

# Ensom Prize 2024

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*“The development of lethal autonomous weapons (LAWs), including AI-equipped drones, is accelerating. The UN Secretary-General António Guterres has previously called for their prohibition, under international law. What is the potential role of small nation-states, like New Zealand, in advocating for LAWs regulations and restrictions?”*

Recent improvements in artificial intelligence (AI) and machine learning technologies have hastened calls for the regulation of lethal autonomous weapons (LAWs). United Nations (UN) Secretary-General António Guterres has called LAWs “politically unacceptable and morally repugnant” (United Nations, 2018), pushing for the creation of a legally binding regulatory instrument by 2026 (United Nations, 2023). Regulation is yet to emerge, with negotiations at the Convention on Certain Conventional Weapons (CCW) having created no restrictions, despite many small nation-states desiring such regulation. New LAWs are being deployed in both Gaza and Ukraine (Klare, 2024), with major military powers including the United States (USA), Russia and China all investing into the technology (Department of Defense, 2023; Cameron, 2024).

Though the experimental and developing nature of new LAWs challenges the ability to regulate them, small states must take all possible actions to set the agenda, influence global publics, minimise the harm of LAWs and shift the positions of larger states. Small states can take individual action through norm promotion, with New Zealand having the opportunity to become a strong norm entrepreneur. Additionally, small states can collectively act to regulate LAWs external to existing fora. Such regulation has in the past been successful in the cases of both the Ottawa Treaty and Convention on Cluster Munitions.

Debates surrounding LAWs are contentious, to the extent that there is no agreed-upon definition for LAWs (van den Boogard, 2024). For this essay, the definition adopted by the International Committee of the Red Cross for autonomous weapons systems is used, namely “any weapons that select and apply force to targets without human intervention” (International Committee of the Red Cross, n.d.), more specifically looking at autonomous weapons systems that apply lethal force. Those in favour of regulating LAWs typically wish to regulate them due to legal and ethical concerns. LAWs dehumanise warfare, with the loss of meaningful human control in the use of lethal force decried by many states as challenging the protection of human rights and dignity (Qerimi, 2023). As LAWs can identify and attack targets without human supervision, there are also questions concerning responsibility in the event of war crimes, with fears that current doctrines of command responsibility would not provide adequate accountability (Human Rights Watch, 2015). Other concerns include the impacts of biases in training data and the inherent opacity of black-box AI models leading to difficulty in understanding LAWs’ behaviours (Qerimi, 2023).

States against the regulation of LAWs, typically major military powers who have already begun investing in the technology, acknowledge these legal and ethical challenges. However, regulation is characterised by these nations as premature due to a lack of understanding surrounding LAWs as a new technology (Human Rights Watch, 2020), leading to a preference instead for “non-binding code[s] of conduct” (AFP, 2021). This has been advanced through the creation of such codes of conduct as the Political Declaration on Responsible Military Use

of Artificial Intelligence and Autonomy, though this declaration has been criticised for being vague (Human Rights Watch, 2023). The primary regulatory forum for LAWs is the CCW, part of the UN system. As this group works based on consensus, states opposing LAWs regulation can effectively veto regulation negotiations (Stop Killer Robots, 2024). Thus, the CCW is restricted by the regressive beliefs of a small group of states (Qerimi, 2023). Supporters of bans, regulations and restrictions for autonomous weapons systems are unable to make progress within this forum.

With traditional multilateral fora not currently an effective avenue to regulate LAWs, alternative options for small states include acting as norm entrepreneurs and attempting to regulate LAWs externally to the CCW. Small states are labelled as weak actors in the international system due to their limited resources and hard power (Thorhallsson, 2019). However, Ingebritsen (2002) highlights the power that small states can hold in constructing global norms, defined as “established practices, codes of conduct, and standards of acceptable behaviour [...] that influence state interests and identity” (p. 12). Her argument builds on Finnemore and Sikkink’s (1998) specification of norm life-cycles. The emergence of norms requires ‘norm entrepreneurs’ to promote particular standards of behaviour and convince states to adopt them (Finnemore & Sikkink, 1998). Ingebritsen (2002) proposes that small states can effectively act as these entrepreneurs, discussing how Scandinavian states were able to do so regarding environmental, global security and international aid norms. Norms originating from these Scandinavian states have become internalised by states and non-state actors, with the most significant of these being Norway’s promotion of sustainable development (Ingebritsen, 2002, p. 14).

Arguments surrounding norm entrepreneurship can be equally applied to LAWs regulation, with a present opportunity for small states to promote particular norms. Public support for LAWs regulation is widespread. Ipsos’ polling conducted on behalf of Human Rights Watch found that across 28 countries, 61% of adults opposed the use of LAWs, whilst only 21% supported their use (Ipsos, 2021). Moreover, the Campaign to Stop Killer Robots coalition is composed of predominant NGOs including Amnesty International, Handicap International and Human Rights Watch. Considering the current era of ‘new public diplomacy’ (Melissen, 2005) in which non-state actors are able to influence both foreign publics and states, small states are incentivised to collaborate with civil society. Collaboration with civil society – including NGOs – should compose a key part of the norm entrepreneurship process in an attempt to shift the perspectives of major powers. Though the ideal situation concerning the spread of norms is the internalisation of such norms by states currently opposing the regulation of LAWs, a situation in which norms are internalised by citizens of states opposing the regulations of LAWs could also be effective. Small states have already begun to take action in this way, with many Global South nations (including small states such as Ecuador, Costa Rica and many African states) clearly expressing support for a complete ban on LAWs due to their many negative consequences (Bode, 2019).

Looking at one specific small state as a case study, New Zealand has the potential to be a particularly strong norm entrepreneur for the regulation of LAWs, though New Zealand’s situation reflects the danger of hypocritical behaviour. New Zealand is commonly perceived as a leader on disarmament issues. In the area of nuclear disarmament, New Zealand was a champion of the Comprehensive Test Ban Treaty and prominent actor in the creation of both the Treaty of Raratonga and the Treaty on the Prohibition of Nuclear Weapons (Ministry of Foreign Affairs and Trade, 2017). Beyond nuclear disarmament, New Zealand has been

recognised as a major player in disarmament diplomacy by a range of scholars (Ball, 1995; O'Brien, 2009). New Zealand has already expressed concern regarding the potential dangers of LAWS not complying with international law and the need for sufficient human control. However, they have not gone as far as to support an outright ban of their usage, instead “advocat[ing] for a legally-binding instrument to articulate sufficiently specific rules or limits to govern the development and use of AWS” (Office of the Minister of Disarmament and Arms Control, 2021, p. 7). New Zealand’s current stance on LAWS and its status as a well-respected voice on disarmament issues would seemingly indicate an opportunity to engage in norm entrepreneurship. However, taking action as a norm entrepreneur requires normative consistency. Moses and Troath (2023) call attention to New Zealand’s possible joining of AUKUS Pillar II as an area which may damage New Zealand’s credibility regarding LAWS. Though the exact military technology to be shared under Pillar II is not publicly known, recent testing of LAWS technologies by AUKUS partners demonstrates the likely inclusion of such technology in the capability-sharing aspect of the partnership (Department of Defense, 2024). New Zealand’s involvement in Pillar II, therefore, could be seen as hypocritical, and instead supportive of norms promoted by nations such as the USA and United Kingdom (UK) that LAWS technologies are morally defensible. Small states interested in LAWS regulation must overall consider how the actions they take affect the norms that they are reinforcing.

In addition to taking action to create and mould international norms, thereby influencing states which are currently against regulating LAWS, small states can also act outside of the consensus-based CCW to create binding regulations through a different regime. The process of regulation seen in the writing of the Ottawa Treaty (banning the use of landmines) and the Convention on Cluster Munitions (banning the use of cluster munitions) highlight that incremental progress can be attained even if weapons regulation is voluntary. When attempts to regulate land-mines began, the situation was similar to the current one concerning LAWS. Desires for regulation were driven by moral and ethical concerns regarding the thousands of civilian deaths caused each year by land-mines (Cameron et al., 1998). Efforts to ban landmines through the consensus-based forum of the CCW made no progress after entering “procedural gridlock” (Matthew, 2004, p. 8). Facing the possibility of either no or weak regulations being adopted, small and medium-sized states supported negotiating a mine-ban treaty external to the CCW (Rutherford, 2004, p. 8). From this point, small states had the ability to narratively frame discussions in ways which advanced their goal of banning landmines. States invited those to conferences who they thought would be able to support the conditions of the treaty, whilst inviting treaty opponents only as observers (English, 1998). This process of arms control negotiation external to the CCW was repeated in the banning of cluster munitions, a military technology which caused civilian casualties due to unexploded ‘bomblets’. From this, the Convention on Cluster Munitions emerged, with many of the conferences in the lead-up to the signing of the Convention being hosted by small states such as Austria, New Zealand and Ireland (Mines Action Canada, 2009). Even though neither of the treaties were negotiated within the CCW, 164 states are party to the Ottawa Treaty and 111 to the Convention on Cluster Munitions.

It is worth asking, however, if the two treaties had a major effect on the use of these regulated arms, especially considering that major arms producing nations have not signed either treaty. Since the ratification of the Mine Ban Treaty in 1997, over 30 countries have been de-mined and declared mine-free. Alongside this, over 55 million stockpiled mines have been destroyed (International Campaign to Ban Landmines, 2023). Concerning cluster munitions, 9 nations have been cleared of cluster munitions remnants and almost 1.5 million cluster munitions

have been destroyed (Cluster Munition Coalition, 2024). Even nonsignatories have altered their behaviour in response to these treaties, demonstrating the treaties' major normative power. The USA, for example, has had a land-mine policy under Democratic party presidents similar to that of the Ottawa Treaty, excepting the use of landmines in the Korean Peninsula ("New U.S. anti-personnel landmine", 2022). Creating a convention on LAWs in a similar way to ones made for cluster munitions and land-mines could also present small states with the opportunity to rhetorically entrap states who currently oppose LAWs regulation. Petrova (2016) examines how the UK initially labelled the banning of cluster munitions external to CCW processes as "foolhardy" (p. 387), but eventually became a key champion of the Convention on Cluster Munitions. Domestic pressure to be a moral actor, as well as a belief that the UK could influence the negotiations and weaken the overall Convention led to their involvement in negotiations (Petrova, 2016, p. 392). However, the opinions of the UK and other nations against strong regulation were strategically marginalised by small state organisers, allowing for the text of the Convention to primarily reflect the opinions of those in support of strong prohibitions on cluster munitions whilst still including some minor compromise to ensure involvement from nations like the UK. The UK's initial commitment to participating in the Convention and the high political cost of their leaving the negotiations and being perceived as a bad international citizen effectively forced them to sign the Convention (Petrova, 2016, p. 395). A stand-alone treaty regulating LAWs could therefore provide the opportunity to rhetorically entrap states currently opposed to (or in support of weaker) regulations.

Though attempts to influence global norms and a stand-alone treaty may be options for small states in campaigning for the regulation of LAWs, some major challenges are present regarding these two options. Deployment of LAWs technology is not wide-spread compared to either land-mines or cluster munitions. As both were – before they were regulated – established technologies known for their disproportionate impact on civilians, the regulation of LAWs is likely to face greater challenges simply because the moral and ethical concerns raised by their use are yet to be clearly demonstrated in combat. The international environment in which the Ottawa Treaty and the Convention on Cluster Munitions were signed are very different to the international environment today. Negotiations for each of those treaties occurred in a unipolar context during which the USA was an undeniable global hegemon. Current shifts toward multipolarity are likely to lead to reduced respect for international norms and a greater focus on the importance of relative power, including military power (Ministry of Foreign Affairs and Trade, 2023). This is already being observed through the weakening of the Convention on Cluster Munitions, with Russia's invasion of Ukraine leading to Lithuania's withdrawal from the Convention in order to utilise cluster munitions if threatened by Russia, arguing that since 2010 "the assessment of feasible threats has changed radically [...], the security environment has deteriorated" (Ministry of National Defence, 2024). The current international environment therefore presents an additional challenge to LAWs regulation that small states will have to combat.

These challenges do not mean that small states should give up on attempts to regulate LAWs. If anything, the current weakening of the international rules based order and ongoing shift towards an unpredictable, multipolar system makes it particularly important, as the CCW and the UN system more generally are proving inadequate to regulate a technology widely agreed to have moral and ethical concerns. The construction of norms and stand-alone regulations, even if they are not internalised or followed by major military powers, creates an environment in which incremental progress is possible.

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