

Balancing Ethical Imperatives: Examining The Role Of 'Responsible Ai' In International Humanitarian Law In Warfare

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For the foreseeable future¹, humans will continue to be engaged in the utilisation of all military systems. Commanders will retain absolute authority over certain critical variables that will be encrypted inside the systems. At minimum, they will include target attributes, geographical/spatial limits, and time constraints. The weapon system is tasked with selecting and engaging specific targets that adhere to these general constraints. Another facet of command and control is the ability to oversee the system, enabling the commander or weapons operator to detect and disable any weapons system displaying indications of malfunction.

Weapons systems provide significant military utility and enable commanders to maintain accountability for their actions and responsibility for the overall outcome of operations within certain limits. These criteria provide commanders with the ability to accomplish mission objectives while following legal standards and rules of engagement, retaining full knowledge of the situation, and working towards the overarching strategic and military goals of the operation.

While humans will retain strategic and operational authority, the weapon system will operate

¹ Shahzad, K., Anwar, A., & Waqas, A. (2023). The Impact of Artificial Intelligence on Future Warfare and Its Implications for International Security. *Asian Innovative Journal of Social Sciences and Humanities*, 7(3).

autonomously inside the tactical loop. Furthermore, several crucial decisions regarding targeting will be made during earlier stages of the targeting process and at locations that are farther away from the planned strike zone. Hence, a meticulous human examination of the functioning of an entirely autonomous weaponry system. This may be accomplished in a mostly theoretical setting, with little awareness of physical hazards or specific vulnerabilities of civilians. Commanders should use more attention while deploying and using these technologies during operations².

Keywords: Ethical Artificial Intelligence, Human Values, International Humanitarian Law, Warfare,

INTRODUCTION

Ethical AI refers to a wide range of concepts and practices that try to ensure that artificial intelligence (AI) technologies are produced and used in a way that is advantageous and does not cause damage to society. This The process entails a meticulous equilibrium between technology progress and compliance with ethical principles that align with human values and society norms.

Artificial intelligence (AI)-assisted systems have profound implications in the humanitarian field, but they also present distinct dangers to human rights, even when used with the utmost benevolence. Based on extensive study and conversations with experts worldwide, this paper outlines the main areas of agreement on how humanitarian practitioners should guarantee that AI enhances human interests without violating human rights. These conversations highlighted the need of establishing a foundational framework rooted in international human rights legislation to ensure that human interests are included into AI systems. Ethics may serve as a valuable supplement to international human rights legislation by addressing deficiencies and raising standards above the bare minimum³.

The use of artificial intelligence (AI) technology for military purposes is rapidly expanding. Consequently, automated weapon systems have undermined humans' ability to make decisions. Once these weapons have been unleashed, mankind will have no ability to alter or terminate their targets. Despite possessing substantial decision-making capabilities, autonomous weapons are now incapable of making ethical decisions. This article examines the ethical consequences of incorporating AI into the military decision-making process and explores how the features of AI systems with machine learning capabilities may interact with human decision-making procedures. The authors propose that in the future, these robots may

² Artificial intelligence and machine learning in armed conflict: A human-centred approach. (2020). *International Review of the Red Cross*, 102(913), 463–479. <https://doi.org/10.1017/S1816383120000454>

³ Knox, J. H. (2008). Horizontal human rights law. *American Journal of International Law*, 102(1), 1–47. <https://doi.org/10.1017/S0002930000039828>

possess the capability to make ethical judgements that closely match those made by humans. An exhaustive and meticulous categorization of AI systems, using rigorous technological, ethical, and cultural criteria, would be crucial in determining the most appropriate and morally sound weapon for a certain mission⁴.

The application of AI technology for military use is growing fast. While the involvement of humans remains crucial in the deployment of these weapons, the growing use of artificial intelligence has enabled weapons to diminish humans' authority in decision-making. Humans possess complete authority over semiautonomous weapon systems. They possess limited control, but eventually maintain the capability to overrule supervised autonomous systems and ultimately lack control over unsupervised autonomous systems. Once these technologies have been implemented in the final situation, humans will lack the ability to modify or terminate their targets.

The most contentious weapons are unsupervised autonomous weapons, since humans lack the capacity to exert control over them after they have been launched. While the current availability of such weapons is restricted, it is quite probable that autonomous weapons will persist in being created and their range of uses will broaden.

The scholarly and professional discourse around the use of these weapon systems mostly centres on their possible targets. However, the authors of this paper propose that we should consider the deployment of these weapon systems within the context of a specific mission. Military operators will deploy semi- and supervised autonomous weapon systems to assist with a mission, while autonomous weapons will be assigned a specific task to complete. The first concern we address is that although autonomous weapons may possess the capability to carry out a mission and so possess substantial decision-making authority, it is very probable that they will lack the ability to make ethical decisions. Currently, autonomous weapons systems lack the capacity to analyse and contemplate alternate actions in case the given mission leads to unanticipated and morally unacceptable outcomes⁵. For instance, during the execution of a mission to annihilate a radar station by a loitering munition, there is a possibility that a civilian car with a family may coincidentally be present near the intended target at the crucial time of the strike. The automated weapon system will persist in its objective and may disregard any potential immoral collateral harm.

According to the authors, there is a viable technique that might somewhat reconcile these seemingly incompatible perspectives. Indeed, a comprehensive and exact categorization of AI systems, using stringent criteria, would be crucial in determining the most appropriate weapon

⁴ Luengo-Oroz, M. (2019). Solidarity should be a core ethical principle of AI. *Nature Machine Intelligence*, 1(11), 494–494. <https://doi.org/10.1038/s42256-019-0115-3>

⁵ De Ágreda, Á. G. (2020). Ethics of autonomous weapons systems and its applicability to any AI systems. *Telecommunications Policy*, 44(6), 101953.

for a certain operation. These factors may pertain to technological, ethical, and cultural aspects. For instance, consider a hypothetical scenario where there exists an AI system that holds the necessary attributes to successfully carry out a designated task. Under such circumstances, the hierarchical structure that intentionally employs an alternative AI system should be held accountable for the possibly immoral result.

Nevertheless, if the appropriate AI system is used, but it reaches a choice that leads to given the unforeseen and morally wrong result, it is important to treat the event as if a conscientious person had made the choice. This last scenario clearly demonstrates the crucial role that the cultural element, defined as the human inclination to accept potentially damaging decisions made by AI, will play in the integration of AI into the human decision-making process⁶. Although current autonomous weapons lack the ability to make ethical decisions, it does not imply that they will never possess the capacity to make ethical choices in the future. The authors propose that in the future, these robots may possess the capability to make ethical judgements that closely match those made by humans. Hence, it is crucial to thoroughly investigate and ascertain the extent to which computer judgements, especially ethical ones, might be deemed acceptable by humans. Not doing so might have two consequences. Some individuals who have excessive confidence in AI systems may be more likely to unquestioningly embrace all automated choices, under the belief that computers are far more intelligent than humans. Conversely, those who are sceptical of computer choices due to their belief that machines never fulfil adequate ethical standards may reject any conclusion made by artificial intelligence. They could choose to forgo the potential advantages that this technology might provide to military decision making in terms of rapidity and precision. The task at hand is to devise a strategy for AI-based decision making that finds a balanced position between the excessively confident and doubtful factions.

The criteria used to determine such an intermediate point will prioritise the existing technology, followed by the ethical framework, and ultimately the human inclination to accept AI's conclusions. This article examines the potential ethical consequences of incorporating artificial intelligence into the military's decision-making process. The study will examine the potential interactions between the specific attributes of AI systems equipped with machine learning capabilities and human decision-making processes.

This paper discusses the theoretical foundations of international humanitarian law, specifically focusing on the concepts of humanity and the Martens clause, and their influence on the regulation of lethal autonomous weapons systems. Despite differing opinions within the field,

⁶ Schuster, E. (2018). When Something Has to Give: The Intersection of Artificial Intelligence, Military Decision-Making and International Humanitarian Law.

this argument suggests that the current basic principles of international humanitarian law are insufficient for regulating the use of emerging military technologies. As a result, a new global standard is required. The paper combines non-legal viewpoints from various normative systems that highlight the value of human life and the involvement of individuals in decision-making processes concerning the welfare and survival of victims of modern armed conflicts. These arguments shall be included in the paper.

OBJECTIVES AND SCOPE OF THE RESEARCH

The primary goal of this research is to comprehensively examine and evaluate the integration and effectiveness of ethical standards and principles in the development and utilization of artificial intelligence (AI) technology. The objective of this research is to explore the practical implementation of ethical AI in real-life situations, with the aim of guaranteeing that the development of AI is in line with human values and society standards.

One important goal is to evaluate the present ethical frameworks for artificial intelligence (AI), by analysing the standards and frameworks that now exist for AI. This entails doing a thorough examination of the concepts outlined in different ethical AI standards and assessing their suitability and efficacy in diverse AI application domains. The study will explore the identification and classification of significant ethical dilemmas encountered in AI applications, including those related to accountability, ethics and responsibility. This involves studying case studies and real-life instances in which AI has presented ethical challenges, offering a detailed comprehension of the ethical framework in AI.

Essentially, this research paper seeks to connect theoretical ethical AI frameworks with their actual implementation. The research contributes to the responsible and sustainable development of AI technologies by examining existing frameworks, identifying ethical problems, and evaluating the effectiveness of ethical AI in practice. The study covers a wide variety of AI applications, viewpoints from many stakeholders, and ethical concerns. Its goal is to provide thorough insights into the ethical aspects of AI.

RESEARCH METHODOLOGY

This study employs a qualitative analytical research technique and utilises theoretical frameworks in the field of Artificial Intelligence ethics. This technique is crucial for understanding the complex ethical aspects of AI, which often go beyond measurable measurements and include moral philosophy, cultural standards, and human values.

The research utilises a qualitative technique, which is reinforced by the stated theoretical frameworks, to get a thorough comprehension of the ethical aspects in the field of artificial intelligence (AI). This approach not only improves understanding of the moral challenges in AI but also helps in creating practical answers for integrating ethical concerns into AI research

and application. The results from this research will significantly advance the field of AI ethics by offering sound and viable principles for ethical AI practices.

THE PERPETUAL ENIGMA OF STRIKING A BALANCE BETWEEN THE NEEDS OF HUMANITY AND THE REQUIREMENTS OF THE MILITARY.

The premise of my study is that International Humanitarian Law (IHL) is a legal framework that has not been thoroughly analysed and requires comprehensive theoretical models for a systematic interpretation. IHL, as described is a practical set of regulations that may be considered a law of emergency or necessity. Despite its imperfections, it is supported by a strong degree of trust from both military commanders and humanitarian activists. This is a result of its equilibrium. The statement recognises the importance of humanitarian concerns, as represented by the concept of humanity, and also admits that military necessity allows for the use of armed action in justifiable situations. Regarding the conduct of hostilities, this balancing exercise is portrayed as a guiding principle or core model. Nevertheless, this perspective lacks appropriate guidance since it often fails to address the specific influence of reconciling human values with military requirements on the development, understanding, or implementation of International Humanitarian Law⁷. On the contrary, it could be seen as a cause of confusion, beginning with complex theoretical discussions and potentially resulting in a situation where a commander and their legal advisor are left in the dark about current legal changes, or increasingly, the commander is left to make decisions alone. The perceived obligation to preserve the lives of soldiers stems from an exaggerated understanding of the concepts of distinction and proportionality, within the framework of humanitarian concerns coming from the simultaneous application of human rights legislation⁸. Therefore, the perspective of the traditional camp (referred to as the "kill faction") considers the careful weighing of both factors that was historically done by politicians.

As the ongoing arguments over doctrine persist, it is clear that the uncertainty surrounding the process of balancing has a negative effect on the implementation of International Humanitarian Law (IHL) and does not enhance the security of the parties concerned. States seldom adopt an official stance (as demonstrated in the process of creating norms to balance humanity and military necessity), which leads to ongoing debates regarding matters such as enhancing the protection of one's own soldiers, apprehending enemy combatants instead of killing them, offering surrender terms, and utilising the most precise and selective weapons (including the

⁷ Hayashi, N. (2020). *Military necessity: the art, morality and law of war*. Cambridge University Press.

⁸ Kowalczywska, K. (2019). The role of the ethical underpinnings of international humanitarian law in the age of lethal autonomous weapons systems. *Polish Political Science Yearbook*, 48(3), 464-475.

substitution of soldiers with unmanned weapons). These discussions occur in doctrine but do not necessarily translate into actual battlefield⁹ practices.

Due to the aforementioned uncertainties, it may be argued that this vital - but inadequately examined - process of finding a balance can be carried out on two distinct levels. Some commentators argue that the application of IHL should be universal, while others disagree and believe that a strict interpretation is necessary. The equilibrium between these two points of view is contingent upon the legislators and the particular circumstances in which they are willing to permit or endure a specific action.

The second perspective would want to emphasise that the increasing automation of warfare offers a fresh chance to redefine the equilibrium based on contemporary notions of human dignity and compassion within the framework of LAWS (Lethal Autonomous Weapons Systems) and the consequential transformation in the nature of conflict¹⁰. An alternative perspective would need a dual arrangement of the equilibrium, first carried out during the process of legislation, and subsequently during the act of implementing and executing the law. This method has the potential to result in novel and perhaps illegal findings that go against the intentions of legislators. Hence, it is imperative to acknowledge that the essential equilibrium between human welfare and military exigency is already included within the existing legal framework. The standards of International Humanitarian Law (IHL)¹¹ should remain constant and not be altered or reinterpreted based on external variables such as political, cultural, or ethical inclinations of the States involved in an armed conflict.

ETHICS IN THE CONDUCT OF ARMED CONFLICTS

The fundamental tenets of International Humanitarian Law (IHL) embody the ideals of humanity, which aim to achieve two main objectives: safeguarding human life and upholding respect for humanity in times of armed conflicts, although recognising the unfortunate need for taking lives. Humanitarianism in combat operations is the actions taken by those involved in armed conflict to reduce the suffering of those affected by the war. These actions aim to provide protection and support to the victims to the best extent feasible. These standards are based on legal norms of International Humanitarian Law (IHL)¹² and are further reinforced by the non-binding standards outlined in the Martens clause. The legitimacy of these measures

⁹ Reichberg, G. M., & Syse, H. (2021). Applying AI on the battlefield: the ethical debates. *Robotics, AI, and Humanity: Science, Ethics, and Policy*, 147-159.

¹⁰ Jafariandehkordi, M. (2024). The AI Battlefield: Legal Challenges of Autonomous Weapon Systems under International Humanitarian Law.

¹¹ Kowalczywska, K. (2019). The role of the ethical underpinnings of international humanitarian law in the age of lethal autonomous weapons systems. *Polish Political Science Yearbook*, 48(3), 464-475.

¹² Ibid.

can also be supported by legal reasoning based on administrative law and human rights law, which set standards for how a government's authority and control should be exercised

THE MARTENS CLAUSE: A MECHANISM TO ENSURE SAFETY AND PREVENT POTENTIAL HARM.

The Martens clause is often regarded as the ultimate safeguard to be used when there is a lack of explicit legal rules in a formal sense, since it embodies the fundamental principles of the International Humanitarian Law framework.

The instance of LAWS seems to align precisely with this concept. Acknowledging the Martens clause¹³, in conjunction with military necessity, offers a fundamental mechanism for the application of traditional International Humanitarian Law (IHL) by States in regions that have not been governed by legal regulations. Although the Geneva Conventions have diminished the significance of military necessity as the primary aspect of the law of war, the Martens clause continues to serve as a standard that prevents the automatic application of the principle that "what is not explicitly prohibited is allowed"¹⁴. The Martens Clause is a fundamental principle of International Humanitarian Law (IHL) that imposes limitations on the actions of sovereign states, both during times of war and peace.

It is referenced in various articles and conventions, including the Fourth Hague Convention, Article 63 of the First Geneva Convention, Article 62 of the Second Geneva Convention, Article 142 of the Third Geneva Convention, Article 158 of the Fourth Geneva Convention, and Article 1 point 2 of the Additional Protocol I. The Martens Clause is also mentioned in the preamble of the Convention on Certain Conventional Weapons (CCW)¹⁵.

Despite its controversial nature, it may be said that it has a pragmatic impact in two potential domains: as a point of reference for non-legal factors in the process of creating laws, and in the process of making decisions.

REVISITING THE PUBLIC CONSCIENCE DOCTRINE FROM A NEW ANGLE

The present condition of discusses at the CCW Convention and the frequency of comments by specialists addressing legal, ethical, and technical issues that include the Martens clause are indicative of the prevailing situation. When there are no other sufficient tools of international law that bring together legal and moral values, the Martens clause may be used as a useful negotiating tool to address possible regulatory deadlocks (Sparrow, 2017). Nevertheless, the practical value of the Martens clause may be deceptive because of the well-recognised challenges and inconsistencies in its interpretation, including the absence of a consistent

¹³ Nakamura, A. (2021). Fully Autonomous Weapons System (AWS): Analysis of AWS with regard to IHL and Martens Clause.

¹⁴ Ticehurst, R. (1997). The martens clause and the laws of armed conflict. *International Review of the Red Cross*, 37(317), 125–134. <https://doi.org/10.1017/S002086040008503X>

¹⁵ CCW/MSP/2019/CRP.2/Rev.1

consensus on the definitions of "the laws of humanity and the dictates of public conscience." However, In his dissenting exposition concerning the case on the Legality of the Threat or Use of Nuclear Weapons (1996), Judge Shahabuddeen emphasized the significance of the Martens Clause., he emphasised the importance of considering evolving circumstances, such as technological advancements and changes in warfare methods, as well as the international community's outlook and tolerance levels, when interpreting the "laws of humanity and dictates of public conscience".

The discussion on the regulatory difficulties associated with LAWS is perfectly aligned with the necessity of updating the concepts mentioned above in the context of the development of disruptive military technologies. The ethical challenges identified make it necessary to go beyond the existing legal regulations. The Martens clause expresses the idea that justice and morality are fundamental to law. To effectively regulate disruptive technologies, it is important to engage in thorough discussions and reflections on the goals, characteristics, and methods of modern warfare. When it comes to the development of LAWS, it's important to consider the principles of humanity and public conscience. "Humanity" refers to respect for human dignity and moral standards, while "public conscience" involves taking into account relevant public opinion. It's recommended to involve civil society and social science experts to accurately gauge international morality, as public opinion reflects the current international climate. Public conscience is a form of international humanitarian law (IHL) that considers non-legal aspects.

THE ROLE OF ETHICS IN THE DECISION-MAKING PROCESS

The use of governmental authority should take ethical factors into account at a minimum of two levels: assessing the legality of the tactics and strategies used in war as outlined in Article 36 API, and the selection of targets. The Martens clause, which is one of the principles of international law in force for a given State, shall be incorporated into the assessment of the legality of the specific means of warfare in question in accordance with the ICRC's Guidelines (ICRC, 2006). As a result, the government must declare all methods and tools of warfare that do not align with humanity's principles and public conscience as illegal. When examining the legal assessment of new weapons, it was noted that this standard requires inquiries to be directed to the appropriate government bodies representing political authority, rather than to military personnel or legal advisors, to ensure that a developed or acquired weapon complies with humanity's principles and public conscience on a strategic level. This approach assumes that a country has a consistent armament strategy unaffected by policy changes, with any changes reflecting the nation's will (this argument is applicable to democratic states, but not renegade nations). When faced with moral decisions about the type of equipment used to protect citizens, determining the legality of a reviewed weapon according to the prevailing military strategy would be aided by identifying public opinion (German defence minister supports European armed drone, 2014). Addressing the challenge of understanding and

evaluating non-legal standards by the team or individuals responsible for legal evaluations of weapons could be accomplished by seeking public input to make decisions about a specific weapon's compliance with the Martens clause.

In this context, the Martens clause has the normative potential to directly influence political decisions, whether at the international or national level, despite the controversy at the theoretical level. In particular, the enhancement of the implementation and enforcement of IHL can be influenced by the elucidation of the prevailing moral and legal standards established by it. This is particularly critical in the context of LAWS regulation, as the primary obstacles pertain to extra-legal inquiries, including whether the decision-making process (regarding the killing of individuals) should be transferred to artificial intelligence and the degree of uncertainty that we are willing to tolerate. The ethical perspective should be the primary focus when addressing these intricate issues. It encompasses such fundamental inquiries as the nature and objectives of contemporary armed conflicts, the position of humans in targeting processes, and the comprehension of human dignity during war. The international community should "take a step back" and consider the ethical implications of disruptive technologies, as IHL norms do not expressly and unequivocally address these matters.

Only after such a contemplation should the relevant legal norms be adopted. In this context, it is important to acknowledge that a portion of the doctrine has conducted research that has resulted in the adoption of new concepts. These concepts are founded on the analogy between the targeting process and other legally regulated situations.

ETHICAL FRAMEWORKS FOR ARTIFICIAL INTELLIGENCE IN WARFARE

The prevailing belief is that the creation and use of LAWS (Lethal Autonomous Weapons Systems) will be technically feasible. Additionally, it is anticipated that military requirements and economic efficiency will make it unavoidable to develop and deploy certain types of LAWS. especially interested in examining the regulation of laws under the setting of combat, when the conduct of states is governed by International Humanitarian Law (IHL). States fulfil their commitments under International Humanitarian Law (IHL) by following national guidance papers that provide boundaries for the rules of engagement they use prior to resorting to armed action¹⁶. Without the presence of updated regulatory frameworks, the deployment and use of LAWS will only be limited by International Humanitarian Law (IHL) and state rules of engagement.

These fundamental principles are applicable independent of the method of warfare and, thus, are equally applicable to the use of LAWS, as confirmed by the governments involved in the UN CCW GGE on LAWS. Applying these fundamental principles to the issue of LAWS offers

¹⁶ Johnson, J. (2019). Artificial intelligence & future warfare: implications for international security. *Defense & Security Analysis*, 35(2), 147-169.

a difficulty since International Humanitarian Law (IHL) is designed for human actions and assumes the presence of human purpose, which AI systems lack. Currently, there is a consensus that all current laws are based on the idea that humans are responsible and accountable for their actions.

There is no significant discussion or disagreement concerning the legal accountability¹⁷ of AI systems or LAWS (lethal autonomous weapons systems) at this moment. Nevertheless, as LAWS have the ability to independently choose their actions within specified limits, they may exhibit intricate and unanticipated behaviours while striving to achieve military goals. These behaviours might potentially jeopardise adherence to norms of International Humanitarian Law (IHL), such as proportionality.

Prior to the World Wars of the twentieth century and the subsequent implementation of new methods of industrialised warfare, early versions of International Humanitarian Law (IHL), like as the St. Petersburg proclamation, aimed to establish guidelines for fighting in terms of proportionality. Subsequently, further specific agreements were introduced that altogether prohibited the use of certain weapon systems.

This include biological and chemical weapons, since their utilisation is hindered by the inability to utilise them in a proportionate and differentiated way, among other factors that also pertain to ethical considerations.

Similarly, the use of cluster ammunition during night time air raids was examined, prompting the development of more advanced alternatives such as GPS or laser precision-guided bombs. These armaments Enabling precise targeting allows for greater compliance with International Humanitarian Law (IHL).

Settings enable users to accomplish their military objectives with little force, hence minimising the impact of military operations on the surrounding environment of the target. However, both operator mistakes and technical malfunctions have led to several well-known events in which so-called 'smart' bombs produced unintentional collateral damage, meaning harm to targets that were not planned or authorised. Laws has the capacity to serve as a further advancement in guaranteeing enhanced precision and less unintended harm, resulting in increased adherence to International Humanitarian Law (IHL), particularly with regards to the principles of distinction and proportionality. Autonomous LAWS have the capability to use precise weaponry and interpret information at a quicker rate than any human operator. However, their lack of transparency and capacity to behave unpredictably in unknown conditions provide several types of danger.

¹⁷ Zhou, N., Zhang, Z., Nair, V. N., Singhal, H., Chen, J., & Sudjianto, A. (2021). Bias, fairness, and accountability with ai and ml algorithms. <https://doi.org/10.48550/ARXIV.2105.06558>

Several scholars examine the consequences of LAWS in relation to the concepts of proportionality and distinction in International Humanitarian Law (IHL). According to International Humanitarian Law (IHL), human commanders¹⁸ are required to provide evidence of the rationality of their assault choices in order to clarify and defend their actions. The issue of the black box problem in contemporary machine learning algorithms, which refers to the lack of transparency and comprehension of their decision-making process, raises significant ethical concerns. This problem makes it impossible for humans to foresee how an AI system will carry out its tasks. The absence of intention in AI systems exacerbates this predicament, since it is impossible to demonstrate that an opaque and indifferent AI system will perform in a trustworthy manner, as mandated by the concept of proportionality.

According to several writers limiting the ability to make decisions might be beneficial in addressing these difficulties. It may include regulations on the weapon system's settings to limit targeting and tasks to certain groups of targets, such as naval boats, in specific environments like the open sea. It would also need human-machine integration to assure human control via in-the-loop or on-the-loop monitoring. These notions pertain to the degree of incorporation of the human operator into the operation of the weapon system.

The term "in-the-loop" refers to a situation where the operator must verify and approve every possible attack, while "on-the-loop" describes a scenario where the system is capable of autonomously launching attacks, with a human supervisor overseeing as a fail-safe measure. Ultimately, the term "out-of-the-loop" refers to a system that functions entirely independently, without any human oversight or supervision. The ICRC suggests the implementation of effective human control procedures, together with internationally accepted limitations on lethal autonomous weapons systems (LAWS) that are in line with international humanitarian law (IHL). Additionally, there is a need for clarification on areas where new regulations may be required concurs with this notion, highlighting that differentiating between military and civilian boats may be simpler than distinguishing between troops and non-combatants.

Overall, LAWS provide a difficulty in terms of duty and accountability within the framework of International Humanitarian Law (IHL), since they have the potential to substitute people in both the execution of actions and the formulation of strategies. Despite human involvement, the limited quantity of data and the need for quick decision-making greatly restrict human scrutiny. The issue of accountability becomes much more urgent when there are no people involved in the decision-making process. The responsibility gap may be closed by appointing responsibility advisers throughout the whole process, from design to employment.

¹⁸ Montgomery, T. (2017). Command and Control: A Moral Framework for the Development of Artificial Intelligence. *ESSAI*, 15(1), 27.

CONTEMPORARY CONCEPTS: STRIKING A BALANCE BETWEEN MILITARY IMPERATIVES AND HUMANITY

The 1899 and 1907 Hague Regulations¹⁹ notoriously stated that the power of belligerents to use methods of harming the adversary is not without limits. Instead, International Humanitarian Law (IHL) is a meticulously crafted equilibrium between the principles of military requirement and compassion. Each rule of the system represents a logical compromise between the two conflicting forces. It is not unexpected that only nations have the ability to create international law, either via treaties or by engaging in state practice that becomes customary law. International law is a reflection of the objectives of the governments involved, agreeing to be obligated by it. In the realm of warfare, governments possess two predominant objectives. One important capability is the capacity to actively seek and protect crucial national interests. When formulating International Humanitarian Law (IHL)²⁰, governments emphasise the need of legal standards that do not excessively limit their ability to act on the battlefield, since this might potentially impact their national interests. The notion of military necessity serves as the mechanism within International Humanitarian Law (IHL) to protect and uphold this objective. Contrary to occasional claims, it does not impose any restrictions on military activities.⁹

However, the idea acknowledges the need of taking military variables into account while establishing the regulations of combat²¹.

All legitimate governments have an equal responsibility to protect the welfare of their citizens. This encompasses the provision of "Public goods," such as ensuring safety, which establishes the social contract between a government and its citizens. The principle of humanity, which seeks to protect individuals and their belongings, advances this fundamental goal, irrespective of whether they are soldiers or civilians. Given the frequent conflicting interests, nations are need to adopt policy decisions, such as treaties or practices, in order to find the most effective way to accommodate these interests. Naturally, all policy choices are contingent upon the context, which means they are influenced by previous, current, or expected conditions. When the situation changes, the perceived adequacy of a certain balance between military need and compassion may be called into doubt.

States respond by either rejecting, revising, or supplementing existing International Humanitarian Law (IHL) or by creating new standards. The changing conditions may also influence the interpretation and implementation of current legislation. The concept of balancing military need with compassion is present throughout International Humanitarian

¹⁹ Greenwood, C. (2000). International humanitarian law (laws of war). In *The Centennial of the First International Peace Conference* (pp. 161-259)

²⁰ Schmitt, M. N., & Schmitt, M. N. (2012). Military necessity and humanity in international humanitarian law: preserving the delicate balance. *Essays on law and war at the fault lines*, 89-129.

²¹ Ibid

Law (IHL) in both a broad and specialised manner²². The 1868 St. Petersburg Declaration²³, for instance, clearly acknowledged the need of finding a middle ground, aiming to establish "the specific boundaries at which the demands of war should give way to the principles of compassion." Elsewhere balancing appears as a broader and fundamental premise of International Humanitarian Law (IHL). An example of a developed customary law recognised by the International Court of Justice (ICJ) is the 1907 Hague Convention IV. The document was motivated by the aspiration to mitigate the negative consequences of war to the greatest extent possible within the constraints of military necessities, as stated in its preamble. The incorporation of the renowned "Martens Clause" into Hague Convention IV provides more evidence that the act of balancing military objectives with humanitarian concerns was meant to be a universal concept that permeates the law.

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.²⁴

The 1977 Additional Protocol I has a similar provision, and the International Court of Justice has used this paragraph to confirm that it is still relevant.

The Martens Clause illustrates that International Humanitarian Law (IHL) is not subject to the positivist claim that everything not explicitly prohibited by international law is automatically allowed²⁵. The International Court of Justice (ICJ) recognised in the Corfu Channel case that international law is influenced by fundamental principles of humanity. Therefore, the lack of a specific norm under International Humanitarian Law (IHL) does not automatically justify an

²² Arnold, R., & Quéniwet, N. N. R. (Eds.). (2008). *International humanitarian law and human rights law: Towards a new merger in international law*. Martinus Nijhoff Publishers.

²³ Klonowska, K. (2022). Article 36: review of AI decision-support systems and other emerging technologies of warfare. *Yearbook of International Humanitarian Law, Volume 23 (2020)*, 123-153.

²⁴ Mero, T. (2000). The martens clause, principles of humanity, and dictates of public conscience. *American Journal of International Law*, 94(1), 78–89. <https://doi.org/10.2307/2555232>

²⁵ Pustogarov. (1999). The martens clause in international law. *Journal of the History of International Law / Revue d'histoire Du Droit International*, 1(2), 125–135. <https://doi.org/10.1163/15718059920956715>

action based on military necessity. Actions taken during wartime must also demonstrate equal regard for people.

However, according to its own conditions, the Martens Clause is only applicable where the written law does not address the issue²⁶. The current body of treaty law is a result of a mutually agreed upon compromise between the need for military actions and the importance of human rights. This means that none of these factors may be used as a sole justification for disregarding the requirements of the treaty, unless the legislation explicitly allows for it. Since laws are created exclusively by states, it is only states that have the authority to alter the balance of consensus.

1863 Lieber Code : Civil War

The idea of military necessity is seldom mentioned in written law. The term "prominently" refers to the fact that it was very visible or noticeable. Originally utilized in the 1863 Lieber Code, which imposed constraints on Union soldiers during the Civil War, the concept's foundational evolution was guided by the code's three articles on military necessity.

Art. 14. Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war²⁷.

Art. 15. Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of the war Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God²⁸.

Art. 16. Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge [A]nd, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult²⁹.

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The Lieber Code's discussions of humanity moderate every reference to military necessity. Article 14 allows for the devastation required to accomplish the war objectives, but only if the

²⁶ Ibid.

²⁷The Lieber Code's (N.d.). Retrieved August 3, 2024, from <https://ihl-databases.icrc.org/en/ihl-treaties/liebercode-1863/article-14>

²⁸Ibid.

²⁹ Ibid.

measures are in accordance with the established legal standards of warfare. Similarly, Article 15 acknowledges that injury to individuals other than combatants is certain to occur, but it restricts such harm to being unintentional and preventable. Article 16 states that although all assaults on combatants are considered essential, they must not be harsh.

On the other hand, International Humanitarian Law (IHL) sometimes considers the possibility of not following a regulation that is based on humanitarian principles due to military necessity. The Hague Convention IV prohibits the destruction or seizure of enemy property, unless it is absolutely necessary due to the demands of war. The 1949 Fourth Geneva Convention³⁰ prevents occupying authorities from destroying specific property, unless it is deemed absolutely essential due to military activities. The 1954 Hague Cultural Property Convention provides safeguards for cultural property, although these protections may be limited in situations when military necessity demands them. The 1977 Additional Protocol I³¹ allows certain actions to be taken when there is a compelling military need. These actions involve straying from the prohibition on "scorched earth" tactics in areas controlled by a Party, utilizing enemy equipment and structures that are permanently designated for civil defense organizations, and imposing restrictions on the actions of civil defense and relief personnel. These instances illustrate that even when explicitly outlined in International Humanitarian Law (IHL) documents, military necessity always operates with humanitarian concerns as a primary factor.

The prevalence of implicit balance is much greater. The concept of difference, which is considered one of the two fundamental principles of International Humanitarian Law (IHL) according to the International Court of Justice (ICJ) in the Nuclear Weapons case, is considerably limited by military necessity.

The norm of customary law, as stated in Article 48 of Additional Protocol I, mandates that parties must consistently differentiate between the civilian population and combatants, as well as between civilian objects and military goals. Articles 51 and 52 of the 29th document establish the practical implementation of differentiation in relation to the requirements of military necessity. According to Article 51, it is forbidden to assault civilians. However, those who actively engage in the war forfeit this protection as long as they directly participate in hostilities. Similarly, Article 52 of the law prohibits assaults on items that are not considered "military objectives." Nevertheless, it acknowledges that non-military items can be categorized as military targets if they "actively contribute to military operations" based on their characteristics, position, intention, or function. The total or partial destruction, seizure,

³⁰ Sati, M. C. (2024). The attributability of combatant status to military AI technologies under international humanitarian law. *Global Society*, 38(1), 122-138.

³¹ de Oliveira Fornasier, M. (2021). The regulation of the use of artificial intelligence (ai) in warfare: between international humanitarian law (ihl) and meaningful human control. *Revista Jurídica da Presidência*, 23(129), 67-93.

or disabling of such items, given the current situation, must provide a distinct military benefit. The second cardinal principle, needless pain, acknowledges the legitimate character of weapons that inflict suffering that is militarily required, thereby recognising necessity as a limiting element.

In the cases given above, the establishment of a specific limit, whether clearly stated or implied, for a general norm based on military necessity is evident. However, examination of the majority of norms under International Humanitarian Law (IHL), particularly those that pertain to the behaviour during armed conflict, demonstrates a persistent awareness of the need to maintain a delicate equilibrium between military objectives and humanitarian concerns.

For example, an aggressor may not consider numerous military targets in a region with a large number of civilians as a single military target (as in the case of area or carpet bombing) when it is possible to strike them separately since they are different and independent from each other. Given that they are legitimate targets, their annihilation is strategically imperative. However, in order to adhere to the legal obligation of minimising injury to non-combatants, it is important to explore a tactical alternative. Imposing specific strategic decisions is a common method of safeguarding the human race throughout the course of armed conflicts³². Assaultants could refrain from attacking a military target if there are other targets available that provide a comparable military benefit but posing less risk to civilian lives and civilian property. In addition, they must carefully choose from a range of strategies and armaments (approaches and tools) while prioritising the "prevention, and at the very least, reduction, of unintended harm to non-combatants, injuries to civilians, and destruction of civilian property." The presence of choice is contingent upon the practicality of the available alternatives, thus illustrating that "precautions in attack" represent a mutually agreed-upon balance between military and humanitarian considerations.

The idea of balance is most evident in the concept of proportionality. Proportionality is described in Article 51 of Additional Protocol I as a customary legal principle that prohibits an attack if it is likely to result in disproportionate harm to civilians or civilian objects compared to the expected military benefit. The concept of "excessive" is inherently subjective, since it depends on the delicate balance between military need and humanitarian concerns. If the military advantage gained from an assault is minimal, even a little amount of collateral damage might prevent it from being considered legitimate. On the other hand, a significant military benefit could potentially justify a large amount of collateral damage.

Occasionally, the seeming lack of logical consistency between military need and humanity may necessitate invoking one or the other to restore equilibrium to an existing norm. However,

³² Toscano, B. M. (2022). Autonomous Weapons and International Responsibility. In *The Limitations of the Law of Armed Conflicts: New Means and Methods of Warfare* (pp. 91-123). Brill Nijhoff.

any adjustment of the balance would lack legitimacy if the new equilibrium strays from the one that states have mutually agreed upon. An illustrative instance pertains to the handling of a hostile combatant apprehended by a Special Forces detachment operating covertly in enemy territory. Despite the unit's inability to fulfil its task while escorting the prisoner, it recognises that releasing the soldier would result in an alert being raised. The most rational solution is to eliminate him; considering that he is the adversary and, if not captured, would have been vulnerable to a lethal assault upon being seen.

However, according to International Humanitarian Law (IHL), enemy soldiers who have been captured are considered hors of combat and are protected from being attacked. This means that any act of violence against an opponent is included in the definition of an assault under IHL. Therefore, the crew is prohibited from causing any damage to the caught soldier. They have two options: either abandon their operation and bring the prisoner back to base, or ensure that he is restrained in a manner that allows him to ultimately escape without any injuries. Despite its apparent lack of logic, the rule demonstrates a deliberate equilibrium between military need and compassion. No modifications are allowed.

The development of international humanitarian law is essential in order to adapt to the changing dynamics of conflicts and align with the principles and beliefs of those involved. Since the 19th century, there has been a consistent shift towards prioritising human welfare and moving away from military requirements. The name of the statute has changed throughout time. During the early part of the twentieth century, this concept was referred to as the "law of war." The implementation of the 1949 Geneva Conventions brought about a modification to the phrase "law of armed conflict" is used in those treaties to highlight the applicability of humanitarian principles in situations of armed conflict.

Prescriptions were not contingent upon the issuance of a war declaration or the acknowledgment by the parties involved of a state of war. In recent times, the term "international humanitarian law" has gained popularity, largely due to the efforts of the International Committee of the Red Cross (ICRC). Although the International Court of Justice (ICJ) acknowledges it, the designation has a significant drawback of concealing the importance of military necessity in the laws that regulate armed conflict. However, it appropriately represents the shift towards giving more importance to the humanitarian aspects of the law.

CONCLUSION

The delicate balance between military necessity and compassion is a fundamental principle in international humanitarian law. War cannot be conducted without restraints since nations have a responsibility to protect the well-being of their people, including soldiers. Therefore, they must agree with possible opponents on restrictions that guarantee their interests. Furthermore, historical evidence has shown that uncontrolled troops pose challenges in terms of leadership,

intensify the determination of the adversary to continue fighting, and provoke hostility among the populace in the territories they govern. The current philosophy of counterinsurgency in the United States affirms the military effectiveness of imposing restrictions on the use of force³³. However, in a world where humanitarianism was the dominant principle, conflict would cease to exist. Given the unfortunate truth that war exists, it is necessary for governments to have a reasonable level of freedom in order to efficiently carry out their military activities.

The review of treaty law demonstrates that codification has led to a gradual shift towards prioritising the humanity aspect of the military necessity-humanity balance. States may find this development acceptable since they have a role in establishing the equilibrium via the process of codification and state practice. Individuals who see a potential standard as unfair have the option to withdraw from the treaty system or take actions to hinder the development of a customary standard.

International tribunals have assumed authority over the process, diminishing the influence of governments. While their rulings may have limited jurisdiction, they undeniably have substantial impact on the overall comprehension of International Humanitarian Law (IHL). Even though tribunals have typically been successful in upholding or clarifying standards of International Humanitarian Law (IHL), it is crucial to acknowledge that they do not address the issue from the same perspective as states. This is because they do not directly bear the consequences of their rulings concerning the appropriate balance between military necessity and humanity. Consequently, their thinking is less focused on achieving equilibrium. This partially elucidates the observable inclination towards normative solutions that prioritise humanity above military need.

The state-based method plays a crucial role in maintaining the integrity of International Humanitarian Law (IHL) by enabling the identification of agreement via codification or practice. States are particularly well-positioned to carry out this role since they are immediately impacted by judgements related to military necessity and humanity. Only they have the ability to fully understand the challenge presented by a rebalancing effort that does not adequately consider the importance of military necessity. The greater the likelihood of a state becoming embroiled in armed conflict, the more likely it is to resist such occurrences in order to protect its capacity to participate in military activities without restriction.

As the likelihood of conflict decreases, a state will more advocate for the concept of humanity, mostly to appeal to popular sensitivities. Fortunately, the participation of several European governments in Afghanistan and other regions has acted as a catalyst for awakening those individuals in the latter group.

³³ Board, D. I. (2019). AI principles: recommendations on the ethical use of artificial intelligence by the department of defense: supporting document. United States Department of Defense.

To ensure a satisfactory equilibrium between the two principles, it is crucial to adhere strictly to the current regulations of International Humanitarian Law (IHL). It is not suitable, for example, to add any further obligation to evaluate military necessity or considerations of humanity to the explicit regulations; the necessary weighing of factors has already occurred. Individual assessments of where the equilibrium should be established would lead to a lack of regard for existing regulations among those who are adversely impacted and make the standards to be implemented in uncertain circumstances less certain for everyone. Undoubtedly, the need for the absence of normative clarity is one of the reasons why customary law does not arise until there is a combination of widespread governmental practice and *opinio juris*.

In modern warfare, the increasing focus on international humanitarian law is a beneficial aspect. The involvement of states, tribunals, nongovernmental and intergovernmental organisations, academics, and the general public in clarifying, spreading, and enforcing International Humanitarian Law (IHL) contradicts Sir Hersch Lauterpacht's well-known statement that "if international law is . . . at the vanishing point of law, the law of war is . . . at the vanishing point of international law." In order to avoid proving him right, it is crucial to keep the delicate equilibrium between the rules of military law and necessity.

Ultimately, this research has successfully achieved its goals by conducting a comprehensive examination of ethical artificial intelligence, presenting a strategic plan for harmonising technical progress with ethical limitations. The results and recommendations provided lay the groundwork for potential research and implementation of ethical AI, playing a significant role in the responsible and long-term growth of AI technology. The study highlights the importance of ethical considerations in the advancement of AI, ensuring that AI serves the greater good of society while upholding the rights of individuals and societal standards.

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