ANZSIL International Peace & Security Interest Group

VIRTUAL SEMINAR SERIES 2020

[Zoom Link](#)

FRIDAY 12 JUNE, 1pm - 2pm (AEST)

Shiri Krebs (Deakin University)

Human-Machine Interaction in Military Decision-Making

FRIDAY 19 JUNE, 1pm - 2pm (AEST)

Rebecca Barber (University of Queensland) and Georgina Jordan (Facilitating Assistance to Syria Together (FAST) program)

The Legal and Operational Issues related Cross-Border Humanitarian Assistance in Syria

FRIDAY 26 JUNE, 1pm - 2pm (AEST)

Anna-Marie Brennan (Waikato University)

The Dispensable Lives of Military-Working Dogs on the Battlefield: The Quagmire of their Legal Status under International Humanitarian Law

FRIDAY 17 JULY, 1pm – 2pm (AEST)

Ntina Tzouvala (University of Melbourne)

The 'Unwilling or Unable' Doctrine and the Persisting Inequalities of International Legal Argumentation

FRIDAY 24 JULY, 1pm – 2pm (AEST)

Eve Massingham (University of Queensland)

Navigating to the starting point of autonomous warfare: Legal questions in use of autonomous aerial vehicles by the Australian military

Draft papers may be circulated in advance of some seminars.

Any questions about the seminar series should be directed to Monique Cormier (mcormier@une.edu.au)

Human-Machine Interaction in Military Decision-Making

Military decision-making processes, including legal evaluation of military operations, have been increasingly relying on technology-generated information and technology-assisted processes. Drone imaging, automated algorithms, and big data analytics are some of these new data gathering techniques and decision-making aids. While incorporating valuable information into the legal analysis and decision-making process, these methods also entail several inherent weaknesses, which lead to erroneous, irreversible, decisions. Findings from several military investigations conducted by US, Israeli, and Australian armed forces demonstrate that technology-assisted decision-making processes place further challenges on the decision-makers, and skew their risk assessments.

This article focuses on the role played by technology in the legal evaluation of military operations, the challenges of these human-machine interactions, and the dangers associated with humans' reliance on technology in this context. To provide fresh insight into these processes and interactions, the article employs interdisciplinary theories of risk assessment, organizational decision-making, and international law, and analyses findings from military investigations conducted by US, Australian, and Israeli armed forces. To test the effects of technology on the legal evaluation of military operations, a series of vignette experiment studies will be fielded in the US, Australia, and Israel. The experiments directly measure the effect of technology on military decision-makers (with legal or field experience), as well as on lay people. The experiments will be fielded with both professional and national samples, and funding for these experiments has already been secured by a generous research grant from Deakin University.

The experimental design includes two vignettes: One simulating ex ante decision-making (all samples), and the second simulating ex post evaluation of decisions made (national samples only). In the *ex ante decision-making study*, participants will be given descriptions of a high-risk, planned military operation and will be asked to make legal determinations as *ex ante* evaluators of the proportionality, reasonableness, and legality of the operation. In short, participants will be randomly assigned to one of four treatment groups (2x2 between-subjects design): one of two *intelligence assessments* of the likelihood and extent of collateral damage: one produced by an automated algorithm, and another produced by a human expert; and to one of two *intelligence inputs* (the data-generation method): one generated by drone imaging and the other generated by a human observer (both containing the same information). Participants will then be asked to make a decision to approve, cancel, or postpone the operation until more data is available. They will also be asked to rate their confidence in the decision they made, to evaluate various aspects of the legality of the planned operation (including its consistency with international law), and to evaluate the quality, sufficiency, and credibility of the intelligence. Some demographic data will also be collected, as well as information about participants' political and technical knowledge, and their general attitudes

about various domestic and international institutions, rule of law principles, and human rights. Due to the anticipated small size of the professional samples, and to increase utility to professional participants, only this ex ante design will be applied to the professional participants, simulating actual decision-making processes. *In the ex post study* (national samples only), participants will be randomly assigned to either the ex ante design or to an ex post design (creating a 2x2x2 between-subjects design). Participants in the ex post condition will be given a description of the same military operation described in the ex ante study, with one difference: Participants will now be asked to make legal determinations as *ex post* evaluators of the reasonableness and legality of the decision to approve this operation. They will be provided with the intelligence that was available to decision-makers in real time (which, again, will be produced by either technology-systems or humans), and will be asked to evaluate the quality, sufficiency, and credibility of the intelligence, and to make a recommendation as to whether further accountability measures should be taken.

The findings from this research will advance theoretical and empirical knowledge of vital legal decision-making process, at a time when legal decision-making processes are increasingly relying on complex – yet underexplored – human-machine interaction. The data on automation and technology-assisted legal decision-making processes will further inform practices and policies in additional areas, such as refugee protection, which also rely on technology-assisted decision-making processes. The mounting reliance on technology in various legal contexts makes this inquiry into human-machine interaction particularly important and urgent.

Shiri Krebs is a Senior Lecturer and HDR Director at Deakin Law School, as well as an affiliate researcher at the Stanford Center for International Security and cooperation (CISAC). Her research focuses on legal fact-finding processes and their impact on attitudes and beliefs about wartime events, at the intersection of law, psychology, and political science. To explore these issues, Dr. Krebs utilizes empirical research methods, including survey experiments and interviews. Her scholarship has been published at top international law and general law journals, including the Harvard National Security Law Journal. She has taught in a number of law schools, including Stanford University and the Hebrew University of Jerusalem, where she won the Dean's award recognizing exceptional junior faculty members. From 2005 to 2010 Dr. Krebs served as legal advisor to the Chief-Justice of the Israeli High Court. Following this role, she led research projects on national security and human rights at the Israeli Democracy Institute. In 2016 Dr. Krebs was selected by the American Society of International Law for the 'New Voices' Panel at the Society's Annual Meeting. Her publications granted her several awards, including the Vice-Chancellor's Early Career Researcher Award for Career Excellence (Deakin University, 2019), the Lucinda Jordan Research Award (2017), the Franklin Award in International Law (2015), the Goldsmith Award in Dispute Resolution (2012), and the Steven Block Civil Liberties Award (2011). Krebs earned her Doctorate and Master degrees from Stanford Law School, as well as LL.B., B.A. and M.A., all magna cum laude, from the Hebrew University of Jerusalem.

Friday 19 June 1pm AEST

The Legal and Operational Issues related to Cross-Border Humanitarian Assistance in Syria

In December 2019, Russia and China vetoed a draft Security Council resolution that would have renewed the Council's authorisation for humanitarian assistance to be provided in Syria from neighbouring countries, via four designated border crossing points. The authorisation had been in place since 2014, and is seen by the UN and its partners as necessary in order for them to provide humanitarian assistance in areas not controlled by the Syrian Government.

In January 2020 the Security Council passed a watered-down resolution (Resolution 2504), reauthorising the use of just two border crossings, allowing access from Turkey. The border crossings into southern Syria from Jordan, and northeast Syria from Iraq, were not renewed, impeding the delivery of humanitarian assistance to more than a million Syrians. Resolution 2504 expires in July 2020, and at that time, the future of those benefiting from humanitarian assistance provided across the border from Turkey will depend on the ability of the UN Security Council to find a solution.

The situation highlights the precariousness of the current cross-border operations, and raises a number of legal questions – among them, the question of the legal necessity of Security Council authorisation for humanitarian assistance provided without the consent of the host state.

This seminar will explore the operational and legal issues related to cross-border humanitarian assistance. We will be joined by Georgina Jordon, the Chief Party of the Facilitating Humanitarian Assistance in Syria Together Consortium – a consortium of international NGOs and local Syrian organizations responding to humanitarian needs in Syria. Georgina will discuss the operational aspects of cross-border humanitarian assistance, and Rebecca will discuss the legal issues, including the question of whether there is any legal alternative to Security Council authorisation, in cases where there is overwhelming humanitarian need and the host state will not consent to the provision of humanitarian assistance.

Rebecca Barber is a PhD scholar with the TC Beirne School of Law and the Asia Pacific Centre for the Responsibility to Protect, University of Queensland. Her research focuses on the role of UN General Assembly in international peace and security, particularly in conflict-related humanitarian crises. Prior to undertaking her PhD she had a career with international humanitarian NGOs, managing human rights and legal assistance programs, as well as multi-sector humanitarian response programs, in a series of humanitarian crisis in South Asia (Afghanistan and Pakistan), Southeast Asia and Africa. She has also worked as a humanitarian advocacy advisor with Oxfam and Save the Children, and lectured and developed new units for the masters in humanitarian assistance program at Deakin University. Her writing on international peace and security law, human rights and humanitarian action and has been published in international law journals, books, foreign policy forums and mainstream media. She is a member of the international humanitarian law advisory committee for the Australian Red Cross, is a certified lawyer, and has masters degrees in international development and international law.

Georgina Jordan is the Chief of Party of the USAID-funded multi-agency Facilitating Assistance to Syria Together (FAST) program, a two-year humanitarian response in the northwest governorates of Idleb, Aleppo, and Hama. FAST programs multi-sector, gender-sensitive humanitarian operations and provides coordinated assistance to conflict-affected communities, especially the newly displaced. Over the life of the award, new emergencies are responded to through FAST's tested Rapid Response Mechanism which can launch mobile response operations within 4 days.

Georgina has a background working with CBOs, NGOs and INGOs in fragile contexts on humanitarian response, resilience, and livelihoods across Africa, the Middle East and Asia. Her previous roles include: Co-Director of the Resilience Measurement Evaluation and Learning Community of Practice; World Vision International (WVI) Livelihoods Program Quality Director where Georgina provided leadership over the quality and impact of World Vision's livelihoods and resilience programme portfolio in 70 countries and chaired WVI's Resilience in Fragile Contexts group; and Quality Assurance and Knowledge Manager for the Somalia Resilience Program consortium – a multi-year effort by 7 leading INGOs to tackle the challenge of recurrent droughts among pastoralists, agro-pastoralists, and peri-urban households across Somalia.

Georgina holds a PhD from Durham University, where she focused on resilient livelihoods in fragile contexts.

The Dispensable Lives of Military-Working Dogs on the Battlefield: The Quagmire of their Legal Status under International Humanitarian Law

They were the only four-foots who could be trusted to do a piece of work strictly 'on their own'. Each one knew his job and did it, not because he was made to, but because of the love which is the impelling motive for everything a free dog does for a man.

- Ernest Harold Baynes, Animal Heroes of the Great War

Since ancient times, animals have played a pivotal role in military operations but international humanitarian law has thus far side-stepped any precise delineation of their precise legal protections on the battlefield. Dogs in particular have proven themselves indispensable during warfare. From acting as guards, bomb detectors, messengers, load bearers carrying weapons to directly attacking enemy troops on command military dogs are highly valuable and cooperative during warfare. While the contribution dogs have made to military operations is gaining wider recognition in society it is unclear what protections are afforded to them under international humanitarian law. Military-working dogs can be injured and killed not only when they are actively participating in hostilities but also as a secondary consequence of attacks on other objectives. Yet, international humanitarian law is mostly silent on the matter of their protection and focuses for the most part on the protection of humans. This paper considers the legal status of military animals under international humanitarian law. It will find that the current classification of military-working dogs as equipment is inherently problematic since it limits the extent of armed forces' obligations towards them before, during and after hostilities. This paper will thus propose a re-imagining of the combatant/civilian distinction to include a new category of 'animal members of armed forces'.

Dr Anna Marie Brennan is a Senior Lecturer in Law at the University of Waikato. She previously worked on the defence team of Karadzic at the ICTY and worked for Judge Sylvia Steiner on the Jean Pierre Bemba Gombo case at the ICC.

The 'Unwilling or Unable' Doctrine and the Persisting Inequalities of International Legal Argumentation

This paper focuses on the 'unwilling or unable' doctrine, which argues for the lawfulness of extraterritorial self-defence against non-state actors whose acts are not attributable to the territorial state, when the latter is 'unwilling or unable' to put an end to armed attacks. My argument has two parts. First, I analyse the methodology of some of the most influential supporters of the doctrine, including Ashley Deeks' pathbreaking article, and contributions that link the doctrine to ideas of 'sovereignty as responsibility'. I show that when arguing for the validity of the doctrine, its proponents perpetuate inequalities of law-making power between Western and non-Western states, as well as between other groups of states that exist in ongoing relationships of domination and subjugation, which cannot be reduced to historic patterns of imperialism. They do so by overemphasising the practice and *opinio juris* of a handful of states and the writings of a narrow circuit academics. More importantly, they by-pass the legal imprint of decolonisation struggles on *jus ad bellum* and draw their arguments and precedents from the pre-Charter era, often from colonial warfare. Secondly, I turn my attention to the substance of the doctrine. I situate it within the political economy of the 'war of terror' as a process of transferring public resources to particular factions of global capital, especially US capital linked to security and surveillance technologies. I contend that 'unwilling or unable' mobilises the threat or use of force as a means of 2 pressuring states into the adoption of the preferred counter-terrorism policies of the US or the UK but also of the language, aesthetics and political economy of the neoliberal security state. In so doing, it enlists them in a global process that transfers resources from the periphery to the centre. Read this way, the doctrine re-authorises inequalities amongst and within states not only by confining 'unwilling or unable' states into a lower scale of 'sovereignty' but also by entrenching a profoundly asymmetrical form of political economy on an international scale.

Ntina Tzouvala is an ARC Postdoctoral Fellow in International Law at Melbourne Law School. Before joining MLS Ntina was a Lecturer in Law at Durham Law School (UK), and she obtained her PhD from the same institution. Her research focuses on the history and theory of international law, with a particular interest in international law and the global political economy. Her first monograph, *Capitalism as Civilisation: A History of International Law*, will be published by Cambridge University Press in 2020.

Navigating to the starting point of autonomous warfare: Legal questions in use of autonomous aerial vehicles by the Australian military

The technological developments that have characterised military research focus and spending over the last 15 years have been increasingly moving towards autonomy in military devices. The Strategic Outlook detailed in the current Australian Defence White Paper (2016, p. 50) notes that 'the region will see more autonomous systems, such as unmanned combat vehicles, in operation in the sub-surface, surface and air-environments' over the period to 2035. Indeed, States are deploying technologies – including remotely piloted, pre-programed and ultimately, autonomous - that will assist them with a range for activities including surveillance, and logistics, as well as in using force, to better enable their warfighting. Un-crewed aircraft currently operated by the Australia Defence Force require remote pilot operation for reasons that include, but are not limited to, legal ones. However, while they are not yet in service, the Australian Defence Force continues to explore a range of autonomous technologies and Australia has 'trusted autonomous systems' as a priority area of work for Defence's strategic research.

In anticipation of their development and technological reality, this paper looks at the legal frameworks that are of relevance to potential autonomous Australian Defence Force air assets. Without an appreciation of these legal frameworks, our Army, Airforce and Navy will not be in a position to, safely and effectively, get their autonomous assets to the starting line of an armed conflict. Without a proper analysis of the gaps that pose challenges to the armed forces in their day-to-day operations, these gaps will not be addressed. The paper will first discuss the relevant international laws, before turning to consider relevant domestic law. It will particularly consider how the law has dealt with remotely piloted craft to date, and what this means for autonomous aircraft – that is aircraft which do not have recourse to a human in command in their operations. It seeks to provide an answer to the question: what legal hurdles might come to light from the use of autonomous devices by the military in Australia?

Dr Eve Massingham is a Senior Research Fellow in the School of Law at the University of Queensland. Eve's current research focuses on the legal challenges connected with the defence applications of science and technology, with a particular focus on the impact of autonomous systems. Her research interests are in the law of armed conflict and international law on the use of force, and she has published a number of book chapters and articles on these topics. She is the co-editor of a forthcoming publication (June 2020) by Routledge on the obligation to ensure respect for international humanitarian law. Prior to joining the University of Queensland, Eve worked for the International Red Cross and Red Cross Movement for ten years, including as the International Committee of the Red Cross' Regional Legal Adviser for East Africa and as an International Humanitarian Law officer for Australian

Red Cross. She began her career at (then) Freehills and was an Associate to Justice Collier at the Federal Court of Australia. Eve has also served as an Australian Army Reserve Officer.