

# **LAWS and the Risks of IHL extension**

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# Extension of Proportionality

- IHL mandates that “those who plan or decide upon an attack shall refrain” when they may expect to cause “incidental loss of civilian life, injury to civilians, or damage to civilian objects” in excess of the direct military advantage anticipated (Art 57, API)
- Question is not whether LAWS could make this balance but rather how proportionality would work when human commander must decide whether or not to deploy LAWS

# Extension of Proportionality

- Human commander must estimate “incidental loss” to civilians caused by LAWS, and whether or not that would be in excess of the advantage anticipated
- The difficulty with LAWS: autonomous, hence non-deterministic, hence necessarily involve uncertainty
- Extending IHL to AWS requires to set standards regarding sufficient knowledge, or non-culpable vs culpable ignorance

# Risks

1. Defining “sufficient knowledge” and gaining sufficient “epistemic confidence” about performance of LAWS would take considerable investment and testing. It may be very tempting to opt for expediency
  - There is no equivalent to impartial consumer protection agencies that would protect vital interests of civilians from LAWS

# Risks

2. Fundamental rules of IHL are open-ended principles which appeal to criteria such as reasonableness and feasibility. These are legal keywords that call for human judgment, and as such vague and open-ended
  - They may end up incorporating preferences of stronger powers for shifting risks away from own forces and enjoying economies in testing
  - High damage to civilians will come to be treated as proportional; higher uncertainty will be found admissible

# Risks

3. While in principle possible to attribute responsibility fairly to human beings, in practice it may require defining specific roles within a complex web of industrial-military production and use
  - Unless deploying states are willing to define certain roles as those responsible for impact of LAWS, the nightmare of unaccountable robots killing innocent civilians may become reality