

# Against the laws of humanity: Expanding bullets and the 1899 First Hague Peace Conference

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## Abstract

*The prohibition on the use of expanding bullets was one of the first prohibitions to arise in contemporary international humanitarian law. This prohibition is not a mere historical curiosity and retains considerable importance due to the breadth of legal instruments that it gave birth to. The spirit that drove the negotiations of the 1899 First Hague Peace Conference – growing concern about the horrors created by new military technologies and their increased lethality – has continued to inspire those who wish to advance the agenda of humanitarian arms control and disarmament today. This article contributes to the literature examining weapons prohibitions by engaging with the historical diplomatic and medical literature and debates that influenced the prohibition of expanding bullets in armed conflicts. It examines the outcry against the use of these bullets, contrasts it with the interests of the States that chose to use or not use them, and traces their influence on the 1899 Hague Conference and contemporary legal*

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*instruments. In doing so, the article highlights the dual influence of ethics and military interests in the prohibition of the use of expanding bullets in armed conflicts and argues that the creation of norms is more multifaceted than typically accounted for.*

**Keywords:** expanding bullets, conventional weapons, Hague Convention of 1899, international humanitarian law, arms control, disarmament.

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## Introduction

The international laws surrounding arms control and disarmament agreements have aimed to reduce suffering in war by prohibiting or regulating the use of certain weapons in order to protect combatants and non-combatants from unnecessary suffering.<sup>1</sup> The legal approaches to doing this are deeply rooted in history and involve internationally binding agreements between States.<sup>2</sup> Means and methods of warfare that cause superfluous injuries or unnecessary suffering are prohibited,<sup>3</sup> and the only legitimate objective of States in war is to weaken the military forces of the enemy by disabling the greatest possible number of combatants, with weapons that exceed this purpose being considered “contrary to the laws of humanity”.<sup>4</sup> The horror associated with the use of certain weapons allows us to understand the prohibitions on their development and use; their indiscriminate effects invite disgust and set them apart from other weapons.<sup>5</sup>

The prohibition on the use of expanding bullets in armed conflicts stands out amongst these prohibitions. States that signed and ratified the 1899 Hague Declaration (IV, 3) concerning Expanding Bullets (Hague Declaration) agreed to abstain from the use of bullets which “expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is

1 UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford University Press, Oxford, 2004, p. 3.

2 Geoffrey Best, *War and Law since 1945*, Clarendon Press, Oxford and New York, 1994, p. vii; Stuart Casey-Maslen and Tobias Vestner, “Trends in Global Disarmament Treaties”, *Journal of Conflict and Security Law*, Vol. 25, No. 3, 2020; Andrew Michie, “The Provisional Application of Arms Control Treaties”, *Journal of Conflict and Security Law*, Vol. 10, No. 3, 2005, p. 345.

3 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 70, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>.

4 Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, 130 IHL 6, 11 December 1868 (St Petersburg Declaration).

5 Valerie Adams, *Chemical Warfare, Chemical Disarmament: Beyond Gethsemane*, Macmillan, Basingstoke and London, 1989, p. 2; Michelle Bentley, *The Biological Weapons Taboo*, Oxford University Press, New York, 2023, pp. 1–2; Nicholas A. Sims, *The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force, 1975–85*, Macmillan, Basingstoke, 1988, pp. 5–6.

pierced with incisions”<sup>6</sup> This prohibition was one of the first to arise in contemporary international humanitarian law (IHL),<sup>7</sup> and is not a mere historical curiosity – to the contrary, it retains considerable importance due to the breadth of legal instruments that it gave birth to. Not only was it, together with the 1868 St Petersburg Declaration, one of the first legal instruments to restrict the use of particular weapons, but it also encouraged peace activists and gave rise to the belief that legal mechanisms could govern the international sphere.<sup>8</sup> The spirit that drove the negotiations of the 1899 First Hague Peace Conference (1899 Hague Conference) – profound concern about the effects of certain military technologies – also inspires those who wish to advance the agenda of humanitarian arms control and disarmament today.<sup>9</sup>

Over the following pages, this article will engage with the legal restrictions and norms surrounding the use of expanding bullets in armed conflicts as opposed to domestic law enforcement or riot control.<sup>10</sup> It will examine the military interests and ethical considerations linked to the use of expanding bullets, highlighting how both influenced States’ positions at the 1899 Hague Conference. In doing so, the article will show how calls for the prohibition of expanding bullets, and the reaction against those calls, were profoundly influenced by military interests and ethical considerations. It will also contribute to the literature surrounding the 1899 Hague Conference and expanding bullets, highlighting its continued contemporary relevance as a significant case study.<sup>11</sup> The article will do this through a careful analysis of historical, nineteenth-century medical literature, the public reaction against expanding bullets, and the military interests of individual States.

This analysis will be carried out in five steps. First, the article will examine the development of expanding bullets within the nineteenth century and position them within the revolution in infantry weapons that changed the face of warfare in this century. In doing so, it will outline why expanding bullets were considered inhumane and the conclusions of nineteenth-century medical analyses. Second, the

6 Hague Declaration (IV, 3) concerning Expanding Bullets, 170 IHL 14, 29 July 1899 (entered into force 4 September 1900) (Hague Declaration).

7 Stuart Casey-Maslen and Tobias Vestner, *A Guide to International Disarmament Law*, Routledge, Abingdon, 2019, pp. 4–7.

8 Daniel Huckner, “British Peace Activism and ‘New’ Diplomacy: Revisiting the 1899 Hague Peace Conference”, *Diplomacy and Statecraft*, Vol. 26, No. 3, 2015, p. 406.

9 David D. Caron, “War and International Adjudication: Reflections on the 1899 Peace Conference”, *American Journal of International Law*, Vol. 94, No. 1, 2000, pp. 4–6.

10 An examination of the use or non-use of expanding bullets within law enforcement and riot control requires a highly detailed analysis of contemporary and domestic sources that exceeds the scope of this article.

11 Geoffrey Best, “Peace Conferences and the Century of Total War: The 1899 Hague Conference and What Came After”, *International Affairs*, Vol. 75, No. 3, 1999; Robin Coupland and Dominique Loye, “The 1899 Hague Declaration concerning Expanding Bullets: A Treaty Effective for More than 100 Years Faces Complex Contemporary Issues”, *International Review of the Red Cross*, Vol. 85, No. 849, 2003; Samuel Longuet, “Permitted for Law Enforcement Purposes but Prohibited in the Conduct of Hostilities: The Case of Riot Control Agents and Expanding Bullets”, *International Review of the Red Cross*, Vol. 98, No. 1, 2016; Eric Prokosch, “The Swiss Draft Protocol on Small-Calibre Weapon Systems: Bringing the Dumdum Ban (1899) Up to Date”, *International Review of the Red Cross*, Vol. 35, No. 307, 1995; Kim A. Wagner, “Savage Warfare”, *History Workshop Journal*, Vol. 85, Spring 2018.

article will outline and engage with the different factors that led to calls to ban expanding bullets, including both the military interests influencing the positions of States and the public outcry against such bullets. Third, the article will turn to the way factors these influenced the negotiations of the 1899 Hague Conference and how different visions of humanity, weapon lethality and national interests led to the prohibition of expanding bullets. Following this, the article will explore the long-term impact of the prohibition on IHL and contemporary legal frameworks. The article will close with an analysis of what the ethical objections and military interests underlying the prohibition on the use of expanding bullets reveal. In doing so, it will show how an examination of one of IHL's earliest prohibitions reveals the nuance that we lose by limiting the area of inquiry of arms control and disarmament studies to weapons of mass destruction, as well as the origin of the prohibition of weapons that cause unnecessary suffering.

## A revolution in weaponry

The nineteenth century saw a revolution in infantry weaponry that started with the use of muskets and gunpowder and culminated in the 1890s with rifling and metal cartridges.<sup>12</sup> Expanding bullets arose at the tail end of this century following a series of developments in conventional weapons, rifling and ammunition that led to enormous increases in the destructive power of infantry weapons and changes to the balance of power in the non-Western and Western worlds.<sup>13</sup> These developments increased the rate of fire of weapons, their striking range and their wounding capacity,<sup>14</sup> and together with the increase in military expenditures internationally, led statesmen and observers at the end of the century to view rising armament levels as a challenge that required the active intervention of States. International law could provide the solution to this challenge by better organizing international society.<sup>15</sup>

The origin of expanding bullets – also known as hollow-point or dum-dum bullets – is tied to this revolution in infantry weaponry. Expanding bullets contain a notch at the tip, uncovered by the metal casing, that causes them to expand upon hitting a target.<sup>16</sup> They are “specialised bullets designed to deform upon impact because of a collapsible space within the projectile tip”.<sup>17</sup> Though used for hunting

12 Maartje Abbenhuis, Branka Bogdan and Emma Wordsworth, “Humanitarian Bullets and Man-Killers: Revisiting the History of Arms Regulation in the Late Nineteenth Century”, *International Review of the Red Cross*, Vol. 104, No. 920–921, 2022, pp. 1692–1693; John Landers, “The Destructiveness of Pre-Industrial Warfare: Political and Technological Determinants”, *Journal of Peace Research*, Vol. 41, No. 4, 2005, pp. 459–460.

13 Daniel R. Headrick, “The Tools of Imperialism: Technology and the Expansion of European Colonial Empires in the Nineteenth Century”, *Journal of Modern History*, Vol. 51, No. 2, 1979, p. 248.

14 M. Abbenhuis, B. Bogdan and E. Wordsworth, above note 12, pp. 1692–1693.

15 Scott Andrew Keefer, “Building the Palace of Peace: The Hague Conference of 1899 and Arms Control in the Progressive Era”, *Journal of the History of International Law*, Vol. 8, No. 1, 2006, pp. 2–4.

16 *Ibid.*, p. 13.

17 B. Swift and G. N. Ruttly, “The Exploding Bullet”, *Journal of Clinical Pathology*, Vol. 57, 2004, p. 108.

as early as the 1870s, their development passed through several variations, which included the Mark III, Mark IV and Mark V .303-inch rifle bullets manufactured at the Woolwich Ordnance Factory and in associated factories across the British Empire.<sup>18</sup> Expanding bullets were regarded as indispensable in colonial fighting against non-Western forces and were used, *inter alia*, in India's northwestern frontier and in Sudan in 1898.<sup>19</sup> Their use carried several benefits, including a decreased risk of ricochet due to the reduced overall penetration distance and a greater ability to stop enemy combatants quickly.<sup>20</sup>

The reasons that linked expanding bullets to other inhumane or prohibited weapons have been extensively explored. Expanding bullets went “beyond what was necessary to stop enemy combatants,”<sup>21</sup> and were perceived to be inhumane due to the unnecessary suffering and superfluous injuries they caused.<sup>22</sup> Unlike the projectiles fired by guns until the middle of the nineteenth century, expanding bullets represented a major increase in wounding capacity.<sup>23</sup> They inflicted considerably more severe injuries in comparison to conventional, full metal jacket bullets, had a higher stopping power and aimed to kill rather than merely incapacitate.<sup>24</sup>

The increased severity of the injuries caused by expanding bullets is linked to their design. Full metal jacket bullets remain stable in their “passage through tissue for a variable distance before turning side-on”, with this deeper penetration meaning that “they may pass through the victim's body without causing as much tissue damage”.<sup>25</sup> Expanding bullets, in contrast, are perceived to cause larger wounds due to how they expand within tissue and deposit kinetic energy earlier in the wound track than full metal jacket bullets.<sup>26</sup> To their opponents, it was this greater capacity to inflict severe wounds that made the use of expanding bullets illegitimate. They went beyond merely disabling enemy combatants, which was sufficient in war, and increased the probability of death or long-term disablement.<sup>27</sup>

A considerable amount of late nineteenth- and early twentieth-century scientific, medical and legal literature analyses the wounding capacity and effects of

18 M. Abbenhuis, B. Bogdan and E. Wordsworth, above note 12, p. 1691.

19 *Ibid.*, p. 1685; S. A. Keefer, above note 15, p. 13.

20 William H. Boothby, *Weapons and the Law of Armed Conflict*, Oxford University Press, Oxford, 2009, p. 148; B. Swift and G. N. Ruddy, above note 17, p. 108.

21 Nisha Shah, “Gunning for War: Infantry Rifles and the Calibration of Lethal Force”, *Critical Studies on Security*, Vol. 5, No. 1, 2017, pp. 96–97.

22 Andrew Latham, “Taking the Lead? Light Weapons and International Security”, *International Journal: Canada's Journal of Global Policy Analysis*, Vol. 52, No. 2, 1997, pp. 322–323.

23 Malvern Lumsden, “New Military Technology and the Erosion of International Law: The Case of the Dum-Dum Bullets Today”, *Instant Research on Peace and Violence*, Vol. 4, No. 1, 1974, p. 16.

24 Alfred P. Rubin, Michael John Matheson, Hans Blix, Christiane Shields Delessert and Jordan J. Paust, “Should Weapons of Dubious Legality Be Developed?”, in American Society of International Law, *Proceedings of the Annual Meeting*, Vol. 72, 1978, p. 32; Detlev F. Vagts, “The Hague Conventions and Arms Control”, *American Journal of International Law*, Vol. 94, No. 1, 2000, pp. 34–35.

25 R. Coupland and D. Loye, above note 11, p. 138.

26 *Ibid.*

27 Malvern Lumsden, “The UN Conference on Inhumane Weapons”, *Journal of Peace Research*, Vol. 16, No. 4, 1979, p. 289.

expanding bullets. This literature reflects the horror that expanding bullets were regarded with. Ballistic scientists, legal scholars and military thinkers saw expanding bullets as “uniquely capable of imposing undue amounts of physical pain in addition to killing the target”.<sup>28</sup> The commentaries written by medical professionals on the wounding capacity of different types of ammunition also stand out within this literature, particularly due to how they passed judgement on the nature of wartime wounds and the levels of violence that ought to be allowed within the laws of war.<sup>29</sup>

Cuthbert S. Wallace’s 1901 account of typical and atypical bullet wounds is a prominent example of this literature. Typical small-bore bullets, Wallace wrote, made a round hole slightly smaller than the bullet itself, whilst wounds made by expanding bullets were always associated with fractures of bone.<sup>30</sup> Though the entry wound of an expanding bullet was typical and otherwise unremarkable, the introduction of a finger often showed “that a still larger irregular cavity is formed into which the ends of the fractured bone protrude”.<sup>31</sup> The damage that expanding bullets caused upon impact was also further noted and contrasted with that of full metal jacket bullets and explosive bullets. Expanding bullets were, as such, deadly, a fact that made them particularly suited for big-game hunting.<sup>32</sup>

W. F. Stevenson also made note of the wounding capacity of expanding bullets in a similar article. The wounds produced by them were severe: “pieces of the core and jagged strips of the envelope are scattered widely through the part struck, remaining lodged in the part to set up surgical complications later on”.<sup>33</sup> This wounding power was not incidental – on the contrary,

[t]hese projectiles were invented for the purpose of obtaining greater “stopping power” than the service bullet possessed against Ghazis and other fanatic savages, and, no doubt, when they implicate any of the large cavities of the body, the destruction of which they are capable is extreme.<sup>34</sup>

An 1899 article in the *Bulletin International des Societes de la Croix-Rouge* further emphasized the deadly nature of expanding bullets. The article noted that they deform more easily than non-hollowed bullets, causing them to cause a higher amount of severe bone fractures at distances of up to 600 metres.<sup>35</sup>

The severe wounds caused by expanding bullets, therefore, made their use in armed – as opposed to colonial – conflicts appear inhumane and contrary to the basic

28 Jonathan Obert, Andrew Poe and Austin Sarat, “The Lives of Guns: An Introduction”, in Jonathan Obert, Andrew Poe and Austin Sarat (eds), *The Lives of Guns*, Oxford University Press, Oxford, 2019, pp. 10–11.

29 M. Abbenhuis, B. Bogdan and E. Wordsworth, above note 12, pp. 1699–1700.

30 Cuthbert S. Wallace, “Types of Entrance and Exit Wounds as Seen in the South African Campaign”, *British Medical Journal*, No. 2121, 1901, pp. 474–475.

31 *Ibid.*, p. 475.

32 J. B. Hamilton, “The Evolution of the Dum-Dum Bullet”, *British Medical Journal*, No. 1950, 1898, p. 1250.

33 W. F. Stevenson, “Note on the Use of ‘Dum-Dum’ and Explosive Bullets in War”, *British Medical Journal*, No. 2808, 1914, p. 701.

34 *Ibid.*

35 “Nouveau projectile Anglais”, *Bulletin International des Societes de la Croix-Rouge*, Vol. 30, No. 120, 1899, p. 243.

principles of IHL. While full metal jacket bullets were relatively humane, expanding bullets “increased the chance of the bullet remaining in the body and [causing] an ‘explosive-type’ wound which made death more likely to happen”.<sup>36</sup> They denied quarter to enemy combatants who were *hors de combat* and caused unnecessary suffering. Expanding bullets therefore ran against the only legitimate object of States in war – to weaken the military forces of the enemy – and the laws of humanity.<sup>37</sup> This linked them to the 1868 St Petersburg Declaration, which highlighted how the only legitimate purpose of States in war is to weaken the military forces of the enemy and that the employment of weapons which “uselessly aggravate the sufferings of disabled men” was contrary to the laws of humanity.<sup>38</sup> They were therefore, due to their higher wounding power, against the laws of humanity.

Having examined the development and treatment of expanding bullets in nineteenth-century medical literature, we will now turn to how these factors, together with military interests, influenced calls to ban expanding bullets in armed conflicts.

## Military utility, outcry and indignation

Substantial national and military interests contributed to the decision to both negotiate and ratify the Hague Declaration. These interests were present at the start of the 1899 Hague Conference and coexisted with the horror associated with the use of expanding bullets. The 1899 Hague Conference was a highly politicized event; though Tsar Nicholas II’s circular calling for the Hague Conferences appealed directly to international morality and sought to halt the arms race, the call was also motivated by substantial national interests.<sup>39</sup> These same national interests influenced the decision of other countries to support the ban on expanding bullets – but they were also present in Britain’s defence of such bullets, which was at the heart of its adoption of a new generation of rifle ammunition.<sup>40</sup>

Germany and Austria-Hungary had recently acquired quick-firing artillery. The cost of refitting the Russian army with this new type of gun would have played havoc with the national budget, and Russian minister of war Aleksei Kuropatkin “suggested a bilateral arrangement with Austria-Hungary to defray this expense, or at least to postpone it for a few years”.<sup>41</sup> The end-of-century arms race was burdening Russia’s economy, with military expenditures running at around 4.4% of the net

36 Asbjørn Eide, “Outlawing the Use of Some Conventional Weapons – Another Approach to Disarmament?”, *Instant Research on Peace and Violence*, Vol. 6, No. 1–2, 1976, pp. 46–47.

37 Thomas Erskine Holland, *The Laws of War on Land (Written and Unwritten)*, Stevens & Sons, London and New York, 1908, pp. 40–42.

38 St Petersburg Declaration, above note 4.

39 Maartje Abbenhuis, *The Hague Conferences and International Politics, 1898–1915*, Bloomsbury Academic, London, 2020, p. 1.

40 Maartje Abbenhuis, “The Dum-Dum Controversy: Rifle Ammunition in British Politics at the Turn of the Twentieth Century”, *Journal of Imperial and Commonwealth History*, Vol. 53, No. 4, 2025, p. 793.

41 S. A. Keefer, above note 15, pp. 7–8.

national product, and Russian general staff foresaw great difficulties in renovating the Russian artillery stock.<sup>42</sup> Tsar Nicholas II's call also followed the development of a new weapon – the expanding bullet – which meant that the “underdeveloped empire faced the introduction of another technologically advanced weapon into world arsenals.”<sup>43</sup> The shift from a bilateral discussion with Austria-Hungary to a multilateral conference on the limitation of armaments reflected Russian concerns about the political fallout of a direct request to Austria-Hungary, which could disfavour negotiations that excluded its ally, Germany.<sup>44</sup>

The reasons that prompted European governments to seek the prohibition of expanding bullets stand out when contrasted with other, rapidly-evolving deadly technologies of the time.<sup>45</sup> The new, small-bore weapons that had been introduced throughout Europe in the late nineteenth century were lighter than their predecessors, fired ammunition that travelled at much higher velocities, and inflicted wounds that could be as severe as those that were caused by expanding bullets.<sup>46</sup> Artillery shells, meanwhile, had grown in size and explosive power, and “Maxim and Nordenfelt guns, mines, submarines, torpedoes, and Lyddite shells enhanced the wounding and killing capacities of all major armies.”<sup>47</sup> Expanding bullets, however, were associated with the British Empire: they “stood in’ for British influence in the world.”<sup>48</sup> The ire of States against expanding bullets was therefore linked, in part, to national interests.

The challenge to expanding bullets came not only from a Russia that was falling behind in the arms race; it also came from an aggressively militaristic Germany.<sup>49</sup> Professor Paul von Bruns of Tübingen notably reported on the effect of British expanding bullets after firing them into the carcasses of animals. The publication of this experiment's report resulted in an appeal to ban expanding bullets from eminent surgeon Professor Friedrich von Esmarch of Kiel to representatives at the 1899 Hague Conference.<sup>50</sup> This appeal highlighted the double standard to which expanding weapons were held because of the advantages brought about by their use in colonial warfare:

The employment of such missiles is, perhaps, excusable in a war with fanatical barbarians, who, ignorant of the rules of international law, give and take no quarter, and who ... though lying wounded and helpless on the ground, yet assailed their enemies when their backs were turned; but it would be a matter

42 D. F. Vagts, above note 24, p. 33.

43 S. A. Keefer, above note 15, pp. 7–8.

44 *Ibid.*, pp. 8–9.

45 *Ibid.*, pp. 10–13.

46 Joanna Bourke, “Dum-Dum Bullets: Constructing and Deconstructing ‘The Human’”, in J. Obert, A. Poe and A. Sarat (eds), above note 28, p. 124.

47 *Ibid.*

48 *Ibid.*, pp. 124–125.

49 *Ibid.*, p. 129.

50 *Ibid.*

for the deepest regret were barbarous engines of destruction ever to come into use in European wars.<sup>51</sup>

The explicit defence of the use of expanding bullets against “uncivilized” peoples lays bare the political calculations underpinning this declaration. Such defences highlight how the grievous injuries inflicted by these bullets were permissible against “barbarous races, or against nations which are partly civilized, but who do not understand, and so fail to observe, the laws of war”, and which “yield only to superior force or superior cunning”.<sup>52</sup> Expanding bullets might have been inhumane when used against civilized nations, but their use against non-States Parties to the St Petersburg Declaration or “uncivilized” communities that fell outside of the laws of war was a different story.<sup>53</sup>

Britain’s defence of expanding bullets was heavily influenced by their considerable utility in colonial warfare. Their stopping power and higher velocity at short range meant that they could stop a charging enemy.<sup>54</sup> The British Army felt that they were indispensable against non-European forces, “who refused to stop fighting upon being shot as a ‘civilised’ soldier would”.<sup>55</sup> Crossman’s 1915 article highlights their specific use in colonial warfare:

The first thing the British discovered about their new small bore acquisition in place of the good old 0.45 caliber Martini Henry, was that the new rifle would not stop an Afghan or other hill person, who really intended to keep coming. Several British soldiers were killed by hill men who, according to all the laws of warfare should have been very, very dead. Drilling them with the 0.303 seemed merely to exasperate them.<sup>56</sup>

Crossman was not the only writer to highlight this concern. An 1895 article in the *Coventry Herald* highlighted the dangers posed by other, non-expanding types of ammunition which theoretically could not stop a rush of determined enemies.<sup>57</sup> The *Bognor Regis Observer* reiterated this claim in an 1899 article asserting that Boer combatants did not realize they had been hit by Lee-Metford bullets until long after the fact.<sup>58</sup> For the British War Office, therefore, expanding bullets were an indispensable weapon. For other governments at the Hague, however, “a ban of the dum-dum offered an effective achievement on arms limitation without great cost”, as few armies other than Britain’s employed them in combat.<sup>59</sup>

51 Alexander Ogston, “Continental Criticism of English Rifle Bullets”, *British Medical Journal*, No. 1996, 1899, pp. 754–755.

52 George B. Davis, *The Elements of International Law, with an Account of Its Origin, Sources and Historical Development*, Harper & Brothers, New York and London, 1900, p. 293.

53 M. Abbenhuis, above note 40, pp. 805–806.

54 R. Coupland and D. Loye, above note 11, p. 139.

55 S. A. Keefer, above note 15, p. 13.

56 Edward C. Crossman, “Dum-Dum Bullets”, *Scientific American*, Vol. 112, No. 16, 1915, p. 358.

57 “Bullets that Do Not Kill”, *Coventry Herald*, 26 July 1895, p. 7.

58 “Prisoners and Wounded”, *Bognor Regis Observer*, 8 November 1899, p. 2.

59 M. Abbenhuis, above note 39, p. 108.

Other contemporary literature reflects these ideas and concerns, and reveals the interests underpinning the ban on expanding bullets. J. B. Hamilton and Arthur E. Barker highlighted the irony involved in arguing for a peaceful way of waging war and questioned the varying inhumanity of expanding bullets when used against either “civilized” or “savage” men. War, they wrote,

cannot be made with rosewater . . . [I]f it is allowable to use Dum-dum bullets on “black” men, by a parity of argument it cannot be wrong to use them on “white” ones. The only alternative would be to arm our troops with a different weapon when engaged with savage races, which would be a *reductio ad absurdum*.<sup>60</sup>

Szabla articulates the questions that arise from Britain’s position regarding expanding bullets at the 1899 Hague Conference as follows: “Did Britain’s previous concern for international law in colonial combat inform its desire to exempt ‘savages’ from it? Or was Britain laying the groundwork for a lower universal standard, as some have suggested?”<sup>61</sup> For Britain, the use of expanding bullets was necessary in order to protect its own soldiers against enemies that could not be stopped with a standard full metal jacket bullet. This fact stood despite the grievous wounds that expanding bullets could inflict.

Having examined the conflicting ethical considerations and national interests that influenced the call to ban expanding bullets, we will turn to the way they impacted the 1899 Hague Conference. This will be done through an examination of how national interests, the idea of humanity and weapon lethality surfaced within the discussions on the prohibition of expanding bullets that took place at the Conference. A notable aspect of some of the arguments against the prohibition was that they did not deny the wounding power of expanding bullets but instead chose to highlight their tragic necessity.

## The 1899 Hague Conference

It was the use of expanding bullets in colonial warfare that gave rise to efforts to outlaw them at the 1899 Hague Conference.<sup>62</sup> That the Conference directly aimed to mitigate the horrors of war is relevant in this respect, with Baron Georg Friedrich von Staal’s speech at the Conference’s Second Meeting clearly illustrating the depth of this aspect of the event:

The effects of an international conflict in any quarter of the globe echo far and wide in every direction. That is why third parties cannot remain indifferent to

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60 J. B. Hamilton and Arthur E. Barker, “The Dum-Dum Bullet”, *British Medical Journal*, No. 1954, 1898, p. 1559.

61 Christopher Szabla, “Civilising Violence: International Law and Colonial War in the British Empire, 1850–1900”, *Journal of the History of International Law*, Vol. 25, No. 1, 2023, pp. 96–97.

62 A. Eide, above note 36, pp. 46–47.

such a conflict. ... [W]e owe it to ourselves to do a useful work by specifying the method of employing some of the means of assuring peace.<sup>63</sup>

Von Staal added that should it be impossible to eliminate armed conflict, “it would still be a labor [on] behalf of humanity to mitigate the horrors of war”.<sup>64</sup>

Though expanding bullets were originally not listed in Tsar Nicholas II’s programme for the Conference, their inclusion was raised by the Swiss and Dutch delegations.<sup>65</sup> This action was motivated by the enormous public reaction that followed the British use of expanding bullets against Mahdist enemies in Sudan, which “inflicted the most horrendous wounds, the ‘terrible severity’ of which caused tens of thousands of casualties”.<sup>66</sup> This public reaction, in turn, had a considerable influence on the Hague Declaration, which was the “product of a media spectacle that revolved around Britain’s deployment of dum-dum bullets”; making efforts to limit the use of such bullets an easy success story for diplomats.<sup>67</sup>

The prohibition on expanding bullets was first proposed at the Sixth Meeting of the 1899 Hague Conference, where delegates pushed for the ban despite the defences articulated by Great Britain and the United States – both colonial powers.<sup>68</sup> Colonel Gilinsky, a Russian technical delegate, emphasized how the two wars in which the bullet had been used had “shown it to be such as to inflict wounds of great cruelty” and noted the similarities between the British bullet and that used in von Bruns’ experiments, which highlighted the grievous injuries it caused.<sup>69</sup> General J. C. C. den Beer Poortugael, one of the Netherlands’ delegate plenipotentiaries, argued that guns of small calibres were sufficient to stop the attack of enemies;<sup>70</sup> he also stated that his government had charged him to demand the “formal interdiction of the use of the dumdums and similar projectiles, which make incurable wounds” and “enormous ravages in the body”.<sup>71</sup> The Austrian delegate further supported the motion on account of the uselessly cruel wounds inflicted by these bullets.<sup>72</sup>

British delegate Sir John Ardagh’s depiction of expanding bullets as being like any other projectile and defence of their use against “savage races” caused general consternation.<sup>73</sup> Upon hearing this argument, Arthur Raffalovich, the Russian councillor of State and technical delegate, argued that the ideas Ardagh had expressed

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63 Von Staal presided over the Hague Conference’s plenary sessions. At the time he was privy councillor, the Russian ambassador at London and one of Russia’s delegate plenipotentiaries. James Brown Scott (dir.), *The Proceedings of the Hague Peace Conferences: Translation of the Official Texts: The Conference of 1899*, Oxford University Press, New York, 1920, pp. 18–19.

64 *Ibid.*, p. 19.

65 Scott Andrew Keefer, “‘Explosive Missals’: International Law, Technology, and Security in Nineteenth-Century Disarmament Conferences”, *War in History*, Vol. 21, No. 4, 2014, p. 459.

66 M. Abbenhuis, B. Bogdan and E. Wordsworth, above note 12, p. 1685.

67 *Ibid.*, pp. 1686–1687.

68 J. B. Scott (dir.), above note 63, p.79.

69 *Ibid.*, pp. 81–82.

70 *Ibid.*, p. 86.

71 *Ibid.*, p. 286.

72 *Ibid.*

73 *Ibid.*, pp. 286–287.

were “contrary to the humanitarian spirit which rules this end of the nineteenth century”.<sup>74</sup> Other delegates further noted the extensive injuries and excruciating internal wounds caused by expanding bullets, which rendered them needlessly cruel.<sup>75</sup> All delegations save for Great Britain and the United States voted to proscribe expanding bullets.

The prohibition of expanding bullets raises questions in relation to the levels of lethality that are deemed to be acceptable. Britain’s defence of expanding bullets within the 1899 Hague Conference underscored the double standard involved in attributing their severity solely to the design of their mantle. All the bullets developed in Austria, Germany, France, Sweden, Portugal, Denmark, Japan and Peru were larger than those used by Britain, and at short ranges, the British bullet was the slowest. The mantle of the bullet was not the only factor in the damage it caused: velocity and weight were also crucial, and in fact were the primary destructive forces.<sup>76</sup> In other words, “if dum-dum and hollow-point bullets were to be condemned, so too should all modern mantled bullets of small caliber, since they all produced terrible wounds”.<sup>77</sup> This raises questions about the standard by which lethality was judged in relation to ammunition within this period and how, in banning expanding bullets, other novel military technologies and types of ammunition of this period were legitimized.<sup>78</sup> It also gives rise to additional questions concerning the link between the prohibition of the use of expanding bullets and efforts to maintain imperial authority.<sup>79</sup>

Sir Alexander Ogston’s critique of the idea that the expanding bullet was anti-humanitarian, which focused on the grievous wounds caused by the ammunition used by other countries, highlights the specific logic of this argument. Attempts to portray fully mantled bullets as letting “the life out of a man by the smallest opening possible and in the gentlest way – an utopian sort of bullet” – were out of place.<sup>80</sup> All modern bullets produced severe wounds and had horrifying consequences, and it was, therefore,

out of place to apply the term ‘humane,’ even in a relative sense, to any of them. They are all, as used by man against man, a disgrace to our species, and their unalloyed cruelty makes it, in truth, a matter of comparatively little moment,

<sup>74</sup> *Ibid.*

<sup>75</sup> M. Abbenhuis, above note 39, pp. 84–85.

<sup>76</sup> J. Bourke, above note 46, p. 130.

<sup>77</sup> *Ibid.*, p. 131.

<sup>78</sup> Matthew Ford, “The Epistemology of Lethality: Bullets, Knowledge Trajectories, Kinetic Effects”, *European Journal of International Security*, Vol. 5, No. 1, 2020, p. 82; Neil Cooper, “Humanitarian Arms Control and Processes of Securitization: Moving Weapons along the Security Continuum”, *Contemporary Security Policy*, Vol. 32, No. 1, 2011, pp. 143–144.

<sup>79</sup> Neil Cooper, “Race, Sovereignty, and Free Trade: Arms Trade Regulation and Humanitarian Arms Control in the Age of Empire”, *Journal of Global Security Studies*, Vol. 3, No. 4, 2018, p. 445.

<sup>80</sup> Alexander Ogston, “The Peace Conference and the Dum-Dum Bullet”, *British Medical Journal*, No. 2013, 1899, p. 279.

where all are so bad, whether the bullet of one breaks up a little more or less than another .... The velocity and weight of the ball are its main destroying forces.<sup>81</sup>

Dr Frédéric Ferrière, who had used the term “humanitarian bullet”, was similarly reluctant to adopt this terminology, and questioned whether said point of view had played a role in the development of bullets at all.<sup>82</sup> Clinton T. Dent also highlighted this in 1900: “Confusion arises from the fact that any form of high-velocity bullet may exert, under certain circumstances, an expanding or ‘explosive’ effect.”<sup>83</sup> Ogston reiterated the same arguments in a separate publication later that year, in which he argued that the changes which bullets had undergone since 1868 allowed them to (1) lessen their diameter and propel the bullet with greater explosive force, increasing its velocity on impact; (2) increase their penetration power by encasing them in a hard mantle of nickel or nickel steel that prevented them from losing their shape when passing through the rifling of the barrel; and (3) kill or wound at much greater distances than earlier bullets.<sup>84</sup> These three changes rendered all types of ammunition deadlier than those that had come before. In a 1914 publication, Stevenson further remarked on the irony of referring to Germany’s “new sharp-pointed bullet” as more humane than prior bullets such as the British Mark III, IV and V, on account of the German bullet’s tendency to “tumble” inside the body on meeting even the slightest resistance, with grievous consequences.<sup>85</sup>

British commentators questioned the methodology of Professor von Bruns’ experiment on expanding bullets, which had led to calls to ban them: von Bruns had employed “‘half-naked bullets’ ... commonly employed by big game hunters in East Africa”, not a British model.<sup>86</sup> Ogston criticized von Bruns’ experiment, arguing that it had not been carried out with dum-dum bullets at all, but with soft-nosed Mauser bullets manufactured in Germany. These projectiles were “too unlike the Dum-dum to justify us in at once accepting his conclusions as being true of it”.<sup>87</sup> He reiterated this conclusion in an 1899 publication which highlighted how the “whole question of modern bullet wounds is far more complex and less perfectly known than the advocates of an international agreement excluding the bullets used by the English troops in India and the Soudan would have us believe”.<sup>88</sup> Hamilton and Barker – whose article was examined in the previous section – focused on the expanding bullet’s humanity, stating that expanding bullets were more merciful due to how they were

81 *Ibid.*, p. 280.

82 Frédéric Ferrière, “Les balles humanitaires”, *Bulletin International des Sociétés de la Croix-Rouge*, Vol. 39, No. 154, 1908, p. 89; Daniel Palmieri, “How Warfare Has Evolved – a Humanitarian Organization’s Perception: The Case of the ICRC, 1863–1960”, *International Review of the Red Cross*, Vol. 97, No. 900, 2015, p. 987.

83 Clinton T. Dent, “A Lecture on Small-Bore Rifle Bullet Wounds and the ‘Humanity’ of the Present War”, *British Medical Journal*, No. 2055, 1900, p. 1212.

84 Alexander Ogston, “The Wounds Produced by Modern Small-Bore Bullets: The Dum-Dum Bullet and the Soft-Nosed Mauser”, *British Medical Journal*, No. 1968, 1898, p. 814.

85 W. F. Stevenson, above note 33, p. 702.

86 J. Bourke, above note 46, pp. 129–130.

87 A. Ogston, above note 84, p. 815.

88 A. Ogston, above note 51, p. 757.

guaranteed to injure only one man rather than two or more when used in combat. Expanding bullets' penetration power diminished rapidly, whereas other projectiles completely covered with nickel would "possibly pass through two or three men, and gradually 'setting up,' inflict great injuries on a fourth".<sup>89</sup> As such, this type of bullet was more humane precisely because of how it was deadly for a single person but, in turn, less deadly for those standing behind them.

These different ideas are reflected in Britain's defence of the bullet at the 1899 Hague Conference. Sir John Ardagh argued at the Conference's Third Meeting that the bullets used in von Bruns' experiment and the British dum-dum bullet were different, and that the damage caused by the former could not "be accepted as evidence or proof against the dum-dum bullet, which has an entirely different construction and effect".<sup>90</sup> Reiterating the importance of humanitarianism in Britain's choice of weaponry, Ardagh asserted that "public opinion in England would never sanction the use of a projectile which would cause useless suffering", and that "every class of projectile of this nature is condemned in advance".<sup>91</sup> He also emphasized the tragic need to use expanding bullets, stating that fully jacketed bullets did not sufficiently protect British soldiers against determined enemies.<sup>92</sup> He reiterated the difference between the two bullets to Russian delegate General Gilinsky, after the latter emphasized the grievous wounds they caused: it was the von Bruns bullet, not the British dum-dum, that was needlessly cruel.<sup>93</sup> It was these reasons, which appealed to the ethical and moral foundations of IHL, that forced Ardagh to vote "against a rule inspired by principles of which [he] wholly approve[d]".<sup>94</sup> The United States took a different position – Captain W. Crozier, a US delegate plenipotentiary, argued at the Conference's Sixth Meeting that none of the evidence which had been presented so far at the Conference was enough to sit in judgement against the British dum-dum bullet.<sup>95</sup> The dum-dum, he later said, "is condemned without proof, for there has been no effort made to show that it is needlessly cruel".<sup>96</sup>

Great Britain did not adopt the Hague Declaration in 1899. However, though British newspapers defended Britain's right to use expanding bullets and presented a case for their necessity, almost no newspaper came to the bullet's defence during the Boer War, between 1899 and 1902.<sup>97</sup> The *Daily Mail* lauded the British government for returning to the traditional Lee-Metford bullet in the Boer War following the 1899 Hague Conference.<sup>98</sup> The Hague Declaration's prohibition forced

89 J. B. Hamilton and A. E. Barker, above note 60, p. 1559. The term "setting up" refers to the deformation, flattening or "mushrooming" of the bullet upon impact.

90 J. B. Scott (dir.), above note 63, p. 277.

91 *Ibid.*, pp. 277–278.

92 *Ibid.*, p. 278.

93 *Ibid.*, p. 279.

94 *Ibid.*, p. 278.

95 *Ibid.*, p. 81.

96 *Ibid.*, pp. 83–84.

97 M. Abbenhuis, above note 39, p. 109. Though Great Britain did not sign the Hague Declaration in 1899, it acceded to it in 1907.

98 *Ibid.*, pp. 110–111.

Britain to “carefully manage the propaganda around its use of expanding rifle ammunition after 1899 in imperial and non-imperial settings”.<sup>99</sup> By the time Britain had adopted the Hague Declaration in August 1907, it had abandoned all plans to employ expanding bullets in combat.<sup>100</sup> Britain’s military delegates recommended signing the Declaration only if it was a universally accepted ban, expressing fears about “facing an enemy armed with new bullets of ‘high stopping efficiency’ if Britain lacked the same ammunitions”.<sup>101</sup> These interests also played a role in the naval armament negotiations at the 1907 Hague Conference; the British Liberal government – which had only recently seen the end of the Boer War, the destruction of the Russian fleet in the Russo-Japanese war, and the launching of the HMS *Dreadnought* in 1906 – also hoped to reduce its military budget and save in operation and construction costs whilst other nations built their own dreadnoughts.<sup>102</sup> This highlights the dual currents of humanitarianism and strategic interests which underpinned both the negotiations at the Hague and the use or non-use of certain weapons.<sup>103</sup>

The power and influence of the 1899 Hague Conference stemmed from the momentum that Tsar Nicholas II’s call found in the public sphere. This public reaction forced world statesmen to consider the public profile and impact of any public mobilization “behind various causes in the wake of [Nicolas II’s call] and their own positions on key issues to be discussed at The Hague”, and opened a new era of public diplomacy.<sup>104</sup> This shows the apparent strength of the norm associated with expanding bullets, which came to represent a resolute standard of barbarism in public diplomacy and an unconscionable weapon regardless of the circumstances of their use. No “civilized” State could employ this bullet without rebuke, even when used in colonial warfare, and its demonization following the Conference was near-universal.<sup>105</sup>

Having examined the different national interests associated with the use of expanding bullets and their influence on the proceedings of the 1899 Hague Conference, we will turn to the influence of expanding bullets on IHL and on contemporary legal frameworks.

## Contemporary impact and influence

The prohibition on the use of expanding bullets in international conflicts, as codified in the Hague Declaration, has had a significant impact in later IHL treaties and legal

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99 M. Abbenhuis, B. Bogdan and E. Wordsworth, above note 12, pp. 1706–1707.

100 S. A. Keefer, above note 65, p. 463.

101 *Ibid.*, p. 463.

102 Scott Andrew Keefer, “Building the Palace of Peace: The Hague Conference of 1907 and Arms Control before the World War”, *Journal of the History of International Law*, Vol. 9, No. 1, 2007, pp. 52–53.

103 S. A. Keefer, above note 65, pp. 463–464.

104 M. Abbenhuis, above note 39, pp. 22–23.

105 *Ibid.*, pp. 111–114.

instruments.<sup>106</sup> This prohibition differed from the 1868 St Petersburg Declaration, which only prohibited projectiles of less than 400 grams that were either explosive or charged with inflammable substances.<sup>107</sup> The Hague Declaration was only binding on the contracting powers in the case of a war between two or more of them and ceased to be binding if the belligerents were to be joined by a non-contracting power; nevertheless, it represented the first time this type of ammunition had been subject to IHL. It has since passed into general international law and is widely regarded as being part of international customary law.<sup>108</sup> It constitutes Rule 77 of the International Committee of the Red Cross (ICRC) Customary Law Study and, as such, is widely regarded as being applicable to all States in international and non-international armed conflicts.<sup>109</sup>

The prohibition on the use of expanding bullets in IHL is linked to the idea of unnecessary suffering and superfluous injuries. The basis for this prohibition, like the prohibition on exploding bullets contained in the 1868 St Petersburg Declaration, is the idea that they were designed to cause unnecessary suffering or superfluous injuries upon impact.<sup>110</sup> These ideas are not exclusive to expanding bullets. Their prohibition was built upon the array of motivations that habitually underlie weapons prohibitions: that is, they were perceived as going against “prevailing criteria of honour, fairness, ethics, morality and so on, or because they were more devastating than need be”.<sup>111</sup> The prohibition on expanding bullets in international conflicts, together with its associated norm, incorporates all of these criteria, which, together with the bullets’ perceived unfairness, illegitimized their use in international conflicts.<sup>112</sup> The Hague Declaration has also held considerable influence on contemporary international criminal law, with the 1998 Rome Statute of the International Criminal Court standing out in this regard<sup>113</sup> – this treaty mirrors the Hague Declaration’s language and states within Article 8(2)(b) that the term “war crimes” refers to:

8(2)(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

106 Dietrich Schindler, “International Humanitarian Law: Its Remarkable Development and Its Persistent Violation”, *Journal of the History of International Law*, Vol. 5, No. 2, 2003, pp. 167–168.

107 St Petersburg Declaration, above note 4.

108 R. R. Baxter, “Conventional Weapons under Legal Prohibitions”, *International Security*, Vol. 1, No. 3, 1977, p. 43; Yudan Tan, “The Identification of Customary Rules in International Criminal Law”, *Utrecht Journal of International and European Law*, Vol. 34, No. 2, 2018, p. 107.

109 ICRC Customary Law Study, above note 3, Rule 77; Robin Geiß, “Poison, Gas and Expanding Bullets: The Extension of the List of Prohibited Weapons at the Review Conference of the International Criminal Court in Kampala”, *Yearbook of International Humanitarian Law*, Vol. 13, 2010, p. 344; David Turns, “Weapons in the ICRC Study on Customary International Humanitarian Law”, *Journal of Conflict and Security Law*, Vol. 11, No. 2, 2006, p. 226.

110 W. H. Boothby, above note 20, p. 142; Paul Scharre and Megan Lamberth, *Artificial Intelligence and Arms Control*, Center for a New American Security, Washington, DC, 2022, pp. 33–34.

111 Roda Mushkat, “*Jus in Bello* Revisited”, *Comparative and International Law Journal of Southern Africa*, Vol. 21, No. 1, 1988, p. 9.

112 John Sislin, “A Convergence of Weapons”, *Peace Review*, Vol. 10, No. 3, 1998, p. 456.

113 R. Coupland and D. Loye, above note 11, p. 136.

...

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.<sup>114</sup>

Article 8(2)(e) expands this prohibition to armed conflicts of not an international character following the Rome Statute's 2010 Review Conference and the adoption of Resolution RC/Res.5.<sup>115</sup>

The ethical motivations underlying the prohibition on the use of expanding bullets are akin to those that led to early prohibitions on the use of poison in war: there is no military utility in putting poison in projectiles so that neutralized soldiers die an agonizing death.<sup>116</sup> The suffering caused by these weapons made their use in combat seem fundamentally different. Though technologies were not regarded as immoral in and of themselves and their moral value was understood in terms of how they were used, expanding bullets did not follow this understanding. The Hague Declaration instead took "the form of a more absolute prohibition in that any kind of first use of such weapons was to be regarded as unacceptable".<sup>117</sup> This is the core idea that nineteenth-century IHL treaties used to build their restrictions on the use of certain weapons in international conflicts, which aimed to ban the use of inhumane weapons that caused excessive or indiscriminate injuries.<sup>118</sup>

Contemporary military manuals also reflect the prohibition on the use of expanding bullets, with Australia, the United Kingdom and Canada openly condemning their use in combat. For Australia, expanding bullets come under the prohibition of weapons that are calculated or modified to cause unnecessary suffering.<sup>119</sup> The United Kingdom's *Manual of the Law of Armed Conflict* also reflects this idea and emphasizes the unnecessarily serious injuries caused by bullets that expand or flatten easily in the human body.<sup>120</sup> Canada's *Joint Doctrine Manual on the Law of Armed Conflict*, meanwhile, prohibits the use of expanding bullets on the

114 The specific cases in which the use of these bullets is prohibited are expanded upon in Annex II of this treaty. Rome Statute of the International Criminal Court, 2187 UNTS 90, 17 July 1998 (entered into force 1 July 2002), Art. 8(2)(b), 8(2)(b)(xix)–(xx).

115 *Ibid.*, Art. 8(2)(e)–8(2)(e)(xv); Review Conference of the Rome Statute of the International Criminal Court, 12th Plenary Meeting, Res. RC/Res.5, 10 June 2010.

116 R. R. Baxter, above note 108, p. 44.

117 Richard Price, "A Genealogy of the Chemical Weapons Taboo", *International Organization*, Vol. 49, No. 1, 1995, p. 90.

118 S. A. Keefer, above note 65, pp. 446–447.

119 Australian Department of Defence, *Executive Series ADDP 06.4: Law of Armed Conflict*, Defence Publishing Service, Canberra, 2006, p. 4-4, para. 4.7.

120 This manual further considers this prohibition to be part of international customary law. UK Ministry of Defence, *The Joint Service Manual of the Law of Armed Conflict*, Joint Service Publication 383, Joint Doctrine and Concepts Centre, Swindon, 2004, paras 6.9–6.9.1.

grounds that they are indiscriminate in their effect.<sup>121</sup> The similarities of the prohibitions articulated in these military manuals, both between each other and to the IHL prohibitions detailed above, stand out, particularly through their emphasis on expanding bullets' indiscriminate effects or the unnecessary injuries and suffering they cause.

The US *Law of War Manual* (US Manual) differs prominently from these prior examples. The US Manual emphasizes the importance of the law of war in US military practice. The law of war is of fundamental importance to the United States' armed forces; it is "part of who we are" and linked with both President Lincoln's Lieber Code and George Washington's decree that the Revolutionary War was to be carried out in a way that was agreeable to the rules of humanity.<sup>122</sup> Despite this, the US Manual holds that expanding bullets are not necessarily unlawful: "The law of war does not prohibit the use of bullets that expand or flatten easily in the human body. Like other weapons, such bullets are only prohibited if they are calculated to cause superfluous injury."<sup>123</sup> The fact that expanding bullets can cause superfluous or unnecessarily severe injuries is not, therefore, considered an inherent characteristic of this type of bullet; instead, the US Manual questions whether expanding bullets always cause superfluous or unnecessarily severe injuries and accepts a ban on those that do cause such wounds. The US Manual references Captain W. Crozier's objections at the 1899 Hague Conference – that expanding bullets were condemned "by designed implication, without even the introduction of any evidence against it, the use of a bullet actually employed by the army of a civilized nation" – in one of its footnotes.<sup>124</sup>

The US Manual's position on expanding bullets is particularly significant when contrasted with the military manuals of the United Kingdom, Canada and Australia. The United States is not a party to the 1899 Hague Declaration due to how "evidence was not presented at the diplomatic conference that expanding bullets produced unnecessarily severe or cruel wounds."<sup>125</sup> The US Manual also considers the Hague Declaration's prohibition on expanding bullets not to be a part of international customary law:

In 2013, a review conducted by DoD in coordination with the Department of State reconfirmed that the prohibition in the 1899 Declaration on Expanding Bullets did not reflect customary international law. The findings of this review were consistent with the longstanding position of the United States ... not to

121 Canadian Office of the Judge Advocate General, *Law of Armed Conflict at the Operational and Tactical Levels: Joint Doctrine Manual*, B-GJ-005-104/FP-021, Office of the Judge Advocate General, 2001, para. 510(1)(b).

122 US Department of Defense, *Law of War Manual*, Office of the General Counsel, Washington, DC, June 2015 (updated July 2023) (US Manual), p. iii.

123 *Ibid.*, § 6.5.4.4.

124 *Ibid.*, § 6.5.4.4 fn. 76. Crozier's objection also questioned whether prohibiting expanding bullets might lead to the adoption of a crueller bullet: *ibid.*, fn. 78. See also James Brown Scott (ed.), *Instructions to the American Delegates to the Hague Peace Conferences and Their Official Reports*, Oxford University Press, New York, 1916, p. 34.

125 US Manual, above note 122, § 6.5.4.4.

apply a distinct prohibition against expanding bullets, but instead to regard expanding bullets as prohibited only to the extent that such bullets are calculated to cause unnecessary suffering.<sup>126</sup>

The US Manual also highlights expanding bullets' ineffectiveness due to technical and military reasons, such as safety and the potential of weapon malfunction, and how this has led to a lack of use.<sup>127</sup> Taken together with the points above, this is said to support "the conclusion that States do not regard such bullets as inherently inhumane or needlessly cruel".<sup>128</sup> This conclusion is also applied to the Rome Statute of the International Criminal Court, which "has been interpreted by States only to criminalize the use of expanding bullets that are also calculated to cause superfluous injury and not to create or reflect a prohibition against expanding bullets as such".<sup>129</sup> It is these facts that lead the US Manual to conclude that "this crime only applies to expanding bullets that are also calculated to cause superfluous injury and does not create or reflect a prohibition against expanding bullets as such".<sup>130</sup> The differences between the conclusions in the US Manual and the UK, Canadian and Australian military manuals are thus notable, particularly when juxtaposed with the treaties examined above.

Contemporary defences of the use of expanding bullets in international armed conflicts foreground the military utility of expanding bullets remarkably similarly: using expanding bullets, these arguments hold, is necessary to stop threats or enemies that may otherwise wound or kill large groups of people. Berry's hypothetical scenario involving the use of expanding bullets to defend soldiers from suicide bombers highlights this idea.<sup>131</sup> Some American operators, he notes, "complained that the M855 was not effective at close ranges, where most urban combat engagements occur, and that a different bullet was required for such combat".<sup>132</sup> This argument is reminiscent of the British defence of expanding bullets at the 1899 Hague Conference: normal bullets were "not sufficient to place a determined, fanatical opponent *hors de combat*".<sup>133</sup> In such situations, lethal force – regardless of how tragic the necessity for it may be – is a requirement rather than the mitigation of a risk.<sup>134</sup> These defences appeal to the utility of expanding bullets when defending civilians or soldiers from attackers that need to be stopped immediately; in other words, they appeal to the need to use expanding bullets due to moral and ethical

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126 *Ibid.*

127 *Ibid.*

128 *Ibid.*

129 *Ibid.*, § 6.5.4.5.

130 This discussion appears in relation to the Rome Statute, to which the United States is not a party. *Ibid.*

131 Joshua F. Berry, "Hollow Point Bullets: How History Has Hijacked Their Use in Combat and Why It Is Time to Reexamine the 1899 Hague Declaration concerning Expanding Bullets", *Military Law Review*, Vol. 206, 2010, pp. 88–91.

132 *Ibid.*, p. 91.

133 *Ibid.*, p. 110.

134 *Ibid.*, pp. 131–135.

reasons which take precedence over the norm associated with the use of such bullets in conflict.

Having established the status of expanding bullets under IHL, we will now bring the different threads explored in this article together in a conclusion that highlights how norms are more nuanced than conventionally thought and can be linked to national interests.

## Conclusion

The norm and IHL restrictions to which expanding bullets were subject retains significance today due to the importance of the legal instruments that their prohibition gave birth to. The spirit that drove the negotiations of the 1899 Hague Conference – that is, the avoidance of war and concern about the growing horrors created by new military technologies – continued throughout the twentieth century and remains markedly important in similar negotiations today.<sup>135</sup> The technological changes and developments that took place throughout the nineteenth century changed the face of warfare completely;<sup>136</sup> the question about what means of combat were legitimate arose for the first time, popularizing the idea that the choice of means and methods in armed conflict was not unlimited.<sup>137</sup> These questions remain at the forefront of IHL debates today, in part due to how small arms and light weapons continue to serve as the primary tools of violence in war and human rights violations.<sup>138</sup> Interrogating the power of the norms constraining the use of weapons is, then, more relevant than ever, particularly when considering the way in which national interests may affect the development of prohibitions on the use of particular weapons.

The case of expanding bullets highlights how norms are prone to developing with time and can be linked to the defence of national interests and a State's power. Defences of the use of weapons that are thought to be horrifying – as seen with historical and contemporary defences of the use of expanding bullets in international conflicts – do not necessarily deny the horror and suffering brought about by their use. Instead, they accept it and argue for the tragic necessity of their use, often in relation to a conflicting norm or ethical imperative. These defences focus on the tragic utility of expanding bullets and raise the question of whether the norms prohibiting the use of certain weapons fall by the wayside when confronted with the need to protect civilians or individual combatants. The desire to save the lives of soldiers fighting against “savages” is a key example of this logic. The horror of using

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135 David D. Caron, “War and International Adjudication: Reflections on the 1899 Peace Conference”, *American Journal of International Law*, Vol. 94, No. 1, 2000, pp. 4–6.

136 A. Eide, above note 36, p. 44.

137 *Ibid.*, pp. 44–45.

138 Barbara Frey, “Obligations to Protect the Right to Life: Constructing a Rule of Transfer Regarding Small Arms and Light Weapons”, in Mark Gibney and Sigrun Skogly (eds), *Universal Human Rights and Extraterritorial Obligations*, University of Pennsylvania Press, Philadelphia, PA, 2010, p. 30.

expanding bullets does not disappear; instead, it becomes tragically necessary to save the lives of soldiers or ensure the death of a single enemy combatant.

Late nineteenth-century critiques and defences of expanding bullets all highlight these conflicting interests. Regardless of the horror that their use implied, there was no question as to the permissibility of their use in colonial contexts. Expanding bullets were required to stop charges of “savages” – enemies that supposedly could not be stopped with standard full metal jacket bullets – and were perceived to be superior in achieving this goal. These defences also show the various political interests that influenced the prohibition of expanding bullets, particularly with regard to colonial warfare and European empires.<sup>139</sup> The language of the historical, nineteenth-century treaties that sought to limit the means of violence used in international conflicts, though seemingly wholly humanitarian in focus, was layered with military pragmatism and varying national interests.<sup>140</sup> The use of expanding bullets may have been horrifying against civilized opponents, but it was not seen as such against those who were deemed to lie beyond the laws of war. The literature examined within this article raises questions about how we evaluate the just limits of military violence in modern life and how pragmatism can determine the types of weapons that are deemed to be horrifying.<sup>141</sup>

The analysis carried out in this article does not imply that norms and ethical considerations were non-existent when it comes to expanding bullets – on the contrary, both were active components of how their use was regarded and implemented. The conflicting accounts in contemporary military manuals and reactions to expanding bullets, which either revile their use or justify it in certain contexts, highlight this. That the US Manual condemns expanding bullets which are *calculated* to cause superfluous injuries, as opposed to condemning expanding bullets in general, is particularly significant in this regard.<sup>142</sup> Taken together, the origins of the international legal instruments and norms prohibiting the use of expanding bullets in international conflicts highlight the dual influence of national interests on the development of those legal instruments and norms, as well as that of ethical and moral considerations such as those linked to the bullets’ effects on the human body. These origins show that norms are more nuanced than conventionally acknowledged, and that potential violations of a norm can be justified when the norm conflicts with another, more powerful norm.

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139 M. Abbenhuis, B. Bogdan and E. Wordsworth, above note 12, pp. 1687–1688.

140 *Ibid.*, pp. 1696–1697.

141 *Ibid.*, p. 1690.

142 US Manual, above note 122, § 6.5.4.4.