

# Realism or Idealism: The Regulation of Lethal Autonomous Weapon Systems through Meaningful Human Control

This article was reviewed by Johannes Hollunder



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## I. Introduction

**The** weapons of war are constantly advancing at a rapid pace and some, like chemical weapons, are deemed so dangerous that their use is banned in armed conflicts around the world (ICRC Database, n.d.a). But the decision to ban certain weapons is not made easily. It requires substantial negotiation and deliberation by international actors. The tool of warfare that has recently come under such scrutiny originates from the technological advancements of the 21st century and is called Lethal Autonomous Weapon Systems (LAWS) (International Committee of the Red Cross, 2022). This paper will analyse the current debate surrounding LAWS to shed light on the conflicts at the heart of the topic to ascertain the likelihood of their regulation and to assess possibilities for the characteristics that such regulation might contain. To achieve this, after defining Lethal Autonomous Weapon Systems, it is first necessary to build a concrete understanding of the actors involved in this process. This will be done through the perspectives of Realist and Liberalist International Relations theory to establish the main arguments of those in favour and against a ban on these instruments of war.

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the 21st century and is called Lethal Autonomous Weapon Systems (LAWS) (International Committee of the Red Cross, 2022). This paper will analyse the current debate surrounding LAWS to shed light on the conflicts at the heart of the topic to ascertain the likelihood of their regulation and to assess possibilities for the characteristics that such regulation might contain. To achieve this, after defining Lethal Autonomous Weapon Systems, it is first necessary to build a concrete understanding of the actors involved in this process. This will be done through the perspectives of Realist and Liberalist International Relations theory to establish the main arguments of those in favour and against a ban on these instruments of war.

From these positions, it is then vital to elaborate on the issue of Meaningful Human Control, the central point of argument in the regulation of LAWS. This will be realized through a consideration of the practical, ethical, and legal issues at the heart of this debate. Furthermore, by employing positivism and legal process theory, this paper will establish two possible approaches to the reception and importance of international legislation aiding in the assessment of this process. Last, through the combination of the International Relations and the International Law perspective, a conclusion will be formed, giving insight into two possible ways that the debate surrounding the regulation of LAWS might develop in the future, clearing a path toward a clear understanding and resolution of the issue. Before commencing the analysis of the actors involved in this debate, it is necessary to define the contested term of Lethal Autonomous Weapon Systems.

One definition of LAWS attaches "the capability to independently compose and select among different courses of action to accomplish goals based on its knowledge and

understanding of the world, itself, and the situation” to these autonomous systems while also integrating clear boundaries in which these actions have to take place (David and Nielsen 2016, p. 4). While this definition provides an idea of the characteristics of LAWS, it does not perfectly encompass and define Lethal Autonomous Weapon Systems, which is the first issue in this debate since different actors utilize different definitions, therefore causing part of the ongoing debate surrounding their regulation.

**Lethal Autonomous Weapon Systems:** Advanced weapon systems that incorporate artificial intelligence to make decisions with no or limited human input. This autonomy raises ethical and practical concerns regarding their effectiveness and safety, making their development and use contested on the international stage.

## II. Actors Explained

Commencing with the analysis of the actors involved, it is vital to do so from two different perspectives, since this enables a dive into the multitude of actors and their motivations. Therefore, both realist and liberalist theory will be utilized to ascertain the different actors involved and the conclusions that can be drawn from their stances and arguments. While the question of weapon development and regulation naturally falls into the domain of the nation-state, the issue of Lethal Autonomous Weapon Systems is highly complex and further involves international (IO) and non-governmental (NGO) organizations. Furthermore, although most nations are in favour of regulating or even banning LAWS, some, like the United States, are

actively developing them while also working against their regulation (Human Rights Watch, 2020). But why are some states against regulation while others are in favor and what role do IOs and their non-governmental counterparts play?

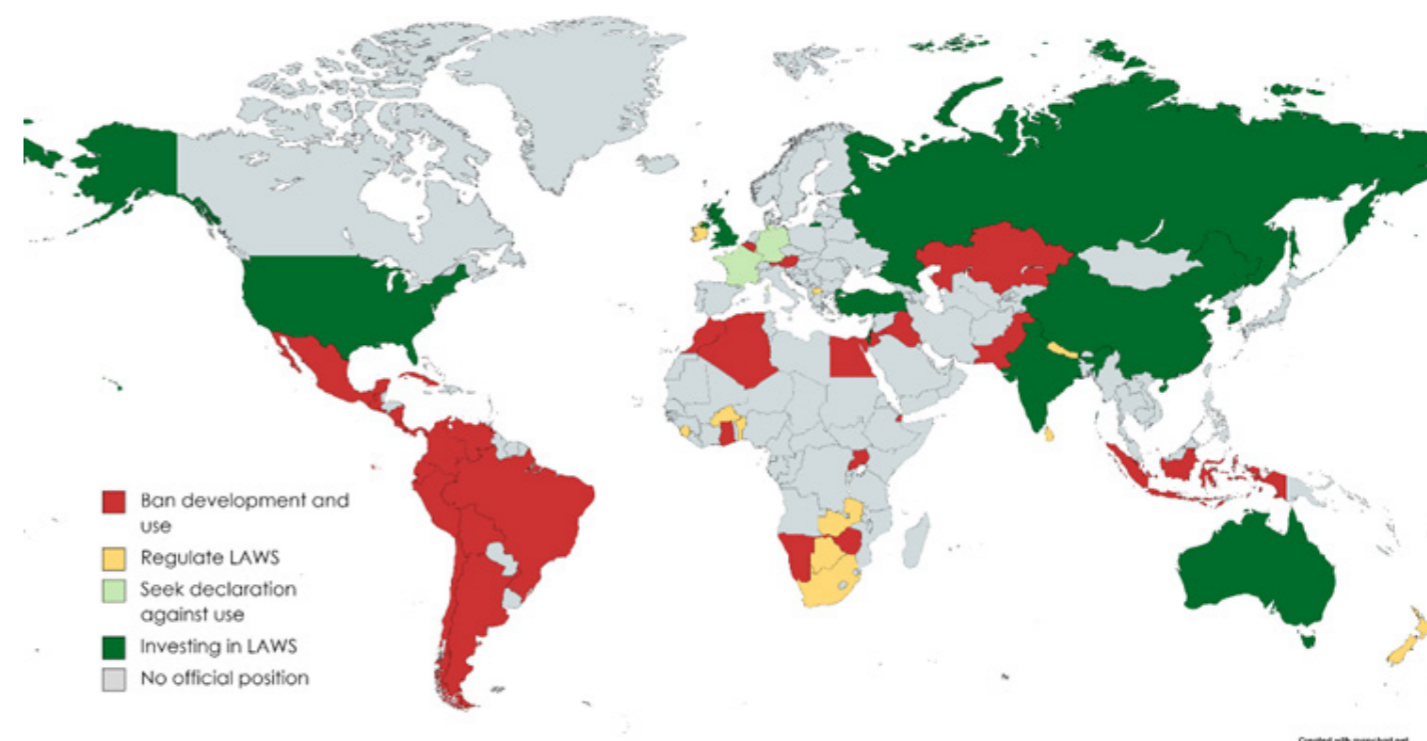
### 1. Realism

Before analysing the actors from a realist point of view, it is necessary to establish its key considerations and assumptions. The realist perspective focuses on nation-states as the primary actors on the international stage and assumes that the lack of a supranational authority results in an anarchical society dominated by hard, military power, and an environment of self-help (Bull, Hurrell, and Hoffman, 2012). This selfishness furthermore creates a lack of trust (Jervis, 1978) which makes long term international cooperation unfeasible since states will always seek to strive for hegemony by maximizing their power, thus creating IOs that only serve as tools for powerful states to further their interests (Mearsheimer, 1994, 12-14). Through these assumptions about the international system, international organizations and NGOs can be disregarded in this analysis, since their actions only reflect the will of the powerful nation-states behind them. Instead, this section will focus on the reasons of those nations developing these weapons to establish their political motivations, while also ascertaining the efforts made by those states that work toward the regulation of LAWS.

Looking at those nations that are in possession of LAWS and those that are actively developing them, commonalities emerge. The Human Rights Watch report “Stopping Killer Robots” ascertained the stance of 97 countries and found that Australia, China, Israel, Russia, South Korea, Turkey, the United Kingdom, and the United States are investing

in the development of LAWS (2020). While these nations seem to have little in common at first glance, through the realist perspective they can be divided into two categories. The first category encompasses those states that are striving for the position of global hegemon. In this conflict between China, Russia, and the United States realist theory emphasizes the primacy of military power, and it is thus no surprise that these actors are against the regulation of LAWS since this would arti-

ficially limit their capabilities in comparison to other nations without the resources to do so as well. Therefore, while acknowledging the need for clear definitions and caution, these nations oppose any concrete legislation beyond the existing framework of international humanitarian law (IHL), even though they emphasize the need for sufficient human control over these weapon systems (Government of China, 2018; Government of Russia, 2017; Government of the United States, 2018).



Source: Human Rights Watch (2020)

The second category on the other hand is not in pursuit of global hegemony but rather, their stance in favour of LAWS stems from a drive for regional hegemony or, in the case of Israel and South Korea, a conflict situation that necessitates the use of all available technologies. Once again, realist theory offers explanations that are grounded in the primacy of state security and the projection of power in their areas of influence. Therefore, these states present similar arguments when discussing Lethal Autonomous Weapon

Systems, which also focus on definitions and existing IHL without arguing in favour of additional legislation (Government of Australia, 2013; Government of Israel, 2014; Government of the Republic of Korea, 2018; Government of Turkey 2016; Government of the United Kingdom, 2013). Furthermore, while these nations argue against any regulation of LAWS beyond existing IHL, other states strongly favour the development of legislation that either ensures Meaningful Human Control (Governments of Austria, Brazil, and Chile 2018), or

bans LAWS outright (Campaign to Stop Killer Robots, 2018). These stances are taken by nations with less military power and developmental capabilities or by those without direct threats to their security. From a realist perspective, it is thus in their interest to prevent other nations from developing a significant military advantage, which explains the stance of those in favour and against the regulation of LAWS from a viewpoint of military power and international anarchy. This points to the conclusion that the states seeking regulation will require sufficient hard power to achieve their objective.

## 2. Liberalism

Moving into the realm of liberalism, the same actors can be assessed differently, therefore creating a different outlook on the LAWS debate. While liberalism also views states as the primary actors in the international system, it focuses on ways that they cooperatively interact with one another through their dependence on other states (Keohane and Nye, 1973). Additionally, instead of the focus on the hard power of realism, liberalism focuses on laws and norms as tools to mitigate the effects of anarchy, an approach that leads to the democratic peace theory, which argues that liberal, democratic states will not fight one another due to their shared values (Doyle, 1997). Therefore, liberalism also considers the importance of international institutions in this cooperative environment since they provide a stage for discussion while also acknowledging that international politics is influenced by domestic discussions (Smith and Ikenberry, 2001).

The liberalist viewpoint thus considers actors beyond the nation-state, as well as different motivations of the governmental ones. While the issue of LAWS is primarily discussed

between states at forums like the Convention on Certain Conventional Weapons, their statements and arguments are supplemented by a range of NGOs that lobby for a ban of these weapon systems (Stopping Killer Robots, 2018). This involvement of other actors highlights the importance of discussion that is present in liberalist theory. This is further supplemented by the extensive debate on this issue that has taken place at the Human Rights Council since 2013 (Human Rights Watch, 2020) and has also prompted calls for regulation from the UN Secretary General (Guterres, 2018). Through this the liberalist notion of values and norms is made clear, as is the importance of international institutions as platforms for mediation. Additionally, the statement by Secretary General Guterres also shows the agency of non-state actors and the impact that they have. Therefore, the liberalist perspective frames this debate through as cooperative where states as the main actors discuss their positions on LAWS through diplomacy to reach a conclusion since they are constrained by international legislation that prevents the use of military power to solve disputes.

## III. Meaningful Human Control

After establishing the key actors in this issue and their motivations, it is now necessary to elaborate on one of the main issues in the debate surrounding the regulation of Lethal Autonomous Weapon Systems, which is the concept of Meaningful Human Control. While there is little consensus on whether regulation of these weapons systems is required or not, the need for sufficient human control over them is broadly accepted, which resulted in a guiding principle on human-machine interaction that ensures the use of LAWS in accordance with IHL (Human Rights Council, 2019). On the other hand, although this represents progress

in the regulation of LAWS, it is not of binding character, and thus this requires an analysis of the core dispute at the heart of this debate and how this integrates into the existing legal framework to then gain insights into the future of this regulatory process.

### 1. Legal Framework

A further aspect that requires consideration is the existing legal framework concerning the limitation and restriction of certain weapons and how it could be used to find a solution in the debate surrounding Lethal Autonomous Weapon Systems. This legal framework can be divided into two separate categories; those laws that govern the use of weapons, and those that ban them outright. Looking at the laws that govern the weapons and methods used in war, there are several key principles that have to be considered. Several of these can be found in Protocol 1 to the Geneva Conventions, first, the principle of Distinction which only allows the use of military force against military targets, this is then followed by a ban of indiscriminate attacks against civilians and a duty to take precautions in attacks that prevent civilian casualties (OHCHR, n.d.).

These principles of international law are at the core of the controversy surrounding LAWS and provide severe challenges for their use. Since these weapons act based on numerical programming, the definition of complex, human focused, terms would have to occur in numerical form while also requiring the ability to reliably differentiate between combatants and civilians. Furthermore, these systems would also be required to predict the consequences of the use of different weapons and variables to gauge the extent of its actions to avoid indiscriminate attacks (Boulanin et al., 2010). It is be-

cause of these challenges that most actors either argue in favour of Meaningful Human Control or a complete ban of LAWS to prevent scenarios in which these weapons are implementing measures unintended by humans.

### 2. Effectiveness or Ethics

These challenges and concerns regarding the development and use of Lethal Autonomous Weapon Systems are addressed through the retention and implementation of Meaningful Human Control. This concept aims to negate the issues faced by LAWS in the context of International Humanitarian Law by integrating procedures through which humans retain sufficient control over these weapons in the realms of target selection, the context of their use, and the ability to intervene to comply with IHL while still utilizing the benefits that this new technology provides (Boulanin et al., 2010, pp. 8-9). While this is partly due to the practical concerns regarding the effectiveness of these weapons, it also reflects the moral concerns that machines killing human beings raises. This consideration creates an argument where effectiveness and ethics stand at odds. Many NGOs raise the concern that this progression in military technology will lead to the dehumanization of warfare and that the agency of warfare should remain with humans and not be delegated to machines (International Committee of the Red Cross, 2022; Human Rights Watch, 2021). These ethical concerns stand in contrast to the argument that LAWS, through their superior capabilities, are able to more effectively adhere to IHL standards and regulations (Government of the United States, 2019). This difference in regard to the use of Lethal Autonomous Weapon Systems once again highlights the differences

between actors and their motivations that were shown earlier, while also providing the foundation for the analysis through theories of international law.

#### IV. Legal consequences

Having established the political dynamics that surround the regulation of Lethal Autonomous Weapon Systems, the next consideration to be made revolves around the nature of international law and the implication that this carries for the regulatory process that is currently underway. This paper will discuss two different approaches to international law in the form of positivism and legal process theory to highlight two paths toward the regulation of LAWS that coincide with the international relations approaches of realism and liberalism, which will serve to create a complete picture of the interaction of international relations and international law.

##### 1. Positivism

Commencing with the positivist perspective, it is first required to establish its position regarding the nature and effectiveness of international law. At the core of this approach to law is the separation of laws and morals, while also emphasizing the hierarchical nature of law (Hart, 1958). Therefore, international law cannot be considered true law from a positivist perspective, since it is a product of self-imposed limita-

tions that can be reversed and not of a coercive nature due to the absence of a higher authority (Jellinek, 1919). This view of international law can explain several issues that can be observed in the process to regulate LAWS. One key issue is the decision-making structure at CCW meetings. There, all decisions have to be made by consensus (Human Rights Watch, 2020) which reflects the absence of a supranational authority that can coerce actors while the focus on the efficiency of LAWS and the seeming disregard for moral considerations by some actors further shows the positivist division of laws and morals.

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Through these observations, the positivist perspective highlights the challenges faced by international law in the process of regulating LAWS since there is little incentive for states to comply with existing, and to negotiate new legislation, due to the absence of binding legislation and serious repercussions.

##### 2. Legal Process Theory

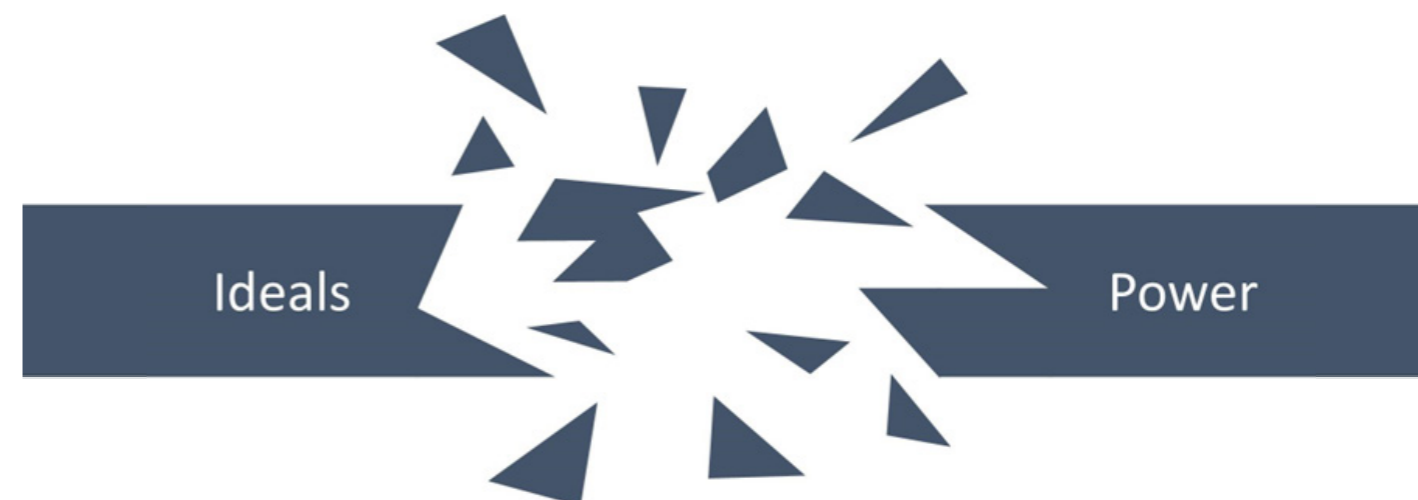
While a positivist approach to international law helps analyse the weaknesses of international law in this debate, it also leaves other facets unanswered. Thus, a look at the legal challenges faced in the regulation of LAWS from the perspective of legal process theory will aid by providing another perspective with different consequences. At the core of this approach challenges the positivist separation of laws and morals, instead viewing them as a combined decision-making process beyond the mere ap-

plication of rules (Higgins, 1995). Furthermore, legal process theory takes on a prescriptive approach based upon liberal values, chief among which human dignity, to argue that this reflects the struggle of different value systems on the international stage (McDougal, 1959). This is then supplemented by a view that international law has a large impact on international relations due to its regulatory powers which states adhere to (Henkin, 1968). Looking at the LAWS debate from this perspective, the continuous discussion can be interpreted positively as the continued exchange of values that build toward a shared norm that can then be implemented as international law. Furthermore, the focus on Meaningful Human Control as a core point of agreement highlights the liberal values of the international system, therefore framing the current debate as a starting point in the process of regulating Lethal Autonomous Weapon Systems, rather than the minimal possible compromise on this issue. This is supported by a glance at past efforts to ban weapons of war, namely the 1997 landmine ban treaty (ICRC Database, n.d.b) which can be viewed as a precursor to this debate due to the autonomous characteristics of landmines, thus setting a precedent for successful cooperation in efforts to limit the use of autonomous weapons.

#### V. Conclusion

In conclusion, the debate surrounding the regulation of Lethal Autonomous Weapon

Systems is characterized by a conflict between ethical concerns and the effectiveness of artificial intelligence in war and therefore be analysed from different perspectives. Realist and positivist theory highlight the anarchical nature of the international system and the importance that hard power plays in the security of states, while also incorporating the absence of coercive measures of the international legal system. Thus, looking at the future evolution of LAWS from this perspective, it is clear that the development of these weapons is not dependent on moral considerations but rather purely on the security of states which will likely result in the development of LAWS by those that either strive for hegemony or those that perceive their security as threatened. Furthermore, any additional legislation on this issue would have little power since it will be the result of a minimal consensus that further relies on enforcement by the very states that are currently developing these weapons. On the other hand, through liberalist and legal process theory, the same situation can be assessed differently. The ongoing negotiations on this issue reflect the willingness of all international actors, state or non-state, to engage in dialogue to achieve a peaceful resolution to this debate that incorporates moral considerations instead of pure military needs into a solution. Additionally, the progress toward Meaningful Human Control as a central element of future LAWS can be



seen as more than a minimal consensus and rather as a starting point in the legal process that enables future legislation on this topic.

Combining both of these theoretical frameworks yields an outlook that combines conflict and cooperation. While the large number of international treaties and legal interactions between states support the liberalist perspective and its cooperative approach, the recent invasion in Ukraine and other conflicts around the world highlight the anarchical and conflictive nature of the current international system, where security of the state will always be of

the highest priority. Therefore, this analysis reveals the duality of the international arena, where conflict is intertwined with cooperation and that international legislation is at the core of this process since states always frame their actions as legitimate. Under this view, the question regarding the regulation of LAWS is grounded in a power struggle of competing views and legislation where Lethal Autonomous Weapon Systems will only be regulated once their capabilities and limitations are clearly established, and public opinion is in favour or against their existence.

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