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ICRC INTERNATIONAL COMMITTEE OF THE RED CROSS

Customary international humanitarian law

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Customary international law is made up of rules that come from "a general practice accepted as law" and that exist independent of treaty law. Customary international humanitarian law (IHL) is of crucial importance in today's armed conflicts because it fills gaps left by treaty law in both international and non-international conflicts and so strengthens the protection offered to victims.

International law comes from both treaty law and rules of what is known as customary international law. Treaties are written conventions in which States formally establish certain rules. Customary international law, on the other hand, is not written but derives from "a general practice accepted as law". To prove that a certain rule is customary, one has to show that it is reflected in state practice and that the international community believes that such practice is required as a matter of law.

Customary IHL continues to be relevant in today's armed conflicts for two main reasons. The first is that, while some States have not ratified important treaty law, they remain nonetheless bound by rules of customary law. The second reason is the relative weakness of treaty law governing non-international armed conflicts – those that involve armed groups and usually take place within the boundaries of one country. A study published by the ICRC in 2005 showed that the legal framework governing internal armed conflicts is more detailed under customary international law than under treaty law. Since most armed conflicts today are non-international this is of particular importance.

This study – "Customary International Humanitarian Law" – was begun in 1996. The ICRC worked with a broad range of renowned experts to look at current state practice in IHL. The aim was to identify customary law in this area and thereby clarify the legal

protection it offered victims of war. The study identified 161 rules of customary IHL that constitute the common core of humanitarian law binding on all parties to all armed conflicts. These rules enhance the legal protection of victims of war throughout the world.

The study is in two parts: Vol. 1 - Rules is a comprehensive analysis of the customary rules of international humanitarian law applicable in international and non-international armed conflicts. Vol. 2 - Practice contains, for each aspect of IHL, a summary of relevant state practice (legislation, military manuals, case-law and official statements), as well as the practice of international organizations, conferences and judicial or quasi-judicial bodies. Volume 2 is currently being updated as part of a joint project with the British Red Cross Society.

