Human Rights Implications of
Fully Autonomous Weapons

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Introduction

- CCW traditionally focused on international humanitarian law (IHL)
- But many states called for consideration of international human rights law (IHRL)
- Significant human rights implications of FAWs
  - Human rights law relevant to FAWs
  - Concerns raised under three core elements of IHRL: right to life, right to a remedy, and principle of dignity
Applicability of Human Rights

- IHRL applies during peace and armed conflict
- FAWs could be used for law enforcement as well as military operations
- Law enforcement operations include
  - Local policing
  - Use by state security forces to control opposition
  - International counterterrorism efforts
Foundations of Human Rights Law

- Right to life
  - “The supreme right”
  - Prerequisite for all other human rights

- Right to a remedy
  - Enforces all other rights
  - Seeks to mitigate harm to victims

- Principle of human dignity
  - Underlies all other rights

- From Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR)
Right to Life

- Article 6 of the ICCPR
  - “Every human being has the inherent right to life.”
  - Non-derogable right

- Not absolute prohibition on killing
  - “No one shall be *arbitrarily* deprived of his life.”

- Force must be
  - Necessary,
  - A last resort, and
  - Proportional

- IHRL generally more stringent standards than IHL
Right to Life: Necessity

Law Enforcement

- Force must be “strictly necessary” and “exceptional”
- Firearms used only to defend oneself or others from “imminent threat of death or serious injury”

FAWs

- Could not be programmed to handle all scenarios
- Lack human qualities that facilitate assessing whether force is necessary
- Attract different response from individual than human officer would
Right to Life: Exhaustion of All Alternatives

- Lethal force must be last resort
  - Firearms may only be used when “less extreme measures are insufficient”

- Harder for FAWs to ensure last resort
  - Could not de-escalate situation by appealing to human’s reasons, emotions, or interests
  - Perpetrator more likely to stand down for human officer than machine
<table>
<thead>
<tr>
<th><strong>Law Enforcement</strong></th>
<th><strong>FAWs</strong></th>
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<tbody>
<tr>
<td>Force must be proportional to threat and minimize harm</td>
<td>Lack human judgment to balance response with threat or handle unforeseen circumstances</td>
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<tr>
<td>Officers should take into account perpetrator’s background, mental state, and demands</td>
<td>Lack compassion, which is safeguard against disproportionate force</td>
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Right to Life in Armed Conflict

- IHRL applies during armed conflict as well as law enforcement situations

- *Lex specialis*: In situations of armed conflict, IHL used to interpret the definition of arbitrary killing

- FAWs could be prone to acting unlawfully in armed conflict for similar reasons as in law enforcement
Right to a Remedy

- ICCPR obliges states parties to “ensure that any person whose rights or freedoms … are violated shall have an effective remedy.”
- States must investigate, prosecute, and punish serious violations of IHRL
- States should provide reparations to victims
- States should enforce civil judgments
Remedy and Accountability

- Right to remedy promotes personal accountability
  - Deters future violations
  - Provides retribution to victims of past violations

- Accountability gap for FAWs in law enforcement and armed conflict

- All parties escape liability under existing law
Right to a Remedy: Criminal Law

- Human could be held liable for *intentionally* misusing robot to commit a crime
- Concern when FAW acts unforeseeably due to no meaningful human control
- Unfair and, under existing law, impossible to hold human liable for actions neither knew about nor could prevent
- Hurdle under direct and command responsibility
Right to a Remedy: Civil Law

- Barriers to domestic civil suits
- Immunity for government and government contractors
- Evidentiary hurdles in product liability cases against programmer or manufacturer
Human Dignity

- Machines could not comprehend or respect value of human life
- Allowing FAWs to determine when to take life could undermine human dignity
- “Machines lack morality and mortality, and should as a result not have life and death powers over humans.” -Christof Heyns
Links across Disciplines

- Right to life and use of force
  - IHL similarly lays out restrictions on use of force

- Right to a remedy and accountability
  - Accountability also issue under IHL, international criminal law, and domestic civil law

- Human dignity and ethics
  - Many question morality of machines making life-and-death determinations
Conclusion

- Human rights implications of FAWs compound other threats
  - Cumulative concerns could be resolved with prohibition of FAWs
  - Threat of harm argues for precautionary measures
- CCW states parties should
  - Follow precedent of Blinding Lasers Protocol
  - Preempt development of revolutionary yet dangerous weapons technology