### Advantage – Policing

#### Advantage 1: Policing

#### LAWs are being developed rapidly---they’ll seep into policing.

**Amnesty International 15**. Global human rights organization, “UN: Ban killer robots before their use in policing puts lives at risk,” Amnesty International, April 15, 2015, https://www.amnesty.org/en/latest/news/2015/04/ban-killer-robots-before-their-use-in-policing-puts-lives-at-risk/

Governments must ban any further development of killer robots whose insidious creep into policing would put lives at risk and pose a serious threat to human rights, Amnesty International said today [as it launched a new briefing](https://www.amnesty.org/en/documents/act30/1401/2015/en/) in Geneva.

Speaking at a meeting of the UN’s [Convention on Certain Conventional Weapons](http://www.unog.ch/80256EE600585943/%28httpPages%29/4F0DEF093B4860B4C1257180004B1B30?OpenDocument)(CCW), the organization is calling for a pre-emptive ban on the development, stockpiling, transfer, deployment and use of fully autonomous weapons systems (AWS or killer robots).

Precursors to fully autonomous weapons – including drones and other unmanned weapons systems which are currently operated by humans – already are used to commit violations and present serious challenges to ensuring accountability.

But rapid advances in technology could mean the next generation of robotic weapons would be able to select and attack targets, potentially killing or injuring people, without effective human control – a chilling prospect which carries a new set of concerns.

“The second round of talks in Geneva this week are a clear sign that governments are waking up to the wide range of serious concerns posed by killer robots, whose development and deployment in the near future seem all but inevitable if we don’t act now,” said Rasha Abdul Rahim, Campaigner on Arms Control, Security Trade & Human Rights at Amnesty International, who is currently at the CCW talks in Geneva.

“The legal, ethical, and moral quandaries of using these systems in warfare are rightly beginning to receive the attention they deserve. But what’s still being widely overlooked is the likelihood that they will also be used in police operations, and it is urgent that this is addressed now.

#### Several internal links ---

#### 1] Overpolicing---there is no hope for effective control. Artificial intelligence is algorithmically racist, which makes law enforcement orders of magnitude more racially biased.

Hayley **Ramsay-Jones 19**. UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, workshop on the impact of new information technologies on racial equality. “Racism and Fully Autonomous Weapons,” *Campaign to Stop Killer Robots,* October 17, 2019, <https://www.ohchr.org/Documents/Issues/Racism/SR/Call/campaigntostopkillerrobots.pdf>

Introduction

The rise of artificial intelligence is largely due to an increase in power, memory and speed of computers, and the availability of large quantities of data about many aspects of our lives.i Through the commercial application of big-data, we are increasingly being sorted into different classifications and stereotypes. In its most benign form, this stereotyping is being used to sell us products via targeted advertising, however, in its most egregious application, we see the weaponization of new information technologies utilize similar classifications based on biased algorithms, to which the consequences for certain communities could be deadly.

In this paper I focus on fully autonomous weapons that are currently being developed for military and law enforcement purposes; and their potential threat to the human rights of marginalized communities, in particular persons of color intersectionallyii. This paper will also consider the systemic nature of racism and how racism would be reinforced and perpetuated by fully autonomous weapons.

Racism in Artificial Intelligence

Fully autonomous weapons can select and attack targets without meaningful human control, they operate based on algorithms and data analysis programming. In essence, this means that machines would have the power to make life-and-death decisions over human beings.

The trend towards more autonomy in weaponry without adequate human oversight is alarming especially when we know that digital technologies are not racially neutral. Moreover, when it comes to artificial intelligence (AI) there is an increasing body of evidence that shows that racism operates at every level of the design process and continues to emerge in the production, implementation, distribution and regulation. In this regard AI not only embodies the values and beliefs of the society or individuals that produce them but acts to amplify these biases and the power disparities.iii

One example of racism manifesting in AI is the under-representation problem in science, technology, engineering and mathematics (STEM) fields, which in itself is a manifestation of structural racism and patriarchy in western society. Technologies in the west are mostly developed by white males, and thus perform better for this group. A 2010 studyiv by researchers at the National Institute of Standards and Technology (NIST) and the University of Texas, found that algorithms designed and tested in East Asia are better at recognizing East Asians, while those designed in Western countries are more accurate at detecting Caucasians. Similarly, sound detecting devices perform better at detecting male, Anglo-American voices and accents, as opposed to female voices, and non-Anglo-American accents.

Research by Joy Buolamwini,v reveals that race, skin tone and gender are significant when it comes to facial recognition. Buolamwini demonstrates that facial recognition software recognizes male faces far more accurately than female faces, especially when these faces are white. For darker-skinned people however the error rates were over 19%, and unsurprisingly the systems performed especially badly when presented with the intersection between race and gender, evidenced by a 34.4% error margin when recognizing dark-skinned women.

Despite the concerning error rates in these systems, commercially we already see adaptations of faulty facial recognition systems being rolled out in a variety of ways from soap dispensers to self-driving cars. The issue here is what happens if law enforcement and national security become reliant on a system that can recognize white males with just 1% error rate yet fails to recognize dark-skinned women more than one-third of the time?

These types of applications of new information technology fail people of color intersectionally at a disturbing rate. The fact that these systems are commercially available reveals a blatant disregard for people of color, it also positions "whiteness"vi as the norm, the standard for objectivity and reason. These applications of new information technology including their weaponization favors whiteness at the expense of all others, it is not merely a disempowerment but an empowerment. In real terms, racism bolsters white people's life chances. vii

As we all grew up in a white-dominated world it is not surprising that the vast majority of white people operate within, benefit from and reproduce a system that they barely notice. This is a long-held reality and it is a fundamental problem that we now see infiltrate technology.

Historical or latent bias in data is another issue, this is created by frequency of occurrence, for example in 2016 an MBA student named Rosaliaviii discovered that googling "unprofessional hairstyles for work" yielded images of mainly black women with afro-Caribbean hair, conversely when she searched "professional hair" images of mostly coiffed white women emerged, similar google search results are still seen today. This is due to machine learning – algorithms; it collects the most frequently submitted entries and therefore reflects statistically popular racists sentiments. These learnt biases are further strengthened, thus racism continues to be reinforced.

A more perilous example of this is in data-driven, predictive policing that uses crime statistics to identify "high crime" areas and then subjects these areas to higher and often more aggressive levels of policing. Crime happens everywhere, however when an area is over-policed such as communities of color that results in more people of color being arrested and flagged as "persons of interest" thus the cycle continues.

In 2017, Amnesty International launched a report called "trapped in the Matrix",ix the report highlighted racially discriminatory practices by the UK police force and their use of a database called the "Gangs Matrix" which inputs data on "suspected" gang members in London. As of October 2017, there were 3,806 people on the Matrix, 87% of those are from black, Asian and minority ethnic backgrounds and 78% are black, a disproportionate number given that the police's own figures show that only 27% of those responsible for serious youth violence are black.

Amnesty stated that some police officers in the UK have been acting like they are in the "Wild West", making false assumptions about people based on their race, gender, age and socioeconomic status. As a result, individuals on the Matrix database are subject to chronic overpolicing. With black people six times more likely to be stopped and searched than white people, and ten times more likely to be convicted of drug-related offenses.

This system not only interferes with their right to privacy, Amnesty claims that the police often share the Matrix with other local agencies such as job centers, housing associations, social services, schools and colleges. In several cases, this has led to devastating impacts on people's social and economic lives because they are listed as "nominal" gang members, a label which is deliberately vague and stigmatizing.

The nature of systemic racism means that it is embedded in all areas of society, the effects of this type of oppression doesn't easily dissipate. Through the continual criminalization and stigmatization of people of color, systemic racism operates by creating winners and losers regardless of what people actually do. This is also the way that it redistributes opportunities and resources based on nothing other than privilege.

Given that the UK, as well as five other countriesx are developing fully autonomous weapons to target, injure and kill based on data-inputs and pre-programmed algorithms, we can see how long-standing inherent biases, pose an ethical and human rights threat. Where some groups of people will be vastly more vulnerable than others, fully autonomous weapons would not only act to further entrench already existing inequalities but could exacerbate them and lead to deadly consequences.

#### 2] Crackdowns---autonomous policing makes the War on Drugs and domestic crackdowns uniquely effective.

**Amnesty International 15**. Global human rights organization. “Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration,” *Amnesty International,* 2015, https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf

AWS could even be used to facilitate violations of the right to freedom of expression and right to freedom of peaceful assembly. Indeed, as Christof Heyns has stated: On the domestic front, LARs could be used by States to suppress domestic enemies and to terrorize the population at large, suppress demonstrations and fight “wars” against drugs. It has been said that robots do not question their commanders or stage coups d’état. 16 Given the potentially grave consequences of such technology and states’ existing obligations under international human rights law and IHL, Amnesty International believes the onus should be on states that wish to develop and deploy AWS to first demonstrate that specific uses of each type of weapon can be fully lawful and, in particular, consistent with international human rights and humanitarian law in operational circumstances.

#### 3] Community relations---police LAWs fracture them, which exacerbates racially based policing.

**Amnesty International 15**. Global human rights organization. “Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration,” *Amnesty International,* 2015, https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf

In addition, rather than providing states with a more effective, risk-averse solution to the conduct of law enforcement operations, AWS would most likely have the opposite effect. Removing human beings from some policing functions is likely only to further exacerbate the often tense relations between police and communities. Given the pervasive nature of discrimination, it is foreseeable that AWS would be deployed in deprived and crime-ridden neighbourhoods where people have historically had bad experiences of the police. Such mistrust would not be remedied by introducing machines to do the job of a human being. Faced with a robot, people will react differently than they would with a human to which they can relate. People will not be able to negotiate with a fully autonomous robot, or signal their intention to cease their unlawful acts or surrender. This could therefore cause escalation and could result in the arbitrary deprivation of life.

#### Modern policing and mass incarceration is modern day slavery---it is unethical to align yourself with it, and it causes hundreds of thousands of deaths.

Dean **Spade 12**. JD @ UCLA Law, “The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson’s “Masculinity as Prison” *California Law Review,* December 18, 2012, https://www.californialawreview.org/the-only-way-to-end-racialized-gender-violence-in-prisons-is-to-end-prisons-a-response-to-russell-robinsons-masculinity-as-prison/

Punishment and the State Administration of Race and Gender

Angela Davis has described the historical trajectory that formed the criminal punishment system as a response to the formal abolition of slavery. As she and others have pointed out, the Thirteenth Amendment’s abolition of involuntary servitude includes a very important caveat: “except as punishment for crime whereof the party shall have been duly convicted.” Davis describes how, in the years following the abolition of slavery, southern prisons drastically expanded and went from being almost entirely white to primarily imprisoning Black people. New laws were passed-the Black Codes-that criminalized an extensive range of behaviors and statuses, such as being unemployed or disobeying an employer, solely where the accused was black. These legal schemes permitted the capture of newly freed slaves into an only somewhat different system of forced labor, control, and racial violence.

The nature of imprisonment changed during this time. Prisons adopted methods of punishment common to slavery, such as whipping, and implemented the convict leasing system that allowed former slave owners to lease the labor of prisoners, who were forced to work under conditions many have suggested were even more violent than those of slavery. In 1873, 25 percent of all black convicts who were leased died; in 1898, nearly 73 percent of total revenue in Alabama came from convict labor. People were literally captured and worked to death, providing cheap labor for white landowners and revenue for states.

The contemporary criminal punishment system developed from this adaptation of slavery to create a somewhat different racially targeted form of control and exploitation. The continuation of those tactics can be seen in the prison system’s contemporary operations. As Davis asserts,

Here we have a penal system that was racist in many respects-discriminatory arrests and sentences, conditions of work, modes of punishmentÂ .Â .Â .Â .

The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and, more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex.

This analysis of the origins of imprisonment helps us understand imprisonment itself as racialized violence. Punishment and imprisonment were and are co-constitutive in the United States with processes of racialization. Today punishment systems are rationalized as race-neutral institutions for determining and punishing individual culpability, but such assertions are laughable in the face of the severe and obvious targeting of people of color in every aspect of policing, pre-trial imprisonment, prosecution, sentencing, imprisonment, probation, and parole. More than 60 percent of the people in prison are people of color, and one in every ten Black men age 30-39 is in prison or jail. Black youth are 16 percent of the youth population,Â but 28 percent of juvenile arrests, 37 percent of the youth in juvenile jails, and 58 percent of the youth sent to adult prisons. There are countless other statistics that demonstrate the racialized targeting of criminal punishment that is endemic to its formation and operation in the United States. The criminal punishment system in the United States, the most imprisoning country on Earth, is justified by the idea that it contains and neutralizes dangerous law-breakers. In reality, race, not dangerousness or illegal action, determines who is imprisoned. US prisons are full of low-income people and people of color who were prosecuted for crimes of poverty and minor drug use. Racist tropes of Black dangerousness that have been a central part of US culture since slavery are invoked and mobilized in media to justify and normalize the continuing expansion of criminalization and imprisonment. Scholars consistently expose the disconnect between the myth that criminal punishment is focused on public safety and the reality that it operates as targeted racial violence.

#### Over-policing is a decision-rule---our impact outweighs under any ethical theory

**Amnesty International 15**. Global human rights organization. “Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration,” *Amnesty International,* 2015, https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf

Principle 1 of the UNBPUFF also states that “Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review”. Here, the ethical considerations of weapons used in law enforcement are given a specific prominence. Quite apart from serious concerns as to whether autonomous technologies will be technically capable of conforming to existing IHRL and the UNBPUFF, AWS raise numerous important ethical and social concerns, including lowering the threshold for the use of lethal and less-lethal force, reducing the cost and risks of launching law enforcement operations with more frequency, especially since AWS would not be able to refuse orders, and the delegation of human decision-making responsibilities to an autonomous system designed to injure and kill. As UN Special Rapporteur Christof Heyns asserts, “[T]here is widespread concern that allowing [fully autonomous weapons] to kill people may denigrate the value of life itself.”27 This also links to the right to dignity, which features in the preamble of the ICCPR and the UDHR, and is recognized in Article 10 of the ICCPR: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

### Advantage – UNCCLEOS

#### Advantage 2: UNCCLEOS.

#### Police LAWs violate UNCCLEOS---it’s impossible to make them compliant.

**Amnesty International 15**. Global human rights organization. “Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration,” *Amnesty International,* 2015, https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf

The international community has elaborated standards to help guide states in ensuring human rights compliant use of force in law enforcement, in particular with due attention to the protection of the rights to life and to security of person, and the prevention of torture and other ill-treatment, such as UN Code of Conduct for Law Enforcement Officials (UNCCLEO, 1979) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UNBPUFF, 1990), as well as guidelines for international and domestic law for citizens held in prisons and other forms of custody, such as the Standard Minimum Rules for the Treatment of Prisoners (SMRTP). It is virtually inconceivable that AWS could be used in a manner that complies with these standards. UNBPUFF’s core provisions on the use of force are an elaboration of legal rules binding on states by way of treaty obligations or obligations under customary international law. The process of its development and adoption involved a very large number of states. At least, the substance of Article 3 of the UNCCLEO and Principle 9 of the UNBPUFF reflect binding international law.12

The UNCCLEO establishes the overall principle that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty” (Article 3). That means force of any sort may only be lawfully used when no other means are likely to achieve the legitimate objective. It also should be clear that no greater force should be used than what is necessary to achieve the objective. To be lawfully used in policing AWS would have to be able to make this determination and act accordingly.

Any use of force must have a sufficient legal basis that is in line with international standards. In particular, it must serve a legitimate objective established by law. Secondly, the use of any force by police should be strictly limited to those situations where it is absolutely necessary for the achievement of a legitimate law enforcement aim. If the use of force is unavoidable, police and law enforcement officers must always exercise restraint in its use.

Thirdly, the level of any force used must also be strictly proportional to the law enforcement objective, which sets a ceiling on the level of force that may be used for a particular law enforcement objective. In any use of force the police must at all times respect human rights, including the right to life and the prohibition of torture and other ill-treatment. Therefore they must always take steps to minimize the risk of injury and death. Finally, the importance of the duties carried out by law enforcement officers and the large powers granted to them make it paramount that law enforcement agencies are held accountable for the fulfilment of their duties and for their compliance with the law. This comprises not only the individual law enforcement official to be held accountable for their actions and omissions, but also all superiors who order, supervise or otherwise have law enforcement officials under their command and control, as well as the agency as a whole. (This is expanded upon in key consideration number 5 ‘AWS erode accountability mechanisms’).

#### Specifically, they make de-escalation of situations impossible, which makes UNCCLEOS violations inevitable.

**Amnesty International 15**. Global human rights organization. “Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration,” *Amnesty International,* 2015, https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf

In the exercise of their duty, police and law enforcement officers must apply non-violent means before resorting to the use of force, which may be used only if non-violent means have proven to be, or are likely not to be, effective. As Principle 4 of the UNBPUFF states:

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

On an operational level, this principle requires law enforcement officials to proactively seek to resolve any situation through other means than the use of force, such as the means of persuasion, negotiation and de-escalation. These techniques require human empathy, negotiating skills, a high level of training and an ability to assess and respond to often dynamic and unpredictable situations, and it would not be possible for a robot to be programmed to perform these duties in a manner that respects international standards. As Special Rapporteur Christof Heyns has argued, while robots may be effective at dealing with quantitative issues, they have a limited capacity to make the qualitative assessments that are required when dealing with human life. As Heyns states in his report, these assessments: …often require human judgement, common sense, appreciation of the larger picture, understanding of the intentions behind people’s actions, and understanding of values and anticipation of the direction in which events are unfolding. Decisions over life and death in armed conflict may require compassion and intuition. Humans – while they are fallible – at least might possess these qualities, whereas robots definitely do not.13

While Heyns refers to armed conflict in the extract above, this observation is, if anything, even more relevant to law enforcement duties outside of armed conflict.

In addition, under Principle 4 of the UNBPUFF any use of force must be guided by a graduated response, with a view to minimizing harm. Law enforcement officials should not resort immediately to the easiest means at their disposal, but must choose – among the available means that are likely to be efficient – the one that presents the lowest risk of causing harm and injury. On an operational level, this means that different types of protective equipment and means of communication, of less lethal equipment and weapons allowing for a graduated response, as well as of sufficient resources and back up means must be made available to police and law enforcement officers. It also means being in a position to decide on the appropriate time and place for any law enforcement action with a view to minimizing risks and damage. Law enforcement officials must also provide assistance and medical aid as swiftly as possible to those injured or otherwise affected by police use of force, and relatives or close friends of the injured or affected must be notified. These are incredibly complex judgements that require thorough and continuous training, as well as an assessment of unique and ever-evolving situations. Thus it would be very unlikely that an AWS, operating without meaningful human oversight, would be able to perform such duties.

Also relevant is Principle 20 of the UNBPUFF, which states: “[I]n the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.” The elements particularly related to ethics, peaceful settlement of conflicts, understanding of crowd behaviour and method of persuasion, negotiation and mediation are inherently human skills which cannot be automated or roboticized, especially given the everevolving, dynamic and unpredictable nature of law enforcement operations.

#### UNCCLEOs effectiveness is key to restrain excessive use of force.

Bridget **Grier 21**. JD @ Michigan Law, “The Code of Conduct for Law Enforcement Officials: Activist Strategies as Compliance Frameworks?” *Michigan Journal of International Law,* 2021, http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/

**Introduction**

International law, specifically the Code of Conduct for Law Enforcement Officials, prohibits discrimination by law enforcement officials and constrains their use of force.[[1]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn1) Around the world, there are many examples of police brutality that violates the Code of Conduct; this post focuses on the widespread use of force by law enforcement officials throughout the United States, particularly against Black people, and use of force by the Special Anti-Robbery Squad in Nigeria. When violations of the Code of Conduct occur, the Code proposes reform. However, given the scale and persistence of violations, the reform envisioned by the Code is insufficient to prevent and systemically address violations. Instead, the #DefundthePolice and #EndSARS movements in the United States and in Nigeria may provide frameworks that better match the scale and persistence of violations, and therefore offer paths to greater compliance with the Code of Conduct for Law Enforcement Officials.

**Code of Conduct for Law Enforcement Officials**

The United Nations General Assembly adopted the Code of Conduct for Law Enforcement Officials on December 17, 1979.[[2]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn2) Article 2 of the Code instructs law enforcement officials to respect and uphold human rights and expressly forbids law enforcement officers from discriminating, including on the basis of race.[[3]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn3) Article 3 addresses use of force by law enforcement officials: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”[[4]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn4) According to the commentary that follows Article 3, law enforcement officers should only use force in “exceptional” circumstances, and when force is appropriate it should be proportional.[[5]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn5) Further, the use of firearms by law enforcement officers “is considered an extreme measure.”[[6]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn6) So extreme that “[e]very effort should be made to exclude the use of firearms.”[[7]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn7) The only exception to this directive is when a suspect is armed or jeopardizes the lives of others and “less extreme measures are not sufficient to restrain or apprehend the suspected offender.”[[8]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn8) Even when international law allows the use of firearms by law enforcement officers, the purpose must be limited to restraining or apprehending a suspect. Although “restrain” and “apprehend” are not defined within the Code of Conduct for Law Enforcement Official, the Code’s emphasis on protecting human life, rights, and dignity is a clear signal that neither “restrain” nor “apprehend” should be read to include kill or permanently impair.[[9]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn9)

**Law Enforcement Use of Force**

In the United States, since January 1, 2015 police officers fatally shot 6,123 people, and “1,004 people have been shot and killed by police in the past year.”[[10]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn10) Although 58% (3,570) of the total number of people who were fatally shot had a gun with them, 42% (2,553) did not- some were unarmed, others had toy guns, vehicles, or knives as “weapons.”[[11]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn11) At least 24% (1,461) of the total number of people fatally shot by police were Black. In the United States, Black people are disproportionately killed by the police: “They account for less than 13 percent of the U.S. population, but are killed by police at more than twice the rate of White Americans.”[[12]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn12) Further, during protests for racial justice in May and June of 2020 (in response to the police killings of Breonna Taylor and George Floyd), police used excessive force against protestors in 125 separate incidents.[[13]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn13) This force included “beatings, the misuse of tear gas and pepper spray, and the inappropriate and at times indiscriminate firing of ‘less lethal’ projectiles, such as sponge rounds and rubber bullets.”[[14]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn14) At face value, the number of people fatally shot by police officers and the number of people who were victim to excessive force may not seem high enough to raise concern, after all there are 330 million people in the United States.[[15]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn15) And, each day there are many more non-lethal encounters with police officers than there are lethal ones. However, the Code of Conduct for Law Enforcement Officials is concerned with the nature of policing and institutionalized norms, not simply the proportion of law enforcement officers who use lethal force compared to those who do not.[[16]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn16) Like the United States, there has also been a recent international spotlight on Nigeria for its policing practices, specifically those of its Special Anti-Robbery Squad.

Nigeria’s Special Anti-Robbery Squad (SARS) was formed in 1992.[[17]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn17) From the beginning, SARS was a force in which brutality, in the form of excessive force, was not out of the norm.[[18]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn18) In 1993, SARS picked up and tortured a graduate student in an attempt to get him to “confess” to belonging to a gang.[[19]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn19) In 1995 SARS shot and killed two other students who did not stop at a checkpoint.[[20]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn20) In the early 2000s with the rise of cybercrimes, SARS began profiling young men who had dreadlocks or those with expensive clothing; they would detain them and torture them.[[21]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn21) In a 2012 interview, the Inspector General of Police described SARS as “killer teams engaging in deals for land speculators and debt collection.”[[22]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn22) When a video was circulated on social media on October 3, 2020 that appeared to show a SARS officer killing a man, unprovoked, Nigerians were fed up.[[23]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn23)

In the fall of 2020, Nigerians organized to demand an end to the Special Anti-Robbery Squad. Like in the U.S., some of the most troubling use of force (including lethal force) by law enforcement occurred at protests that were organized to try to dismantle systems of inequality and police brutality. During Nigeria’s 2020 #EndSARS protests “at least 56 people were killed by excessive use of force used by the army and police.”[[24]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn24) Thirty eight of those people were killed on a single day, October 20, 2020; that night law enforcement officers “without warning, opened fire on thousands of people who were peacefully calling for good governance and an end to police violence as part of the #EndSARS movement.”[[25]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn25) Throughout October 2020, protestors were “fired at with live ammunition, beaten, and arrested,” an aggressive, and sometimes deadly, response used by law enforcement to disperse crowds.[[26]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn26) How is that the Code of Conduct for Law Enforcement Officials is, at least in some instances, ignored?

**The Code of Conduct’s Adherence Framework**

A decade after the General Assembly adopted the Code of Conduct, the United Nations Economic and Social Council (ECOSOC) adopted Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials.[[27]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn27) These Guidelines prompted States to codify the 1979 Code of Conduct via “national laws and practice.”[[28]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn28) The 1989 Guidelines identified several issues and included recommendations. ECOSOC emphasized the importance of law enforcement training and recommended that States implement effective discipline and supervision mechanisms that include an organized way for the public to submit complaints against law enforcement officers.[[29]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn29) Although neither the Code of Conduct for Law Enforcement Officials nor the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials are binding, the UN put in place adherence mechanisms so that the ideals and norms expressed could be realized. To encourage and monitor national implementation of the Code, the Guidelines require States to provide a progress report to the Secretary-General on their implementation of the Code, at least every five years.[[30]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn30) The information provided by governments is to be used to determine whether the Code should be revised.[[31]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn31) It is unclear what (if any) progress individual nations reported and made in implementing the Code, but issues remain, and the Code has not been revised. More must be done.

**#DefundthePolice and #EndSARS, Stronger Strategies for Compliance?**

In the United States, the #DefundthePolice movement grew from the frustration and outrage over repeated instances of police brutality and police shootings. The phrase #DefundthePolice captures a range of approaches that are meant to significantly reduce police brutality, police shootings, and the overpolicing of communities of color; these approaches range from relatively conservative municipal budget reallocation proposals to calls for the abolition of police departments paired with the expansion of community-oriented services and resources.[[32]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn32) The American Civil Liberties Union proposed a three-part solution that involves shrinking police budgets and reallocating the money within communities; creating and strengthening laws that limit police use of force; and reducing the role of police within communities.[[33]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn33) Black Lives Matter’s position is similar but more straightforward: defund does not mean reform.[[34]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn34) Efforts to reform and retrain law enforcement have not worked- more than1,000 people each year are killed by police so a new solution is needed.[[35]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn35) Black Lives Matter’s approach is two pronged: #DefundPolice and #InvestInCommunities.[[36]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn36) If the United States is interested in becoming compliant with the Code of Conduct, it must radically reimagine the nature of policing, and reducing and reformulating the function of police is certainly a worthwhile pursuit in striving for compliance with international law.

Like in the U.S., improvements to policing in Nigeria may be most attainable through dismantling and reimaging policing, rather than simple reform. Similar to the #DefundthePolice movement in the U.S., the #EndSARS movement in Nigeria is also decentralized and activists have a variety of goals, some broader and others more specific. For example, the feminist coalition (a prominent group of feminist #EndSARS organizers) demanded “the disbandment of the SARS unit and an end to the predatory harassment, intimidation and physical & sexual violence millions of Nigerian men and women face at the hands of the police.”[[37]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn37) Whereas, a more pointed list of demands was put forth and circulated by #EndSARS organizers and supporters; they demanded:

Immediate release of all arrested protesters

Justice for all deceased victims of police brutality and appropriate compensation for their families

Setting up an independent body to oversee the investigation and prosecution of all reports of police misconduct (Within 10 days)

In line with the new Police Act, psychological evaluation and retraining (to be confirmed by an independent body) of all disbanded SARS officers before they can be redeployed

Increase police salary so that they are adequately compensated for protecting lives and property of citizens.[[38]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn38)

In response to the protests and demands, Nigeria’s Inspector General of Police (IGP) did announce the dissolution of SARS.[[39]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn39) Notably, under the plan announced by the IGP, SARS officers were to be redeployed to other law enforcement units and a “new policing arrangement” was going to be formed to handle the types of crimes that SARS was intended to combat.[[40]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn40) Two days later, on October 13, the IGP announced the formation of a new Special Weapons and Tactic Team (SWAT) with a similar directive as SARS; IGP asked the public to give them time to implement reforms and assured the public that they were committed to “meet[ing] the yearnings and aspirations of the citizenry.”[[41]](http://www.mjilonline.org/the-code-of-conduct-for-law-enforcement-officials-activist-strategies-as-compliance-frameworks/%22%20%5Cl%20%22_ftn41) Time will tell whether policing by SWAT complies with international law, but there is little reason to be hopeful that this rebranding is enough to change the form of policing that is so at odds with the Code of Conduct. Like in the U.S., a more imaginative approach is likely needed to produce the types of changes that would consistently bring law enforcement practices in compliance with international law.

**Conclusion**

Law enforcement must be pushed towards comprehensive compliance with international law as a matter of practice. On the ground policing must be more aligned with the nature of policing described in the Code of Conduct. Excessive force by law enforcement is so normalized and justified and embedded in some societies that a shift is almost unimaginable; there is a belief that a recalibration would cause a complete breakdown in society. However, societies are dynamic, and periodically our ideals require us to adapt and dismantle harmful institutions and institutional norms. The Code of Conduct is not progressive, but it is a baseline- a baseline that requires States to undertake drastic changes to prevent and stop brutal outcomes.

#### Restraining police use of force is critical to a clear US signal on human rights, but current laws are a patchwork---only a Supreme Court ruling can clearly signal.

Cornelius **Cornelssen et al 20**. Cornelius Cornelssen (’16); Anna Duke (’20); Josia Klein (’20); Brittany McKinley (’19); Ryan Maher (’18); and Shelbi Smith (’18), all JDs @uChicago Law, “Deadly Discretion: The Failure of Police Use of Force Policies to Meet Fundamental International Human Rights Law and Standards,” *Chicago Unbound,* 2020, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1014&context=ihrc

The human rights of people living in the United States are profoundly affected by how law enforcement officials carry out their duties. Police use of force implicates the basic rights of every individual subject to this power—the rights to life, security of person, freedom from discrimination and equal protection of the laws. These rights, established following the atrocities of World War II in the Charter of the United Nations and the Universal Declaration of Human Rights, form the cornerstone of the human rights system. The challenge of managing police power is a global one. People in every country face the difficult and complex balance between granting police the discretion and resources needed to achieve their purpose, while holding them accountable when they abuse their power in violation of the human rights of the communities they serve.

To address this global challenge, the 193 member states of the United Nations, which include the United States, have developed principles and standards to constrain, direct and ensure the proper use of lethal force. These principles—legality, necessity, proportionality and accountability—have been developed and concretized in various forms in the international system, and have been articulated in resolutions by the U.N. General Assembly, rules by committees of experts, and findings by U.N. Special Procedure Mechanisms. These principles and the rules they establish represent the best global effort to consider how police discretion and accountability can contribute to a just and humane society that respects and protects the rights of all its individuals.

In the United States, some of these principles have been adopted and articulated by our courts and law makers.4 However, this country lacks a comprehensive and effective national legal framework that places specific conditions on the use of force and establishes mechanisms of accountability.5 While the Constitution sets some limits on the use of force, the standards set by the Supreme Court in its case law fall woefully short of meeting the international standards, and Congress has failed to take action to fill this critical gap in federal law.6 Due to the decentralized nature of law enforcement in the United States, and the failure of national leadership to set uniform, federal standards, the main restrictions on police use of force exist at the state and local level. State law and police departmental policies provide the principles and standards on use of force and the consequences for when that authority is abused.

#### Failure to act against excessive force destroys American soft power.

Colum **Lynch &** Robbie **Gramer 20**. \*Senior Diplomatic Reporter, Foreign Policy \*\*National Security Reporter, Foreign Policy, “With Scenes of Police Brutality, America’s Beacon to the World Winks Out,” *Foreign Policy,* June 1, 2020, https://foreignpolicy.com/2020/06/01/protests-trump-soft-power-wanes-racial-injustice-police-violence-george-floyd-world-reaction-police-brutality/

A world that once looked to the United States to champion democracy and human rights watched with dismay and alarm as police departments across the nation unleashed violent crackdowns on anti-police protesters, targeting looters, demonstrators, and journalists alike, even as President Donald Trump on Monday criticized state governors for their “weak” response.

Meanwhile, from [Canada](https://www.cbc.ca/news/canada/british-columbia/vancouver-police-protest-1.5592620) to [New Zealand](https://www.theguardian.com/world/2020/jun/01/thousands-in-new-zealand-protest-against-george-floyd-killing), tens of thousands of people gathered around the world to protest the killing of an African American man, George Floyd, who was suffocated on May 25 in Minneapolis by a white police officer who kneeled on his neck. The officer has since been charged with murder. Floyd’s death a week ago touched off U.S. demonstrations that swiftly turned into riots in more than 100 American cities. But memorials also sprouted up in cities around the globe, from a candlelight [vigil](https://twitter.com/Shirinj/status/1266753355721904129?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1266753355721904129&ref_url=https%3A%2F%2Fwww.npr.org%2F2020%2F05%2F31%2F866428272%2Fgeorge-floyd-reverberates-globally-thousands-protest-in-germany-u-k-canada) in Mashhad, Iran, to a mural painted on the Berlin Wall bearing Floyd’s likeness along with his dying plea: “I can’t breathe.”

What shocked observers around the world more than anything was the often brutal response of police, some of whom were videotaped ramming demonstrators with SUVs and tasing college students in their car. One heavily armed Minneapolis police officer fired paint rounds Saturday night at a resident watching the events unfold from her porch while another officer called out, “Light ’em up.”

Trump only appeared to encourage official violence, telling U.S. governors in a video conference call on Monday: “You have to dominate, if you don’t dominate you’re wasting your time. They’re going to run over you. You’re going to look like a bunch of jerks. You have to dominate.”

The overwhelmingly negative international reaction to the crackdown showed how far the United States’ reputation has fallen in the eyes of the world under the Trump presidency, evoking the international opprobrium directed at previous U.S. governments during the Vietnam War and civil rights era, when police in Southern states turned attack dogs on black freedom marchers.

“The erosion of U.S. global leadership has been faster than expected,” a senior European diplomat told *Foreign Policy*. “Military supremacy and financial leverage is still there. However, reserves of political and ‘soft’ power are being depleted rapidly.”

“This is placing traditional allies in a difficult position—trying to cling to a traditional value-based connection [with the United States] which is diminishing fast,” the diplomat said. “Europe is hoping for a turning point, although everyone is realizing that there is no absolute return to 2016.”

The protests have also laid bare to the world deeply rooted societal problems in the United States, undercutting America’s standing as a standard-bearer of modern liberal values, including the promotion of human rights, democracy, and free-market capitalism.

“I’m very concerned about how this will impact our leadership and our voice overseas,” said Linda Thomas-Greenfield, a former career diplomat who was the seniormost-ranking African American woman in the U.S. foreign service when she retired in 2017. “People look to the United States for leadership, they look to us for support. They are worried that we’re losing ground.”

In his call with the governors, Trump urged them to increase law enforcement efforts and noted that foreign countries were watching—and judging. “You know, when other countries watch this, they’re watching this, the next day wow, they’re really a pushover. And we can’t be a pushover. And we have all the resources—it’s not like we don’t have the resources. So, I don’t know what you’re doing,” he told the governors.

Trump’s national security advisor, Robert O’Brien, said that U.S. rivals were trying to exploit the situation and rebuked their criticisms as hypocritical. “I want to tell our foreign adversaries, whether it’s Zimbabwe or China, that the difference between us and you is that that officer who killed George Floyd … he’ll be investigated and he’ll be prosecuted, and he’s going to receive a fair trial,” O’Brien told ABC’s on Sunday. “The American people that want to go out and protest peacefully, they’re going to be allowed to seek redress from their government. They’re not going to be thrown in jail for peaceful protesting.” (Peaceful protesters and [journalists](https://cpj.org/2020/05/cpj-condemns-targeting-of-journalists-covering-protests-across-the-u-s/) were among some 4,000 arrested across the United States over the weekend.)

Some senior U.S. diplomats have weighed in from afar, explaining how they defend American values abroad even as they condemn Floyd’s killing and struggle to grapple with the reality of racial injustice at home.

“As an African American, for as long as I can remember I have known that my rights and my body were not fully my own. I have also always known that America, conceived in liberty, has always aspired to be better—a shining city on a hill—and that is why I have dedicated my life to her service,” Brian Nichols, a senior U.S. diplomat and the ambassador to Zimbabwe, wrote in a letter the embassy published.

Nichols’s letter reflects how U.S. diplomatic outposts abroad are now [being compelled](https://foreignpolicy.com/2020/05/29/africa-countries-condemn-george-floyd-minneapolis-killing-diplomatic-fallout-racial-injustice-police-violence/) to address domestic strife amid a chorus of outcry from foreign countries on systemic racial injustices and police violence in the United States.

In his letter, Nichols tied the struggle of protesters in the United States to civil society activists detained and abused by the Zimbabwean government, noting that a police officer has been charged with murder in Floyd’s death, while Zimbabwean authorities abducted and assaulted democracy activists without consequence.

“In a long, unbroken line of black men and women, George Floyd gave the last full measure of devotion to point us toward a new birth in freedom,” he wrote. “Americans will continue to speak out for justice whether at home or abroad. We can meet the ideals of our founding, we will change this world for the better.”

Thomas-Greenfield, however, said that while the messages coming from U.S. diplomatic outposts abroad are important, they don’t make up for the void in Washington.

“It has to be extraordinarily hard for ambassadors to try to explain what is happening in the United States in the context of human rights and justice, where we had been the voice that people have looked to,” she said. “They’re doing the best with what they have.”

#### Soft power solves war.

**Brady 17:** Brady, Kyle R. [Kyle R. Brady is a security-oriented academic with a primary interest in contextualizing security concerns, which he currently explores as a postgraduate student at King’s College London in the Department of War Studies.  He also holds a Masters in Homeland Security from Pennsylvania State University with foci on terrorism, public administration, and emergency management, as well as a Bachelors in Political Science from San Jose State University with interests in international relations and political theory.] “Beware the Limits of Hard Power in 2017.” Small Wars Journal. May 6, 2017. http://smallwarsjournal.com/jrnl/art/beware-the-limits-of-hard-power-in-2017

In the first four months of 2017, the use and threat of American military force (hard power) has substantially increased, while diplomatic and socioeconomic efforts (soft power) have been notably marginalized, with little concern [for the appropriate mix of the two](http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199588862.001.0001/oxfordhb-9780199588862-e-31) (smart power).  Under the Trump Administration, this reliance upon hard power can be seen in his generally aggressive rhetoric; his [budget proposal that provides increased funding to the Department of Defense while severely decreasing funding for the Department of State and related efforts](https://www.washingtonpost.com/graphics/politics/trump-presidential-budget-2018-proposal/); his [positioning of top military leaders in non-military, civilian leadership positions](http://www.politico.com/magazine/story/2017/02/the-generals-guarding-american-democracy-214827); his framing of the evolving situations in [North Korea](http://www.cnn.com/2017/04/23/politics/pentagon-north-korea/) and [Iran](http://thehill.com/policy/defense/329991-trump-team-raises-rhetoric-against-iran); his willingness to [grant more autonomy to the military in their overseas operations](https://www.nytimes.com/2017/04/05/us/politics/rules-of-engagement-military-force-mattis.html); his interest in [using the military to disrupt and prevent terrorism](http://www.politico.com/magazine/story/2017/04/like-middle-east-wars-youre-gonna-love-president-trump-214985); and recent developments in [Syria](http://www.politico.com/magazine/story/2017/04/just-what-is-trump-trying-to-do-in-syria-215032), [Iraq](http://www.cnn.com/2017/03/28/politics/trump-iraq-troops-comments/), [Afghanistan](http://www.newyorker.com/news/news-desk/trump-drops-the-mother-of-all-bombs-on-afghanistan), and elsewhere.  Quite simply, President Trump seems to hold the view that most of the problems of the United States can be solved through military power, even when other courses of action may produce improved outcomes.

This is not to say that the military doesn’t have a role in the world affairs of the United States, as power projection is a central tenet of the American reputation.  In this modern era, the military continually ensures that the country is safe from attack and invasion, but also has developed serious roles in counterterrorism, disaster relief, humanitarian interventions, and the general safeguarding of domestic interests in the foreign theatre.  However, the limits of hard power must be remembered, in order to avoid repeating the mistakes of the past.

Hard power won both World War I and World War II, but not without the assistance of some actions **that would now be considered soft power**.  However, hard power struggled to produce the desired outcome in the Korean War, ultimately failed in the Vietnam War, and has only seen any recent success in the Gulf War, as the wars in Afghanistan and Iraq continue to struggle toward success.  During the Cold War, the use of hard power was ultimately limited -- and absolutely avoided, when direct conflict between the Soviet Union and the United States was possible -- in favor of soft power and dramatic threats to use hard power.  This half-century recognition that military engagements could not resolve all of the external problems and concerns of the United States was an important shift.

Presently, the United States faces a number of direct and indirect threats to its interests, including attacks from other countries, attacks from terrorists and other non-state actors, attacks on American people and goods abroad, the destabilization of the European Union, a resurgent Russia, a rising China, failed and failing states, and, of course, anti-democratic extremism found in seemingly endless varieties.  Hard power cannot, however, address all of these issues.  How does a military force successfully combat a stateless, shifting terror network?  How would a military engagement with either Russia or China not further escalate conflict into war both terrifying and absolute?  How can the military assist with the socioeconomic unrest found in Europe?  How does the invasion of a failed or failing state help to re-establish legitimate government?  How would an aggressively defiant, irrational, and dangerous North Korea respond to a military engagement of any kind?

Even if the military could be used to address the myriad concerns of the United States, which it quite clearly cannot, American experience since the end of World War II provides numerous examples of why it should not.  First, and most direct, the deployment of military forces to a foreign theatre without proper preparations or a clearly identified mission can be inefficient, costly, and dangerous, producing none of the desired goals.  Second, rapid escalation -- both within the target itself and with its allied states or people --  is always a very serious concern.  Third, the American military -- and, arguably, any foreign military force -- remains ill-suited to properly engage with a fully developed insurgency or in a complex, guerilla-style civil war.  Fourth, the cost of any military deployment -- in terms of blood, treasure, and time -- may very well exceed the benefits of any outcomes achieved.

Instead of relying so heavily upon the use and threat of hard power, soft power should be employed, where possible.  Through diplomacy -- both formal and informal -- and the careful manipulation of socioeconomic factors, the United States and its allies may better address some of these concerns.  Partnership and collaboration, rather than threats, may produce favorable outcomes with various states and peoples.  Leading by example, rather than by demand, may increase an overall interest in the socioeconomic wellbeing of the West and the return of a desire to replicate it.  Decreasing the number of stated enemies through carefully negotiated agreements and plans of action, rather than perpetually creating new enemies, would clearly be beneficial.  Seeking to minimize some of the socioeconomic factors that appear to be directly correlated with some forms of terrorism and extremism, rather than exacerbate them, should see favorable results.  Supporting global self-governance and self-rule, rather than Western-style democracy, would permit various peoples to live peacefully as they collectively desire and better join the international community.

None of this can be achieved, however, if the U.S. Department of Defense is to be the primary face of American interests worldwide.  Although the American military should absolutely continue its necessary engagements -- both now and in the future -- and employ varying levels of force to achieve their missions, the military cannot also engage in the building of alliances, governments, nations, democracy, or socioeconomic stability.  As the rhetoric rises against various aggressors, the Trump Administration must remember that the U.S. Department of State serves a very vital purpose:  helping to mitigate wars of necessity and prevent wars of choice.  If the American soft power community is properly funded, fully trusted, and allowed to undertake its important work, **the constant threat of war and the cultivation of foreign fear will no longer be necessary.**

### Plan

#### Plan: The Supreme Court of the United States ought to rule that lethal autonomous weapons in policing violate the United Nations Code of Conduct for Law Enforcement Officials.

#### A ban solves.

Mary **Wareham 21**. Advocacy Director, Arms Divison, HRW, “Don’t Arm Robots in Policing,” *HRW,* March 24, 2021, https://www.hrw.org/news/2021/03/24/dont-arm-robots-policing#

Elected officials and local authorities across the United States and around the world should consider replicating an innovative legislative proposal that would prohibit police from arming robots used in their law enforcement operations.

The [bill](https://nam02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flegistar.council.nyc.gov%2FLegislationDetail.aspx%3FID%3D4856756%26GUID%3D716C2D7E-ED51-4C9E-9312-AB9529B6C812%26Options%3DID%257cText%257c%26Search%3D&data=04%7C01%7Cwareham%40hrw.org%7Cde5cfb17c8ac4c9911db08d8ee3b73c9%7C2eb79de4d8044273a6e64b3188855f66%7C1%7C0%7C637521286404474057%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=YMtcJjJfR9UsY0nuZYIudydnhdpwCDbbUH%2Fu%2B9S4j4w%3D&reserved=0), introduced on March 18 by New York City council members Ben Kallos and Vanessa Gibson, would “prohibit the New York City Police Department (NYPD) from using or threatening to use robots armed with a weapon or to use robots in any manner that is substantially likely to cause death or serious physical injury.”

The proposed law comes after a social media outcry [over the use](https://nypost.com/2021/02/23/video-shows-nypds-new-robotic-dog-in-action-in-the-bronx/) of an unarmed 70-pound ground robot manufactured by Boston Dynamics in a policing operation last month in the Bronx. US Representative Alexandria Ocasio-Cortez [criticized](https://twitter.com/AOC/status/1365021717144420354) its deployment “for testing on low-income communities of color with under-resourced schools” and suggested the city should invest instead in education.

In a statement published in [Wired](https://www.wired.com/story/new-york-lawmaker-wants-ban-police-armed-robots/) and other news outlets, Boston Dynamics CEO Robert Playter said that the company’s robots “will achieve long-term commercial viability only if people see robots as helpful, beneficial tools without worrying if they’re going to cause harm.” Playter also said that the company prohibits customers from attaching weapons to its robots. The company’s terms of service [require buyers](https://www.bostondynamics.com/sites/default/files/inline-files/spot-terms-and-conditions-of-sale.pdf) of its ground robot — which is unarmed — to not intentionally use it “to harm or intimidate any person or animal, as a weapon, or to enable any weapon.” Other technology companies such as [Paravision](https://www.paravision.ai/ai-principles/), [Skydio](https://twitter.com/cbdawson/status/1283061355222716416), and [Clearpath Robotics](https://www.stopkillerrobots.org/2014/08/clearpath/) have similar measures in place.

Such contractual requirements are a start, but laws are needed to ensure police forces don’t ignore these dangers as they expand their use of artificial intelligence and emerging technologies. Pledges not to weaponize robots will not prevent a future of digital dehumanization and automated killing.

Fully autonomous weapons systems need to be prohibited in all circumstances, including in armed conflict, law enforcement, and border control, as Human Rights Watch and other members of the [Campaign to Stop Killer Robots](https://www.stopkillerrobots.org/) have advocated.

Allowing machines to select and attack humans without meaningful human control crosses a moral line. Regulation in the form of new laws is the only viable option when faced with the serious ethical, legal, operational and other challenges raised by the removal of human control from the use of force.

#### The plan’s ruling meets the threshold of a domestic legal review, which meets our international legal obligations.

**Amnesty International 15**. Global human rights organization. “Autonomous Weapons Systems: Five Key Human Rights Issues for Consideration,” *Amnesty International,* 2015, https://www.amnesty.org/download/Documents/ACT3014012015ENGLISH.pdf

Under Article 36 of 1977 Additional Protocol I to the four Geneva Conventions of 1949 (henceforth, Article 36), States Parties are required to conduct a review of the legality of a new weapon, means or method of warfare under international humanitarian law and other applicable international law. According to Article 36:

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

Weapons reviews are crucial for ensuring that weapons and their use will comply with international law, national laws and relevant international and national standards. A growing number of states have argued during discussions on AWS that Article 36 could provide a mechanism for ensuring that AWS will comply with IHL, without the need for imposing a prohibition on AWS. While the mention and engagement with Article 36 is welcome, it is not enough, for several reasons.

Firstly, Article 36 is not clear on how the review of weapons should take place. Indeed, there is a lack of established state practice in implementing Article 36 and according to the International Committee of the Red Cross (ICRC), ‘only a few countries are known to have set up formal review mechanisms for new weapons’.25 Those states that have established formal review mechanisms have done so on varying levels of detail and following differing standards. There is also often a lack of transparency in how states conduct weapons reviews, when they conduct them and the results of those reviews.

Secondly, a weapons review under Article 36 does not apply to all weapons and equipment and does not examine how they might be used in policing and law enforcement operations.

Some weapons may be lawfully used in armed conflict but not in policing and the converse is also true (e.g. tear gas and dum-dum bullets cannot be used in armed conflict but may lawfully be used in some circumstances in police operations). Therefore, some lethal and less-lethal AWS would not be covered in such weapons reviews. Although Article 36 also requires States Parties to examine the legality of new weapons, means and methods of warfare under ‘any other rule of international law applicable to the High Contracting Party’, which would necessarily include a review of compliance with international human rights law, this would apply only to military operations in situations of armed conflict. Thus in the absence of a prohibition on AWS, states, civil society organizations, technical, legal and other experts that are currently examining the issue of AWS must address this gap as discussions surrounding the applicability of Article 36 continue

STATES’ DUTY TO REVIEW WEAPONS FOR LAW ENFORCEMENT

The UNBPUFF places a due diligence requirement upon states to review weapons used in law enforcement. As Principle 3 of the UNBPUFF states, “the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons”. This review is limited to less-lethal weapons but is still important to ensure that those weapons will comply with relevant international standards and national laws and, moreover, given that evidence shows that “non-lethal” weapons can often have lethal effects which is why the term “less-lethal” is more appropriate. The requirement of a review of weapons used for law enforcement is even more important given the increasing ‘militarization’ of law enforcement operations, whereby military personnel assume roles often held by law enforcement agencies, such as policing of public assemblies.

In the absence of a prohibition on AWS, states intending to develop, acquire, or use AWS must therefore be required to thoroughly review whether they can be used in a manner that fully respects relevant law and standards be it for law enforcement or military operations. This testing should be carried out by an independent body. The rapid technological advances that are moving towards full autonomy in weapons systems present serious concerns. The technology to allow fully autonomous operations may be reached soon; but it is extremely unlikely that programming that could ensure AWS perform law enforcement functions lawfully would be developed in the foreseeable future.

Any new law enforcement equipment should be introduced based on clearly defined operational needs and technical requirements with a view to reduce the amount of force used and the risk and level of harm and injury caused. They must be subject to rigorous testing, by an independent expert body, and the testing, review and selection process should be legally constituted. In addition to assessing compliance with the UNBPUFF themselves, the process must test AWS compatibility with other key human rights treaties and standards, including ICCPR, International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention Against Torture, the SMRTP and the UNCCLEO.

It is unclear what operational needs and technical requirements could only be met by lethal or less-lethal AWS as opposed to other weapons or equipment that would have an element of effective and meaningful human control. New law enforcement equipment should be introduced with a view to reduce the amount of force used and the risk and level of harm and injury caused as well as possible unwarranted effects. So introducing AWS to carry out duties that require complex judgements in the context of the inherently dynamic and unpredictable nature of law enforcement operations, would carry unacceptably high risks and would be unwarranted. As Human Rights Watch argues, “interpreting more subtle cues whose meaning can vary by context, such as tone of voice, facial expressions, and body language, requires an understanding of human nature.”26