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When Target Selection Becomes Autonomous: Rethinking Legal Responsibility under International Humanitarian Law

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ABSTRACT :

Autonomous weapons are changing the structure of modern military operations. These systems can select and engage targets without further human intervention. This development creates difficult questions under international humanitarian law. Traditional warfare normally connects weapon use with human judgment. Autonomous systems can weaken that connection during target selection. The central problem concerns responsibility when a machine selects the target. The operator may activate the system without choosing the specific target. The commander may authorise deployment without controlling the final decision. Developers may design systems without knowing their future operational circumstances. This article examines these problems through international humanitarian law. It focuses on distinction, proportionality, precautions and human control. It also examines State and individual responsibility for unlawful attacks. The article argues that autonomy cannot transfer legal responsibility to machines. Responsibility must remain connected with human decisions and institutional authority. Stronger rules are therefore needed for predictable and controlled autonomous warfare.

Keywords: Autonomous Weapons, International Humanitarian Law, Legal Responsibility, Human Control, Target Selection.

Introduction

Warfare has always developed alongside advances in military technology. Autonomous weapons, however, create a different legal difficulty. They can change the place of human judgment during an attack. A human may activate the weapon without selecting its final target. The system can then identify and engage a target independently. This process creates serious questions about responsibility under international humanitarian law. The International Committee of the Red Cross defines autonomous weapons through this function. Such systems can select and engage targets without further human intervention. They rely upon sensors and predefined target profiles during operation. The user may not know the exact target before activation. The user may also lack control over timing and location.

This process differs from ordinary remotely operated weapons. A drone operator normally identifies the target before launching an attack. The operator can assess the surrounding circumstances before firing. An autonomous system can make that assessment after activation. The machine therefore occupies part of the traditional decision-making process. International humanitarian law already applies to autonomous weapons. Their technological nature does not remove existing legal obligations. The principles of distinction, proportionality and precautions remain relevant. Human beings remain responsible for complying with these principles. Legal obligations cannot simply be transferred to machines.

The main problem concerns the location of responsibility after unlawful harm. Several people may contribute to an autonomous attack. Developers may design the system and its operational functions. Military authorities may approve and test the weapon. Commanders may decide where deployment should occur. Operators may activate the system during military operations. The final target selection may still come from the machine. This creates a distance between human decisions and actual harm. Traditional legal investigation may therefore become more complicated. The person who activates the weapon may not select its target. The commander may not know the specific target either. This article examines that responsibility problem under international humanitarian law. The discussion focuses on three major areas. The first concerns autonomous targeting and existing humanitarian principles. The second examines responsibility among different human actors. The third considers human control and stronger international regulation.

Autonomous Target Selection and International Humanitarian Law

Autonomy does not necessarily mean complete independence from human control. Some weapons perform limited functions without human intervention. Their autonomous functions may involve navigation or defensive interception. Other systems can independently select and engage targets. The second category creates greater legal concerns during armed conflict. Target selection is central to international humanitarian law. The principle of distinction requires careful identification of lawful targets. Civilians cannot be deliberately attacked during armed conflict. Civilian objects also receive protection under international humanitarian law. Military objectives may be attacked under prescribed legal conditions.

A machine may recognise physical characteristics without understanding legal status. Sensors can detect movement, heat, shape or speed. These

characteristics can correspond with a programmed target profile. Yet physical similarity does not always establish lawful target status. A civilian object may resemble a military object under battlefield conditions. Consider a simple example involving a military vehicle. An autonomous system may identify its shape and movement. A civilian vehicle may display similar characteristics under certain conditions. The machine may therefore classify both objects similarly. Human judgment becomes important in distinguishing their legal status.

The principle of proportionality creates another difficult problem. Lawful military objectives cannot justify unlimited civilian harm. An attack remains unlawful when expected civilian harm becomes excessive. This assessment requires consideration of the surrounding circumstances. It cannot always be reduced to predetermined technical instructions. Autonomous systems may struggle with these contextual judgments. A machine can compare information with predetermined parameters. It may not understand changing human circumstances in the same manner. The legal assessment may therefore become uncertain during complex operations. The problem increases when civilian populations are nearby.

Precautions in attack create further difficulties for autonomous systems. Attackers must take feasible precautions against civilian harm. They must also verify the nature of intended targets. They must cancel attacks when relevant circumstances change. Autonomous systems may complicate each of these requirements. The problem becomes greater in populated environments. Civilians and military personnel can move rapidly between locations. Objects can also change their character during hostilities. A building may become a military objective temporarily. Its legal status may change again after military use ends.

The ICRC has identified these contextual difficulties in recent guidance. It notes that distinction requires more than technical identification. Proportionality also requires assessment of the circumstances. Such judgments cannot simply be reduced to coded indicators. Predictability therefore becomes an important legal consideration. Humans must understand how an autonomous system may behave. They must also understand its likely effects during deployment. An unpredictable system creates serious problems for lawful military use. This problem becomes sharper when artificial intelligence increases system complexity. Human control should therefore remain central to autonomous warfare. Control does not necessarily require manual target selection. It requires meaningful influence over the weapon's operation. Humans should determine its permitted targets and operating environment. They should also retain appropriate means of intervention.

The ICRC has recently emphasised this concern. It links meaningful control with predictability and operational restrictions. Geographic and temporal limits can reduce potential harmful outcomes. Effective deactivation mechanisms can also strengthen human control. Autonomous targeting therefore does not remove existing legal rules. Instead, it creates difficulties in applying those rules. The problem concerns the distance between human decisions and machine actions. That distance can become a serious responsibility problem. International law must therefore examine the entire decision-making chain.

Identifying Responsibility When Machines Select Targets

Responsibility becomes difficult when several actors influence one weapon. Autonomous systems usually involve extensive technological and military structures. Developers design the software and technical architecture. Military authorities determine operational requirements and restrictions. Commanders decide whether and where deployment should occur. Operators may activate the system during actual operations. Their involvement may nevertheless remain limited. They may not select the specific target themselves. They may only establish the conditions for autonomous operation. This distinction becomes important when assessing individual responsibility. The operator should not automatically bear responsibility for every outcome. Responsibility depends upon the operator's knowledge and available control. The operator's instructions also require careful examination. Investigators must determine what the operator could reasonably anticipate.

Commanders raise a separate responsibility question. A commander may authorise deployment without selecting targets. The commander may rely upon previous testing and technical assessments. Responsibility may arise from inadequate supervision or improper deployment. It should not arise merely from holding military rank. International criminal law requires careful assessment of individual conduct. Criminal responsibility cannot simply follow from technological failure. Investigators must establish the relevant mental and factual elements. The autonomous system itself cannot satisfy those requirements. Human responsibility must therefore remain the focus. Developers present another difficult category of responsibility. A developer may create software without knowing future deployment conditions. The developer may also work within a large technical team. Responsibility cannot automatically extend to every programmer involved. The relevant contribution must be examined with legal precision.

Technical failure may also have several possible causes. Software design may create one problem. Inadequate testing may create another problem. Operational deployment may produce unexpected effects. Environmental conditions may also influence system behaviour. This complexity can create what scholars call a responsibility gap. The phrase does not mean that no law applies. It describes difficulty in connecting harm with individual conduct. Autonomous systems can increase that difficulty considerably. The legal investigation must therefore become more detailed. State responsibility provides an important legal foundation here. Armed forces normally operate as organs of the State. Their conduct can therefore engage State responsibility. Autonomous technology does not automatically change this relationship. The State remains connected with its military operations.

The use of autonomous technology cannot become a legal escape route. States cannot avoid responsibility through technological delegation. Otherwise, responsibility could weaken as military autonomy increases. Such an outcome would undermine basic principles of international law. Attribution and responsibility must nevertheless remain separate questions. Conduct may be attributable to a State without proving wrongdoing. The next question concerns whether an international obligation was breached. International humanitarian law provides the relevant standards for that assessment. An autonomous attack may therefore involve several legal questions. Was the conduct attributable to the State? Was the target a lawful military objective? Was civilian harm excessive? Were feasible precautions taken before the attack? These questions require separate legal analysis. Individual responsibility remains more complicated than State responsibility. Criminal law focuses upon the conduct of particular persons. It also requires appropriate mental elements for specific offences. Autonomous systems make those elements harder to identify.

Investigators may need extensive technical evidence after an incident. They may examine system logs and operational instructions. They may examine testing records and software limitations. They may also investigate the command structure surrounding deployment. The ICRC has recognised this accountability problem. Autonomous targeting can make unlawful outcomes harder to explain. Traditional investigation often begins with the person firing the weapon. Autonomous systems can disrupt this familiar chain. Responsibility must therefore be traced across the entire system. The machine

should not become the final legal destination. Human decisions created the conditions for autonomous action. Those decisions must remain open to legal scrutiny.

Human Control and the Need for Stronger International Rules

Existing international humanitarian law provides an important starting point. It does not, however, answer every autonomous weapons question. New technological capabilities create new practical difficulties. States therefore face pressure to clarify existing legal standards. Weapons reviews provide one important preventive mechanism. Article 36 of Additional Protocol I addresses new weapons. States must assess their legality before certain forms of use. This process becomes important for autonomous weapon development. Autonomous weapons require detailed technical and legal examination. States should examine their predictable operational behaviour. They should also examine possible civilian consequences. Testing should cover realistic operational environments whenever possible.

A successful laboratory test cannot guarantee battlefield legality. Battlefield environments contain unpredictable human behaviour. Civilian movement can change rapidly during armed conflict. Communication failures can also alter operational circumstances. Human control should therefore continue after weapon approval. Commanders must consider changing operational conditions. Operators must understand the limits of autonomous systems. Systems should also allow intervention when necessary. Control can take several forms during military operations. It can involve limits on geographic deployment. It can involve restrictions on target categories. It can also involve limits on operational duration. Deactivation mechanisms provide another important safeguard. Humans should retain the ability to stop autonomous attacks. Such intervention may become essential when circumstances change. A weapon without effective human interruption creates greater legal risks.

The ICRC currently supports stronger international regulation. It calls for legally binding rules concerning autonomous weapons. Its position includes prohibitions on certain unpredictable systems. It also supports restrictions on other autonomous systems. The proposed approach does not prohibit every autonomous weapon. Some systems may operate within controlled environments. Their target categories may also remain narrowly defined. Legal regulation can therefore distinguish between different systems. Unpredictability creates a particularly serious legal concern. Humans cannot properly control effects they cannot understand. Black-box systems can therefore create significant accountability problems. They may also complicate assessments under IHL. Anti-personnel autonomous systems raise another concern. Such systems can select individual human targets independently. The consequences may be especially serious during civilian exposure. Human judgment becomes particularly important when people are targeted.

Recent international discussion reflects growing concern about this issue. The UN Secretary-General and ICRC President renewed their appeal in 2026. They urged States to adopt new international rules. Their statement highlighted autonomous targeting of humans as a major concern. International regulation should therefore focus on meaningful control. It should also establish clear operational boundaries for autonomous systems. Rules should address predictability, testing and human intervention. They should also establish accountability after unlawful incidents. Documentation will become increasingly important in future investigations. States should preserve relevant operational and technical records. These records can help reconstruct autonomous targeting decisions. They can also identify failures within the decision chain.

Accountability requires more than punishment after civilian harm. Prevention must remain a central objective of international law. Stronger regulation can reduce unlawful outcomes before deployment. It can also provide clearer standards for military institutions. The legal framework should not treat technology as inherently unlawful. Autonomous weapons differ greatly in their capabilities and limitations. Some systems may operate within carefully restricted environments. Others may create unacceptable risks through unpredictability. The better approach is therefore controlled military autonomy. Humans should retain meaningful authority over lethal force. Autonomous systems should operate within clearly defined boundaries. Those boundaries should reflect existing humanitarian principles.

Human control also protects the credibility of international humanitarian law. If machines receive unlimited targeting authority, accountability becomes uncertain. Such uncertainty can weaken civilian protection during armed conflict. It can also create dangerous precedents for future warfare. International law must therefore develop alongside military technology. Existing rules should remain the foundation of this development. New rules should address technological gaps where necessary. The objective should remain human protection during armed conflict.

Conclusion

Autonomous weapons have changed the structure of military decision-making. Machines can now perform important targeting functions independently. This development creates serious questions under international humanitarian law. The most difficult question concerns responsibility for machine-selected targets. Existing humanitarian principles remain applicable to autonomous weapons. Distinction continues to protect civilians and civilian objects. Proportionality continues to restrict excessive civilian harm. Precautions continue to require careful conduct before attacks. Autonomous technology nevertheless complicates these legal requirements. Machines may identify targets without understanding their legal context. They may also operate within rapidly changing environments. Human operators may therefore struggle to predict outcomes.

Responsibility cannot be transferred to the autonomous system itself. Machines do not possess legal responsibility under international law. Human beings remain responsible for the use of force. States also remain responsible for their military conduct. The responsibility chain may nevertheless become complicated. Developers, commanders and operators perform different functions. Their individual responsibility requires careful factual investigation. Automatic attribution would produce unfair and uncertain results. State responsibility provides a stronger foundation for accountability. Military actions remain connected with State institutions. Technological autonomy does not remove this connection. States cannot avoid responsibility through machine-based decision-making.

Individual criminal responsibility requires greater precision. Investigators must establish relevant conduct and mental elements. They must also identify the person's actual degree of control. Autonomous technology makes this investigation more complex. Human control therefore becomes the central legal safeguard. It should operate throughout the weapon's lifecycle. Control begins with design, testing and legal review. It continues through deployment, monitoring and possible intervention. International law now faces an important regulatory choice. It can rely entirely upon existing general principles. It can also develop clearer rules for autonomous weapons. Current international discussions increasingly support the second approach.

The objective should not be technological prohibition alone. International law should distinguish between different autonomous systems. Predictability and operational limits should guide this distinction. Human control should remain the basic legal requirement. The future of warfare will increasingly involve autonomous technologies. Legal responsibility must therefore remain connected with human decisions. A machine may select the target, but humans created its authority. That responsibility should remain visible under international law.

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