

Justice Augmented: Navigating the Ethical and Legal Terrains of AI Integration in International Criminal Proceedings

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Abstract

The intersection of Artificial Intelligence (AI) and International Criminal Law has heralded an era of augmented justice, characterized by enhanced efficiency yet beset by intricate ethical and legal quandaries. The present article seeks to delve into the multifarious impacts of AI integration, dissecting the potential augmentations and the inherent complications within the enigmatic confines of international criminal proceedings. It aims to meticulously juxtapose the promises of technological advancements against the imperatives of ethical justice and legal propriety.

The article commences with a nuanced exploration of AI's role in evidence gathering and analysis, illuminating the potential for expedited and enriched processes. Yet, the core of the discussion gravitates towards the ethical and legal predicaments of AI biases and the consequential implications on the sanctity of fair trials. The article, thus, strives to weave together the threads of accountability, transparency, and the inviolable rights of the accused in a tapestry that reflects the multifaceted challenges posed by AI.

Drawing from a rich tableau of international perspectives, including the diverse legal landscapes of Europe, Asia, Africa, and the Americas, an offering of a global vista of prevailing attitudes, policies, and frameworks governing AI in judicial systems is endeavoured. In navigating the future, the article ends with policy proposals and legal frameworks to align AI's integration with the sacrosanct principles of international human rights and criminal justice.

It is ultimately hoped that the article, rooted in rigorous academic discourse yet resonant with broader societal implications, offers an original, refined, and critical perspective on the confluence of AI and international criminal law.

INTRODUCTION

In the intricate dance of evolving technologies and legal systems, the incorporation of Artificial Intelligence (AI) in international criminal law has emerged as a pivotal juncture, emblematic of a modern renaissance in the legal praxis. The juxtaposition of AI's mechanistic precision and the organic, complex nature of international criminal law has uncloaked a landscape replete with both unprecedented opportunities and intricate challenges.

In the contemporary age, AI's inroads into the legal domain are not merely incremental but transformative. It promises a paradigm where data analytics, machine learning, and other AI technologies become the linchpins in evidence gathering, analysis, and even predictive justice. The quintessence of this transformation lies in the enhanced efficiency, accuracy, and perhaps, an unblemished objectivity, ostensibly unfettered by human biases and imperfections.

However, beneath this surface of technological allure, lies an enigmatic, multifaceted ethical and legal terrain. AI, for all its precision, is not immune to biases. Algorithms, trained on historical data, can inadvertently perpetuate, and even accentuate existing prejudices, casting long, unsettling shadows on the sanctity of fair trials and the inviolable principles of justice.¹ International criminal law, with its foundational ethos rooted in the upholding of human dignity, faces the intricate task of navigating these algorithmic waters, ensuring that "justice is not only done but is manifestly seen to be done."²

Furthermore, the global nature of international criminal law accentuates these complexities. AI's integration is not a monolithic narrative but is variegated, influenced by diverse legal, ethical, and cultural milieus. Countries and jurisdictions, each with their distinct legal traditions and ethical norms, are embarking on this AI journey, crafting narratives that are as diverse as they are obtuse.

This article, therefore, seeks to unfurl this complex tapestry, exploring the nuanced interstices of AI's integration in international criminal proceedings. It aims to walk the intricate pathways where technology meets ethics and law, unveiling the profound implications, challenges, and opportunities that lie therein.

The Promises and Challenges of AI In International Criminal Law

Technological Advancements

The advent of AI in the legal realm heralds a transformative epoch, one where the mechanistic

1 Alexander Babuta and Marion Oswald, *Data Analytics and Algorithmic Bias in Policing* (Royal United Services Institute, 2019).

2 *R v. Sussex Justices* [1924] 1 KB 256.

precision of technology marries the evaluative and analytical prowess intrinsic to legal proceedings. In the context of international criminal law, this amalgamation is not just progressive but potentially revolutionary. AI's contributions to evidence gathering and analysis are emblematic of a future where justice is not just swift but is rendered with an enhanced degree of accuracy and objectivity.

AI facilitates the processing of voluminous data with speed and accuracy that are humanly unattainable. In international criminal cases, where evidence is often dispersed across jurisdictions and is embedded in massive datasets, AI emerges as a potent tool. Machine learning algorithms can sift through extensive data, identifying patterns and correlations with a level of sophistication that amplifies the depth and breadth of legal analysis.³

For instance, in cases of genocide or war crimes, evidence is often scattered, multifarious, and embedded in complex geopolitical contexts.⁴ AI's capability to analyse text, audio, images, and even patterns of movement or communication, transforms the evidentiary landscape. It ensures that no piece of evidence, however obscure or embedded in tangles, escapes legal scrutiny. Moreover, AI's ability to cross-reference data points across diverse datasets ensures a comprehensive and multidimensional analysis, offering legal practitioners insights that are both profound and actionable.⁵

However, this technological boon is not without its challenges. The very algorithms that promise objectivity are crafted by human hands and trained on human-generated data. This engenders a risk of biases – racial, gendered, or otherwise, seeping into AI's analyses and predictions.⁶ The legal implications are significant. In a domain where the principles of fairness, impartiality, and justice are sacrosanct, the infusion of biased algorithms can potentially skew

3 Nicole Yamane, "Artificial Intelligence in the Legal Field and the Indispensable Human Element Legal Ethics Demands" 33 *Geo. J. Legal Ethics* 877 (2020).

4 Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* (Cambridge University Press, 4th edn., 2019).

5 Hin-Yan Liu et al., "Artificial Intelligence and Legal Disruption: A New Model for Analysis" 12 *L. Innov. Technol.* 258 (2020).

6 Babuta and Oswald, *supra* note 1.



legal outcomes, undermining the foundational ethos of the justice system.

Moreover, the deployment of AI in evidence analysis opens up dialogues around privacy and data protection. International criminal law often navigates sensitive terrains, where evidence encompasses personal, sensitive, and often traumatic narratives. The utilization of AI raises imperative questions around data privacy, consent, and the ethical handling of sensitive information.

Ethical Quandaries

Artificial Intelligence, in its promising grandeur, is not immune to the thorny issues of ethical considerations. The AI algorithms, characterized by their efficiency and speed, are nevertheless shaped by the data they are trained on and the human hands that craft them. This engenders an environment where biases, both subtle and overt, can infiltrate the very fabric of AI-driven legal processes.

The aforementioned biases in AI systems are not merely theoretical conjectures but palpable realities with far-reaching implications. In the international criminal law arena, where the impartiality and fairness of trials are the bedrock of justice, AI biases threaten to undermine these foundational principles. For instance, AI tools used in evidence analysis, if tainted by biases, can skew the interpretative lens, leading to conclusions that are not reflective of an objective analysis but are echoes of embedded prejudices.⁷

In the intricate corridors of international trials, where evidentiary analyses are often the pivot upon which justice turns,⁸ biased AI can imperil the fairness of trials. Ethical quandaries extend beyond biases to include issues of transparency and explainability. AI systems, especially those based on deep learning, are often termed “black boxes” due to their opaque decision-making processes.⁹ In a legal setting, where every decision, especially those pertaining to evidence and its admissibility, is subject to scrutiny, the opacity of AI systems raises profound ethical challenges. The necessity for decisions to be explainable, interpretable, and ultimately, accountable, is intrinsic to the ethos of legal processes.

7 Panel for the Future of Science and Technology, *The ethics of artificial intelligence: Issues and initiatives* (European Parliament, 2020).

8 Cryer et al., *supra* note 4.

9 European Parliament, *supra* note 7.

Legal Complexities

The ethical challenges are intertwined with legal convolutions. The integration of AI in international criminal proceedings raises questions that straddle the intersection of technology and law. Legal systems, anchored in principles of integrity, transparency, and the rights of the accused, are now confronted with AI systems whose operations are not always aligned with these principles.

AI-driven processes raise significant accountability challenges. While legal systems are anchored in clear, mandated standards of responsibility, the complexity and opacity of AI algorithms complicate this norm. In law, every conviction is rooted in discernible accountability.¹⁰ Yet, AI’s multifaceted and often enigmatic decision-making mechanisms obfuscate clear lines of responsibility, necessitating an urgent re-evaluation to ensure transparency and accountability are not only maintained but are unequivocally visible and understandable.¹¹

The rights of the accused, a cornerstone in legal processes, are also potentially imperilled. The use of AI in evidence gathering and analysis raises questions about the accused’s right to confront and challenge the evidence presented against them. In scenarios where evidence is processed and analysed by AI systems, the rights of the accused to understand, challenge, and counter the evidence become less lucid in nature.

Furthermore, the international nature of these criminal proceedings accentuates these challenges. Different jurisdictions have varied legal norms and standards, and the integration of AI has to be navigated within these diverse legal terrains. The universal application of AI tools becomes a subject of contention, given the variations in legal, ethical, and cultural norms across different jurisdictions.

In conclusion, as we tread this uncharted territory, the dual narrative of AI’s promise and its associated ethical and legal challenges will be the compass guiding this exploration. It is an unfolding narrative,

10 Ronja Ganster et al., *Accountability and Rule of Law* (German Marshall Fund of the United States, pp. 35–43, 2022).

11 Will Knight, “The Dark Secret at the Heart of AI” *MIT Technology Review*, Apr. 11, 2017, available at: <https://www.technologyreview.com/2017/04/11/5113/the-dark-secret-at-the-heart-of-ai/> (Last Visited on Sep. 20, 2023).

one that will shape and be shaped by the continuous evolution of both AI technology and international criminal law.

International Perspectives

Europe

In the European context, the interplay between artificial intelligence and legal systems is marked by a careful balancing act between innovation and rights preservation. European legal landscapes, rooted in the civil law tradition, emphasize the protection of individual rights, data privacy, and the ethical deployment of technology. *The European Union's "General Data Protection Regulation (GDPR)"* is a testament to this ethos, establishing rigorous standards for data protection and privacy.¹²

The integration of AI in the European judicial systems is approached with a lens of caution and scrutiny. For instance, in criminal proceedings, AI tools like predictive policing are employed, yet they are subject to stringent oversight to mitigate biases and ensure fairness. The utilization of AI in evidence analysis is also governed by legal provisions ensuring transparency and accountability.¹³

In countries like the United Kingdom, AI applications in law have been met with both enthusiasm and caution. AI's potential to streamline case backlog and enhance efficiency is recognized, yet ethical considerations, particularly those related to bias and transparency, are paramount.¹⁴ For example, the UK's *"Data Protection Act 2018"* reinforces individuals' rights against automated decision-making and profiling, ensuring that AI applications in legal contexts are balanced by considerations of fairness and transparency.¹⁵

Asia

The Asian perspective on the incorporation of AI in criminal law is as diverse as the continent itself, characterized by a spectrum of approaches

¹² EU General Data Protection Regulation (GDPR), Regulation (EU) 2016/679 of the European Parliament and of the Council (Apr. 27, 2016).

¹³ Cryer et al., *supra* note 4.

¹⁴ Select Committee on Artificial Intelligence, Report of Session 2017–19: *AI in the UK: ready, willing and able?* (House of Lords, 2018).

¹⁵ Data Protection Act, 2018 c. 12.

influenced by distinct legal, cultural, and social contexts. Countries like Japan and South Korea are at the forefront of technological innovation, yet their engagement with AI in the legal domain is marked by prudence.

Japan's approach to AI in law is informed by its civil law system and societal values that prioritize privacy and individual rights. AI applications in Japanese legal systems are emerging yet are bound by legal and ethical frameworks that ensure these technologies are aligned with societal norms and legal standards.¹⁶ For example, AI is being considered to enhance efficiency in evidence review and case management but is approached with measures to ensure transparency and ethical use.¹⁷

China presents a contrasting narrative, with a rapid embrace of AI technologies yet with concerns related to privacy and rights protection. AI is extensively employed in surveillance and public security, and its integration into the legal system is marked by efficiency and state control. *The Chinese government's "New Generation Artificial Intelligence Development Plan"* underscores the nation's ambition to lead in AI, yet it raises global concerns about human rights and ethical standards.¹⁸

In India, a common law country, the intersection of AI and law is nascent. AI's potential in augmenting legal processes is acknowledged, yet the legal frameworks and policies governing its use are still evolving. Initiatives like the *"Responsible AI for Social Empowerment" project* underscore the commitment to balance technological innovation with ethical and legal considerations.¹⁹

¹⁶ Netherlands Enterprise Agency, *Artificial Intelligence in Japan 2020* (Ministry of Economic Affairs and Climate Policy, 2020).

¹⁷ *Ibid.*

¹⁸ China Association for International Science and Technology Cooperation, *Next Generation Artificial Intelligence Development Plan* (Department of International Cooperation, Ministry of Science and Technology, Peoples Republic of China, 2017), available at: <http://fi.china-embassy.gov.cn/eng/kxjs/201710/PO20210628714286134479.pdf> (Last Visited on Oct. 2, 2023).

¹⁹ Press Release, Prime Minister's Office, *RAISE 2020 – Mega Virtual Summit on Artificial Intelligence to be held from October 5-9* (Press Bureau of India, 2020), available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1658758> (Last Visited on Oct. 2, 2023).

Africa

In the diverse continent of Africa, the integration of AI within legal frameworks is a burgeoning development, characterized by a dynamic interplay of opportunities and challenges. African nations, each with distinct legal, social, and economic contexts, are in the preliminary stages of navigating the terrain of AI in legal systems.

South Africa, as an exemplar, is witnessing an incremental incorporation of AI in legal processes, underscored by both enthusiasm and caution. AI's potential in expediting legal processes, enhancing accuracy in evidence analysis, and mitigating the backlog of cases is acknowledged. However, the nation's historical and socio-political context necessitates a meticulous approach to ensure that AI integration aligns with the imperatives of justice, equality, and rights preservation.²⁰

Moreover, the ethical and legal challenges posed by AI, including biases, transparency, and accountability, are particularly salient in the African context. Given the continent's historical backdrop, marked by colonialism and its attendant inequities, the integration of AI is not just a legal and technological endeavour but is imbued with social and ethical dimensions. "The African Declaration on Internet Rights and Freedoms" is indicative of the continent's commitment to ensuring that digital technologies, including AI, are harnessed within the paradigms of human rights and social justice.²¹

The Americas

In the Americas, the narrative of AI within legal contexts is diverse, marked by advanced integration in the North and emergent engagements in the South. The United States stands as a vanguard in the incorporation of AI in legal processes. AI's role in evidence analysis, predictive policing, and judicial decision-making is well-established, yet it is continually evolving amidst ongoing debates around ethical and legal challenges.²²

20 Nathaniel Allen, "The promises and perils of Africa's digital revolution" *BROOKINGS*, Mar. 11, 2021, available at: <https://www.brookings.edu/articles/the-promises-and-perils-of-africas-digital-revolution/> sentencing (Last Visited on Oct. 3, 2023).

21 African Declaration on Internet Rights and Freedoms, African Internet Governance Forum (2013).

22 R. Susskind and D. Susskind, *The Future of the Professions*:

In the United States, the dialogue around AI in law is characterized by a tension between technological innovation and rights preservation. The nation's common law tradition, marked by precedent and adaptability, provides a fertile ground for AI's incorporation. However, issues related to biases, discrimination, and the rights of the accused in the context of AI-driven processes are subjects of intense scrutiny and debate.²³ For instance, *the COMPAS software*, used by U.S. courts to assess the likelihood of a criminal defendant's reoffending, has been revealed to be biased against African Americans.²⁴

South America, conversely, is in the nascent stages of this journey. Countries like Brazil and Argentina are exploring the potential utilities of AI in legal systems amidst challenges related to technology access, legal reforms, and ethical considerations. *The Inter-American Court of Human Rights* provides a regional framework, yet the specific contours of AI's integration are still in the process of formulation.²⁵

Thus, in continents and nations across the world, the future of AI in legal systems is an unfolding narrative. It is being shaped by technological advancements, legal reforms, ethical considerations, and the continuous dialogue between the diverse stakeholders involved.

NAVIGATING THE ETHICAL AND LEGAL LABYRINTH

Policy Proposals

In the dynamic milieu where AI intersects with international criminal law, an urgent call for robust, nuanced, and globally informed policy initiatives is echoed. These policies must not only respond

How Technology Will Transform the Work of Human Experts (Oxford University Press, 2019).

23 *Ibid.*

24 Julia Angwin et al., "Machine Bias" *ProPublica*, May 23, 2016, available at: <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> (Last Visited on Oct. 3, 2023).

25 Derechos Digitale, *A Latin American perspective on the use of AI systems by the State* (2021), available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/DigitalAge/Submissions/CSOs/Derechos-Digitales.pdf> (Last Visited on Oct. 4, 2023).

to technological advancements but also to ethical and legal complications, ensuring the sanctity of justice is not compromised. Drawing insights from the strengths and challenges of diverse international perspectives previously delineated, some recommendatory steps towards the building of said policies could be as outlined hereunder:

Adaptive Regulatory Mechanisms

AI's rapid evolution necessitates regulatory mechanisms to be equally adaptive. Policies should be designed with built-in flexibility to accommodate technological advancements and emerging ethical challenges.

Ethical Congruence

A universal ethical framework, transcending national and regional boundaries, could foster ethical congruence in AI applications globally. By establishing core ethical principles, rooted in human rights and justice, this framework would serve as a foundational guide for developing and deploying AI in criminal law contexts, ensuring ethical integrity.

Anticipatory Governance

AI's future trajectories, though uncertain, can be navigated effectively through anticipatory governance. Policies should not only address current challenges but also anticipate future ethical and legal dilemmas. Scenario planning, ethical foresight, and stakeholder engagement can inform policy development, ensuring preparedness for emerging challenges.

Enhanced Transparency

Transparency stands as a cornerstone in addressing the ethical challenges inherent in AI applications. Inspired by Europe's GDPR,²⁶ a universal standard that mandates the explicit delineation of AI algorithms and decision-making processes is proposed. Such transparency will facilitate a critical examination, ensuring that biases, both explicit and implicit, are identified and mitigated.

Stakeholder Collaboration

A multi-stakeholder collaborative approach is crucial. Policies should encourage collaborations amongst governments, judicial institutions, international

bodies, tech industries, and civil societies. Such synergy can facilitate the sharing of expertise, ethical insights, and legal perspectives, fostering comprehensive and balanced AI integration policies.

Public Literacy and Awareness

Enhancing public literacy on AI is essential. Policies should promote educational initiatives to increase public understanding of AI's possible uses and associated challenges. An informed public can actively participate in dialogues and decision-making processes, contributing diverse perspectives to the policy discourse.

Technology Ethics Committees

Establishing Technology Ethics Committees at national and international levels can oversee AI integration. Comprising experts from legal, ethical, technological, and social domains, these committees can evaluate AI applications for their ethical and legal alignments, ensuring informed and balanced integrations.

Data Privacy and Security

Given AI's reliance on data, policies ensuring data privacy and security are paramount. Regulations should enforce stringent measures to protect individuals' data, prevent unauthorized access, and ensure that AI's data utilization aligns with ethical and legal standards while being deployed during criminal investigations and trials.

AI in Judiciary Training Programs

Initiating specialized training programs for legal professionals to equip them with the necessary skills and knowledge to navigate the AI-augmented legal landscape. This would ensure informed judicial decisions, maintaining the sanctity of justice amidst AI integration.

AI Audits

Implementing mandatory AI audits to evaluate the ethical and legal alignments of AI applications regularly. These audits, conducted by independent bodies, can ensure transparency, accountability, and ethical integrity in AI's applications in international criminal proceedings.

Legal Frameworks

The allure of AI in enhancing the efficacy of international criminal proceedings is undeniable. However, as previously discussed, this allure is tinged with discernible challenges rooted in ethical and legal conundrums. Thus, the development of legal frameworks alongside policy proposals emerges as a quintessential element, where they are formulated not merely as statutory instruments, but as meticulously crafted legal architectures designed to harmonize AI's transformative potentials with the unyielding imperatives of international human rights and criminal justice principles. Some suggestive examples are as follows:

Evidence Collection Frameworks

In the realm of evidence collection, the focus needs to be primarily anchored on the ethical handling of data. Policies should be stringent, ensuring that every AI application is transparent and adheres to ethical norms. The integration of AI ought to be closely scrutinized to align with privacy standards akin to GDPR,²⁷ with human oversight being a fundamental component to validate the authenticity and ethical adherence of AI-generated evidence.

Witness Protection Protocols

For witness identification and protection, AI's deployment should be guided by protocols ensuring security and anonymity. Guidelines need to be tailored to mirror the resilience and security embedded in established witness protection programs. This ensures that AI aids the process while uncompromisingly upholding the sanctity of witness security and the integrity of their testimonies.

AI Standards in Forensic Analysis

In forensic analysis, AI's adoption should be governed by standards ensuring both scientific rigour and ethical compliance. These standards ought to ensure that AI's role is validated for accuracy, impartiality, and adherence to the ethical norms intrinsic to the forensic science landscape.

AI Deployment in Trial Proceedings

The infusion of AI into judicial proceedings should be governed by an ethics code ensuring fairness,
²⁷ *Ibid.*

transparency, and justice. Judicial oversight needs to be enshrined in these protocols, mandating human review in all AI-assisted decisions. Every piece of AI-generated evidence and decision should be subjected to rigorous scrutiny, ensuring not just the delivery but also the manifest appearance of justice.

Sentencing Frameworks

In the realm of judgment and sentencing, protocols ensuring ethical, fair, and just outcomes should govern AI's integration. Transparency in AI-assisted sentencing needs to be mandated, with clear provisions for reviewing and appealing such decisions, ensuring an unwavering commitment to the principles of justice, fairness, and equity.

Post-Trial AI Standards

AI's role in post-trial reviews should be guided by ethical standards ensuring justice, fairness, and the protection of rights. These standards need to mandate the ethical employment of AI in reviewing evidence and judgments, ensuring that the rights of both the accused and victims are upheld.

Global Oversight

A mechanism for global oversight of AI in international criminal law should epitomize international cooperation, knowledge sharing, and standard-setting. It should embody collective wisdom and global solidarity, crafting AI ethics and legal frameworks that are robust and reflective of diverse international perspectives and norms.

Adaptive Laws

Given the dynamic nature of AI, concerned laws should be adaptive and responsive. They need to evolve by incorporating global insights and technological advancements continuously, refining and enhancing the legal landscapes governing AI in international criminal law.

CONCLUSION: FUTURE TRAJECTORIES

The trajectory of AI's integration into international criminal law is poised on a precipice of significant transformation, where the harmonization of technological innovation and legal-ethical

imperatives is not just aspirational but fundamentally essential. As AI's capabilities continue to burgeon, so too do the challenges of the ethical and legal landscapes that they inhabit. The future, although replete with promise, is also fraught with challenges that demand multifaceted, dynamic, and globally concerted solutions.

In the forthcoming era, AI is anticipated to play a pivotal role in expediting and enhancing the processes of evidence gathering, analysis, and trial proceedings. Yet, this ascendancy is not unbridled but is instead shackled by stringent ethical and legal imperatives. AI's potential to augment the precision, efficiency, and fairness of international criminal proceedings is substantial. However, it is the balancing act between these potential augmentations and the inviolable principles of justice and human rights that will define the future landscape of international criminal law.

International legal frameworks need to morph and become more adaptive and responsive. Ethical considerations, rooted in the principles of justice, fairness, and equity, must not merely be peripheral but central to the discourse surrounding AI's integration.

In closing, the journey towards a harmonious integration of AI within the realms of international criminal law is characterized by both immense potential and intricate challenges. This pathway calls for more than the amalgamation of legal acumen and technological advancements; it demands an unwavering commitment to ethical scrutiny and moral integrity. The task ahead is not solitary but collective, inviting the collaborative efforts of legal scholars, technologists, ethicists, and policymakers across the globe. It is an expedition that, though arduous, holds the promise of heralding an era where justice, truly and unconditionally, is not just done but is unequivocally seen to be done.

