# War Torts Counterplan

## 1NC Shell

### 1NC Shell

#### CP – [States] ought to implement a strict liability tort regime requiring compensation for wrongful injury caused by Lethal Autonomous Weapons as mandated by International Humanitarian Law and should establish that states are the responsible actors for actions caused by Lethal Autonomous Weapons.

#### Tort Liability solves the Aff – it establishes accountability that deters irresponsible employment and usage of LAWs

Fuzaylova 18, Elizabeth. "War Torts, Autonomous Weapon Systems, and Liability: Why a Limited Strict Liability Tort Regime Should be Implemented." Cardozo L. Rev. 40 (2018): 1327. http://cardozolawreview.com/wp-content/uploads/2019/03/40.3.9.Fuzaylova..pdf (Associate Counsel at R3 associates)//Elmer

* checked

III. PROPOSAL: IMPLEMENTING A LIMITED STRICT LIABILITY TORT REGIME AS THE STANDARD OF JUDGMENT IN CASES A. THE STANDARD—AUTONOMOUS WEAPONS AND STATE LIABILITY Because lethal autonomous weapon systems have the potential to be substantially more dangerous than semi-autonomous and non-lethal autonomous weapons, **they should be governed by a strict liability standard**. Generally, strict liability is applied much more narrowly and under more strict circumstances than any other theory of liability within tort law.223 Most commonly, strict liability is applied to situations with animals, some nuisance cases, libel, misrepresentation, vicarious liability, workman’s compensation, and ultra-hazardous activities.224 Although the use of fully autonomous weapon systems, specifically those that are lethal, is not within the confines of any of the initially listed categories, its use arguably can fall under the category of ultra-hazardous activities. In this scenario, an ultra-hazardous or dangerous activity is performed, and a defendant is held liable for an injury even if there is absence of any fault.225 This concept traces back to the original case establishing strict liability: Rylands v. Fletcher.226 The English court in this case differentiated between a “natural” and “non-natural” use of land.227 American courts have generally adopted Rylands, but remain reluctant to impose strict liability without considering more.228 This means that courts will take not only the activity into account, but also the area and circumstances under which it is being executed.229 The Restatement (Third) of Torts considers four main factors when strict liability is being debated. An abnormally dangerous activity will provide for strict liability if (1) the activity creates a foreseeable risk of physical harm; (2) the risk is a “highly significant” risk; (3) the risk remains “even when reasonable care is exercised by all actors;” and (4) “the activity is not a matter of common usage.”230 The strongest case within this realm of strict liability is where a defendant knows and understands the significant risk the activity poses but decides to follow through anyway.231 In these instances, strict liability will undoubtedly govern.232 **Autonomous weapons have an inherent highly significant risk associated** with them. Analyzed through both the Rylands approach and the Restatement (Third) of Torts approach, strict liability would be appropriate to govern fully autonomous weapons. Based on Rylands, while, arguably, using autonomous weapons is a function that the military is **privileged to exercise, these weapons will not have meaningful human contact**.233 This puts them out of the realm of “ordinary” uses of similar items,234 especially considering human control would not be guaranteed with fully autonomous weapons.235 The Restatement provides a stronger reason for lethal autonomous weapon systems to be governed under strict liability. Autonomous weapons **are inherently dangerous and pose significant risk regardless of their sophistication**. Because killer robots will have the ability to select and target on their own, rather than through human guidance, there is no indication as to how their paths will change from the point at which they depart to the point at which they hit a target. Machine learning reinforces this risk since these killer robots can eventually become sophisticated enough to act and think on their own.236 This scenario also provides a case where a **negligence standard would fail because there would be no way to avoid the risk** when the machines have a mind of their own, unless these weapons are not used at all.237 Take, for example, the miniature drone-like lethal autonomous weapon in the “Stop Autonomous Weapons” video238 played at the CCW convention. If that weapon was deployed with one target in mind, but then reexamined the data in its software and determined that a different person should be targeted instead, it would undoubtedly follow the new route rather than the original.239 Meanwhile, the military that was going to control the operation does not have any meaningful input or control since the killer robot is fully autonomous.240 Therefore, there is no reasonable way for one to avoid the risk that is created since a human would neither be able to change the machine’s course nor be able to stop the machine. Although this is dangerous, in this hypothetical, the state may nonetheless choose to deploy the weapon. Although there have been several United Nations conventions held to discuss the aforementioned ban on these weapons,241 the world has yet to come to a consensus on a plan for the rise of autonomous weapons. Without an enforced strict liability tort regime **for accidental injuries** sustained from killer robots, the possibility **of catastrophic accidents that go without remedies would be incredibly high**. **Such a liability system would make a state think twice when choosing whether to use or deploy certain AI.** B. THE STANDARD—SEMI-AUTONOMOUS AND NON-LETHAL WEAPONS AND MANUFACTURER LIABILITY By contrast, non-lethal fully autonomous weapons and semi-autonomous weapons will be better governed under a negligence scheme. Largely, these categories of weapons already exist, including Packbots,242 drones, and other UAVs. Unlike AI, these machines include some form of human guidance or support at some stage.243 This difference is fundamental to the analysis of the type of liability regime that should be implemented for these weapons because, unlike with fully autonomous weapons, the risk here can be avoided or at least minimized through human involvement.244 Notably, the Restatement (Second) of Torts provides that both a negligence approach and a strict liability approach can be applied when it comes to ultra-hazardous activities.245 This merely shows the normality in separating out the approaches for these two categories of autonomous weapons. While a negligence standard may not have been appropriate with fully autonomous weapons, since even the most careful designer “could not . . . [necessarily anticipate] the decisions [an autonomous weapon system] might eventually make in a complex battlefield scenario,”246 it is more appropriate here. Autonomous weapons systems are designed specifically for independent decision-making.247 Semi-autonomous weapons systems, on the other hand, require human interaction. Therefore, a finding of negligence is much more likely against semi-autonomous weapons designers or manufacturers. In reality, it will likely be difficult to establish or bring an action for a design or manufacturing defect in this scenario.248 This proposed regime does not provide a significant shift, but it will nonetheless provide reinforcement for personnel, despite any immunity or exemptions. C. ISSUES TO CONSIDER: SOVEREIGN IMMUNITY THROUGH THE FTCA AND MCA **The main obstacle to be addressed is sovereign immunity, which not only keeps states from being sued in foreign courts, but also eliminates state-to-state tort actions**.249 While sovereign immunity exists within many nations, this Note will discuss its relevance only in the context of the United States. At the forefront of exemptions made for cases that cannot be brought against the United States lies the Federal Tort Claims Act (FTCA). In theory, the FTCA exists so that civilians and wronged individuals can bring a suit against a government employee if they were wronged while the employee was acting within the scope of his duties.250 However, the FTCA also allows the United States to invoke any judicial or legislative immunity available to it in order to minimize the damages, or to eliminate a lawsuit altogether.251 Notably, the FTCA makes an exception for any intentional torts, ensuring that no such claims will be brought against the United States government.252 States typically do not take responsibility for tort actions, particularly in a war setting.253 However, if the United Nations does not decide on a preemptive ban on lethal autonomous weapons systems, then a regime will need to be put in place since humans will have less control over machines’ actions. If a system is not put in place, then **there is a real possibility that these weapons systems will wreak havoc** and cause harm to civilians and people who should not be in the line of fire at all. Another consideration is that no civil liability claims can be brought under the FTCA where the government or its contractors are operating during wartime.254 However, if these weapons systems are being tested domestically, become uncontrollable, and cause an injury to a civilian, then a negligence action under the FTCA may be brought.255 Based on the FTCA’s exceptions, there are instances where a lawsuit can be brought. While it will undoubtedly be difficult to establish certain negligence actions around semi-autonomous and non-lethal weapons, there is room for breaking down the exceptions and creating a standard for these lawsuits. Additionally, the United States military has its own Military Claims Act (MCA)256 that compensates individuals for damages caused by government activity.257 MCA claims are broken down into two categories: (1) injury or damages caused by military personnel or civilian employees acting within the scope of their employment; and (2) injury or damages caused by noncombatant.258 The second prong is irrelevant here. The first prong, however, may be relevant if AI systems are deemed to be military personnel or, at least, an extension of military employees. One major distinction between the MCA and FTCA is that, while the MCA applies worldwide, if a claim is denied, there is no right to sue. If the agency denies a claim under the FTCA, one can still pursue a lawsuit.259 MCA claims present similar challenges to those under the FTCA, such as the exemption of combat activities during times of war.260 However, that may create a claim under both statutes (assuming weapons are being tested and the situation goes awry). Although it currently appears as though states can avoid liability under the FTCA and MCA if combatant activity goes amiss, the use of AI, and especially of fully autonomous weapons, would require a review of the activities included in these exceptions.261 This is especially the case **because they do not have any meaningful human control**, and many aspects of war need to be evaluated by humans before action is taken.262 Even if the aforementioned ban is implemented by the United Nations, the liability aspects will still be relevant for semi-autonomous and non-lethal weapons because these weapons will likely continue to be used.263 A liability scheme will be marginally clearer than that of fully autonomous weapons systems since semi-autonomous systems still adhere to the “man-in-the-loop” model.264 This does, however, bring about a discussion of potential regulation governing programmers and the standard to which they must adhere when initially creating the software for these autonomous weapons.265 CONCLUSION Autonomous weapons systems can be enormously advantageous to military efforts across many nations, but there is also potential **for unnecessary devastation.**266 When there is both great potential for growth and destruction, an international standard for judgment surrounding potential horrors is necessary.267 Although it is unclear whether autonomous weapons will be preemptively banned, it is vital to prepare if they are not. **A limited strict liability tort regime is the most versatile and customizable standard for judging these actions** in the current climate. This will allow lethal fully autonomous weapons systems to fall under a strict liability regime, while semi-autonomous and non-lethal autonomous weapons will fall under a negligence standard. Obstacles such as sovereign immunity are not to be ignored but, if addressed properly, the **outcome will be a functioning and sensible governing standard for war torts**—actions that are becoming only increasingly more real.

#### The Counterplan spills over – action by one country on LAWs results in an international war torts regime – overstretch collapses and de-legitimizes all international criminal law

Crootof 15, Rebecca. "War torts: Accountability for autonomous weapons." U. Pa. L. Rev. 164 (2015): 1347. (Assistant Professor of Law. Dr. Crootof's primary areas of research include technology law, international law, and torts)//Elmer

Given the varied sources of international legal obligations, it is difficult to predict how a war torts regime might evolve. Soft law may develop from states’ domestic laws and policies, international non-binding resolutions or declarations, or industry practice. New customary international law may materialize as state practice solidifies into opinio juris sive necessitatis.274 States might conclude a treaty codifying norms or creating new ones.275 Judicial opinions and academic writings may elucidate confusing concepts.276 Nor is it obvious, as a normative matter, what is the best form for new regulations regarding new technology. Treaties are clear statements of international legal obligations, but they are relatively **inflexible**; customary international law and soft law are responsive to state interests and new technological developments, but they **are relatively weak**: it can be difficult to identify when a new customary **law norm is established**, and soft law sources are not legally binding. An ideal international legal regime for the regulation of autonomous weapon systems would exploit the differing strengths of the **different sources of international law.** Accordingly, I have suggested elsewhere that states negotiate **a broad framework convention that can be augmented and expanded by specialized additional protocols**, soft and interstitial law, and domestic law.277 One of these additional protocols could **outline an integrated international and domestic liability regime for autonomous weapon systems**. At the very least, it should reiterate and **clarify the relevance of the law of state responsibility**. It could also clarify common definitions, describe overarching regulatory aims, and require member states to pass legislation creating domestic liability for both war crimes and war torts (which may entail waiving sovereign immunity). Ambitiously, a treaty might establish an independent tribunal for autonomous weapon systems’ war torts, much like the ICC or other specialized criminal tribunals.278 Theoretically, the International Court of Justice could also serve as a forum for such suits, but its jurisdiction limitations will reduce its usefulness. The Court has jurisdiction only in contentious cases on the basis of state consent: states may agree to bring a specific issue before the Court by submitting a compromis,279 or states may accept the Court’s jurisdiction as generally compulsory.280 Many powerful states have refused to accept or have withdrawn from the Court’s compulsory jurisdiction,281 and a state allegedly responsible for an autonomous weapon system’s internationally wrongful act would have little incentive to submit a compromis. States employing autonomous weapon systems might be more willing to submit to the limited jurisdiction of a specialized tribunal, however, as it will not open the possibility of other kinds of suits. A carefully tailored independent tribunal would also help alleviate the plaintiff problem. Tort suits are usually initiated by the injured party, which seemingly ensures that only important wrongs are litigated. However, there are significant drawbacks to limiting war torts plaintiffs to either states or individuals. There are myriad political reasons a state might decide against bringing an otherwise strong war tort suit against another state, and individuals often do not have the resources or wherewithal to bring suits against states themselves. But tort law is not the only legal regime where accountability for wrongs is sometimes foregone; prosecutorial discretion serves a similar aim in criminal law. To the extent war torts are wrongful acts that affect the international legal order, it would be appropriate to charge independent prosecutorial-like actors—call them “International Representative Plaintiffs”—with bringing war tort suits against states on behalf of harmed individuals. These International Representative Plaintiffs could have the independent power to determine when a suit should be brought, and states and individuals could also petition them to consider specific cases. An integrated international and domestic liability regime would be a familiar extension of the way international and domestic liability regimes currently interact to create more effective enforcement mechanisms. Treaties often require states to pass national legislation implementing the treaty’s provisions without mandating the specifics of how that is to be done. For example, the 1949 Geneva Conventions oblige state parties to search for and try or extradite persons alleged to have committed or alleged to have ordered the commission of war crimes,282 and the Chemical Weapons Convention requires state parties to, “in accordance with [their] constitutional process, adopt the necessary measures to implement its obligations under this Convention” and proceeds to detail certain crucial requirements.283 However, the international community need not collectively organize to create tort liability for the actions of autonomous weapon systems. One nation state **could do so singlehandedly**, simply **by passing domestic legislation with universal jurisdiction**. In fact, depending on the alleged tort violation, it is possible that the Alien Tort Statute could already be used to prosecute individuals for war torts caused by autonomous weapon systems.284 However, because of the political problems associated with attempting to hold foreign states accountable for international law violations in domestic courts285 and the foreign policy conflicts legislation like the ATS engenders,286 **it would be far preferable to have an overarching international war torts regime than a domestic one**. 4. The Time Is Now When liability for war torts is created is less important than whether it is created—but **timing may affect what is possible**. States can await the inevitable tragic accident before constructing a responsive tort liability regime, but it would be far preferable **if they took proactive action.** Timing is always an issue in attempting to regulate new technology.287 It is of particular importance in the international legal order, however, as the lack of a single authoritative lawmaker renders international law prone to reactive lawmaking. There is much to be said for reactive lawmaking when attempting to regulate a poorly understood new technology. First, it allows for a great deal of flexibility; instead of preemptively making rules or regulatory standards that will quickly become outdated, legal developments will track technological ones. Second, it avoids inadvertently constraining beneficial innovation through overbroad rules. If autonomous weapon systems are eventually better able to comply with the law of armed conflict than human soldiers, for example, it would be unfortunate to ban them at this early stage of development. Finally, and perhaps most influentially, reactive lawmaking has the benefit of inertia. It appears costless, as states need not invest time in treaty negotiations or norm-building conversations. Indeed, some suggested proactive regulations of new technology have proven to be utterly superfluous.288 When an autonomous weapon system inevitably takes action that results in a serious violation of international humanitarian law, the responsible state will advocate for the most politically advantageous solution, the international community will respond, and international law will evolve. But the evolutionary approach to lawmaking has a major drawback: it foregoes a precious opportunity to use law responsibly to channel the development of this new kind of weaponry.289 Technology and law have long been dancing, and they regularly trade the lead—this is a situation where law should seize it.290 International law—even treaty law—is not set in stone; instead, it is constantly evolving in response to state action and interests.291 Left unregulated, states might employ increasingly autonomous weapon systems in ways that undermine hard-won humanitarian protections.292 The stakes here are too high to leave to the vagaries of responsive state practice. Not only may acting now make it possible to create tort liability for the actions of autonomous weapon systems, it **is a precipitous time for legal intervention**. States—particularly those states fielding increasingly autonomous weapon systems—are participating in international conversations on the subject and expressing an interest in developing regulations.293 5. A Useful Test Case Why would states create a liability regime for an autonomous weapon system’s war torts? Consider the failure to create tort remedies for environmental damage, notwithstanding decades of effort from activists and civil society294: While the issues with transboundary pollution are clear and obvious, states remain reluctant to accept direct liability or to create tort liability for private actors.295 Given the likelihood of accidents in armed conflicts and the high stakes associated with the use of lethal force, why would states have any interest in creating a new liability regime? In environmental law, the alternative to tort liability is no liability.296 At first glance, it appears that is the case here: if no one can be held directly or indirectly liable under existing law, there appears to be little incentive for states to create a new liability regime. However, an autonomous weapon system will eventually and inevitably act in a way that results in significant death or destruction with no one acting willfully. When that occurs, there will be widespread outcry to hold some person or entity accountable. Absent a regime or theory of tort liability for such actions, it is likely that criminal law will be read to create ex post liability for a “crime” that calls out for punishment, much as occurred at Nuremberg. The alternative to tort liability will not be no liability—instead, it will likely be expanded criminal liability. And not only is this morally questionable**, it threatens to undermine the legitimacy of all of international criminal law.297** Not only do states have a vested interest in creating a tort liability regime, the unpredictability and inherently dangerous nature of autonomous weapon systems justify treating responsibility for this weapons technology differently. Unlike other weapons, autonomous weapon systems are capable of acting independently, breaking the causal chain between an individual’s decision to deploy them and the target of these weapons’ ultimate use of lethal force. And, unlike other robots, autonomous weapon systems are intended to kill people—they just are not supposed to kill the wrong people. The combination of these two factors strongly favor imposing strict liability. In contrast, when a non-autonomous or nonlethal weapon system malfunctions and causes a serious violation of international humanitarian law, a negligence standard may be more appropriate. It is therefore possible to draw a line in the sand and create a limited strict liability tort regime governing the actions of autonomous weapon systems. Indeed, it may prove a useful test case: if it is a successful counterpart to international criminal law, states may consider the **utility of further expanding state liability for war torts**. This Article’s proposal naturally raises the question of whether states should be responsible and provide compensation for all war torts—not just those committed by autonomous weapon systems. Furthermore, why shouldn’t state responsibility extend to encompass all unanticipated harm to civilians resulting from actions attributable to a state?298 Addressing these questions and outlining a comprehensive international war torts regime akin to what has developed in international criminal law is beyond the scope of this Article. I look forward to exploring these and related issues in future work.

#### Strengthened International Criminal Law solves Terrorism

Roach 8, Steven C. "Courting the rule of law? The International Criminal Court and global terrorism." Global Governance: A Review of Multilateralism and International Organizations 14.1 (2008): 13-19.

Fulfilling this vision raises several questions. What is the relationship between an ethical international society and the struggle against terrorism? **How can terrorism be deterred through the global rule of law**? More particu larly, how can the International Criminal Court (ICC) help in this regard? This essay argues that the ICC, which the US government has opposed tout court, could play a constructive role in countering terrorism. Indeed, such a role constitutes a potentially important ethical precondition for combating global terrorism. Global terrorism, as understood in this essay, refers to the global activities of terrorist groups, such as Al-Qaida, that employ global instruments (technologies) to indiscriminately target and harm civilians. In addition, "constructive role" refers here to the ICC's stated objective of pro scribing grave harm perpetrated against civilians, which might, under certain circumstances, apply to terrorists who commit crimes against humanity. It should be stressed that any attempt to couple the ICC with the campaign against terrorism requires that ICC authorities and other policymakers develop a balanced and pragmatic set of policy guidelines. No one wishes to see the tain powerful states. Indeed, like any legal institution, the ICC's legitimacy rests on the fair application of its rules of procedure and its independence from outside political influences. However, the ICC also remains dependent on the cooperation of states, which is likely to require pragmatic considerations to address the political risks or overtones of exercising its (assertive) discretionary power.1 Thus, for instance, while the Congolese and Ugandan governments have voluntarily cooperated with the ICC regarding the surrender of targeted suspects of crimes against humanity, the Sudanese government remains, as of late 2007, unwill ing to investigate and prosecute the perpetrators of genocide in Darfur. Clearly, there are bound to be political consequences in high-intensity cases. But such cases should not detract from the larger issue of how the ICC's moral stature and legal effectiveness could contribute to the campaign against global terrorism. Indeed, the time has arrived to take the ICC's potential role in coun tering terrorism more seriously. It is time to consider what ICC involvement would mean for transforming the war on terrorism into a sustained campaign against terrorism. In arguing these points, I shall first discuss the stark US opposition to the ICC, before moving on to address the potential parameters of an ICC role in countering global terrorism. The United States and the ICC The establishment of the ICC in July 1998 marked a historic achievement of international criminal law. For many, the creation of this permanent standing court to target perpetrators of gross human rights violations marked the cul mination of a long struggle for international criminal justice that began with the 1946 Nuremberg trials. At the core of the ICC mandate is the complementarity principle. This rule gives the state with the relevant jurisdiction first prerogative to investigate and prosecute the cases but provides the ICC prosecutor with the power to take over a case if the state proves unwilling or unable to investigate or prosecute. Through the complementarity principle, the draftees of the ICC statute were able to address concerns regarding universal jurisdiction and to provide the (flexible) basis of the Court's legal process. Still, this arrangement did little to convince the US government that the Court would operate impartially. In fact, the United States raised several objections to the ICC. Perhaps most important was that ICC jurisdiction over US military personnel would allow the Court to pass legal judgment on mat ters related to national security decisions. In an effort to limit the ICC's juris diction, the Clinton administration sought special exemption status of the US military through NATO Status of Forces Agreements (SOFAs) that would exclude US army, navy, and air force personnel stationed overseas. Such a claim was driven by practical considerations, the most important being the large US military presence overseas. Here, Washington reasoned that certain vengeful states would refer bogus cases involving US military personnel to the ICC, thereby politicizing the Court. In response to this objection, ICC officials pointed out that the ICC statute contained an important safeguard against such abuses: namely, the Pre-Trial Chamber's duty to screen out any unsubstanti ated evidence.2 The US government also claimed that the Court's automatic jurisdiction over nationals of nonstate parties violated international treaty law. The ICC, it contended, required state consent to exercise jurisdiction over individuals of nonstate parties.3 To downplay this rule was, in effect, to ignore a crucial com ponent of international jurisprudence?that is, the state's capacity to shape international legal rules.4 Perhaps even more importantly, the Court chal lenged US sovereignty inasmuch as the ICC statute could take precedence over key legal provisions of the US Constitution, including a trial by jury. Given these objections, the United States insisted that the ICC statute had to be revised. Yet in making this demand, the United States effectively turned its back on a rapidly evolving international criminal system that it had helped to initiate and shape. Although President Clinton eventually decided to sign the ICC statute in December 2000, shortly before leaving office, he did not submit the treaty to the Republican-controlled US Senate for ratification. A year later the attacks of September 11 intensified US Senate opposition to the ICC. Indeed, the situation became one of virtual war on the Court. Yet the new war on the ICC grew out of the war on terrorism. The United States was determined to prevent the ICC from interfering in its overseas military operations against terrorism. To this end, the US Senate, in December 2001, passed the American Servicemembers Protection Act (ASPA), which extended special legal protection to US service personnel from unlawful detainment overseas.5 Not long after the passage of this bill, the UN announced in April 2002 that the ICC would enter into force on 1 July 2002. This provoked an angry response from the Bush administration, which declared that it would no longer cooperate with the ICC. The US signature was withdrawn from the Treaty of Rome on 6 May 2002. The United States then threatened to veto the UN man date that would extend peacekeeping operations in Bosnia.6 When the United States formally announced its plan to withdraw its troops from the Bosnian peacekeeping mission at the end of June 2002, the UN Security Council held a special meeting to address the US demand to pre vent the ICC from exercising jurisdiction over its military personnel in the Bosnian peacekeeping operation. The result was the adoption of UN Security Council Resolution 1422, which granted immunity from ICC investigation and prosecution to all military personnel of nonstate parties stationed overseas in peacekeeping missions.7 This resolution gave the United States an impor tant strategic device to circumvent the ICC's jurisdiction. In addition, the Bush administration adopted its text on Bilateral Immunity (or so-called Article 98) Agreements, which stipulated that the ICC could not exercise jurisdiction over US nationals in any country that had entered into a bilateral accord with the United States. Despite these strategic ploys, however, the ICC has managed to develop without US support. In fact, the United States has recently signaled its will ingness to support the ICC's investigation of perpetrators of genocide in the Darfur region.8 This situation raises the issue of whether the United States can begin to cooperate with the ICC on matters related to peace and security. At the very least, the move suggests the possibilities of working together with other states and global actors to counter global terrorism and a readiness to abide by international legal norms in conducting its campaign. The Terrorist Factor, the ICC's Legal Prowess How might the ICC promote this ethical vision? For one thing, the ICC offers a highly legitimate venue for investigating and prosecuting murderous acts or crimes against humanity.9 The ICC statute provides that the prosecutor can investigate and prosecute "acts of murder" or "other inhumane acts, commit ted deliberately as part of widespread or systematic attack directed against any civilian population" (Article 7). Although terrorism is not encoded as an official act or crime under the ICC statute, it can be interpreted as an act of murder committed in connection with a systematic attack against the civilian pop ulation. Clearly, the September 11 attacks would fall under this category, as legal scholar Roy Lee has suggested.10 Even if the United States would never allow the ICC to exercise jurisdiction over these cases (since the acts were committed on US soil), other such cases may arise. Accordingly, the ICC's complementary role would operate on two levels. Either the Court could **pursue judicial proceedings against perpetrators of murder** (treated in connection with the terrorist acts), or it could **actively adjudicate in cases involving the treatment** of suspected terrorists being detained at Guantnamo Bay. Whether or not some states parties would balk at the ICC's involvement remains to be seen. But few should overlook the legal and political implications of the ratification process, particularly the reform of domestic criminal systems (through constitutional amendments or new pub lic legislation). Protecting the civil and political rights of defendants would have an important strategic benefit. It would, for instance, counter the terrorists' use of media images of tortured Muslims **as a strategic tool to recruit more militants**. Of course, critics will object that such protection would offer cushy treatment for those who are least deserving of it. But disregarding the trade-off between security and upholding these civil standards misses the larger point of the ICC's multifaceted role in protecting and promoting **international legal norms**. Such a role would consist in its capacity to promote greater transparency of information and further coordination among nongovernmental organizations (NGOs), international organizations, and states. In this sense, the ICC would also address problematic geopolitical factors, in particular the regional or sectarian perception of the illegitimacy of national courts. By holding trials in The Hague, the international community would also neutralize, to some degree, the political fallout associated with the **contested legitimacy of national courts**. All of this raises the crucial question: how can terrorism be deterred through the global rule of law? True, terrorists in general are unlikely to be swayed by the rule of law. Indeed, the prospect of being held legally account able would probably have minimal effect. Still, this does not diminish the pragmatic implications of countering global terrorism by other legitimate means. In fact, the problem is not with eliminating the incorrigible behavior of the worst terrorists, but in qualifying the practical application of the deterrent effect to combat terrorism. In other words, it is not the terrorists who are being directly targeted, but the state leaders **who harbor the terrorists**. Those who hold power and enjoy legitimacy of some kind will fear the **consequences of committing crimes against humanity**. Deterrence then may not apply to agents who have nothing to lose and everything to gain by committing acts of murder. But it is possible that state leaders who harbor terrorists may (re)consider the consequences of their actions. Terrorist groups such as Al-Qaida have, in fact, shown a resilient capacity to conduct secretive missions around the world. Therefore, we should not downplay the active or even unintended collaboration between state authorities and terrorists, whether this entails granting safe haven to the terrorists or failing actively to pursue them. States that abet terrorism in this sense need to be encouraged, **through the rule of law**, to **take a more active stance on combating terrorism**. Another potential way to promote the deterrent effect is to link the har boring of terrorists to the crime of aggression in the ICC statute. To achieve this step, however, members of the Assembly of States Parties must be willing to adopt a comprehensive definition of the crime of aggression, which the drafters of the Rome Statute left to future generations. In addition, it would be necessary to specify the circumstances under which this crime occurs. On an individual level, therefore, the challenge is one of determining a perpetrator's knowledge of the circumstances of intent or, alternatively, determining that the circumstances proved the absence of such knowledge. In this respect, the Assembly of States Parties will need to reevaluate and clarify the meaning of Articles 30 and 32 of the ICC statute, which stipulate the mental elements and mistakes of law. ICC authorities, then, will need to convince interested and involved parties on two levels: that the individualistic elements of the crime will remain consistent with the statute and that the prosecutor will have the power to determine when the crime has occurred.

#### Terrorism causes Extinction – multiple warrants

Wright 7 Robert Wright 4-28-2007 "Planet of the Apes" <https://www.nytimes.com/2007/04/28/opinion/28wright.html> (Journalist who has BA in Sociobiology at Princton University)//Elmer

- Checked

(3) Terrorism. Alas, the negative-feedback loop — bad outcomes lead to smart policies — may not apply here. We reacted to 9/11 by freaking out and invading one too many countries, creating more terrorists. With the ranks of terrorists growing — amid evolving biotechnology and loose nukes — we could within a decade see terrorism **on a scale that would make us forget any restraint** we had learned from the Iraq war’s outcome. **If 3,000 deaths led to two wars**, **how many wars would 300,000 deaths yield**? And how many new terrorists? Terrorism alone won’t wipe out humanity. But with our unwitting help, it **could strengthen other lethal forces.** It could give weight to the initially **fanciful “clash of civilizations**” thesis. Muslim states could fall under the control of radicals and opt out of what might otherwise have become a global civilization. Armed with nukes (Pakistan already is), they would revive the **nuclear Armageddon scenario**. A fissure between civilizations would also sabotage the solution of environmental problems, and the ensuing eco-calamity could make people on both sides of the fissure receptive to radical messages. The worse things got, the worse they’d get. Editors’ Picks 10 Stories of Support in a Year of Obstacles Seriously? He Gets an Early Vaccine? I Might Be Able to Jump the Vaccine Line. Should I? Continue reading the main story So while no one of the Big Three doomsday dynamics is likely to bring the apocalypse, they could well combine to form a positive-feedback loop, a **the planetary death spiral**. And the **catalyst would be terrorism**, along with our mishandling of it.

## 2NR

### 2NR – O/V

#### Extend the CP – [States] ought to implement a strict liability war torts regime that requires compensation for wrongful injury caused by Lethal Autonomous Weapons and clarify that States are the responsible and liable actors are States. The CP is competitive – a] the Plan’s prohibition classifies usage of LAWs as Criminal while the CP classifies reckless usage of laws as Morally Liable and b] LAWs are allows under a War Torts Regime but we regulate the accidental and reckless usage of them by holding states morally accountable for actions. It solves the Aff since their arguments are all based on the accidental usage of LAW Automation which the CP serves as a deterrent against to improve regulatory measures.

#### Extend the Net Benefit – classifying LAWs as criminally liable despite not having any human control collapses the International Criminal Law regime by over-extending jurisdiction to decide intent rather than just wrongful behavior. Strong International Criminal Law key to counter-terrorism by holding states accountable from wrongful detainment that bolsters terrorist recruitment and bolstering deterrence vs states that sponsor terrorist activity. Terrorism causes extinction via nuclear draw-in due to misattribution.

### Cards

#### The Plan and Perm Fail – the Plan forces states to accept criminal guilt for LAWs which results in compliance gaps. The CP assigns moral blame which solves and ensures follow-on by States

Crootof 15, Rebecca. "War torts: Accountability for autonomous weapons." U. Pa. L. Rev. 164 (2015): 1347. (Assistant Professor of Law. Dr. Crootof's primary areas of research include technology law, international law, and torts)//Elmer

Although individual liability for international torts is recognized in some domestic law,230 similar individual tort liability does not exist in the international sphere. This is likely due to the fact that, until recently, only states were recognized as legal actors in the international order.231 As evidenced by international criminal law, however, it is now possible to construct a new legal regime grounded on individual liability. That being acknowledged, it seems both more likely and normatively **preferable to hold states**, rather than individuals, accountable for the actions of autonomous weapon systems.232 At the practical level, not only is the state in the best position to ensure that autonomous weapon systems are designed and employed in compliance with international humanitarian law, states will also have pockets deep enough to adequately compensate victims of their actions.233 Also, given that states are responsible for developing, purchasing, and integrating increasingly autonomous weapon systems in their military forces, **state responsibility may operate as a more effective deterrent** to overuse than individual liability.234 As a matter of doctrine, holding states accountable for the actions of their autonomous weapon systems requires only clarifying the applicability of existing law (rather than creating a new liability regime out of whole cloth). States are already responsible for all serious violations of international humanitarian law “attributable to the State under international law.”235 Regardless of whether an autonomous weapon system is analogized to more conventional weaponry or a soldier, its actions should simply be attributed to the state fielding it.236 Once the actions of an autonomous weapon system are attributable to a state, that state is then “under an obligation to make full reparation for the injury caused by the internationally wrongful act.”237 Such reparation might “take the form of restitution, compensation and satisfaction, either singly or in combination.”238 If a serious violation results in injurious damage and it is impossible to restore the situation to its pre-violation state, the state should pay compensation.239 In practice, states **often refuse to take responsibility** for actions akin to war torts. Consider the downing of Iran Air Flight 655. Not only was this incident notable as one of the most deadly in aviation history—290 passengers and crew members, including 66 children, died—it also involved an autonomous weapon system, albeit one operated in a semiautonomous mode.240 In 1988, as the Iran–Iraq War was ending, the USS Vincennes was patrolling in the Strait of Hormuz.241 The Vincennes was outfitted with the then-brand-new Aegis Combat System.242 On July 3, after taking fire from gunboats, the Vincennes pursued them into Iranian territorial waters. While there, the Aegis system mislabeled a passenger jet as an F-14 Tomcat. Despite hard data that suggested the plane was not a threat, the crew nonetheless authorized the Aegis to fire, resulting in the deaths of all 290 individuals on board.243 In 1991, Iran brought suit in the International Court of Justice, claiming that the United States had violated numerous treaty obligations and Article 2(4) of the U.N. Charter.244 Iran demanded declaratory relief, an order that the United States cease all unlawful conduct, and reparation for damages.245 The United States contested the International Court of Justice’s jurisdiction under treaty and customary law, but in 1996 it agreed to settle for a $61.8 million compensation payout to the victims’ families.246 The United States never admitted fault, and no one on board the ship or within the Navy was ever publicly punished.247 It may be, however, that states’ reluctance to admit fault is linked less to an unwillingness to **accept responsibility** than to a disinclination to **accept moral blame**. The United States actually offered to compensate the families of the victims shortly after the tragedy,248 and it was willing to pay millions of dollars to settle Iran’s claim; it was not willing to **publicly acknowledge fault** for the downing of the passenger flight in response to accusations of having committed a “criminal act,” an “atrocity,” and a “massacre.”249 Similarly, Article 231 of the Treaty of Versailles—which stated that Germany accepted the responsibility for the losses and damages of World War I—was known as the “War Guilt Clause,” and viewed by Germans as a national humiliation.250 Many have even suggested it was an important factor in Hitler’s subsequent rise to power.251 Had it been clear that the article was assigning tort-like responsibility rather than criminal-like guilt, it would hardly have carried the same sting.252 States might actually welcome a clear distinction between **war torts and war crimes** and the attendant ability to accept responsibility for injurious wrongs without accepting blame for criminal acts. Indeed, many states—particularly the political and military powerhouses that are currently employing autonomous weapon systems—already voluntarily compensate victims of their actions in armed conflicts with ex gratia payments.253 The United States, for example, passed domestic legislation in 1918 requiring it to pay for damages caused by its foreign forces,254 which it expanded into the Foreign Claims Act in 1942.255 U.S. claims commissioners often find ways to circumvent certain liability exclusions, presumably because they believe that making an award is in the best interests of the United States.256 And many states are party to Status of Forces Agreements (SOFAs), which often provide a means by which civilians may pursue tort remedies. For example, in 1953, the United States ratified the North Atlantic Treaty Organization’s Status of Forces Agreement, which established a jurisdictional regime allowing injured citizens in a host state to pursue civil damages for tortious acts of foreign forces.257 Twenty-six states are party to the NATO SOFA, and an additional twenty-two nonNATO states have signed the NATO Partnership for Peace Program, under which they incur the same obligations.258 The NATO SOFA thereby provides a means for satisfying the “general principle of law . . . that those who cause injury to others compensate them.”259 These practices suggest that states might be willing to commit to a more formal agreement codifying their responsibility for war torts, or at least those war torts committed by autonomous weapon systems.

#### Establishing LAWs as criminal law collapses ICL precedent by de-linking willful human action and criminal acts – regulations under Tort Law solves while avoiding our Net Benefit

Crootof 15, Rebecca. "War torts: Accountability for autonomous weapons." U. Pa. L. Rev. 164 (2015): 1347. (Assistant Professor of Law. Dr. Crootof's primary areas of research include technology law, international law, and torts)//Elmer

Imagine a marine autonomous weapon system, armed with torpedoes, designed to patrol within a preset region and attack anything it identifies as an enemy warship. Is anyone liable if it sinks a cruise ship, resulting in the deaths of all aboard? Or envision a mobile, land-based autonomous weapon system, meant to provide force protection, that enters a remote village and kills every man, woman, and child it encounters. Who is responsible for that massacre? On July 17, 2014, Malaysia Airlines flight MH17 was shot down over eastern Ukraine, resulting in the deaths of all 298 individuals on board.2 Many were quick to argue that this action should have spurred prosecution, either as a war crime under international law or as murder under domestic criminal laws.3 But if an autonomous weapon system had fired the missile that downed the plane, could anyone be held accountable? Autonomous weapon systems are fundamentally different from prior forms of weaponry: their capacity for self-determined action makes them uniquely effective and uniquely unpredictable. Unlike conventional weapons or remotely operated drones, an autonomous weapon system can select and engage targets without human direction or oversight.4 And unlike landmines, trip-wire sentry guns, or other automated weapon systems, autonomous weapon systems do not simply react to preset triggers. Instead, they gather information from their environment and make independent calculations as to how to act.5 The sheer complexity of autonomous weapon systems’ methods for making these determinations may make it impossible for human beings to predict what the systems will do,6 especially to the extent they operate in complex environments and are subject to various types of malfunction and corruption. More advanced autonomous weapon systems might even “learn” from in-field experiences or make probabilistic calculations.7 Given their destructive capacity and their inherent unpredictability, if autonomous weapon systems continue to be fielded, they will inevitably be involved in an accident with devastating and deadly consequences. Assuming that no one intended for the accident to occur or acted recklessly, it is unlikely that any person could be held individually liable under existing international criminal law. By definition, war crimes—serious violations of international humanitarian law that give rise to **individual criminal liability8**—must be committed by a person acting “willfully,” which is usually understood as acting intentionally or recklessly.9 By challenging the presumption that serious violations of international humanitarian law **will not occur absent willful human action**, autonomous weapon systems threaten to destabilize nearly **seventy years of efforts to establish international criminal law.** Individual criminal liability for war crimes grew from a deep-seated desire **to hold individuals accountable for atrocities and to discourage future occurrences**.10 Criminal law is useful for creating and enforcing prohibitions, and it therefore provides an appropriate liability regime for genocide, slavery, massacres, systematic rape, and other such outrages. But while autonomous weapon systems are capable of committing serious violations of international humanitarian law with tragic consequences, they **are too useful to be criminalized**. Not only do they offer a seductive combination of distance, accuracy, and lethality, this uniquely effective weaponry may prove to be more “humane” than human beings on the battlefield. Given their inherent value and their attendant risk, what is needed is a legal regime that regulates, rather than prohibits, the use of autonomous weapon systems. **Enter tort law**.