

## Research Report

**Name :** Krasny Jaroslav

**Organization** (at the start of the grant period): Hiroshima University

**Title of Research:** International Humanitarian Law in Weapons Control: Examining the Principle of Superfluous Injury and Unnecessary Suffering.

**Purpose of Research:** (200 words)

The purpose of this research was to clarify the role of international humanitarian law (IHL), otherwise known as the law of armed conflict (LOAC), in restricting and prohibiting specific weapons and ammunition. While certain weapons are universally banned under customary law, such as chemical and biological weapons, others are merely restricted, such as incendiaries or mines. A whole category of somewhat controversial weapons remains unregulated. These include white phosphorus, projectiles with depleted uranium, or nuclear weapons, despite the newly adopted Treaty on the Prohibition of Nuclear Weapons, binding only the State Parties. One of the reasons behind the customary ban on chemical weapons is the violation of the most fundamental principles of IHL, i.e., distinction and prohibition of unnecessary suffering. However, what exactly is the principle prohibiting unnecessary suffering and superfluous injury? How is unnecessary suffering "measured," and more importantly, why does it apply to a specific category of weapons and not to weapons of other categories, including nuclear weapons? Therefore, the purpose of the research was to clarify the nature of the principle prohibiting unnecessary suffering, analyze its evolution from its first codification in the late 19<sup>th</sup> century, and assess its applicability to modern and future weapons.

**Content/Methodology of Research:** (400 words)

Due to the unexpected circumstances and travel restrictions regarding the global pandemic of COVID-19, the study and its field research were slightly modified. The study is framed as doctrinal legal research including qualitative and partially quantitative data analysis, i.e., mixed methods including selected case studies. Chronologically the study was divided into two phases. In the first phase, the researcher concentrated on case studies and conducted interviews in Hiroshima and Nagasaki with the survivors of the atomic bombings. The interviews focused on understanding the impact the bombings still have on the lives of "*hibakusha*" or atomic bombing survivors. Particular weight was put on the long-term health effects. The researcher also conducted interviews and collected data at the Radiation Effects Research Foundation (RERF) in Hiroshima. The second case study took place in Iran, where the researcher interviewed the survivors of the Iran-Iraq war who were affected by chemical weapons, particularly sulfur mustard, so-called *mustard gas*, or *yperite*. The interviews were conducted with the help of the Tehran Peace Museum, which is active in the advocacy field for the survivors. The survivors of chemical attacks share analogous characteristics with the *hibakusha*. Both groups suffer long-term health effects of exposure to either toxic substances or ionizing radiation, which also causes crippling health anxiety throughout their lives.

In the second phase, the researcher traveled to Geneva to the International Committee of the Red Cross (ICRC) to conduct research in the organization's archives. Particular focus was given to documents concerning the ICRC activities in weapon control and weapons prohibition activities based on specific health effects. The researcher studied and analyzed documents related to the bombings of Hiroshima prepared by Dr. Junod Marcel. Documents related to the use of chemical weapons during the Iran-Iraq war and documents related to the use of napalm in the course of the Vietnam War. These cases were selected according to the legal status of the weapons, i.e., universally banned chemical weapons, thenceforth restricted, however, lawful incendiaries and arguably lawful nuclear weapons. An integral part of this documentary analysis included interviews with the ICRC Arms Unit personnel, Mr. Lovold Magnus, and a legal advisor of the ICRC, Mrs. Wen Zhou. Finally, the researcher analyzed humanitarian law treaties and conventions, weapons law agreements, and case law, i.e., judicial decisions, which included deliberations on the principle prohibiting unnecessary suffering. The researcher utilized the Atlas.ti qualitative analysis software for coding and

discourse analysis throughout the document and treaty analyses processes.

**Conclusion/Observation** (200 words)

The principle prohibiting unnecessary suffering or superfluous injury as codified in the 1977 Additional Protocol I to Geneva Conventions of 1949, Art.35(2) applies to combatants and traditionally since its earliest appearance in the St. Petersburg Declaration of 1868 was unrelated to health effects of particular weapons. The principle used to be understood as a comparative rule that had to be weighed against military necessity or advantage offered by a particular weapon. In other words, a weapon would be in breach of the principle if the advantage offered is rather limited vis-à-vis inflicted injury. Since the dawn of the international human rights law (IHRL) in the '60s and '70s, and on the background of the use of napalm or Agent Orange in the course of the Vietnam War, followed by the use of chemical weapons during the Iran-Iraq war, there is an increased focus on particular health effects. Increasingly the IHL utilizes IHRL mechanisms (courts, committees) for its implementation. This implementation through human rights courts coupled with increased understanding of long-term health effects of particular weapons initiated the evolution of the principle prohibiting unnecessary suffering. Courts dealing with IHL issues started to take into consideration severe and long-term health effects of particular weapons. This evolution recently culminated in the adoption of the Treaty on the Prohibition of Nuclear Weapons. Therefore, long-term health effects will play a crucial role when applying the principles of IHL, particularly the prohibition of unnecessary suffering to particular weapons.