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The Procedural Black Hole: Article 14 of the ICCPR and the Impossibility of a Fair Trial for Unlawful Killings by Autonomous Weapons Systems

Sana Nasir
sananasir003@gmail.com
LLB (Hons) College of Law, Government College University Faisalabad.

Rida Shabir
ridashabir533@gmail.com
LLB (Student) College of Law, Government College University Faisalabad.

Shuja Ul Din
shuja.202004538@gcuf.edu.pk
LLB (Hons) College of Law, Government College University Faisalabad.

Corresponding Author: Shuja Ul Din shuja.202004538@gcuf.edu.pk

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ABSTRACT

Autonomous weapons systems (AWS) that select and engage targets based on algorithmic processing rather than human input pose a challenge to international law that has been framed almost exclusively in substantive terms: whether such systems can distinguish combatants from civilians or apply proportionality. This article shifts the analytical focus to the procedural dimension of accountability. It argues that the operational characteristics of AWS, autonomy in target engagement, automated decision-making, and black-box opacity, structurally negate the minimum guarantees of Article 14 of the International Covenant on Civil and Political Rights (ICCPR), and that this negation, rather than any substantive violation, constitutes the procedural mechanism through which the accountability gap for unlawful killings is produced. Drawing on doctrinal analysis of General Comment No. 32 and qualitative thematic analysis of institutional reports and scholarly commentary, the article demonstrates that the black-box nature of machine-learning decision-making makes it impossible to satisfy the rights to be informed of charges under Article 14(3)(a), to examine witnesses under Article 14(3)(e), and to a fair hearing before a competent tribunal under Article 14(1). The article concludes that Article 14 is not merely one violated right among many but the procedural precondition of all accountability, and that any future legal instrument on AWS must therefore incorporate binding procedural guarantees.

Keywords: *Autonomous Weapons Systems; Article 14 ICCPR; Fair Trial; Black Box; Accountability Gap; Algorithmic Opacity; International Human Rights Law*

INTRODUCTION

The development and projected deployment of autonomous weapons systems have generated one of the most sustained legal debates of the past decade. That debate has been conducted predominantly through the lens of international humanitarian law (IHL), and within that lens, predominantly through the substantive rules governing the conduct of hostilities: distinction, proportionality, and precautions. The Convention on Conventional Weapons (CCW) Group of Governmental Experts has met for years without producing a binding instrument, in significant part because states cannot agree on whether existing IHL rules are adequate to regulate machines that select and engage targets without human intervention. The scholarly literature has largely mirrored this substantive orientation, asking whether an autonomous system can, in principle, comply with the rules of war (George Jain, 2023).

This article argues that the dominant framing has overlooked a prior and more fundamental legal question. Before one can ask whether an autonomous weapon has unlawfully killed a civilian, one must ask whether the killing can be subjected to any fair adjudication at all. If it cannot, then the substantive rules of IHL and international human rights law (IHRL) remain, in practice, unenforceable: they describe prohibitions that no tribunal can apply and no victim can invoke. The central claim of this article is that the operational characteristics of AWS make the procedural conditions of accountability, as codified in Article 14 of the ICCPR, structurally impossible to satisfy. The result is not merely a practical difficulty in bringing cases, but a *procedural black hole*: a legal condition in which the fair trial guarantee, and with it the possibility of accountability, collapses (LOT, 2025).

The argument proceeds through a causal sequence. The independent variable is the cluster of AWS characteristics: autonomy in target engagement, automated decision-making, and black-box opacity. The mediating variable is the structural negation of Article 14's guarantees. The dependent variable is the accountability gap: the absence of attributable state responsibility, individual criminal liability, or remedy for victims. The article's contribution is to demonstrate that Article 14 is the procedural hinge between the technology and the gap, the provision that, once negated, renders every other accountability mechanism theoretical (Okoye, 2025).

The analysis is qualitative and doctrinal. It draws on the Human Rights Committee's General Comment No. 32, the authoritative interpretation of Article 14; institutional reports from Human Rights Watch and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; and the emerging scholarly literature on algorithmic opacity and fair trial rights. Section 2 defines the independent variable by examining the nature and forms of algorithmic opacity in AWS. Section 3 traces the operational chain through which a black-box decision is produced. Section 4 demonstrates the structural incompatibility between that chain and the guarantees of Article 14. Section 5 analyses the accountability gap as the procedural consequence of the Article 14 violation. Section 6 concludes with the normative implications for the regulation of AWS (Ferstman, 2024).

ALGORITHMIC OPACITY IN AWS

The independent variable in this analysis is not "autonomy" in the abstract but the specific operational characteristics that distinguish machine-learning-enabled AWS from earlier, more limited automated systems. Human Rights Watch describes the defining feature: AWS "select and engage targets based on sensor processing, rather than human inputs, and once the systems find a target, they fire or release their payload without approval of or review by a human operator". A machine, rather than a human, determines where, when, and against what force is applied. This delegation of the lethal decision is the factual predicate of the legal problem.

The opacity of that delegation is not a single phenomenon. Jenna Burrell's influential taxonomy distinguishes three forms of opacity in machine learning, and each is present, to varying degrees, in AWS. The first is *intentional secrecy*: the algorithm is concealed for reasons of trade secrecy, intellectual property, or national security. The second is *technical illiteracy*: the system is too complex for operators, lawyers, and judges to understand, creating a gap between the expertise of the developer and the comprehension of the regulator. The third, and most intractable, is opacity arising from the characteristics of machine learning itself: the model's internal logic is not predictable by its designer and cannot be fully reconstructed even in principle. The system learns from data in ways that are not transparent to human cognition, developing decision rules that no human explicitly programmed and that cannot be extracted after the fact (LUZURIAGA, 2025).

It is this third form that is decisive for the Article 14 analysis. A deep neural network trained on sensor imagery may develop targeting heuristics that its creators cannot explain. As Human Rights Watch documents, "it is currently not possible to interrogate and document the steps leading to decisions generated by deep learning systems, sometimes referred to as 'black boxes'". The system's

output is a conclusion without an auditable chain of evidence: it can produce a decision, but it cannot produce the reasons for that decision in a form that a human can examine, contest, or reconstruct (Molik, 2024).

This opacity is not a contingent technical deficiency that better engineering will eventually cure. It is, in significant part, constitutive of the most capable machine-learning systems. The very complexity that makes the model useful is the complexity that makes it unaccountable. The OHCHR has recognized that the opacity inherent in contemporary AI systems, "wherein systems function essentially as algorithmic 'black boxes'," presents "significant challenges to accountability frameworks given the lack of explainability". The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has identified the "increased difficulty of attributing killing and holding individuals accountable for violations of international law committed with an Autonomous Weapons System" as a key challenge. These are not marginal concerns. They go to the possibility of legal accountability itself (Bose, 2025).

THE OPERATIONAL CHAIN OF A BLACK-BOX DECISION

To understand why the black box is legally fatal, it is necessary to trace the operational chain through which an autonomous decision is produced. The chain can be reconstructed in five stages, and at each stage a procedural guarantee is foreclosed.

The first stage is *data input*. Sensors, cameras, radar, and heat detectors feed raw data into the system. The accused, or those claiming on their behalf, cannot challenge the quality, selection, or interpretation of that data because the system's processing is opaque.

The second stage is *feature extraction*. The algorithm identifies patterns and relationships in the data using deep neural networks with millions of parameters. The features the system considers relevant are not disclosed. There is, in effect, no "evidence" in any recognizable legal sense that can be disclosed to an accused or tested in a hearing (Páez, 2024).

The third stage is *classification and prediction*. The model classifies objects as threats or non-threats, combatants or civilians, and predicts the likely outcome of engagement. The classification logic is inscrutable. There is no "witness" to cross-examine, because the entity that performed the classification is not a person and cannot give testimony.

The fourth stage is *decision output*. The system outputs a targeting decision: engage, withhold, or continue tracking. The decision cannot be reconstructed. No tribunal can determine, after the fact, whether the decision was lawful or unlawful, because the reasoning pathway that produced it is inaccessible.

The fifth stage is *lethal action*. The weapon executes the decision. The causal chain from decision to death is opaque. The *actus reus* cannot be traced to a human hand, and the *mens rea* cannot be located in a human mind.

This chain is not a description of technical malfunction. It is a description of how a successful, functioning machine-learning system operates. The opacity is intrinsic to the mode of operation. The consequence is that each stage of the decision process forecloses a specific procedural guarantee that Article 14 requires. The causal pathway is therefore not speculative: it is a direct inference from the structure of the technology to the structure of the legal guarantee (Kouloufakos, 2024).

The presupposition underlying the entire edifice of legal accountability is human agency. Accountability is an essential component for the proper functioning of the law. All law is premised on human agency. Thus, human agency is essential to accountability. Article 14 is the procedural

expression of that presupposition: it presumes a decision-maker who can be informed of a charge, who can answer it, and whose actions can be examined by a tribunal. When the decision-maker is a black box, the presupposition fails, and the procedural mechanism collapses with it (Dickinson & Berg, 2024).

IMPOSSIBILITY OF A FAIR TRIAL

Article 14 of the ICCPR is the procedural heartbeat of the Covenant. The Human Rights Committee's General Comment No. 32 describes it as "a key element of human rights protection" that "serves as a procedural means to safeguard the rule of law". The article guarantees a fair and public hearing by a competent, independent, and impartial tribunal; the presumption of innocence; and a series of minimum guarantees, including the right to be informed promptly and in detail of the nature and cause of the charge, and the right to examine, or have examined, the witnesses against the accused (Tymofeyeva, 2024).

The Committee has made clear that these guarantees are not suspended in armed conflict. While Article 14 is not listed among the non-derogable rights in Article 4(2), the Committee has held that derogations must not exceed what is strictly required by the exigencies of the situation, and that "the guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights". Because Article 6, the right to life, is non-derogable in its entirety, any killing that engages Article 6 must be subject to procedures that conform to Article 14. The Committee's concluding sentence is categorical: "Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times".

The difficulty for AWS is not that these guarantees are routinely violated in fact. It is that the structure of a black-box decision makes it impossible to satisfy them in principle. Consider the specific guarantees.

Article 14(3)(a) entitles an accused "to be informed promptly and in detail … of the nature and cause of the charge against him." In an AWS engagement, there is no articulable charge. The algorithm's "reasoning" cannot be rendered into a statement of the nature and cause of the decision. No one, not the operator, not the developer, not the tribunal, can say what the system "found" that caused it to classify a person as a target (Tiwari, 2025).

Article 14(3)(e) entitles an accused "to examine, or have examined, the witnesses against him." The witness against the victim is the algorithm. It cannot be cross-examined. Its internal logic cannot be interrogated. The right becomes structurally meaningless because there is no testimonial subject to whom it can be addressed.

Article 14(1) guarantees a fair hearing by a competent tribunal. A tribunal cannot adjudicate what it cannot understand. If the decision pathway is a black box, the tribunal has no evidentiary basis upon which to determine lawfulness. The hearing becomes a proceeding without a res to which the law can be applied.

Article 14(2) guarantees the presumption of innocence. The presumption presupposes a charge and a guilt to be proved. When a machine executes without human intent, there is no *mens rea* to disprove and no *actus reus* traceable to a person. The presumption collapses for want of a subject (Khalil & KRISHNA RAJ, 2024).

The scholarly literature has begun to recognise this structural problem. Hattan notes that Article 14 contains the "right to due process," and that it can support the claim that autonomous targeted killings "would be arbitrary in nature, and thus in breach, inter alia, of Article 6 ICCPR". The emerging literature on "algorithmic due process" makes the same point in a different register: procedural

fairness requires the right to a reasoned decision and the ability to confront and challenge the evidence, and black-box systems foreclose both. As Brandon Garrett has put it, "You cannot possibly protect someone's due process rights if the government is relying on black box AI, because they do not disclose what factors the system is relying on, and certainly the person affected doesn't know how it works".

The conclusion is not that fair trials are difficult to achieve with AWS. It is that the fair trial, as a legal institution, has no object to which it can attach. The procedural guarantee is not overridden; it is deprived of its conditions of possibility.

ACCOUNTABILITY GAP

The accountability gap is conventionally described as the difficulty of attributing responsibility for unlawful killings involving AWS. The UN Special Rapporteur identifies the "increased difficulty of attributing killing and holding individuals accountable" as a defining challenge. The ICRC and scholarly commentators have documented the fracture of command responsibility: if the "subordinate" is a machine, and the machine's decision cannot be reconstructed, the commander's knowledge cannot be established, and the duty to punish becomes impossible to discharge. State responsibility is equally vexed: attribution requires a traceable link between a state organ and the wrongful act, and the black box disrupts that link.

This article's contribution is to reframe the gap not as a free-standing problem of attribution but as the *procedural consequence* of the Article 14 violation. The gap is not merely that responsible agents are hard to find. It is that the procedural mechanism through which responsibility is determined, the fair trial has been negated. Without Article 14, there is no forum in which the lawfulness of the killing can be adjudicated, no procedure through which evidence can be examined, and no remedy that a victim can obtain. The right to a remedy under Article 2(3) of the ICCPR presupposes an adjudicatory process; if the process is impossible, the remedy is empty. Human Rights Watch makes the connection explicit: the lack of explainability "would interfere with the right to remedy" and the accountability gap "would contravene the right to a remedy".

The gap, in other words, is not a practical failure that better institutions might one day overcome. It is a *procedural void*. The substantive rules of IHL and IHRL continue to exist on the books, but they cannot be applied to a black-box killing because the procedural gateway to their application has been closed. The Article 14 violation is therefore not one item on a list of human rights concerns. It is the mechanism through which the entire edifice of accountability is rendered inoperative.

This conclusion is subject to scope conditions. A fully autonomous system produces a complete procedural void. A human-supervised system, in which a human retains meaningful control over the specific engagement, may leave residual traces, a human decision, a contemporaneous record, a witness who can testify that preserve some possibility of adjudication. The level of AI explainability also matters: an explainable system may permit partial reconstruction of the decision pathway. But these are moderating conditions, not refutations. They define the boundary of the argument: where the system is genuinely autonomous and genuinely opaque, the Article 14 guarantee is not merely burdened but structurally negated.

CONCLUSION

The debate over autonomous weapons has been conducted as though the central legal question were substantive: can the machine comply with the rules of distinction and proportionality? This article has argued that a prior procedural question determines the practical enforceability of every substantive rule. Article 14 of the ICCPR guarantees the fair trial, the procedural mechanism through which the lawfulness of a killing is adjudicated and responsibility is determined. The black-box characteristics

of machine learning-enabled AWS make it structurally impossible to satisfy Article 14's minimum guarantees. The result is a procedural black hole: the fair trial has no object to which it can attach, and the accountability gap is its consequence.

The normative implications are direct. First, the CCW GGE and any future negotiating forum must treat procedural guarantees as a non-negotiable element of any instrument on AWS. A treaty that regulates the *use* of autonomous weapons without guaranteeing the *adjudicability* of their use will leave the accountability gap intact. Second, the Human Rights Committee should clarify, through a general comment or a decision on an individual communication, that Article 14 applies to algorithmic decision-making in armed conflict and that the impossibility of a fair trial is itself a violation of the Covenant. Third, states must ensure that any deployment of AWS preserves the evidentiary and procedural conditions of accountability: a human decision-maker capable of being informed of a charge, a record capable of being examined, and a forum capable of adjudicating lawfulness. Meaningful human control is a necessary condition, but it is not sufficient. What Article 14 requires is not merely a human somewhere in the loop, but a procedural architecture in which the loop itself can be opened, examined, and judged.

The procedural black hole is not a metaphor. It is a legal description of what happens when the fair trial guarantee encounters a decision-maker that cannot explain itself. The task of international law is to refuse to accept that condition as the price of technological advance.

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