

# Accountability for Lethal Autonomous Weapons Systems under International Humanitarian Law

Cecilie Hellestveit\*

## Introduction

Lethal autonomous weapons systems (LAWS) have two characteristics that challenge traditional rules of the international law of armed conflict, in the following referred to as international humanitarian law (IHL). LAWS expand the distance in time and space between the soldier and his military target by introducing a weapon that has its own agency. This allows for dislocating the link between the two sides to the point where it may be pertinent to suggest that LAWS is *replacing* the soldier in the hostile interaction. A number of questions concerning accountability under IHL consequently arise, including the question of whether machines *can* replace soldiers in the chain of command without distorting the entire system of IHL.

Rules of accountability under IHL refer to hierarchical command structures inherently required by IHL, rules of individual responsibility, and of state accountability. These rules serve to strengthen compliance and enforce rules of IHL by identifying who is accountable in case IHL is violated. IHL is distinguished from other legal frameworks applicable to the use of force because it governs and restricts an activity that by nature is *reciprocal*. IHL may only apply if there are two (or more) parties to an armed conflict that engage in mutual exchanges of hostile acts.<sup>1</sup> These norms regulate the encounter between two military hierarchies and adjacent structures. Often, this encounter takes place in the form of a physical meeting between two enemy fighters. The question posed here is what happens to the norms of IHL and its system of accountability when man fights with machines or against machines that have agency, in the sense of a capacity to make choices and act without human involvement in the hostile encounter.

The ability of a robotic system to address many questions and evaluations that are necessary for complying with IHL would require a level of programming and technical complexity beyond current technology, and perhaps even beyond that envisaged for the near future. This chapter does not evaluate the probability of such an evolution but instead focuses

\* International Law and Policy Institute, Oslo; Atlantic Council, Washington DC.

1 See Common Art. 2 and 3 to the Geneva Conventions I-IV of 12 August 1949.

on the nature of IHL, the effects that introduction of LAWS is likely to have for rules of accountability in IHL in specific scenarios, and how LAWS are likely to challenge and potentially distort the existing regime of accountability under IHL.

For the sake of simplicity, this analysis will be limited to the use of autonomous weapons in conflicts that arise between states, and that consequently fall under the scope of application of Common Article 2 to the four Geneva Conventions.<sup>2</sup> Additional Protocol I to the Geneva Conventions (API)<sup>3</sup> applies to such conflicts, either by way of ratification, or by way of custom in as far as the main provisions relevant to LAWS expressed in API are declaratory of customary international law.<sup>4</sup> These principles apply irrespective of the means or methods of war utilised, and consequently apply to any use of LAWS in offence or defence in the course of an armed conflict.<sup>5</sup> The separate problems that may arise if LAWS are applied in law enforcement operations will not be addressed.

### Accountability for violations of IHL – a delicate system

Rules of accountability under IHL have two distinct purposes. Firstly, they distribute responsibility for acts of war *within* the party to the armed conflict (1). Secondly, they distribute responsibility for certain effects of acts of war *between* the two adversary parties (2).

(1) The rules of accountability presuppose that a military organisation exists on each side that is responsible for the conduct of the party. IHL does not regulate anarchic violence, but is dependent on a certain level of hierarchy within each party.<sup>6</sup> A chain of command is a prerequisite for the very application of the rules of IHL. While this is made explicit for application of IHL in non-international armed conflicts,<sup>7</sup> it is a requirement inherent in Common Article 2's reference to a High Contracting Party, i.e. a state. It is the responsibility

2 The provisions apply to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties”.

3 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict, adopted on 8 June 1977, entered into force on 7 December 1978 (API).

4 ICRC, Customary International Humanitarian Law, Volume I: Rules, Cambridge 2005; U.S. Department of State, 3 Cumulative Digest of United States Practice in International Law, 1981-1988, paras. 3434-35.

5 Art. 49 API.

6 Art. 80(2) API: each party “shall give orders and instructions to ensure observance [of IHL] and shall supervise their execution”.

7 Art. 1(1) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict, adopted on 8 June 1977, entered into force on 7 December 1978 (APII): “organized armed groups [...] under responsible command”.

of a party to have a system that enables compliance with IHL.<sup>8</sup> The system is outlined in Article 43 API. The Protocol stipulates a chain of accountability for compliance with IHL within the party along the lines of command. A military organisation enables a *chain of command* going from the top to the bottom, and a corresponding *chain of accountability* going from rank and file to the military commander.

Under a traditional command system, a broad array of enforcement mechanisms intends to prevent IHL violations, ranging from disciplinary sanctions by the party for soldiers disobeying orders,<sup>9</sup> via punitive measures imposed by the party for the behaviour of a soldier or a group of soldiers, to the prospect of criminal liability in case of capture by the enemy belligerent. If a soldier captured by the enemy has complied with IHL, he may not be prosecuted for his hostile acts on account of the privilege of having combatant status.<sup>10</sup> If the soldier has violated certain duties of IHL, however, such as the requirement not to blend in with civilians, he may nevertheless be prosecuted for his hostile acts.<sup>11</sup> If he has committed grave breaches of IHL, his privilege of immunity as a combatant does not protect him from prosecution for these crimes. He must stand trial for such violations by the belligerent adversary in case of capture, or by his own state upon return.

API is premised on a chain of command consisting of individuals with responsibility who can be identified directly or by way of command responsibility, and who can be held accountable for IHL violations and suffer individual sanctions.<sup>12</sup> While there is individual accountability for grave breaches of IHL, commanders are likewise responsible for breaches by their subordinates if they knew, or should have known, about relevant misconduct, and did not take all feasible measure within their power to prevent or repress the breach.<sup>13</sup> In cases where IHL violations amount to grave breaches of the Geneva Conventions and API, the party will be obliged to either prosecute or extradite those responsible to other countries or institutions in

8 Art. 86(1) API: the party shall “require military commanders, with respect to members of the armed force under their command and other persons under their control” to “prevent [...] and suppress” breaches of IHL.

9 Art. 87(3) API.

10 R. Baxter, So-Called ‘Unprivileged Belligerency’: Spies, Guerrillas and Saboteurs, 28 *British Yearbook of International Law* 323 (1951).

11 Art. 44 and 46 API.

12 Art. 49 Geneva Convention I; Art. 50 Geneva Convention II; Art. 129 Geneva Convention III; Art. 146 Geneva Convention IV.

13 Art. 86(2) API; under customary law, the *mens rea* element is that the commander “knew or had reason to know” that subordinates were about to commit or were committing a war crime. See ICRC (n 4), Rules 152 and 153. Under the Rome Statute of the ICC, command responsibility covers situations where the commander “either knew or, owing to the circumstances at the time, should have known” that forces were about to commit or were committing war crimes; see Article 28(a)(i) of the Rome Statute of the International Criminal Court, adopted on 17 July 1998, entered into force on 1 July 2002.

order to ensure prosecution. Identifying accountability for acts linked to the armed conflict within this chain of command is supposed to be an *intuitive* undertaking. Every soldier must be aware of his obligations under IHL. This is supposed to reduce the scale and nature of IHL violations.<sup>14</sup> Correspondence between the chain of command and the chain of accountability is essential for the system of IHL to function properly.

LAWS may have certain qualities that resemble those of a human soldier. However, LAWS cannot be held accountable in the sense of IHL.<sup>15</sup> Consequently, the following question arises: *who will assume accountability in their place?* If LAWS are the agent, which soldier will have to assume responsibility for the acts of LAWS *within* the party to the armed conflict? LAWS are complicated systems, where numerous persons and entities are responsible for proper functions and effects – some of which are outside of the traditional chain of command. While this trespassing of the chain of command is a common feature of modern warfare, when associated with LAWS it exposes the accountability regime of IHL to even more pressure, since the entity equipped with agency on the battlefield *cannot* be held accountable.

(2) In the encounter between two enemy parties to an armed conflict, IHL establishes certain principles and rules that apply *reciprocally*, meaning that provisions of IHL apply *with equal force to both parties*. This extends to the principle of distinction, the rule on proportionality, the duty to take precautions in attack, and the prohibition to cause unnecessary suffering or superfluous injury. The obligations are accompanied by corresponding duties of precaution in defence.<sup>16</sup> These principles apply irrespective of the behaviour of the adversary, since humanitarian rules are not subject to reciprocity as enforcement mechanism.<sup>17</sup> When the adversary party is in breach of its obligations under the rules of conduct of hostilities, this may alter certain rules of accountability.

With respect to rules of conduct of hostilities, in some very specific circumstances, such as immunising military objectives by using involuntary human shields, the use of child soldiers, or the feigning of civilian immunity, accountability for the unlawful effects will

14 Art. 87(2) API.

15 K. Egeland, *Lethal Autonomous Weapons Systems under International Humanitarian Law*, 85 *Nordic Journal of International Law* 89 (2016).

16 Art. 58 API.

17 Art. 60(5) of the Vienna Convention on the Law of Treaties, 1969, entered into force 27 January 1980, precludes a state from suspending or terminating for material breach any treaty provision “relating to the protection of the human person contained in treaties of a humanitarian character”. See also Article 51(8) API, recalling that indiscriminate attacks do not release the Parties from their obligations. Belligerent reprisals are still permissible, but subject to stringent restrictions. They are proscribed against protected persons.

not rest with the party using force, but will be placed on the adversary party. The objective of this distribution of accountability between the parties is to protect the rules of IHL from being undermined by parties exploiting protection under IHL in order to gain military advantages that would undermine respect for IHL itself, to the detriment of all. This 'shift' of accountability from one party to the other is a part of the internal enforcement mechanisms of IHL, and a way to prevent abuse and the weakening of IHL protections over time.

Rules of accountability for violations of IHL are hence not merely a set of singular rules put together by chance, but constitute a rather delicate system that distributes accountability *within* a party to an armed conflict and *between* the parties to the armed conflict for the purpose of enhancing and preserving respect for these rules to the benefit of all. If LAWS perform the tasks of soldiers, how will this affect the distribution of accountability *between* the parties?

In the following, a closer look is taken at how LAWS must be expected to influence, distort, and affect this system of accountability for IHL violations. Three archetypical violations of IHL by LAWS are likely to present different problems. LAWS may violate IHL by intention of the party, by design, or by accident. The main emphasis will be on the last point, where the major difficulties linked to LAWS are expected to arise.

### Violation by intention: LAWS violate IHL as a deliberate effect

A party may use LAWS to conduct hostilities in a way that intentionally contradicts or ignores IHL. In such a scenario, most rules of accountability for IHL violations will apply in ordinary ways.

LAWS may be intentionally programmed to directly target civilians, civilian objects, or persons *hors de combat*, in which case they will violate the principle of distinction.<sup>18</sup> LAWS may alternatively violate the prohibition on indiscriminate attacks if they are programmed in ways that strike military objectives and civilians or civilian objects without distinction, either because LAWS do not or cannot direct attacks at specific military objectives,<sup>19</sup> or because LAWS have effects of a nature that is indiscriminate.<sup>20</sup>

18 Art. 51(2) and 52(1) API; Common Art. 3(1) GC.

19 Art. 51(4)(a) and (b) API.

20 Art. 51(4)(c) API.

The duty of precaution in attack extends responsibility for IHL violations to those who plan or decide upon an attack.<sup>21</sup> It imposes duties on the soldier launching the LAWS, and the commander, according to traditional rules of accountability under IHL as described above. This duty of precaution may also extend to the programmer, who does not plan or decide upon an attack, but whose contribution determines the agency of the LAWS.

In such situations, therefore, the ordinary rules of accountability for IHL violations will apply to the use of LAWS. These violations may amount to grave breaches of the Geneva Conventions,<sup>22</sup> and are regarded as war crimes.<sup>23</sup> This entails responsibility by the Party for the violation (i.e. state responsibility),<sup>24</sup> individual responsibility for those responsible for preparing and programming the LAWS in ways that would violate or ignore the rules,<sup>25</sup> and possibly command responsibility for the military commander.<sup>26</sup> Consequently, commanders and civilian supervisors can be held accountable for these war crimes if he or she “knew or should have known” that the autonomous weapons system had been programmed in such a way.<sup>27</sup> Accountability, in the sense of holding states and individuals responsible, when a party *intentionally* violates or disregards IHL by using LAWS is not likely to pose problems out of the ordinary. In this sense, LAWS are a weapon like any other.

### Violation by design: LAWS lack the ability to comply with certain aspects of IHL

LAWS may lack the ability to comply with IHL. Accountability under IHL applies to LAWS on an equal footing with other means of war. LAWS are consequently subject to review under Article 36 API for the purpose of determining whether the employment of a given type of LAWS would, in some or in all circumstances, be prohibited under IHL applicable to the party. This is an obligation that applies to State Parties to the API; its status as a norm of customary international law is currently unclear. The review must assess whether a specific type of LAWS is designed, manufactured, or programmed in a way that may cause effects that are unlawful under international humanitarian law, more specifically whether the

21 Art. 57(2)(a) API.

22 Art. 85(3)(a)-(f) API.

23 Art. 85(5) API; see also the corresponding rules under the Rome Statute for the ICC. It is perceived to be declaratory of custom that violation of these rules in international armed conflicts will amount to war crimes.

24 See International Law Commission, Draft Articles on State Responsibility for Wrongful Acts; Art. 91 API.

25 Art. 87(3) API.

26 Art. 86(2) API.

27 M.N. Schmitt, Autonomous Weapon Systems and International Humanitarian Law: A Reply to the Critics, Harvard National Security Journal Features, 2013, <http://harvardnsj.org/wp-content/uploads/2013/02/Schmitt-Autonomous-Weapon-Systems-and-IHL-Final.pdf>, p. 33.

weapon can and will comply with the principle of distinction (i.e. the duty to only target military objectives, prohibition against indiscriminate attack, including the rule of proportionality), the prohibition against unnecessary suffering or superfluous injury,<sup>28</sup> and assess its effect in terms of qualified damage to the natural environment.<sup>29</sup>

Review of weapons is compulsory for States Parties to the API. This entails an obligation to assess whether the weapon under ordinary circumstances and use would cause unlawful effects. LAWS may pose problems on account of technical complexities and on account of the level of autonomous agency. These weapons will therefore require extended review, which is likely to include a determination about the level of human control necessary over the weapon, the ability to abort an attack, and reassuring methods to enable a soldier or a military commander to prevent breaches of IHL.<sup>30</sup> The higher the level of autonomy, the more extensive the review and the more reassuring guarantees are likely to be necessary under Article 36 API.

### Violation by accident: LAWS incidentally violate IHL

LAWS's ability to have agency and to act with a certain level of autonomy introduces a range of new ways in which a weapon may violate IHL, not by intention or design, but by varying levels of 'accident', in the sense of autonomous agency. These are the situations where LAWS raise the most intriguing and complex problems linked to accountability for IHL violations.

The soldier has autonomy of agency. He has his place in the chain of command with corresponding rights and duties. Rules of accountability under IHL for violations mirror this system. If LAWS increasingly perform some of the tasks commonly executed by the soldier, who will be accountable for the violations of IHL that the LAWS may incidentally commit? If LAWS incidentally direct an attack at civilians in violation of the principle of distinction,<sup>31</sup> or fail to recognise surrender by a combatant *hors de combat*,<sup>32</sup> who is accountable for this violation of IHL? As LAWS cannot themselves be held accountable in the sense presumed under API, who will be held accountable in their stead?

28 Art. 86(2) API.

29 Art. 35(3) API.

30 Art. 87(1) API.

31 Art. 51(2) API.

32 Art. 41(1) API.

Three hostile encounters are reviewed here. The encounter between LAWS and civilians, the encounter between LAWS and enemy combatants, and the hostile encounter between two LAWS.

### LAWS vs. Civilians

The rules on the conduct of hostilities most likely to be exposed to incidental violation in an encounter between LAWS and civilians are those linked to the principle of distinction. This includes the duty of a party to select targets that may be lawfully engaged, and only direct attacks at such targets.<sup>33</sup> If an attack is directed at a lawful target, it must not be expected to cause incidental harm to civilians and civilian objects which is excessive in relation to the direct and concrete military advantage anticipated (i.e. the rule of proportionality).<sup>34</sup> Finally, a party must take all feasible precautions during the entire targeting cycle with the aim of sparing the lives of civilians (i.e. the rule of precautions in attack).<sup>35</sup>

LAWS may incidentally directly target civilians or civilian objects. Alternatively, LAWS may cause disproportionate civilian casualties. The duties to avoid such effects under IHL are framed as *ex-ante* evaluations, prior to and during the targeting cycle. These evaluations are context-specific, and, from the perspective of a machine, very complex. Can LAWS make such evaluations in a meaningful way at all?

The accountability chain of a party under IHL implies that a combatant has individual accountability, while his superiors have command responsibility. The entire system under API is premised on the possibility of identifying individuals who are responsible for the various acts of the party. How will this play out if LAWS have autonomy in the sense of agency?

Firstly, it may be difficult to identify the failure, and consequently to determine which entity bears responsibility for such violations of IHL. When the cause is neither intent nor design, the process of determining who is responsible in place of LAWS for a given violation is likely to be a complex process. Accountability in IHL, in contrast, is expected to be immediate and intuitive in order to have the desired effects of inducing compliance with IHL.

33 Art. 51(2) API.

34 Art. 51(5)(b) API.

35 Art. 57 API.



Secondly, identifying who is accountable is further complicated by the high level of civilian technology involved with LAWS. This distributes the potential for accountability beyond the military chain of command, to a manufacturer or programmer, distorting the correspondence between the chain of command and the chain of accountability in API.

Finally, the large number of individuals and entities involved in the design, manufacture, programming, preparation, and dispatching of LAWS further pulverises individual accountability as envisaged by API. While this is a common feature of manufacture and operation of modern weaponry, the absence of human agency in the hostile encounter when LAWS are involved increases the detrimental effects of pulverisation for questions of accountability.

The way in which a party to a conflict may take measures to prevent such violations by default is by having reassuring procedures of precaution. It is therefore likely that LAWS will further increase the emphasis on duties linked to precautionary measures – in particular the duty to do everything feasible to verify that LAWS are able to distinguish lawful military objectives from persons and objects that enjoy immunity from attack,<sup>36</sup> and the duty to take all feasible precautions in the choice of means to avoid and minimise indiscriminate effects,<sup>37</sup> including the obligation to choose a different weapon in circumstances when violations of IHL might occur. A major hurdle is that precaution in attack is presently among the opaqueness elements of IHL when it comes to accountability for conduct of hostilities.

While many of these violations of IHL are likely *not* to qualify as grave breaches of IHL and war crimes, the distortive effects that LAWS are likely to have on the internal enforcement mechanisms of IHL in international armed conflicts should not be ignored or taken lightly. These dynamics may cause LAWS to have long-time detrimental effects on enforcement of IHL far beyond operations involving LAWS, with serious and potentially devastating effects for the respect for IHL more generally. The current accountability model under IHL is based largely on a logical and intuitive function in the chain of command, mirrored in the chain of accountability. This system will be jeopardised by LAWS, raising questions about the need for a separate system of accountability for operations involving LAWS.

36 Art. 57(2)(a)(i) API.

37 Art. 57(2)(a)(ii) API.

## LAWS vs. Combatants

Problems of a different nature arise when LAWS meet enemy combatants in a hostile encounter. The restrictions that apply to both parties, and by extension their agents, is the prohibition to target a combatant who has been placed *hors de combat* by injury or has given a clearly expressed indication of the intention to surrender.<sup>38</sup> The first question that arises is whether LAWS must be able to identify an enemy combatant who is signalling surrender. If not, LAWS will effectively undermine one of the most important pillars of IHL, namely the right to quarter and prohibition to attack a defenceless combatant – a cornerstone in the rules of IHL that aim to offer combatants an avenue of exit in battle other than the choice of killing or being killed. This is seen to have an important humanising effect, influencing how soldiers approach battle and conduct hostilities. The supposition is therefore that LAWS must be able to identify a soldier clearly expressing indication of intention to surrender.<sup>39</sup>

The next question that arises is whether the combatant has corresponding duties. In classical hostilities with human encounters, the combatant signalling intention to surrender will be under the obligation not to feign immunity and abuse the protection of IHL in order to gain a military advantage.<sup>40</sup> The permission of ruses of war and the prohibition of perfidy are constitutive elements of a delicate system of enforcement of IHL that distributes accountability *between the two parties* for the purpose of strengthening respect and enforcement of the rules of IHL. The basic idea is that there are humans on both sides, and the dynamic between humans must be such that even in the midst of hostilities, a fair balance remains, so *humanity* is preserved.

When one side replaces its frontline agents with LAWS, does this imply that the balance shifts? The party employing LAWS is under an obligation to ensure that LAWS do not violate prohibitions under IHL, including the duty not to target an enemy soldier who is incapacitated by injury.<sup>41</sup> The next question is whether there will be a corresponding obligation on the combatant not to feign incapacitation in the encounter with LAWS. Is man only allowed to fool the machine in ways that can be considered ‘fair’?

38 Art. 41(1) API.

39 Art. 41(2)(b) API.

40 Art. 37(1)(b) API.

41 This is a grave breach amounting to a war crime, see Art. 11(4) API.

If the answer is yes, because the mentioned rationale – that taking advantage of the rules will weaken IHL more generally – applies with equal strength, does this mean that soldiers will be obliged to comply with the rules “as if the LAWS were a combatant”? This would entail that the LAWS takes the place of a combatant in terms of rights and privileges under IHL. And can it be justified that the soldier is expected to treat the LAWS with the same amount of fairness as if the machine were a soldier – for example by observing a corresponding duty on the soldier not to attack the LAWS if it becomes incapacitated. Is it even feasible for the internal enforcement mechanism of IHL of distributing accountability between the parties to function as long as LAWS cannot be held individually accountable? The soldier can be charged with perfidy and may be executed. The LAWS will not face a similar fate.

If the answer is no, because the rules of ruses and perfidy were made for honourable battles between human soldiers, and that a machine cannot be afforded the same privilege, the next question is – what follows from that? Will the soldier be allowed to resort to any measure to *fool* the autonomous weapon? Will the autonomous weapon consequently be forced to adapt to this tactic, pushing programming into a ‘presumption of perfidy by humans’? And how does this influence the level of lawful use of force employed by the machine? How will such a scenario play out for the combatant in the end, and will this not inevitably introduce a sub-set of rules applicable to encounters between human and machine that is different from that for the encounter between human soldiers?

If ordinary rules apply, the combatant is likely to end up at the losing end. Forcing the same rules for human and machine will provide the machine with a comparative advantage, sliding armed conflict between states into patterns of ever stronger asymmetry – always to the detriment of militarily inferior states – alas *without* high human costs for major military powers. It is also likely that this development will affect distribution of accountability between the parties, in the sense that the party relying on humans will end up as the violator of IHL. Over time, the rules on conduct of hostilities in interstate conflicts will increasingly face the dilemmas and quagmires associated with asymmetric, irregular warfare – ultimately to the detriment of all.

If ordinary rules do not apply, this would entail the introduction of a sub-set of norms for LAWS.

## LAWS vs. LAWS

The introduction of a sub-set of norms becomes even more palpable in the event of an encounter between adversary LAWS. Presumably, such a hostile encounter will require programming that in part or in total will exclude humans from the fight. IHL is a system of norms that channels the risks associated with armed conflict in certain directions. The main function is to direct violence away from civilians by allowing for combatants to target and be targeted. When LAWS meet LAWS, humans are in principle out of the equation. Is it then pertinent that the principle of distinction extends to all humans, or that the combination of the prohibition to target civilians be joined by the prohibition of unnecessary suffering or superfluous injury, to construct a ban for machines to directly target *humans* in such battles? If LAWS nevertheless cause unlawful effects, the question of accountability is likely to open a new battlefield – which party is responsible for incidental effects of a battle between their respective machines? The type of accountability for violations of IHL under such a scheme will be very different from IHL accountability as we know it.

This development may effectively result in the *de facto* development of three sub-sets of rules for conduct of hostilities: one for battle between human combatants, a different set for battles when humans meet machines, and a third subset for encounters between machines. It would require a substantially more detailed (and problematic) regulation of hostilities than what is presently the case under international law.

## Concluding remarks

The introduction of LAWS will trigger difficult questions of accountability under IHL. In cases where LAWS are used to commit deliberate violations of IHL, the system of accountability under IHL will work in ways comparable with war crimes committed with other weapons. Ultimately, this is due to the fact that an *intention* may be traced back to one or more humans in charge of the LAWS at some point in time.

The introduction of LAWS as a means of warfare is nevertheless likely to challenge fundamental lines of accountability under IHL. The range of challenges to accountability outlined above are linked to the notion that no identified human within the chain of command is directly accountable for the agency and autonomy of LAWS – causing a cascade of derived effects for how accountability for the rules of conduct of hostilities of IHL is distributed and how it will work out on the battlefield. LAWS will affect the distribution of accountability for violations of IHL *within* a party to an armed conflict. LAWS will also disturb distribution of accountability for violations of IHL *between* the two enemy parties

to an armed conflict. It is submitted that these disturbances are likely to affect the regime of IHL in profound and distortive ways. Over time these dynamics will most probably destroy the underlying, fine-tuned balances and internal enforcement mechanisms of IHL applicable to hostilities in armed conflicts between states – to the detriment of all humans.

