

## EXISTE UM DIREITO DO ESTADO À SEGURANÇA? A INTELIGÊNCIA ARTIFICIAL COMO FERRAMENTA DE APROFUNDAMENTO DAS DESIGUALDADES GLOBAIS EM SEGURANÇA E DEFESA

João Vitor Sales Zaidan

Graduando em Direito na Universidade Federal de Pernambuco

Wisley Simon de Lima Cunha

Graduando em Direito na Universidade Federal de Pernambuco

### Resumo

Esta pesquisa busca explorar as consequências do uso de sistemas de inteligência artificial (IA) para o aprofundamento de desigualdades em matéria de segurança e defesa e a sua interação com um direito à segurança. São notáveis os possíveis efeitos em vista de um maior uso de sistemas automatizados na área estratégica. Percebe-se, porém, que, assim como em outros momentos da história, a capacidade de garantir a própria segurança dos Estados associa-se ao seu grau de avanço tecnológico, de modo que as desigualdades tecnológicas de países do Sul Global em relação às nações desenvolvidas implicam também em uma assimetria em matéria estratégica. Com isso, uma lógica realista de observar o sistema internacional é intensificada, na medida em que se tem uma afirmação ainda maior daqueles que detêm a força, ou, neste caso, domínio das aplicações tecnológicas. Contudo, uma noção de direito à segurança decorre de uma abordagem das relações internacionais calcada na Teoria da Sociedade Internacional, sendo baseada em expectativas compartilhadas a partir do comum acordo de normas, ainda que atravessadas por questões como a capacidade e o contexto. São também exploradas propostas de regulação de sistemas automatizados letais, no sentido de a normatização ser um caminho para diminuir ou frear o aumento das assimetrias tecnológico-estratégicas. Como resultados, pôde-se notar que a assecuração do direito à segurança está sendo posta em jogo com projetos de regulação de armas autônomas vagos, os quais estão propostos até mesmo por países do Sul Global.

**Palavras-chave:** Desigualdade. Inteligência Artificial. Segurança. Poder. Regulação.

## IS THERE A STATE'S RIGHT TO SECURITY? ARTIFICIAL INTELLIGENCE AS A TOOL OF DEEPENING GLOBAL SECURITY AND DEFENSE INEQUALITIES

### Abstract

This study aims to explore the consequences of the use of artificial intelligence (AI) systems to deepen defense and security inequalities and its interaction with a right to security. The possible future effects of a bigger adoption of automated systems in the strategic area are

notable. One can realize, though, that, as in other moments of history, the states' capacity of assuring its own security associates itself with the level of technological advancement of the nation, which implies that Global South countries' technological inequalities also have strategic asymmetry as a consequence. Hence, a realist logic of observing the international system is intensified, as there is an even greater affirmation of those who detain the force, or, in this case, technological dominance. Although, a notion of a right to security is based on the Theory of the International Society, recognizing shared expectations from the common agreements on norms, even if they are crossed by issues such as capacity and context. Regulation proposals on legal automated systems are also explored, in a sense that rule-making and enforcing are constructed in a way so as to diminish or to break the raising of technological-strategic asymmetries. As results, it was possible to notice that the right to security is being compromised by autonomous weapons draft regulations that are vague, which are even being proposed by South Global countries.

**Keywords:** Inequality. Artificial Intelligence. Security. Power. Regulation.

## INTRODUCTION

Artificial intelligence (AI) is a key technological tool which already is changing societies, the world economy and how political decisions are made; it has, although, an even bigger potential of transformation. One area that certainly is impacted is the military field, as well as strategic studies and the decision-making process on conflicts and disputes between states.

One can say that the remarkable potential offered by AI in the strategic field creates a new dimension of power, since it expands the range of possibilities with which an action can be taken<sup>1</sup>. More than innovations on technology itself, what has the potential of changing societies — creating limits and channeling those technologies — is innovating on the use of these systems and computers, which is a result of political debate and decisions, which generate law.

Accordingly, it is important to underscore that IA has an important difference in comparison to other technologies, which is the absence of a direct causal link, which diminishes the predictability of it. In this sense, the notion of risk is crucial when it comes to regulating this kind of system. It also dictates the relations of power involving it, something that remains at the center of the discussion here proposed.

If the exact impact of these technologies is not yet known, it is possible to analyze the political and strategic dynamics of this phenomenon to current and future international relations, as it can deepen inequalities and intensify a realist logic of world politics. One question comes to mind as well, which this paper aims to discuss: is it possible to say there is a states' (and, in consequence, nations') right to security and how the technology gap is an obstacle to its assurance?

The whole international legal framework created in particular after World War II and with the United Nations gives states — especially those which detain less hard power<sup>2</sup> than

<sup>1</sup> GARCIA, E. V.. *The Technological Leap of AI and the Global South: Deepening Asymmetries and the Future of International Security*, 2022. Available at: <<https://ssrn.com/abstract=4304540>>. Reached on: Feb., 25th, 2023.

<sup>2</sup> KEOHANE, R O.; NYE, J. S. *Power & Interdependence*. New York: Pearson, 2011.

the others — expectations on how the international community will act<sup>3</sup>. Thus, it is possible to understand that the international system, as organized, gives nations a right to security, although it is crossed by the capacity to assure a secure strategic position.

In face of those theoretical debates, this paper has the following structure in order to discuss the presented questions. Initially, the first section explores the specific transformations of AI and related technologies in the strategic/military field and inequalities on this matter. The second section, in turn, discusses the notion of a right to security considering the interaction between legal and political issues. Finally, the third section explores the negotiations to regulate automated weapons and what that means to the Global South.

The methodology used to conduct this research is qualitative, with deductive method, starting from comprehensive assumptions to the studied cases and with data collection in the literature about the themes and in the documents from the United Nations Disarmament Affairs Office on the negotiations about automated weapons. Following this path, the research aims to describe the state in which arms that use IA and other similar systems and also to understand how the asymmetries in the access to these technologies are expressed in the dynamics of negotiating its regulation.

## 1 AI POTENTIALS AND RISKS IN STRATEGY AND POWER

AI has a multitude of possible applications, including in the strategic field, armed conflicts, defense and surveillance. According to Horowitz *et al*<sup>4</sup>, there are some elements that may be the main ones to control in order to maintain a hegemonic position within the 21st century and AI. Data is one of them, as it is one of the bases of how automated systems make decisions and consider different scenarios. Other elements include training people to control and develop these solutions, having computing resources and incentivizing adoption of AI by organizations and branches of public and private sectors.

These systems are also sensibly useful to the decision-making process. A system that uses AI can calculate possibilities, identify vulnerabilities and make projections in such a way that it expands exponentially a country's range of action. This can lead to a security dilemma, as it mutually stimulates states to develop their AI capabilities, but it is important to underline<sup>5</sup> that leadership in that area will be defined by how societies manage the technology. In such a wide field, to define where it can be applied is a challenge itself.

Although it is not possible to measure exactly how much IA will change combat<sup>6</sup>, there are already some tests, as Garcia<sup>7</sup> underscores, that show how automated systems can act. In Iraq, the United States of America has tested the Special Weapons Observation Reconnaissance Detection System (SWORDS), used to patrol streets. Another example is the Algorithmic Warfare Cross-Functional Team, or Project Maven, which applies AI in an

<sup>3</sup> BULL, H. *A Sociedade Anárquica*. Trad. Sérgio Bath. Brasília: Editora Universidade de Brasília; São Paulo: Imprensa Oficial do Estado de São Paulo, 2002.

<sup>4</sup> HOROWITZ, M.; KANIA, E. B.; ALLEN, G. C.; SCHARRE, P. Strategic Competition in an Era of Artificial Intelligence. In: *Artificial Intelligence and International Security*. Washington, D. C.: Center for a New American Security, 2018. Available at: <https://www.cnas.org/publications/reports/strategic-competition-in-an-era-of-artificial-intelligence>. Reached on: March, 1st, 2023.

<sup>5</sup> HOROWITZ *et al.*, 2018, *op. cit.*

<sup>6</sup> GILL, A. S. Artificial Intelligence and International Security: The Long View. In: *Ethics & International Affairs*, v. 33, n. 02, p. 169–179, 2019.

<sup>7</sup> GARCIA, 2022, *op. cit.*

extremely controversial area: facial recognition and in war zones. The initiative analyzes drone footage using machine learning programs to identify targets, which raises several

With this scenario being constructed, it is possible to say that, with more widespread use of AI solutions in the strategic area, a realist logic of international relations is intensified. Thus, the international system will be even more defined by those who have control and a better application of the technology and, as such, more relative power<sup>8</sup>. Risks can also be foreseen, as some AI systems can be used with few scrutiny necessities and almost secretly, which reduces room for the civil society and other institutions to oversee security policies.

As countries act more closely to a realist perspective — and, as such, far less closely to international law and regulations that limit state power —, it is also possible to imagine that human rights and international humanitarian law will suffer great violations. With a lack of regulations with a minimum level of efficiency, military powers will probably feel more comfortable to impose their interests without any constraint and civilian populations — mostly from less developed countries — often pay the price.

Whether one considers offensive<sup>9</sup> or defensive realism<sup>10</sup>, dominating technological resources is crucial to guaranteeing a secure position in the international arena. This is true when considering simply keeping a nation from being attacked and specially applies to situations in which states are pursuing power projects and to occupy a hegemonic position in the world, something that increasingly depends on dominating the use of innovations.

Henceforth, an “ethics by design”<sup>11</sup> framework is very difficult to be applied in the military area because of the strategic urging of not being surpassed in the development of new techniques. As in the intelligence dilemma, in which a country not spying on others means it will simply let itself be spied on without gathering information on its adversaries, strategic technologies work under a logic of competition.

In this complex geopolitical thread, it is very sensible that some countries are constantly on the margins of these disputes: the Global South. As Horowitz *et al*<sup>12</sup> remember, technological and economic development were always connected to establishing a hegemonic position in the balance of power. Navy advancements made the naval dominance of the United Kingdom possible, such as tanks, trucks and radios helped Germany’s blitzkrieg to happen at the beginning of World War II.

With the Third and the Fourth Industrial Revolutions, technologies such as semiconductors, the internet and the Global Positioning System changed how societies work, but also created much ground for strategic competition to loom. Data became one of the most important concepts of this time, as things like intelligence, algorithms and AI depend on it to work and to be defined in some cases. A then unimaginable amount of data is processed daily in several different fields of work, which helps people and organizations to make decisions.

Although this narrative is not false, it certainly does not depict the whole world. As said before, many countries simply do not participate in this complex scheme of the 21st

<sup>8</sup> MORGENTHAU, H. J. *A política entre as nações: a luta pelo poder e pela paz*. Brasília, DF: Ed. UnB; São Paulo: Imprensa Oficial do Estado de São Paulo, 2003.

<sup>9</sup> MEARSHEIMER, J. J. *The Tragedy of Great Power Politics*. New York: W. W. Norton & Company, 2014.

<sup>10</sup> WALTZ, K. N. Structural Realism after the Cold War. In: *International Security*, v. 25, n. 1, pp. 5–41, 2000.

<sup>11</sup> EUROPEAN COMMISSION. *Ethics By Design and Ethics of Use Approaches for Artificial Intelligence*, 2021. Available at:

<[https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/guidance/ethics-by-design-and-ethics-of-use-approaches-for-artificial-intelligence\\_he\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/horizon/guidance/ethics-by-design-and-ethics-of-use-approaches-for-artificial-intelligence_he_en.pdf)>. Reached on Feb, 20th, 2023.

<sup>12</sup> HOROWITZ *et al.*, 2018, *op. cit.*

century. To these nations, the internet has a whole different meaning, as it — in some cases — may not be present at all, or does not have the same quality and cannot be trusted.

The same can be said to the states and armies of these nations, which function under an outdated logic, since they do not have the same access to the technologies that the most powerful countries do. Garcia<sup>13</sup> writes that, for example, due to a lack of expertise, many countries gather in blocks, such as the Non-Aligned Movement, to negotiate in the Group of Governmental Experts (GGE) that discuss the matter, which works within discussions from the United Nations Convention on Certain Conventional Weapons (1980) in the UN Office on Disarmament Affairs.

It is important to recognize that colonialist perspectives have interfered in the even distribution and development of the technologies, as South Global countries' economic development is based on commodities and primary products. On the other hand, the countries of the North have specialized their productive systems on technological products, reaffirming their control of the global economy<sup>14</sup>. In this sense, the colonies of other times served industries from developed countries with commodities.

Furthermore, it is important to underline that most colonized countries have followed the same perspective to the current days, but one of them has escaped this trajectory: China. According to Skinner<sup>15</sup>, the Asian country was wise enough to gather some favorable elements: a favorable international scenario, the attractiveness of its enormous market with a cheap working force. This was important to attract companies in exchange for access to technology and the external market.

Thus, the balance of power — which had been more clearly divided and unequal — started to become more complex with other players occupying positions of power<sup>16</sup>. Hence, countries have invested substantially in strategic Research and Development (R&D) to reach AI advancements, looking for these tools to tackle problems in areas such as security and military necessities. The development of these technologies allows a relentless level of technological maturity that makes the base to its mass commercial production.

Horowitz *et al*<sup>17</sup> underline that the ease with which AI inventions will be able to be replicated will also be important. The mutual relationship between commercial and military technology is also relevant to companies to enhance capabilities like image recognition, which may be used commercially, but also to strategic means.

The U.S.A's technological development has always been connected to a military perspective and the future transformation of these technologies onto marketing<sup>18</sup>; many of those commercialized creations, for example, have military origins. Considering the Brazilian outlook, one can assume that military institutions are training centers and, further, developers of technology with geopolitical impact. To Duarte<sup>19</sup>, military advancements are as social and

<sup>13</sup> GARCIA, 2022, *op. cit.*

<sup>14</sup> FAUSTO, Boris. *História do Brasil* — 2. ed. São Paulo: Universidade de São Paulo, 1995, p. 41.

<sup>15</sup> SKINNER, M. A guerra pela supremacia tecnológica ou poder global?. In: *Tecnologia e Geopolítica. Jornal dos Economistas*. Rio de Janeiro: Conselho Regional dos Economistas, n. 378., 2021, p. 3. Available at: <<http://www.corecon-rj.org.br/anexos/96B681AA2DA63EC417A02C41E5327585.pdf>>. Reached on: March, 3rd, 2023.

<sup>16</sup> HOROWITZ *et al.*, 2018, *op. cit.*

<sup>17</sup> *Idem, Ibidem.*

<sup>18</sup> DUARTE, E. *Tecnologia militar e desenvolvimento econômico: Uma análise histórica*. Brasília: Institute of Applied Economic Research (Ipea), 2012. Available at: <<https://www.econstor.eu/bitstream/10419/90920/1/719400392.pdf>>. Reached on: Feb. 21th, 2023.

<sup>19</sup> DUARTE, 2012, *op. cit.*, p. 16.



subordinate to society interests as any other technology type. Beyond that, these innovations have the capacity of becoming economic vectors when they are transformed into civil application.

Beyond that, specifically in the IA field, it is impossible to forget underlying a crucial matter to the discussion about technology and power: risk control. When it comes to automated systems — notably when they are applied to public policies and conflicts —, the causality nexus is sensibly unclear and who controls the level of this risk has the power of choosing what is the acceptable damage. There is not any mutually assured destruction either, which has repercussions on the balance of power and on the asymmetries that technologies create and/or intensify.

Henceforth, the Global South — which generally does not possess this kind of technology, at least not on the same level as North countries — ends up in a position of vulnerability. If catching up is something more distant to reality<sup>20</sup>, another option is to fight for regulations. It is possible, in this sense, to understand that international institutions as conceived since the end of the II World War, and especially after 1990 decade may have created a notion that could be called right to security, to be discussed in the next section.

### 3 INTERFACES OF THE RIGHT TO SECURITY

Since the foundation of the United Nations in 1945, there has been a deep international legal and political system, which can be theoretically compared to what the English School of the International Relations' proposal about the world. Although the norms that have been products of this framework must deal with power asymmetries, it is noticeable they created organization paradigms to countries' relations among each other.

Thus, even with certain difficulties and issues, the procedures and customs conceived in UN practice create expectations on what may happen in the near future. Bleicher<sup>21</sup>, for example, analyzes how the re-citation of UN General Assembly Resolutions contribute to the expectations of it being followed. Another aspect that this work shows is that the most recited texts until the publication of it were about issues like Human Rights and decolonization.

These most recited subjects show that the international system in formation in the 20th century tried to bring obligations related to fundamental rights and the right to self determination. Both questions, but especially the latter, were and still are crucial to countries which were colonized to have a minimal level of security that they would keep being sovereign and independent from their former colonizers.

In this sense, it is possible to understand international law produced in the auspices of institutions — in special legally binding instruments such as the UN Charter and Security Council resolutions — to construct what can be called a notion of security. In the international context, one can understand it as shared expectations on the future and the capability to predict and keep their position protected from threats, with also a notion of fairness and righteousness given by international legal texts.

As Reale<sup>22</sup> underscores, to have a subjective right means to maintain a relation of alterity. This means, according to the author, that, in order for someone to exercise a right, it is necessary that the provision is given on the other end. Applied to the notion of security

<sup>20</sup> GARCIA, 2022, *op. cit.*

<sup>21</sup> BLEICHER, S. A. The Legal Significance of Re-Citation of General Assembly Resolutions. *In: The American Journal of International Law*, v. 63, n. 3, Jul., 1969, pp. 444-478.

<sup>22</sup> REALE, M. *Lições Preliminares de Direito*. São Paulo: Saraiva, 2013.

here discussed, it is possible that all countries are holders and also providers of this right, since they must act by the norms and their assurance depends on how much countries respect them.

Is it true, however, that the notion of security is also crossed by political and strategic issues. Some regions of the world, for example, have local insecurity issues and it is not possible to forget that balance of power arrangements are also crucial for nations to stay secure and to keep themselves out of conflicts. Nevertheless, one must underscore the role of international legal principles and regulations to create obligations in order to protect those principles.

This is noticeably important to countries that possess less hard power than the others. It is not new in History the idea of those who are weaker in a group or in a society to be the ones that most demand regulations that limit the use of force<sup>23</sup>. Thus, in the international society, inequality is a characteristic that makes regulations even more important, since they provide some level of predictability and a notion of right and fair that the absence of law would not.

Another aspect of this entanglement is the interaction between an idea of security and sovereignty. The expectations created by the norms that are legally and politically binding are related in a direct way to sovereignty assurance. Although it is a basic principle when it comes to Theory of the State<sup>24</sup>, one can understand that the constraints put by the international framework on invasions and aggressions are essential to the weakest countries to keep their integrity.

That done, a dimension in which one can understand the existence of a right to security is reached. With the creation of a framework from the UN, a very important element could be seen, which was some level of normativity to states'. That is to say all member states must comply with the UN Charter determinations, since it is an international treaty, which, being ratified, generates international obligations.

If one analyzes security through the lens of the nations — which are the “reflex” of the state —, using the classification of generations of fundamental rights created by Paulo Bonavides<sup>25</sup>, it is also possible to compare a right to security to what he calls right to peace. To the praised constitutional law expert, the latter is what is defined as a fifth generation right, more advanced than transindividual rights, which are diffused through collectivity. The assurance of it is undoubtedly a challenge, as it is dependent from other generations and from other factors, as discussed in this study.

Even if sanctions related to violating those rules are crossed by power asymmetries, one can say that they are a way to, as seen, guarantee some level of predictability, creating codes and expected conducts from states. Thus, according to the International Society Theory, from the English School of International Relations<sup>26</sup>, it is possible to say that states with less bellicose power and material capacities are the most profited by regulations that create constraints to the use of force.

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<sup>23</sup> GARCIA, 2022, *op. cit.*

<sup>24</sup> JELLINEK, G. *Teoría General del Estado*. Trad. Fernando de los Ríos. México: Fondo de Cultura Económica, 2000.

<sup>25</sup> BONAVIDES, P. A Quinta Geração de Direitos Fundamentais. In: *Direitos Fundamentais & Justiça*, n. 3, abr-jun, 2008.

<sup>26</sup> ALVES RIBEIRO, M. M. L. A Escola Inglesa das Relações Internacionais como Instrumental Teórico Adequado de Análise das Intervenções Humanitárias. In: *Examâpaku Revista Eletrônica de Ciências Sociais, História e Relações Internacionais*, v. 6, n. 2, 10 mar. 2014.

When it comes to capacity building — especially talking about the one that happens in what is called “high politics” —, something that may come up is the concept of security dilemma. As seen in contexts like World War I, it means the situation in which a country arms itself up because of the threat of its adversary also arming itself and becoming more powerful. It was shown in the previous section how it is possible to understand that this may be occurring with IA among powerful countries.

It is impossible not to underscore, however, this reality may not be applied to the Global South. If superpowers get preoccupied with maintaining their influence zones and to catch up to the others’ capacity, the countries in the periphery of these disputes concentrate more of their thoughts on how to stay safe and secure, as well as how it is possible to keep potential conflicts out of their territory. This difference is crucial to understand how to instrumentalize this discussion.

Apart from capacity building and differences in hard power, another important factor in this complicated assurance of the right to security are military alliances. It would be possible to say this phenomenon breaks what Luhmann<sup>27</sup> calls *autopoiesis*, which means self-referencing. That is to say the system has its paradigms broken, since countries cannot be safe by only trusting in its right assurance and have to resort to the protection of a more powerful state.

With AI, a phenomenon that may be seen is a less clear distinction between Law for the Peace and for the War. Mello<sup>28</sup> underlines that International Law has this division, considering it has provisions to the “normal” organization of the international society, but also limitations and regulations for when two or more states are in a declared armed conflict. Anyhow, it is important to keep in mind, as Bull<sup>29</sup> remembers, that war is a social phenomenon — and a regulated one — and this should keep being true even with the inclusion of technologies.

Another aspect that must be considered is that states are represented by people and that its decisions, which end up being the acts of the state, are the consequence of a series of considerations. So, these regulations are one of the things considered in the phase of input. It is important that they are strong so that the output — and action to be taken — is something that complies with those rules. To consider that a level of security is existent means the risk of this output being a conflict is low — and that its cost is high.

Having discussed the complicated interfaces of a notion of a right to security, it is important to understand the concrete cases of regulation and how the discussed assurance is being treated. Another aspect to be analyzed is the asymmetries and their repercussions to the negotiations of the use of automated weapons and similar technologies, as it is going to be seen.

## 4 REGULATION EFFORTS: AN INTERNATIONAL SOCIETY PERSPECTIVE?

Observing the dynamics of AI, defense and technology gaps, it draws attention to the fact that power disputes are not only reinforced but also potentialized, which intensifies a realist logic of asymmetries. The inequality on defense leads the Global South to a position of

<sup>27</sup> LUHMANN, Niklas. *O Direito da Sociedade*. São Paulo: Martins Fontes, 2016.

<sup>28</sup> MELLO, Celso. D. de Albuquerque. *Noções Preliminares*. In: *Curso de Direito Internacional Público*. Rio de Janeiro e São Paulo: Renovar, 2000.

<sup>29</sup> BULL, 2002, *op. cit.*



insecurity because of the lack of conditions to innovate, which raises the question about how can a right to security – if existent — be assured.

Hence, one very important dimension of this inequality is the effort of regulating AI technologies, especially the military applications of them. Although one way of the Global South to level the playing field on the matter is trying to catch up with the development reached by developed countries, the idea that developing nations will be able to invest the same amount of budget on AI innovations is something distant and difficult<sup>30</sup>. Hence, discussing regulations to the field is an option to counterbalance the power distribution, but it also is sensibly intricate and complex.

It is possible to say this logic comprehends the rule-making process that Bull<sup>31</sup> describes as the one adopted by the international society to create institutions — legal, practical, political or customary. It comprises steps such as creation and communication, since the norms come from discussions between states and negotiation and can only be binding if parties accept it. This also means limiting the use of force, creating constraints to it that can be put in place through mechanisms such as naming and shaming, when some actions generate political consequences to actors because of humanitarian and ethical questions<sup>32</sup>.

Even though these phases are important, other steps acknowledged by Bull<sup>33</sup> and crucial to their effectiveness still depend on negotiations and enforcement. This — which includes elements such as administration and protection of the rules — is, as with other international formal institutions, a challenge and can be referred to two theoretical tendencies in the English School. These are pluralism, more connected to realism and the idea of several states interacting in a selfish way, and solidarism, which is closer to liberalism/rationalism and a basis of cooperation.

It is possible to understand that the application of norms in the international context ranges between these two ways of acting that can be adopted by parties of an agreement or even to a customary rule. Although it is better for those with less hard power that solidarism prevails, cooperation is not always possible especially when its costs are higher than a position of isolationism and this is an unfavorable scenario to ensure the right to security.

Furthermore, it is important to remember that regulation does not always exactly benefit the Global South and it can also be a power instrument. This was the case of the nuclear Non-Proliferation Treaty, which former Brazilian chancellor João Augusto de Araújo Castro called an expression of “world power frosting”<sup>34</sup>. That was because it allowed those who possessed nuclear arms to keep it, but forbidden those who did not have this kind of guns to develop it, so as to maintain power equilibrium.

Anyhow, if it is possible to establish some comparison between nuclear weapons rules and the discussion on limiting automated arms and the use of AI for military applications, one difference is clear. When the NPT was reached, nuclear technology was already pretty advanced and in use, but IA is not in this stage. Nevertheless, it is noticeable that non-proliferation agreements succeeded in creating an “anti-nuclear weapons

<sup>30</sup> GARCIA, 2022, *op. cit.*

<sup>31</sup> BULL, 2002, *op. cit.*

<sup>32</sup> Terman, R.; Voeten, E. The relational politics of shame: Evidence from the universal periodic review. In: *The Review of International Organizations*, v. 13, p. 1–23, mar. 2018.

<sup>33</sup> BULL, 2022, *op. cit.*

<sup>34</sup> VARGAS, J. A C. *Um Mundo Que Também é Nosso: o pensamento e a trajetória diplomática de Araújo Castro*. Brasília: Fundação Alexandre de Gusmão, 2013, p. 175.

appropriateness”. Hence, the timing is favorable for new technologies to be regulated and to prevent their abuse.

It is true, although, this analogy must be done with caution, given the distinctions in the nature of IA and nuclear power. They have implications, e. g., to the way both tools can be verified and how and even why instrumentalize limitations to it. Yet, non-proliferation is a good example of an arms regulation that, even though there are some issues, was able to create a norm of appropriateness<sup>35</sup>, as can be seen with the slamming reactions to not complying with rules<sup>36</sup>. The main challenge is to reach this status when it comes to powerful countries, which are, as shown, the most advanced on IA development and such.

The main instance in which the matter is being discussed is the GGE on lethal autonomous weapons systems (LAWS). It is an important multilateral forum of discussing how to regulate these technologies that enable the theoretical idea to be seen in practice. Structurally, powerful countries — that dominate the use and innovation of military AI applications — tend to be against these kinds of norms, as they are a way of imposing limits to their power, which the Global South does not have.

Hence, it is possible to analyze these disputes as a fight for a “right to security”. A state’s ability of assuring its sovereignty and a secure position in the international community is the product of several variables, which increasingly include R&D and economic capacities. So, in order to diminish their vulnerability, an interesting strategy to developing nations is to negotiate regulations that establish minimum levels of military AI development and use.

The Additional Protocol II of the Geneva Conventions (1977), in its article 36, establishes that, when a new weapon is acquired or developed, a state has the obligation of verifying if it complies with International Law. It is possible to say that this norm assures a right to security, since it binds new creations to the rules already agreed and known. The notion that LAWS must be used only in accordance with IHL is what is mostly written on proposals and what guides the debate, although it is, to current times, vague and insufficient to provide security.

That done, one can realize that the right to security’s assurance is something that ranges depending on time and, as one can imagine, on conditions and social, political and economic contexts. Besides capacity to build power to dissuade threats, it is necessary that norms are rediscussed and even newly constructed if those existing are no longer enough to assure fundamental rights and principles agreed before.

According to Garcia<sup>37</sup>, although most of the 97 countries surveyed by Human Rights Watch<sup>38</sup> expressed concern with removing human control of the decision-making process on the use of force, only 30 countries have called for a full ban on totally autonomous weapons and all of them are from the Global South<sup>39</sup>. This shows the political challenge of reaching a military AI international regulation and how inequalities affected it.

One stance which may result in some level of efficacy is to raise awareness about guaranteeing fundamental rights with AI and to establish a minimum level of rules that assure

<sup>35</sup> MARCH, J. G.; OLSEN, J. P. The logic of appropriateness. In: GOODIN, R. *The Oxford Handbook of Public Policy*. Oxford: Oxford Academic, 2009. p. 689–708.

<sup>36</sup> GOLDEMBERG, J. O TNP e o Protocolo Adicional. In: *Política Externa*, v. 19, nº 2, set/out/nov 2010.

<sup>37</sup> GARCIA, 2022, *op. cit.*

<sup>38</sup> HUMAN RIGHTS WATCH. *Stopping killer robots: country positions on banning fully autonomous weapons and retaining human control*. London: Human Rights Watch, 2020. Available at: <<https://www.hrw.org/news/2020/08/10/killer-robots-growing-support-ban>>. Reached on March 1st., 2023.

<sup>39</sup> GARCIA, 2022, *op. cit.*

human rights and humanitarian international law onto the military use of automated systems. This is the approach taken by Global South countries, which propose some principles to be adopted by most countries in order to protect people and, therefore, international security and also secure a notion of right to security<sup>40</sup>.

Hence, it may be effective to create an appropriateness<sup>41</sup> rule to shape stances on military IA, such as it happens on non-proliferation. This would be important to construct limits about its application, although there are dissenting opinions about international responsibility, for instance. One should also keep in mind the need of combating what is called ethics washing<sup>42</sup>, which means to establish standards and pretend to meet them with a supposedly ethical rhetoric.

In the GGE negotiations, the Non-Aligned Movement, for example, suggested some elements to discussion in a 2017 statement. They include the enforcement of international law on AI military tools, responsibility of states which commit unlawful acts using LAWS, as well as the impact of those machines on security and a legally binding instrument about them. There are also more abstract — and substantially important — points, such as ethics and moral questions on LAWS, common understandings about them and the technology gap between states and its potential risks<sup>43</sup>.

Furthermore, another position that deserves to be underscored is the one from the African Group, which includes all 54 countries from the continent. Benin, according to Garcia<sup>44</sup>, highlighted four points from their position: (i) the need of codifying legal principles based on international law to guide human control of those technologies; (ii) the importance of principles of humanity to be enunciated and take seriously; and the proposals of (iii) a ban on fully automated systems and of (iv) the conclusion of legally binding instrument on the matter.<sup>45</sup>

The Brazilian government — representing the position of the biggest and most important country in Latin America — has developed prolific discussions and meetings focusing on the humanistic impact of activities on AI, following the general Global South's position. According to Garcia<sup>46</sup>, the country's delegation submitted to the GGE a roadmap<sup>47</sup> containing bases for a legal framework on LAWS and a plan on how to put in practice 11 principles proposed by its diplomacy, with four paths. They include links between national and international regulation, cooperation, training, compliance with international law, setting

<sup>40</sup> BODE, I. Bode, Ingvild. Norm-making and the Global South: attempts to regulate lethal autonomous weapons systems. In: *Global Policy*, v. 10, i. 3, 2019, p. 359–64. Available at: <https://doi.org/10.1111/1758-5899.12684>. Reached on: March, 2nd, 2023.

<sup>41</sup> MARCH; OLSEN, 2009, *op. cit.*

<sup>42</sup> VAN MAANEN, G. AI Ethics, Ethics Washing, and the Need to Politicize Data Ethics. In: *Digital Society*, v. 1, n. 2, p. 9, set. 2022.

<sup>43</sup> GARCIA, 2022, *op. cit.*

<sup>44</sup> *Idem, Ibidem.*

<sup>45</sup> UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS. Group of Governmental Experts of Emerging Technologies in the Area of Lethal Autonomous Weapons Systems. *Statement by The African Group*. Geneva: UNODA, 2017. Available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2018/gge/statements/9April\\_African-Group.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/ccw/2018/gge/statements/9April_African-Group.pdf). Reached on: March, 2nd, 2023.

<sup>46</sup> GARCIA, 2022, *op. cit.*

<sup>47</sup> UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS. CCW/GGE.1/2020/WP.3. *Operationalizing the Guiding Principles: a roadmap for the GGE on LAWS. Submitted by Brazil*. Geneva: UNODA, 2020. Available at: <https://documents.unoda.org/wp-content/uploads/2020/08/CCW-GGE.1-2020-WP.3-.pdf>. Reached on: Jun, 10th, 2023.

up an international network on the theme, organizing international conferences on it and promoting a strategic agenda for LAWS and defense, science and technology themes.

In the Brazilian proposal, it is noticeable, from the first page, the definition of “codification through specific International Humanitarian Law (IHL) rules in a legally binding instrument” as “the ultimate goal”<sup>48</sup>. Yet, the delegation does not forget the importance of multi stakeholder debate and cooperation, also proposing for the establishment of networks of experts from several areas that can contribute with study on and control of autonomous weapons.

Technical cooperation — especially when it also involves international organizations, such as the UN — is very important for an autonomous weapons control regime, if built, to work. As Gill<sup>49</sup> underscores, there is a need of reforming arms control systems, since algorithms and data are different and a very distinct application when compared to other kinds of guns, such as nuclear weapons.

One shall not forget the importance of the role of civil society in shaping those agendas and pressuring states not to take measures which represent violations of principles and rights. Therefore, it is vital for conferences about this theme — which also are important to analyze the evolution of the discussion — to include social groups, such as experts, non-profit organizations, think-tanks, universities and professors and young students interested in AI, defense and strategic studies.

When one analyzes a Working Paper<sup>50</sup> submitted by Australia, Canada, Japan, Poland, the Republic of Korea, the United Kingdom, and the United States, it is possible to notice some differences in tone. The focus of the proposals are in national processes in order to comply with IHL and with regulations on LAWS. It also has some worrying mentions, such as “these technologies could be used to improve the protection of civilians” (p. 1) and “damage to civilian objects excessive in relation to the concrete and direct military advantage anticipated” (p. 2). Even accountability is thought of as an internal responsibility, to be ensured by national mechanisms.

An internal regulations approach was also noticed in a Draft Protocol<sup>51</sup> submitted by countries such as Argentina, Costa Rica, Sierra Leone, nations from the Global South that do not exactly possess a great level of arms development. The proposed text even has a provision saying it shall not “hamper progress in, or the inherent right of every State to the access, development, research, production, procurement, transfer and use of, emerging technologies for peaceful purposes” (p. 2). The draft, however, contains propositions related to creating obligations on transparency, review of weapons and compliance, yet stimulating states to internally apply them and “identify and share, on a voluntary basis, with other High

<sup>48</sup> UNODA, 2020, *op. cit.*, p. 1.

<sup>49</sup> GILL, 2019, *op. cit.*

<sup>50</sup> UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS. CCW/GGE.1/2023/WP.4/Rev.2. *Draft articles on autonomous weapon systems – prohibitions and other regulatory measures on the basis of international humanitarian law (“IHL”)*. Geneva: UNODA, 2023. Available: [https://docs-library.unoda.org/Convention\\_on\\_Certain\\_Conventional\\_Weapons\\_-\\_Group\\_of\\_Governmental\\_Experts\\_on\\_Lethal\\_Autonomous\\_Weapons\\_Systems\\_\(2023\)/CCW\\_GGE1\\_2023\\_WP.6\\_2.pdf](https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-_Group_of_Governmental_Experts_on_Lethal_Autonomous_Weapons_Systems_(2023)/CCW_GGE1_2023_WP.6_2.pdf). Reached on: Jun, 20th, 2023.

<sup>51</sup> UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS. CCW/GGE.1/2023/WP.6. *Draft Protocol on Autonomous Weapon Systems (Protocol VI)*. Geneva: UNODA, 2023. Available at: [https://docs-library.unoda.org/Convention\\_on\\_Certain\\_Conventional\\_Weapons\\_-\\_Group\\_of\\_Governmental\\_Experts\\_on\\_Lethal\\_Autonomous\\_Weapons\\_Systems\\_\(2023\)/CCW\\_GGE1\\_2023\\_WP.6\\_2.pdf](https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-_Group_of_Governmental_Experts_on_Lethal_Autonomous_Weapons_Systems_(2023)/CCW_GGE1_2023_WP.6_2.pdf). Reached on: Jul, 1st, 2023.

Contracting Parties, information and good practices on the conduct of review of autonomous weapon systems” (p. 3).

In most projects submitted to the GGE, one of most frequent themes is a human-centered approach, so as to avoid a context in which humans do not have control of LAWS. It is possible to understand, hence, there is an agreement on guaranteeing what is called human on-the-loop<sup>52</sup>, which means a human supervision, combatting out-of-loop models, that would allow fully autonomous weapons. A focus on an ethics perspective can also be seen, with a call to respect human rights and IHL while using LAWS.

The Report of the 2023 session<sup>53</sup> has embodied many of these points related to respecting IHL, stating that any autonomous weapon should comply with existing regulations, but without further elaborating on new rules specific to LAWS. There are, however, proposals of limitations with an ethical background, such as “limit the types of targets that the system can engage” (p. 3), although there are not many details, which may be a sign of a lack of deep consensus in negotiations. The conclusions of the report are closed with an indication that “the voluntary exchange of relevant best practices between States is encouraged”, yet with the caveat “bearing in mind national security considerations or commercial restrictions on proprietary information” (p. 3).

This sheds light to a very entangled and known issue in International Law: how to make the most powerful not use their force when it is understood as wrong by international rules. As shown by Garcia<sup>54</sup>, there were few agreements between parties in 2019 and, four years later, it is possible to say that the situation has not changed very much. The main challenge is to establish real obligations, the scope of them and decide what are the limits to autonomous weapons.

In spite of that, current texts are still vague and show that it is possible that incidents involving LAWS may happen and, without clear regulations, the world is more prone to them. This context is clearly more advantageous to the countries with the most advanced technology sector, since they are the ones that control the risk, as stated before. Hence, there is a clear threat to the assurance of a right to security, especially for the Global South. Uncertainty is the consequence of a lack of regulations, which demonstrates the complicated relation between International Law and power.

That done, there is an important actor that may help to reach some level of consensus: the civil society. Groups from the third sector can exercise pressure in order to elevate the costs of insecurity. After an obligation was taken, they also can do what Toope & Brunnée<sup>55</sup> redefine as a state’s international obligation, in a sense that it can only be fulfilled with its incorporation as a duty into the society. Non-profits, the academia and other agents can contribute to this, although it is still important to maintain international control of compliance.

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<sup>52</sup>GARCIA, E. V. Inteligência Artificial, Paz e Segurança: Desafios para o Direito Internacional Humanitário. In: *Cadernos de Política Exterior*, v. 5, n. 8, p. 99–121, 2019.

<sup>53</sup> UNITED NATIONS OFFICE FOR DISARMAMENT AFFAIRS. CCW/GGE.1/2023/2. *Report of the 2023 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems*. Available at: [https://docs-library.unoda.org/Convention\\_on\\_Certain\\_Conventional\\_Weapons\\_-\\_Group\\_of\\_Governmental\\_Experts\\_on\\_Lethal\\_Autonomous\\_Weapons\\_Systems\\_\(2023\)/CCW\\_GGE1\\_2023\\_CRP2.pdf](https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-_Group_of_Governmental_Experts_on_Lethal_Autonomous_Weapons_Systems_(2023)/CCW_GGE1_2023_CRP2.pdf). Reached on: 20th, Jul, 2023.

<sup>54</sup> GARCIA, 2019, *op. cit.*, p. 111.

<sup>55</sup> TOOPE, Stephen J.; BRUNNÉE, Jutta. *Legitimacy and legality in international law: An interactional account*. Cambridge: Cambridge University Press, 2010.



## 5 FINAL REMARKS

The discussion proposed with this study shows how complicated it is to establish a definition of a right to security. Its assurance is undoubtedly included in the challenge of ensuring effectiveness to International Law, since the right to security can be considered an analogic consequence of other international obligations and recognitions, such as formal equality among all states. With LAWS and IA, more factors enter the equation of this guarantee, turning even more complex something that already does not depend only on legal issues.

This is an extremely deep discussion with more doubts than answers, which emphasizes the importance of meetings and conferences on this theme. The immediate challenge is to produce common understandings and efficient rules that establish a minimum ground on fundamental rights, LAWS and AI. The wide concept of security also includes those rights, showing how interconnected those issues are. Certainly, more can and should be discussed and theoretically and legally built on what is being proposed in this study, which is undoubtedly desired in order to deepen understandings on the right to security, new IHL regulations and so on.

Even though cooperation may be difficult in general due to the lack of trust in strategic areas, the Global South can challenge that understanding by coming together to reach technological advancements. Relations between developing and developed countries are also an intricate field of study, as it has traditionally been used for exploration and not cooperation, but some could say that it represents a path of win-win relations.

Although the latter is true, this study showed that one cannot homogenize the Global South's position. Yet some countries, such as Brazil, defend a more codified regulation, there are countries that do not have high military capacities that defend — such as powerful states — proposals focused on internal norms and laconic propositions when it comes to compliance, international sanctions, cooperation and mutual verifying.

It is always easier to analyze something that has already passed, since there is the privilege of knowing the consequences and better understanding the causes of the phenomenon. However, to study current movements is crucial for formulating questions and attempting to create ways of sorting the huge number of actors, interests and relations that can be seen in the world. That certainly applies to the deep impacts AI may offer to defense and also to inequalities on this subject.

Henceforth, it is clear how the discussions contained in this paper can surely go further, especially because its object is still in development. Not even the GGE — a small instance — has reached full agreements on deep discussions and the theme needs to be discussed in bigger forums, such as the UN General Assembly Disarmament and Security Committee and, surely, the UN Security Council. If it reaches the UNSC, it will mean the international community recognized LAWS as a threat to international security, emphasizing the urgency of regulating them to assure a right to security.

If this right is what some would call a “fifth generation right”, such as the right to peace, the path to assure it also takes a lot of time and processes that depend on the guarantee of the predecessor rights generations. As seen, the fight for development, independence, capacities, international law norms and its efficacy are interconnected and interdependent; hence, it is possible that countries are striving in more that way to achieve their interests, even if this is done through a different way than intended.

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