Impact of LAWS on the Law governing Interstate Force (jus ad bellum)

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The Law of Interstate Force:

**Basic Rule:** General prohibition of the threat or use of "force" by States in their international relations (Art. 2.4 UN Charter).

**Exceptions:**
- UN SC Authorization (Chapter VII UN Charter).
- Consent (by territorial State).
- Self-defense in case of an "armed attack" (Art. 51 UN Charter).

**Distinction "Force" / "Armed Attack":**
While any threat or use of "force" by (or against) LAWS belonging to another State is prohibited, not every use of "force" amounts to an "armed attack".

**Example:** Mere territorial intrusion of LAWS may constitute (prohibited) "force" but not necessarily an "armed attack" (justifying counterforce).

**Below the threshold of "Force":**
**Examples:** Espionage, Cyber-Operations (DDOS)
**Response:** Judicial, diplomatic, economic, countermeasures, necessity
Frequently Raised Concerns 1:

1. “LAWS may lower the threshold for force and conflict”

As a matter of law:
- Any threat or use of force by (or against) LAWS belonging to another State remains prohibited;
- The use of LAWS does not lower threshold of force required:
  a) for the use of counter-force in self-defense (= “armed attack”)
  b) for IHL/LOAC to become applicable (= “armed conflict”)

As a matter of fact:
- LAWS may lower the attacker’s risk (just as any other superior means / method of warfare)
- LAWS may increase the difficulty of assigning responsibility to individuals (but not to States);
- LAWS may increase the risk of violations in case of insufficient control (just as is the case for human forces).
Frequently Raised Concerns 2:

2. “LAWS will escalate international confrontations”

As a matter of law:
- All States remain obliged to resolve their disputes peacefully.
- All use of interstate force by (and against) LAWS remains subject to the requirements of necessity and proportionality.
- Legal reviews of LAWS must systematically assess and ensure the capacity of LAWS to operate in compliance with these principles.
- States are responsible for any malfunction which was reasonably foreseeable given the system’s inherent capabilities and limitations.

As a matter of policy:
Given that the use of interstate (counter-)force is always a highly delicate issue driven by complex political considerations, the relevant assessments and decisions should not be delegated to LAWS.
Thank you for your attention!

**GCSP Executive Course:**
Weapons Law & Legal Review of Weapons
(“Learning to conduct legal reviews of weapons’’)
- Geneva, 8-12 December 2014
- Other dates & places upon request

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### Spectrum of Escalation

<table>
<thead>
<tr>
<th>1. Lawfulness:</th>
<th>Lawful</th>
<th>Unlawful</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Gravity:</td>
<td>No unlawful Intervention</td>
<td>Non-violent “Intervention”</td>
</tr>
<tr>
<td>3. Examples:</td>
<td>Espionage</td>
<td>Cyber-Attack</td>
</tr>
<tr>
<td>4. Legal qualification:</td>
<td>Peace-time (General international law)</td>
<td>Transition Peace to War</td>
</tr>
</tbody>
</table>
| 5. Lawful defense: | Defensive action short of “Force”:  
  - Judicial, diplomatic & economic sanctions  
  - Otherwise unlawful countermeasures  
  - Measures of necessity (against non-State actors) | Self-Defense:  
  - Military force  
  - Necessity  
  - Proportionality |