

# International humanitarian law (IHL) and 'LAWS': is there a need for a new protocol?

## Rio Seminar on Autonomous Weapons Systems

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# Introduction

## ▶ **Autonomy in weapon systems**

- ▶▶ Weapon selects and attacks target without human intervention
- ▶▶ Loss of human control over the use of force

## ▶ **ICRC's core considerations**

- ▶▶ Humanitarian consequences
- ▶▶ Compatibility with IHL

## ▶ **Three key points**

1. Protection is afforded by existing IHL
2. But also significant challenges for IHL compliance
3. Critical questions for legal compliance and ethical acceptability must be urgently addressed



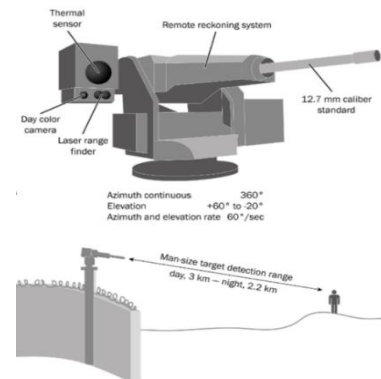
# Protection afforded by existing IHL

## ▶ IHL rules on conduct of hostilities

- ▶ Obligation to distinguish military objectives from civilians/civilian objects
- ▶ Prohibition of indiscriminate and disproportionate attacks
- ▶ Obligation to take all feasible precautions in attack, to avoid or in any event minimize civilian harm

## ▶ IHL requires the (human) commander / combatant to

- ▶ make complex, context-specific value judgements
- ▶ based on the circumstances prevailing at the time of attack
- ▶ predict the consequences of the attack



# Challenges in complying with IHL

- ▶ The **unique characteristics of autonomous weapons** -- loss of human control and unpredictability in the consequences of their use -- present **unique challenges** to complying with IHL and raise profound ethical concerns

## 1. Context-specific value judgements

- ▶▶ the characterization of the target as lawful or unlawful generally involves qualitative judgements
- ▶▶ the value judgements of the commander cannot be reduced to the technical indicators (numerical and quantitative data) used by machines
- ▶▶ for example: IHL definitions of “military objectives” and “proportionality in attack”, which require a weighing up of different values



# Challenges in complying with IHL

**Military objectives:** “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization in the circumstances ruling at the time, offers a definite military advantage”

**Proportionality:** prohibition to conduct an “attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”

- ▶▶ context-based value judgements by those (humans) who plan, decide upon and carry out attacks
- ▶▶ weighing up different qualitative values that change over time



# Challenges in complying with IHL

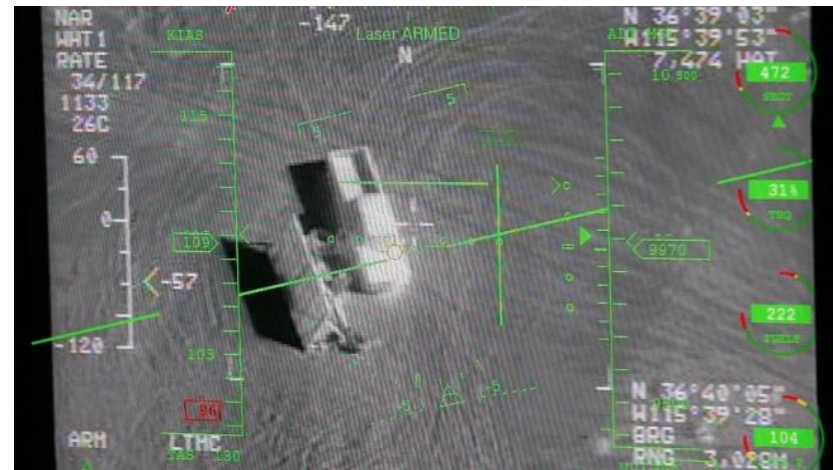
## 2. Unpredictability

- ▶ Autonomous weapons raise concerns about unpredictability, as it is the weapon itself that selects a specific target and the time and location of attack
- ▶ Unpredictability of the weapon and of the environment hinders the commander from properly anticipating and limiting the weapon's effects, as required by IHL
- ▶ Assumption on which the commander plans and decides to attack must remain valid until the execution of the attack
  - ▶ Facts on the ground may have changed between weapon's activation and the moment it selects and attacks the target



# Control measures

- ▶ Three types of control measures to ensure AWS can be used in compliance with IHL:
  - ▶▶ constrain the weapon's targets and tasks
  - ▶▶ constrain the environment and situation of use, including through temporal and spatial limits
  - ▶▶ retain the ability to supervise and intervene in the operation of AWS during the course of an attack





# Critical questions for IHL compliance and ethical acceptability

- ▶ **Build on broad agreement on “human control”**
  - ▶ Determine which elements of human control are needed to ensure compliance with IHL and ethical acceptability
- ▶ **Critical questions:**
  - ▶ Is it legally and ethically acceptable to develop and use autonomous weapons designed to use force against persons?
  - ▶ And against objects in areas where civilians and civilian objects are at risk?
  - ▶ What limits should be set on the use of autonomous weapons to address their unpredictability?
    - ▶ Limits on tasks, duration (time-frame) and area (geographical scope)?

