

# *AWS* and the Obligation to Exercise Discretion

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# Four General Claims:

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- (a) Modern warfare is a form of governance, meaning, a use of executive public powers vis-à-vis individuals;
- (b) Modern warfare thus spawns administrative-legal obligations (administrative law = norms that govern executive decision-making);
- (c) When AWS are deployed, executive power is in fact exercised without proper discretion, since AWS are programmed in advance and cannot exercise “true” discretion (a case of pre-bound discretion);
- (d) Administrative law standards should inform and complement existing standards of IHL; they impose “residual” constraints concerning decision-making.



# What does the administrative legal perception of warfare require during hostilities?

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- The duty to take “constant care” in order to fulfill IHL requires to exercise continuous discretion during hostilities;
- Continuous discretion excludes binding one’s discretion in advance.
- Autonomous targeting contravenes this duty, since in an out-of-the-loop scenario, the last “decision” is made by the AWS based on predetermined algorithms

# Counterarguments?

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- Is the human discretion of the programmers enough?
- Is the human discretion of the deploying commander enough?
- Does an *AWS* that “freezes” in complex situation solve the problem?
- Does the problem of discretion arise in “traditional” battlefields (no civilians around) or in “uncluttered” environments (only combatants are at risk)?