The purpose of this paper is to discuss some aspects of the principles of international humanitarian law relating to the choice of weapons of war. While its source of inspiration lies in remarks made by Jean Pictet in the course of a conference on weapons held in 1974, the discussion takes as its point of departure the St. Petersburg Declaration of 1868, whereby

the Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

The Declaration, creation of an International Military Commission assembled for that purpose at St. Petersburg, admittedly was of strictly limited import from a substantive point of view, and it was doomed to lose the greater part even of this modest significance as a consequence of developments in the techniques of war. Yet, it stands out as a remarkable achievement, on two counts. First, this was the first time ever for an international agreement to put a stop to the use in war of a specific small-arms munition which, although reprehensible from a humanitarian point of view, at the same time was certainly not devoid of all military utility. The main importance of the Declaration, however, doubtless lies in the remarkable statement of principles which precedes the quoted substantive provision:

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;
That for this purpose it is sufficient to disable the greatest possible number of men;


That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;
That the employment of such arms would, therefore, be contrary to the laws of humanity.

By this preamble, the St. Petersburg Declaration can with some justification be said to have furnished the basis for the entire body of international humanitarian law of war as it has developed since. It dealt, in effect, with the core problem of that body of law, which is the confrontation between the “necessities of war” and the “requirements of humanity”: at what point ought the former to yield to the latter? Both, it should be emphasized, were entirely legitimate considerations in the eyes of the members of the International Military Commission, and they have remained so to the present day.

The conflict is easily resolved whenever one of the two opposing forces is clearly the weaker one, perhaps even to the extent of being virtually negligible. Thus, no one will probably object on humanitarian grounds to the contention that an isolated munitions dump may be attacked and destroyed, even though it is foreseeable that a soldier guarding the dump may lose his life as a consequence of the attack. Again, the requirement that prisoners of war must be detained in a safe place will meet with little or no protest on grounds of military necessity. In many other instances, however, the solution does not lie so readily at hand, and it must then be arrived at through a difficult process of weighing the various factors involved in the equation. The principal factors emerge clearly from the quoted preambular paragraphs: they are: the distinction between the “military forces” of the enemy State and its civilian population, and military necessity defined as the need “to disable the greatest possible number of men” without employing means that would uselessly aggravate their fate.

The principles enunciated in the preamble of the St. Petersburg Declaration of 1868 proved far more durable than the specific rule they preceded; indeed, they were very much in the minds of those participating in the weapons conference of 1974, mentioned in the opening paragraph. Prior to turning to that event, however, we will examine the influence of these principles at an earlier occasion, viz., the Hague Peace Conference of 1899.

This influence is conspicuous even in the very terms of the Hague Convention and Regulations Respecting the Laws and Customs of War on Land. The preamble to the Convention, in its version of 1899, refers to the “desire to serve … the interests of humanity and the ever increasing requirements of civilization” and the concomitant “desire to diminish the evils of war so far as military necessities permit”; and Article 23(e) of the Regulations lays down the prohibition “to employ arms, projectiles, or material of a nature to cause superfluous injury” (in the English version of 1907: “calculated to cause unnecessary suffering”).

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3 See Schindler & Toman, op. cit. note 2, p. 57.