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PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fundamental standards of humanity

Report of the Secretary-General

Summary

This report is submitted pursuant to Commission on Human Rights decision 2004/118 in which it requested the Secretary-General, in consultation with the International Committee of the Red Cross, to submit to the Commission at its sixty-second session an analytical report which would consolidate and update previous reports and studies, cover relevant developments, including regional and international case law and the forthcoming study by the International Committee of the Red Cross (ICRC) on customary rules of international humanitarian law, and address the issue of securing implementation.

The need to identify fundamental standards of humanity initially arose from the premise that most often situations of internal violence pose a particular threat to human dignity and freedom. The process of fundamental standards of humanity is not, however, limited to situations of internal strife and aims at strengthening the protection of individuals through the clarification of uncertainties in the application of existing international law standards aimed at the protection of persons in all circumstances. The process of fundamental standards of humanity should thus focus on the clarification of uncertainties in the application of existing standards in situations which present a challenge to their effective implementation.

During the period from 2004 to 2005, the following developments have contributed to the clarification of several problems related to the interpretation and application of the relevant standards. The ICRC study on customary international humanitarian law rules made a significant contribution to the process of identifying fundamental standards of humanity by clarifying, in particular, international humanitarian law rules applicable in non-international armed conflict. Furthermore, adoption by the Human Rights Committee of general comment 31 on article 2 of the ICCPR as well as the International Court of Justice's Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and its judgment in the *Case Concerning Armed Activities on the Territory of the Congo* reaffirmed the applicability of international human rights law during armed conflict and addressed the relationship between international humanitarian law and international human rights law.

To build on this substantial progress, the Commission on Human Rights may wish to keep itself informed of relevant developments, including international and regional case law, which contribute to clarification of uncertainties in the application of existing standards. The question of how to secure better compliance with fundamental standards of humanity by non-State actors also merits further consideration.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1	4
I. OVERVIEW OF FUNDAMENTAL STANDARDS OF HUMANITY	2 - 5	4
II. ICRC STUDY ON CUSTOMARY RULES OF INTERNATIONAL HUMANITARIAN LAW	6 - 20	5
III. OTHER DEVELOPMENTS IN INTERNATIONAL LAW	21 - 28	9
IV. CONCLUSIONS AND RECOMMENDATIONS	29 - 31	11

Introduction

1. In its decision 2004/118, the Commission on Human Rights, recalling its resolution 2000/69 and its decision 2002/112, and taking note of the report of the Secretary-General on fundamental standards of humanity (E/CN.4/2004/90), decided, without a vote, to consider the question of fundamental standards of humanity at its sixty-second session and to request the Secretary-General, in consultation with the International Committee of the Red Cross (ICRC), to submit to the Commission at its sixty-second session an analytical report which would consolidate and update previous reports and studies, cover relevant developments, including regional and international case law and the forthcoming study by the International Committee on customary rules of international humanitarian law, and address the issue of securing implementation. The present report is submitted in accordance with decision 2004/118. The comments and advice of the ICRC in the preparation of the report are gratefully acknowledged.

I. OVERVIEW OF FUNDAMENTAL STANDARDS OF HUMANITY

2. The need to identify fundamental standards of humanity initially arose from the premise that most often situations of internal violence pose a particular threat to human dignity and freedom.¹ However, the need for a statement of principles to be derived from human rights and international humanitarian law, which would apply to everyone in all situations, is clearly not limited to situations of internal strife. The process of fundamental standards of humanity aims at strengthening the practical protection of individuals in all circumstances.

3. Previous reports² observed that, while there is no apparent need to develop new standards, there is a need to secure practical respect for existing international human rights and humanitarian law standards in all circumstances and by all actors. The process should thus aim at strengthening the practical protection through the clarification of uncertainties in the application of existing standards in situations, which present a challenge to their effective implementation. Progress already achieved in this regard is largely based on the increasingly recognized interplay between international human rights law, international humanitarian law, international criminal law, international refugee law and other bodies of law that may be relevant.

4. During the period from 1998 to 2003, the following developments have contributed to the clarification of several problems related to the interpretation and application of the relevant standards: (a) ongoing work of the International Criminal Tribunals for the Former Yugoslavia and Rwanda; (b) adoption and ratification of the Rome Statute of the International Criminal Court; (c) adoption by the Human Rights Committee of general comment No. 29 on article 4 of the International Covenant on Civil and Political Rights; (d) adoption by the International Law Commission of the draft Articles on State Responsibility for Internationally Wrongful Acts; and (e) increased ratification by States of key international human rights law and international humanitarian law instruments. Furthermore, agreements concluded at the country level between humanitarian agencies and both States and non-State entities illustrate the importance of promoting fundamental principles of human rights and international humanitarian law on the ground.

5. Despite this substantial progress, some issues remained to be further considered and clarified. The present report thus focuses on further developments that contributed to the clarification of uncertainties in the application of existing standards. Most importantly, the report considers the relevant findings of the ICRC study on customary rules of international humanitarian law which contributed to the process of identifying fundamental standards of humanity by clarifying, in particular, international humanitarian law rules applicable in non-international armed conflict. Furthermore, the report discusses the Human Rights Committee's general comment 31 on article 2 of the ICCPR as well as two recent rulings of the International Court of Justice that reaffirm the applicability of the international human rights law during armed conflict and address the relationship between international humanitarian law and international human rights law.

II. ICRC STUDY ON CUSTOMARY RULES OF INTERNATIONAL HUMANITARIAN LAW

6. In March 2005, ICRC published a study, *Customary International Humanitarian Law*, on rules applicable in international and non-international armed conflicts.³ This study contributed to the process of identifying fundamental standards of humanity by clarifying, in particular, international humanitarian law rules applicable in non-international armed conflict.

A. Background

7. The study was undertaken by the ICRC at the request of the 26th International Conference of the Red Cross and Red Crescent in December 1995 to prepare a report on customary rules of international humanitarian law applicable in international and non-international armed conflicts. In 2005, after extensive research and consultation with experts, the study on customary international humanitarian law was published. The purpose of the study was to address two main impediments related to the application of international humanitarian treaty law. First, treaties apply only to the States that have ratified them. Second, humanitarian treaty law does not regulate non-international armed conflicts in sufficient detail, because these conflicts are subject to only a limited number of treaty rules. Therefore, the first purpose of the study was to determine which rules of international humanitarian law are part of customary international law and therefore applicable to all parties to a conflict, regardless of whether they have ratified the treaties containing the same or similar rules. The second purpose of the study was to determine whether and to what extent customary international law regulates non-international armed conflict in more detail than treaty law.⁴

B Methodology

8. The ICRC adopted the following methodology in the preparation of the study. The Statute of the International Court of Justice describes customary international law as "a general practice accepted as law".⁵ It is widely agreed that the existence of a rule of customary international law requires the presence of two elements, namely State practice (*usus*) and a belief that such practice is required, prohibited or allowed, depending on the nature of the rule, as a matter of law (*opinio juris sive necessitatis*). State practice must be looked at from two angles: what practice contributes to the creation of customary international law (selection of State practice) and whether this practice establishes a rule of customary international law (assessment of State practice). The requirement of *opinio juris* in establishing the existence of a rule of

customary international law refers to the legal conviction that a particular practice is carried out “as of right”. The form in which the practice and the legal conviction are expressed may well differ depending on whether the rule concerned contains a prohibition, an obligation or merely a right to behave in a certain manner. Treaties are also relevant in determining the existence of customary international law because they help shed light on how States view certain rules of international law. Hence, the ratification, interpretation and implementation of a treaty, including reservations and statements of interpretation made upon ratification, were included in the study. As the study did not seek to determine the customary nature of each treaty rule of international humanitarian law, it did not necessarily follow the structure of existing treaties. It thus cannot be concluded that any particular treaty rule is not customary merely because it does not appear as such in the study.⁶

C. Summary of the findings

9. The study covers the following six broad subjects: the principle of distinction; specifically protected persons and objects; specific methods of warfare; weapons; treatment of civilians and persons hors de combat; and, implementation. The present report does not seek to give an exhaustive summary but rather focuses on the relevant findings of the study that contribute to the process of identifying fundamental standards of humanity by clarifying, in particular, international humanitarian law applicable in non-international armed conflict.

1. Non-international armed conflicts

10. The study shows that over the last few decades, there has been a considerable amount of practice demonstrating the application of international humanitarian law in non-international armed conflicts. This body of practice has had a significant influence on the formation of customary law applicable in non-international armed conflicts. Like Additional Protocol I, Additional Protocol II has had a far-reaching effect on this practice and, as a result, many of its provisions are now considered to be part of customary international law.⁷

11. Examples of rules found to be customary and which have corresponding provisions in Additional Protocol II include: the prohibition of attacks on civilians;⁸ the obligation to respect and protect medical and religious personnel, medical units and transports;⁹ the obligation to protect medical duties;¹⁰ the prohibition of starvation;¹¹ the prohibition of attacks on objects indispensable to the survival of the civilian population;¹² the obligation to respect the fundamental guarantees of civilians and persons hors de combat;¹³ the obligation to search for and respect and protect the wounded, sick and shipwrecked;¹⁴ the obligation to search for and protect the dead;¹⁵ the obligation to protect persons deprived of their liberty;¹⁶ the prohibition of forced movement of civilians;¹⁷ and the specific protections afforded to women and children.¹⁸

12. The study further concluded that the most significant contribution of customary international humanitarian law to the regulation of internal armed conflicts is that it goes beyond the provisions of Additional Protocol II. Practice has created a substantial number of customary rules that are more detailed than the often rudimentary provisions in Additional Protocol II and has thus filled important gaps in the regulation of internal conflicts. For example, Additional Protocol II contains only a rudimentary regulation of the conduct of hostilities. The gaps in the regulation of the conduct of hostilities in Additional Protocol II have, however, largely been filled through State practice, which has led to the creation of rules parallel to those in Additional

Protocol I, but applicable as customary law to non-international armed conflicts. This covers the basic principles on the conduct of hostilities and includes rules on specifically protected persons and objects and specific methods of warfare.¹⁹ Similarly, Additional Protocol II contains only a very general provision on humanitarian relief for civilian populations in need. Unlike Additional Protocol I, Additional Protocol II does not contain specific provisions requiring respect for and protection of humanitarian relief personnel and objects and obliging parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need and to ensure the freedom of movement of authorized humanitarian relief personnel, although it can be argued that such requirements are implicit in article 18, paragraph 2, of the Protocol. These requirements have crystallized, however, into customary international law applicable in both international and non-international armed conflicts as a result of widespread, representative and virtually uniform practice to that effect. In this respect it should be noted that while both Additional Protocols I and II require the consent of the parties concerned for relief actions to take place,²⁰ most of the practice collected does not mention this requirement. It is nonetheless self-evident that a humanitarian organization cannot operate without the consent of the party concerned. However, such consent must not be refused on arbitrary grounds. If it is established that a civilian population is threatened with starvation and a humanitarian organization which provides relief on an impartial and non-discriminatory basis is able to remedy the situation, a party is obliged to give consent.²¹ While consent may not be withheld for arbitrary reasons, practice recognizes that the party concerned may exercise control over the relief action and that humanitarian relief personnel must respect domestic law on access to territory and security requirements in force.²²

2. Fundamental guarantees

13. The *Customary International Humanitarian Law* study identifies, inter alia, the fundamental guarantees that apply to all civilians in the power of a party to the conflict and who do not or have ceased to take a direct part in hostilities, as well as to all persons who are hors de combat. These fundamental guarantees are overreaching rules that apply to all persons. They all have a firm basis in international humanitarian law applicable in both international and non-international armed conflicts. In addition, they are supported by references to international human rights principles which are either non-derogable in human right treaties or which appear to be non-derogable in the light of treaty-body practice and State practice. The study noted that it was beyond its scope to determine whether these fundamental guarantees apply outside armed conflict although collected practice appeared to indicate that they do.²³

14. The 18 fundamental guarantees contained in chapter 32 can be summarized as follows: the requirement that civilians and persons hors de combat must be treated humanely;²⁴ the prohibition of adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited;²⁵ the prohibition of murder,²⁶ torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment,²⁷ corporal punishment,²⁸ mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards,²⁹ rape and other forms of sexual violence,³⁰ slavery and the slave trade in all their forms,³¹ uncompensated or abusive forced labour,³² taking of hostages,³³ the use of human shields,³⁴ of enforced disappearance,³⁵ of arbitrary deprivation of liberty,³⁶ and of collective punishments.³⁷ Additionally, no one may be

convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees;³⁸ no one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed;³⁹ and no one may be convicted of an offence except on the basis of individual criminal responsibility.⁴⁰ Furthermore, the convictions and religious practices of civilians and persons hors de combat must be respected⁴¹ and family life must be respected as far as possible.⁴²

15. The chapter on fundamental guarantees arose out of the initial decision to include a chapter on fundamental human rights law applicable during armed conflict. The decision was subsequently made to merge into one chapter customary humanitarian law rules applicable to all persons not or no longer actively participating in hostilities, supported by human rights protections that are either non-derogable in human rights treaties or which appear to be non-derogable in the light of treaty-body practice and State practice. The chapter refers to practice of all relevant treaty bodies, in particular those of the United Nations as well as European, inter-American and African systems. Additionally, this chapter also includes references to State practice in the form of resolutions and decisions adopted by the Security Council, General Assembly and Commission on Human Rights which show that States consider that both international humanitarian law and international human rights law apply in armed conflict. By including this practice, the study contributes towards the identification of those sources of law that can fill the supposed “gap” of protection during states of emergency. However, as it was beyond the scope of the study to determine whether the fundamental guarantees in chapter 32 apply outside armed conflict, further research may be necessary in that respect. Nevertheless, the general rules on fundamental guarantees identified in the study, together with the commentary provided, can contribute to an understanding of basic rules to be respected at all times.⁴³

3. Other relevant international humanitarian law rules on the treatment of civilians and persons hors de combat

16. In addition to the above fundamental guarantees, chapters 34 to 39 of the study identified additional relevant international humanitarian law rules on the treatment of civilians and persons hors de combat. These include rules related to the wounded, sick and shipwrecked;⁴⁴ the dead;⁴⁵ missing persons;⁴⁶ persons deprived of their liberty;⁴⁷ displacement and displaced persons;⁴⁸ and other persons afforded specific protection.⁴⁹

17. The rules governing the protection of persons deprived of their liberty in the context of non-international armed conflicts can be summarized as follows: persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention;⁵⁰ women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women;⁵¹ children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units;⁵² persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene;⁵³ pillage of the personal belongings of persons deprived of their liberty is prohibited;⁵⁴ the personal details of persons deprived of their liberty must be recorded;⁵⁵ in non-international armed conflicts, ICRC may offer its services to

the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families;⁵⁶ persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities;⁵⁷ civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable;⁵⁸ the personal convictions and religious practices of persons deprived of their liberty must be respected;⁵⁹ persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist.⁶⁰ The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed.⁶¹

4. Implementation

18. The study lists a number of rules on the implementation of international humanitarian law which are part of customary international law. This includes the following rules on compliance with international humanitarian law: each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control;⁶² each State must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of international humanitarian law;⁶³ States and parties to the conflict must provide instruction in international humanitarian law to their armed forces;⁶⁴ and States must encourage the teaching of international humanitarian law to the civilian population.⁶⁵

19. With regard to enforcement of international humanitarian law, the study, *inter alia*, noted that “States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law”.⁶⁶ Additionally, “parties to non-international armed conflicts do not have the right to resort to belligerent reprisals. Other countermeasures against persons who do not or who have ceased to take a direct part in hostilities are prohibited”.⁶⁷

20. With regard to responsibility and reparation, the study noted that “a State is responsible for violations of international humanitarian law attributable to it, including: (a) violations committed by its organs, including its armed forces; (b) violations committed by persons or entities it empowered to exercise elements of governmental authority; (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct”.⁶⁸ Furthermore, “a State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused”.⁶⁹

III. OTHER DEVELOPMENTS IN INTERNATIONAL LAW

21. This section considers Human Rights Committee general comment No. 31 on article 2 of the ICCPR, as well as two recent rulings of the International Court of Justice which confirm the applicability of the international human rights law during armed conflict and address the relationship between international humanitarian law and international human rights law.

A. Human Rights Committee general comment No. 31, “The nature of the general legal obligation imposed on States parties to the Covenant”

22. On 29 April 2004, the Human Rights Committee adopted its general comment No. 31 on article 2 of the ICCPR. The Committee stated that “[a]s implied in general comment No. 29 on States of Emergencies, adopted on 24 July 2001, reproduced in Annual Report for 2001, A/56/40, annex VI, paragraph 3, the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive”.⁷⁰

B. Recent jurisprudence of the International Court of Justice

1. Advisory Opinion on the legal consequences of a wall in the Occupied Palestinian Territory

23. On 8 December 2003, the General Assembly decided to request the International Court of Justice to urgently render an advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory.⁷¹ On 9 July 2004, the International Court of Justice delivered its advisory opinion and found that the construction of the wall by Israel “in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, are contrary to international law”.⁷² In assessing the legality of the measures taken by Israel, the Court had to determine the relevant rules and principles of international law. In addressing the issue of the relationship between international humanitarian law and human rights law, the Court considered that “the protection offered by human rights conventions does not cease in case of armed conflict”, and that while some rights may be exclusively matters of international humanitarian law or of human rights law, there are other rights that “may be matters of both these branches of international law”.⁷³ The Court thus determined that both branches of international law, namely international human rights law and international humanitarian law, will have to be taken into consideration. In addressing the issue of the applicability of human rights instruments outside national territory, the Court considered that international human rights instruments are applicable “in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”, particularly in occupied territories.⁷⁴

2. Case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*

24. On 19 December 2005, the International Court of Justice rendered its judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. In determining which rules and principles of international law are relevant to the case, the Court recalled that it addressed “the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*”⁷⁵ (see above, para. 23).

25. The Court thus considered that both international human rights law and international humanitarian law are applicable to the present case. It affirmed that some rules constitute customary international law. The Court, *inter alia*, found that “the acts committed by the [Uganda Peoples’ Defence Forces (UPDF)] and officers and soldiers of the UPDF are in clear violation of the obligations under the Hague Regulations of 1907, articles 25, 27 and 28, as well as Articles 43, 46 and 47 with regard to obligations of an occupying Power. These obligations are binding on the Parties as customary international law”.⁷⁶

26. The Court concurrently quoted provisions of international humanitarian law and human rights law. For instance, the Court found that “Uganda also violated the following provisions of the international humanitarian law and international human rights law instruments, to which both Uganda and the Democratic Republic of the Congo are parties: Fourth Geneva Convention, articles 27 and 32 as well as article 53 with regard to obligations of an occupying Power; International Covenant on Civil and Political Rights, articles 6, paragraph 1, and 7; First Protocol Additional to the Geneva Conventions of 12 August 1949, articles 48, 51, 52, 57, 58 and 75, paragraphs 1 and 2; African Charter on Human and Peoples’ Rights, articles 4 and 5; Convention on the Rights of the Child, article 38, paragraphs 2 and 3; Optional Protocol to the Convention on the Rights of the Child, articles 1, 2, 3, paragraph 3, articles 4, 5 and 6”.⁷⁷

27. The Court concluded that “Uganda is internationally responsible for violations of international human rights law and international humanitarian law committed by the UPDF and by its members in the territory of the DRC and for failing to comply with its obligations as an occupying Power in Ituri”.⁷⁸

28. In a Separate Opinion, Judge Simma concluded with a general observation on the community interest underlying international humanitarian and human rights law and stated that “at least the core of the obligations deriving from the rules of international humanitarian and human rights law are valid *erga omnes*”.⁷⁹

IV. CONCLUSIONS AND RECOMMENDATIONS

29. **Previous reports observed that, while there was no apparent need to develop new standards, there was a need to secure respect for existing rules of international law aimed at ensuring the protection of persons in all circumstances and by all actors. The process of fundamental standards of humanity should thus continue to focus on strengthening protection through the clarification of uncertainties in the application of existing standards in situations, which present a challenge to their effective implementation.**

30. **The 2005 ICRC study on customary international humanitarian law rules made a significant contribution to the process of identifying fundamental standards of humanity by clarifying, in particular, international humanitarian law rules applicable in non-international armed conflict. Furthermore, adoption by the Human Rights Committee of general comment No. 31 on article 2 of the ICCPR as well as the International Court of Justice *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and its judgment in the *Case Concerning Armed Activities on the Territory of the Congo* reaffirmed the applicability of international human rights law during armed conflict and addressed the relationship between international humanitarian law and international human rights law.**

31. **To build on this substantial progress, the Commission on Human Rights may wish to continue to keep itself informed of relevant developments, including international and regional case law, which contribute to the clarification of uncertainties in the application of existing standards. The question of how to secure better compliance with fundamental standards of humanity by non-State actors also merits further consideration.**

Notes

¹ See E/CN.4/2002/103, para. 2, E/CN.4/2001/91, para. 4; E/CN.4/2000/94, paras. 7-12; E/CN.4/1999/92, para. 3; E/CN.4/1998/87, para. 8. See also E/CN.4/2004/90.

² See E/CN.4/2002/103, E/CN.4/2001/91.

³ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, ICRC and Cambridge University Press, 2005; vol. I, *Rules*, liii and 621 pages; vol. II, *Practice*, xxxiv and 4,411 pages.

⁴ See Jean-Marie Henckaerts, “Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict”, *International Review of the Red Cross*, vol. 87, No. 857, March 2005, pp. 176-178.

⁵ Statute of the International Court of Justice, Article 38 (1) (b).

⁶ See “Study on customary international humanitarian law”, pp. 178-184.

⁷ See *ibid.*, p. 188.

⁸ See *Customary International Humanitarian Law*, vol. I, Rule 1.

⁹ See *ibid.*, Rules 25 and 27-30.

¹⁰ See *ibid.*, Rule 26.

¹¹ See *ibid.*, Rule 53.

¹² See *ibid.*, Rule 54.

¹³ See *ibid.*, Rules 87-105.

¹⁴ See *ibid.*, Rules 109-111.

¹⁵ See *ibid.*, Rules 112-113.

¹⁶ See *ibid.*, Rules 118-119, 121 and 125.

¹⁷ See *ibid.*, Rule 129.

¹⁸ See *ibid.*, Rules 134-137. See also “Study on customary international humanitarian law”, p. 188.

¹⁹ See, e.g., *ibid.*, Rules 7-10 (distinction between civilian objects and military objectives), Rules 11-13 (indiscriminate attacks), Rule 14 (proportionality in attack), Rules 15-21 (precautions in attack); Rules 22-24 (precautions against the effects of attack); Rules 31-32 (humanitarian relief personnel and objects); Rule 34 (civilian journalists); Rules 35-37 (protected zones); Rules 46-48 (denial of quarter); Rules 55-56 (access to humanitarian relief) and Rules 57-65 (deception).

²⁰ See Additional Protocol I, article 70 (1) and Additional Protocol II, article 18 (2).

²¹ See Yves Sandoz, Christophe Swinarski, Bruno Zimmermann (eds.), “Commentary on the Additional Protocols”, ICRC, Geneva, 1987, para. 4885; see also para. 2805.

²² See “Study on customary international humanitarian law”, pp. 189-190.

²³ See *Customary International Humanitarian Law*, vol. I, p. 299. See also Louise Doswald-Beck, “Filling the Protection Gap: Fundamental Standards of Humanity and the Relevance of Customary International Humanitarian Law”, *Respect: The Human Rights Newsletter*, No. 6, June 2005.

²⁴ See *Customary International Humanitarian Law*, vol. I, Rule 87.

²⁵ See *ibid.*, Rule 88.

²⁶ See *ibid.*, Rule 89.

²⁷ See *ibid.*, Rule 90.

²⁸ See *ibid.*, Rule 91.

²⁹ See *ibid.*, Rule 92.

³⁰ See *ibid.*, Rule 93.

³¹ See *ibid.*, Rule 94.

³² See *ibid.*, Rule 95.

³³ See *ibid.*, Rule 96.

³⁴ See *ibid.*, Rule 97.

³⁵ See *ibid.*, Rule 98.

³⁶ See *ibid.*, Rule 99.

³⁷ See *ibid.*, Rule 103.

³⁸ See *ibid.*, Rule 100.

³⁹ See *ibid.*, Rule 101.

⁴⁰ See *ibid.*, Rule 102.

⁴¹ See *ibid.*, Rule 104.

⁴² See *ibid.*, Rule 105.

⁴³ See Louise Doswald-Beck, “Filling the Protection Gap”, *op. cit.* See also *Customary International Humanitarian Law*, vol. I, p. 299.

⁴⁴ See *ibid.*, vol. I, Rules 109-111.

⁴⁵ See *ibid.*, Rules 112-116.

⁴⁶ See *ibid.*, Rule 117.

⁴⁷ See *ibid.*, Rules 118-128.

⁴⁸ See *ibid.*, Rules 129-133.

⁴⁹ See *ibid.*, Rules 134-138.

⁵⁰ See *ibid.*, Rule 118.

⁵¹ See *ibid.*, Rule 119.

⁵² See *ibid.*, Rule 120.

⁵³ See *ibid.*, Rule 121.

⁵⁴ See *ibid.*, Rule 122.

⁵⁵ See *ibid.*, Rule 123.

⁵⁶ See *ibid.*, Rule 124 (B).

⁵⁷ See *ibid.*, Rule 125.

⁵⁸ See *ibid.*, Rule 126.

⁵⁹ See *ibid.*, Rule 127.

⁶⁰ See *ibid.*, Rule 128 (C).

⁶¹ See *ibid.*, Rule 128.

⁶² See *ibid.*, Rule 139.

⁶³ See *ibid.*, Rule 141.

⁶⁴ See *ibid.*, Rule 142.

⁶⁵ See *ibid.*, Rule 143.

⁶⁶ See *ibid.*, Rule 144.

⁶⁷ See *ibid.*, Rule 148.

⁶⁸ See *ibid.*, Rule 149.

⁶⁹ See *ibid.*, Rule 150.

⁷⁰ General comment No. 31, “The nature of the general legal obligation imposed on States parties to the Covenant”, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 11.

⁷¹ Resolution ES-10/14.

⁷² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, *I.C.J. Reports 2004*, para. 163, (3) lit. A.

⁷³ *Ibid.*, para. 106.

⁷⁴ *Ibid.*, paras. 107-113.

⁷⁵ *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 19 December 2005, *I.C.J. Reports 2005*, para. 216.

⁷⁶ *Ibid.*, para. 219.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*, para. 220.

⁷⁹ *Case Concerning Armed Activities on the Territory of the Congo*, Separate Opinion of Judge Simma, 19 December 2005, *I.C.J. Reports 2005*, para. 39.
