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Title: A Spanner in the Works of Racial Justice: Examining the Impact of Autonomous Weapon Systems on Legal and Moral Responsibility over Racism and Use of Lethal Force by States Agents

Central Thesis: Autonomous weapon systems (AWS) – also known as killer robots – are robotic weapons that are powered by artificial intelligence (AI) and once activated, are able to make the decision as to who to target, harm or kill without any further human intervention or control. If developed, AWS may be used in law enforcement and counter-terrorism operations. While people of colour and civilians in the Muslim world have been disproportionately affected by the use of lethal force in law enforcement and counter-terrorism operations, in the current United Nations (UN) discussions on AWS, the implications of AWS on racial oppression have not been sufficiently considered. One of the challenges that has been discussed is that AWS, whether used in armed conflict or law enforcement situations, will create an accountability gap. In other words, where AWS violate international humanitarian law (IHL) or international human rights law (IHRL), it will be difficult to establish *mens rea* thereby affecting individual responsibility. Yet, discussions on the accountability gap problem have been general in nature without specifics on the identity of the likely victims. Using legal, ethics and sociology theories, this paper discusses the impact of AWS on responsibility, accountability and racial justice as it relates to the violation of fundamental human rights of people of colour and civilians in the Muslim world when emerging technologies such as AWS are used.

Background: The UN discussions on AWS have been ongoing since 2013 when the UN Special Rapporteur on extrajudicial executions (UN Special Rapporteur) submitted his annual report to the UN Human Rights Council. In the 2013 Report, the UN Special Rapporteur noted that AWS pose challenges to IHL and IHRL. While AWS are yet to be deployed, the UN Special Rapporteur noted that if they are developed and deployed, they may violate fundamental human rights like the right to life and human dignity. Indeed, the UN Secretary General, Antonio Guterres, noted that AWS are one of the four major threats to world peace and security. He further noted that AWS are "morally repugnant, politically unacceptable and should be banned by international law". Yet, that notwithstanding, there are states and scholars who have argued that AWS will perform better than humans and as such, their development and use will ameliorate the suffering of civilians on the battlefield.

In view of the seriousness of the challenges raised by AWS, in 2014, states established the UN Group of Governmental Experts on Lethal Autonomous Weapon Systems (UNGGE) whose mandate is to formulate appropriate recommendations on how states should respond to the AWS technology. For the past 8 years, the UNGGE has been involved in intensive multi-disciplinary discussions on AWS, examining the issue from various standpoints, including gender perspectives on AWS. Between 2014 and 2019, the UNGGE produced six reports. While the concern that AWS may perpetuate and/or exacerbate racial oppression has been raised by some delegates and while it is clear that "the forces of racial socialisation are constantly at play", not once are the words racism, racial oppression, racial bias or racial discrimination mentioned in all the six reports between 2014 to 2019. This is regardless of the fact that it has been highlighted that AWS may end up being used in law enforcement situations where people of colour are disproportionately affected. Furthermore, research has already shown that existing racial prejudice and bias may end up being programmed – either intentionally or unintentionally – into AWS.

The UN CERD Committee is the body of independent international experts who monitor the implementation of the CERD by its state parties. In its 2020 report, particularly relating to the United States – one of the states that are currently developing AWS – the CERD Committee noted various concerns regarding racial bias and the use of lethal force. It particularly noted "the continuing practice of racial profiling, the use of brutality and the excessive use of force by law enforcement officials against persons belonging to racial and ethnic minorities." Similar concerns have been noted regarding other countries such as the United Kingdom, France and Israel. In cases where people of colour are involved, the CERD Committee has noted the disproportionate use of lethal force regardless of whether or not the victim concerned is armed. The CERD Committee also expressed concerns that those who attempt to peacefully demonstrate against the racist use of lethal force are often met with brutal and disproportionate use of force by states agents. Of paramount importance is the fact that the CERD Committee noted that racist use of lethal force cannot be categorised as sporadic incidents and commissions by errand bad white police officers, those who are morally bad, rather, it is a matter of "systemic and structural discrimination [that] permeates state institutions and disproportionately promotes racial disparities against African Americans, [people of colour and ethnic minorities]." The CERD Committee has thus noted that in all UN institutions – including the UNGGE that is currently discussing AWS – there should be condemnation of "modern day racial terror lynchings and calling for systematic reform and justice, and their statement on the protests against systemic racism."

The CERD Committee has also expressed deep concerns over the lack of "appropriate accountability for and sanctions imposed to those responsible." Thus, already, before the deployment of AWS, there exists an accountability gap when it comes to remedying violations of the rights of people of colour and certain ethnic minorities. Yet, with AWS on the horizon, things could even get worse in terms of obtaining racial justice. The intense racial justice discussions and the demand for racial justice that followed after the murder of George Floyd was partly because the public could see Officer Derek Chauvin committing the act. What if Floyd was killed by an AWS? How would you even begin to characterise such an incident as constituting a racist use of lethal force when there is "no soul to damn" and "no body to kick"? How easy will it be to dismiss a nasty racist use of force as machine error? Already, sociologist Robin DiAngelo has articulated that when it comes to racial oppression, white fragility leads to certain white progressives not only distancing themselves away from racist acts as a way to preserve their own moral character and standing but involves vigorous attempts to explain away violent racist acts by law enforcement officials in terms of other reasons –

often, blaming the victim. Likewise, political scientist John Emery has noted that reliance on emerging AI military technologies in the western wars in the Middle East serve to create a distance between a morally wrongful act and the perpetrator.

Implications for human rights: As indicated above, if the international community allow the development and use of AWS without meaningful human control, AWS will have far reaching consequences for fundamental human rights such as the right to life, physical security, dignity, the right to non-discrimination and the right to remedy. This paper focuses on AWS's impact on the right to non-discrimination and the right to remedy. The right to non-discrimination is a norm of customary international law and a norm of *jus cogens* that cannot be derogated from. Discrimination on grounds of race, nationality, religion, region or any other ground violates human dignity, the worthy of a human being which is the reason why it is internationally prohibited. The right to non-discrimination on the grounds of race is provided for in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). It is also provided for in the International Covenant on Civil and Political Rights and other regional human rights treaties. CERD also provides that in cases where there has been a violation of the right to non-discrimination – including where state agents use violent force in violation of the right to non-discrimination – victims are entitled to a remedy. Such a remedy includes prosecution of the offender. If the current discussions on AWS continue without sufficient regard to the negative potential impact of AWS on racial justice, it will forever have far reaching consequences for the fundamental rights of people of colour and ethnic minorities.

Tentative Recommendations: While discussions on racial oppression may not be the easiest to have especially in the diplomatic *fora* of the UN, discussion on racial oppression associated with AWS is critical to have for two main reasons: First, as already highlighted, AWS have far reaching consequences for people of colour and ethnic minorities who are likely to be disproportionately affected by this technology. Secondly, because participants in the AWS debate agree that one of the challenges raised by AWS is that they pose a challenge to global peace and security, it is also important to understand that racial oppression is "capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same state." As such, if AWS raise questions about racism and racial oppression, it is best to address such questions than avoid them. It is, therefore, recommended that the UNGGE, in consideration of a policy response to AWS, should substantively consider, discuss and address the racial implications of AWS. Further, in addition to novel racial justice challenges that are discussed in this paper, the challenges raised by AWS create a lacuna – a legal gap. It is, therefore, recommended that the international community should adopt a new legally binding instrument on AWS.

Methodology: This will be mainly a desktop research, reviewing reports on AWS by United Nations experts and scholarly articles.

Keywords: Autonomous weapon systems; racial oppression; human rights law; ethics