WHAT LAW APPLIES?
WHAT DOES THIS HAVE TO DO WITH KILLER ROBOTS?
“In time of war, the laws are silent.”

- Marcus Tullius Cicero
“The common underlying purpose of international humanitarian law and international human rights law is the protection of the life, health and dignity of human beings.”

- Jakob Kellenberger, former ICRC President
**IMPORTANT DIFFERENCES**

**International Humanitarian Law**
- Origin story: State relations in armed conflicts
- Applies in armed conflicts and occupations

**International Human Rights Law**
- Origin story: Just relationship between states and individuals
- Complicated application
RELATIONSHIP

This talk / Scholarship

Realistically

IHL

IHRL

IHL

IHRL
CONFLICTS OF LAW

- The Right to Life
- Prohibition on Arbitrary Detention
- The Right to a Fair and Speedy Trial
THREE MODELS FOR RESOLVING CONFLICTS

- Displacement Model
- Complementarity Model
- Conflict Resolution Model
DISPLACEMENT MODEL

Armed Conflict?

Yes → Apply IHL

No → Apply IHRL
DISPLACEMENT MODEL

IHL

IHL

IHL

IHL
COMPLEMENTARITY MODEL

Armed Conflict?

No

Apply IHRL

Yes

Is there a conflict of law?

No

Apply both

Yes

No there isn’t

Interpret IHL and IHRL to not conflict
COMPLEMENTARITY MODEL
CONFLICT RESOLUTION MODEL

Armed Conflict?

No

Apply IHRL

Yes

Relationship?

Interpretation

Conflict

Apply IHL and IHRL

Use conflict resolution rule to determine applicable law
CONFLICT RESOLUTION RULES

- Event-Specific Displacement
- Reverse Event-Specific Displacement
- Specificity
CONFLICT RESOLUTION MODEL

Armed Conflict?
- No: Apply IHRL
- Yes: Relationship?
  - Interpretation: Apply IHL and IHRL
  - Conflict: Use conflict resolution rule to determine applicable law
CONFLICT RESOLUTION MODEL

IHL IHL

IHL IHR

IHRL
AREAS OF OVERLAP
The existence of an armed conflict need not mean human rights law goes out the window.

Determining the actual relationship between the legal regimes is messy.

However, some of that confusion can be alleviated with forethought – which is the point of military manuals, rules of engagement, and other military policies.
IMPLICATIONS: HIGHLIGHTS IMPORTANCE OF OTHER QUESTIONS

- Is there an armed conflict?
- When does an armed conflict end?
- Type of armed conflict? (IAC v. NIAC)
  - Recall: Different rules apply
- What about consent-based interventions?
  - Way to evade HR requirements?
IMPLICATIONS: CREATES DEBATES

- Extraterritoriality application of human rights
- Capture / Kill
- Duty to use most humane weapon?
  - Duty to use precision-guided weapons (smart bombs)
  - “Duty to Drone”
  - “Duty to Hack”
WHAT DOES THIS HAVE TO DO WITH KILLER ROBOTS?
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