ARTICLES


Unlike conventional weapons or remotely-operated drones, autonomous weapon systems can independently select and engage targets. As a result, actions that look like war crimes might occur without anyone acting intentionally or recklessly—but, absent such “willful” action, no one can be held criminally liable. International criminal law is grounded in individual liability, which aims to evaluate who is guilty for willful and blameworthy actions. What is needed now is a complementary legal regime that creates liability for unintended injurious wrongs. Although largely ignored in international law, tort law was specifically designed to solve this exact problem. Just as the Industrial Revolution fostered the development of modern tort law, autonomous weapon systems may result in the recognition of international “war torts.”


Despite much recent scholarly focus on how outdated treaties might be updated, surprisingly little attention has been paid to an alternative route of treaty evolution: modification by subsequently-developed customary international law. This Article demonstrates that such modification occurs; argues for recognition of its legitimacy; and highlights how it may result in more consensus-respecting action than arguments grounded in consent-based forms of treaty modification.


Notwithstanding increasing state interest, no one has yet put forward a coherent legal definition of autonomy in weapon systems, resulting in a confusing conflation of legal, ethical, policy, and political arguments. This Article proposes that an “autonomous weapon system” be defined as “a weapon system that, based on conclusions derived from gathered information and preprogrammed constraints, is capable of independently selecting and engaging targets.” Contrary to the general consensus, such systems are not weapons of the future: they exist and are in use today. This fact has two main implications: it undermines almost all legal arguments for a ban, as they are based on the false assumption that such weaponry could never be lawfully employed; and it significantly reduces the likelihood that a successful ban will be negotiated, as states will be reluctant to voluntarily relinquish otherwise lawful and uniquely effective weaponry. Accordingly, this Article concludes with a discussion of how best to create successful international regulations.
Although international human rights and humanitarian law share common roots in their respective efforts to protect human dignity, the two bodies of law appear to have incompatible requirements in armed conflicts. This Article draws on jurisprudence, state practice, and scholarship to describe three approaches to evaluating what is lawful in armed conflicts, explores the consequences of the various applications, and recommends that the United States employ interpretive strategies to minimize discrepancies. In situations where states’ obligations remain irreconcilable, the Article endorses a “specificity decision rule” to determine the applicable legal regime.

Cyber-attacks pose a growing threat to national security and international peace. However, while often addressed in the context of humanitarian law, cyber-attacks bear little resemblance to traditional forms of warfare. This Article clarifies the definition of cyber-attack and describes how such attacks are currently regulated under the law of war, international treaties, and domestic criminal law. Concluding that existing legal regimes address only a small fraction of potential challenges raised by cyber-attacks, this Article proposes how international and domestic law might be adapted or created to more effectively regulate them.

Although many are concerned that autonomous weapon systems may make war “too easy,” no one has discussed how their use may affect the constitutional war power. When conventional weaponry required boots on the ground, popular outrage at the loss of American lives incentivized Congress to check presidential warmongering. But as human troops are augmented and supplanted by robotic ones, it will be politically easier to justify using force, especially for short-term military engagements. Like drones and cyber operations, autonomous weapon systems will contribute to the growing concentration of the war power in the hands of the Executive, with implications for the doctrine of humanitarian intervention.
What law governs autonomous weapon systems? Those who have addressed this subject tend to focus on the law of armed conflict. But the international laws applicable to the development or use of autonomous weapon systems are hardly limited to rules regarding the conduct of hostilities. Other legal regimes—including international human rights law, the law of the sea, space law, and the law of state responsibility—may also be relevant to how states may lawfully create or employ autonomous weapon systems, resulting in a complex and evolving web of international governance.

This response to Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice discusses the consequences of the authors’ data on rights convergence for customary international law theory, suggesting that scholars advocating that a right has obtained customary or jus cogens status should consider whether that right appears in a majority of domestic constitutions and whether it has risen or declined in popularity over time.

Non-self-executing treaties are commonly, and inappropriately, dismissed as irrelevant in domestic law. This note examines how judges employ the Charming Betsy canon to interpret ambiguous statutes to accord with U.S. international obligations, including those expressed in non-self-executing treaties. The Note concludes that this practice is justified and beneficial.

This report evaluates the lawfulness, under international law, of U.S. use of unmanned aerial vehicles to target non-state actors in Pakistan.