

Doctoral Dissertation

**Examining the Interpretation of the Principle Prohibiting
Superfluous Injury or Unnecessary Suffering: From the St.
Petersburg Declaration of 1868 to the Treaty on the Prohibition of
Nuclear Weapons**

(Summary)

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September 2022

This doctoral dissertation examines the central reasons behind the divergent interpretations of the principle of the law of armed conflict prohibiting superfluous injury or unnecessary suffering. The research explores the codification processes of the law of armed conflict, historical landmarks pertaining to the deployment of specific weapons, and pertinent case law. As a result, the author contends that, whereas military necessity was previously the balancing principle for evaluating and interpreting the norm prohibiting unnecessary suffering, this balancing factor has shifted since the Vietnam War to place a greater emphasis on long-term health effects. In addition to examining whether the principle may be interpreted in medical terms, the dissertation includes medical data to support such an argument. While controversy remains regarding particular weapons and their correlation with the unnecessary suffering principle, long-term health effects of individual weapons, most notably nuclear weapons, are being recognized through jurisprudence as a particular cause of superfluous injury or unnecessary suffering. This is because of their unceasing, continuous detrimental effect on human health and quality of life even after the end of an armed conflict which should also terminate the application of the law of armed conflict. The author argues that weapons causing unending long-term harmful effects on human body are in fact violating the principle prohibiting superfluous injury or unnecessary suffering by violating the temporal application of the law of armed conflict. As a result, the principle is increasingly interpreted by judicial bodies in medical terms, as opposed to military necessity alone.

The study is structured chronologically reflecting the codification of the law of armed conflict (LOAC). The original research is contained in Chapters 3, concerned with the codification of the principle in the 1977 Additional Protocol I and its gradual medicalization, Chapter 4 discussing medical effects of selected weapons and Chapter 6 following with legal discussion and jurisprudence concerning health effects of weapons selected in Chapter 4. Accordingly, Chapter 1 positions the research within current literature on the subject. The author has selected the literature of the most prominent advocates and scholars representing each of the interpretative legal positions. Through the literature review, a gap—or, rather, a difference in interpretation of the principle—becomes apparent. This difference appears in the interpretation of the nature of the principle as divided between, on the one hand, the predominant and traditional interpretation that weighs military necessity with injury to a predominant focus, on the other hand, on specific health effects of particular weapons regardless of the military advantage such weapons may offer. Based on identifying this interpretative division, I proceed to formulate the research questions and set up the study, its objectives, methodology and purposes. Chapter 2 then proceeds with a descriptive analysis of the historical

evolution and codification of the “traditional” understanding of unnecessary suffering under LOAC. Continuing with this chronological order, Chapter 3 proceeds to analyze the “medicalization” of the principle by moving away from the traditional juxtaposition with military necessity to an increased focus on health effects. Chapter 4 forms the core of this interdisciplinary research in that it provides medical data and analysis of the health effects of particular controversial weapons, including interviews with the survivors. These selected interviews with survivors of particularly chemical weapons represent a part of original data acquired through field research. The weapons were selected based on their legal standing according to applicable agreements where State parties or a concerned civil society specifically referred to “unnecessary suffering” due to particular health effects. Chapter 5 proceeds with legal analysis of the treaties concerning the same weapons elaborated upon from the medical perspective in the preceding chapter. This analysis includes the reasoning behind the regulation or outright ban and whether the prohibition of unnecessary suffering played any role whatsoever during negotiations or *travaux préparatoires*. Chapter 6 offers primary source legal analysis that invokes the principle of unnecessary suffering in judicial decisions of particular cases selected in connection with the weapons discussed in Chapters 4 and 5. It also examines primary data of the International Committee of the Red Cross related to the bombing of Hiroshima in order to assess how the organization applied the principle to the use of atomic bombs. While unnecessary suffering is a fundamental principle of LOAC, this body of law often lacks effective implementation mechanisms besides traditional “self-help” or the controversial notion of “reprisals.” The author therefore looked for cases in ad hoc, international, regional, and national judicial and quasi-judicial bodies. Chapter 7 then offers a summary of the major findings and provides an answer to the research questions as well as limitations of the study and opportunities for future research.