Autonomous Weapons without Responsibility: A Legal Analysis under International Humanitarian Law and Islamic Jurisprudence

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Abstract

The rapid evolution of military technology has ushered modern day warfare into the age of autonomous weapons systems (AWS); machines capable of selecting targets with little or, ideally, no human intervention. This paper examines the legality of using such weapons under two distinct but, in places, convergent legal frameworks i.e. international humanitarian law (IHL) and Islamic law. It argues that the use of AWS to launch attacks in armed conflict cannot be reconciled with the IHL fundamental principles of humanity, distinction, proportionality, and military necessity, nor with the doctrine of command responsibility, since all those principles presuppose a human decision-maker capable of contextual judgment and moral accountability. Additionally, under Islamic law, that AWS fails the juristic requirements of legal capacity (*al-ahalliyah*) and the devotional character of *jihad*, rendering their offensive use impermissible. The paper concludes that while defensive deployment may be permissible, offensive use of AWS is unlawful under both frameworks, and calls for urgent international regulation before such systems become widespread.

Keywords: IHL, AWS, islamic law, armed conflict, weapons law

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Introduction

The history of conflict among human beings on earth is as ancient as the history of human civilization itself. Right from the conflict between Abel and Cain,[‡] the two sons of Ādam[§] to modern day conflicts, the disagreements and disputes have often taken the form of armed confrontation. Hence war[**] has always remained a prominent reality in the internal and external fabric of human societies. From individuals to groups, tribes, and states, armed conflicts have repeatedly occurred in human societies. While armed conflicts among nations and groups have continued through all ages, humankind has developed various codes of conduct to regulate those conflicts to some extent.

The broader trajectory of human progress has also entirely transformed the methods, battlefields, and instruments of armed conflicts. Initially, humans fought face-to-face with spears and swords; later, archery and firearms came into use. After that, human capability crossed the stage of chemical weapons and ushered modern warfare into the era of AWS.[††] This evolution not only increased the distance between combatants but also multiplied the destructive power of weapons many times over. Thus, while innovation in instruments of armed conflict transformed the battlefield, it also brought an extraordinary increase in legal and ethical complexities. In view of these challenges, the law too continued to evolve. Every notable civilization contributed in some way to shaping the rules of armed conflict. This resulted in gradual transformation of early rudimentary principles to well organized, and detailed legal frameworks. This evolutionary process ultimately gave rise to modern international laws of war, which today, like other branches of law, are recognized as a permanent, systematic, and coherent field known as IHL.

[‡] The story of Abel and Cain is the earliest known conflict in human history which ended in murder. Abel and Cain were two sons of Prophet Ādam. Both offered sacrifices to God; the former's offering was accepted while the latter's was rejected. Angered by this, Cain killed Abel. This event is recorded in both the Bible and the Qur'an. The Qur'an narrates it in detail in Surah al-Mā'idah, verses 27–31, while the Bible recounts it in the Book of Genesis, chapter 5, verses 1–10.

[§] In this paper, whenever the name of any of the Prophets appears, the authors intend to offer the salutation of "peace and blessings of Allah Almighty be upon him".

[**] Although there is difference between the expression of *war* and *armed conflict,* this paper uses these expressions interchangeably according to the requirement of the context. Thus, unless specified otherwise, these two expressions will be construed in the same meaning.

[††] Klaus Jurgen Gantzel and Torsten Schwinghammer, *Warfare since the second world war*, (London: Transaction Publishers, 2018), 139.

Generally, the laws of armed conflict are divided into two major parts. The first part is called *jus ad bellum* (justification of war), which addresses the fundamental question of legal justification to initiate an armed conflict by a party against another or participate in it.‡‡ The second part, *jus in bello* deals with the acts that are permitted during the conduct of hostilities and those which are prohibited. This part addresses the questions such as: Who may be targeted and who may be not? Which weapons are lawful and which are unlawful? How should prisoners of war be treated, and what rights do the wounded possess? IHL is all about *jus in bello*. This paper discusses IHL in general, and in particular the use of AWS in armed conflicts, examining the legal status of these weapons from the perspectives of both IHL and Islamic law, and considering, where such use is prohibited under either framework, the reasons for that prohibition. This paper addresses some essentials questions such as how far the use of AWS is allowed in armed conflict under IHL and Islamic law? What are the general principles dealing with the weapons in IHL? What do Islamic injunctions say about manufacturing weapons by Muslim government? What is the guidance of Islam regarding use of AWS in armed conflict? A

‡‡ This part of the law of armed conflict is not directly related to our present discussion, so it has not been dealt with in detail here. However, it is appropriate to point to the legal evolution that occurred in this area. Generally, in discussions of *jus ad bellum*, history is divided into periods i.e. before and after the UN Charter. Before the UN Charter, there was no significant restriction on the use of force. The state sovereignty recognized under the 1648 Peace of Westphalia included the states' authority to wage war. In the twentieth century, after the WWI, the world realized the need to place limits on war. Thus, Article 12(1) of the 1919 Covenant of the League of Nations, though it did not declare war entirely unlawful, stipulated that states would adopt arbitration or inquiry as a means of initial dispute resolution, and would not go to war for three months following an arbitral award. Finally, the UN Charter, adopted in 1945, imposed a general prohibition on war. Article 2(4) of the Charter provides that "in their international relations, states shall refrain from the threat or use of force against the political independence or territorial integrity of any state, or in any other manner inconsistent with the purposes of the Charter". Two exceptions are carved out from this general prohibition. The first is that when a state becomes a threat to international peace and no option remains except the use of force against it, the UN Security Council will use collective force against that state or authorize another state to do so — an authority granted to the Security Council under Article 42 of the Charter. The second exception is set out in Article 51 of the Charter, known as the right of self-defense. For details, see Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th ed. (London & New York: Routledge, 1997), 306–317.

doctrinal qualitative research method will be applied in this study where international conventions, texts from the Quran and the Sunna and opinions of Muslim jurists will be analyzed. Mainly, it is a library-based work. The discussion comprises three main parts: the first part examines the legal status of weapons under IHL; the second part introduces AWS, including a classification of weapons by degree of autonomy; and the third one examines, in light of IHL and Islamic legal principles, whether the use of AWS is lawful or unlawful. The paper concludes with certain findings and recommendations.

Literature Review

In order to ascertain past studies on the topic in hand a number of scholarly works have been taken into consideration which is as follows: Mawlāna Abu'l A 'lā Mawdūdī's *Al-Jihād fi'l Islām*[§§] is arguably the first notable work on the law of war in Islam in 20th century. The book explores various aspects of the law of war in Islam. It explains the types of war – such as defensive war and reformative war – in Islam. It also distinguishes the law of war in Islam from other traditions such as the Arab tribal tradition, Judaism, Christianity and other non-Abrahamic religions. The book also takes account of the modern laws of war. It provides a significant detail of how war should be conducted in Islam and how the people –such as non-combatants, combatants and POWs- and properties should be treated. The book, however, specifically does not discuss the weapon law in Islam.

Wahba Zuhaylī's PhD thesis, published in book form, titled *Āthār al-Ḥarb fi'l Fiqh al-Islāmī* is one of this finest works on the law of war in Islam. The book discusses various issues related to the law of war from *jus in bello* to *jus ad ballum* and even *jus post bello* in Islam. He discusses the justification of war from the perspective of Islam and also the permanent relationship between Muslims and non-Muslim. In this context his discussion on the notions of *Dār al-Islām* and *Dār al-Ḥarb* has very much to offer.[***] He further discusses the conduct of hostilities, the treatment of prisoners of war and the manners in which the war come to an end under Islamic law. Zuhaylī, however, did not discuss the matter of the weapons

[§§] Syed Abu'l A'lā Mawdūdī, *Al-Jihād Fi'l Islām,* (Lahore: Idara Tarjuman-ul-Quran, 2005)

[***] Zuhaylī argues that the bifurcation of territories into *Dār al-Islām* and *Dār al-Ḥarb* is not based on the injunctions of Islam. It was, rather, the reality of that time which Muslim jurists have expounded. See, Wahba Zuhaylī, *Āthār al-Ḥarb fi'l fiqh al-Islāmī,* (Damascus: Dār al-Fikr, 1998), 168.

in war in general and AWS in particular. This is because at the time of Zuhaylī's research the issue of AWS was non-existent.

Zuhaylī's magnum opus *Al-Fiqh al-Islāmī wa Adillatuhū*[†††] also contains a chapter on the law of *Jihād* in Islam which is a brief version of *Āthār al-Ḥarb*. This book also does not discuss the issue of AWS in armed conflict.

Yusuf al-Qaraḍawī has taken the issue of weapons in his book *Fiqh al-Jihād*.[‡‡‡] The book provides a comprehensive account of the law of war in Islam. It also takes some contemporary issues of conflict in Muslim world such as the issue of Palestine and Islamophobia in the West. As far as the weapon is concerned, Qaradāwī argues that development of modern weapons –collectively known as weapons of mass destruction (WMS) –is allowed under Islamic law. However, using them is certainly prohibited because their use will fail the principles of distinction and proportionality as recognized by Islam.[§§§] However, the issue of AWS is missing in this work as well.

Other works that provided significant scholarship on the law of war from the perspective of Islam but lack the discussion on the law of weapon include *The Law of War and Peace in Islam*[****] and *Jihād Muaḥamat Awr Baghāwat*[††††]

The legal status of autonomous weapons systems has attracted a growing body of scholarship within international humanitarian law, though this literature has, until recently, developed largely in isolation from Islamic legal scholarship on the same subject. Among the earliest and most influential contributions, Schmitt and Thurnher examined whether autonomous weapons could, as a matter of law, ever comply with the core principles of IHL, concluding that no rule of IHL categorically prohibits autonomous weapons as such, but that compliance with distinction and proportionality would in practice depend heavily on the sophistication of the underlying technology.[‡‡‡‡] Anderson and Waxman took a more

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††† Wahba Zuhaylī, *Al-Fiqh al-Islāmī Wa Adillatuhū,* (Damascus: Dār al-Fikr, n.d) 8: 5843-5917

‡‡‡ Yūsuf al-Qaraḍāwī, *Fiqh al-Jihād* (Cairo: Maktabah Wahba, 2014)

§§§ Ibid, 1: 614

**** Muhammad Munir, *The Law of War and Peace in Islam*, (Islamabad: IRD, 2019)

†††† Muhammad Mushtaq Ahmad, *Jihād Muzaḥamat Awr Baghāwat,* (Lahore: Kitab Mahal, 2016)

‡‡‡‡Michael N. Schmitt and Jeffrey S. Thurnher, "'Out of the Loop': Autonomous Weapon Systems and the Law of Armed Conflict," *Harvard National Security Journal* 4, no. 2 (2013): 231–281.

cautious position, arguing against an outright ban and instead calling for the gradual development of state practice and technical standards to guide the lawful use of autonomous functions in weapons systems.[§§§§] Boothby's treatise situates autonomous weapons within the broader law of weaponry, applying the Article 36 weapons-review framework discussed in Section 4 below to autonomous systems specifically, and argues that existing IHL, if rigorously applied, already supplies much of the framework needed to assess their lawfulness.[*****] By contrast, Sharkey adopted a more skeptical position, arguing that the technical requirements for lawful autonomous targeting are unlikely to be met for the foreseeable future, given the complexity of the contextual judgment IHL demands.[†††††] Sassòli's contribution is particularly significant for its emphasis on accountability, anticipating much of the command-responsibility analysis undertaken in Section 4.5 below.[‡‡‡‡‡] Human Rights Watch's *Losing Humanity*, discussed extensively in Section 3.1, remains the most widely cited advocacy-oriented contribution and has shaped much of the subsequent policy debate at the United Nations Convention on Certain Conventional Weapons.[§§§§§]

Weapons under IHL

Since the purpose of IHL is to minimize the destruction and harm of armed conflict and to protect non-combatants, it places restrictions — irrespective of the justification or lack thereof for the war itself — on the weapons used and the methods adopted during the armed conflict. In this regard, this body of law divides weapons into two categories: lawful weapons and unlawful weapons. Furthermore, weapons that are inherently

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[§§§§]Kenneth Anderson and Matthew C. Waxman, "Law and Ethics for Autonomous Weapon Systems: Why a Ban Won't Work and How the Laws of War Can," Jean Perkins Task Force on National Security and Law Essay Series (Stanford: Hoover Institution, 2013).

[*****]William H. Boothby, *Weapons and the Law of Armed Conflict*, 2nd ed. (Oxford: Oxford University Press, 2016).

[†††††]Noel E. Sharkey, "The Evitability of Autonomous Robot Warfare," *International Review of the Red Cross* 94, no. 886 (2012): 787–799.

[‡‡‡‡‡]Marco Sassòli, "Autonomous Weapons and International Humanitarian Law: Advantages, Open Technical Questions and Legal Issues to Be Clarified," *International Law Studies* 90 (2014): 308–340.

[§§§§§]Bonnie Docherty, *Losing Humanity: The Case Against Killer Robots* (Human Rights Watch, 2012), 1.

lawful but are sometimes used unlawfully are, on account of that misuse, also placed in the category of unlawful weapons. The definition and details of lawful and unlawful weapons are set out below.

Unlawful Weapons

The first category of weapons consists of those whose use is considered prohibited and impermissible under all circumstances. Under international law, the prohibition of these weapons rests on three key principles, which determine which weapons are contrary to the principles safeguarding human life, property, and dignity, and whose use will accordingly be deemed unlawful under IHL.

1. **Principle of Unnecessary Suffering:** The first principle is against unnecessary and excessive pain or suffering. Thus, weapons that cause the enemy unjustified or unnecessary harm are prohibited. Article 35 of Additional Protocol I to the Geneva Conventions clearly states that the use of any weapon is unlawful if it causes unnecessary suffering or injury. Although this article is of great importance, the ICRC, despite numerous efforts, has not been able to provide a comprehensive interpretation through which definitive criteria could be established for declaring any given weapon lawful or unlawful. Nevertheless, numerous international treaties and conventions, on the basis of this same principle, explicitly prohibit several specific weapons, so as to ensure the protection of human life and dignity.[******]

2. **Principle of Protection of the Natural Environment:** The second principle concerns the protection of the natural environment. Any weapon that causes widespread environmental damage, whether it affects air, land, or water resources, is considered unlawful and prohibited under all circumstances. Modern IHL has incorporated environmental protection as an essential element of the humanitarian and legal regulation of armed conflict, to prevent long-term and irreparable environmental damage resulting from an armed conflict.

[******] For details see: International Humanitarian Law Centre, *"Weapons and IHL,"* Diakonia, accessed November 16, 2025, https://www.diakonia.se/ihl/resources/international-humanitarian-law/weapons-law-ihl

3. **Distinction and the Protection of Civilians:** The third principle relates to the fundamental rule of distinction. This principle guarantees that only military objects are targeted in an armed conflict, and that ordinary civilians remain protected. Any weapon that lacks the capacity to ensure the distinction between military and civilian targets, or whose effects may also reach civilians, is deemed unlawful and prohibited under IHL. This principle of distinction is of fundamental importance in safeguarding human life and property and in ensuring the ethical standards of armed conflict.

Beyond this, numerous treaties and conventions at the international level impose explicit prohibitions on the use of specific weapons that have extremely harmful effects on human life, health, and the natural environment. These treaties ensure that military operations remain confined to military objectives, and that civilian populations, infrastructure, and ecological systems are protected from unnecessary or disproportionate harm. Among these international instruments, the most important is Ottawa Convention (1997), which completely prohibits the use of landmines and directs measures to reduce the resulting human and social harm. Alongside it, the Convention on Cluster Munitions (CCM) (2008) is also an important instrument which prohibits the use, production, stockpiling, and transfer of cluster bombs, since these bombs can cause lasting and disproportionate harm to civilians and to agricultural land. Similarly, the Biological Weapons Convention (1972) is also of great significance, prohibiting at the international level the use, production, stockpiling, or transfer of any biological weapon, since these can severely harm not only human life but also ecological balance. Furthermore, the Chemical Weapons Convention (CWC) (1992) imposes a complete prohibition on the use, production, stockpiling, and transfer of chemical weapons, and warns of the human, social, and environmental risks of their use.

All these treaties are grounded in the principle that, during armed conflict, priority must be given to the protection of human life, the safety of civilian populations, and the preservation of natural resources. Under these, the use of any weapon capable of causing unnecessary, disproportionate harm to human health, civilian life, or the natural environment is considered unlawful and prohibited under IHL.

Lawful Weapons

In contrast to unlawful weapons, all weapons that do not subject the enemy to unnecessary pain, extraordinary suffering, or extreme harm are considered lawful. In other words, weapons which, by their basic design and general effects, do not unjustifiably increase human suffering are deemed acceptable within the scope of IHL. It is also worth noting that some weapons are not lawful or unlawful in every circumstance; rather, their legal status changes according to the circumstances and manner of use. For example, incendiary weapons are prohibited from use against ordinary soldiers because they cause unnecessary suffering. But the same weapons, if used to target the enemy's military buildings, depots, or installations, may be permissible under specific legal conditions.[††††††]

From these lawful weapons arises a third important category: the misuse of a lawful weapon. Weapons that do not, in themselves, violate IHL may become unlawful under circumstances when used in a manner that causes the enemy unnecessary suffering or excessive harm. It is thus clear that the legal status of a weapon is not determined merely by its technical characteristics, but also by when, where, and for what purpose it is used.[‡‡‡‡‡‡] In summary, whether a weapon is lawful or unlawful is a multifaceted question in which both the nature of the weapon and the manner of its use carry equal weight.

Autonomous Weapons

Before beginning a detailed discussion on AWS — often referred to by the term Autonomous Weapon System (AWS) — it is necessary to clarify a few basic concepts related to this subject. Considering these concepts, we can better understand the technical, ethical, and legal dimensions of AWS. Thus, first and foremost, the meaning of *weapon* and *autonomy* needs to be explained first so that the meaning of *autonomous weapon* could be made clearer.

As far as the meaning of weapon is concerned, according to dictionaries, "weapon" is used in two basic senses:

[††††††] To understand the weapons law with significant details, please see Van Coller, Arthur. "Detonating the air: The legality of the use of thermobaric weapons under international humanitarian law." *International Review of the Red Cross* 105, no. 923 (2023): 1125-1151.

[‡‡‡‡‡‡] Boothby, William H. *Weapons and the law of armed conflict*. (Oxford University Press, 2016) p. viii.

1. Any physical object designed to cause bodily harm or used for that purpose.§§§§§§

2. Any method, action, strategy, or means by which advantage is gained in a conflict or contest. Thus, the meaning of "weapon" is not limited to physical objects alone but extends to non-physical tactics as well, which can play an effective role in a clash or conflict.*******

As far as the word autonomy is concerned, it, literally, means freedom, freedom of decision, and independence from external control. In law and politics, this concept describes a state in which an entity has the power to make decisions free from external influence.††††††† In the context of AWS, autonomy refers to a machine's capacity to perform its own functions, make decisions, and respond according to its environment without human supervision.‡‡‡‡‡‡‡ At this point it is important to note the distinction between autonomy and automatism. The latter refers to a system that operates according to a pre-set program in a closed and previously known environment, and is not based on artificial intelligence. The former is an AI-based system capable of decision-making, analysis, and responding to unforeseen situations.§§§§§§§

Expectations to have a comprehensive and globally agreed definition remain unachieved as no comprehensive, globally agreed definition of AWS has yet been settled upon. However, on the basis of their basic characteristics, the ICRC has offered a definition as a system that *"can select and attack targets without human intervention."********* This capability is made possible through artificial intelligence and algorithmic decision-making, by which the system assesses its

§§§§§§ Henry Watson Fowler and Francis George Fowler, *The Concise Oxford Dictionary of Current English*, (Oxford: The Clarendon Press, 1919), 1009.

******* Jean Loup Richet, *Cybersecurity Policies and Strategies for Cyberwarfare Prevention*, (Hershey: IGI Global, 2015), 25.

††††††† Henry Campbell Black, *Black's Law Dictionary*, (St. Paul, Minn.: West Publishing Co., 1979), 122.

‡‡‡‡‡‡‡ Armin Krishnan, *Killer Robots: Legality and Ethicality of Autonomous Weapons*, (Surrey: Ashgate Publishing Limited, 2009), 4.

§§§§§§§Mateusz Piatkowski, "Fully Autonomous Weapons Systems and the Principles of International Humanitarian Law," (Lithuania: 5th International Conference of PhD Students and Young Researchers "How Deep Is Your Law? Brexit. Technologies. Modern Conflicts," 2017), 298–309.

********ICRC, *Autonomous Weapons Systems: Technical, Military, Legal and Humanitarian Aspects: Expert Meeting*, (Geneva, 2014), 5.

environment and independently identifies targets and selects a course of action. This decision-making capacity distinguishes AWS from objects that are simply beyond human control. For example, a bullet fired from a gun, or a boulder rolling down a mountain, are beyond human reach once released, but since they lack any independent decision-making capacity, they cannot be called AWS.[††††††††]

Fully Autonomous and Semi-Autonomous Weapons

Autonomy is a relative concept, meaning that a system's freedom of operation and capacity for independent decision-making depend on the degree of human intervention. The less the human intervention, the more autonomous the system. In other words, less human intervention means greater autonomy, and when human intervention is entirely absent, the system is considered fully autonomous — that is, capable of performing every action and decision entirely on its own.

Various methods and scales are used to assess the level of autonomy in weapon systems. One well-known method is presented by the National Institute of Standards and Technology (NIST) in its report, *Autonomy Levels for Unmanned Systems (ALFUS Framework)*. Under this framework, unmanned weapon systems are divided into four broad categories based on degree of autonomy: remotely controlled, tele-operated, semi-autonomous, and fully autonomous.[‡‡‡‡‡‡‡‡] The details of each category are as follows:

1. **Fully Autonomous System:** At this level, the weapon or machine is entirely free of human intervention. The system carries out its own mission, identifies targets, and decides on attack or action entirely at its own discretion. Human guidance or supervision is never required, and the system can analyze and decide upon unforeseen circumstances arising in its environment.

2. **Semi-Autonomous System:** This type of system possesses some degree of autonomous capability but is not fully autonomous. It can make certain decisions on its own, but human guidance or intervention is required at some stage — that is, a human remains involved in its key functions, and while the system carries out

[††††††††]Dan Saxon, *International Humanitarian Law and the Changing Technology of War*, (London: Martinus Nijhoff Publishers, 2013), 127.
[‡‡‡‡‡‡‡‡]National Institute of Standards and Technology, *Autonomy Levels for Unmanned Systems (ALFUS) Framework* (2008), 21–22.

certain actions according to human instructions, it makes other decisions independently through its own artificial intelligence.

3. **Tele-operated System:** At this level, the system operates under the supervision of a human operator who controls it from a distance. It acts on information and instructions received from the human, and adjusts its actions according to human-provided feedback. Here the machine's independence is limited, since fundamental decisions are determined by human guidance.

4. **Remotely Controlled System:** This is the lowest level of autonomy. Here, the machine is entirely dependent on human instructions and cannot make any decision or take any action without a human. Every action, every target identification, and every operation is based on instructions provided by a human, and this system is incapable of acting on its own discretion or autonomy.[§§§§§§§§]

A second method of assessing weapons' autonomy has been presented by Human Rights Watch (HRW) in its report, *Losing Humanity: A Case Against Killer Robots* (2012).[*********] In this report, HRW divides unmanned systems into 3 categories based on the level of human involvement, in order to better understand their autonomy and their legal and ethical nature. These categories are as follows:

1. **"Human in the Loop" Weapons:** In this system, the weapon can only select and act upon a target under human command or control. Human decision is required for every action, and the machine cannot take any step on its own discretion. This category is known as requiring the highest degree of human oversight.

2. **"Human-on-the-Loop" Weapons:** In this type of system, the weapon can select targets and carry out its mission under human supervision. This means the machine has the capacity to make its own decisions, but a human supervisor remains present, observing its actions, and can halt or alter them if necessary. Thus this system is partially autonomous, and the possibility of human control or intervention always remains present.

[§§§§§§§§]Ibid.

[*********]Bonnie Docherty, *Losing Humanity: The Case Against Killer Robots* (Human Rights Watch, 2012), 2.

3. **"Human-out-of-the-Loop" Weapons:** This is the most advanced and highest-level system, in which the weapon has the capacity to select and attack a target entirely on its own, without human intervention. The machine analyzes its environment, makes its own decisions, and completes its mission independently.

The HRW report clarifies that both of the earlier two categories, despite having different levels of autonomy, essentially fall within the category of fully AWS. The report further states that, at present, a fully autonomous weapon does not yet exist in practice, but rapid technological advancement and progress in machine learning increase the likelihood that such systems could become a reality in the future.[†††††††††]

This HRW report was published fourteen years ago, in 2012, and considerable technological innovation has certainly occurred over these years, with early examples of AWS now being introduced. However, fully AWS — capable of selecting their own targets and attacking independently — have still not been brought into existence on any large scale. Among the progress made so far in this regard are Turkey's Kargu drones, used in Libya in 2022, and Israeli drones.[‡‡‡‡‡‡‡‡‡]

Autonomous Weapons under IHL

Before discussing the permissibility or impermissibility of using AWS in armed conflict under IHL, it is necessary to clarify a foundational principle: under customary international law, all states are obligated to satisfy themselves of a weapon's legality before developing any new weapon. The St. Petersburg Declaration, 1868 obligated states to consider new weapons in light of IHL before manufacturing them, and to decide whether or not to produce them based on their lawfulness.[§§§§§§§§] This principle is elaborated further in Article 36 of Additional Protocol I (AP I). Under this article, states bear a formal responsibility to conduct a thorough and careful legal review of any new weapon, its method of operation, or any new means of its use, before adopting it. The purpose of this review is to determine whether the new weapon is consistent with the fundamental principles, rules, and prohibitions of IHL.

[†††††††††]Ibid.

[‡‡‡‡‡‡‡‡‡]For details, see *Humanities*, accessed November 16, 2025, https://www.ebsco.com/research-starters/social-sciences-and-humanities/lethal-autonomous-weapons-laws.

[§§§§§§§§]U.C. Jha, *Killer Robots: Lethal Autonomous Weapon Systems Legal, Ethical and Moral Challenges*, (Delhi: Vij Books India Pvt Ltd, 2016).

In this process, states must carefully assess the fundamental guiding values set out in Article 35 of API such as avoiding unnecessary suffering, avoiding unjustified destruction, and maintaining minimum standards of humanity in war. Alongside these, other principles of IHL, such as distinction, proportionality, and humanity, are also an essential part of this legal review.

For this reason, Article 36 obligates states to consider in advance the potential effects of new technologies, advanced weapons, and autonomous systems. This is not merely a legal requirement but also an ethical responsibility, aimed at ensuring that modern warfighting capabilities do not unjustifiably increase human suffering, nor produce outcomes that threaten global peace, civilian populations, or the minimum principles of war.

Having set out the general principles relating to modern weapons, it is now necessary to examine the potential risks that AWS pose to IHL, and to consider, in light of the principles of IHL, to what extent the use of AWS in armed conflict is right or wrong. These are risks that not only demand serious discussion in this field but also make clear that special legal measures must be taken before such weapons become a reality. In other words, understanding the potential effects of autonomy is necessary so that the global community can, in good time, formulate laws that keep the use of these technologies within the bounds of human values and the principles of war.

Principle of Distinction

The principle of distinction in IHL holds a foundational and central place in the law of armed conflict. This principle requires that any party to a conflict maintain a clear and effective distinction, in its military attacks, between civilians and combatants, and likewise between civilian property and military targets. This requirement of distinction is part of customary international law and applies equally in both international and non-international conflicts.

The historical roots of this principle can be traced to the St. Petersburg Declaration,[**********] which first sought to establish a balance between military necessity and the demands of humanity. In the same way, the Hague Regulations[††††††††††] prohibits attack by any means on

[**********] St. Petersburg Declaration (n. 26), preamble.

[††††††††††] Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (Hague Regulations) (adopted 18 October 1907, entered into force 26 January 1910) 205 CTS 277, art 25.

undefended towns, dwellings, or buildings which is a clear extension of the principle of distinction. This principle was later codified formally in API. Particularly Articles 48, 51(2), and 52(2) set out in detail the protection of civilians, the definition of military objectives, and the prohibition of indiscriminate attacks.

Furthermore, the principle of distinction is also prominent in Protocol II, Amended Protocol II, and Protocol III of the CCW, as well as in the Ottawa Convention (which banned anti-personnel landmines),[‡‡‡‡‡‡‡‡‡‡] demonstrating its broad international acceptance.

This principle has also been consistently affirmed in judicial precedent. In the 1969 Kassem case, the Israeli Military Court held the security of civilians to be a fundamental and uncontested principle of IHL.[§§§§§§§§§§] Likewise, in the Nuclear Weapons case, the International Court of Justice (ICJ), in its advisory opinion, described the principle of distinction as a "cardinal principle" of IHL and a rule of customary international law admitting no derogation.[**********] During the 1973 Middle East war, in response to an ICRC appeal, all parties, including Egypt, Iraq, Israel, and Syria, expressed willingness to abide by this principle, further reinforcing its international standing.[††††††††††]

However, in the context of modern technology, particularly AWS, the principle of distinction now faces exceptional challenges. Traditionally, the distinction between combatant and civilian could, to some degree, be made through outward signs, which technology could to some extent recognize. But in contemporary warfare the conduct of combatants has changed: they blend in among civilians, adopt non-military clothing, and are identifiable only through their conduct — that is, direct participation in armed conflict — rather than by appearance or any outward marker.

This shift creates a fundamental obstacle to the legitimacy of AWS, because such systems cannot perform the analysis of human behavior, intent, and context that the human mind performs. As a result, the capacity of AWS to maintain the distinction between combatants and non-combatants becomes severely limited, and the risk of mistaken attacks

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[‡‡‡‡‡‡‡‡‡‡]Ottawa Convention (n. 8), Preamble.

[§§§§§§§§§§]Military Prosecutor v. Omar Mahmud Kassem et al., 1971 International Law Reports, 470.

[**********]Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, [1996] ICJ Rep 226.

[††††††††††]ICRC, "Rule 1 — The Principle of Distinction Between Civilians and Combatants," *Customary IHL Database*, n.d., accessed November 18, 2025, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule1.

on civilians increases sharply. This is precisely where a fundamental principle of IHL and modern technology come into direct conflict, with the likelihood that the legal and ethical debate will become even more complex in the future.

Principle of Proportionality

In IHL, the principle of proportionality limits the scope of force that may be used during armed conflict. Under this principle, any attack likely to cause unnecessary or disproportionate harm or destruction to civilian objects is prohibited, particularly if its scale or intensity exceeds the anticipated military advantage. Under customary international law, this principle mandates the prohibition of disproportionate or unnecessary attacks, its basic purpose being to ensure the protection of civilians in war.

The legal basis of this principle is found in Article 51(5)(b) and Article 57(2)(a) of Additional Protocol I to the Geneva Conventions, while its presence is also recognized in Protocol II[‡‡‡‡‡‡‡‡‡‡‡] and Amended Protocol II[§§§§§§§§§§] of the Convention on Certain Conventional Weapons. However, Additional Protocol II to the Geneva Conventions contains no explicit clause on proportionality in attacks. Furthermore, the use of disproportionate force in international armed conflict has been designated a war crime under the Rome Statute of the International Criminal Court (ICC), highlighting the international legal standing and importance of this principle.[**********]

The principle of proportionality is not only embedded in the national laws of various countries but is also treated as mandatory in various military manuals, and is regarded as a fundamental part of customary international law. Historically, in the 1985 Military Junta case, Argentina's National Court of Appeals recognized the principle of proportionality in attack as part of customary international law.[††††††††††††] Similarly, in the well-known Nuclear Weapons case, the International Court of Justice (ICJ) invoked this principle in assessing whether the use of nuclear weapons would violate IHL.

Violations of the principle of proportionality are generally condemned by states at the international level. The United Nations and other international bodies have strongly criticized violations of the

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[‡‡‡‡‡‡‡‡‡‡‡]Article 3(3), Protocol II to the Convention on Certain Conventional Weapons, 1996.

[§§§§§§§§§§]Article 3(8), Amended Protocol II to the Convention on Certain Conventional Weapons, 1996.

[**********]Article 8(2)(b)(iv), Rome Statute.

[††††††††††††]Argentina, National Appeals Court, Military Junta Case.

principle of proportionality in Chechnya, Kosovo, the Middle East, and the former Yugoslavia.[‡‡‡‡‡‡‡‡‡‡‡‡] The ICRC also repeatedly stresses that full observance of the principle of proportionality in attacks, during both international and non-international armed conflicts, is essential to ensure the protection of civilians and non-combatants.

However, in the context of modern AWS, this principle emerges as a fundamental challenge. Determining proportionality in an attack is a complex, context-dependent human judgment, one that can be made only through human understanding, experience, and reflective deliberation. Proportionality is not an absolute or fixed standard but varies according to each case and situation. Even a minor change can alter the balance of risk, harm, or military advantage — an assessment that current machine- or AI-based systems cannot accurately make. Thus, compliance with the principle of proportionality in attacks is a task that is not possible without genuine human intelligence and awareness.[§§§§§§§§§§§§]

Principle of Military Necessity

IHL rests on three fundamental principles: military necessity, proportionality, and distinction. Among these, the principle of military necessity is an especially subtle and intellectually complex concept, which permits a belligerent force to take such measures as are necessary to incapacitate the enemy's war-fighting capacity and achieve the objectives of war. However, IHL does not permit unrestrained action to be taken in the name of military necessity. This principle is itself, in its structure, bound by the strict limits of other fundamental principles, particularly distinction and proportionality.[**********]

The interpretation of military necessity has always been contingent on human understanding, contextual analysis, and awareness of numerous practical dimensions. This is precisely where a clear gap emerges between the capability of AWS and legal responsibilities. Despite technical progress, AWS lack the conscious insight, moral responsibility, and sensitivity to the nuances of a situation that are indispensable for correctly determining the scope of military necessity.

[‡‡‡‡‡‡‡‡‡‡‡‡]UN Security Council Resolutions No. 1160 & 1199, 1322; UN Commission on Human Rights Resolution 2000/58.

[§§§§§§§§§§§§]Bonnie, *Losing Humanity*, 32.

[**********]Burrus M. Carnahan, "Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principles of Military Necessity," *The American Journal of International Law* 92, no. 2 (Apr. 1998): 213–231.

For example, an autonomous weapon cannot perform the kind of direct, ethical assessment that a human decision-maker instantly makes regarding a combatant who has fallen on the ground after a fight — whether that combatant has genuinely been wounded and has attained the legal status of *hors de combat*, and is therefore now entitled to protection from attack, or is merely feigning injury as a tactic of war. This subtle distinction cannot be derived by relying solely on technical data or motion signals. Nor can an autonomous weapon satisfactorily assess when an enemy soldier's capacity to resist has ended, after which continuing the attack falls into the category of unlawful violence rather than military necessity.[††††††††††††]

Furthermore, the principle of military necessity is, in practice, justified only in circumstances where the human mind weighs the moment-by-moment changing situation, anticipated outcomes, proposed advantage, and possible human harm against one another to reach a decision. In the absence of this balanced analysis, the principle of military necessity loses its fundamental moral and legal standing. Thus, in the context of AWS, the greatest question that arises is this: when decision-making is grounded in algorithms rather than human insight, can the principle of military necessity be applied in keeping with its true spirit?

All of these factors reinforce the concern that, at present, AWS cannot be genuinely reconciled with the protective framework of IHL. This is why the global debate has intensified over whether the use of AWS — particularly in lethal attacks — can, legally, ethically, and practically, be reconciled in any way with the principle of military necessity under IHL.

Principle of Humanity

The principle of humanity is the principle of IHL that, together with the principle of military necessity, establishes ethical and legal balance in military operations. These two principles operate simultaneously: on one hand, military necessity legally permits the effective weakening of the enemy's war-fighting capacity, while on the other, the principle of humanity obligates belligerent forces not to inflict unnecessary, unwarranted, or excessively painful harm on the enemy.[‡‡‡‡‡‡‡‡‡‡‡‡‡] Article 51 of Additional Protocol I to the Geneva Conventions provides the clear legal basis for this very principle.

[††††††††††††]Bonnie, *Losing Humanity*, 30.

[‡‡‡‡‡‡‡‡‡‡‡‡‡]International Committee of the Red Cross, "What Is IHL?", accessed November 18, 2025, https://www.icrc.org/en/document/what-ihl.

However, the practical implementation of the principle of humanity is bound up with one crucial condition: that decisions be made by humans who are attuned to human emotion, moral sensitivity, and an awareness of pain and suffering. This principle is only meaningful, by its very nature, when the decision-maker possesses the capacity to feel the pain, suffering, fear, vulnerability, and sanctity of human dignity that are so gravely affected during war.

This is precisely where AWS give rise to serious legal and ethical questions. Since these systems operate purely on algorithms, digital processing, and machine logic, they altogether lack the moral hesitation, sense of compassion, and recognition of human suffering that are indispensable to the spirit of the principle of humanity. A machine, however advanced, cannot feel an adversary's suffering the way a human can, nor can it grasp the point at which further attack becomes unnecessary and inhumane.

For this reason, there is a heightened risk that AWS, through decision-making devoid of human emotion and moral responsibility, may tend toward causing unnecessary suffering or disproportionate harm — directly undermining the principle of humanity.[§§§§§§§§§§§§§]

Command Responsibility

Command responsibility is the principle of IHL under which a commander or senior officer is held responsible when subordinates under their command violate IHL, and the commander, despite knowing of these violations, failed to prevent, investigate, or punish them. This principle is grounded in the relationship between authority and accountability: since a commander issues orders to subordinates and can influence their actions, the commander's responsibility is correspondingly greater.[**********]

It has been established that a commander will be held responsible if they possessed effective command and control over their subordinates. Similarly, the ICTR, in *The Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-T, held that a commander will be responsible when:

A. A superior–subordinate relationship exists between the commander and the subordinates;

[§§§§§§§§§§§§§]Bonnie, *Losing Humanity*, 30.

[**********]Peter Margulies, "Making Autonomous Weapons Accountable: Command Responsibility for Computer-Guided Lethal Force in Armed Conflicts," in *Research Handbook on Remote Warfare*, ed. Jens David Ohlin (Cheltenham: Edward Elgar Press, 2016), 6.

B. The commander knew, or should have known, of the violations; and

C. The commander failed to punish the perpetrators.

These three elements together provide the basis for a commander's legal responsibility and form the foundation for the application of traditional command responsibility in international legal practice.

When it comes to AWS, the traditional principle of command responsibility faces several major challenges. First, there is an absence of the traditional command–subordinate relationship. The person or commander who launches an autonomous weapon generally does not retain complete control over every subsequent action of the machine. When the system independently selects targets and takes action, the commander's control — given the machine's status as a "subordinate" — may be limited or altogether absent. Since control is the first requirement, this creates difficulty in applying traditional command responsibility on this basis.

The second issue is one of knowledge. If an autonomous weapon carries out an unlawful action, the question arises whether the commander knew, or should have known, that the machine would commit a war crime. Because of the machine's unpredictable behavior and decisions, it becomes difficult to prove that the commander had knowledge of this risk.

The third challenge concerns punishment and disciplinary action. One element of traditional command responsibility is that the commander failed to punish the perpetrators. But an autonomous weapon is an inanimate object, and punishment cannot be applied to it. Thus the meaning of "punishment" must here be reconsidered: should it be directed against the human operators or the technical party responsible — such as the programmer or manufacturer — or should responsibility instead be determined at the level of the state? This gives rise to a fourth issue, concerning the identification of the responsible parties. An autonomous weapon system involves multiple actors: the commander or operator, the system launcher, developers, algorithm designers, manufacturers, and the state as a party. These multiple actors complicate the argument for responsibility, since it becomes difficult to determine clearly who should be held accountable, and to what extent.

Although some authors have proposed that those who launch AWS should be held accountable under command responsibility, this position

would face strong legal challenges at the international level, particularly from the powerful states that sponsor these technologies.††††††††††††††
From the discussion above, it becomes clear that IHL leaves no room for the use of AWS in military operations, because their use makes it impossible to uphold the fundamental principles of IHL — such as proportionality, humanity, distinction, and military necessity. Furthermore, when these weapons are used, determining who is responsible for any resulting violations of the principles of IHL becomes complex, if not impossible. For this reason, the use of these weapons in war is not lawful. There may, however, be room for deploying them defensively — to protect civilians and military installations.

Weapons under Islamic Law

Before examining, in light of the principles of Islamic Law, the question of the permissibility or impermissibility of AWS, it is necessary to see what Islam says about weapons in general. The Islamic rulings concerning weapons are therefore explained below.

- Numerous Ḥadīths of the Holy Prophet speak of the merit, for a Muslim, of making and keeping weapons. In this regard it is narrated on the authority of Abu Hurairah‡‡‡‡‡‡‡‡‡‡‡‡‡‡ that the Messenger of Allah said that all idle pastimes of this world are void except three: a man's practicing archery with his bow, training his horse, and playing affectionately with his family — these are among the things that are true and worthwhile.§§§§§§§§§§§§§§ In another narration, the Messenger of Allah said: practice archery, and also horsemanship, but your practicing archery is dearer to me; and Allah Almighty will admit three persons into Paradise through a single arrow: the one who makes the arrow, the one who supplies it, and the one who shoots it.********** The context of these narrations makes clear that the

††††††††††††††Peter Margulies has proposed in his research that the person who launches an autonomous weapon should be held responsible under command responsibility.

‡‡‡‡‡‡‡‡‡‡‡‡‡‡ In this paper, wherever the name of any of the companions of the Prophet appears, the authors intended to offer the salutation of "may Allah be pleased with him/them".

§§§§§§§§§§§§§§ Abū 'Abdillah al-Ḥakim Muḥammad b. 'Abdillah, *al-Mustadrak 'alā'l-Saḥiḥayn*, (Beirut: Dar al-Kutub al-'Ilmiyyah, 1990), vol. 2, 105, hadith no. 2468.

**********Sulaymān b. Aḥmad b. Ayyūb al-Ṭabrānī, *al-Mu'jam al-Awsaṭ*, (Cairo: Dar al-Haramayn), vol. 5, 278, hadith no. 5309.

merit attached to weapons here lies in making and using them for the defense of the Islam and Muslims, in the way of Allah.

- Islam permits keeping lawful weapons for personal defense and protection, but with the condition that there be no apprehension that the weapon will be used to unjustly kill or harm anyone. Where there exists a risk that a weapon may be misused, an individual is not permitted to keep it. In one narration, the Messenger of Allah even prohibited pointing a weapon at a fellow Muslim, saying: "Let none of you point a weapon at his brother, for he does not know — Satan may cause it to slip from his hand, and he may fall into a pit of Hell."[†††††††††††††††] This shows that, far from using a weapon against a Muslim, even pointing one at him is prohibited.

- The defense of the Islamic state and of Muslims is an obligation upon every Muslim; accordingly, keeping weapons is not merely commendable for a Muslim but a collective religious duty. This is reflected in the Ḥadīths of the Prophet and in his own life, in which an inclination toward weapons is evident. It should, however, be kept in mind that in that era Muslims had no standing regular army; rather, every sane, adult person was, in effect, also a soldier. In the present age, however, Muslim states possess organized, regular armed forces, upon which the responsibility for protecting the state and its citizens rests. Accordingly, if the armed forces and law-enforcement institutions properly discharge their duties, and the government, in order to maintain public order, prohibits citizens from keeping weapons, this is permissible particularly where the general public being armed poses a threat to the life and property of other citizens, in which case they may be barred from keeping weapons.[‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡]

Islam and Arms Manufacturing

The basis of Islamic law regarding arms manufacturing is the verse 60 of *Surah al-Anfāl*, in which Allah Almighty commands the Muslims: "*And prepare against them whatever you are able of power and*

[†††††††††††††††]Abū 'Abdillah Muḥammad b. Isma'īl al-Bukhārī, *Saḥīḥ al-Bukhīri*, (Beirut: Dar Tawq al-Najat, 1422 AH), vol. 9, 49, hadith no. 7072.

[‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡]Dar al-Ifta, Jami'at al-'Ulum al-Islamiyyah, Banuri Town, Karachi, 2006, https://www.banuri.edu.pk/readquestion/kia-hatya-rakhna-sunnat-hay-144403100911/08-10-2022

of steeds of war, by which you may terrify the enemies of Allah." In this verse, Allah Almighty commands the Muslims to remain prepared to confront the enemy in terms of '*quwwah*' (power/strength). The question that arises here is what exactly is meant by '*quwwah*.' In this regard, a *Ḥadīth* of the Prophet is cited, in which he explained '*quwwah*' as '*al-ramī*' meaning throwing or shooting. He has been reported to say: "*Indeed, strength is in archery [shooting arrows]*."§§§§§§§§§§§§§§§

According to this verse and the Prophet's explanation, a question has been raised: is the standard for fulfilling the duty imposed on Muslims — to maintain strength against the enemy according to their capacity — that Muslims manufacture every type of weapon of every age, or is the duty fulfilled if they manufacture some of the weapons considered modern in a given era? According to the commentators, this verse both grants permission to manufacture all instruments and weapons of war of any era, and also establishes the responsibility of the ruler of the time to maintain the preparation necessary to confront the enemy. The majority of the exegetes lean toward the view that the scope of this verse encompasses all modern and effective weapons of every era. However, some scholars have taken the word "*min*" in the verse to indicate partitive meaning (*tab'īḍ*), holding that it is not required that every weapon of the age be manufactured, but that having the basic and necessary instruments of war suffices.

Most commentators, in this regard, cite as evidence the Prophet's statement in which he identified the most effective military strength of that time, saying that true strength lies in archery. The commentators explain that he stated this by way of illustration, because at that time archery was the most complete form of military strength. Later commentaries established the principle that "*quwwah*" refers to any means by which strength for war is obtained — whether mounts, weapons, or any other implement of war.

Tafsīr Mazharī likewise clarifies this concept, stating that this command is general and includes everything counted among the instruments of war needed to gain strength against the enemy — including resources, equipment, actions, military training, and even the building of forts and the strengthening of the economy.**********

§§§§§§§§§§§§§§§Ibn Majah, Abu Abdullah Muhammad ibn Yazid al-Qazwini, *Sunan Ibn Majah* (Beirut: Dar Ihya al-Kutub al-'Arabiyyah), vol. 2, 940, hadith no. 2813.
**********Muhammad Sana'ullah Mazhari, *Tafsir Mazhari*, (Quetta: Maktaba Rashidiyya, 1412 AH), vol. 4, 106.

Yūsuf Al-Qaraḍāwī opines weapon, as a term, is not confined to sword and guns. Instead, it includes anything that can be used in conflict. He further holds that it is essential for Muslims to manufacture all kinds of weapons including biological weapons, nuclear weapons and WMD. He, however, clarifies that using WMD in armed conflict is prohibited because the bring the principle of distinction at failure.[†††††††††††††††]

Against this, some commentators have adopted an alternative view, according to which "min" is taken as partitive. In light of this interpretation, it follows that it is not necessary to provide every weapon of the age; rather, it suffices to have those basic instruments capable of pressuring the enemy and averting the possibility of war. This view was also adopted by al-Ṭanṭāwī, whose position, in summary, is that if Muslims provide some of the weapons considered modern in a given era, the obligation is fulfilled.[‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡] Reflecting on the phrase "*mastaṭa'tum*" (i.e., "to the extent of your ability") in this verse shows that Muslims should remain prepared according to their capacity — if that capacity extends to manufacturing all weapons of any era, then that very responsibility applies.

Among contemporary scholars, Mufti Muhammad Shafi's 'has written that Allah Almighty used the word "*quwwah*" in this verse precisely because it carries a broad meaning encompassing every weapon of every age. By today's standards, "*quwwah*" would include every kind of bomb, cannon, and tank, and even submarines.[§§§§§§§§§§§§§§§] Maulānā Maudūdī has derived from this verse that it is obligatory upon Muslims to maintain a standing army.[**********] Mufti Taqi Usmani has taken essentially the same meaning as set out by his father in his own commentary, though Mufti Taqi Usmani's wording is more emphatic. He states:

> "This is a perpetual command for the entire Muslim *Ummah*, that it should make arrangements to gather every kind of defensive strength in order to establish the honor of Islam and the Muslims. By using the general word 'strength,' the Holy Qur'ān has made clear that preparation for war is not confined to any one weapon;

[†††††††††††††††] Al-Qaraḍāwī, *Fiqh al-Jihād* 1:614.

[‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡]Muhammad Sayyid Tantawi, *al-Tafsir al-Wasit li-Tantawi*, (Cairo: Dar Nahdat Misr, 1997), 6:139.

[§§§§§§§§§§§§§§§]Mufti Muhammad Shafi, *Ma'ariful Qur'an* (Karachi: Idaratul Ma'arif, 2008), vol. 4, 272.

[**********]Maulana Abul A'la Maududi, *Tafhim al-Qur'an*, (Lahore: Idara Tarjuman al-Qur'an), vol. 2, 155.

> rather, whatever type of defensive strength is useful at any given time, acquiring that strength is the duty of the Muslims. This therefore includes all the most modern weapons and equipment, as well as all the means and resources necessary for the collective, economic, and defensive development of the Muslims."[†††††††††††††††††]

It should, however, be kept in mind here that the above discussion concerns the obligation (*wujūb*) of manufacturing weapons that is, which weapons Muslims are obligated to produce. This discussion does not address which weapons are permissible to manufacture. Clearly, weapons whose manufacture is obligatory are also permissible; but the question remains whether there could also be weapons whose manufacture is not obligatory, yet which Muslims may produce if they wish, and whether there could also be weapons whose manufacture is prohibited to Muslims. Classical texts do not provide an explicit answer to this question, but it remains a field open to contemporary Islamic thought and *ijtihād*.

Islam and Autonomous Weapons

This matter can be discussed from two angles. First, whether it is permissible in Islam to manufacture AWS. Second, whether Islam permits the use of AWS for attack during armed conflict. The first angle has already been discussed above; in summary, once such a weapon becomes prevalent in the world, its manufacture is, in the view of some scholars, a collective obligation upon the Muslim *Ummah*.

As for whether an autonomous weapon may be used for attack in armed conflict, the answer is in the negative. All the reasons already discussed above in relation to IHL serve as grounds for this prohibition as well, since Islam also recognizes the principles of proportionality and distinction[‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡] and of military necessity in war.[§§§§§§§§§§§§§§§§] Moreover, even if these principles were not explicitly stated in Shariah,

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[†††††††††††††††††]Muhammad Taqi Usmani, *Aasan Tarjuma Qur'an* (Karachi: Maktaba Ma'ariful Qur'an), vol. 1, 546.

[‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡‡]In verse 190 of Surah al-Baqarah, Allah Almighty commands the Muslims: "Fight in the way of Allah those who fight you." This means that it is not permissible to fight against those who are not engaged in fighting.

[§§§§§§§§§§§§§§§§]For details on the IHL principles of distinction, proportionality, military necessity, and humanity, and the corresponding Islamic teachings, see Syed Mahmood Akhter Hussain Gardezi, "Comparative Study of Islamic Laws of War and IHL — Points of Convergence for Universal Consensus on Laws of War," *Margalla Papers* 25, no. 1 (2021).

since Muslims are also party to the Geneva Conventions, the obligation to fulfill agreements (*wafā bil-'ahd*) now makes adherence to these principles a requirement of Shariah as well.

Beyond these reasons, there are other grounds within Islamic Shariah from which it can be concluded that Islamic law does not permit the use of AWS for attack in armed conflict.

Legal Capacity (Ahliyyah) and Autonomous Weapons

In Islamic law, the legal or moral validity of any act is fundamentally conditioned on the actor possessing capacity (*ahliyyah*). Capacity means that the person performing the act possesses reason, will, intent, and attributable responsibility, so that the consequences of the act can be legally attributed to him/her. The principle is that in the absence of capacity, Shariah obligations do not apply. For criminal responsibility in particular, the highest form of capacity i.e. perfect capacity for execution (*ahliyyah al-adā al-kāmilah*) is required.********** That is, acts performed by an actor lacking capacity cannot carry Shariah rulings, responsibility, or accountability. The entire framework of *qiṣāṣ* (retaliation), *diyah* (blood money), liability (*ḍamān*), reward and sin rests on this very attribution of responsibility. Since an autonomous weapon is a non-sentient instrument devoid of intent and will, it can neither form intention, nor have the capacity to choose or refrain from an act of its own accord, nor can any act issuing from it be attributed to it. Furthermore, since a machine does not possess legal capacity for punishment, sin, repentance or reform, its acts cannot attain the moral and legal status of human acts within the framework of Islamic law. When a weapon lacks basic capacity altogether, any killing or harm carried out through it takes on a condition in which a "responsibility gap" arises, meaning neither is the actor identifiable, nor can Shariah responsibility be imposed. Such a situation is impermissible in Islamic law, because it is a condition for military action that the actor be known and accountable. AWS are therefore unlawful under the Islamic principle of capacity, since they are neither morally obligated (*mukallaf*) nor capable of bearing responsibility, nor can their acts be attributed to any actor possessing moral or legal consciousness.

**********For the definition, types, and legal effects of the absence or diminishment of capacity, see Abdulaziz Ibrahim Sha'af al-Dhafiri, "Ahkam wa Aqsam wa Awarid al-Ahliyyah fi al-Fiqh al-Islami wa al-Nizam al-Sa'udi," *Majallat al-Dirasat al-Qanuniyyah wal-Iqtisadiyyah* 11, no. 3 (2025): 859–910.

Worship (*Jihad*) and Autonomous Weapons

Another ground which renders the AWS unlawful under Islamic law is the lack of capacity for religious obligation, and moral responsibility. This is because engaging in justified armed conflict is considered a religious act known as *jihād* under Islamic law which can be performed only by a human being. First, it must be understood that *jihād* in Islam is not merely a military activity but an act of worship, one whose validity requires intention, the intent of nearness to Allah (*qaṣd al-qurbah*), sincerity, and adherence to the rulings of Shariah. Worship requires that the actor be morally obligated (*mukallaf*) i.e. capable of forming intention and of distinguishing between obedience and disobedience to Allah. An autonomous weapon possesses, at no level, any awareness of intention, purpose, obedience, sin, or worship; therefore, any military action carried out through it cannot, in Shariah terms, be reconciled with the concept of worship (*jihād*).

In Islamic jurisprudence, the three fundamental conditions for being morally obligated, namely reason (*'aql*), maturity (*bulūgh*), and being Muslim, are established as settled principles.[††††††††††††††††] AWS possess no reason, intent, and the capacity for accountability or capacity to embrace Islam and act upon its commandments. Since they are not morally obligated, no military action carried out through them can, in Shariah terms, be called *jihād*, because *jihād* is an act of worship valid only when performed by an adult, sane, Muslim human being. Consequently, warfare carried out by an autonomous weapon is neither worship, nor does it carry the Shariah ruling of *jihād*; rather, It amounts to the use of a force that cannot be accepted, at any level, within the moral and religious framework of Shariah.

Furthermore, Shariah lays down another fundamental condition for war: that combat is valid only from an actor capable of understanding Shariah responsibilities such as the correctness of intention, distinguishing between the enemy and the innocent, avoiding what is forbidden in combat, and observing the limits set by Allah. AWS cannot differentiate between right and wrong, so any action carried out by it falls entirely outside the whole system of war's moral and juristic principles such as distinction, proportionality, piety, justice, and accountability. Thus, owing to the absence of capacity for religious obligation, the capacity for moral judgment, and the Shariah requirements of worship, AWS are, according

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[††††††††††††††††] Abu'l Ḥasan Syed al-Dīn 'Alī b. Abī 'Alī b. Muḥammad al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām,* (Beirut: al-Maktab al-Islāmī, n.d.) v.1 p. 155.

to Islamic law, illegitimate, immoral, and unlawful because, according to Shariah, the legitimacy, authority, and responsibility of war belong to human beings alone, not to a machine.

Conclusion

From the above discussion, the conclusion emerges that, under IHL, AWS may not be used to attack the enemy during armed conflict, because their use makes it impossible to uphold the fundamental principles of IHL, such as the principle of distinction, the principle of humanity, the principle of proportionality, and the principle of military necessity, and violating these principles is not only impermissible but also constitutes a war crime. However, if such weapons are built and used solely for the protection of non-combatants, civilian installations, soldiers, or military installations, rather than for attacks, this use will be permissible.

As far as Islamic law is concerned, it too does not permit the use of AWS for attack, because doing so, on one hand, violates the principles of IHL, which Islam also recognizes, and, on the other hand, certain other principles of Islamic law, as discussed, likewise prohibit its use.

In this regard, the United Nations, the ICRC, and other international organizations should now play their role in persuading all countries with the capability to build such weapons to refrain from doing so. If the production of such weapons cannot be stopped or banned altogether, at least, its production should be regulated in a way, that it does not become fully autonomous and stays under effective control of human mind particularly in deciding target to hit. Stopping this now can prevent a massive legal crisis in the future; but once the manufacturing of such weapons becomes widespread, the principles of humanity in war will become a thing of the past, and it will be robots that decide which human being is to be allowed to live and which is to be killed and thus humanity will find itself facing a crisis of its own survival at the hands of its own creation.

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