2016 Informal meeting of experts on LAWS
«Criminal responsibility for IHL breaches by (the use) of LAWS»
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3 key questions

1. Role of ICL within the international legal framework?
2. Any LAWS-specific issues under ICL?
3. Need for new rules?
Overview of legal regimes under int. Law

**Ius ad Bellum**
- UN Charter

**Law on State responsibility**

**Ius in Bello**

**International armed conflicts**
- Hague Conventions 1899/1907
- 4 GCs
- AP I

**Non-international armed conflicts**
- Art. 3 common to the GCs
- AP II

**Human Rights**
- UN Declaration
- ICCPR/ICESC
- ECHR
- ....

**Law of Weapons**
- Specific weapons
- Arms Control
- Disarmament

**Int. Criminal Law**
- ICC
- ICTY, ICTR
- Nuremberg + Tokyo
- ....
Crimes under International Criminal Law

- **War crimes**
- Crimes against humanity
- Genocide
- Aggression
Alleged challenges to the applicability of ICL

1. LAWS are machines:
   - They cannot qualify as an “individual”
   - They cannot have a “mens rea”
   - They cannot be “guilty” or “culpable” of something
   - Criminal sanctions do not have the required impact on LAWS

→ Evidentiary problems
→ No legal problem with regard to attribution!
Solutions under criminal law
Individual (direct) responsibility

As long as there is a *man in the loop*, either:

- the **programmer**
- the **deployer**, or
- the **operator**

...can be held accountable for the (mis-)use of LAWS.
Solutions under criminal law
Command responsibility

Commanders + other superiors can be criminally responsible for war crimes

• committed by their subordinates
• if they knew, or had reason to know,
• that the subordinates were about to commit or were committing such crimes
• and did not take all necessary and reasonable measures in their power to prevent their commission,
• or if such crimes had been committed, to punish the persons responsible.
Conclusions

• ICL is one viable option within the framework of int. law
• The legal challenges are not specific to LAWS (eg. evidence)
• ICL will always apply as long as there is a man in the loop
• There is no need for new rules, under ICL.