

Annex 1 - Assessing the Authority of the ICRC Customary IHL Study

Authors' biographies

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Abstract

How has the Customary IHL study been received by the community of international humanitarian lawyers? The authors of this research have studied government reactions, including formal statements and military manuals, published since the finalization of the study in 2005 to 31 July 2021. The research has also studied judicial decisions by international courts such as the ICTY, ICTR, MICT, ICC, SCSL, ECCC, STL, KSC, ICJ, ITLOS, ECtHR, AfCtHR and domestic courts in various parts of the world. In addition, the authors have also studied the reception of the study by other influential actors such as the ILC, the UN Human Rights Council, UN Commissions of Inquiry and academics. The findings of the study are published in the article “Assessing the authority of the ICRC customary IHL study” in the *Review's* edition **How Does IHL Develop?** In addition, the authors have produced the following three datasets on the findings of the empirical research, that include the citations of the customary IHL study in expressions of state positions, judgements of international and domestic courts and tribunals, as well as outputs of other influential actors.

Message from the authors

The three spreadsheets below accompany our article, “Assessing the Authority of the ICRC Customary IHL Study”, published in the *International Review of the Red Cross*. They were initially prepared by our research assistant, Adaena Sinclair-Blakemore, and then revised by us. We are very grateful to Adaena for her excellent work.

CIHL citations, UN documents..... p. 2

CIHL citations, international courts..... p. 105

CIHL citations, domestic courts..... p. 157

CIHL citations, UN documents

2	Actor	UN document name	UN document number	Publication date	Passage	Vol One/Vol Two/Both	ICRC Study rule number	Agreed/Disagreed	Other material cited alongside?	How used? (See eg; fn; etc)	Other comments	Link to document
3	Armenia	Letter dated 21 October 2020 from the Permanent Representative of Armenia to the United Nations addressed to the Secretary-General	A/75/544-S/2020/1035	26.oct.20	2. '... Well-established customary law particularly prohibits attacking persons, who are recognized as hors de combat. A person hors de combat, inter alia, is: (a) anyone who is in the power of an adverse party; (b) anyone who is defenseless because of unconsciousness, shipwreck, wounds or sickness; provided he or she abstains from any hostile act and does not attempt to escape ²³ .' Fn 23: 'For extensive national practice, see: ICRC, Customary International Humanitarian Law, Vol. II: Practice, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2005, pp. 930-938.'	Two	Rule 47	Agreed. Citation of state practice.	Part of broader discussion	Fn - 'see'		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/286/63/pdf/N2028663.pdf?OpenElement
4	Armenia	Ibid	Ibid	Ibid	3. 'Mutilation of dead bodies. The customary nature of prohibition of mutilation, as well as its applicability on Azerbaijan, clearly follows from a long list of arguments. Some of them are as follows: (a) Article 19 of the Laws of War on Land adopted by the Institute of International Law back in 1880 (the Oxford Manual) provided: "It is forbidden to ... mutilate the dead lying on the field of battle."; (b) Mutilation or other maltreatment of dead bodies during armed conflict is prohibited under the military manuals of more than twenty different countries, including Australia, Canada, Greece, Israel, Netherlands, Spain, USA etc. ²⁴ ; ...' Fn 24: 'ICRC, Customary International Humanitarian Law, Vol. I: Rules, by Jean-Marie Henckaerts and Louise Doswald Beck, 2009, p. 410.'	One (rules)	Rule 113	Agreed.	Part of broader discussion	Fn		Ibid
5	Azerbaijan	Letter dated 4 June 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General	A/74/881-S/2020/503	05.juin.20	(6) Prohibition on Settlements in Occupied Territories ... [discussing GC IV art 49] 65. 'Such activity also constitutes a grave breach of Additional Protocol I 81 and, indeed, a breach of Armenia's own domestic legislation. ⁸² ' Fn 82: 'See J.M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, vol I: Rules, ICRC, Cambridge, 2005, p. 462, footnote 36.'	One (rules)	Rule 130	Agreed. Citation of Armenia's legislation - see footnote 36 on p. 462 of Vol I.	Part of broader discussion	Fn - 'see'		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/141/13/pdf/N2014113.pdf?OpenElement
6	Azerbaijan	Letter dated 3 February 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General	A/74/676*-S/2020/90*	07.févr.20	1. War crimes relating to civilian deaths and injury (i) Applicable legal principles The principle of distinction 60. '... Armed attacks may only be directed against combatants and cannot be directed against civilians. ⁹⁵ ' Fn 95: J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 1, p. 3 and following.	One (rules)	Rule 1	Neutral	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/032/59/pdf/N2003259.pdf?OpenElement
7	Azerbaijan	Ibid	Ibid	Ibid	67. 'Article 8(2)(b)(i) of the Rome Statute identifies as a war crime "[i]ntentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities" — a provision that reflects a rule of customary international law which establishes individual criminal responsibility for such conduct. Indeed, in light of the treaty provisions and other extensive State practice accompanied by the necessary opinio juris, the International Committee of the Red Cross has identified as a rule of customary international law that: "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians." ¹⁰⁵ ' Fn 105: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 1, p. 3 and following. This principle was also held to constitute a rule of customary international law in Eritrea-Ethiopia Claims Commission, Western Front, Aerial Bombardment and Related Claims, Partial Award, 45 ILM, 2006, pp. 396, 417, 445.'	One (rules)	Rule 1	Agreed	Yes. Eritrea-Ethiopia Claims Commission Partial Award.	Fn		Ibid

8	Azerbaijan	Ibid	Ibid	Ibid	72. 'The Rome Statute identifies as war crimes the grave breaches listed in the Fourth Geneva Convention, cited above. ¹¹⁰ The ICRC has identified the prohibition of murder as a rule of customary international law. ¹¹¹ ' Fn 111: J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 89, p. 311.	One (rules)	Rule 89	Neutral	Part of broader discussion	Main text and fn	Ibid
9	Azerbaijan	Ibid	Ibid	Ibid	2. War crimes relating to civilian property (i) Applicable legal principles The principles of distinction and proportionality in relation to civilian objects 118. 'Civilian property is subject to many of the same protections as apply to civilians themselves. In particular, under customary international law, the principle of distinction operates such that attacks may only be directed against military objectives, and must not be directed against civilian objects. ¹⁹⁵ "Civilian objects" consist of "all objects that are not military objectives", with the latter defined as "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage". ¹⁹⁶ ' Fn 195: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 7, p. 25. See also Y. Dinstein, The Conduct of Hostilities under the Law of Armed Conflict (Cambridge, 3rd ed., 2016), chapters 2 and 5.'	One (rules)	Rules 7, 8 and 9	Agreed	Yes. Dinstein (2016) book cited alongside reference to CIHL Study rule 7.	Fn	Ibid
10	Azerbaijan	Ibid	Ibid	Ibid	124. 'The Trial Chamber of the ICTY defined pillage in terms of the unlawful appropriation of public or private property by individual soldiers for private ends. ¹⁹⁷ While pillage is usually committed by a member of the armed forces, it may be committed also by civilians in appropriate circumstances. The ICRC has identified the prohibition of pillage as a rule of customary international law. ¹⁹⁸ ' Fn 198: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 52, p. 182.'	One (rules)	Rule 52	Agreed	Part of broader discussion	Main text and fn	Ibid
11	Azerbaijan	Ibid	Ibid	Ibid	Property in occupied territory 125. 'Under customary international law, in occupied territory, private property must be respected and may not be confiscated, except where destruction or seizure of such property is required by imperative military necessity. ²⁰⁰ ' Fn 200: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 51, p. 178.'	One (rules)	Rule 51	Agreed	Part of broader discussion	Fn	Ibid
12	Azerbaijan	Ibid	Ibid	Ibid	127. 'There are also a number of international instruments dealing specifically with the property rights of displaced persons, which must be respected as a matter of customary international law. ²⁰³ ...' Fn 203: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 133, p. 472.'	One (rules)	Rule 133	Agreed	Part of broader discussion	Fn	Ibid
13	Azerbaijan	Ibid	Ibid	Ibid	151. 'A breach of the rule prohibiting attacks directed against a person hors de combat amounts to a grave breach of the Protocol under Article 85(3)(e). Correspondingly, the Rome Statute defines as a war crime "killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion" (Article 8(2)(b)(vi)) and the ICRC has recognised the prohibition as a rule of customary international law. ²⁴⁴ ...' Fn 244: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 47, p. 164.'	One (rules)	Rule 47	Agreed	Part of broader discussion	Main text and fn	Ibid

14	Azerbaijan	Ibid	Ibid	Ibid	<p>163. 'Hostage-taking is similarly prohibited "at any time and in any place whatsoever, whether committed by civilian or by military agents" by virtue of Article 75(2)(c) of Additional Protocol I. The prohibition on this conduct is a rule of customary international law.²⁶⁷'</p> <p>Fn 267: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 96, p. 334. See also Y. Dinstein, The Conduct of Hostilities under the Law of Armed Conflict (Cambridge, 3rd ed., 2016), pp. 296–297.'</p>	One (rules)	Rule 96	Agreed	Yes. Dinstein (2016) book.	Fn		Ibid
15	Azerbaijan	Ibid	Ibid	Ibid	<p>181. '... This is consistent with a rule of customary international law to the effect that parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.²⁸⁹'</p> <p>Fn 289: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 129, p. 457.'</p>	One (rules)	Rule 129	Agreed	Part of broader discussion	Fn		Ibid
16	Azerbaijan	Ibid	Ibid	Ibid	<p>222. 'Aside from binding Armenia and Azerbaijan as States parties to the relevant treaties, all of the above rules have been recognised by the ICRC as reflecting rules of customary international law.³⁴⁷'</p> <p>Fn 347: J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rules 38, 40–41, pp. 127, 132 and following.</p>	One (rules)	Rules 38, 40-41	Neutral	Part of broader discussion	Main text and fn		Ibid
17	Azerbaijan	Ibid	Ibid	Ibid	<p>7. War crimes relating to damage to the natural environment</p> <p>(i) Applicable legal principles</p> <p>230. 'Various rules of IHL operate to protect the environment. Indeed, to the extent that the natural environment is not a military object, it is a civilian object and therefore cannot be the subject of attack, and any damage caused to the natural environment must comply with the principles of proportionality. Rule 43 of the ICRC Rules of Customary International Humanitarian Law provides that: "The general principles on the conduct of hostilities apply to the natural environment: A. No part of the natural environment may be attacked, unless it is a military objective. B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity. C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited."³⁶⁷'</p> <p>Fn 387: 'J. Henckaerts and L. Doswald-Beck (eds), Customary International Humanitarian Law, Vol. I: The Rules (ICRC, Cambridge, 2005), Rule 43, p. 143.'</p>	One (rules)	Rule 43	Neutral	Part of broader discussion	Main text and fn		Ibid

22	Azerbaijan	Ibid	Ibid	Ibid	<p>287. 'In addition to the aforementioned instruments, a number of other treaties provide an important framework for the protection of cultural property. 606 Thus, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property also defines the export and ownership of cultural property under compulsion from an occupied territory as illicit.607 Rule 41 of the ICRC study on customary international humanitarian law on the obligation of the occupying power reconfirms its obligation to prevent the illicit export of cultural property from occupied territory as well as to return illicitly exported property to the competent authorities of the occupied territory.608'</p> <p>Fn 608: Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), op. cit., pp. 135-138</p>	One (rules)	Rule 41	Agreed	Part of broader discussion	Fn	Ibid
23	Azerbaijan	Letter dated 30 April 2012 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General	A/66/787-S/2012/289	03.mai.12	<p>79. '... In the case of international armed conflict, article 13 of Geneva Convention IV provides that the provisions of the Convention concerning protection of populations "cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war".102 The International Committee of the Red Cross ("ICRC") in its work on customary international humanitarian law regarded this prohibition of discrimination as established by State practice as a rule of customary international law with regard to both international and non-international armed conflicts.103'</p> <p>Fn 103: See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Cambridge, ICRC, 2005, vol. I: Rules, p. 308 and following (Rule 88).</p>	One (rules)	Rule 88	Agreed	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N12/329/60/pdf/N1232960.pdf?OpenElement
24	Azerbaijan	Ibid	Ibid	Ibid	<p>B. Discrimination by implantation of ethnic Armenian settlers in the occupied territories of Azerbaijan</p> <p>88. 'Article 49, paragraph 6 of Geneva Convention IV provides that "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". This is regarded as a "grave breach" pursuant to article 85 (4) (a) of Additional Protocol I, 1977, and as a war crime in article 8 (2)(b) (viii) of the Rome Statute.115 The International Court of Justice in the Wall case, regarded this provision as prohibiting "not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an Occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory".116 The ICRC study on customary international humanitarian law regards this provision as constituting a rule of customary international law applicable in international armed conflicts.117'</p> <p>Fn 117: Henckaerts and Doswald-Beck, op. cit., p. 462.</p>	One (rules)	Rule 130	Neutral	Part of broader discussion	Main text and fn	Ibid
25	Azerbaijan	Ibid	Ibid	Ibid	<p>IV. The prevention of access of Azerbaijani internally displaced persons to their property in the occupied areas by Armenia and those for whom it is responsible</p> <p>96. 'The ICRC in its work on customary international humanitarian law has noted that State practice has established the rule of respect for the property rights of displaced persons as a norm of customary international law applicable in both international and non-international armed conflicts.127 ...'</p> <p>Fn 127: See Henckaerts and Doswald-Beck, op. cit., p. 472.</p>	One (rules)	Rule 133	Agreed	Part of broader discussion	Main text and fn	Ibid
26	Azerbaijan	Ibid	Ibid	Ibid	<p>V. The right of return of Azerbaijani internally displaced persons to their homes in internationally recognized Azerbaijani territory</p> <p>105. 'The ICRC commentary on customary international humanitarian law declares that, "displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist" and concludes that State practice has established this principle as a norm of customary international law in both international and non international armed conflicts.139'</p> <p>Fn 139: Henckaerts and Doswald-Beck, op. cit., p. 468.</p>	One (rules)	Rule 132	Agreed	Part of broader discussion	Main text and fn	Ibid

27	Azerbaijan	Letter dated 23 January 2009 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General	A/63/692-S/2009/51	27.janv.09	53. 'Such activity also constitutes a grave breach of Additional Protocol I 52 and, indeed, a breach of Armenia's own domestic legislation.53' Fn 53: See J.M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, vol I: Rules, ICRC, Cambridge, 2005, p. 462, footnote 36.	One (rules)	Rule 130	Agreed. Citation of Armenia's legislation - see footnote 36 on p. 462 of Vol I.	Part of broader discussion	Fn - 'see'	Same citation as that in row 5.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N09/221/70/pdf/N0922170.pdf?OpenElement
28	Azerbaijan	Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General	A/62/491-S/2007/615	23.oct.07	pp. 11-12: It should be noted in that connection that the sixth paragraph of article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War prohibits transfers of population to occupied territory. State practice has made that provision one of the norms of customary international law applied in cases of international armed conflict.49 ...' Fn 49: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (Cambridge: Cambridge University Press, 2005), vol. I: Rules, p. 462.	One (rules)	Rule 130	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N07/558/52/pdf/N0755852.pdf?OpenElement
29	Germany	CCW Group of Experts on the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects RESPONSES TO DOCUMENT CCW/GGE/X/WG.1/WP.2, ENTITLED IHL AND ERW, DATED 8 MARCH 2005 Response from the Federal Republic of Germany	CCW/GGE/XI/WG.1/WP.9	29.juil.05	18. 'The use of all types of projectiles (especially explosive and incendiary projectiles) with a weight of less than 400 grams, containing explosive power or filled with explosive or detonating agents, is prohibited in land and naval warfare, as these projectiles regularly inflict upon the soldier disproportionately large wounds which are not necessary for the incapacitation of the soldier. Germany, in accordance with customary international law,2 considers only the anti-personnel use of such projectiles to be prohibited, and only if they are designed to explode upon impact with the human body.' Fn 2: 'See also JEAN-MARIE HENCKAERTS and LOUISE DOSWALD-BECK: Customary International Humanitarian Law. Volume I: Rules. Cambridge: Cambridge University Press, 2005. ISBN 0-521-00528-0; p. 273.'	One (rules)	Rule 78	Neutral	Part of broader discussion	Fn - 'see also'		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G05/625/30/pdf/G0562530.pdf?OpenElement
30	Malaysia	Letter dated 1 June 2015 from the Permanent Representative of Malaysia to the United Nations addressed to the Secretary-General	S/2015/402	02.juin.15	p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as forced recruitment into, and use by, armed forces or groups;1 ...' Fn 1: 'Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), art. 77; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict (Protocol II), art. 4; J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rules 136-137, International Review of the Red Cross, vol. 17, no. 857 (International Committee of the Red Cross, March 2005).'	One (rules)	Rules 136-137	Agreed	Yes. AP I art 77; AP II art 4.	Fn	Note that Malaysia cites the Henckaerts (2005) article about the Study rather than the Study itself.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N15/164/54/pdf/N1516454.pdf?OpenElement
31	Malaysia	Ibid	Ibid	Ibid	p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... murder, torture and inhuman treatment;2 ...' Fn 2: Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 3 and 32, Treaty Series, vol. 75, No. 973; Additional Protocol I, art. 75; Additional Protocol II, art. 4; J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rules 89-90, International Review of the Red Cross, vol. 17, no. 857 (International Committee of the Red Cross, March 2005).	One (rules)	Rules 89-90	Agreed	Yes. GC IV arts 3, 32; AP I art 75; AP II art 4.	Fn	Ibid	Ibid
32	Malaysia	Ibid	Ibid	Ibid	p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... rape and other forms of sexual violence;3 ...' Fn 3: Additional Protocol I, art. 75; Additional Protocol II, art. 4; J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rule 93, International Review of the Red Cross, vol. 17, no. 857 (International Committee of the Red Cross, March 2005).	One (rules)	Rule 93	Agreed	Yes. AP I art 75; AP II art 4.	Fn	Ibid	Ibid

33	Malaysia	Ibid	Ibid	Ibid	<p>p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... slavery;4</p> <p>Fn 4: 'Additional Protocol II, art. 4; J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rule 94, International Review of the Red Cross, vol. 17, no. 857 (International Committee of the Red Cross, March 2005).'</p>	One (rules)	Rule 94	Agreed	Yes. Ap II art 4.	Fn	Ibid	Ibid
34	Malaysia	Ibid	Ibid	Ibid	<p>p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... forced labour;5</p> <p>Fn 5: Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 51(2), Treaty Series, vol. 75, No. 973; Additional Protocol I, art. 75; J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rule 95, International Review of the Red Cross, vol. 17, no. 857 (International Committee of the Red Cross, March 2005)</p>	One (rules)	Rules 95	Agreed	Yes. GC IV art 51(2); AP I art 75.	Fn	Ibid	Ibid
35	Malaysia	Ibid	Ibid	Ibid	<p>p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... hostage taking;6</p> <p>Fn 6: Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 3, 34 and 147, Treaty Series, vol. 75, No. 973; Additional Protocol I, art. 75; Additional Protocol II, art. 4; J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rule 96.</p>	One (rules)	Rule 96	Agreed	Yes. GC IV arts 3, 34 and 147; AP I art 75; AP II art 4.	Fn	Ibid	Ibid
36	Malaysia	Ibid	Ibid	Ibid	<p>p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... use as human shields;7</p> <p>Fn 7: J. Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict", rule 97.</p>	One (rules)	Rule 97	Agreed	Part of broader discussion	Fn	Ibid	Ibid
37	Malaysia	Ibid	Ibid	Ibid	<p>p. 4: 'Moreover, the myriad consequences that can ensue from abduction include serious violations of international humanitarian law, such as ... and enforced disappearances.8</p> <p>Fn 8: Ibid., rule 98.</p>	One (rules)	Rule 98	Agreed	Part of broader discussion	Fn	Ibid	Ibid
38	Netherlands	CCW Group fo Experts on the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects RESPONSES TO DOCUMENT CCW/GGE/X/WG.1/WP.2, ENTITLED IHL AND ERW, DATED 8 MARCH 2005 Response from The Netherlands	CCW/GGE/XII/WG.1/WP.4	07.nov.05	<p>Part 1: Applicability of relevant IHL principles</p> <p>Which existing principles of IHL applicable to the use of force during an armed conflict are considered relevant to the use of munitions, including sub-munitions, that may become ERW? (i.e. military necessity, distinction, discrimination, proportionality, precautions taken before and during an attack, superfluous injury/unnecessary suffering, environmental protection, any others?)</p> <p>(1)(ii). 'distinction and discrimination: The principles of distinction and discrimination are closely related. Distinction is understood as the principle dictating that operations may only be directed at enemy combatants and valid military objectives, as a corollary to which such personnel and objects (buildings, equipment, etc.) must be distinguishable from civilian personnel and objects. This principle is one of the most fundamental principles of IHL and is both a binding principle of customary law (CIHL, rules 1 – 10) and the subject of treaty obligations (see especially AP1 (articles 44, 48); the principle is, however, the foundation for much of IHL in general). The principle of discrimination takes the obligations arising from the principle of distinction a step further, in requiring that attacks and methods and means of warfare must be capable of being directed at a valid military objective. Indiscriminate attacks, etc., being attacks, etc., which cannot be so directed</p>	One (rules)	Rules 1-10; 11-13	Agreed	Yes. AP I arts 44, 48, 51.	Main text	Unclear whether the Netherlands is referring to the Study or the CIHL database.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G05/640/47/pdf/G0564047.pdf?OpenElement

39	Netherlands	Ibid	Ibid	Ibid	(1)(iii) proportionality: The principle of proportionality occurs in IHL in two primary forms. The first primary reflection of this principle is the requirement that in planning an attack, the anticipated losses of civilian life and property may not be excessive in relation to the concrete and direct military advantage anticipated from the attack as a whole (CIHL, rule 14, especially AP1 (articles 51, 57; see Netherlands declaration upon ratification of AP1)). The second version of this principle relates to the effects of a weapon and the prohibitions of superfluous injury and unnecessary suffering (see below).'	One (rules)	Rule 14	Agreed	Yes. AP I arts 51, 57.	Main text	Ibid	Ibid
40	Netherlands	Ibid	Ibid	Ibid	(iv) superfluous injury/unnecessary suffering: The Netherlands considers the prohibition of superfluous injury and unnecessary suffering as an extension of the principle of proportionality ... The principle is part of customary law (CIHL, rule 70) and appears in various forms in treaty obligations (DP, EB, HR (articles 22, 23(e)), AP1 (article 35)).'	One (rules)	Rule 70	Agreed	Yes. AP I art 35	Main text	Ibid. Unsure what the Netherlands is referring to when referencing '(DP, EB, HR (articles 22, 23(e)))'. I assume HR may refer to the Hague Regulations, but I'm not sure?	Ibid
41	Netherlands	Ibid	Ibid	Ibid	v) environmental protection: The protection of the natural environment from the effects of war takes the form of prohibitions of methods and means of warfare which cause unnecessary damage to the natural environment and prohibitions of methods and means of warfare which cause disproportionate damage to the natural environment (both measured against the military advantage anticipated). (A part of) the natural environment as such may not be the object of attack, unless it forms a military objective due to its use, location, etc., and its partial or complete capture or destruction offers a definite military advantage under the circumstances ruling at the time. The use of methods or means of warfare which are intended or expected to cause long-term, widespread and severe damage to the natural environment are prohibited. The principles regarding the natural environment can be found in customary law (CIHL, rule 43 – 45) and treaty law (AP1 (articles 35, 55), ENMOD).'	One (rules)	Rules 43-45	Agreed	Yes. AP I arts 35, 55	Main text	Ibid. Unsure what the Netherlands is referring to when referencing 'ENMOD'.	
42	United States	ILC, Subsequent agreements and subsequent practice in relation to the interpretation of treaties: Comments and observations received from Governments	A/CN.4/712	21.févr.18	p. 17: 'Second, footnote 603 of the commentary cites "the United States manual" by reference to a quote found in the ICRC study on customary international humanitarian law. The actual manual being cited is a United States Department of the Army Field Manual last issued in 1976, and the effect of that manual must be considered in the light of changes to United States law and Department of Defense procedures since that time. Moreover, the provision of that manual being cited is based on article 109 of the Third Geneva Convention, not article 118. The misinterpretation of United States practice in the draft commentary is understandable given that the ICRC study on customary international humanitarian law does not provide this background when it presents what ICRC regards as United States practice. The United States has indicated significant concerns with the methodology used in the ICRC study, including its use of military manuals.10' Fn 10: John B. Bellinger, III and William J. Haynes II, "A US government response to the International Committee of the Red Cross study Customary International Humanitarian Law", International Review of the Red Cross, vol. 89, No. 866 (June 2007), pp. 443–471, at pp. 444–446.			Disagreed	Part of broader discussion	Main text	Unsure what the US is referring to as I cannot find a footnote 603 in Vol I or II that cites "the United States manual".	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/18/043/09/pdf/N1804309.pdf?OpenElement

53	League of Arab States	Ibid	Ibid	Ibid	Attacks on hospitals, ambulances and means of humanitarian assistance The law 505. 'Under customary international law medical personnel must be respected and protected in both international and non-international armed conflicts. Humanitarian relief must likewise be respected and protected.340 ...' Fn 340: See Rules 25 and 31 of the International Committee of the Red Cross study on Customary International Humanitarian Law, vol. I (eds. J-M Henckaerts and L. Doswald-Beck (2005), 79, 105.	One (rules)	Rules 25, 31	Agreed	Part of broader discussion	Fn	Ibid
54	League of Arab States	Ibid	Ibid	Ibid	Part IV: Conclusions, remedies and recommendations A. Conclusions Responsibility of Israel 572. ' ... Those responsible for the commission of such crimes are individually responsible for their actions, as are those who ordered or incited the commission of such crimes, aided or abetted in the commission of such crimes, or participated in a common purpose to commit such crimes.394 ...' Fn 394: Article 25 of the Rome Statute; Rule 151 of ICRC. Study on Customary International Humanitarian Law eds. J-M Henckaerts & L. Doswald-Beck (2005) vol. 1, 551-555.	One (rules)	Rule 151	Agreed	Part of broader discussion	Fn	Ibid
55	UNSC documents										
56	UNSC	Letter dated 9 January 2017 from the Chair of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council	S/2017/22	09.janv.17	80. 'The Panel has been unable to conduct an investigation into these allegations to independently verify them, as it has not yet had access to Darfur. The Panel intends to follow up on these issues. If confirmed, such conduct would amount to a breach of the prohibition under international humanitarian law to deliberately or indiscriminately attack the civilian population and civilian objects. 33' Fn 33: See Additional Protocol II to the Geneva Conventions of 12 August 1949, art. 13 (2); see also Jean Marie Henkaerts and Louise Doswald-Beck, Customary International Humanitarian Law, vol. I, International Committee of the Red Cross (Cambridge, Cambridge University Press, 2005), rules 1, 7, 11 and 12.	One (rules)	Rules 1, 7, 11, 22	Agreed	Yes. AP II art 13(2)	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N17/005/63/pdf/N1700563.pdf?OpenElement
57	UNSC	Letter dated 22 September 2016 from the Chair of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council	S/2016/805	22.sept.16	B. Indiscriminate air attack case studies 107. 'The Panel has identified further evidence of indiscriminate air attacks 48 that seriously and recurrently affect the civilian population and objects (see paras. 108-112). It is certain that the attacks covered below were indiscriminate in nature and, as a result, caused significant harm to civilians. They resulted in certain violations of paragraphs 6 and 7 of resolution 1591 (2005) and of international humanitarian law.' Fn 48: 'See International Committee of the Red Cross (ICRC), customary international humanitarian law, rule 12, available from www.icrc.org/customary-ihl/eng/docs/v1 .'	One (rules)	Rule 12	Agreed	Part of broader discussion	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N16/296/39/pdf/N1629639.pdf?OpenElement
58	UNSC	Ibid	Ibid	Ibid	Violations against protected persons and their objects 113. 'Civilians are protected from attack and cannot be targeted unless and until they take a direct part in hostilities.49 ...' Fn 49: Article 13 (3) of Additional Protocol II and see, for example, ICRC customary international humanitarian law, rule 6, which relates to the protection of civilians, and rule 33, which relates to peacekeepers and their objects.	One (rules)	Rules 6, 33	Agreed	Part of broader discussion	Fn - 'see, for example'	Ibid
59	UNSC	Ibid	Ibid	Ibid	Violations against protected persons and their objects ... 114. 'Civilian dwellings and livestock affected by the attack were entitled to the protection afforded to civilian objects and thus were not military objectives. 51' Fn 51: See, for example, ICRC customary international humanitarian law, rules 9, 10 and 33	One (rules)	Rules 9, 10, 33	Agreed	Part of broader discussion	Fn - 'see, for example'	Ibid

60	UNSC	Ibid	Ibid	Ibid	Violations in respect of principles of proportionality and precautionary measures 115. ' ... It also equally applies that the civilian population and any United Nations peacekeepers would not lose their immunity from attack because of the presence of SLA/AW fighters among the population.53 ...' Fn 53: See ICRC customary international humanitarian law, rule 6, and associated State practice.	One (rules)	Rule 6	Agreed	Part of broader discussion	Fn - 'see'	Ibid	
61	UNSC	Ibid	Ibid	Ibid	Violations in respect of means and methods of warfare (Antonov An-26/improvised aerial-delivered munitions combination) 117. 'International humanitarian law prohibits means and methods of warfare that are by their very nature indiscriminate.54 ...' Fn 54: See ICRC customary international humanitarian law, rule 71.	One (rules)	Rule 71	Agreed	Part of broader discussion	Fn - 'see'	Ibid	
62	UNSC	Letter dated 16 January 2015 from the Vice-Chair of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council	S/2015/31	19.janv.15	141. 'Directing an attack against personnel and objects102 involved in a peacekeeping mission "in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under the international law of armed conflict", is prohibited103 and such attacks constitute war crimes.' Fn 103: International Committee of the Red Cross (ICRC) customary international humanitarian law, rule 33. B. Abductions of humanitarian workers	One (rules)	Rule 33	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N14/652/15/pdf/N1465215.pdf?OpenElement	
63	UNSC	Ibid	Ibid	Ibid	148. 'Darfur witnessed a spate of abductions for ransom in the first seven months of 2014. Civilian humanitarian relief personnel are protected against attack and hostage-taking under international humanitarian law.111' Fn 111: Customary international humanitarian law, rule 31.	One (rules)	Rule 31	Agreed	Part of broader discussion	Fn	Ibid	
64	UNSC	Ibid	Ibid	Ibid	155. ' ... Collective punishment of a civilian population is prohibited under all circumstances, including their allegiances to armed opposition groups or the Government of the Sudan.125' Fn 125: Additional Protocol II, article 4(2)(b) and customary international humanitarian law, rule 103.	One (rules)	Rule 103	Agreed	Yes. AP II art 4(2)(b).	Fn	Ibid	
65	UNSC	Ibid	Ibid	Ibid	157. ' ... These attacks were associated with reports of cattle rustling, looting of household material and the removal and destruction of objects. ...' Fn 126: These include foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies, and irrigation works. International humanitarian law prohibits parties from attacking, destroying, removing or rendering useless objects indispensable to the civilian population. See Additional Protocol II, article 14 and customary international humanitarian law, rule 54.	One (rules)	Rule 54	Agreed	Part of broader discussion	Fn	Ibid	
66	UNSC	Ibid	Ibid	Ibid	See pp. 70-74: 'Table 10 - Summary of violations' for a table form summary of violations of CIHL with references to the CIHL Study.	One (rules)	Various	Agreed	N/A	Table	This includes a table summary on pp. 70-74 of the IHL violations with specific reference to which rules of the CIHL Study were violated.	
67	UNSC	Letter dated 2 October 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council	S/2007/584	03.oct.07	266. ' ... In addition to the provisions of treaty-based international humanitarian law, all parties to the conflict in Darfur are bound by the norms of customary international humanitarian law.19 ...' Fn 19: In March 2005, the International Committee of the Red Cross published a study of customary international humanitarian law that aims to overcome some of the challenges associated with the application of treaty-based international humanitarian law. The study identifies 161 rules of customary international humanitarian law clustered in six subject areas. The rules identified in the study are listed as an annex in Jean-Marie Henckaerts' article entitled "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, No. 857 (March 2005).	One (rules)	N/A	N/A	N/A	Fn	Citation to the Henckaerts (2005) article annexing the rules of the Study.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N07/491/00/pdf/N0749100.pdf?OpenElement

68	UNSC	Letter dated 30 January 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan addressed to the President of the Security Council	S/2006/65	30.janv.06	174. 'In addition to the provisions of treaty-based international humanitarian law, all parties to the conflict in Darfur are bound by the norms of customary international humanitarian law.74 ...' Fn 74: In March 2005, the International Committee of the Red Cross published a study of customary international humanitarian law which aims to overcome some of the challenges associated with the application of treaty-based international humanitarian law. The study identifies 161 rules of customary international humanitarian law clustered in six subject areas. The rules identified in the study are listed as an annex in 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, No. 857 (March 2005).	One (rules)	N/A	N/A	N/A	Fn	Citation to the Henckaerts (2005) article annexing the rules of the Study.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N05/632/74/pdf/N0563274.pdf?OpenElement
69	Secretary-General reports and notes											
70	Secretary-General	Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine: Report of the Secretary-General	A/HRC/47/58	27.mai.21	B. Prohibition of torture and the rights to liberty and security of person 11. 'Both international human rights law ¹⁹ and international humanitarian law ²⁰ prohibit torture and cruel, inhuman or degrading treatment (hereinafter "ill treatment").' Fn 20: 'Fourth Geneva Convention, art. 32; Protocol I Additional to the Geneva Conventions of 1949, art. 75 (2); and Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, vol. I, Rules (Geneva, International Committee of the Red Cross; Cambridge, United Kingdom, Cambridge University Press, 2005), rule 90.'	One (rules)	Rule 90	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G21/113/64/pdf/G2111364.pdf?OpenElement
71	Secretary-General	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General	A/75/336	01.sept.20	5. '... This incident raises serious concern about a failure by Israel to take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury of civilians and damage to civilian objects, in accordance with international humanitarian law.10 ...' Fn 10: 'International Committee of the Red Cross, "Practice relating to rule 15", customary international humanitarian law database (IHL database), available at https://ihl-databases.icrc.org/customaryihl/eng/docs/v2_rul_rule15 .'	Database	Rule 15	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/226/62/pdf/N2022662.pdf?OpenElement
72	Secretary-General	Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine: Report of the Secretary-General	A/75/334	01.sept.20	7. 'International human rights law provides that, in the determination of any criminal charges, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An accused must be informed without delay of the particulars of the alleged charges and must be afforded all necessary rights and means of defence. Other fair trial rights include the presumption of innocence, the right to trial without undue delay, the right to examine (confront), or have examined, the witnesses against the accused, and the right to appeal or review.2' Fn 2: 'International Covenant on Civil and Political Rights, art. 14; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 75; and Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, vol. I, Rules (Cambridge, Cambridge University Press, 2005), rule 100.'	One (rules)	Rule 100	Agreed	Yes. ICCPR art 14; AP I art 75.	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/226/11/pdf/N2022611.pdf?OpenElement
73	Secretary-General	Ibid	Ibid	Ibid	14. '... Arbitrary deprivation of liberty is also prohibited under customary international humanitarian law.17' Fn 17: 'Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 99.'	One (rules)	Rule 99	Agreed	Part of broader discussion	Fn		Ibid

74	Secretary-General	Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine: Report of the Secretary-General	A/HRC/44/21	19.juin.20	<p>B. Right to be free from torture and the rights to life and to liberty and security of person</p> <p>12. Torture and cruel, inhuman or degrading treatment ("ill-treatment") are prohibited by both international humanitarian law¹¹ and international human rights law. ...'</p> <p>Fn 11: Fourth Geneva Convention, art. 32; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 75 (2); and International Committee of the Red Cross, Customary International Humanitarian Law, Volume I: Rules (Cambridge, Cambridge University Press, 2005), rule 90.</p>	One (rules)	Rule 90	Agreed	Yes. GC IV art 32; AP I art 75.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G20/151/42/pdf/G2015142.pdf?OpenElement	
75	Special Representative of the Secretary-General for Children and Armed Conflict	Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict Note by the Secretariat	A/HRC/37/47	08.janv.18	<p>13. 'In that regard, the Special Representative urges parties to conflict to commit to a renewed focus on depoliticizing the issue and facilitating the delivery of humanitarian aid to children. Those entities are reminded that it is a principle of customary international law that they must allow and facilitate the rapid and unimpeded passage of aid to the civilian population in need in areas subject to their control. Furthermore, contained in regional human rights instruments³ and numerous resolutions of the Human Rights Council, General Assembly and Security Council is a demand that parties to conflict provide access for relief personnel to refugee and displaced populations, often with special reference to the plight of children. ...'</p> <p>Fn 3: 'See, for example, the African Charter on the Rights and Welfare of the Child, art. 23; the InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women, art. 9; and principles 4 and 19 of the Guiding Principles on Internal Displacement. See also JeanMarie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, vol. 1: Rules, rule 131 (Cambridge, Cambridge University Press; Geneva, International Committee of the Red Cross, 2005).'</p>							https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/003/76/pdf/G1800376.pdf?OpenElement
76	Secretary-General	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan: Report of the Secretary-General	A/72/564	01.nov.17	<p>VI. Conclusions</p> <p>...</p> <p>64. 'Moreover, in much of Area C and East Jerusalem, various measures put in place by the Israeli authorities have continued to strengthen a coercive environment. It may amount to forcible transfer, in violation of Israel's obligations under international humanitarian law and human rights law.⁹⁵'</p> <p>Fn 95: 'See A/HRC/34/39, para. 42; Fourth Geneva Convention, arts. 49 and 147; and rule 129 of customary international humanitarian law.'</p>	Not specified	Rule 129	Agreed	Yes. GC IV arts 29, 147; A/HRC/34/39.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N17/358/07/pdf/N1735807.pdf?OpenElement	
77	Secretary-General	The safety of journalists and the issue of impunity Report of the Secretary-General	A/72/290	04.août.17	<p>16. 'In addition to the protection provided to journalists generally, 35 international humanitarian law provides for a number of specific protections that apply in times of armed conflict to women, including protection from sexual violence.³⁶'</p> <p>Fn 35: 'See Protocol additional to the Geneva Conventions of 1949, and relating to the protection of victims of international armed conflicts, arts. 51 and 79; and International Committee of the Red Cross customary international humanitarian law database, rules 6 and 34.'</p>	Database	Rules 6, 34	Agreed	Yes. AP I arts 51, 79.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N17/245/44/pdf/N1724544.pdf?OpenElement	

78	Special Representative of the Secretary-General for Children and Armed Conflict	Report of the Special Representative of the Secretary-General for Children and Armed Conflict	A/72/276	02.aout.17	<p>21. 'In this regard, the Special Representative urges parties to conflict to commit to a renewed focus on depoliticizing the issue and facilitating the delivery of humanitarian aid to children. These entities are reminded that it is a principle of customary international law that they must allow and facilitate the rapid and unimpeded passage of aid to the civilian population in need in areas subject to their control. Moreover, contained in regional human rights instruments⁴ and numerous resolutions of the General Assembly and Security Council is a demand that parties to conflict provide access for relief personnel to refugee and displaced populations, often with special reference to the plight of children.'</p> <p>Fn 4: 'See, for example: the African Charter on the Rights and Welfare of the Child (1999), art. 23; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), art. 9; and the Guiding Principles on Internal Displacement (2004), principles 4 and 19. See also International Committee of the Red Cross, Customary International Humanitarian Law, Vol. 1: Rules, rule 131.'</p>	One (rules)	Rule 131	Agreed	Yes. African Charter on the Rights and Welfare of the Child art 23; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994), art. 9; and the Guiding Principles on Internal Displacement (2004), principles 4 and 19.	Fn - 'see also'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N17/242/35/pdf/N1724235.pdf?OpenElement
79	Secretary-General	Human rights situation in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General	A/HRC/34/38	13.avr.17	<p>11. '... In particular, all parties to a conflict have to respect the principles of distinction, proportionality and precaution.²¹'</p> <p>Fn 21: International Committee of the Red Cross (ICRC), Customary International Humanitarian Law (Volume I: Rules) (Cambridge University Press, 2005), rules 1-3.</p>	One (rules)	Rules 1-3	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G17/091/86/pdf/G1709186.pdf?OpenElement
80	Secretary-General	Ibid	Ibid	Ibid	<p>III. Recurrent violations of international law in the Occupied Palestinian Territory</p> <p>13. '... Israel bears the obligation to meet the needs of the protected population²⁸ and to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.²⁹ ...'</p> <p>Fn 29: Fourth Geneva Convention, art. 59, and ICRC, Customary International Humanitarian Law, rule 55. As consent of the occupying power remains necessary, it cannot be withheld on grounds other than those set out in article 59 of the Fourth Geneva Convention.</p>	One (rules)	Rule 55	Agreed	Yes. GC IV art 59	Fn	Ibid
81	Secretary-General	Ibid	Ibid	Ibid	<p>2. Unlawful seizure and destruction of property</p> <p>21. 'As set out in the Fourth Geneva Convention, the occupying power must administer public property according to the rules of usufruct. The occupying power can thus use and enjoy public property as long as doing so does not alter its character.⁴⁵ ...'</p> <p>Fn 45: 'Convention respecting the Laws and Customs of War on Land, art. 55, Fourth Geneva Convention, art. 53, and ICRC, Customary International Humanitarian Law, rule 51.'</p>	One (rules)	Rule 51	Agreed	Yes. GC IV art 53; Convention respecting the Laws and Customs of War on Land art 55.	Fn	Ibid
82	Secretary-General	Ibid	Ibid	Ibid	<p>21. '... Private property must be respected and cannot be confiscated;⁴⁶ the destruction of property by the occupying power is expressly prohibited by international humanitarian law.⁴⁷ ...'</p> <p>Fn 46: Convention respecting the Laws and Customs of War on Land, arts. 46 and 56, Fourth Geneva Convention, art. 53, and ICRC, Customary International Humanitarian Law, rule 51.</p> <p>Fn 47: Fourth Geneva Convention, art. 53, and ICRC, Customary International Humanitarian Law, rule 51.</p>	One (rules)	Rule 51	Agreed	Yes. GC IV art 53; Convention respecting the Laws and Customs of War on Land arts 46, 56.	Fn.	Ibid
83	Secretary-General	Ibid	Ibid	Ibid	<p>27. '... Affected relief items included shelters and tents, water cisterns, animal barracks and other basic structures needed for survival and to gain a livelihood. Such actions are irreconcilable with the occupying power's obligations to allow and facilitate humanitarian access for civilians in need.⁵⁶'</p> <p>Fn 56: Fourth Geneva Convention, art. 59; see also ICRC, Customary International Humanitarian Law, rule 55.</p>	One (rules)	Rule 55	Agreed	Yes. GC IV art 59.	Fn	Ibid

84	Secretary-General	Ibid	Ibid	Ibid	33. '... That prohibition does not apply only to criminal sanctions but also to harassment of any sort, including administrative measures, carried out by the police or the military.72 ...' Fn 72: ICRC, Customary International Humanitarian Law, commentary to rule 103.	One (rules)	Rule 103	Agreed	Part of broader discussion	Fn	Ibid
85	Secretary-General	Ibid	Ibid	Ibid	68. 'These restrictions constitute a violation of the obligation of Israel as an occupying power to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.154' Fn 154: Fourth Geneva Convention, art. 59, and ICRC, Customary International Humanitarian Law, rule 55.	One (rules)	Rule 55	Agreed	Yes. GC IV art 59	Fn	Ibid
86	Secretary-General	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem: Report of the Secretary-General	A/71/364	30.août.16	C. Practices raising serious concerns of collective punishment 22. Israeli practices that may amount to collective punishment continued during the reporting period. In addition to being explicitly prohibited by international humanitarian law,11 collective punishment violates a range of human rights and may amount to a war crime.12' Fn 11: 'For example, see Fourth Geneva Convention (article 33), Hague regulations (article 50) and Customary International Humanitarian Law (rule 103).'	Not specified	Rule 103	Agreed	Yes. GC IV art 33; Hague Regulations art 50.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N16/273/59/pdf/N1627359.pdf?OpenElement
87	Secretary-General	Ibid	Ibid	Ibid	Accountability for violations committed during hostilities 51. Pursuant to international law, investigations should be opened in response to every credible allegation of a war crime.33' Fn 33: Customary international humanitarian law, rule 158.	Not specified	Rule 158	Agreed	Part of broader discussion	Fn	Ibid
88	Secretary-General	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem Report of the Secretary-General	A/69/347	25.août.14	E. Accountability for alleged violations of international law by Israeli security forces 52. '... Under international law, Israel is obliged to investigate alleged violations of international human rights and humanitarian law and to bring those responsible to justice.28 ...' Fn 28: See CCPR/C/21/Rev.1/Add.13, paras. 15-18; and International Committee of the Red Cross, Customary International Humanitarian Law Study, 2005, rule 158.	Not specified	Rule 158	Agreed	Yes. CCPR/C/21/Rev.1/Add.13.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N14/516/23/pdf/N1451623.pdf?OpenElement
89	Secretary-General	[States] Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts Report of the Secretary-General	A/67/182/Add.1	28.sept.12	p. 12: 'A specific task for the Committee was to analyse the content of the rules of customary international humanitarian law, including the conclusions as presented by the ICRC in its study of customary international humanitarian law of 2005. The Committee thinks that the ICRC customary law study is a valuable compilation of the contents of customary international humanitarian law and the Committee proposes that Sweden should promote acceptance of the rules as identified in the study. The Government is currently in the process of evaluating the proposals made by the Committee.'	N/A	N/A	Agreed	Part of broader discussion	Main text	Describes the Study as 'a valuable compilation of the contents of customary international humanitarian law' https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N12/528/27/pdf/N1252827.pdf?OpenElement
90	Secretary-General	Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem Report of the Secretary-General	A/66/356	13.sept.11	47. 'The firing of these rockets is contrary to the rules of international humanitarian law prohibiting indiscriminate attacks, the targeting of civilians, the use of inherently indiscriminate weapons and acts aimed at spreading terror in the civilian population.70 In addition, it has been alleged by the Government of Israeli that such rockets and mortars are often fired from densely populated areas. Should this be the case, it would also contravene customary international humanitarian law.71' Fn 70: 'These rules are identified in a Study on Customary international humanitarian law, International Committee of the Red Cross, rules 1, 2, 11 and 71.' Fn 71: Ibid., rule 23.	Not specified	Rules 1, 2, 11, 23, 71,	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N11/495/26/pdf/N1149526.pdf?OpenElement

91	Secretary-General	The scope and application of the principle of universal jurisdiction Report of the Secretary-General	A/66/93	20.juin.11	126. 'While the relevant treaty law provisions are restricted to grave breaches, State practice has confirmed as a norm of customary international law the rule that States have the right to vest universal jurisdiction in their national courts over violations of the laws and customs of war that constitute war crimes (Rule 157, Customary International Humanitarian Law, 2005). This includes serious violations of common article 3 of the Geneva Conventions and Additional Protocol II committed in non-international armed conflict and other war crimes such as those recognized in article 8 of the Statute of the International Criminal Court.'	Not specified	Rule 157	Agreed	Part of broader discussion	Main text	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N11/380/74/pdf/N1138074.pdf?OpenElement
92	SRS	Protection of and assistance to internally displaced persons Report of the SRS	A/65/282	11.août.10	75. 'In conflict situations, international humanitarian law sets out additional obligations to provide humanitarian assistance. Parties causing displacement in international or non-international conflict (for example, by clearing an area for military operations) must take all possible measures to ensure that evacuated civilians are provided with satisfactory conditions of shelter, hygiene, health, safety and nutrition.24 ...' Fn 24: International Committee of the Red Cross, Customary International Humanitarian Law. Vol. I: Rules (Cambridge, Cambridge University Press, 2005), rule 131. See also the Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), article 49.	One (rules)	Rule 131	Agreed	Yes. GC IV art 49.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N10/482/24/pdf/N1048224.pdf?OpenElement
93	SRS	Ibid	Ibid	Ibid	80. '... Similarly, according to customary international humanitarian law applicable in situations of international as well as non-international armed conflicts, parties to a conflict "must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control".32' Fn 32: International Committee of the Red Cross, Customary International Humanitarian Law. Vol. I: Rules (Cambridge, Cambridge University Press, 2005), rule 55.	One (rules)	Rule 55	Agreed	Part of broader discussion	Fn	Ibid
94	SRS	Ibid	Ibid	Ibid	81. '... Furthermore, in situations of armed conflict, States are allowed to temporarily restrict the freedom of movement of authorized humanitarian relief personnel in case of imperative military necessity.36 Fn 36: Customary International Humanitarian Law. Vol. I: Rules, rule 56.	One (rules)	Rule 56	Agreed	Part of broader discussion	Fn	Ibid
95	SRS	Ibid	Ibid	Ibid	87. 'At the same time, national authorities and, within the ambit of international humanitarian law, non-State parties to conflict, must grant and facilitate the free passage of humanitarian assistance and grant persons providing such assistance rapid and unimpeded access to the internally displaced.42' Fn 42: Guiding Principle 25, para. 3. See also the Kampala Convention, articles 3, para. 1 (g), and 7, para. 5 (g); Additional Protocol I to the 1949 Geneva Conventions, article 70, para. 2; and Customary International Humanitarian Law. Vol. I: Rules (see note 32 above), rule 55. This obligation has also formed the basis for numerous binding Security Council resolutions such as resolution 1910 (2010), para. 17.	One (rules)	Rule 55	Agreed	Yes. Kamapa Convention arts 3(1)(g), 7(5)(g); Ap I art 70(2); SC Res 1910 (2010); Guiding Principles on Internally Displaced Persons, Guiding Principles 25.	Fn	Ibid
96	SRS	Ibid	Ibid	Ibid	E. The obligation to protect persons engaged in humanitarian assistance, their transport and supplies 92. 'National authorities and, within the ambit of international humanitarian law, armed groups, have a duty to respect and protect humanitarian assistance and actors.45 ...' Fn 45: 'See Guiding Principle 26; the Convention on the Safety of United Nations and Associated Personnel, article 7, para 1; Customary International Humanitarian Law. Vol. I: Rules (see note 32 above), rules 31 and 32; and the Great Lakes Protocol, article 3, para. 7.'	One (rules)	Rules 31, 32	Agreed	Yes. Guiding Principles on Internally Displaced Persons, Guiding Principles 26; Great Lakes Protocol art 3(7); Convention on the Safety of United Nations and Associated Personnel art 7(1).	Fn	Ibid

					p. 2: 'Summary ... 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.'	N/A	N/A	Agreed	Part of broader discussion	Main text	Discusses the 'significant contribution' made by the Study to 'principles of humanity'.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/114/76/pdf/G0611476.pdf?OpenElement
97	Secretary-General	PROMOTION AND PROTECTION OF HUMAN RIGHTS Fundamental standards of humanity Report of the Secretary-General	E/CN.4/2006/87	03.mars.06	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. Fn 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. A. Background	N/A	N/A	Agreed	Part of broader discussion	Main text and fn	Subheading: 'ICRC Study on Customary Rules of International Humanitarian Law' and lengthy discussion of the Study in the following paras.	Ibid
98	Secretary-General	Ibid	Ibid	Ibid	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	Henckaerts article	N/A	Agreed	Part of broader discussion	Main text	Ibid. Cited Henckaerts (2005) article annexing the Study rather than the Study itself.	Ibid
99	Secretary-General	Ibid	Ibid	Ibid	Fn 4: See Jean-Marie Henckaerts, "Study on customary	Henckaerts article	N/A	Agreed	Part of broader discussion	Main text	Ibid.	Ibid

					B Methodology							
100	Secretary-General	Ibid	Ibid	Ibid	<p>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 C. Summary of the findings</p>	Henckaerts article	N/A	Agreed	Part of broader discussion	Main text	Ibid. Cited Henckaerts (2005) article annexing the Study rather than the Study itself.	Ibid
101	Secretary-General	Ibid	Ibid	Ibid	<p>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.’</p> <p>1. Non-international armed conflicts</p>	N/A	N/A	N/A	Part of broader discussion	Main text	Ibid.	Ibid
102	Secretary-General	Ibid	Ibid	Ibid	<p>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</p> <p>Fn 7: See <i>ibid.</i>, p. 188.</p>	Henckaerts article	N/A	N/A	Part of broader discussion	Main text	Ibid. Cited Henckaerts (2005) article annexing the Study rather than the Study itself.	Ibid
103	Secretary-General	Ibid	Ibid	Ibid	<p>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</p> <p>Fn 8: See Customary International Humanitarian Law, vol. I, Rule 1.</p> <p>Fn 9: See <i>ibid.</i>, Rules 25 and 27-30.</p> <p>Fn 10: See <i>ibid.</i>, Rule 26.</p> <p>Fn 11: See <i>ibid.</i>, Rule 53.</p> <p>Fn 12: See <i>ibid.</i>, Rule 54.</p>	One (rules)	Rules 1, 25, 26, 27-30, 53, 54	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid

104	Secretary-General	Ibid	Ibid	Ibid	<p>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</p>	One (rules)	Rules 7-10, 11-13, 14, 15-21, 22-24, 31-32, 34 35-37, 46-48, 55-56, 57-65	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid
105	Secretary-General	Ibid	Ibid	Ibid	<p>2. Fundamental guarantees</p> <p>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 overarching 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</p> <p>Fn 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.</p>	One (rules)	Intro to ch 32 (fundamental guarantees)	Agreed	Yes. Doswald-Beck (2005) article.	Main text and fn	Ibid.	Ibid
106	Secretary-General	Ibid	Ibid	Ibid	<p>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 th 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</p>	One (rules)	Rules 87-105	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid

107	Secretary-General	Ibid	Ibid	Ibid	<p>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</p>	One (rules)	Rules 109-11; intro to Ch 32 (fundamental guarantees)	Agreed	Yes. Doswald-Beck (2005) article.	Main text and fn	Ibid.	Ibid
108	Secretary-General	Ibid	Ibid	Ibid	<p>3. Other relevant international humanitarian law rules on the treatment of civilians and persons hors de combat</p> <p>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</p> <p>Fn 44: See <i>ibid.</i>, vol. I, Rules 109-111. Fn 45: See <i>ibid.</i>, Rules 112-116. Fn 46: See <i>ibid.</i>, Rule 117. Fn 47: See <i>ibid.</i>, Rules 118-128. Fn 48: See <i>ibid.</i>, Rules 129-133. Fn 49: See <i>ibid.</i>, Rules 134-138.</p>	One (rules)	Rules 109-138	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid
109	Secretary-General	Ibid	Ibid	Ibid	<p>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-</p>	One (rules)	Rules 118-128	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid

					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								
110	Secretary-General	Ibid	Ibid	Ibid	Fn 62: See <i>ibid.</i> , Rule 139. Fn 63: See <i>ibid.</i> , Rule 141. Fn 64: See <i>ibid.</i> , Rule 142. Fn 65: See <i>ibid.</i> , Rule 143.	One (rules)	Rules 139, 141, 142, 143	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid	
					19. With regard to enforcement of international humanitarian law, the study, <i>inter alia</i> , 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								
111	Secretary-General	Ibid	Ibid	Ibid	Fn 66: See <i>ibid.</i> , Rule 144. Fn 67: See <i>ibid.</i> , Rule 148.	One (rules)	Rules 144, 148	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid	
					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								
112	Secretary-General	Ibid	Ibid	Ibid	Fn 68: See <i>ibid.</i> , Rule 149. Fn 69: See <i>ibid.</i> , Rule 150.	One (rules)	Rules 149, 150	Agreed	Part of broader discussion	Main text and fn	Ibid.	Ibid	
					IV. CONCLUSIONS AND RECOMMENDATIONS								
					...								
					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.'	One (rules)	N/A	Agreed	Part of broader discussion	Main text	Ibid.	Ibid	
113	Secretary-General	Ibid	Ibid	Ibid									

122	Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination: Note by the Secretariat	A/HRC/39/49		13.juil.18	19. '... Furthermore, customary international humanitarian law recognizes the prohibition of recruitment of child soldiers in both international and non international armed conflicts.2 ...' Fn 2: See International Committee of the Red Cross, "Customary IHL database", available at ihldatabases.icrc.org/customary-ihl/eng/docs/home (accessed 9 July 2018), rules 136 and 137.	Database	Rules 136, 137	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/212/46/pdf/G1821246.pdf?OpenElement
123	Human Rights Council	Report of the Working Group on Arbitrary Detention	A/HRC/22/44		24.déc.12	45. 'The prohibition of "arbitrary" arrest and detention has been recognized both in times of peace and armed conflict.10 ...' Fn 10: 'See, for example, Human Rights Committee, concluding observations on the combined fourth and fifth periodic reports of Sri Lanka, CCPR/CO/79/LKA, para. 13; concluding observations on the initial report of Uganda, CCPR/CO/80/UGA, para. 17; concluding observations on the third periodic report of the Sudan, CCPR/C/SDN/CO/3, para. 21. See also International Committee of the Red Cross, Customary International Humanitarian Law Database, rule 99 (deprivation of liberty).'	Database	Rule 99	agreed	Yes. CCPR/CO/79/LKA; CCPR/CO/80/UGA; CCPR/C/SDN/CO/3.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G12/189/35/pdf/G1218935.pdf?OpenElement
124	Human Rights Council	JOINT STUDY ON GLOBAL PRACTICES IN RELATION TO SECRET DETENTION IN THE CONTEXT OF COUNTERING TERRORISM OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM, MARTIN SCHEININ; THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, MANFRED NOWAK; THE WORKING GROUP ON ARBITRARY DETENTION REPRESENTED BY ITS VICE-CHAIR, SHAHEEN SARDAR ALI; AND THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES REPRESENTED BY ITS CHAIR,	A/HRC/13/42		20.mai.10	55. '... According to ICRC, these procedures are meant to ensure that internment is not a measure of punishment; interned persons must therefore not be held incommunicado.63 ...' Fn 63: ICRC commentary to the Fourth Geneva Convention, art. 106, available at the ICRC website (www.icrc.org). See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, (ICRC, 2005), at pp. 439-449, regarding mandatory recording of personal details of detainees, the right to communicate with families and the right to receive visitors.	One (rules)	Rules 122-126	Agreed	Yes. GC IV art 106	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G10/134/99/pdf/G1013499.pdf?OpenElement
125	Human Rights Council	Ibid	Ibid	Ibid		55. '... The prohibition of enforced disappearance is a rule of customary international humanitarian law applicable in all situations of armed conflict.64' Fn 64: Henckaerts and Doswald-Beck, op.cit., pp. 340-343.	One (rules)	Rule 90	Agreed	Part of broader discussion	Fn	Ibid
126	Human Rights Council	Ibid	Ibid	Ibid		56. 'As incommunicado detention is also prohibited under international humanitarian law applicable to all armed conflicts65 and to all persons who no longer take direct part in hostilities,66 ...' Fn 65: Ibid., pp. 344-352. Fn 66: Ibid., p. 299.	One (rules)	Rule 99; intro to Ch 2 (fundamental guarantees)	Agreed	Part of broader discussion	Fn	Ibid
127	Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	Report of the Working Group on the Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	A/75/259		28.juil.20	7. 'Article 47 of Protocol I Additional to the Geneva Conventions of 1949 does not prohibit mercenarism, but it does define mercenaries and denies them the right to combatant or prisoner-of-war status.7 This rule has been recognized as having customary status under international humanitarian law. 8' Fn 8: 'See rule No. 108 in Jean-Marie Henckaerts, Louise Doswald-Beck and others, Customary International Humanitarian Law, vol. I., Rules, ICRC study (Cambridge, United Kingdom, Cambridge University Press, 2009).'	One (rules)	Rule 108	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/197/68/pdf/N2019768.pdf?OpenElement

					III. Status of mercenaries and foreign fighters in international law Laws applicable to mercenaries 9. Mercenaries are specifically subject to two international legal measures. Article 47 of Additional Protocol I to the Geneva Conventions denies combatant and prisoner-of-war status to mercenaries but does not make mercenarism an offence. The International Convention against the Recruitment, Use, Training and Financing of Mercenaries, on the other hand, makes it an offence to recruit, use, train or finance mercenaries. The Convention has been ratified by 34 States. Additional Protocol I, on the other hand, has 174 State parties, 10 and its provisions on mercenaries are considered to constitute binding customary international humanitarian law in international armed conflict. ¹¹ Fn 11: 'The International Committee of the Red Cross asserts that article 47 constitutes a rule of customary international law. See https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule108 .'								https://documents-dds-ny.un.org/doc/UNDOC/GE/N/16/254/52/pdf/N1625452.pdf?OpenElement
128	Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	Report of the Working Group on the Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination	A/71/318	09.août.16	v1_rul_rule108.'	One (rules)	Rule 108	Neutral	Part of broader discussion	Fn			
129	Reports of UN special rapporteurs												
130	Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	Situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, with a focus on collective punishment: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	A/HRC/44/60	22.déc.20	30. 'Some States – such as Israel – have adopted the Fourth Geneva Convention, but have not ratified Protocol I Additional to the Geneva Conventions of 1949. Notwithstanding this, ICRC has stated that the prohibition on collective punishment has become an accepted norm of customary international humanitarian law and, as such, it would be applicable to all States and combatants, and in all situations. Breaching this customary prohibition, according to ICRC, would be a "serious violation" of international humanitarian law. ⁴² ' Fn 42: 'Jean-Marie Henckaerts et al., Customary International Humanitarian Law (Cambridge University Press, 2005), vol. 1, pp. 372–375, 586–587 and 602–603.' E. Withholding of bodies	One (rules)	Rules 102-104; 156	Neutral	Part of broader discussion	Main text and fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G20/352/94/pdf/G2035294.pdf?OpenElement
131	Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	Ibid	Ibid	Ibid	73. 'International law stipulates that the remains of dead combatants should be treated with respect and dignity. The Geneva Conventions provide that the military has an obligation to facilitate the repatriation of the bodies and the remains of the dead. ¹²⁴ In particular, rule 114 of the Rules of Customary International Humanitarian Law, developed by ICRC, states: "Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon request of their next of kin." ¹²⁵	One (rules)	Rule 114	Agreed	Part of broader discussion	Main text and fn			Ibid
132	Special Rapporteur on the human rights of internally displaced persons	Visit to Iraq: Report of the Special Rapporteur on the human rights of internally displaced persons	A/HRC/44/41/Add.1	13.mai.20	40. 'The discriminatory treatment of entire families of internally displaced persons because of perceived ties to ISIL or the actual or alleged affiliation of one or some of their members to ISIL constitutes collective punishment in violation of international law. ¹³ ...' Fn 13: 'International Committee of the Red Cross, Study on Customary International Humanitarian Law, Rule 103.'	One (rules)	Rule 103	Agreed	Part of broader discussion	Fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G20/112/35/pdf/G2011235.pdf?OpenElement
133	Special Rapporteur on extrajudicial, summary or arbitrary executions	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq: Note by the secretariat	A/HRC/38/44/Add.1	20.juin.18	16. 'The Government bears responsibility for all violations of international humanitarian law committed by its armed forces or those acting under its direction or control. ⁶ Under customary international law, the Government has to investigate all violations of international human rights and humanitarian law, and ensure full reparation for loss or injury caused by the State.' ⁷ Fn 6: Art. 8 of the articles on responsibility of States for internationally wrongful acts, General Assembly resolution 56/83 of 12 December 2001, annex; ICRC, Customary International Humanitarian Law, Volume I: Rules, rule 149. Fn 7: ICRC, Customary International Humanitarian Law, Volume I: Rules, rules 144, 150, 157 and 158. For United Nations practices supporting the obligations of armed groups to make reparations, see also rule 150.	One (rules)	Rules 144, 149, 150, 157, 158	Agreed	Yes. ARSIWA art 8; GA Res 56/83 annex	Fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/185/94/pdf/G1818594.pdf?OpenElement

134	Special Rapporteur on the human rights of internally displaced persons	Report of the Special Rapporteur on the human rights of internally displaced persons on her mission to the Niger	A/HRC/38/39/Add.3	09.mai.18	41. '... In addition, such measures raise issues under international humanitarian law applicable to the non international armed conflict in Diffa between government forces and non-State armed groups, including the customary principle according to which "[t]he use of starvation of the civilian population as a method of warfare is prohibited", ⁶ and that "[i]t is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works". ⁷ ' Fn 6: J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, vol. 1: Rules, International Committee of the Red Cross, Cambridge University Press, Cambridge, Rule 53, p. 186, 2006.	One (rules)	Rule 53	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/130/11/pdf/G1813011.pdf?OpenElement
135	Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967: Note by the Secretariat	A/HRC/34/70	13.avr.17	25. 'Preventing humanitarian staff from entering and leaving Gaza may amount to a violation of the duty of the occupying Power to facilitate and allow the delivery of humanitarian aid, as provided for in article 23 of the Fourth Geneva Convention. ³⁷ ' Fn 37: See also customary international humanitarian law rule 55.	One (rules)	Rule 55	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G17/091/45/pdf/G1709145.pdf?OpenElement
136	Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson	Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson	A/HRC/29/51	16.juin.15	51. '... Basing forces among civilians and civilian infrastructure constitutes a serious violation of applicable standards of international humanitarian law and can constitute a war crime. At the same time, however, international humanitarian law is clear that direct attacks against civilian objects are prohibited, ⁹⁸ unless and for such time as they are military objectives. ⁹⁹ There is a presumption of civilian character for objects normally dedicated to civilian purposes. In case of doubt, the principle of distinction and the requirement to do everything feasible to verify that targets are military objectives, not civilian objects, prevail. ¹⁰⁰ ' Fn 98: See International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, rule 8. Fn 99: Ibid., rule 10. Fn 100: Ibid., rule 16.	One (rules)	Rules 8, 10, 16	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G15/127/02/pdf/G1512702.pdf?OpenElement
137	Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani	Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani	A/HRC/26/33	04.avr.14	39. 'Article 49 of the Fourth Geneva Convention, relative to the protection of civilians in time of international armed conflict, prohibits "individual or mass forcible transfers" as a grave breach of international humanitarian law. This prohibition was later extended to non-international armed conflicts when the second additional Protocol to the Geneva Conventions. State practice establishes these rules as norms of customary international humanitarian law applicable in both international and non-international armed conflicts. ¹⁸ ' Fn 18: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules(Cambridge, Cambridge University Press, 2009), p. 457.	One (rules)	Rule 129	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G14/129/45/pdf/G1412945.pdf?OpenElement
138	Special Rapporteur on the human rights of internally displaced persons	HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES	A/HRC/10/22	29.mai.09	11. 'The most relevant rules of customary international humanitarian law applicable to the conduct of hostilities in the present context relate to the principles of distinction, proportionality and precaution. ⁴ These obligations are cumulative; an attack must comply with all of the rules in order to be lawful.' Fn 4: International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, J.-M. Henckaerts and L. Doswald-Beck (eds.), Cambridge University Press, 2005 (ICRC study). The study was prepared at the request of States at the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 and is based on an extensive analysis of State practice (e.g. military manuals) and documents expressing opinio iuris. Rules 6-9, 11-13, 15-24, 97.	One (rules)	Rules 6-9, 11-13, 15-24, 97	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G09/135/43/pdf/G0913543.pdf?OpenElement

139	Special Rapporteur on the human rights of internally displaced persons	Ibid	Ibid	Ibid	46. '... The Special Rapporteur considers that this constitutes a serious violation of customary international humanitarian law, which prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population. ³⁴ ' Fn 34: ICRC study, rule 54.	One (rules)	Rule 54	Agreed	Part of broader discussion	Fn	Ibid
140	Special Rapporteur on the human rights of internally displaced persons	Ibid	Ibid	Ibid	83. 'International law prohibits arbitrary displacement, a notion that includes displacement in situations of armed conflict that is incompatible with international humanitarian law because it is not warranted by the security of the civilians involved or imperative military reasons. ⁶⁴ ' Fn 64: Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 6, restating articles 12 of the International Covenant on Civil and Political Rights and customary international humanitarian law (ICRC study, rules 24 and 129-131). See also chapter II.	One (rules)	Rules 24, 129-131, ch II	Agreed	Yes. Guiding Principles on Internal Displacement, principlr 6.	Fn	Ibid
141	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum MISSION TO THE UNITED STATES OF AMERICA	A/HRC/11/2/Add.5	28.mai.09	39. 'The United States has an obligation under international law to provide detainees with fair trials that afford all essential judicial guarantees. No State may derogate from this obligation, regardless of whether persons are to be tried for crimes allegedly committed during peace or armed conflict. ⁵⁸ ...' Fn 58: See, e.g., International Covenant on Civil and Political Rights, Article 14; UN Human Rights Committee, General Comment No 29, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), paras 11, 16; Geneva Conventions, Common Article 3; International Committee of the Red Cross, Customary International Humanitarian Law, Volume 1: Rules, Rule 100.	One (rules)	Rule 100	Agreed	Yes. ICCPR art 14; HRC General Comment 29; Common Article 3.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G09/135/57/pdf/G0913557.pdf?OpenElement
142	Special Rapporteur on extrajudicial, summary or arbitrary executions	Ibid	Ibid	Ibid	55. 'It is noteworthy that "command responsibility," a basis for criminal liability recognized since the trials after World War II, is absent both from the Uniform Code of Military Justice (UCMJ) and the War Crimes Act. ...' Fn 81: 'In re Yamashita, 327 U.S. 1 (1946). The ICRC study on customary international humanitarian law surveys state practice and succinctly summarizes the law on command responsibility: "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible." (Henckaerts & Doswald-Beck, Customary International Humanitarian Law: Volume I: Rules (ICRC 2005), p. 558.)'	One (rules)	Rule 153	Agreed	Yes. In Re Yamashita (1946).	Fn	Ibid
143	Special Rapporteur on extrajudicial, summary or arbitrary executions	Ibid	Ibid	Ibid	4. Reparations for civilian casualties 67. 'The Government has implemented a number of programs to provide compensation and restitution to civilian victims of U.S. military operations. While the motivation for these programs is often cited as "winning hearts and minds" they are also responsive to international law's requirement of reparations for violations of human rights and humanitarian law. ⁹¹ ...' Fn 91: See ICCPR, Art. 2(3); Human Rights Committee, General Comment 31, "Nature of the General Legal Obligation on States Parties to the Covenant" (2004), para. 16; Henckaerts & Doswald-Beck, Customary International Humanitarian Law (ICRC 2005), Rule 150; International Law Commission, Draft Articles on State Responsibility, A/56/10 (2001).	One (rules)	Rule 150	Agreed	Yes. ICCPR art 2(3); HRC General Comment 31; ARSIWA	Fn	Ibid

144	Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum	PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT	MISSION TO AFGHANISTAN	A/HRC/11/2/Add.4	06.mai.09	5. '... IHL provides that attacks on legitimate military objectives may be lawful even when they result in civilian deaths, as long as they are proportional. ⁴	Fn 4: 'With respect to the proportionality requirement, the "expected" resulting "incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof" must not be "excessive in relation to the concrete and direct military advantage anticipated" (Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (2005) (hereinafter, ICRC Study), Rule 14). With respect to the required precautions in carrying out an attack, the general rule is that "constant care" and "[a]ll feasible precautions" must be taken "to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects" (ICRC Study, Rule 15). This general rule is supplemented by a number of more specific rules. These include rules requiring that a party to the conflict make the "choice of means and methods of warfare" such as to minimize such harm to civilians (ICRC Study, Rule 17), do "everything feasible to assess" whether the proportionality requirement will be satisfied (ICRC Study, Rule 18), and "give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit" (ICRC Study, Rule 20). Furthermore, even as an operation is underway, there is an obligation to do "everything feasible to	One (rules)	Rules 14, 15, 17, 18, 20	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G09/131/17/pdf/G0913117.pdf?OpenElement
145	Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,		Ibid	Ibid	Ibid	7. 'IHL also requires each party to the conflict to take certain steps to limit the risk to civilians of attacks by the opposing party. ⁵	Fn 5: 'Customary international humanitarian law prohibits "the use of human shields" (ICRC Study, Rule 97) meaning the "intentional collocation of military objectives and civilians or persons hors de combat with the specific intent of trying to prevent the targeting of those military objectives" (ICRC Study, Rule 97, discussion p. 340). In addition to this prohibition, each party also has various affirmative obligations. There is a general obligation to "take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks" (ICRC Study, Rule 22). The specific implications of this rule in the context of non-international armed conflicts are open to some interpretation; however, the rules required in international armed conflicts provide guidance. These rules include that each party must "to the extent feasible, avoid locating military objectives within or near densely populated areas" (ICRC Study, Rule 23) and "to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives" (ICRC Study, Rule 24).'	One (rules)	Rules 97, 22, 23, 24	Agreed	Part of broader discussion	Fn	Ibid
146	Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,		Ibid	Ibid	Ibid	E. Compensation for victims 35. The Government provides some payments (approximately US\$1,900) to civilians killed by AGEs, but this program is uneven, and operates in a highly unsatisfactory manner. The various international forces have implemented diverse programs for compensating civilian victims of military operations. Such payments are consistent with international law requirement for reparations for human rights or IHL violations. ³⁵ ...'	Fn 35: See ICCPR, Art. 2(3); Human Rights Committee, General Comment 31, "Nature of the General Legal Obligation on States Parties to the Covenant" (2004), para. 16; Henckaerts & Doswald-Beck, Customary International Humanitarian Law (ICRC 2005), Rule 150. As a matter of customary international humanitarian law, "A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused." (ICRC Study, Rule 150.) While the modalities of this obligation under IHL continue to be clarified, "There is an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State." (ICRC Study, volume 1, page 541.) This interpretation is, moreover, obligatory pursuant to the international human rights law requirement to "ensure that	One (rules)	Rule 150	Agreed	Yes. ICCPR art 2(3); HRC General Comment 31	Fn	Ibid

147	Special Rapporteur on the right to education, Vernor Muñoz	PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT Right to education in emergency situations Report of the Special Rapporteur on the right to education, Vernor Muñoz	A/HRC/8/10	20.mai.08	53. 'Additional Protocol II to the Geneva Conventions, of 1977, applies to non-international conflicts and is therefore of the utmost relevance today, as it covers the actions of non-State armed groups and establishes in article 4, paragraph 3 (a), the obligation to provide children with the care and aid they require, and the right to receive education. ³¹ ' Fn 31: 'Además, las normas del derecho internacional humanitario consuetudinario, que se aplican a todo tipo de conflictos, incluso en el territorio de los Estados que no han ratificado los Protocolos adicionales, establecen que los niños y niñas afectados por conflictos armados son titulares de ciertas garantías, incluyendo el acceso a la educación. Véase Jean Marie Henckaerts y Louise Doswald-Beck, Customary International Humanitarian Law, vol. I, Rules, Comité Internacional de la Cruz Roja, 2005, pág. 481.'	One (rules)	Rule 150	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G08/135/33/pdf/G0813533.pdf?OpenElement
148	Human Rights Council	PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum MISSION TO PHILIPPINES	A/HRC/8/3/Add.2	16.avr.08	32. '... In some cases, the use of people's courts would appear to amount to little more than an end run around the principle of non-combatant immunity. In other words, it seeks to add a veneer of legality to what would better be termed vigilantism or murder. Failure to respect due process norms constitutes a violation of IHL for the NPA/CPP/NDF and may constitute a war crime for participating cadres. ⁴⁵ ' Fn 45: Article 3(1)(d) common to the Geneva Conventions of 1949; Protocol I, Article 75(4); Rome Statute of the International Criminal Court, Article 8(2)(c)(iv); International Committee of the Red Cross, Customary International Humanitarian Law, Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Cambridge University Press, 2005, Rules 100-103, 156.	One (rules)	Rules 100-103, 156	Agreed	Yes. Common Article 3(1)(d); AP I art 75(4); Rome Statute art 8(2)(c)(iv)	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G08/130/01/pdf/G0813001.pdf?OpenElement
149	Special Rapporteur, Okechukwu Ibeanu	IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights Report of the Special Rapporteur, Okechukwu Ibeanu	A/HRC/5/5	05.mai.07	48. '... The principle of distinction prescribes that parties to the conflict must at all times distinguish between civilian objects and military objectives, and that civilian objects must not be the object of attack. This principle is enshrined in article 52 of Additional Protocol I to the Geneva Conventions ⁴⁹ and State practice shows it to be a binding rule of customary international law, applicable to both international and non-international armed conflicts. ⁵⁰ ...' Fn 50: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (Cambridge, Cambridge University Press/International Committee of the Red Cross (ICRC), 2005), p. 25.	One (rules)	Rule 7	Agreed	Yes. AP I art 52.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G07/125/63/pdf/G0712563.pdf?OpenElement
150	Special Rapporteur, Okechukwu Ibeanu	Ibid	Ibid	Ibid	49. '... An attack is prohibited if it is expected to cause incidental loss or damage which would be excessive in relation to the concrete and direct military advantage anticipated. Article 51, paragraph 5 (b) of Additional Protocol I codifies this principle and State practice shows it to be a binding rule of customary international law applicable to both international and non-international armed conflicts. ⁵² ...' Fn 52: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (Cambridge, Cambridge University Press/ICRC, 2005), p. 46.	One (rules)	Rule 46	Agreed	Part of broader discussion	Fn	Ibid
151	Special Rapporteur, Okechukwu Ibeanu	Ibid	Ibid	Ibid	51. 'International humanitarian law also contains several specific limitations on the conduct of hostilities which are applicable to the particular issue of release of toxic and dangerous products. Additional Protocol I and customary international law contain general protections for the environment. In particular, it is prohibited to cause widespread, long-term and severe damage to the natural environment. ⁵⁴ ...' Fn 54: Articles 35, para. 3 and 55, para. 1 of Additional Protocol I; Jean-Marie Henckaerts and Louise Doswald Beck, Customary International Humanitarian Law (Cambridge, Cambridge University Press/ICRC, 2005), p. 151.	One (rules)	Rule 45	Agreed	Part of broader discussion	Fn	Ibid

152	Special Rapporteur, Okechukwu Ibeanu	Ibid	Ibid	Ibid	52. '... The authors of the recent International Committee of the Red Cross (ICRC) study on customary international humanitarian law mention that other installations containing dangerous forces, such as chemical plants and petroleum refineries, should benefit from the same considerations because an attack on this type of object may cause severe damage to the civilian population.56 ...' Fn 56: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (Cambridge, Cambridge University Press/ICRC, 2005), pp. 141-142.	One (rules)	Rule 42	Agreed	Part of broader discussion	Fn	Ibid
153	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF DISAPPEARANCES AND SUMMARY EXECUTIONS Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	A/HRC/4/20	29.janv.07	35. 'The prohibition of murder of persons hors de combat and the obligation to protect the wounded from adverse treatment are norms of customary international law applicable in both international and non-international armed conflicts.48' Fn 48: International Committee of the Red Cross, Customary International Humanitarian Law (Jean-Marie Henckaerts & Louise Doswald-Beck, eds. 2005) (hereinafter "ICRC Study on Customary Law"), pp. 306-308 (Rule 87 - civilians and persons hors de combat must be treated humanely), pp. 311-314 (Rule 89 - prohibition of murder of persons hors de combat), pp. 403-405 (Rule 111 -protection of wounded, sick, and shipwrecked).	One (rules)	Rules 87, 89, 111	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G07/105/00/pdf/G0710500.pdf?OpenElement
154	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	38. '... The obligation to treat injured soldiers "humanely" and the obligation to "respect and protect" the wounded are incompatible with the idea of "mercy killings". Rather, the obligation of parties to a conflict, in the presence of injured persons, is (i) to "take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction"51 and (ii) to seek the appropriate medical care to the fullest extent practicable and with the least possible delay.52 ...' Fn 51: First Geneva Convention, art. 15; Second Geneva Convention, Art. 18; Fourth Geneva Convention, Art. 16(2); Additional Protocol I, Art. 10; Geneva Conventions, Common Art. 3; Additional Protocol II, Art. 8, ICRC Study on Customary Law, supra note 49, at pp. 396-399 (Rule 109). Fn 52: First Geneva Convention, Arts. 12(2), 15(1); Second Geneva Convention, Arts. 12(2), 18; Fourth Geneva Convention, Art. 16(1); Geneva Conventions, Common Art. 3; Additional Protocol II, Arts. 7-8; ICRC Study on Customary law, supra note 49, at pp. 400-403.	One (rules)	Rules 109, 110	Agreed	Yes. GC I art 15; GC II art 18; GC IV art 10; Common Article 3; AP II art 8	Fn	Ibid
155	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari	A/HRC/2/7	02.oct.06	B. International humanitarian law 22. 'Both Israel and Lebanon are parties to the Geneva Conventions of 12 August 1949. Lebanon is a party to Additional Protocols I and II to the Geneva Conventions. All of the parties to the conflict are also subject to customary international humanitarian law.22' Fn 22: International Committee of the Red Cross, Customary International Humanitarian Law, Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Cambridge University Press, 2005 (hereafter "ICRC Study"). This study was prepared upon recommendation of the twenty-sixth International Conference of the Red Cross and Red Crescent (December 1995) and is based on an extensive analysis of State practice (e.g. military manuals) and documents expressing opinio iuris. The application of these customary standards to the present conflict has been the subject of extensive analysis by civil society groups. See for example Human Rights Watch, Fatal Strikes: Israel's Indiscriminate Attacks Against Civilians in Lebanon (August 2006); Human Rights Watch, Hezbollah Must End Attacks on Civilians (August 2006); Amnesty International, Deliberate destruction or "collateral damage"? Israeli attacks on civilian infrastructure (August 2006); and Amnesty International, Under fire: Hizbullah's attacks on northern Israel (September 2006).	One (rules)	N/A	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/141/95/pdf/G0614195.pdf?OpenElement

156	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>25. 'First, under the principle of distinction, the parties to a conflict must at all times distinguish between civilians and combatants,23 and attacks may be directed only at military objectives, defined as those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.24 The only circumstance in which civilians may be targeted is for such time as they take a direct part in hostilities.25 Thus, attacks on civilian objects26 are unlawful unless at the time of the attack they were used for military purposes and their destruction offered a definite military advantage.'</p> <p>Fn 23: Ibid., pp. 3-8 (Rule 1), 25-36 (Rules 7-10).</p> <p>Fn 24: Ibid., pp. 25-32 (Rules 7-8).</p> <p>Fn 25: Ibid., pp. 19-24 (Rule 6).</p> <p>Fn 26: Ibid., pp. 32-34 (Rule 9).</p>	One (rules)	Rules 1, 6, 7-10	Agreed	Part of broader discussion	Fn	Ibid
157	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>26. 'Indiscriminate attacks are similarly prohibited.27 They are those which (i) are not directed at a specific military objective; (ii) employ a method or means of combat which cannot be directed at a specific military objective; or (iii) employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.28 Attacks by bombardment, including with rockets, which treat as a single military objective a number of clearly separated and distinct military objectives located in an urban area or rural village are prohibited.29 The prohibition of indiscriminate attacks must not only determine the strategy adopted for a particular military operation but also limit the use of certain weapons in situations where the civilian population will be affected.'</p> <p>Fn 27: Ibid., p. 37 (Rule 11).</p> <p>Fn 28: Ibid., pp. 40-43 (Rule 12).</p> <p>Fn 29: Ibid., pp. 43-45 (Rule 13).</p>	One (rules)	Rules 11, 12, 13	Agreed	Part of broader discussion	Fn	Ibid
158	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>27. 'Second, under the principle of proportionality, attacks on legitimate military objectives which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.30'</p> <p>Fn 30: Ibid., p. 48 (Rule 14).</p>	One (rules)	Rule 14	Agreed	Part of broader discussion	Fn	Ibid
159	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>28. 'Third, an attacker must take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.31 A number of specific precautionary measures are prescribed by humanitarian law in relation to the planning and conduct of attacks.32 In addition, an attacker is required to give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.33'</p> <p>Fn 31: Ibid., p. 51 (Rule 15).</p> <p>Fn 32: Ibid., pp. 51-67 (Rules 15-21).</p> <p>Fn 33: Ibid., pp. 62-65 (Rule 20).</p>	One (rules)	Rules 15-21	Agreed	Part of broader discussion	Fn	Ibid
160	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>29. 'International humanitarian law also imposes obligations on defenders. The use of human shields is prohibited.34 Violation of this rule may be understood to require the defender's specific intent to use civilians to immunize otherwise legitimate military objectives from lawful attack.35 In addition to this prohibition, the defender also has affirmative obligations to protect civilians by keeping them away from military targets.36'</p> <p>Fn 34: Ibid., pp. 337-340 (Rule 97).</p> <p>Fn 35: Ibid., p. 340 (Rule 97).</p> <p>Fn 36: Ibid., pp. 68-76 (Rules 22-24).</p>	One (rules)	Rules 22-24, 97	Agreed	Part of broader discussion	Fn	Ibid

161	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>31. 'Because of time, informational and other constraints, the mission was not in a position to evaluate the responsibility of individuals for crimes under national or international law. However, serious violations mentioned above and other principles of international humanitarian law by individuals constitute war crimes. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects.³⁷ They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.³⁸'</p> <p>Fn 37: See also the recommendation contained in para. 107 below.</p> <p>Fn 38: Ibid., pp. 568-603, 607-611 (Rules 156 and 158); see also E/CN.4/2006/53, paras. 33-43.</p>	One (rules)	Rules 156, 158	Agreed	Part of broader discussion	Fn		Ibid
162	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>1. Precautionary measures and principled limits to the conduct of hostilities</p> <p>...</p> <p>36. 'Israel made extensive use of leaflets dropped from the air and of telephone calls to warn civilians of impending attacks, an obligation which applies unless circumstances do not permit.⁴³'</p> <p>Fn 43: ICRC Study, see note 21 above, Rule 20.</p>	One (rules)	Rule 20	Agreed	Part of broader discussion	Fn		Ibid
163	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>Fn 55: Lebanon crisis: Service Availability Assessment, Ministry of Health and WHO, 29 August 2006. For international humanitarian law prohibitions on attacking civilian hospitals, see e.g. article 18 of the Fourth Geneva Convention, article 12 of Additional Protocol I and Rule 28 in the ICRC Study.</p> <p>2. Attacks on Hezbollah and the principle of distinction</p> <p>...</p> <p>47. 'The same conclusion must be drawn regarding the reports of 12 destroyed and 38 severely damaged health facilities, notably in Bent Jbeil, Marjayoun and Nabatieh.⁵⁵ Ambulances and medical convoys were, according to ICRC, also hit during the conflict.⁵⁶ In the absence of concrete evidence to the contrary, it must be assumed that the health facilities and ambulances attacked were not legitimate targets. In this context it is important to stress that killing persons placed hors de combat is prohibited at any time and in any place whatsoever.⁵⁷'</p> <p>Fn 56: During the evening of 23 July, for example, two Lebanese Red Cross (LRC) ambulances carrying six wounded to Tebnine Governmental Hospital were hit by Israeli aircraft in two separate attacks, wounding six LRC volunteers (ICRC press release, 29 August 2006). On 11 August, an LRC ambulance was hit directly by two projectiles, injuring two LRC volunteers; no hostilities were taking place in the vicinity at the time. That night, a convoy of hundreds of cars occupied mostly by civilians fleeing the area of Marjayoun came under fire from Israeli aircraft; one LRC first aid volunteer, Mikhael Jbayieh, was killed in the attack. LRC continued its work,</p>	One (rules)	Rule 28	Agreed	Yes. GC IV art 18; AP I art 12.	Fn		Ibid
164	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>Fn 56: During the evening of 23 July, for example, two Lebanese Red Cross (LRC) ambulances carrying six wounded to Tebnine Governmental Hospital were hit by Israeli aircraft in two separate attacks, wounding six LRC volunteers (ICRC press release, 29 August 2006). On 11 August, an LRC ambulance was hit directly by two projectiles, injuring two LRC volunteers; no hostilities were taking place in the vicinity at the time. That night, a convoy of hundreds of cars occupied mostly by civilians fleeing the area of Marjayoun came under fire from Israeli aircraft; one LRC first aid volunteer, Mikhael Jbayieh, was killed in the attack. LRC continued its work,</p>	One (rules)	Rule 29	Agreed	Yes. GC IV arts 21, 22; AP I art 21.	Fn		Ibid
165	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	<p>Fn 57: Common article 3 to the Geneva Convention (preventing "violence to life and person, in particular murder of all kinds" of those placed hors de combat by sickness, wounds, detention, or any other cause"). Common article 3 is considered by the International Court of Justice to "constitute a minimum yardstick ... which, in the Court's opinion, reflects what the Court in 1949 called 'elementary conditions of humanity'". Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). I.C.J. Reports 1986, para. 218. See also ICRC Study, note 21 above, p. 312. ("The prohibition on killing civilians and persons hors de combat is set forth in numerous military manuals. It is also contained in the legislation of a large number of States. This prohibition has been upheld extensively in national and international case-law. Furthermore, it is supported by official statements and other practice.")</p>	One (rules)	Rule 89	Agreed	Yes. Common Article 3; Nicaragua Judgment.	Fn		Ibid

166	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	Fn 60: ICRC Study, see note 21 above, Rule 8; Additional Protocol I, art. 52 (2). Israel agrees that this definition is "generally accepted". Israel Ministry of Foreign Affairs, Jerusalem, "Responding to Hizbullah attacks from Lebanon: Issues of proportionality, Legal Background", 25 July 2006.	One (rules)	Rule 8	Agreed	Yes. AP I art 52(2).	Fn	Ibid
167	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	5. Use by Hezbollah of civilian sites for military activities 58. 'It is clear that Hezbollah made at least some use of houses and other civilian sites to hide or conceal military activities. Although systematic evidence was not presented to the mission in this regard, the Government of Israel has provided it with video material unmistakably showing rockets being launched from civilian residential buildings in South Lebanon. This conduct was a violation of international humanitarian law obligations. The question of whether Hezbollah used human shields is more complicated, and the mission did not receive clear evidence on that issue. Under international law, the term "human shield" is appropriate when there is "an intentional collocation of military objectives and civilians or persons hors de combat with the specific intent of trying to prevent the targeting of those military objectives".65 This relatively precise definition of the term should be maintained, especially in light of the distinction between war crimes and other violations of humanitarian law.66'	One (rules)	Rule 98	Agreed	Part of broader discussion	Fn	Ibid
168	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	66. '... International human rights law prohibits arbitrary displacement - a notion which includes displacement in situations of armed conflict - which is not warranted by the need to ensure the security of the civilians involved or imperative military reasons.81 The principle of precaution requires each party to the conflict to give effective advance warning of attacks which may affect the civilian population, and give it enough time and the opportunity to evacuate safely, unless circumstances do not permit.82' Fn 81: Guiding Principles on Internal Displacement, see note 20 above, principle 6, restating ICCPR article 12, and customary international humanitarian law (see ICRC Study, note 21 above, pp. 74-76, 457-468 (Rules 24 and 129-131)). Fn 82: ICRC Study, see note 21 above, pp. 62-65 (Rule 20). The duty to warn as part of the duty to protect life may also be derived from ICCPR article 6.	One (rules)	Rules 20, 24, 129-131, ch II	Agreed	Yes. Guiding Principles on Internal Displacement, principle 6; ICCPR art 12	Fn	Ibid
169	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	B. Israel 1. The conduct of hostilities by Hezbollah ... 70. 'The notion that one party's violation of humanitarian law may justify the other party's violation is called reprisal. Leaving aside the question of requirements for a reprisal to be legitimate, reprisals against civilians are absolutely prohibited.88' Fn 88: On reprisals, see ICRC Study, note 21 above, pp. 519-523 (Rules 145-148).	One (rules)	Rules 145-148	Agreed	Part of broader discussion	Fn	Ibid
170	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Ibid	Ibid	Ibid	80. '... It was also noted that since many Arab Israelis are among the poorer population in Israel, it was difficult for many to flee the area.103 ...' Fn 103: ICRC Study, see note 21 above, pp. 468-472 (Rule 132).	One (rules)	Rule 132	Agreed	Part of broader discussion	Fn	Ibid

171	Special Rapporteur on the right to food, Jean Ziegler	IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" Human rights in Lebanon Report of the Special Rapporteur on the right to food, Jean Ziegler, on his mission to Lebanon.	A/HRC/2/8	29.sept.06	III. LEGAL FRAMEWORK RELATED TO THE RIGHT TO FOOD IN LEBANON 8. 'As the International Court of Justice has reaffirmed, ² both human rights law and, as <i>lex specialis</i> , international humanitarian law are applicable during armed conflicts and situations of occupation. These include the war in Lebanon, where all provisions of international human rights and humanitarian law protecting the right to food were applicable. It is important to note in that context that both Israel and Lebanon are parties to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of the Child, the two main human rights instruments for the protection of the right to food, as well as to the Geneva Conventions of 12 August 1949. It is also important to note that while only Lebanon is a party to the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Additional I Protocol, adopted in 1977), most of its provisions that are relevant to the right to food are considered part of customary international law and are therefore binding on all States and all parties to a conflict, regardless of status and ratification.' ³ Fn 3: See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, 2005.	One (rules)	N/A	Neutral	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/141/71/pdf/G0614171.pdf?OpenElement
172	Special Rapporteur responsible for conducting a detailed study of the universal implementation of international human rights treaties, Emmanuel Decaux	ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY The universal implementation of international human rights treaties Final report prepared by the Special Rapporteur responsible for conducting a detailed study of the universal implementation of international human rights treaties, Emmanuel Decaux	A/HRC/Sub.1/58/5	28.juil.06	2. The legal scope of universal commitments 30. 'The nature of universal commitments in the area of human rights should be elucidated, particularly as regards the "International Bill of Human Rights", formed by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its protocols, as the Human Rights Committee recalled in its general comment No. 26 (1997), by laying emphasis on the continuity of obligations to the International Covenant on Civil and Political Rights. Apart from this statement of position of principle, reflection is still required on customary norms and obligations <i>erga omnes</i> and <i>jus cogens</i> , along the lines of the work conducted under the auspices of ICRC. ¹⁰ ' Fn 10: J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (ICRC, Cambridge University Press (vol. 3), 2005). Cf. also T. Meron, Human Rights and Humanitarian Norms as Customary Law (Oxford, Clarendon Press, 1989); O. de Frouville, L'intangibilité des droits de l'homme en droit international (régime conventionnel des droits de l'homme et droit des traités) (Paris, Pedone, 2004). Cf. also the work being done by the International Law Association, with its Interim Report on the Relationship between General International Law and International Human	Three	N/A	Agreed	Yes Meron (1989) book; ILA Report.	Fn	Refers to 'Vol 3' of the Study. https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/131/60/pdf/G0613160.pdf?OpenElement
173	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Note by the Secretariat	A/HRC/37/50	28.nov.18	60. '... Last but not least, neither official capacity ⁵⁹ nor superior orders ⁶⁰ provide immunity from prosecution, and both war crimes and crimes against humanity are subject to universal jurisdiction and exempt from statutes of limitation. ⁶¹ ' Fn 61: 'See Rome Statute, art. 29; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, and Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross (Cambridge, United Kingdom, Cambridge University Press, 2005), Rule 160.'	One (rules)	Rule 160	Agreed	Yes. Rome Statute art 29; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/347/27/pdf/G1834727.pdf?OpenElement

174	Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt	Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt	A/HRC/28/66	29.déc.14	<p>3. Obligations of non-state armed groups</p> <p>...</p> <p>(b) International humanitarian law</p> <p>56. 'In the event that a non-State armed group is party to an armed conflict, international humanitarian law can also be invoked. Article 3 common to the four Geneva Conventions of 1949 defines certain minimum guarantees that all parties involved in a non-international armed conflict should observe, including to treat in all circumstances persons who take no active part in the hostilities humanely, without any adverse distinction founded on religion or faith. Furthermore, a number of norms contained in the Geneva Conventions of 1949 and the Additional Protocols I and II of 1977 have reached the status of customary international law and, as such, are binding on all parties to the armed conflict.21'</p> <p>Fn 21: See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005), with rules 3, 27, 30, 38, 40, 88, 104 and 127 specifically referring to "religious" issues.</p>	One (rules)	Rules 3, 27, 30, 38, 40, 88, 104 and 127	agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G14/250/87/pdf/G1425087.pdf?OpenElement
175	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum Mission to the Democratic Republic of the Congo	A/HRC/14/24/Add.3	14.juin.10	<p>3. '... The Government's military operations are also governed by the Geneva Conventions and the two Additional Protocols thereto, which oblige it to prevent civilian casualties in accordance with the requirements of discrimination, proportionality, necessity and precaution.2 ...'</p> <p>Appendix IV Endnotes</p> <p>2. Geneva Conventions, Common Article 2 (requiring the Government to "to respect and to ensure respect" for the Conventions); Jean-Marie Henckaerts & Louise Doswald Beck, Customary International Humanitarian Law (2005) (Rules 15–20) (describing the applicable customary international humanitarian law rules on the protection of civilians); Security Council Res. 1906 (2009) (stressing the Government's primary responsibility for protecting civilians in accordance with international human rights and humanitarian law).</p>	One (rules)	Rules 15-20	Agreed	Yes Common Article 2; SC Res 1906.	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G10/143/71/pdf/G1014371.pdf?OpenElement
176	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum Communications to and from Governments	A/HRC/14/24/Add.1	18.juin.10	<p>1050. Similarly, an authoritative study of customary international humanitarian law finds that attacking and killing persons who are recognized as hors de combat is prohibited. Persons hors de combat include anyone who clearly expresses an intention to surrender, provided he or she abstains from any hostile act and does not attempt to escape (Rule 47 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross).</p>	One (rules)	Rule 47	Agreed	Part of broader discussion	Main text	Describes the CIHL Study as 'authoritative'.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G10/145/06/pdf/G1014506.pdf?OpenElement
177	Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns	A/HRC/20/22	10.avr.12	<p>67. 'This protection that journalists and civilians enjoy is limited in a number of ways. Their proximity to military objectives entail that their deaths in an attack could potentially be considered collateral damage, provided the other conditions, such as proportionality, are met. Moreover, as is the case with civilians, the protection journalists enjoy ceases to apply when they directly engage in hostilities. ...'</p> <p>Fn 63: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules (New York, International Committee of the Red Cross (ICRC), 2005), pp. 116-117.</p>	One (rules)	Rule 34	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G12/128/73/pdf/G1212873.pdf?OpenElement
178	Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns	Ibid	Ibid	Ibid	<p>70. 'The primary duty, however, is on States to investigate and, if appropriate, prosecute offenders for war crimes that fall within the relevant State's jurisdiction.68 If they are unable or unwilling to do so, the International Criminal Court has jurisdiction.'</p> <p>Fn 68: Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 158.</p>	One (rules)	Rule 158	Agreed	Part of broader discussion	Fn		Ibid

179	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum Study on targeted killings	A/HRC/14/24/Add.6	28.mai.10	30. '... In addition, the killing must be militarily necessary, the use of force must be proportionate so that any anticipated military advantage is considered in light of the expected harm to civilians in the vicinity, ⁵⁷ and everything feasible must be done to prevent mistakes and minimize harm to civilians. ⁵⁸ ...' Fn 57: Proportionality requires an assessment whether an attack that is expected to cause incidental loss of civilian life or injury to civilians would be excessive in relation to the anticipated concrete and direct military advantage. AP I, arts. 51(5)(b) and 57; Henckaerts & Oswald-Beck, Customary International Humanitarian Law Rules, ICRC (2005) (ICRC Rules) Rule 14. Fn 58: Precaution requires that, before every attack, armed forces must do everything feasible to: i) verify the target is legitimate, (ii) determine what the collateral damage would be and assess necessity and proportionality, and (iii) minimize the collateral loss of lives and/or property. AP I, art. 57; ICRC Rules 15-21. "Everything feasible" means precautions that are "practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations." Melzer, supra note 9 at 365.	One (rules)	Rules 14, 15-21	Agreed	Yes. AP I arts 51(5)(b), 57; Melzer article.	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G10/137/53/pdf/G1013753.pdf?OpenElement
180	Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston	A/HRC/14/24	20.mai.10	I. Reparations for unlawful killings and amends for civilian harm 84. 'Human rights law, humanitarian law and the international law on State responsibility require that individuals should have an effective remedy when their rights are violated, and that the State must provide reparations for its own violations. ³⁹ ...' Fn 39: Human Rights Committee, general comment 31 (2004), para. 16; J-M. Henckaerts & L. Doswald-Beck, Customary International Humanitarian Law (International Committee of the Red Cross, 2005), Rule 150; and Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 10 (A/56/10), Draft articles on responsibility of States for internationally wrongful acts, para. 76.	One (rules)	Rule 150	Agreed	Yes. HRC General Comment 31; DARSIVA para 76	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G10/135/03/pdf/G1013503.pdf?OpenElement
181	Special Rapporteur on extrajudicial, summary or arbitrary executions	Extrajudicial, summary or arbitrary executions	A/75/384	12.oct.20	52. '... international law prohibits despoiling or mutilating the dead. ⁶⁷ ' Fn 67: 'ICRC, customary international humanitarian law database, rule 113. Available at https://ihldatabases.icrc.org/customary-ihl/eng/docs/v1_rul_rule113 . See also Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-Intentional Armed Conflicts (Protocol II), art 8.'	Database	Rule 113	Agreed	Yes. AP II art 8.	Fn	Document cites the CIHL rules on the database rather than the Study itself.	Ibid
182	Ibid	Ibid	Ibid	Ibid	55. 'Obligation to search and identify. International law requires all States (and parties to a conflict) to search and identify disappeared and missing persons, return any remains to the family, as well as any personal effects, or provide the families with access to the burial site. ⁷⁰ ' Fn 70: 'ICRC, customary international humanitarian law database, rule 114. Available at https://ihldatabases.icrc.org/customary-ihl/eng/docs/v1_rul_rule114 .'	Database	Rule 114	Agreed	Part of broader discussion	Fn	Ibid	Ibid
183	Ibid	Ibid	Ibid	Ibid	57. 'Obligations regarding human remains. Under the Geneva Conventions, burial of the dead should be "carried out individually as far as circumstances permit", ⁸⁰ a position also reflected in case law. ⁸¹ ' Fn 81: 'ICRC, customary international humanitarian law database, practice relating to rule 115, section D. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule115_sectiond .'	Database	Rule 115	Agreed	Part of broader discussion	Fn	Ibid	Ibid

					5. Managed support for local forensic initiatives							
184	ibid	Ibid	Ibid	Ibid	80. 'Under international law, the exhumation of mass graves, their investigation and the search for the disappeared or the missing is, above all, the obligation of the State and all parties to a conflict. International humanitarian law recognizes that, when States fail to act, international organizations should step in.103' Fn 103: ICRC, customary international humanitarian law database, rule 112. Available at https://ihldatabases.icrc.org/customary-ihl/eng/docs/v1_rul_rule112 .	Database	Rule 112	Agreed	Part of broader discussion	Fn	Ibid	Ibid
185	Report of the Special Rapp	Promotion and protection of human rights and fundamental freedoms while countering terrorism	A/75/337	03.sept.20	15. 'Without oversimplifying the differences between international humanitarian law and international human rights law,15 conceptual and practical overlap between these legal regimes is found in the designation of duties and obligations for key actors (noting in particular the obligations of States under both regimes), the centrality of protection as a norm and a practice, the convergence of certain fundamental prohibitions (such as torture and arbitrary detention), 16 the common expression of essential judicial guarantees, the criminalization of breaches, the presumption that both regimes provide sufficient normative content so that no person is left without the coverage of legal norms and the shared core Grundnorm of non-discrimination.17 ...' Fn 17: 'Charter of the United Nations; Fourth Geneva Convention, art. 27; and ICRC, Customary International Humanitarian Law, rule 88 on non-discrimination.'	Not specified	Rule 88	Agreed	Yes. UN Charter; GC IV art 27.	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/228/70/pdf/N2022870.pdf?OpenElement
186	ibid	Ibid	Ibid	Ibid	15. '... There is now a broad consensus that certain fundamental norms that can be derived from both human rights law and international humanitarian law, specifically norms that protect persons from arbitrary deprivations of life, liberty and property, as well as hostage-taking, at the hands of State actors, apply at all times during an armed conflict, including in conflicts in which acts of terrorism occur. 20' Fn 20: 'Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, vol. I (New York, Cambridge University Press, 2005); see also Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 13, concerning regime overlaps.'	One (rules)	N/A	agreed	Yes. HRC General Comment 29	Fn		Ibid
187	ibid	Ibid	Ibid	Ibid	36. 'While international humanitarian law differentiates between categories of actors in armed conflict, it maintains a foundational commitment in its sphere of application to equality and non-discrimination that has a horizontal legal application among parties to a conflict.66' Fn 66: 'This is captured in ICRC, Customary International Humanitarian Law, rule 88 on non-discrimination.'	One (rules)	Rule 88	Agreed	Part of broader discussion	Fn		Ibid
188	Report of the Special Rapp	Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions	A/73/314	07.août.18	23. '... Those protections undergird the prohibition under customary international humanitarian law of starving civilians as a method of warfare or combat and of attacking or destroying objects that are indispensable to their survival. Protecting humanitarian actors is an indispensable condition for the delivery of essential care.10' Fn 10: 'See International Committee of the Red Cross (ICRC), Customary International Humanitarian Law Database, rule 31.'	Database	Rule 31	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/252/85/pdf/N1825285.pdf?OpenElement
189	ibid	Ibid	Ibid	Ibid	34. '... Customary international law provides that medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. 19 ...' Fn 19: See ICRC, Customary International Humanitarian Law Database, rule 25.	Database	Rule 25	Agreed	Part of broader discussion	Fn		Ibid

190	Ibid	Ibid	Ibid	Ibid	35. 'Under international humanitarian law, in no circumstances should any person be punished for having provided medical services compatible with medical ethics, regardless of the person benefiting therefrom. 20' Fn 20: 'See Protocol I additional to the Geneva Conventions of 12 August 1949, article 16.1, and Additional Protocol II, article 10.1; see also Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, article 18, and ICRC, Customary International Humanitarian Law Database, rule 26.'	Database	Rule 26	Agreed	Yes. AP I art 16(1); AP II art 10(1); GC I art 18.	Fn	Ibid
191	Special Rapporteur on torture	Interim Report of the Special Rapporteur on Torture	A/73/207	20.juil.18	44. 'Under legislation in some States, corporal punishment is still provided for and domestic violence and chastisement, in particular against women and children, are tolerated. That must be regarded as incompatible with a contemporary understanding of human dignity and, therefore, cannot be justified as "lawful sanctions" within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.15' Fn 15: 'See also Human Rights Committee, general comment No. 20 (1992) on article 7: prohibition of torture or other cruel, inhuman or degrading treatment or punishment (para. 5), and ICRC, Customary International Humanitarian Law, vol. I (Cambridge, United Kingdom, Cambridge University Press, 2009), rule 91.'	One (rules)	Rule 91	Agreed	Yes. HRC General Comment 20	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/232/16/pdf/N1823216.pdf?OpenElement
192	Special Rapporteur on human rights	Report of the Special Rapporteur on Human Rights of internally displaced persons	A/73/173	17.juil.18	27. 'Forced displacement is explicitly prohibited, per se, under international humanitarian law ¹¹ in the form of the deportation or transfer of parts of a State's own civilian population into occupied territories, which qualifies as a war crime, ¹² or as a crime against humanity, in certain circumstances. ¹³ ...' Fn 11: See Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), arts. 49 and 147; Additional Protocol I, art. 85 (4) (a); Additional Protocol II, art. 17; and International Committee of the Red Cross, customary international humanitarian law rule 129. See also Additional Protocol I, arts. 51 (7) and 78 (1), and Additional Protocol II, art. 4 (3) (e)).	Not specified	Rule 129	Agreed	Yes. GC IV arts 49, 147; AP I art 85(4)(a); AP II art 17.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/227/16/pdf/N1822716.pdf?OpenElement
193	Ibid	Ibid	Ibid	Ibid	27. '... Displacement can also be a consequence of other international humanitarian law violations. Certain violations often trigger displacement, such as mass killings, persecution, arbitrary arrests, torture or sexual violence. Other violations are deliberate attempts to prevent the possibility of certain groups returning home, through the destruction of housing and property. ¹⁴ ...' Fn 14: Under international humanitarian law, internally displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist (Fourth Geneva Convention, art. 49, and customary international humanitarian law rule 132).	Not specified	Rule 132	Agreed	Yes. GC IV art 49.	Fn	Ibid
194	Special Rapporteur on the right to food, Jean Ziegler	Interim Report of the Special Rapporteur on the Right to Food	A/72/188	21.juil.17	68. 'Many provisions of international humanitarian law are accepted as customary law, binding on all whether or not a State is party to the Additional Protocols. The International Committee of the Red Cross (ICRC) conducted a study on customary international humanitarian law and identified 161 rules — 149 of which also apply in non-international wars — that come from general practice and that are, in its view, currently accepted as law and exist independently of the treaties. ⁶⁷ ' Fn 67: 'International Committee of the Red Cross, "Customary international humanitarian law". Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/home .'	One (rules)	N/A	Neutral	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N17/224/73/pdf/N1722473.pdf?OpenElement

200	Special Rapporteur on human rights of internally displaced persons	Protection of and assistance to internally displaced persons	A/67/289	10.août.12	35. 'The 2005 ICRC study on customary international humanitarian law, conducted on the basis of a request by States and Red Cross and Red Crescent Societies, recognized the role of the Guiding Principles as a source of customary law. ¹⁸ Based on State practices, the study developed rules applicable to internally displaced persons. These rules make explicit reference to the Guiding Principles.'	One (rules)	Ch 38	Agreed	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N12/459/56/pdf/N1245956.pdf?OpenElement
201	Special Rapporteur on Extrajudicial Executions	Report of the Special Rapporteur on Extrajudicial Executions	A/66/330	30.août.11	72. 'A State may, under no circumstances, follow an approach in terms of which an offer to surrender will not be accepted. Orders that "no quarter be given" constitute war crimes. ⁴⁴ ' Fn 44: Article 8(2)(b)(xii) and article 8(2)(e)(x) of the Rome Statute of the International Criminal Court. Customary International Humanitarian Law rules 46 to 48 provide that it is also a crime under customary law.	Not specified	Rules 46-48	Agreed	Yes. Rome Statutes arts 8(2)(b)(xii) and 8(2)(e)(x)	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N11/483/99/pdf/N1148399.pdf?OpenElement
202	Ibid	Ibid	Ibid	Ibid	84. 'International humanitarian law requires a State to investigate, and if appropriate, prosecute individuals for violations. ⁵⁴ ...' Fn 54: Customary International Humanitarian Law, rule 158.	Not specified	Rule 158	Agreed	Part of broader discussion	Fn	Ibid
203	Special Rapporteur on Promotion and protection of the right to freedom of opinion and expression	Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression	A/65/284	11.août.10	B. Protection under international humanitarian law and international human rights law 48. 'International humanitarian law protects journalists and other media professionals in times of armed conflict. In an international armed conflict, a journalist is entitled to all rights and protection granted to civilians, as stipulated in article 79 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). The same protection also applies to non international armed conflicts during which journalists are considered to be civilians by virtue of customary international law. ²⁸ ...' Fn 28: See Security Council resolution 1738 (2006); Council of Europe Recommendation No. R (96) 4 of the Committee of Ministers to member States on the protection of journalists in situations of conflict and tension, 3 May 1996; and International Committee of the Red Cross study on customary international humanitarian law, 2005, rule 35.	Not specified	Rue 35	Agreed	Yes. SC Res 1738; CoE Recommendation No R (96) 4.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N10/482/85/pdf/N1048285.pdf?OpenElement
204	Special Rapporteur on freedom of religion or belief	Report of the Special Rapporteur on freedom of religion or belief	A/60/399	30.sept.05	84. 'The Special Rapporteur also notes that "[S]tate practice establishes this rule as a norm of customary international law applicable in both international and noninternational armed conflicts." ¹⁰ ' Fn 10: Jean-Marie Henckaerts et al., Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005), page 450.	One (rules)	Rule 127	Neutral	Part of broader discussion	Fn.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N05/532/25/pdf/N0553225.pdf?OpenElement
205 206	Special Rapporteur on extrajudicial executions	CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF DISAPPEARANCES AND SUMMARY EXECUTIONS Extrajudicial, summary or arbitrary executions Report of the Special Rapporteur, Philip Alston Addendum MISSION TO SRI LANKA	E/CN.4/2006/53/Add.5	27.mars.06	32. 'Motorcycle drive-by shootings have been a common tactic. It might be argued that when such a shooting occurs in territory controlled by an opposing party, it is governed by the principle of distinction whereby soldiers and military members of armed groups may be targeted but civilians may not be. ¹⁸ ...' Fn 18: Rule 1 of the ICRC's study on Customary International Humanitarian Law (J.M. Henckaerts and L. Doswald-Beck, eds., 2005) p. 3 states that "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians."; art. 13 (3) of Protocol II provides that "Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities." And Art. 8 (2) (e) (i) of the Rome Statute provides that it is a war crime to "Intentionally direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities".	One (rules)	Rule 1	Agreed	Yes. AP II art 13(3); Rome Statute art 8(2)(e)(i)	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/121/16/pdf/G0612116.pdf?OpenElement

214	OHCHR	Ibid	Ibid	Ibid	41. '... Furthermore, official or unofficial confiscation of land and limiting access through coordination measures violate the prohibition on confiscation of private property enshrined in international humanitarian law.78 ...' Fn 78: 'Hague Regulations, arts. 46 and 56; Fourth Geneva Convention, art. 53; and Customary International Humanitarian Law, rule 51.'	One (rules)	Rule 51	Agreed	Yes. HR arts 46, 56; GC IV art 53	Fn	Ibid
215	OHCHR	Follow-up on the application of the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity Note by the Secretariat	A/HRC/39/26	29.juin.18	34. 'International humanitarian law, which applies only in situations of armed conflict, contains a number of relevant legal obligations drawn from the Geneva Conventions, the Additional Protocols to the Geneva Conventions and customary international humanitarian law. At a minimum, States and parties to the conflict have a duty to provide special care for pregnant women and mothers of young children with regard to the provision of food, clothing, medical assistance, evacuation and transportation, and to ensure that the protection and care due to the wounded and sick is also provided to pregnant women.25 This care must furthermore be provided and ensured without discrimination. Humanitarian law also emphasizes that the specific needs of women must be respected at all times, including to be protected against all forms of sexual violence.26' Fn 25: Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 16–18, 21–23, 38, 50, 89, 91 and 127; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, arts. 8 (a), 70 (1) and 76 (2); rule 134 of the customary international humanitarian law database of the International Committee of the Red Cross. Fn 26: See rules 119 and the commentary to rule 93 of the	Database	Rule 134	Agreed	Yes. GC IV arts 16-18, 21-23, 38, 50, 89, 91 and 127; AP I arts 8(a), 70(1) and 76(2).	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/194/84/pdf/G1819484.pdf?OpenElement
216	OHCHR	Situation of human rights in Yemen: Report of the United Nations High Commissioner for Human Rights	A/HRC/33/38	04.août.16	C. Attacks on objects benefiting from special protection 1. Medical facilities and personnel ... 47. On 2 December 2015, a clinic run by Médecins sans frontières in Houban, Taizz, was hit by a coalition forces air strike, which killed one civilian and wounded nine others, including two children and one woman. On 5 January, an air strike by the coalition forces reportedly hit the Dar al Noor children's rehabilitation centre for the blind in Safia, a neighbourhood in Sana'a city, injuring three civilians, including children. Attacks on medical units may amount to war crimes and may constitute a violation of the right to health.16' Fn 16: 'See rule 25, on medical personnel, and rule 28, on medical units, of customary international humanitarian law described by ICRC, which provide a higher threshold of protection under international humanitarian law.'	Not specified	Rule 25	Neutral	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G16/172/38/pdf/G1617238.pdf?OpenElement
217	OHCHR	Ibid	Ibid	Ibid	2. Historic or cultural sites and places of worship17 48. OHCHR has documented the partial or total destruction of cultural properties. The cases documented include the coalition forces air strike that hit Al-Waht Mosque in Lahj Governorate on 7 July 2015, killing 10 civilians and injuring 15 others; the destruction of the ancient tombs of Hadramaut on 1 July 2015 by armed groups affiliated with Al-Qaida; and the partial destruction of Al-Qahira Castle, one of the country's most important historic and architectural sites, in August 2015, by the Popular Committees.18' Fn 18: 'Rule 38 of customary international humanitarian law provides that each party to the conflict must respect cultural property. Specifically, special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives, and property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity. Cultural sites are also protected under international human rights law, including under article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, which protect the right of everyone to take part in cultural life.'	Not specified	Rule 38	Agreed	Yes. UDHR art 27; ICESCR art 15	Fn	Ibid

218	OHCHR	Implementation of Human Rights Council resolutions S-9/1 and S-12/1 Report of the United Nations High Commissioner for Human Rights	A/HRC/31/40		20.janv.16	31. 'By their very nature, the demolitions of family homes punish the relatives of attackers and alleged attackers, and therefore constitute a form of prohibited collective penalty. ²² ' Fn 22: 'Article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and Jean-Marie Henckaerts and Louise Doswald-Beck (eds), Customary International Humanitarian Law, Vol. 1: Rules, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), rules 102-103.'	One (rules)	Rules 102-103	Agreed	Yes. GC IV art 33.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G16/008/48/pdf/G1600848.pdf?OpenElement
219	OHCHR	Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka	A/HRC/30/61		28.sept.15	J. Denial of humanitarian assistance 51. 'The investigation team found that the Government of Sri Lanka placed considerable restrictions on freedom of movement of humanitarian personnel and on humanitarian activities in the Vanni. These restrictions had an impact on the ability of humanitarian organizations and personnel to exercise their functions effectively and to ensure access to relief of civilians in need. According to rule 56 of customary international humanitarian law, such restrictions may only be justified by imperative military necessity.'	Not specified	Rule 55	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G15/219/90/pdf/G1521990.pdf?OpenElement
220	OHCHR	Ibid	Ibid	Ibid		53. 'The team found reasonable grounds to believe that the Government knew or had reasons to know the real humanitarian needs of the civilian populations in the concerned areas, including from its own agents on the ground, and nonetheless imposed severe restrictions on the passage of relief and the freedom of movement of humanitarian personnel. This conduct apparently deprived the civilian population in the Vanni of basic foodstuffs and medical supplies essential to survival. If established by a court of law, these acts and omissions point to violations of international humanitarian law, which, depending on the circumstances, may amount to the use of starvation of the civilian population as a method of warfare, which is prohibited by rule 53 of customary international humanitarian law. Such conduct, if proven in a court of law and depending on the circumstances, may constitute a war crime.'	Not specified	Rule 53	Agreed	Part of broader discussion	Fn	Ibid
221	OHCHR	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 Addendum: Concerns related to adherence to international human rights and international humanitarian law in the context of the escalation between the State of Israel, the de facto authorities in Gaza and Palestinian armed groups in Gaza that occurred from 14 to 21 November 2012	A/HRC/22/35/Add.1		04.juil.13	10. '... Rockets were launched from densely populated areas, in contravention of customary international humanitarian law. ¹¹ ...' Fn 11: The rule is identified in International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, Jean-Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rule 23.	One (rules)	Rule 23	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G13/154/84/pdf/G1315484.pdf?OpenElement
222	OHCHR	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1	A/HRC/22/35		04.juil.13	35. '... Additionally, Israel has the duty to ensure that all persons wounded, including those wounded by the action of its security forces, receive the medical attention required by their condition with the least possible delay. ²⁷ ' Fn 27: International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, vol. I, Jean Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rule 110, and the 1977 Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, art. 10. Israel must also respect its obligations regarding the right to health, namely article 12 of the International Covenant on Economic, Social and Cultural Rights.	One (rules)	Rule 110	Agreed	Yes. AP I art 10; ICESCR art 12.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G13/154/88/pdf/G1315488.pdf?OpenElement

223	OHCHR	Ibid	Ibid	Ibid	41. '... It has been alleged by the Government of Israel that these weapons are often stockpiled in structures that appear to be civilian in nature. Should this be the case, this would also violate the rules of international humanitarian law requiring parties to a conflict to protect the civilian population and objects under their control from the effects of attacks, including by avoiding locating military objectives within or near densely populated areas.37' Fn 37: ICRC, Customary International Humanitarian Law, rules 22 and 23.	One (rules)	Rules 22, 23	Agreed	Part of broader discussion	Fn	Ibid
224	OHCHR	Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1	A/HRC/19/20	13.déc.11	8. 'Indiscriminate attacks, such as the firing of these rockets, is contrary to the rules of international humanitarian law prohibiting the targeting of civilians, the use of inherently indiscriminate weapons and acts aimed at spreading terror in the civilian population.7 In addition, it has been alleged by the Government of Israel that such rockets and mortars are often located in and fired from densely populated areas. Should this be the case, it would also contravene customary international humanitarian law.8' Fn 7: 'These rules are identified in International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, Jean-Marie Henkaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2009), rules 1, 2, 11 and 71.'	One (rules)	Rules 1, 2, 11, 71	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G11/173/01/pdf/G1117301.pdf?OpenElement
225	OHCHR	Report of the United Nations High Commissioner for Human Rights on the obligation of States to investigate serious violations of human rights, and the use of forensic genetics	A/HRC/18/25	04.juil.11	7. '... Furthermore, in its study on customary international humanitarian law, the ICRC found that there is sufficient practice to establish the obligation on States to investigate war crimes, other than those that qualify as grave breaches, including those allegedly committed in non-international armed conflicts.19' Fn 19: ICRC, Customary IHL Database, rule 158, available at http://www.icrc.org/customaryihl/eng/docs/v1_rul_rule158# Fn2. There are also provisions for the obligation to search for missing persons in Third Geneva Convention, art. 122; Fourth Geneva Convention, art. 136; First Geneva Convention, arts. 16 and 17; Second Geneva Convention, art. 19 referring to the information bureaux established in accordance with art. 122 of the Third Geneva Convention. See also Additional Protocol I, arts. 32, 33; ICRC, Customary IHL Database, rule 117, available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule117 , which states that each party to international or non-international armed conflict must take all feasible measures to account for persons reported as missing as a result of the armed conflict and must provide their family members with any information it has on their fate.	Database	Rule 158; 117	Agreed	Yes. GC III art 122; GC IV art 136; GC I arts 16, 17; AP I arts 32, 33.	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G11/144/08/pdf/G1114408.pdf?OpenElement
226	OHCHR	Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan: Report of the United Nations High Commissioner for Human Rights	A/HRC/43/67	30.janv.20	IV. Coercive environment resulting from settlement policies and consequent risk of forcible transfer A. Prohibition of forcible transfer of protected persons 37. 'International humanitarian law prohibits "individual or mass forcible transfers" of protected persons within an occupied territory, as well as their deportations outside of the occupied territory, regardless of motives, although an occupying Power may undertake the total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.32' Fn 32: 'Fourth Geneva Convention, art. 49, and Rule 129 of Customary International Humanitarian Law, International Committee of the Red Cross.'	Not specified	Rule 129	Agreed	Yes. GC IV art 49.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G20/024/44/pdf/G2002444.pdf?OpenElement

227	OHCHR	Report of the United Nations High Commissioner for Human Rights	E/2014/86	11.juil.14	60. '... Additionally, widespread, long-term and severe damage to the natural environment is prohibited, and the extensive destruction or appropriation of property may constitute "grave breaches".47' Fn 47: Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 45, 49 and 147; Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts, arts. 3 (3) and 54; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non international armed conflicts, art. 54; Regulations concerning the Laws and Customs of War on Land, art. 55; Customary international humanitarian law, rule 51.	Not specified	Rule 51	Agreed	Yes. GC IV arts 45, 49. 147; AP I art 3(3); AP II art 54.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G14/075/01/pdf/G1407501.pdf?OpenElement
228	OHCHR	PROMOTION AND PROTECTION OF HUMAN RIGHTS Study on the right to the truth Report of the Office of the United Nations High Commissioner for Human Rights	E/CN.4/2006/91	08.févr.06	7. 'The International Committee of the Red Cross (ICRC) concluded that the right to truth is a norm of customary international law applicable in both international and non international armed conflict, according to which "each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate".7 ...' Fn 7: Rule 117 in ICRC, Customary International Humanitarian Law, Volume I, Rules, Cambridge Press University, 2005, p. 421.	One (rules)	Rule 117	Agreed	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/106/56/PDF/G0610656.pdf?OpenElement
229	OHCHR	Report on the human rights situation in Ukraine 16 May to 15 August 2018	A/HRC/39/CRP.5	21.sept.18	24. 'OHCHR recalls that it is a serious violation of international humanitarian law for a party to a conflict to target civilians and civilian infrastructure, or to carry out an indiscriminate attack, and that the parties have an obligation to take all feasible precautions to avoid harm to the civilian population.19' Fn 19: 'ICRC. Customary International Humanitarian Law Database. Rules 1, 7, 11, 12, 15, 17. Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul . Accessed 5 August 2018.'	Database	Rules 1, 7, 11, 12, 15, 17	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/282/71/pdf/G1828271.pdf?OpenElement
230	OHCHR	Ibid	Ibid	Ibid	36. '... Unless required by imperative military necessity, such expropriations may constitute violations of international humanitarian law, which prohibits the seizure of private property. They may also violate international human rights law which protects the right not to be subjected to arbitrary interference in one's privacy, family or home, and guarantees legal protection against forced eviction.35' Fn 35: 'Customary International Humanitarian Law Database, Rule 50; Committee on Economic, Social and Cultural Rights, general comments 4 and 7.'	Database	Rule 50	Agreed	Yes. CESCR General Comments 4 and 7.	Fn	Ibid
231	OHCHR	Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13 September 2017 to 30 June 2018	A/HRC/39/CRP.4	21.sept.18	1. Arbitrary arrests and detentions 28. 'The arrest or detention of an individual is arbitrary where there is no reasonable suspicion that they committed or planned to commit a crime or where there has been no due process of law. Arbitrary detention is strictly prohibited under international humanitarian law21 and international human rights law.22 Unlawful confinement of a protected person constitutes a grave breach of the Fourth Geneva Convention (article 147).'	One (rules)	Rule 99	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/282/16/pdf/G1828216.pdf?OpenElement
232	OHCHR	Human rights violations and abuses and international humanitarian law violations committed in the context of the Ilovaisk events in August 2014	A/HRC/39/CRP.3	19.sept.18	25. '... International humanitarian law imposes corresponding obligations on all parties, independent of the commitment of the other parties.27' Fn 27: 'Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, Customary International Humanitarian Law: Volume 2: Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity.'	Two	Rule 140	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G18/279/43/pdf/G1827943.pdf?OpenElement

					Conduct of hostilities and treatment of civilians and persons hors de combat								
233	OHCHR	Ibid	Ibid	Ibid	<p>26. 'The fundamental principle of international humanitarian law that all parties to a conflict have an obligation to distinguish between civilians and combatants applies in both international and non-international armed conflict.28 ...'</p> <p>Fn 28: ICRC, Customary International Humanitarian Law: Volume 1: Rules (Cambridge, Cambridge University Press, 2005), Rule 1 (applicable to both types of conflict). In relation to international armed conflict, the principle of distinction is codified in Additional Protocol I: articles 48; 51(2). Although not explicitly stated, the same rule is implicit in Additional Protocol II art. 13(2) which relates to non-international armed conflict.</p>	One (rules)	Rule 1	Agreed	Yes. AP I arts 48, 51(2); AP II art 13(2)	Fn			Ibid
234	OHCHR	Ibid	Ibid	Ibid	<p>26. '... Parties to a conflict may direct attacks against combatants or military objects and must not make the civilians and civilian population the object of an attack. Civilians are persons who are not directly participating in hostilities at the time of attack and are not members of the armed forces of a party to the conflict.29'</p> <p>Fn 29: ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 5. Note that the presence within a civilian population of non-civilians does not deprive the population of its civilian character (recognized as customary international law: International Criminal Tribunal for the former Yugoslavia, Prosecutor v Kordić and Čerkez, Case No. IT-95-14/2, Appeals Chamber, Judgment of 17 December 2004, para. 97); however, the population must remain predominantly civilian.</p>	One (rules)	Rule 5	Agreed	Yes. ICTY Kordić and Čerkez Appeals Judgment.	Fn			Ibid
235	OHCHR	Ibid	Ibid	Ibid	<p>27. 'Important rules of the conduct of hostilities, which include attacks, defensive and responsive military actions, are the prohibition of indiscriminate attacks,30 proportionality31 and precaution.32 It may amount to a war crime to intentionally target civilians not taking direct part in the hostilities in both international and non international armed conflict.33 Allegations concerning an attack against civilians must be investigated, and where there is sufficient evidence, persons responsible for the commission of the offence or for ordering the offence must be prosecuted.34</p> <p>Fn 30: ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 11.</p> <p>Fn 31: Ibidem, Rule 14.</p> <p>Fn 32: Ibid, Rule 15.</p> <p>Fn 34: ICRC, Customary International Humanitarian Law: Volume 2: Rules, Rules 158 and 150.</p>	Both	Rules 11, 14, 15, 150, 158	Agreed	Part of broader discussion	Fn			Ibid
236	OHCHR	Ibid	Ibid	Ibid	<p>28. 'International humanitarian law requires that persons hors de combat35 are treated humanely. ...'</p> <p>Fn 35: Rule 47 of customary international humanitarian law defines the person hors de combat as (a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape. Common Article 3 to the Four Geneva Conventions provides that persons hors de combat "shall in all circumstances be treated humanely".</p>	One (rules)	Rule 47	Agreed	Part of broader discussion	Fn			Ibid
237	OHCHR	Ibid	Ibid	Ibid	<p>28. '... Customary international humanitarian law explicitly provides that "the wounded and sick shall be collected and cared for".37'</p> <p>Fn 37: ICRC, Customary International Humanitarian Law: Volume 1. Rules 110.</p>	One (rules)	Rule 110	Agreed	Part of broader discussion	Fn			Ibid

238	OHCHR	Ibid	Ibid	Ibid	31. 'Both international human rights ⁴² and humanitarian law ⁴³ require States to investigate extrajudicial, summary or arbitrary killings and murders, punish perpetrators and provide effective remedies to relatives. ...' Fn 43: ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 158. See also, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 4.	One (rules)	Rule 158	Agreed	Part of broader discussion	Fn		Ibid
239	OHCHR	Ibid	Ibid	Ibid	53. '... Three people were killed in the shelling: Mr. Myronenko and two members of the battalion. On the morning of 28 August, a battalion doctor told the witness to bury Mr. Myronenko and the bodies of two other men lying near the school. ⁹⁵ This incident could be considered a violation of the customary rule 115 ⁹⁶ of the international humanitarian law, as the grave was not even marked.' Fn 96: 'Rule 115 of customary international humanitarian law: The dead must be disposed of in a respectful manner and their graves respected and properly maintained.'	One (rules)	Rule 115	Agreed	Part of broader discussion	Fn		Ibid
240	OHCHR	Ibid	Ibid	Ibid	105. 'Every day, except on Sundays, the detainees were forced to load boxes of ammunition or to clean the debris of ruined buildings without any personal protection equipment. ¹⁹⁸ ' Fn 198: 'Rule 95 of customary international humanitarian law prohibits that detainees be involved in the work that has a "direct connection with the operations of the war". In the context of international armed conflict, the Third Geneva Convention provides that "unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature". In the context of noninternational armed conflict, Additional Protocol II provides that persons who are deprived of their liberty for reasons related to the armed conflict "shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population".'	One (rules)	Rule 95	Agreed	Part of broader discussion	Fn		Ibid
241	OHCHR	Ibid	Ibid	Ibid	C. Detention facility in Ilovaisk 125. 'In mid-October 2014, 68 Ukrainian soldiers ²²⁸ were transferred from Donetsk city to Ilovaisk where they were forced to clean up debris, collect unexploded ordnance, ²²⁹ and reconstruct houses and multi-storey buildings – all without any protection or security equipment. ²³⁰ ' Fn 229: 'Rule 95 of customary international humanitarian law prohibits that detainees be involved in the work that has a "direct connection with the operations of the war". The Third Geneva Convention provides that "unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature". Additional Protocol II provides that persons who are deprived of their liberty for reasons related to the armed conflict "shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population".'	One (rules)	Rule 95	Agreed	Part of broader discussion	Fn		Ibid
242												
243												
244												
245	Sixth Committee documents											
246	Sixth Committee	Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts: Report of the Sixth Committee	A/69/499	17.nov.14	Preamble p. 5: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on customary international humanitarian law and recent initiatives by the Committee, and looking forward to further constructive discussion on the subject...'	N/A	N/A	N/A	N/A	Main text	General reference to the Study in the preamble	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/14/636/26/pdf/N1463626.pdf?OpenElement
247	Sixth Committee	Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts: Report of the Sixth Committee	A/67/468	21.nov.12	Preamble p. 4: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on customary international humanitarian law and recent initiatives by the Committee, including the online launch of the updated study, as well as the growing number of translations into other languages of parts of the study, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	general reference to the Study in the preamble	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/12/534/29/pdf/N1253429.pdf?OpenElement

248	Sixth Committee	Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts Report of the Sixth Committee	A/65/470		10.nov.10	Preamble p. 4: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on customary international humanitarian law and recent initiatives by the Committee, including the online launch of the updated study, as well as the growing number of translations into other languages of parts of the study, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	General reference to the Study in the preamble	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N10/547/67/pdf/N1054767.pdf?OpenElement
249	Sixth Committee	Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts: Report of the Sixth Committee	A/63/440		17.nov.08	Preamble p. 4: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on Customary International Humanitarian Law and current initiatives by the Committee to update volume II of the study, on practice, as well as the growing number of translations into other languages of parts of the study, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	General reference to the Study in the preamble	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N08/521/87/pdf/N0852187.pdf?OpenElement
250	Sixth Committee	Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts Report of the Sixth Committee	A/61/451		10.nov.06	Preamble p. 4: 'Welcoming the significant debate generated by the recent publication of the study on Customary International Humanitarian Law by the International Committee of the Red Cross, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	General reference to the Study in the preamble	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N06/550/62/pdf/N0655062.pdf?OpenElement
251	ILC reports												
252	ILC	Draft report of the International Law Commission on the work of its seventy-first session	A/CN.4/L.928/Add.1		19.juin.19	Ensuring that "crimes against humanity" are offences in national criminal law ... (21) National laws and military manuals also often contain this type of criminal responsibility for war crimes, and sometimes for genocide and crimes against humanity, under the influence of both treaty obligations and calls by relevant international bodies. ³²¹ Based on a detailed analysis of State practice, as well as of international and national jurisprudence, the 2005 ICRC study on Customary International Humanitarian Law formulated a general standard for war crimes as follows: "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible". ³²² Fn 322: J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, vol. 1: Rules, Cambridge University Press, 2005, pp. 558–563 (Rule 153).	One (rules)	Rule 153	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/175/41/pdf/G1917541.pdf?OpenElement
253	ILC	Ibid	Ibid	Ibid		(7) ' ... While the scope and application of these guarantees may depend on the form of armed conflict at issue, many, if not all, of these guarantees are seen as customary international law in all forms of armed conflict. ⁴⁸³ ...' Fn 483: See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, vol. 1: Rules (footnote 322 above), pp. 352–371 (Rule 100).	One (rules)	Rule 100	Agreed	Part of broader discussion	Fn		Ibid
254	ILC	Seventh report on immunity of State officials from foreign criminal jurisdiction, by Concepción Escobar Hernández, Special Rapporteur	A/CN.4/729		18.avr.19	161. 'Similarly, in accordance with the rules of international humanitarian law, members of a State's armed forces who are made prisoners of war during an international armed conflict may not be tried merely for their participation in the hostilities. ²⁵⁸ ...' Fn 258: J. M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press/International Committee of the Red Cross, 2005, p. 384.'	One (rules)	Rule 106	Agreed	Part of broader discussion	Fn		Ibid

255	IILC	Fourth report on crimes against humanity By Sean D. Murphy, Special Rapporteur	A/CN.4/725	18.févr.19	160. 'The Special Rapporteur notes that there were 174 States parties to Protocol I as of January 2019. As such, a streamlined standard based on article 86, paragraph 2, might reflect better the manner in which the command/superior responsibility standard already operates in the national laws, military manuals, and practice of many States in relation to war crimes,418 thereby making it easier for States to adhere to and implement the obligation with respect to crimes against humanity of January 2019. After analysing such laws, manuals and practice, as well as international and national jurisprudence, a 2005 study completed under the auspices of the ICRC on Customary International Humanitarian Law formulated the relevant rule (Rule 153) as follows: "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible".419' Fn 418: 'In this regard, the ICRC study cites the legislation of Azerbaijan, Bangladesh, France, Italy, Luxembourg, the Netherlands, Spain, Sweden and the Philippines, the military manuals of the United Kingdom and the United States, and the practice of Italy (see J.-M. Henckaerts and L. Doswald-Beck,	One (rules)	Rule 153	Agreed. Citation of state practice.	Part of broader discussion	Fn		Ibid
256	IILC	Draft report of the International Law Commission on the work of its seventy-first session Chapter VI Protection of the environment in relation to armed conflicts	A/CN.4/L.930/Add.1	09.juil.19	(5) 'As far as the law of armed conflict is concerned, the obligation to disseminate the law of armed conflict to armed forces and, to the extent possible, also to the civilian population contributes to the protection of the environment.9 ...' Fn 9: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I) (Geneva, 12 August 1949), United Nations, Treaty Series, vol. 75, No. 970, p. 31, art. 47; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II) (Geneva, 12 August 1949), ibid., No. 971, p. 85, art. 48; Geneva Convention relative to the Treatment of Prisoners of War (Convention III) (Geneva, 12 August 1949), ibid., No. 972, p. 135, art. 127; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV) (Geneva, 12 August 1949), ibid., No. 973, p. 287, art. 144; Additional Protocol I, art. 83; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Additional Protocol II) (Geneva, 8 June 1977), ibid., No. 17513, p. 609, art. 19; Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Additional Protocol III) (Geneva, 8 December 2005), ibid., vol. 2404, No. 43425, p.	One (rules)	Rule 143	Agreed	Yes. GC I art 47; GC II art 48; GC III art 127; GC IV art 144; AP I art 83; AP II art 19; AP II I art 7; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/208/46/pdf/G1920846.pdf?OpenElement	
257	IILC	Ibid	Ibid	Ibid	(6) 'Common article 1 is also interpreted to require that States, when they are in a position to do so, exert their influence to prevent and stop violations of the Geneva Conventions by parties to an armed conflict.14 ...' Fn 14: 'See the ICRC commentary (2016) on article 1 of Geneva Convention I (the commentaries on the Geneva Conventions of 1949 and the Protocols thereto are available from www.icrc.org/en/war-andlaw/treaties-customary-law/geneva-conventions (accessed on 8 July 2019)). The ICRC study on customary international law provides a broader interpretation, according to which the obligation to respect and ensure respect is not limited to the Geneva Conventions but refers to the entire body of international humanitarian law binding upon a particular State (Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 139, p. 495).'	One (rules)	Rule 139	Agreed	Yes. ICRC Commentary to GC I art 1.	Fn	Ibid	

258	ILC	Ibid	Ibid	Ibid	<p>(9) 'While Additional Protocol I applies only to international armed conflict, the weapons review provided for in article 36 also promotes the respect for the law in noninternational armed conflicts. Furthermore, the use of weapons that are inherently indiscriminate and the use of means or methods of warfare that are of a nature to cause superfluous injury or unnecessary suffering are prohibited under customary international law. 19 ...'</p> <p>Fn 19: 'Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (see footnote 9 above), rules 70 and 71, pp. 237–250.'</p>	One (rules)	Rules 70, 71	Agreed	Part of broader discussion	Fn	Ibid
259	ILC	Ibid	Ibid	Ibid	<p>(2) 'Demilitarized zones are established by the parties to a conflict and imply that the parties are prohibited from extending their military operations to that zone if such an extension is contrary to the terms of their agreement.35 ...'</p> <p>Fn 35: See Additional Protocol I, art. 60. See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 36, p. 120. The ICRC study on customary law considers that this constitutes a rule under customary international law and is applicable in both international and non-international armed conflicts.'</p>	One (rules)	Rule 36	Agreed	Yes. AP I art 60.	Fn	Ibid
260	ILC	Ibid	Ibid	Ibid	<p>(4) 'The rules of the law of armed conflict concerning the responsibility of States are clear and well-established. As <i>lex specialis</i> in armed conflict, the law of armed conflict extends the responsibility of a State party to an armed conflict to "all acts committed by persons forming part of its armed forces", including private acts.126 ...'</p> <p>Fn 126: 'Convention (IV) respecting the laws and customs of war on land (Hague Convention IV) (The Hague, 18 October 1907), J.B. Scott (ed.), The Hague Conventions and Declarations of 1899 and 1907, 3rd ed. (New York, Oxford University Press, 1915), p. 100, art. 3: "[a] belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." See also Additional Protocol I, art. 91. See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 150, p. 537: "A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused". This special rule also applies to private acts of members of armed forces.'</p>	One (rules)	Rule 150	Agreed	Yes. Hague Convention IV art 3; Scott book.	Fn	Ibid
261	ILC	Ibid	Ibid	Ibid	<p>(10) 'Paragraph 3 of draft principle 13 seeks to treat the natural environment in the same way as a civilian object during armed conflict. This paragraph is based on the fundamental rule that a distinction must be made between military objectives and civilian objects.235'</p> <p>Fn 235: 'See, in general, Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 7 and rule 43, pp. 25–29 and 143.'</p>	One (rules)	Rules 7, 43	Agreed	Part of broader discussion	Fn	Ibid
262	ILC	Ibid	Ibid	Ibid	<p>(11) '... In terms of the law of armed conflict, attacks may only be directed against military objectives, and not civilian objects.238 There are several binding and non binding instruments which indicate that this rule is applicable to the natural environment.239'</p> <p>Fn 238: 'See, in general, Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 7, pp. 25–29. The principle of distinction is codified, inter alia, in article 48 and 52, paragraph 2, of Additional Protocol I, as well as the Amended Protocol II and Protocol III to the Convention on Certain Conventional Weapons. It is recognized as a rule of customary international humanitarian law in both international and non-international armed conflict.'</p> <p>Fn 239: 'These instruments have been cited as, inter alia, art. 2, para. 4, of Protocol III to the Convention on Certain Conventional Weapons, the Guidelines on the Protection of the Environment in Times of Armed Conflict, the Final Declaration adopted by the International Conference for the Protection of War Victims, General Assembly resolutions 49/50 and 51/157, annex, the military manuals of Australia and the United States, as well as national laws of Nicaragua and Spain. See Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 43,</p>	One (rules)	Rule 7	Agreed	Yes. AP I, II and III arts 48 and 52.	Fn	Ibid

263	ILC	Ibid	Ibid	Ibid	<p>(4) 'One of the cornerstones of the law of armed conflict²⁴⁴ is the principle of distinction which obliges parties to an armed conflict to distinguish between civilian objects and military objectives at all times, and that attacks may only be directed against military objectives.²⁴⁵ This is considered a rule under customary international law, applicable in both international and non-international armed conflicts.²⁴⁶</p> <p>Fn 246: 'See Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 7, p. 25.'</p>	One (rules)	Rule 7	Agreed	Part of broader discussion	Fn	Ibid
264	ILC	Ibid	Ibid	Ibid	<p>(6) 'The principle of proportionality is an important rule under the law of armed conflict also because of its relation to the rule of military necessity. ²⁴⁸ It is codified in several instruments of the law of armed conflict, and the International Court of Justice has also recognized its applicability in its advisory opinion on Legality of the Threat or Use of Nuclear Weapons.²⁴⁹ It is considered a rule under customary international law, applicable in both international and non-international armed conflict.²⁵⁰</p> <p>Fn 250: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 14, p. 46.</p>	One (rules)	Rule 14	Agreed	Part of broader discussion	Fn	Ibid
265	ILC	Ibid	Ibid	Ibid	<p>(7) '... The particular importance of the principle of proportionality in relation to the protection of the natural environment in armed conflict has been emphasized by the ICRC customary law study, which found that the potential effect of an attack on the environment needs to be assessed.²⁵²</p> <p>Fn 252: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 44, p. 150.</p>	One (rules)	Rule 44	Agreed	Part of broader discussion	Fn	Ibid
266	ILC	Ibid	Ibid	Ibid	<p>(10) 'The rule concerning precautions in attack lays out that care must be taken to spare the civilian population, civilians and civilian objects from harm during military operations; and also that all feasible precautions must be taken to avoid and minimize incidental loss of civilian life, injury to civilians as well as damage to civilian objects which may occur. The rule is codified in several instruments of the law of armed conflict²⁵⁸ and is also considered to be a customary international law rule in both international and non-international armed conflict.²⁵⁹</p> <p>Fn 259: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 15, p. 51.</p>	One (rules)	Rule 15	Agreed	Part of broader discussion	Fn	Ibid
267	ILC	Ibid	Ibid	Ibid	<p>(4) 'In this context, some members took the view that the prohibition of reprisals forms part of customary international law. However, other members questioned the existence of this rule, and were of the view that the rule exists only as a treaty obligation under the Additional Protocol I.²⁶⁴</p> <p>Fn 264: 'For a discussion on the customary law status of reprisals, see Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rules 147–149, pp. 523–530; Y. Arai-Takahashi, The Law of Occupation: Continuity and Change of International Humanitarian Law and its Interaction with International Human Rights Law (Leiden, Martinus Nijhoff, 2009), pp. 285–289; M. A. Newton, "Reconsidering reprisals" Duke Journal of Comparative and International Law, vol. 20 (2010), pp. 361–388; S. Darcy, Collective Responsibility and Accountability under International Law (Leiden, Brill, 2007) pp. 154–156.'</p>	One (rules)	Rules 147-149	Agreed	Yes. Arai-Takahashi book; Newton article; Darcy book.	Fn	Ibid

268	ILC	Ibid	Ibid	Ibid	<p>(7) '... The drafting history of Additional Protocol II reveals that at the time of drafting, some States were of the view that reprisals of any kind are prohibited under all circumstances in non-international armed conflicts. 268 ...'</p> <p>Fn 268: 'See Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974-1977) vol. IX, available from www.loc.gov/rr/frd/Military_Law/RC-dipl-conference-records.html (accessed on 8 July 2019), most notably the statements made by Canada (p. 428), Greece (p. 429), the Islamic Republic of Iran (p. 429), Iraq (p. 314), Mexico (p. 318). See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 148, p. 528.'</p>	One (rules)	Rule 148	Agreed	Yes. Statements made at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, 1974-1977) .	Fn	Ibid
269	ILC	Ibid	Ibid	Ibid	<p>(9) 'Concerning reprisals against the natural environment in particular, it is worth mentioning that the International Criminal Tribunal for the former Yugoslavia considered that the prohibition against reprisals against civilian populations constitutes a customary international law rule "in armed conflicts of any kind".270 ...'</p> <p>Fn 270: Prosecutor v. Duško Tadić, case No. IT-94-1-A72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, of 2 October 1995, International Criminal Tribunal for the Former Yugoslavia, Judicial Reports 1994-1995, vol. I, p. 353, at pp. 475-478, paras. 111-112. See also in general Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), pp. 526-529.</p>	One (rules)	Rules 100, 134, 148	Agreed	Yes. Tadić Interlocutory Jurisdiction Decision.	Fn	Ibid
270	ILC	Ibid	Ibid	Ibid	<p>(2) '... The prohibition has been widely incorporated into national legislation as well as in military manuals.275 ...'</p> <p>Fn 275: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 52, "Pillage is prohibited", pp. 182-185</p>	One (rules)	Rule 52	Agreed	Part of broader discussion	Fn	Ibid
271	ILC	Ibid	Ibid	Ibid	<p>(2) '... The prohibition of pillage has been found to constitute a customary rule of international law.278'</p> <p>Fn 278: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above) rule 52, pp. 182-185.</p>	One (rules)	Rule 52	Agreed	Part of broader discussion	Fn	Ibid
272	ILC	Ibid	Ibid	Ibid	<p>(4) 'Pillage is a broad term that applies to any appropriation of property in armed conflict that violates the law of armed conflict. At the same time, the law of armed conflict provides a number of exceptions under which appropriation or destruction of property is lawful.282 ...'</p> <p>Fn 282: For capture of an adversary's movable public property that can be used for military purposes, see Geneva Convention I, art. 50. Adversary's property can also be lawfully destroyed or appropriated if required by imperative military necessity; see the Hague Regulations (1907), art. 23 (g). See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), rule 50, pp. 175-177. For the lawful use by an Occupying Power of the resources of the occupied territory for the maintenance and needs of the army of occupation, see commentary to draft principle 21 below.</p>	One (rules)	Rule 50	Agreed	Yes. GC I art 50; Hague Regulations art 23(g).	Fn	Ibid
273	ILC	Ibid	Ibid	Ibid	<p>(2) '... It is to be recalled in this respect that, according to the ICRC study on customary international humanitarian law, "there is sufficiently widespread, representative and uniform practice to conclude that the destruction of the natural environment may not be used as a weapon", and this irrespective of whether the provisions of the Convention are themselves customary.305'</p> <p>Fn 305: 'Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (see footnote 9 above), p. 156.'</p>	One (rules)	Rule 45	Agreed	Part of broader discussion	Fn	Ibid

274	ILC	Ibid	Ibid	Ibid	(3) 'This condition could nevertheless also be fulfilled in a non-international armed conflict provided that a hostile use of an environmental modification technique by a State in the context of such a conflict causes environmental or other damage in the territory of another State party. 307' Fn 307: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (see footnote 9 above) rule 44, commentary, p. 148: "it can be argued that the obligation to pay due regard to the environment also applies in non-international armed conflicts if there are effects in another State."	One (rules)	Rules 44	Agreed	Part of broader discussion	Fn	Ibid
275	ILC	Ibid	Ibid	Ibid	(4) 'In contrast, the Convention only addresses the hostile or military use of environmental modification techniques by States, excluding hostile use of such techniques by non State actors. The ICRC study on customary international humanitarian law has nevertheless established the prohibition of the use of the environment as a weapon, or as a means of warfare, as a norm of customary international law "applicable in international armed conflicts and arguably also in non-international armed conflicts".309 ...' Fn 309: Henckaerts and Doswald-Beck, Customary International Humanitarian Law ... (footnote 9 above), explanation of rule 45, p. 151. See also Part 2 of the ICRC Customary International Humanitarian Law Study (available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_ru_rule45) and related practice.	Two	Rule 45	Agreed	Part of broader discussion	Fn	Ibid
276	ILC	Draft report of the International Law Commission on the work of its seventieth session Chapter IV Subsequent agreements and subsequent practice in relation to the interpretation of treaties	A/CN.4/L.917/Add.1	21.juin.18	Commentary to Conclusion 6 ... (15) 'The ICRC Study on customary international humanitarian law carefully notes in its commentary on rule 128 A: "According to the Fourth Geneva Convention, no protected person may be transferred to a country 'where he or she may have reason to fear persecution for his or her political opinions or religious beliefs' [article 45, paragraph 4, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War]. While the Third Geneva Convention does not contain a similar clause, practice since 1949 has developed to the effect that in every repatriation in which the ICRC has played the role of neutral intermediary, the parties to the conflict, whether international or noninternational, have accepted the ICRC's conditions for participation, including that the ICRC be able to check prior to repatriation (or release in case of a noninternational armed conflict), through an interview in private with the persons involved, whether they wish to be repatriated (or released)."210' Fn 210: 'J.-M. Henckaerts and L. Doswald-Beck, eds., Customary International Humanitarian Law, Volume 1: Rules (Cambridge, International Committee of the Red Cross and Cambridge University Press, 2005), p. 455 (footnotes	One (rules)	Rule 128	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/188/41/pdf/G1818841.pdf?OpenElement
277	ILC	Ibid	Ibid	Ibid	(16) 'This formulation suggests that the State practice of respecting the will of the prisoner of war is limited to cases in which ICRC is involved and in which the organization has formulated such a condition. States have drawn different conclusions from this practice.211...' Fn 211: J.-M. Henckaerts and L. Doswald-Beck, eds., Customary International Humanitarian Law, Volume 2: Practice (Cambridge, International Committee of the Red Cross and Cambridge University Press, 2005), pp. 2893–2894, paras. 844–855, and online update for Australia, Israel, the Netherlands and Spain, available from http://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_ru_rule128_sectiond	Two	Rule 128	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid

278	ILC	Ibid	Ibid	Ibid	<p>Commentary to Conclusion 7</p> <p>...</p> <p>(17) '... This language has come to be accepted by way of subsequent practice in many military manuals as a general definition of "feasible precautions" for the purpose of article 57, paragraph (2) (ii), of Protocol I to the 1949 Geneva Conventions.272'</p> <p>Fn 272: For the military manuals of Argentina (1989), Canada (2001) and the United Kingdom (2004), see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, volume 2 ... (footnote 211 above), pp. 359–360, paras. 160–164 and the online update for the military manual of Australia (2006) (www.icrc.org/customary-ihl/eng/docs/v2_rul_rule15_sectionc); see also Sandoz, Swinarski and Zimmermann, Commentary on the Additional Protocols ... (footnote 258 above), p. 683, para. 2202</p>	Two	Rule 160	Agreed. Citation of state practice.	Yes. Sandoz commentary.	Fn	Ibid
279	ILC	Draft report of the International Law Commission on the work of its seventieth session Chapter IX Protection of the environment in relation to armed conflicts	A/CN.4/L.922/Add.1	25.mai.18	<p>Draft principle 4 Measures to enhance the protection of the environment</p> <p>Commentary</p> <p>...</p> <p>(5) As far as the law of armed conflict is concerned, the obligation to disseminate the law of armed conflict to armed forces and, to the extent possible, also to the civilian population contributes to the protection of the environment.1'</p> <p>Fn 1: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I) (Geneva, 12 August 1949), United Nations, Treaty Series, vol. 75, No. 970, p. 31, art. 47; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II) (Geneva, 12 August 1949), ibid., No. 971, p. 85, art. 48; Geneva Convention relative to the Treatment of Prisoners of War (Convention III) (Geneva, 12 August 1949), ibid., No. 972, p. 135, art. 127; Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV) (Geneva, 12 August 1949), ibid., No. 973, p. 287, art. 144; Protocol Additional to the Geneva Conventions of 12 August</p>	One (rules)	Rule 143	Agreed	Yes. GC I art 47; GC II art 48; GC III art 127; GC IV art 144; AP I art 83; AP II art 19; AP II I art 7; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indis	Fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/140/73/pdf/G1814073.pdf?OpenElement
280	ILC	Ibid	Ibid	Ibid	<p>(9) 'While Additional Protocol I applies only to international armed conflict, the weapons review provided for in article 36 also promotes the respect for the law in noninternational armed conflicts. Furthermore, the use of weapons that are inherently indiscriminate and the use of means or methods of warfare that are of a nature to cause superfluous injury or unnecessary suffering are prohibited under customary international law.11 ...'</p> <p>Fn 11: Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rules 70 and 71, pp. 237–250.</p>	One (rules)	Rules 70, 71	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/140/73/pdf/G1814073.pdf?OpenElement
281	ILC	First report on protection of the environment in relation to armed conflicts by Marja Lehto, Special Rapporteur	A/CN.4/720	30.avr.18	<p>7. 'As to draft principle 9 [II-1] on "General protection of the natural environment during armed conflict", it was pointed out that the preventive measures should seek not only to minimize but also to avoid damage to the environment. It was suggested that Rule 44 of the ICRC study entitled Customary International Humanitarian Law³⁷ and the precautionary principle could provide guidance on how to approach the issue of prevention. ...'</p> <p>Fn 37: "Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions" (J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law: Rules, vol. I, ICRC and Cambridge University Press, 2005, p. 147).'</p>	One (rules)	Rule 44	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/096/52/pdf/N1809652.pdf?OpenElement

					p. 57: VI. Select Bibliography ...										
282	ILC	Ibid	Ibid	Ibid	HENCKAERTS, Jean-Marie and Louise DOSWALD-BECK Customary International Humanitarian Law: Rules, vol. I. ICRC and Cambridge University Press, 2005. Annex III: Resources by field of international law Law of armed conflict International Committee of the Red Cross - Henckaerts, Jean-Marie and Doswald-Beck, Louise (eds.), Customary International Humanitarian Law (2 vols.), International Committee of the Red Cross and Cambridge University Press (English) / Bruylant (French), 2006, printed and online, www.icrc.org/eng/resources/documents/publication/pcustom .htm	One (rules)	N/A	N/A	N/A	Bibliography				Ibid	
283	ILC	Identification of customary international law Ways and means for making the evidence of customary international law more readily available Memorandum by the Secretariat	A/CN.4/710	12.janv.18		Both	N/A	N/A	N/A	Bibliography	Citation of the CIHL Study in the bibliography but not elsewhere in the memorandum.			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/013/59/pdf/N1801359.pdf?OpenElement	
284	ILC	Third report on crimes against humanity By Sean D. Murphy, Special Rapporteur	A/CN.4/704	23.janv.17	287. '... The 2005 study on Customary International Humanitarian Law published under the auspices of the ICRC interprets article 6, paragraph 5, as excluding persons suspected of, accused of or sentenced for war crimes, concluding that State practice established this as a norm of customary international law applicable in non-international armed conflicts.492 That interpretation, however, has been criticized.493' Fn 492: 'See J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press, 2005, rule 159 ("At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes").'	One (rules)	Rule 159	Agreed	Part of broader discussion	Fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N17/017/23/pdf/N1701723.pdf?OpenElement		
285	ILC	Draft report of the International Law Commission on the work of its sixty-eighth session Chapter X Protection of the environment in relation to armed conflicts	A/CN.4/L.888/Add.1	01.juil.16	Draft principle I-(x) Designation of protected zones Commentary ... (2) It should be noted that the term "demilitarized zones" has a special meaning in the context of the law of armed conflict. Demilitarized zones are established by the parties to a conflict and imply that the parties are prohibited from extending their military operations to that zone if such an extension is contrary to the terms of their agreement12. Fn 12: 'See Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts (Additional Protocol I), done in Geneva on 8 June 1977 (United Nations, Treaty Series, vol. 1125, No. 17512), p. 3, art. 60. See also Jean Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law: Rules, vol. I (Cambridge: Cambridge University Press, 2005), p. 120. The ICRC study on customary law considers that this constitutes a rule under customary international law and is applicable in both international and noninternational armed conflicts.'	One (rules)	Rule 36	Agreed	Yes. AP I art 60.	Fn			https://documents-dds-ny.un.org/doc/UNDOC/LTD/G/16/141/56/pdf/G1614156.pdf?OpenElement		
286	ILC		Ibid	Ibid	Draft principle II-1 General protection of the [natural] environment during armed conflict Commentary ... (12) '... In terms of the law of armed conflict, attacks may only be directed against military objectives, and not civilian objects.50 ...' Fn 50: 'See in general Henckaerts and Doswald-Beck, supra note 12, rule 7, pp. 25-29. The principle of distinction is codified, inter alia, in article 48 and 52(2) of Additional Protocol I, as well as the Amended Protocol II and Protocol III to the Convention on Certain Conventional Weapons. It is recognized as a rule of customary international humanitarian law in both international and noninternational armed conflict.'	One (rules)	Rule 7	Agreed	Yes. AP I, II and III arts 48 and 52.	Fn			Ibid		

287	ILC	Third report on the protection of the environment in relation to armed conflicts Submitted by Marie G. Jacobsson, Special Rapporteur	A/CN.4/700		03.juin.16	253. 'Even if the focus of the regulations on landmines became more and more connected with the protection of human beings, it cannot be denied that the regulations have had direct implications for the protection of agricultural land and property, by making the land available for use. The obligation on parties to a conflict to remove or otherwise render landmines harmless to civilians at the end of active hostilities can be considered a rule of international customary law.441' Fn 441: Rule 83 in the ICRC customary law study; see Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law: Rules, vol. I (Cambridge: Cambridge University Press, 2005). For practice conducted after 2005, see www.icrc.org/customary-ihl/eng/docs/v2_rul_rule83.	Both	Rule 83	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N16/159/40/pdf/N1615940.pdf?OpenElement
288	ILC	Ibid	Ibid	Ibid		Annex II: Select bibliography p. 92: 'Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. Customary International Humanitarian Law, vols. I and II. Cambridge: International Committee of the Red Cross and Cambridge University Press, 2005.'	Both	N/A	N/A	N/A	Bibliography	Ibid
289	ILC	Draft report of the International Law Commission on the work of its sixty-eighth session Chapter VI Subsequent agreements and subsequent practice in relation to the interpretation of treaties	A/CN.4/L.884/Add.1		31.mai.16	Conclusion 6: Identification of subsequent agreements and subsequent practice Commentary ... (15) Article 118 of Geneva Convention relative to the Treatment of Prisoners of War ²¹¹ provides that: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." The will of a prisoner of war not to be repatriated was intentionally not declared to be relevant by the States parties in order to prevent States from abusively invoking the will of prisoners of war in order to delay repatriation. ²¹² ICRC has, however, always insisted as a condition for its participation that the will of a prisoner of war not to be repatriated be respected. ²¹³ This approach, as far as it has been reflected in the practice of States parties, does not necessarily mean, however, that article 118 should be interpreted as demanding that the repatriation of a prisoner of war must not happen against his or her will. The ICRC Study on customary international humanitarian law carefully notes in its commentary on rule 128 A: "According to the Fourth Geneva Convention, no protected person may be transferred to a country 'where he or she may have reason to fear persecution for his or her political opinions or religious beliefs'".	One (rules)	Rule 128	Agreed	Yes. GC III art 118.	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/107/53/pdf/G1610753.pdf?OpenElement
290	ILC	Ibid	Ibid	Ibid		(16) 'This formulation suggests that the State practice of respecting the will of the prisoner of war is limited to cases in which ICRC is involved and in which the organization has formulated such a condition. States have drawn different conclusions from this practice. ²¹⁵ ...' Fn 215: 'J.-M. Henckaerts and L. Doswald-Beck, eds., Customary International Humanitarian Law, Volume 2: Practice (Cambridge, International Committee of the Red Cross and Cambridge University Press, 2005), pp. 2893-2894, paras. 844-855, and online update for Australia, Israel, the Netherlands and Spain, available from www.icrc.org/customary-ihl/eng/docs/v2_rul_rule128_section d.'	Both	Rule 128	Agreed	Part of broader discussion	Fn	Ibid

					(17) 'This particular combination of the words "must" and "should" indicates that the United Kingdom, like other States, is not viewing the subsequent practice as demonstrating an interpretation of the treaty according to which the declared will of the prisoner of war must always be respected.217'							
291	ILC	Ibid	Ibid	Ibid	Fn 217: 'The United States manual mentions only the will of prisoners of war who are sick or wounded, see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Volume 2: Practice (footnote 215 above), pp. 2893-2894, paras. 844-855; but United States practice after the Second Gulf War was to have ICRC establish the prisoner's will and to act accordingly (United States of America, Department of Defense, Conduct of the Persian Gulf War: Final Report to Congress (United States Government Printing Office, 1992), pp. 707-708, available from www.globalsecurity.org/military/library/report/1992/cpgw.pdf .'	Two	Rule 128	Agreed	Part of broader discussion	Fn		Ibid
					Conclusion 7: Possible effects of subsequent agreements and subsequent practice in interpretation Commentary ... (17) 'Another example of "other subsequent practice" under article 32 concerns the term "feasible precautions" in article 57, paragraph 2 (ii), of Protocol I274 to the 1949 Geneva Conventions. This term has been used in effect by article 3, paragraph 4, of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) of 10 October 1980,275 which provides that: "Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations." This language has come to be accepted by way of subsequent practice in many military manuals as a general definition of "feasible precautions" for the purpose of article 57, paragraph (2) (ii), of Protocol I to the 1949 Geneva Conventions.276'							
292	ILC	Ibid	Ibid	Ibid	Fn 276: 'For the military manuals of Argentina (1989), Canada (2001) and the United Kingdom (2004), see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Annex II: Identification of customary international law: bibliography	Two	Rule 15	Agreed. Citation of state practice.	Yes. Sandoz commentary.	Fn		Ibid
					C. Customary international law in different fields of international law 2. Customary international humanitarian law p. 23: Henckaerts, J.-M. and Doswald-Beck L., Customary International Humanitarian Law (International Committee of the Red Cross, Cambridge University Press, 2005).							
293	ILC	Fourth report on identification of customary international law by Michael Wood, Special Rapporteur	A/CN.4/695/Add.1	25.mai.16		Both	N/A	N/A	N/A	Bibliography		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N16/146/96/pdf/N1614696.pdf?OpenElement

294	ILC	Identification of customary international law: The role of decisions of national courts in the case law of international courts and tribunals of a universal character for the purpose of the determination of customary international law Memorandum by the Secretariat	A/CN.4/691	09.févr.16	Observation 14: In the identification of customary international law, the International Tribunal for the former Yugoslavia occasionally referred to decisions of national courts as forms of evidence of the two constitutive elements of customary international law, although it only sometimes qualified any given decision as being either State practice or evidence of acceptance as law (opinio juris) specifically. 37. 'The International Tribunal for the Former Yugoslavia has explicitly endorsed the two-element approach to the identification of customary international law, and has occasionally used decisions of national courts as pertinent forms of evidence of each element. In the Hadžihasanović and Kubura case, the Trial Chamber emphasized that to "prove the existence of a customary rule, the two constituent elements of the custom must be established, namely, the existence of sufficiently consistent practices (material element), and the conviction of States that they are bound by this uncodified practice, as they are by a rule of positive law (mental element)".73 ...' Fn 73: 'Prosecutor v. Hadžihasanović and Kubura, Case No. IT-01-47-T, T.Ch., 15 March 2006, paras. 255-257, at para. 253. Attention should be drawn to the fact that the Trial Chamber first turned to the 2005 International Committee of the Red Cross study on customary international law (Jean-Marie	One (rules)	N/A	N/A	N/A	Fn	Discussion of how the ICTY Trial Chamber in Prosecutor v. Hadžihasanović turned to the CIHL Study but the Study was silent on the question.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/16/032/94/pdf/N1603294.pdf?OpenElement
295	ILC	Report of the International Law Commission on the work of its sixty-seventh session (2015): Topical summary of the discussion held in the Sixth Committee of the General Assembly during its seventieth session, prepared by the Secretariat	A/CN.4/689	28.janv.16	E. Protection of the environment in relation to armed conflicts ... 2. Specific comments 53. 'With regard to methodology, some delegations encouraged the Special Rapporteur to analyse further the applicability of the relevant rules and principles of international environmental law in relation to armed conflict, as well as the interrelation between international humanitarian law and international environmental law. In this regard, attention was drawn in particular to rule 44 of the 2005 International Committee of the Red Cross study Customary International Humanitarian Law;1 the duty of care set forth in article 55 of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I); 2 and the no-harm rule and the precautionary principle under environmental law. Fn 1: 'Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law, vol. I, Cambridge, Cambridge University Press, 2005.'	One (rules)	Rule 44	Neutral	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/16/021/62/pdf/N1602162.pdf?OpenElement	
296	ILC	Second report on crimes against humanity By Sean D. Murphy, Special Rapporteur	A/CN.4/690	21.janv.16	59. '... The 2005 ICRC Study of Customary International Humanitarian Law, in rule 155, provides: "Obeying a superior order does not relieve a subordinate of criminal responsibility if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered."221.' Fn 221: 'See ICRC, Customary IHL Database, "Chapter 43: Practice relating to Rule 155. Defence of superior orders", available from www.icrc.org/customary-ihl/eng/docs/v1_rul_rule155.'	One (rules)	Rule 155	Neutral	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/16/013/95/pdf/N1601395.pdf?OpenElement	
297	ILC	Draft report of the International Law Commission on the work of its sixty-seventh session Chapter VIII Protection of the environment in relation to armed conflicts	A/CN.4/L.862	22.juil.15	(h) Draft principle 4 29. '... The drafting of the prohibition in such absolute terms as had been proposed by the Special Rapporteur was thus questioned by those members. Moreover, it was observed that in exceptional cases, belligerent reprisals could be considered lawful when used as an enforcement measures in reaction to unlawful acts of the other party. In this context, references were made to the reservations made by States to article 55, paragraph 2, of the Additional Protocol 1, as well as to the definition of reprisals contained in the ICRC customary international law study.11 ...' Fn 11: 'Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law, vols. I and II (Cambridge, Cambridge University Press, 2005).'	Both	Ch 41 (reprisals)	Neutral	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/162/47/pdf/G1516247.pdf?OpenElement	

					Method and sources								
298	ILC	Second report on the protection of the environment in relation to armed conflicts Submitted by Marie G. Jacobsson, Special Rapporteur	A/CN.4/685	28.mai.15	7. '... A challenge lies in which method to use in identifying applicable customary law rules. The International Committee of the Red Cross (ICRC) has made an impressive effort in this respect. Its momentous study on customary international humanitarian law (ICRC customary law study) was published in 2005 following some 10 years of compilation of material and analytical work. 5 The ICRC customary law study has no precedent. With its three volumes, 5,000 pages and 161 rules and commentaries and supporting material, it is, to quote one author, "a remarkable feat".6 Yet it has been criticized for shortcomings in methodology and reliability.7 In addition, it should be underlined that the study is, in and of itself, a snapshot of the applicable law at a given time. To mitigate the latter temporal shortcoming, additional material is continuously placed on the ICRC customary law web page.8 In the view of the Special Rapporteur, the work by ICRC is far too valuable to neglect or even downplay. It is the most comprehensive compilation of legislative and regulatory measures, along with expressions of opinio juris, available in this field. To the extent that reference is made to the ICRC customary law study it is done on the basis of the aforementioned premises.'	Both	N/A	Agreed	Part of broader discussion	Main text and fn	Discussion of the Special Rapporteur's views on the significance of the ICRC Study: 'In the view of the Special Rapporteur, the work by ICRC is far too valuable to neglect or even downplay. It is the most comprehensive compilation of legislative and regulatory measures, along with expressions of opinio juris, available in this field.'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/15/154/94/pdf/N1515494.pdf?OpenElement	
299	ILC	Ibid	Ibid	Ibid	121. 'Discussion of the protection of the environment in relation to armed conflicts is therefore of recent modern history, and scholars have written extensively on the subject.167 ICRC has also been profoundly engaged with the topic. 168 States, however, have taken a cautious approach and attempts to codify new rules have generally been disavowed. This cautious approach should be placed in context, given that States were equally cautious in developing other areas of the law on armed conflict. Furthermore, the possible connection to issues concerning the use of nuclear weapons was of concern.'	Both	Ch 14	Neutral	Yes. Guidelines for Military Manuals and Instructions on the Protection of the Environment in Time of Armed Conflict, annexed to the Report submitted by ICRC to the General Assembly at its forty-ninth session (A/49/323)	Main text and fn		Ibid	
300	ILC	Ibid	Ibid	Ibid	C. International Committee of the Red Cross study on customary international humanitarian law 166. As mentioned in the introduction to the present report, the momentous ICRC study of customary international humanitarian law was published in 2005 after some 10 years of compilation of material and analytical work. 238 The study has no precedent. In addition to the documents on State practice made available by the study, ICRC has also drawn conclusions with regard to the status of the law it examined. As a result, the study contains three rules relating to the protection of the environment. They appear in under part II, "Specifically protected persons and objects". The first is rule 43, which states that the general principles on the conduct of hostilities apply to the natural environment. ICRC concludes that "State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts".' Fn 238: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law: Rules, vol. I (Cambridge, Cambridge University Press, 2005).	One (rules)	Rule 43	Agreed	Part of broader discussion	Main text and fn	Subheading: 'International Committee of the Red Cross study on customary international humanitarian law'	Ibid	
301	ILC	Ibid	Ibid	Ibid	167. 'Rule 43 is based on the principle of distinction, the prohibition of destruction of property not justified by military necessity, the principle of proportionality and other rules affording protection to the natural environment.'	One (rules)	Rule 43	Agreed	Part of broader discussion	Main text		Ibid	

302	ILC	Ibid	Ibid	Ibid	<p>168. 'The second, rule 44, addresses the obligation of due regard for the natural environment in military operations. It reads: "Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions".'</p> <p>169. 'The International Committee of the Red Cross considers that State practice establishes this rule "as a norm of customary international law applicable in international, and arguably also in non-international, armed conflicts".'</p> <p>170. Rule 44 is based on the obligation to take all feasible precautions to avoid or minimize damage to the environment, the precautionary principle and the continued application of (international) environmental law during armed conflict.'</p>	One (rules)	Rule 44	Agreed	Part of broader discussion	Main text		Ibid
303	ILC	Ibid	Ibid	Ibid	<p>171. 'The third, rule 45, refers to a situation in which there is a risk of causing serious damage to the natural environment. It reads: The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon.'</p> <p>172. 'ICRC concludes that this rule also reflects customary international law applicable in international, and arguably also in non-international, armed conflicts. According to the commentary attached to rule 45, "it appears that the United States is a 'persistent objector' to the first part of this rule. In addition, France, the United Kingdom and the United States are persistent objectors with regard to the application of the first part of this rule to the use of nuclear weapons".'</p> <p>173. 'Rule 45 is based on article 35, paragraph 3, of Additional Protocol I, which prohibits the employment of "methods or means of warfare which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment", and on extensive State practice prohibiting the deliberate destruction of the natural environment as a form of weapon.'</p>	One (rules)	Rule 45	Neutral	Part of broader discussion	Main text		Ibid
304	ILC	Ibid	Ibid	Ibid	<p>174. 'There is yet another rule of direct relevance, rule 42, which concerns works and installations containing dangerous forces. It reads: "Particular care must be taken if works and installations containing dangerous forces, namely, dams, dykes and nuclear electrical generating stations, and other installations located at or in their vicinity are attacked, in order to avoid the release of dangerous forces and consequent severe losses among the civilian population".'</p> <p>175. 'ICRC considers that State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts.'</p> <p>176. 'Rule 42 is based on the detailed rules contained in article 56 of Additional Protocol I and in article 15 of Additional Protocol II. The first sentences of the two provisions are identical: "Works or installations containing dangerous forces, namely, dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population".'</p> <p>177. 'It should be noted that Additional Protocol I contains several exceptions to this clear-cut prohibition, stipulating that the special protection against attack provided by</p>	One (rules)	Rule 42	Agreed	Part of broader discussion	Main text	Note especially 179. 'Undeniably, the conclusions reached by ICRC are more than a qualified guess. They are built on extensive and widespread State practice and represent practice from all geographical areas and all major legal systems. Nevertheless, as mentioned above, its methodology and conclusions have been criticized. 239'	Ibid

					IX. Protected zones and areas A. Demilitarized zones ... 211. ' ... The ICRC customary law study considers that the rule reflects a norm of customary law in both international and non-international armed conflicts.282 ...' Fn 282: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law: Rules, Vol. I (Cambridge, Cambridge University Press, 2005), pp. 120-121. Making a demilitarized zone an object of attack is a grave breach of the Protocol. See Additional Protocol I, art. 85, para. 3 (d).									
305	ILC	Ibid	Ibid	Ibid		One (rules)	Rule 36	Neutral	Yes. AP I art 85(3)(d).	Main text and fn			Ibid	
306	ILC	Ibid	Ibid	Ibid		Both	N/A	N/A	N/A	Bibliography			Ibid	
					III. Inaction as practice and/or evidence of acceptance as law 20. 'Inaction is a form of practice that (when general and coupled with acceptance as law) may give rise to a rule of customary international law. 36 ...' Fn 36: 'See also Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, at p. 99, para. 188 ("The Court has however to be satisfied that there exists in customary international law an opinio juris as to the binding character of such abstention"); G.I. Tunkin, "Remarks on the Juridical Nature of Customary Norms of International Law", California Law Review, 49 (1961), pp. 419, 421 ("The custom to abstain from action under certain circumstances may undoubtedly lead to the creation of a rule of conduct that may become a juridical norm. Obviously, everything said before about the elements of repetition, time, and continuity applies equally to the practice of abstinence"); M. Akehurst, "Custom as a Source of International Law", British Yearbook of International Law, 47 (1977), pp. 1, 10 ("State practice ... can also include omissions and silence on the part of States"); G.M. Danilenko, "The Theory of International Customary Law", German Yearbook of International Law, 31 (1988), pp. 9, 28 ("usual or habitual abstentions from specific actions may									
307	ILC	Third report on identification of customary international law by Michael Wood, Special Rapporteur	A/CN.4/682	27.mars.15		One (intro)	N/A	Agreed	Yes. Nicaragua Judgment; Tunkin article; Akehurst article; Danilenko article; Mandelson article; Koroma article; US Third Restatement on the Law on Foreign Relations.	Fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N15/088/91/pdf/N1508891.pdf?OpenElement	
					Draft Conclusion 6: Identification of subsequent agreements and subsequent practice Commentary ... (15) Article 118 of Geneva Convention III of 1949 provides that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." The will of a prisoner of war not to be repatriated was intentionally not declared to be relevant by the States parties in order to prevent States from abusively invoking the will of prisoners of war in order to delay repatriation.27 The International Committee of the Red Cross (ICRC) has, however, always insisted as a condition for its participation that the will of a prisoner of war not to be repatriated be respected.28 This approach, as far as it has been reflected in the practice of States parties, does not necessarily mean, however, that article 118 should be interpreted as demanding that the repatriation of a prisoner of war must not happen against his or her will. The ICRC Study on customary international humanitarian law carefully notes in its commentary on rule 128 A: "According to the Fourth Geneva Convention, no protected person may be transferred to a country 'where he or she may have reason to fear persecution for his or her									
308	ILC	Draft report of the International Law Commission on the work of its sixty-sixth session	A/CN.4/L.840/Add.1	08.juil.14		One (rules)	Rule 128	Agreed	Yes. GC III art 118.	Fn			https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/078/15/pdf/G1407815.pdf?OpenElement	

						Draft Conclusion 6: Identification of subsequent agreements and subsequent practice						
						Commentary ... (16) 'This formulation suggests that the State practice of respecting the will of the prisoner of war is limited to cases in which ICRC is involved and in which the organization has formulated such a condition. States have drawn different conclusions from this practice. ³⁰ The 2004 United Kingdom Manual provides that: "A more contentious issue is whether prisoners of war must be repatriated even against their will. Recent practice of States indicates that they should not. It is United Kingdom policy that prisoners of war should not be repatriated against their will." ³¹ ' Fn 30: J.-M. Henckaerts and L. Doswald-Beck, eds., Customary International Humanitarian Law, vol. 2, Practice (Cambridge, International Committee of the Red Cross and Cambridge University Press, 2005), pp. 2893–2894, paras. 844–855 and online update for Australia, Israel, the Netherlands and Spain, available from www.icrc.org/customary-ihl/eng/docs/v2_rul_rule128_section_d .	Two	Rule 128	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid
309	ILC	Ibid	Ibid	Ibid		Draft Conclusion 6: Identification of subsequent agreements and subsequent practice						
						Commentary ... (17) This particular combination of the words "must" and "should" indicates that the United Kingdom, like other States, is not viewing the subsequent practice as demonstrating an interpretation of the treaty according to which the declared will of the prisoner of war must always be respected. ³² Fn 32: The United States manual mentions only the will of prisoners of war who are sick or wounded, see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, vol. 2, Practice, supra note 28, pp. 2893–2894, paras. 844–855; but United States practice after the Second Gulf War was to have the International Committee of the Red Cross establish the prisoner's will and to act accordingly (United States of America, Department of Defense, Conduct of the Persian Gulf War: Final Report to Congress (United States Government Printing Office, 1992), pp. 707–708, available from www.dod.mil/pubs/foi/operation_and_plans/PersianGulfWar/404.pdf).	Two	Rule 128	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid
310	ILC	Ibid	Ibid	Ibid		(e) International humanitarian law 16. Article 118 of Geneva Convention III of 1949 provides that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." The will of a prisoner of war not to be repatriated was intentionally not declared to be relevant by the States parties in order to prevent States from abusively invoking the will of prisoners of war in order to delay repatriation. ³⁸ In its practice, however, the International Committee of the Red Cross (ICRC) has always insisted as a condition for its participation that the will of a prisoner of war not to be repatriated be respected. ³⁹ This practice does not necessarily mean, however, that article 118 should be interpreted as demanding that the repatriation of a prisoner of war must not happen against his or her will. The ICRC Study on customary international humanitarian law carefully notes in its commentary on rule 128 A: "According to the Fourth Geneva Convention, no protected person may be transferred to a country 'where he or she may have reason to fear persecution for his or her political opinions or religious beliefs' (Art. 45 para. 4 Geneva Convention IV). While the Third Geneva Convention does not contain a similar clause, practice since 1949 has developed to the effect that in every repatriation in which ICRC has played the role of neutral intermediary, the parties to the conflict, whether international or non-international, have accepted the ICRC	Two	Rule 128	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid
311	ILC	Second report on subsequent agreements and subsequent practice in relation to the interpretation of treaties by Georg Nolte, Special Rapporteur	A/CN.4/671	26.mars.14								https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N14/278/52/pdf/N1427852.pdf?OpenElement

					<p>17. 'This formulation suggests that the practice of respecting the will of the prisoner of war is limited to cases in which ICRC is involved and in which the organization has formulated such a condition. States have drawn different conclusions from this practice of ICRC.41 The 2004 United Kingdom Manual provides that: "A more contentious issue is whether prisoners of war must be repatriated even against their will. Recent practice of States indicates that they should not. It is United Kingdom policy that prisoners of war should not be repatriated against their will".42'</p> <p>Fn 41: J.-M. Henckaerts and L. Doswald-Beck, eds., Customary International Humanitarian Law, vol. 2, Practice (Cambridge, International Committee of the Red Cross and Cambridge University Press, 2005), pp. 2893-2894, paras. 844-855 and online update for Australia, Israel, the Netherlands and Spain, available from www.icrc.org/customary-ihl/eng/docs/v2_rul_rule128_sectiond</p>							
312	ILC	Ibid	Ibid	Ibid		Two	Rule 128	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid	
					<p>18. 'This particular combination of the words "must" and "should" indicates that, like ICRC, the United Kingdom is not firmly basing its policy on the view that subsequent practice suggests, namely, that the declared will of the prisoner of war must always be respected.43'</p> <p>Fn 43: The United States manual mentions only the will of prisoners of war who are sick or wounded, see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, vol. 2, Practice, pp. 2893-2894, paras. 844-855; but United States practice after the Second Gulf War was to have the International Committee of the Red Cross establish the prisoner's will and to act accordingly (United States of America, Department of Defense, Conduct of the Persian Gulf War: Final Report to Congress (United States Government Printing Office, 1992), pp. 707-708, available from www.dod.mil/pubs/foi/operation_and_plans/PersianGulfWar/404.pdf).</p>							
313	ILC	Ibid	Ibid	Ibid		Two	Rule 128	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid	
					<p>32. 'The term "feasible precautions" in article 57 of the Additional Protocol to the Geneva Conventions of 1949 (Protocol I) of 1977 has been circumscribed in article 3 (4) of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) of 10 October 1980, which provides that "[f]easible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations." This specification has come to be accepted by way of subsequent practice in many military manuals as a general definition of "feasibility" for the purpose of article 57 of Protocol I of 1977.67'</p> <p>Fn 67: For the military manuals of Argentina (1989), Canada (2001) and the United Kingdom (2004), see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, vol. 2, Practice, pp. 359-360, paras. 160-164 (see footnote 40 above) and the online update for the military manual of Australia (2006) (http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule15_sectionc); see also Y. Sandoz, C. Swinarski and B. Zimmermann, eds., Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Dordrecht, International Committee of the Red Cross and Martinus Nijhoff, 1987), p. 683, para. 2202.</p>							
314	ILC	Ibid	Ibid	Ibid		Two	Rule 15	Agreed. Citation of state practice.	Yes. Sandoz commentary.	Fn		
					<p>163. 'The experience of those who had tried to identify customary international law in particular fields, such as the authors of the study commissioned by the International Committee of the Red Cross (ICRC) on "Customary International Humanitarian Law",300 could make a significant contribution to the topic. The works of writers on the formation of customary international law — including textbooks, relevant monographs and specialized articles — might also shed important light. While different theoretical approaches might sometimes lead to similar results, this was not always the case.'</p> <p>Fn 300: J.-M. Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC/Cambridge University Press, vol. I, 2009; vol. II, 2005.</p>							
315	ILC	Report of the International Law Commission Sixty-fourth session (7 May–1 June and 2 July–3 August 2012)	Supplement No. 10 (A/67/10)	03.aout.12		Two	N/A	Agreed. Citation of state practice.	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G12/G21/23/pdf/G1262123.pdf?OpenElement	

316	ILC	Protection of persons in the event of disasters Memorandum by the Secretariat	A/CN.4/590	11.déc.07	193. '... Furthermore, the use of military and civil defence assets in complex emergencies raises difficult questions with regard to the principle of distinction between combatants and non-combatants in armed conflict.594 ...' Fn 594: See, for example, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, arts. 48, 51(2) and 52(2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977, art. 13(2); Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, 2005, pp. 3-8 and 25-29. The principle of distinction is considered by the International Court of Justice to be one of the "cardinal principles" of international humanitarian law and one of the "intransgressible principles of international customary law". Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, at p. 257, paras. 78 and 79.	One (rules)	Rules 1, 2, 7	Agreed	Yes. Ap I arts 48, 51(2) and 52(2); Ap II art 13(2); Nuclear Weapons Advisory Opinion.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N07/656/36/pdf/N0765636.pdf?OpenElement
317	ILC	Ibid	Ibid	Ibid	193. 'It should be noted, however, that under international humanitarian law, all members of the armed forces are combatants, except medical and religious personnel, an exception which would presumably not cover all military and civil defence assets engaged in disaster relief.595' Fn 595: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977, art. 43(2); Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, 2005, pp. 11-14 (rule 3).	One (rules)	Rule 3	Agreed	Yes. Protocol I art 43(2).	Fn	Ibid
318	ILC	Ibid	Ibid	Ibid	193. '... 'While the commentary to Additional Protocol I to the Geneva Conventions provides that medical and religious personnel are the only members of the armed forces who are entitled to non-combatant status,596 the military manuals of certain States give non-combatant status to other members of the armed forces, which could include a broader category of military and civil defence assets involved in disaster relief.597 ...' Fn 597: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, 2005, p. 13 ("Germany's Military Manual explains that "combatants are persons who may take a direct part in hostilities, i.e., participate in the use of a weapon or a weapon-system in an indispensable function", and specifies, therefore, that "persons who are members of the armed forces but do not have any combat mission, such as judges, government officials and blue-collar workers, are non-combatants". The United States Naval Handbook states that "civil defense personnel and members of the armed forces who have acquired civil defense status" are non-combatants, in addition to medical and religious personnel"). The use of military and civil defence assets also raises difficulties of terminology. In order to clearly distinguish other concepts such as "humanitarian intervention" and "military humanism", it was suggested in the Inter-Agency Standing Committee (IASC) that any	One (intro)	Rule 3	Agreed. Citation of state practice.	Part of broader discussion	Fn	Ibid
319	ILC	Draft report of the International Law Commission on the work of its sixty-fourth session Chapter VIII Formation and evidence of customary international law	A/CN.4/L.806	30.juil.12	8. 'The experience of those who had tried to identify customary international law in particular fields, such as the authors of the study commissioned by the International Committee of the Red Cross (ICRC) on "Customary International Humanitarian Law",4 could make a significant contribution to the topic. The works of writers on the formation of customary international law — including textbooks, relevant monographs and specialized articles — might also shed important light. While different theoretical approaches might sometimes lead to similar results, this was not always the case.' Fn 2: J.-M. Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC/Cambridge University Press, vol. I, 2009; vol. II, 2005.	Both	N/A	Neutral	Part of broader discussion	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/LTD/G12/619/01/pdf/G1261901.pdf?OpenElement

					III. Work done by other bodies								
320	ILC	Report of the International Law Commission Sixty-third session (26 April–3 June and 4 July–12 August 2011)	Supplement No. 10 (A/66/10)	12. août.11	18. 'As mentioned above, the ICRC summoned expert meetings and presented important reports during the 1990s. Those include Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict (1994). The perspective of the ICRC is, for obvious reasons, that of international humanitarian law. This in essence poses the question: to what extent does existing international humanitarian law contain principles, rules or provisions that aim to protect the environment during an armed conflict. It is often noted that the environment needs to be protected in order to achieve the goal of protecting civilians and their livelihoods. But it is likewise pointed out that the environment as such needs protection. The underlying assumption is that the environment is civil in nature. This is evidenced by the ICRC's multi-volume explanation of customary international humanitarian law, published in 2005. Three of the rules identified by the ICRC as customary law, namely Rules 43–45, relate particularly to natural resources and environmental protection during armed conflicts. Rule 44 reads: "Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the	One (rules)	Rules 43-45	Neutral	Part of broader discussion	Main text			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N11/527/74/pdf/N1152774.pdf?OpenElement
321	ILC	Seventh report on the protection of persons in the event of disasters by Eduardo Valencia-Ospina, Special Rapporteur	A/CN.4/668	27.févr.14	16. '... Moreover, in case of complex emergencies, provisions formulated in the context of international humanitarian law could be of relevance in this respect. ¹² ' Fn 12: Several international humanitarian law provisions could be relevant in this regard, such as: arts. 70(4) and 71(2) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), of 8 June 1977, United Nations, Treaty Series, vol. 1125, No. 17512; art. 59 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, United Nations, Treaty Series, vol. 75, No. 973. See also Rules 31 and 32 in Customary International Humanitarian Law, Volume I: Rules, Jean Marie Henckaerts and Louise Doswald-Beck (Cambridge: International Committee of the Red Cross and Cambridge University Press, 2005), pp. 105-111.	One (rules)	Rules 31, 32	Neutral	Yes. AP I arts 70(4), 71(2); GC IV art 59	Fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N14/248/75/pdf/N1424875.pdf?OpenElement
322	ILC	Expulsion of aliens Memorandum by the Secretariat	A/CN.4/565	10.juil.06	99. 'In addition, article 85 of Additional Protocol I to the Geneva Conventions characterizes as "grave breaches" only deportations or transfers occurring within the context of occupied territories. ¹⁹² Thus, international humanitarian treaty law would not appear to explicitly govern the expulsion of aliens by a State in time of international armed conflict. Moreover, a study on customary international humanitarian law published by the International Committee of the Red Cross almost fifty years after the adoption of the Fourth Geneva Convention only addresses the issues of "forcible transfer" and "deportation" with respect to actions by an occupying power in an occupied territory. ¹⁹³ ' Fn 193: See Rule 129 A of the ICRC's study on customary international humanitarian law: "Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand." Jean Marie Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, vol. I – Rules, Cambridge, University Press, 2005, p. 457.	One (rules)	Rule 129	Neutral	Part of broader discussion	Main text and fn			https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N06/260/29/pdf/N0626029.pdf?OpenElement
323	ILC	Ibid	Ibid	Ibid	Annex I: Select bibliography ... VIII. Non-governmental organizations Henckaerts, Jean-Marie and L. Doswald-Beck, Customary International Humanitarian Law, vol. I – Rules, Cambridge, University Press, 2005 (prepared within the International Committee of the Red Cross).	One (rules)	N/A	N/A	N/A	Bibliography			Ibid
324	Human Rights Council advisory committee												

325	Human Rights Council	Human rights and issues related to terrorist hostage-taking Report of the Human Rights Council Advisory Committee	A/HRC/24/47	04.juil.13	11. '... An authoritative commentary on international humanitarian law states that the prohibition of hostage taking during both international and non-international armed conflicts is established as a norm of customary international law.10 ...' Fn 10: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (International Committee of the Red Cross, Cambridge University Press, 2005), vol. I, pp. 334-336.	One (rules)	Rule 96	Agreed	Part of broader discussion	Fn	Describes the Study as 'authoritative'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G13/154/42/pdf/G1315442.pdf?OpenElement
326	Human Rights Council	Ibid	Ibid	Ibid	11. '... The Elements of Crimes under the jurisdiction of the International Criminal Court reproduced the definition of hostage-taking contained in the International Convention against the Taking of Hostages with an additional clarification that "the required behaviour of the third party could be a condition not only for the release of the hostage but also for the safety of the hostage".13' Fn 13: Henckaerts and Doswald-Beck, Customary International Humanitarian Law (see footnote 10). p. 336.	One (rules)	Rule 96	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G13/154/42/pdf/G1315442.pdf?OpenElement
327	Human Rights Council	Human rights and issues related to terrorist hostage-taking: Draft final report prepared by Wolfgang Stefan Heinz on behalf of the drafting group of the Advisory Committee	A/HRC/AC/10/2	12.déc.12	11. 'Hostage-taking is indeed prohibited in all the 1949 Geneva Conventions and 1977 Additional Protocols.7 An authoritative commentary on international humanitarian law states that the prohibition of hostage-taking during both international and non-international armed conflicts is established as a norm of customary international law.8 ...' Fn 8: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (International Committee of the Red Cross, Cambridge University Press, 2005), vol. I, pp. 334-336.	One (rules)	Rule 96	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G12/186/97/pdf/G1218697.pdf?OpenElement
328	Human Rights Council	Ibid	Ibid	Ibid	11. '... The Elements of Crimes under the jurisdiction of the International Criminal Court reproduced the definition of hostage-taking contained in the International Convention against the Taking of Hostages with an additional clarification that "the required behaviour of the third party could be a condition not only for the release of the hostage but also for the safety of the hostage".11' Fn 11: Henckaerts and Doswald-Beck, Customary International Humanitarian Law (see footnote 8). p. 336.	One (rules)	Rule 96	Agreed	Part of broader discussion	Fn		Ibid
329	Human Rights Council	Human rights and issues related to terrorist hostage taking: Progress report prepared by Wolfgang Stefan Heinz, on behalf of the drafting group of the Advisory Committee	A/HRC/AC/9/CRP.1	03.août.12	11. '... An authoritative commentary of International Humanitarian Law states that the prohibition of hostage taking during both international and non-international armed conflicts is established as a norm of customary international law.10 ...' Fn 10: J-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (International Committee of the Red Cross, Vol. I, Cambridge University Press, 2005), pp. 334-336	One (rules)	Rule 96	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G12/156/65/pdf/G1215665.pdf?OpenElement
330	Human Rights Council	Ibid	Ibid	Ibid	11. '... The Elements of Crimes under the jurisdiction of the International Criminal Court reproduced the definition of hostage-taking contained in the 1979 Hostage-Taking Convention; with an additional clarification that "the required behaviour of the third party could be a condition not only for the release of the hostage but also for the safety of the hostage".13 ...' Fn 13: Henckaerts and Doswald-Beck, supra note 10, p. 336, paraphrasing the Elements of Crimes, ICCASP/1/3(part II-B), p. 17, on Article 8 (2) (a) (viii), relating to the War crime of taking hostages.	One (rules)	Rule 96	Agreed	Yes. ICC Elements of Crimes, elements to art 8(2)(a)(viii)	Fn		Ibid
331	UNGA resolutions											
332	Human Rights Council	Resolution adopted by the General Assembly on 14 December 2012 67/93. Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts	A/RES/67/93	14.janv.13	Preamble p. 2: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on customary international humanitarian law and recent initiatives by the Committee, including the online launch of the updated study, as well as the growing number of translations into other languages of parts of the study, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	General reference to the Study in the preamble to the resolution.	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N12/484/18/pdf/N1248418.pdf?OpenElement

333	UNGA	Resolution adopted by the General Assembly on 6 December 2010 65/29. Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts	A/RES/65/29		10.janv.11	Preamble p. 2: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on customary international humanitarian law and recent initiatives by the Committee, including the online launch of the updated study, as well as the growing number of translations into other languages of parts of the study, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	main text	ibid	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/10/514/28/pdf/N1051428.pdf?OpenElement
334	UNGA	Resolution adopted by the General Assembly on 11 December 2008 63/125. Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts	A/RES/63/125		15.janv.09	Preamble p. 2: 'Welcoming the significant debate generated by the publication in 2005 of the study by the International Committee of the Red Cross on Customary International Humanitarian Law and current initiatives by the Committee to update volume II of the study, on practice, as well as the growing number of translations into other languages of parts of the study, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	ibid	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/08/478/29/pdf/N0847829.pdf?OpenElement
335	UNGA	Resolution adopted by the General Assembly on 4 December 2006	A/RES/61/30		18.déc.06	p. 2: 'Welcoming the significant debate generated by the recent publication of the study on Customary International Humanitarian Law by the International Committee of the Red Cross, and looking forward to further constructive discussion on the subject, ...'	N/A	N/A	N/A	N/A	Main text	ibid	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/06/496/23/pdf/N0649623.pdf?OpenElement
336	Reports of Commissions of Inquiry												
337	Commission on Human Rights in South Sudan	Report of the Commission on Human Rights in South Sudan	A/HRC/46/53		04.févr.21	Violations and alleged crimes: findings 45. The Commission notes with grave concern that organized militias were supplied with personnel and arms, including military grade weapons, by the SSPDF and SPLA IO. The attacks on civilians perpetrated by both government forces and armed opposition groups violated article 3 of the Geneva Conventions and provisions of Additional Protocol II, as well as customary international law, and constitute the war crimes of murder, pillage, unnecessary destruction of property and sexual violence. ³³ Fn 33: 'See articles 4 and 5 of the draft statute of the hybrid court for South Sudan. See also Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. 1: Rules (ICRC/Cambridge University Press, 2005), pp. 590–603.'	One (rules)	Rule 156	Agreed	Draft Statute of Hybrid Court for South Sudan arts 4 and 5	Fn - 'see also'		https://undocs.org/A/HRC/46/53
338	Commission on Human Rights in South Sudan	Report of the Commission on Human Rights in South Sudan	A/HRC/43/56		31.janv.20	13. 'All parties to the conflict in South Sudan are bound by the relevant rules of customary international law applicable in non-international armed conflict. ²⁸² ' Fn 282: 'ICRC, Study on Customary International Humanitarian Law, Rules 1-24.'	One (rules)	Rules 1-24	Agreed	Part of broader discussion	Fn		Ibid
339	Commission on Human Rights in South Sudan	Ibid	Ibid	Ibid		25. 'Customary international humanitarian law further prohibits arbitrary deprivation of liberty, ³⁰⁰ and requires parties to a conflict to keep a register of those deprived of their liberty, ³⁰¹ to respect detainees' family life, to permit detainees to receive visitors, and to allow correspondence between detainees and their families.' Fn 300: ICRC Rule 99. Fn 301: Ibid., at Rule 123.	One (rules)	Rules 99, 123	Agreed	Part of broader discussion	Fn		https://undocs.org/A/HRC/43/56
340	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the Independent International Commission of Inquiry on the Syrian Arab Republic	A/HRC/46/55		11.mars.21	90. 'The Government has committed war crimes on a massive scale, of murder, torture and ill-treatment, rape and sexual violence, outrages upon personal dignity, and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. ⁶⁹ ' Fn 69: 'Common article 3 of the Geneva Conventions. See also International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law, Rules 87, 89, 90, 93, 99, 100 and 156.'	One (rules)	Rules 87, 89, 90, 93, 99, 100 and 156	Agreed	Yes. Common Article 3.	Fn - 'see also'		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G21/059/73/pdf/G2105973.pdf?OpenElement

341	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the Independent International Commission of Inquiry on the Syrian Arab Republic	A/HRC/44/61	03.sept.20	<p>72. 'Concerning the attacks with cluster munitions on densely populated civilian areas, which struck the Khaled Shaar, al-Barahim and al-Izza Ibn Abdelsalam schools in Idlib city (see paras. 36–47), the Commission has reasonable grounds to believe that Government forces committed the war crime of launching indiscriminate attacks resulting in death or injury to civilians,42 which may also amount to a direct attack against civilians.43'</p> <p>Fn 42: The use of cluster munitions in densely populated areas is inherently indiscriminate (given the typically wide dispersal pattern and high dud rate) and therefore prohibited by customary international humanitarian law. See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law: Volume I – Rules (Geneva, International Committee of the Red Cross), rules 1, 7, 11, 12, 14 and 71; and the Convention on Cluster Munitions, Dublin, 30 May 2008, art. 2.</p> <p>Fn 43: International Tribunal for the Former Yugoslavia, Prosecutor v. Galić, Case No. IT-98-29-T, 5 December 2003, paras. 19 and 57; and Customary International Humanitarian Law, rules 1 and 156. See also International Tribunal for the Former Yugoslavia, Prosecutor v. Martić, Decision, Case No. IT-95-11-I, paras. 23–31.</p>	One (rules)	Rules 1, 7, 11, 12, 14, 71, 156	Agreed	Yes. Convention on Cluster Munitions art 2; ICTY Galić Judgment; ICTY Martić Judgment.	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G20/224/45/pdf/G2022445.pdf?OpenElement
342	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	<p>78. 'The mass wave of displacement that ensued from the above-mentioned attacks was therefore a foreseeable consequence of the widespread unlawful attacks by pro Government forces.48'</p> <p>Fn 48: International Tribunal for the Former Yugoslavia, Prosecutor v. Milosevic, Case No. IT-02-54-T, Decision on Motion for Judgment of Acquittal, rule 98 bis decision, 16 June 2004, para. 78; International Tribunal for the Former Yugoslavia, Prosecutor v. Stakic, Case No. IT-97-24-A, 22 March 2006, paras. 304–307; Customary International Humanitarian Law, rule 129; and Guiding Principles on Internal Displacement, principle 5.</p>	One (rules)	Rule 129	Neutral	Yes. ICTY Milosevic Rule 98bis Decision; ICTY Stakic Judgment; Guiding Principles on Internal Displacement, principle 5.	Fn	Ibid
343	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	<p>91. 'Hay'at Tahrir al-Sham also attempted to interfere with and control the delivery of humanitarian assistance, in violation of international humanitarian law.60'</p> <p>Fn 60: Customary International Humanitarian Law, rule 32.</p>	One (rules)	Rule 32	Agreed	Part of broader discussion	Fn	Ibid
344	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	<p>96. 'The Commission finds that there are reasonable grounds to believe that members of Hay'at Tahrir al-Sham committed the war crimes of murder;64 of passing sentences and carrying out executions without previous judgment pronounced by a regularly constituted court; and of cruel treatment, ill-treatment and torture.65 In instituting makeshift courts whose procedures fall far short of fair trial standards,66 Hay'at Tahrir al-Sham violated due process principles.67 Moreover, Hay'at Tahrir al-Sham also committed the war crime of pillage.68'</p> <p>Fn 65: 'Customary International Humanitarian Law, rules 90 and 156.'</p> <p>Fn 66: 'Common article 3 of the Geneva Conventions; and Customary International Humanitarian Law, rule 100. See also https://reliefweb.int/sites/reliefweb.int/files/resources/POE_Report_Full.pdf (para. 188).'</p> <p>Fn 67: 'Customary International Humanitarian Law, rule 100.'</p>	One (rules)	Rules 90, 100, 156	Agreed	Part of broader discussion	Fn	Ibid
345	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	<p>100. 'The Commission finds that there are reasonable grounds to believe that members of pro-Government forces, and in particular the twenty-fifth Special Mission Forces Division, committed the war crime of pillage70 in southern Idlib in the reporting period.'</p> <p>Fn 70: 'Customary International Humanitarian Law, rule 52.'</p>	One (rules)	Rule 52	Agreed	Part of broader discussion	Fn	Ibid

346	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the Independent International Commission of Inquiry on the Syrian Arab Republic	A/HRC/43/57	28.janv.20	25. 'Based on the evidence available, including witness testimonies, video footage, data imagery as well as reports by flight spotters, flight communication intercepts and early warning observation reports, the Commission has reasonable grounds to believe that a Russian aircraft participated in each incident described above. In both incidents, the Russian Air Force did not direct the attacks at a specific military objective, amounting to the war crime of launching indiscriminate attacks in civilian areas (see annex II for a detailed description of the attacks).11' Fn 11: 'See Jean-Marie Henckaerts and Louise Doswald Beck Customary International Humanitarian Law –Volume I: Rules (Geneva, International Committee of the Red Cross; Cambridge, United Kingdom, Cambridge University Press, 2005), rule 156.'	One (rules)	Rule 156	Agreed	Part of broader discussion	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G20/022/08/pdf/G2002208.pdf?OpenElement
347	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	35. 'Hay'at Tahrir al-Sham terrorists continued to recruit and use children to participate in hostilities,17 targeting primarily young boys who had missed years of schooling as guards or checkpoint personnel in Idlib Governorate. ...' Fn 137: See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 137.	One (rules)	Rule 137	Agreed	Part of broader discussion	Fn - 'see'	Ibid
348	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	42. 'By perpetrating acts of looting and property appropriation, armed groups under the umbrella of the Syrian National Army committed the war crime of pillaging and further violated the right to enjoyment of possessions and property.22 Moreover, the Commission finds that there are reasonable grounds to believe that members of armed groups under the umbrella of the Syrian National Army committed the war crimes of hostage-taking, cruel treatment, ill-treatment and torture.23' Fn 23: 'See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 156.'	One (rules)	Rule 156	Agreed	Part of broader discussion	Fn - 'see'	Ibid
349	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	59. 'In conducting the aforementioned acts, the Commission finds that there are reasonable grounds to believe that Syrian National Army fighters perpetrated the war crime of murder and repeatedly committed the war crime of pillaging, further seriously contravening the right to enjoyment of possessions and property. If any armed group members were shown to be acting under the effective command and control of Turkish forces, these violations may entail criminal responsibility for such commanders who knew or should have known about the crimes, or failed to take all necessary and reasonable measures to prevent or repress their commission.28' Fn 28: 'Rome Statute of the International Criminal Court, art. 28. See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 153.'	One (rules)	Rule 153	Agreed	Yes. Rome Statute art 28.	Fn - 'see also'	Ibid
350	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	61. 'In Hawl camp, women and children with familial links to ISIL suffered discrimination on the basis of their perceived affiliation with the group, in violation of international humanitarian law.29' Fn 29: See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rules 88 and 118.	One (rules)	Rules 88, 118	Agreed	Part of broader discussion	Fn - 'see'	Ibid
351	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	61. 'Interviewees described that, on occasion, access to medical care was denied by guards, or they were not allowed to accompany children to hospitals in Hasakah or Qamishli. Instances of harassment, verbal abuse and looting31 of the tents of family members of ISIL fighters by camp guards have also been documented.' Fn 31: 'See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 122.'	One (rules)	Rule 122	Agreed	Part of broader discussion	Fn - 'see'	Ibid
352	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	80. '... By imposing arbitrary restrictions on movements and denying freedom of movement, in addition to unlawfully depriving individuals of their property in previously besieged areas, including eastern Ghutah, government forces may have committed the war crime of collective punishment.41' Fn 41: 'Special Court for Sierra Leone, Prosecutor v. Fofana and Kondewa, Case No. SCSL-04-14-A, Judgment, 28 May 2008, para. 224. See also Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 103.'	One (rules)	Rule 103	Agreed	Yes. SCSL FoFana and Knodewa Judgment.	Fn - 'see also'	Ibid

353	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	C. Children 93. 'Children's lives have been scarred by the brutality of the war in the Syrian Arab Republic. Contrary to the principle of the best interests of the child, countrywide, girls and boys have been victimized in numerous ways, continuously denied the special respect and protection they are entitled to under international humanitarian and international human rights law. ⁴⁵ ' Fn 45: 'See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 135.'	One (rules)	Rule 135	Agreed	Part of broader discussion	Fn - 'see'	Ibid
354	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the Independent International Commission of Inquiry on the Syrian Arab Republic	A/HRC/42/51	15.aout.19	31. '... Launching indiscriminate attacks that result in death or injury to civilians amounts to a war crime in cases in which such attacks are conducted recklessly. ¹¹ ' Fn 11: 'For the mens rea, see, e.g., International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Prosecutor v. Stanislav Galić, Case No. IT-98-29-T, judgment of 5 December 2003, para. 54. Cf. Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law – Volume I: Rules (Geneva, International Committee of the Red Cross; Cambridge, United Kingdom, Cambridge University Press, 2005), rule 156.'	One (rules)	Rules 156	Neutral	Yes. ICTY Galić Judgment.	Fn - 'cf'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G19/243/69/pdf/G1924369.pdf?OpenElement
355	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	43. 'The foregoing attacks were characterized by indiscriminate, indirect artillery fire into densely populated civilian areas, with no apparent legitimate military objective, the effect of which terrorized the inhabitants of the countryside surrounding Hama and Aleppo. In each instance, there are reasonable grounds to believe Jaysh al-Izzah and Levant Liberation Organization militants committed the war crime of launching indiscriminate attacks resulting in the death or injury of civilians, ¹⁴ as well as the war crime of intending to terrorize civilians living under government control. ¹⁵ ' Fn 14: 'See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 156.'	One (rules)	Rule 156	Agreed	Part of broader discussion	Fn - 'see'	Ibid
356	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	82. 'In response to the influx of displaced individuals from Baghuz, SDF established temporary managed sites some 700 metres away from the front lines – in violation of international humanitarian law ²² – where escaping individuals were held with limited access to medicine and sanitary services for up to two days, pending completion of screening procedures. ...' Fn 22: 'See Henckaerts and Doswald-Beck, Customary International Humanitarian Law, rule 121, which states that "persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene".'	One (rules)	Rule 121	Agreed	Part of broader discussion	Fn - 'see'	Ibid
357	Independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory	Report of the detailed findings of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory	A/HRC/40/CRP.2	18.mars.19	3. Customary international human rights law 51. '... Thus, State authorities are obligated to respect, protect and fulfil these rights regardless of whether an apposite treaty has been ratified. While there exists no definitive list of the human rights that form part of customary international law, it is clear that arbitrary deprivation of life, freedom from discrimination, and freedom from torture, inhuman and degrading treatment form part of customary international human rights law. ⁴¹ ...' Fn 41: See among many others: Vojin Dimitrijevic, Customary Law as an Instrument for the Protection of Human Rights, Istituto per gli Studi di Politica Internazionale, 2006 (Available at https://www.ispionline.it/it/documents/wp_7_2006.pdf); M. Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, N. P. Engel, Kehl/Strasbourg/Arlington, 2005, p. 122; Y. Dinstein, "The Right to Life, Physical Integrity, and Liberty", in L. Henkin (ed.), The International Bill of Rights: The Covenant on Civil and Political Rights, Columbia University Press, New York, 1981, pp. 114-115. These human rights are also recognized as customary international humanitarian law, see ICRC Customary International Humanitarian Law Study, Rule 88 (Nondiscrimination); Rule 89 (Violence to life), Rule 90 (Torture and Cruel, Inhuman or Degrading Treatment). For additional sources on the customary nature of these rights see	One (rules)	Rule 88	Agreed	Yes. A number of academic books and articles.	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G19/085/50/pdf/G1908550.pdf?OpenElement

358	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>2. Customary international humanitarian law</p> <p>58. The ICRC, in an extensive, consultative process, has identified 161 rules of customary international humanitarian law.⁵⁵ The Commission takes note of those rules,⁵⁶ and considers the lex lata in the Geneva Conventions, the Additional Protocols and the Hague Regulations, as the corpus of the law of armed conflict, against which, where applicable, the Commission assessed the parties' conduct.'</p> <p>Fn 56: 'ICRC's Customary International Humanitarian Law Study has been cited favourably by the Israeli Supreme Court in The Public Committee against Torture in Israel, et. al. v. Government of Israel, et. al., Israeli Supreme Court, sitting as High Court of Justice, HCJ 769/02, judgment of 11 December 2005 (Hereafter Targeted Killings case), at para. 23.'</p>	One (rules)	N/A	Neutral	Yes. GCs I-IV, AP I and II, HR.	Fn	Notes in footnote that the Israeli Supreme Court cited the CIHL Study 'favourably' in the Targeted Killings Case.	Ibid
359	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>1. The relationship between IHL and IHRL</p> <p>80. '... As aptly summarized by the well-known Marten's Clause, "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience."⁸⁶</p> <p>Fn 86: 'Additional protocol I, art 1(2), also known as the Marten's Clause. For other principles of IHL see the ICRC Customary International Humanitarian Law Study, Rules 1-15.'</p>	One (rules)	Rules 1-15	Neutral	Yes. AP I art 1(2) (Martens Clause).	Fn - 'see'		Ibid
360	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>95. 'The principle of distinction requires that parties to a conflict distinguish between civilians and civilian objects on one hand, and military forces and military objectives on the other. Attacks may only be directed against the latter. In order for an object or building to be considered a military objective it must meet two cumulative criteria namely that (1) by its "nature, location, purpose or use [it] make[s] an effective contribution to military action" and, (2) the object's "total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage."¹¹⁶</p> <p>Fn 116: ICRC, Customary international humanitarian law study, Rule 9.</p>	One (rules)	Rule 9	Agreed	Part of broader discussion	Fn		Ibid
361	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>96. 'The principle of proportionality prohibits attacks that are expected to cause incidental loss of life or injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.¹¹⁷</p> <p>Fn 117: 'ICRC, Customary international humanitarian law study, Rule 14. Note that the Rome Statute requires the damage to be 'clearly excessive' in relation to the anticipated military advantage, see Elements of Crimes, Article 8 (2) (b) (iv).'</p>	One (rules)	Rule 14	Agreed	Yes. Rome Statute art 8(2)(b)(iv).	Fn		Ibid
362	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>97. 'The principle of precautions in attack requires parties to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. This includes: verifying that the target is a military objective and that the attack respects the proportionality requirement; choosing weapons and timing for the attack with a view to avoiding or minimizing civilian casualties; issuing advance warnings when feasible; and suspending any attack if it becomes apparent that it does not respect the principle of proportionality.¹¹⁸</p> <p>Fn 118: ICRC, Customary international humanitarian law study, Rules 15-21.</p>	One (rules)	Rules 15-21	Agreed	Part of broader discussion	Fn		Ibid

363	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>284. ' ... Under international law, use of tear gas is prohibited in hostilities but allowed for purposes of law enforcement.408'</p> <p>Fn 408: 'The Chemical Weapons Convention (CWC) makes a distinction between use during hostilities as a method of warfare, which is prohibited, and use for purposes of law enforcement, which is permitted, however with a preference for non-lethal, nonchemical riot control agents and subject to the principles of necessity and proportionality, CWC Articles I (5) and II (9). While Israel is not a party to the CWC, the ICRC has identified an equivalent rule (nr. 75) in its study on customary international humanitarian law.'</p>	One (rules)	Rule 75	Agreed	Yes. CWC arts I(5) and II(9).	Fn	Ibid
364	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>694. ' ... Therefore, in finding that the victims were not 'directly participating in hostilities', the Commission has reasonable grounds to believe that they were killed and injured in violation of the principle of distinction under international humanitarian law.906'</p> <p>Fn 906: ICRC Customary international humanitarian law study, Rule 7.</p>	One (rules)	Rule 7	Agreed	Part of broader discussion	Fn	Ibid
365	Independent international Commission of inquiry on the protests in the Occupied Palestinian Territory	Ibid	Ibid	Ibid	<p>2. IHL - duty to investigate</p> <p>712. ' ... Although Israel is not a party to API, there is support for the position that Article 87 reflects customary international law.925 ...'</p> <p>Fn 925: See, e.g., Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law (2005), rule 158. Numerous international instruments also state the obligation to investigate possible war crimes; See, e.g., Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature 9 December 1948, 78 UNTS 277 art. IV (entered into force 12 January 1951); Convention for the Protection of Cultural Property in the Event of Armed Conflict, opened for signature 14 May 1954, 249 UNTS 240 art. 7 (entered into force 7 August 1956); Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts arts. 15–17; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85, art. 7 (entered into force 26 June 1987); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature 13 January 1993, 1974 UNTS 45, art. VII(1) (entered into force 29 April 1997); Amended Protocol II to CCW art. 14; Convention on the</p>	One (rules)	Rule 158	Neutral	Yes. Genocide Convention art IV; Convention for the Protection of Cultural Property in the Event of Armed Conflict art 7; Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflicts arts 15-17; CAT art 7; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction art VII(1); CCW AP II art 14; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction art 9; Convention on Cluster Munitions art 9; UK Military Manual.	Fn - 'see, eg'	Ibid
366	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the Independent International Commission of Inquiry on the Syrian Arab Republic	A/HRC/40/70		<p>43. ' ... There are reasonable grounds to believe that, by attacking and abducting Druze civilians, ISIL militants committed the war crimes of making the civilian population or individual civilians, not taking a direct part in hostilities, the object of attacks,16 and hostage-taking.17 By holding women and children in inhumane conditions and executing captives, they further committed the war crimes of cruel treatment and murder.18 ...'</p> <p>Fn 16: 'See Jean-Marie Henckaerts and Louise Doswald Beck, Customary International Humanitarian Law: Volume I – Rules (Geneva, International Committee of the Red Cross (ICRC); Cambridge, United Kingdom, Cambridge University Press, 2005), rule 156.'</p> <p>Fn 17: 'See article 3 common to the Geneva Conventions of 12 August 1949; see also, Customary International Humanitarian Law, rule 156.'</p> <p>Fn 18: 'Customary International Humanitarian Law, rule 156.'</p>	One (rules)	Rule 156	Agreed	Yes. Common Article 3.	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G19/023/20/pdf/G1902320.pdf?OpenElement

367	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	57. 'The Commission notes that the mass arbitrary detention of political dissenters perpetrated by Hay'at Tahrir al-Sham terrorists constitutes a systematic attack directed against a civilian population. There are reasonable grounds to believe that Hay'at Tahrir al-Sham is perpetrating the crime against humanity of persecution on political grounds. The Commission also notes that, in instituting makeshift courts whose procedures fall far short of fair trial standards, Hay'at Tahrir al-Sham routinely violates the principles of due process ²⁴ and seriously contravenes international human rights norms.'	Fn 24: 'Customary International Humanitarian Law, rule 100.'	One (rules)	Rule 100	Agreed	Part of broader discussion	Fn	Ibid
368	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	62. 'The Commission finds that Hay'at Tahrir al-Sham continues to commit the war crime of conscripting or enlisting children under the age of 15 into its armed forces or groups, and using them to participate actively in hostilities. ²⁷	Fn 27: 'Customary International Humanitarian Law, rule 156.'	One (rules)	Rule 156	Agreed	Part of broader discussion	Fn	Ibid
369	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	71. '... The Commission finds there are reasonable grounds to believe that armed group members in Afrin committed the war crimes of hostage-taking (see paras. 64–65 above), cruel treatment, torture (see para. 66 above) and pillage (see para. 67 above). ²⁸	Fn 28: 'Customary International Humanitarian Law, rule 156.'	One (rules)	Rule 156	Agreed	Part of broader discussion	Fn	Ibid
370	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	90. '... By 13 September, and only days after the Hajin offensive commenced, up to 1,400 individuals fled bombardments and were rounded up and confined by SDF in a makeshift camp in Hajin (see para. 44 above), amounting to de facto detention from the moment of capture. The camp was established only two kilometres from the combat zone, in violation of international humanitarian law. ⁴² ...'	Fn 42: 'Customary International Humanitarian Law, rule 121, noting that "persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene".'	One (rules)	Rule 121	Agreed	Part of broader discussion	Fn	Ibid
371	Independent International Fact-Finding Mission on Myanmar	Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar	A/HRC/39/CRP.2	17.sept.18	61. 'Furthermore, parties to armed conflicts must, at all times, abide by the principles of distinction, proportionality and precautions in attack. ⁶⁴	Fn 64: 'See J.M. Henckaerts and L. Doswald-Beck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 1-24. (hereafter ICRC/Customary IHL).'	One (rules)	Rules 1-24	Agreed	Part of broader discussion	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE N/G18/277/04/pdf/G1827704.pdf?OpenElement
372	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	(a) Legal framework 117. 'During armed conflict, international humanitarian law applies alongside international human rights law. The key purpose of international humanitarian law is to protect the victims of armed conflicts and to regulate hostilities, in an effort to limit the humanitarian consequences of armed conflicts. ¹⁵⁶ It restricts the means and methods of warfare that parties to a conflict may employ and endeavours to ensure the protection and humane treatment of persons who are not, or no longer, taking a direct part in the hostilities. The cornerstone of international humanitarian law is the principle of distinction: the parties to the conflict must at all times distinguish between civilians and combatants (fighters) and between civilian objects and military objectives. ¹⁵⁷ Attacks may therefore only be directed against combatants (fighters) and never against civilians. A corollary of the principle of distinction is the duty of parties to the conflict to avoid or, in any event, minimize the infliction of incidental death, injury and destruction on persons or objects protected against direct attack. This is the principle of precaution: in the conduct of hostilities "constant care shall be taken to spare the civilian population, civilians and civilian objects". ¹⁵⁸ This requirement applies to the attacking party and the party that is attacked. ¹⁵⁹ A third cardinal principle of international humanitarian law is the principle of proportionality. This		One (rules)	Rules 1, 7, 14, 15, 22	Agreed	Part of broader discussion	Fn	Ibid

373	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	118. 'It flows from the above that direct attacks against civilians are absolutely prohibited and so are acts or threats of violence the primary purpose of which is to spread terror among the civilian population.161 ...' Fn 161: ICRC/Customary IHL, rules 1 and 2.	One (rules)	Rules 1, 2	Agreed	Part of broader discussion	Fn	Ibid
374	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	118. '... Indiscriminate attacks are also prohibited. These are attacks of a nature to strike military objectives and civilians or civilian objects without distinction because: (1) they are not directed at a specific military objective, (2) they employ a method or means of combat which cannot be directed at a specific military objective, or (3) they employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law.162' Fn 162: ICRC/Customary IHL, rule 12.	One (rules)	Rule 12	Agreed	Part of broader discussion	Fn	Ibid
375	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	126. 'On many occasions, the Tatmadaw launched attacks on villages under the apparent assumption that fighters of EAOs were present at such locations but without seemingly making any efforts to establish this ahead of initiating the attack or further assessing it in the course of the attack. This is in violation of the rule that parties to the conflict must do everything feasible to verify that targets are military objectives.175 ...' Fn 175: ICRC/Customary IHL, rule 16.	One (rules)	Rule 160	Agreed	Part of broader discussion	Fn	Ibid
376	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	141. 'Life is also protected under international humanitarian law. Common article 3 of the Geneva Conventions prohibits "violence to life and person, in particular murder of all kinds" of civilians and persons hors de combat. A person hors de combat is anyone who is in the power of an opposing party; who is defenseless because of unconsciousness or injury; or who clearly expresses an intention to surrender.202 ...' Fn 202: ICRC/Customary IHL, rule 47.	One (rules)	Rule 47	Agreed	Part of broader discussion	Fn	Ibid
377	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	3. Torture and other ill-treatment (a) Legal framework 161. 'Torture and cruel, inhuman and degrading treatment are prohibited under international human rights law246 and under international humanitarian law.247' Fn 247: 'Common Article 3 of the Geneva Conventions prohibits "cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment" of civilians and persons hors de combat. See also ICRC/Customary IHL, rule 90.'	One (rules)	Rule 90	Agreed	Part of broader discussion	Fn	Ibid
378	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	191. 'Rape and other forms of sexual violence are also prohibited under international humanitarian law.323 ...' Fn 323: 'See Common art. 3 of the Geneva Conventions (prohibiting "violence to life and person" including cruel treatment and torture and "outrages upon personal dignity"), and ICRC/Customary IHL, rule 93.'	One (rules)	Rule 93	Agreed	Yes. Common Article 3.	Fn	Ibid
379	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	222. 'Arbitrary deprivation of liberty is also prohibited under international humanitarian law.382 ...' Fn 382: See common art. 3 of the Geneva Conventions, requiring that all civilians and persons hors de combat are treated humanely. Arbitrary detention is considered incompatible with this requirement. See also ICRC/Customary IHL, rule 99.	One (rules)	Rule 99	Agreed	Yes. Common Article 3.	Fn	Ibid
380	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	225. 'The prohibition of enforced disappearances is a norm of peremptory law (jus cogens). Enforced disappearances violate the right to liberty and security of the person and violate or constitute a grave threat to the right to life, along with several other rights. International humanitarian law also prohibits enforced disappearances.388 ...' Fn 388: ICRC/Customary IHL, rules 98 and 150.	One (rules)	Rules 98, 150	Agreed	Part of broader discussion	Fn	Ibid

					7. Forced displacement, confiscation and destruction of property, and denial of humanitarian assistance (a) Legal framework 275. 'It is a violation of international humanitarian law for a party to a non-international armed conflict to order the displacement of the civilian population, in whole or in part, unless an evacuation is required to protect the security of the civilians involved or because of imperative military reasons.574 ...'									
381	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	Fn 574: ICRC/Customary IHL, rule 129B. 275. '... Parties to a conflict also have a duty to ensure respect for their obligations under international law so as to prevent displacement caused by their own acts.576 ...'	One (rules)	Rule 129(B)	Agreed	Part of broader discussion	Fn			Ibid	
382	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	576: 'Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 5. See also, ICRC/Customary IHL, rule 129.'	One (rules)	Rule 129	Agreed	Yes. Guiding Principles on Internal Displacement, principle 5.	Fn - 'see also'			Ibid	
383	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	276. 'Even if ordering an evacuation is justified because relocation is necessary to clear a combat zone, the party responsible for the transfer or evacuation must ensure, to the greatest practicable extent, proper accommodation for the protected persons and "satisfactory conditions of hygiene, health, safety and nutrition".578' 578: ICRC/Customary IHL, rule 131.	One (rules)	Rule 131	Agreed	Part of broader discussion	Fn			Ibid	
384	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	277. 'It is a violation of international humanitarian law if a party to the armed conflict, in the context of and associated with the conflict: (i) destroys or seizes property of an adversary, unless the destruction or seizure is required by imperative military necessity579; (ii) attacks civilian objects, unless and for such time as they are military objectives580; (iii) appropriates a town or village's property for personal use (pillaging)581; or (iv) fails to respect the property of displaced persons, including failing to protect against destruction or the arbitrary and illegal appropriation, occupation or use of property or possessions left behind.582 ...' Fn 579: ICRC/Customary IHL, rule 50. Fn 580: ICRC/Customary IHL, rule 10. Fn 581: ICRC/Customary IHL, rule 52. Fn 582: ICRC/Customary IHL, rule 133; Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 21(3).	One (rules)	Rules 10, 50, 52	Agreed	Yes. Guiding Principles on Internal Displacement, principle 21(3).	Fn				Ibid
385	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	278. 'Under international humanitarian law, parties to armed conflicts are required to allow and facilitate rapid and unimpeded humanitarian relief for civilians in need, and are in breach when they: (i) impede access of humanitarian relief to civilians; or (ii) arbitrarily deny consent to enable humanitarian relief operations; or (iii) restrict freedom of movement of humanitarian relief personnel, other than temporarily when it is required by imperative military necessity.584' Fn 584: ICRC/Customary IHL, rule 55 and 56.	One (rules)	Rules 55, 56	Agreed	Part of broader discussion	Fn			Ibid	
386	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	319. '... The placing of this group of civilian detainees in the line of fire is a clear example of the Tatmadaw not taking all feasible precautions to protect the civilian population under their control against the effects of attacks, one of the fundamental principles of international humanitarian law.695 In this instance, it may also amount to the prohibited use of human shields.696' Fn 695: ICRC/Customary IHL, rule 22. Fn 696: ICRC/Customary IHL, rule 97. The use of human shields is defined as using the presence (or movements) of civilians or other protected persons to render certain points or areas (or military forces) immune from military operations.	One (rules)	Rules 22, 97	Agreed	Part of broader discussion	Fn			Ibid	
387	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	327. '... As for States, the (voluntary) recruitment of children into a non-State armed group is prohibited.714 ...' Fn 714: 'ICRC/Customary IHL, rule 136. See also CRC, art. 38.'	One (rules)	Rule 136	Agreed	Yes. CRC art 38.	Fn			Ibid	

388	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	1567. 'This includes a duty to investigate, prosecute and punish gross human rights violations and serious violations of international humanitarian law, in particular where they amount to crimes under international law.3287' Fn 3287: 'E.g. A/HRC/27/56, para. 27. See also e.g. Genocide Convention, art. 1; U.N. Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13); J.M. Henckaerts and L. DoswaldBeck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 150, 158 (hereinafter "ICRC/Customary IHL"); Basic Principles and Guidelines on the Right to a Remedy and Reparation (principles 1-5); and the Principles to Combat Impunity.'	One (rules)	Rules 150, 158	Agreed	Yes. Genocide Convention art 1; HRC General Comment 31; Basic Principles and Guidelines on the Right to a Remedy and Reparation, principles 1-5; Principles to Combat Impunity.	Fn	Ibid
389	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	1454: 'The forced displacement must, however, be unlawful under international law and not justified, for example, by reasons of security or military necessity.3147' Fn 3147: 'Article 49 of Geneva Convention IV Relative to the Protection of Civilians; ICRC/Customary IHL, rule 129.'	One (rules)	Rule 129	Agreed	Yes. GC IV art 49.	Fn	Ibid
390	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	1489: 'Nor is there any indication that this mass displacement of an entire geographical region was justified under international law by, for example, security or military necessity.3204' Fn 3204: Article 49 of Geneva Convention IV Relative to the Protection of Civilians. See also ICRC/Customary IHL, rule 129.	One (rules)	Rule 129	Agreed	Yes. GC IV art 49.	Fn	Ibid
391	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	1567. '... This includes a duty to investigate, prosecute and punish gross human rights violations and serious violations of international humanitarian law, in particular where they amount to crimes under international law.3287 ...' Fn 3287: E.g. A/HRC/27/56, para. 27. See also e.g. Genocide Convention, art. 1; U.N. Human Rights Committee, General Comment No. 31 (CCPR/C/21/Rev.1/Add.13); J.M. Henckaerts and L. DoswaldBeck, "Customary International Humanitarian Law. Volume I: Rules" (Cambridge, ICRC/Cambridge University Press, 2005), rules 150, 158 (hereinafter "ICRC/Customary IHL"); Basic Principles and Guidelines on the Right to a Remedy and Reparation (principles 1-5); and the Principles to Combat Impunity.'	One (rules)	Rules 150, 158	Agreed	Yes. Genocide Convention art 1; HRC General Comment 31; Basic Principles and Guidelines on the Right to a Remedy and Reparation, principles 1-5; Principles to Combat Impunity.	Fn	Ibid
392	Independent International Fact-Finding Mission on Myanmar	Ibid	Ibid	Ibid	1569. '... Additionally, in the event of death or disappearance, victims' families have the right to know the truth about the circumstances in which violations took place and the victims' fate.3300 ...' Fn 3300: 'Principles to Combat Impunity, principle 4. This right finds its roots in international humanitarian law, see ICRC/Customary IHL, rule 117.'	One (rules)	Rule 117	Agreed	Yes. Principles to Combat Impunity, principle 4.	Fn	Ibid
393	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the Independent International Commission of Inquiry on the Syrian Arab Republic	A/HRC/34/64	02.févr.17	D. International humanitarian law 6. 'Throughout the reporting period, IHL remained binding on all warring parties.7 Its applicability had been triggered when hostilities met the threshold criteria of "armed conflict."8 IHL comprises the four Geneva Conventions of 12 August 1949 as well as its Protocols I and II and an array of other instruments and customary principles that protect civilians and other categories of persons from deliberate targeting and seek to limit the effects of armed conflict on the most vulnerable.9' Fn 9: 'One repository of the principles of customary IHL can be accessed in Customary International Humanitarian Law (3 vols.), by Jean-Marie Henckaerts and Louise Doswald Beck for the International Committee of the Red Cross, (Cambridge, Cambridge University Press, 2005) (ICRC Study).'	Both	N/A	Neutral	N/A	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G17/026/63/pdf/G1702663.pdf?OpenElement

394	Independent International Commission of Inquiry on the Syrian Arab Republic	Ibid	Ibid	Ibid	The right to water 12. '... Intentionally attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of a besieged civilian population, including water stations, is prohibited under IHL.17' Fn 17: 'International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Volume I: Rules [hereinafter "ICRC Rule"]', at Rule 54.'	One (rules)	Rule 54	Agreed	Part of broader discussion	Fn		Ibid
395	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	A/HRC/29/CRP.4	24.juin.15	33. '... The commission recognizes the complexity of determining customary rules of international law and therefore referred to analyses of custom by international tribunals as well as to the Study on Customary International Humanitarian Law,23 the contents of which it considers as indicative of the existence of customary norms.24' Fn 23: 'Jean Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Cambridge, 2006. The rules and the updated related practice are now available on the ICRC Database on customary international humanitarian law, to which this report will refer to.'	One (rules)	N/A	Neutral	N/A	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE N/G15/132/95/pdf/G1513295.pdf?OpenElement
396	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	36. '... State practice since the adoption of the Geneva Conventions has also made clear that the obligations of common Article 1 are not limited only to those states involved in an armed conflict;28 rather all States "must exert their influence, to the degree possible, to stop violations of international humanitarian law."29' Fn 29: ICRC, Database on customary international humanitarian law, Rule 144.	Database	Rule 144	Agreed	Part of broader discussion	Fn	Cites to the database rather than the Study.	Ibid
397	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	37. 'Main principles on the conduct of hostilities: - The principle of distinction requires that parties to a conflict distinguish between civilians and civilian objects on the one hand, and combatants30 and military objectives on the other. Attacks may only be directed against the latter. In order for an object or building to be considered a military objective it must meet two cumulative criteria namely that (1) by its "nature, location, purpose or use [it] make[s] an effective contribution to military action" and, (2) the object's "total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage."31' Fn 31: Article 52(2) Additional Protocol I. ICRC, Database on customary international humanitarian law, Rule 9.	Database	Rule 9	Agreed	Part of broader discussion	Fn	ibid	Ibid
398	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	37. ' - The principle of proportionality prohibits attacks that are expected to cause incidental loss of life or injury to civilians or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.32' Fn 32: 'Articles 51(5) and 57(2) Additional Protocol I. ICRC, Database on customary international humanitarian law, Rule 14.'	Database	Rule 14	Agreed	Yes. AP I arts 51(5), 57(2).	Fn	ibid	Ibid
399	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	37. ' - The principle of precautions in attack requires all parties to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. This includes: verifying that the target is a military objective and that the attack respects the proportionality requirement; choosing weapons and timing for the attack with a view to avoiding or minimizing civilian casualties; issuing advance warnings when feasible; and suspending an attack if it becomes apparent that it does not respect the principle of proportionality.33' Fn 33: 'Article 57 Additional Protocol I. ICRC, Database on customary international humanitarian law, Rules 15-21.'	Database	Rules 15-21	Agreed	Yes. AP I art 57.	Fn	ibid	Ibid
400	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	51. 'Individuals are criminally responsible if they commit, attempt to commit, plan, order, or instigate war crimes. Persons are also liable for a crime if they aid, abet or otherwise assist or facilitate the commission of a crime.59 ...' Fn 59: 'Article 25 Rome Statute of the ICC, article 7(1) of the Statute of the ICTY and article 6(1) of the Statute of the ICTR. See also ICRC, Database on Customary International Humanitarian Law, Rule 151.'	Database	Rule 151	Agreed	Yes. Rome Statute art 25; ICTY Statute art 7(1); ICTR Statute art 6(1).	Fn	ibid	Ibid

401	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>51. '... A military commander or another superior is not only individually responsible for crimes he may have ordered or instigated, but also for those crimes committed by forces under his command or effective control, when he knew or should have known that such acts were being or were about to be committed and failed to take all necessary measures to prevent, punish or report the perpetrators of these acts.60'</p> <p>Fn 60: 'Article 28 Rome Statute of the ICC, article 7(2) of the Statute of the ICTY and article 6(2) of the Statute of the ICTR. See also ICRC, Database on Customary International Humanitarian Law, Rule 152.'</p>	Database	Rule 152	Agreed	Yes. Rome Statute art 28; ICTY Statute art 7(2); ICTR Statute art 6(2).	Fn	ibid	Ibid
402	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>94. 'The customary rule of international humanitarian law reflected in article 57(3) of Additional Protocol I,147 provides that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit." ...'</p> <p>Fn 147: 'ICRC, Database on customary international humanitarian law, Rule 20.'</p>	Database	Rule 20	Agreed	Part of broader discussion	Fn	ibid	Ibid
403	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>97. '... Such rockets cannot be directed at a specific military objective and therefore strikes employing these weapons constitute indiscriminate attacks in violation of the customary rule reflected in article 51(4) of Additional Protocol I.151 ...'</p> <p>Fn 151: ICRC, Database on customary international humanitarian law, Rule 12.</p>	Database	Rule 12	Agreed	Part of broader discussion	Fn	ibid	Ibid
404	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>99. 'Given the apparent absence of any possible military advantage, and statements by Palestinian armed groups that they intended to hit Israeli cities, the commission cannot exclude the possibility that the indiscriminate rocket attacks may constitute acts of violence whose primary purpose is to spread terror amongst the civilian population, in violation of the customary rule reflected in article 51(2) of Additional Protocol I and article 13(2) of Additional Protocol II.155</p> <p>Fn 155: 'ICRC, Database on customary international humanitarian law, Rule 2. While not listed as a war crime in the Rome Statute of the ICC, the Appeals Chamber of the ICTY found that "customary international law imposed individual criminal liability for violations of the prohibition of terror against the civilian population." Prosecutor v. Galic, case No. IT-98-29-A, Judgement, 30 November 2006.'</p>	Database	Rule 20	Agreed	Yes. ICTY Galić Judgment.	Fn	ibid	Ibid
405	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>102. 'Therefore, the use of such weapons with wide area effects by Palestinian armed groups against targets located in Israeli towns and villages, and the possible indiscriminate effects, are likely to constitute a violation of the prohibition of indiscriminate attacks.159'</p> <p>Fn 159: Article 51(4) Additional Protocol I. ICRC, Database on customary international humanitarian law, Rule 11.</p>	Database	Rule 11	Agreed	Yes. AP I art 51(4).	Fn	ibid	Ibid
406	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>103. 'The use of mortars against military objectives located in populated areas also raises concerns with regard to the principle of precaution in attack. Indeed parties to the conflict must take all feasible precautions in the choice of weapons with a view to avoiding or at least to minimizing incidental civilian loss of life.160'</p> <p>Fn 160: Article 57 Additional Protocol I. ICRC, Database on customary international humanitarian law, Rule 17.</p>	Database	Rule 17	Agreed	Yes. AP I art 57.	Fn	ibid	Ibid
407	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	<p>Timing</p> <p>232. '... International humanitarian law requires that all feasible precautions must be taken to avoid or at least to minimize incidental loss of life and damage to civilian objects. This includes the choice of the timing of the attack.437 ...'</p> <p>Fn 437: AP I, article 57(3). AP II article 13(1). ICRC, Database customary international humanitarian law, Rule 17.</p>	Database	Rule 17	Agreed	Yes. Ap I art 57(3); AP II art 13(1).	Fn	ibid	Ibid

408	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	Warnings and their effectiveness 235. ' ... According to State practice, warnings are not required when attacks necessitate the element of surprise, when they would put the security of the attacking forces at risk, or when speedy responses are needed.441' Fn 441: Jean Marie Henckaerts and Louise Doswal-Beck, Customary International Humanitarian Law, Cambridge, 2006, p. 64.	Database	Rule 20	Agreed	Part of broader discussion	Fn	ibid	Ibid
409	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	Legal Analysis ... 337. ' ... This would be in violation of the prohibition of indiscriminate attacks, found in customary international law and reflected in article 51(5) of Additional Protocol I.591 ...' Fn 591: International Committee of the Red Cross, Customary International Humanitarian Law Database, Rule 13.	Database	Rule 13	Agreed	Part of broader discussion	Fn	ibid	Ibid
410	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	346. ' ... These incidents also raise concerns that in two of the cases, the IDF may have violated the obligation to hold persons deprived of their liberty in premises that are removed from the combat zone,601 when detaining them for several days. The tasks the victims were ordered to perform by the soldiers jeopardized their lives and health. ...' Fn 601: ICRC, Database customary international humanitarian law, rule 121.	Database	Rule 121	Agreed	Part of broader discussion	Fn	ibid	Ibid
411	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	402. ' ... The customary rule of international humanitarian law reflected in article 57(3) of Additional Protocol I,677 provides that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit." ...' Fn 677: ICRC, Database Customary International Humanitarian Law, Rule 20.	Database	Rule 20	Agreed	Part of broader discussion	Fn	ibid	Ibid
412	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	454. ' ... The commission notes that the electricity infrastructure servicing the civilian population constitutes a civilian object,786 which is protected from attack unless it makes an effective contribution to military action, and its destruction offers a definite military advantage.787 ...' Fn 787: ICRC, Database Customary International Humanitarian law, rules 7 and 8. See also article 51(2) Additional Protocol I.	Database	Rules 7, 8	Agreed	Yes. AP I art 51(2).	Fn	ibid	Ibid
413	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	454. ' ... These objects are also protected by the customary law rule prohibiting parties to a conflict from attacking, destroying or rendering useless objects indispensable to the survival of the civilian population.788 Deliberate targeting of such objects would be in violation of this prohibition.789 ...' Fn 788: ICRC, Database Customary International Humanitarian law, rule 54. Fn 789: The prohibition contained in IHL treaty law (article 54(2) of Additional Protocol I, and article 14 of Additional Protocol II) requires that the attack be for the specific purpose of denying them their sustenance value. However, most State practice with regards to this rule does not seem to require this purpose. See: ICRC, Customary International Humanitarian Law, Volume I: Rules, p. 190.	Database	Rule 54	Agreed	Yes. AP I art 54(2); AP II art 14.	Fn	ibid	Ibid
414	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	473. 'International humanitarian law prescribes that parties to the conflict should take all feasible precautions to protect the civilian population and civilian objects under their control from the effects of attacks and to the maximum extent feasible avoid locating military objectives within or near densely populated areas.821 ...' Fn 821. 'These customary rules (see ICRC, Database on Customary international humanitarian law, Rules 22 and 23) are reflected in article 58 of Additional Protocol I. Article 13 of Additional Protocol II expresses the principle that the "civilian population shall enjoy general protection against the dangers arising from military operations."	Database	Rules 22, 23	Agreed	Yes. AP I art 58; AP II art 13.	Fn	ibid	Ibid

415	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	475. 'As mentioned by Ms. Sharvit-Baruch, in a number of instances, Palestinian armed groups appear to have conducted military operations within or in close proximity to sites benefiting from special protection under international humanitarian law, such as hospitals, shelters and places dedicated to religion and education.824 ...' Fn 824: ICRC, Database on Customary international humanitarian law, Rules 28, 29, 35 and 38	Database	Rules 28, 29, 35, 38	Agreed	Part of broader discussion	Fn	ibid	Ibid
416	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	480. '... Article 7 of Protocol II to the Convention prohibiting Certain Conventional Weapons,838 which reflects customary international law,839 prohibits attaching or associating a boobytrap with an object entitled to special protection. Therefore the booby trapping of a medical clinic would constitute a violation of international humanitarian law.' Fn 839: ICRC, Database on Customary international humanitarian law, Rule 80.	Database	Rule 80	Agreed	Part of broader discussion	Fn	ibid	Ibid
417	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	482. '... While the commission cannot conclude that in making these declarations the authorities in Gaza had the specific intent to use the presence of civilians to protect Palestinian armed groups from attack, the declarations are a clear indication that the authorities in Gaza did not take all the necessary precautions to protect the civilian population under its control as required by international humanitarian law.844' Fn 844: Article 58, Additional Protocol I. ICRC, Database on Customary international humanitarian law, Rule 22.	Database	Rule 22	Agreed	Part of broader discussion	Fn	ibid	Ibid
418	Independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1	Ibid	Ibid	Ibid	603. '... International humanitarian law holds commanders and other superiors criminally responsible for war crimes committed by their subordinates if they "did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible."1118 ...' Fn 1118: ICRC, Database Customary International Humanitarian Law, Rule 153.	Database	Rule 153	Agreed	Part of broader discussion	Fn	ibid	Ibid
419	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the independent international commission of inquiry on the Syrian Arab Republic	A/HRC/22/59	05.févr.13	Findings ... 21. 'With respect to the internally displaced persons who lived there, customary international humanitarian law, obliges the parties to a conflict to prevent displacement caused by their own acts. Further, under customary law, displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.c ...' Fn c: Rule 132. Return of Displaced Persons. ICRC Customary Law Study.	One (rules)	Rule 132	Agreed	Part of broader discussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE N/G13/106/27/pdf/G1310627.pdf?OpenElement
420	Independent International Commission of Inquiry on the Syrian Arab Republic	Report of the independent international commission of inquiry on the Syrian Arab Republic	A/HRC/21/50	16.août.12	IV. International humanitarian law 11. 'International humanitarian law (IHL), also known as the law of armed conflict, is binding on all parties to a conflict.9 Its applicability is triggered whenever hostilities meet the threshold criteria of —armed conflict, and applies irrespective of whether any party involved has in fact declared war. IHL comprises the four Geneva Conventions of 12 August 1949 as well as its Protocols I and II and an array of other instruments and customary principles that protect those most vulnerable to the effects of armed conflict.10' Fn 10: One repository of the principles of customary IHL can be accessed in Customary International Humanitarian Law (3 vols.), by Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, (Cambridge, Cambridge University Press, 2005) (ICRC Study).	Both	N/A	Neutral	N/A	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE N/G12/160/66/pdf/G1216066.pdf?OpenElement

421	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	A/HRC/17/44	12.janv.12	64. 'In relation to the non-international armed conflict which developed in Libya, of particular significance are the provisions of Protocol II together with the provisions of common article 3 of the Geneva Conventions ("common article 3"). The parties to the conflict are also bound by the provisions of customary international humanitarian law. ⁵⁴ ' Fn 54: See Jean-Marie Henckaerts and Louise Doswald Beck, eds., for the International Committee of the Red Cross, Customary International Humanitarian Law, 2 vols. (Cambridge, ICRC and Cambridge University Press, 2005) (henceforth the ICRC Study on Customary International Humanitarian Law).'	Both	N/A	Agreed	Part of broader discussion	Fn	https://digitallibrary.un.org/record/720257?ln=en
422	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	93. 'Under international humanitarian law, persons taking no active part in the hostilities are entitled to be treated humanely (art. 4, para. 1, of Protocol II, and common article 3). Customary international humanitarian law rules also include a prohibition on arbitrary deprivation of liberty ⁷⁵ and require parties to the conflict to keep a register of persons deprived of their liberty, ⁷⁶ respect detainees' family life, permit detainees to receive visitors, especially near relatives to the degree practicable ⁷⁷ and allow correspondence between detainees and their families. ⁷⁸ Parties to a conflict must take all feasible measure to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information the party has on their fate. ⁷⁹ The practice of enforced disappearance also may be a gateway to other violations such as torture, murder or extra judicial executions. The combined effect of particular international humanitarian law obligations leads to the conclusion that the practice of disappearance is prohibited by customary international humanitarian law. ⁸⁰ ' Fn 75: Rule 99, ICRC Study on Customary International Humanitarian Law, p. 344. Fn 76: Rule 123, ICRC Study on Customary International Humanitarian Law, p. 439.	One (rules)	Rules 99, 123	Agreed	Part of broader discussion	Fn	Ibid
423	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	131. '... Under international humanitarian law, journalists are civilians and thus entitled to the range of protections for civilian personnel, ⁹¹ as underlined in Security Council resolution 1378 (2001). While the Rome Statute does not refer specifically to attacks against journalists, particular actions can be considered within the existing framework of war crimes and crimes against humanity.' Fn 91: See rule 34, ICRC Study on Customary International Humanitarian Law, p 115.	One (rules)	Rule 34	Agreed	Part of broader discussion	Fn	Ibid
424	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	2. Applicable law 146. In times of armed conflict, international humanitarian law is the <i>lex specialis</i> . International humanitarian law prohibits the intentional targeting of civilians ¹¹¹ and indiscriminate attack on civilians. ¹¹² Forces are to distinguish between civilian and military persons. ¹¹³ Forces must also distinguish between civilian and military objects. Deliberate attacks on civilian objects are prohibited. The notion of "civilian objects" embraces all objects (e.g. houses, private dwellings, orchards, schools, shelters, hospitals, churches, mosques, synagogues, museums and works of art) that neither serve nor are used for military purposes. Attacks on places where both civilian and combatants may be found are prohibited if they are not directed at a specific military objective or if they use methods or means of combat which cannot be directed at a specific military objective. It is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the anticipated concrete and direct military advantage. ¹¹⁴ ' Fn 112: See rule 11, ICRC Study on Customary International Humanitarian Law, p. 37.	One (rules)	Rule 11	Agreed	Part of broader discussion	Fn	Ibid

425	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	147.' ... (e) When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.115' Fn 115: See rules 15–21, ICRC Study on Customary International Humanitarian Law, pp. 51–67.	One (rules)	Rules 15-21	Agreed	Part of broader discussion	Fn	Ibid
426	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	148. 'International humanitarian law also incorporates specific protections for persons or objects. Of particular relevance in the current conflict are the following rules. It is prohibited to commit an act of hostility directed against historic monuments, works or art or places of worship which constitute the cultural or spiritual heritage of peoples (art. 16 of Protocol II). Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of the civilian population is prohibited (article 14 of the Protocol II). Sieges must still allow for vital foodstuffs and other essential supplies to be delivered to the civilian population.116 Parties to a conflict are obliged to allow and facilitate the unimpeded passage of humanitarian relief for civilians in need.117 Humanitarian relief personnel must be respected and protected as well as objects used for humanitarian relief operations.118' Fn 116: While sieges to achieve a military objective are permitted, sieges that cause starvation are not (see article 14 of Protocol II). The passage of foodstuffs and other essential supplies must be permitted: see rules 53 and 55 of the ICRC Study on Customary International Humanitarian Law, pp. 186 and 193. Fn 117: See rule 55 of the ICRC Study on Customary International Humanitarian Law, p. 193.	One (rules)	Rules 31, 32, 53, 55	Agreed	Yes. AP II art 14; Rome Statute art 8(2)(e)(iii).	Fn	Ibid
427	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	G. Prohibited weapons ... 2. Applicable law 172. International humanitarian law prohibits the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.142 As the ICRC publication Customary International Humanitarian Law highlights, there are differing views as to whether this rule renders a weapon illegal or whether a weapon is illegal only if a specific treaty or customary rule prohibits its use (p. 242). The International Court of Justice in the Nuclear Weapons case, however, undertook its analysis on the basis of the rule itself,143 without requiring treaty law and this approach has been adopted by the Commission here. Other rules of general application in this area include the prohibition of the use of weapons which are by their nature indiscriminate, arising out of the duty to direct hostilities to legitimate military objectives.' Fn 142: See rule 70, ICRC Study on Customary International Humanitarian Law, p. 237. Fn 143: Advisory Opinion on the Legality of the Threat or Use	One (rules)	Rule 70	Agreed	Yes. Nuclear Weapons Advisory Opinion.	Fn	Ibid

					173. 'As noted in paragraph 63 of the present report, Libya has ratified certain weapons conventions, but is not a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1977, or to the Convention on Cluster Munitions, 2008. The general norms from customary international humanitarian law must thus be applied to these situations. In addition to the general principles noted above, there are some other specific rules of customary international humanitarian law relating to for instance, landmines (requiring particular care to minimize their indiscriminate effects), ¹⁴⁴ and expanding bullets. ¹⁴⁵ '								
428	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	Fn 144: See rule 81, ICRC Study on Customary International Humanitarian Law. Where landmines are used, particular care must be taken to minimize their indiscriminate effects. Fn 145: Rule 77 of the ICRC Study on Customary International Humanitarian Law states that the use of bullets which expand or flatten easily in the body is prohibited in both international and noninternational armed conflict. In 2010, the Rome Statute was amended to include article 8, paragraph 2 (e) (xv), specifically prohibiting the use of "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". This amendment is not yet in	One (rules)	Rules 77, 81	Agreed	Yes. Rome Statute art 8(2)(e)(xv).	Fn			Ibid
429	International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya	Ibid	Ibid	Ibid	176. 'Mines: The Commission notes the rule of customary international humanitarian law requiring that where landmines are used, particular care must be taken to minimize their indiscriminate effects. ¹⁴⁸ ...' Fn 148: Rule 81, ICRC Study on Customary International Humanitarian Law.	One (rules)	Rule 81	Agreed	Part of broader discussion	Fn			Ibid
430	Commission of Inquiry into Nepal	Nepal Conflict Report 2012 An analysis of conflict-related violations of international human rights law and international humanitarian law between February 1996 and 21 November 2006	Not a formal UN publication.	01.janv.12	p. 17: 'International Humanitarian Law Other obligations incumbent on parties to a conflict are those under customary international law, including the obligation to distinguish at all times between civilians and combatants and target only the latter; to refrain from indiscriminate attacks; ¹¹ to forego any offensive where the incidental damage expected "is excessive in relation to the concrete and direct military advantage anticipated"; ¹² and to take all feasible precautions to minimize incidental loss of civilian life and injury to civilians. ¹³ The Principle of Humanity requires that civilians and those who are hors de combat must be treated humanely, meaning that abuses of such persons, such as killing, torture, rape, mutilation, beatings and humiliation are prohibited. Violations of these rules may constitute violations of the laws and customs of war, and trigger individual criminal responsibility.' Fn 11: Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, Customary International Humanitarian Law (3 vols.), (Cambridge, Cambridge University Press, 2005). Fn 12: International Committee of Red Cross, Customary International Humanitarian Law, rule 14 (see endnote 11).	Both	Rules 14, 97	Agreed	Part of broader discussion	Fn			https://www.ohchr.org/Do cuments/Countries/NP/OH CHR_Nepal_Conflict_Report2012.pdf
431	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	p. 64" 'The parties to the conflict are also bound by the provisions of customary international law. ¹²⁹ ...' Fn 129: Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, Customary International Humanitarian Law (3 vols.), (Cambridge, Cambridge University Press, 2005).	Both	N/A	Agreed	Part of broader discussion	Fn			Ibid
432	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	p. 65: 'Proportionality: A party is required to forego any offensive where the incidental damage expected "is excessive in relation to the concrete and direct military advantage anticipated." ¹³⁰ ' Fn 130: See International Committee of Red Cross, Customary International Humanitarian Law, rule 14 (see footnote 129).	Both	Rule 14	Agreed	Part of broader discussion	Fn			Ibid

433	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 65: 'Precautions in Attack (and Against Effects): Prior to any attack, all feasible precautions must be taken to ensure that the subject of the attack are legitimate military objectives, and to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Where a civilian population is reasonably expected to be affected by the attack, "effective advance warning" must be given to the civilian population unless the prevailing circumstances do not allow such a warning. Further, parties must take "all feasible precautions" to protect those civilian populations under their control from the effects of an attack by the opponent. Each party must avoid locating objects that could be considered "legitimate military objectives" in populated areas. Similarly, the use of human shields to protect certain objects or individuals is prohibited.¹³¹'</p> <p>Fn 131: International Committee of Red Cross, Customary International Humanitarian Law, rule 97, which is derived in part from the IHL obligation upon states to protect life (see footnote 129).</p>	Both	Rule 97	Agreed	Part of broader discussion	Fn	Ibid
434	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 66: 'It is now broadly regarded as a customary international legal obligation to investigate and punish alleged perpetrators of IHL violations – in either international or non-international armed conflicts.¹⁴¹'</p> <p>Fn 141: International Committee for the Red Cross, Customary International Humanitarian Law, rule 158 (see footnote 129).</p>	Both	Rule 158	Agreed	Part of broader discussion	Fn	Ibid
435	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 71: '... This is clearly set out in article 38 of the Convention on the Rights of the Child, to which Nepal became a signatory in 1990, as well as a number of other international instruments, and is deemed to be part of international customary law.¹⁶⁵'</p> <p>Fn 165: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC OP-armed conflict) (2002); International Committee for the Red Cross, Customary International Humanitarian Law, vol.1 (see footnote 129), rules 135-137; The Rome Statute, article 8 (2) (e) (vii) (see footnote 145); Additional Protocol I to the Geneva Conventions, 1949, article 77; Additional Protocol II to the Geneva Conventions, 1949, article 4. Note also that the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), ILO Convention No. 182, which Nepal ratified in 2002, prohibits the "forced or compulsory recruitment of children for use in armed conflict" in its article 3(a). See also International Committee for the Red Cross, Customary International Humanitarian Law, vol.1 (see footnote 129), p. 487</p>	One (rules)	Rules 135-137	Agreed	Yes. OPCRC; Rome Statute art 8(2)(e)(vii); AP I; AP II; ILO Convention No 182.	Fn	Ibid
436	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 75: 'c) Indiscriminate attacks</p> <p>Indiscriminate attacks are prohibited under IHL in both international and non-international armed conflicts. An attack is indiscriminate when it is not directed at a specific military objective;¹⁸² ...'</p> <p>Fn 182: The definition of "Military Objective" is set out in International Committee of Red Cross, Customary International Humanitarian Law, rule 8: "Military objectives are to limited those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage." Rule 9 states that "Civilian objects are all objects that are not military objectives." (see footnote 129).</p>	One (rules)	Rule 8	Agreed	Part of broader discussion	Fn	Ibid
437	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 75: 'In these circumstances, where the nature of the attack is such that it could strike military objectives and civilians or civilian objects without distinction, it is indiscriminate.¹⁸⁴'</p> <p>Fn 184: International Committee of Red Cross, Customary International Humanitarian Law, rule 12 (see footnote 129).</p>	One (rules)	Rule 12	Agreed	Part of broader discussion	Fn	Ibid

438	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 76: 'd) Disproportionate attacks</p> <p>Similarly, in accordance with the principle of proportionality in attack, any military offensive must be foregone where the incidental damage expected "is excessive in relation to the concrete and direct military advantage anticipated."186'</p> <p>Fn 186: See International Committee of Red Cross, Customary International Humanitarian Law, rule 14 (see footnote 129).</p>	One (rules)	Rule 14	Agreed	Part of broader discussion	Fn	Ibid
439	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 78: 'i) International Humanitarian Law on Dealing with the Deceased</p> <p>A related area of customary IHL deals with the treatment of the deceased during armed conflict. IHL requires that whenever circumstances permit, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate those killed.194 The mutilation of bodies is strictly prohibited, and in fact the parties must undertake all possible measures to prevent the dead from being despoiled. These measures include facilitating the return of the remains of the deceased to their next of kin upon request, or returning them to the party to which the deceased belonged.195 Personal effects must also be returned. Importantly, the conflicting parties are required to record all available information concerning the dead prior to disposing of the body and they must mark and record the location of graves.196 Failure to undertake these measures may contravene IHL. '</p> <p>Fn 194: International Committee of Red Cross, Customary International Humanitarian Law, rule 112 (see footnote 129).</p> <p>Fn 195: Ibid, rule 113.</p> <p>Fn 196: Ibid, rules 115-116.</p>	One (rules)	Rules 112, 113, 115-116	Agreed	Part of broader discussion	Fn	Ibid
440	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 112: ' ... Enforced disappearance is not humane treatment and a prohibition against enforced disappearance can be, and has been, read into Common Article 3.319'</p> <p>Fn 319: International Committee for the Red Cross, Customary International Humanitarian Law, vol.1 (see footnote 129). The Human Rights Commission, as well as the European Court of Human Rights, have ruled that the enforced disappearance of a close family member constitutes 'inhuman treatment' of the next-of-kin.</p>	One (rules)	Rule 6	Agreed	Part of broader discussion	Fn	Ibid
441	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 112: 'For example, customary international law prohibits the arbitrary deprivation of liberty, and requires that a register be kept of persons deprived of their liberty.321 Similarly, where a party to a conflict detains persons, the party must respect the detainees' family life, permit visits of detainees by their close relatives and allow correspondence by detainees with their families.322 Customary international law also requires each party to take all feasible measures to account for persons reported missing as a result of the conflict and to provide their family members with any information it has regarding their fate.323 The cumulative effect of these obligations amounts to a prohibition on enforced disappearance (committed by either side to a conflict) under customary international law.324'</p> <p>Fn 321: International Committee of Red Cross, Customary International Humanitarian Law, rule123 (see footnote 129).</p> <p>Fn 322: Ibid, rules 118-128.</p> <p>Fn 323: Ibid, rule117.</p> <p>Fn 324: Ibid, p. 340-341.</p>	One (rules)	Rules 123, 118-128	Agreed	Part of broader discussion	Fn	Ibid

442	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 129: 'Mutilation is specifically prohibited in Common Article 3(1)(a) of the Geneva Conventions as well as being a specific offence in the Rome Statute.401 Its elements are as follows:</p> <ul style="list-style-type: none"> • The perpetrator mutilated a person,402 in particular by <ul style="list-style-type: none"> o permanently disfiguring, or; o permanently disabling, or; o removing an organ or appendage.' <p>Fn 402: Unlike "Outrages upon personal dignity" below (see footnote 419) the term "person" here implies a living person, or at least a person who was living while the mutilation was committed. Concerning mutilation of the deceased, it is prohibited both by the mentioned prohibition on "Outrages," as well as customary IHL. See International Committee of Red Cross, Customary International Humanitarian Law, rule 113 (see footnote 129).</p>	One (rules)	Rule 113	Agreed	Part of broader discussion	Fn	Ibid
443	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 142: '7.6 OBLIGATIONS OF THE STATE</p> <p>All States are bound by international law, both IHL and IHRL, to investigate credible allegations of torture and ill-treatment and to punish the perpetrators.476 ...'</p> <p>Fn 476: CAT, article 6; International Committee of Red Cross, Customary International Humanitarian Law, rule 158: "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects." (see footnote 129). Neither the role of the perpetrator nor the victim, nor any justification based upon concerns such as national security, states of emergency, or counter-terrorism, excuse such acts. As a peremptory norm of international law, torture allegations must be investigated.</p>	One (rules)	Rule 158	Agreed	Yes. CAT art 6.	Fn	Ibid
444	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>152.'8.2.1 International Humanitarian Law</p> <p>Although not specifically prohibited under Common Article 3, arbitrary deprivation of liberty is prohibited under customary IHL.488 Scholars have observed that the underlying "humane treatment" provision in Common Article 3 would forbid such arrests during both international and non-international armed conflicts.489'</p> <p>Fn 488: See International Committee of Red Cross, Customary International Humanitarian Law, rule 99 (see footnote 129).</p> <p>Fn 489: See International Committee of Red Cross, Customary International Humanitarian Law, vol. 1 (see footnote 129). "[C]ommon Article 3 of the Geneva Conventions . . . require[s] that all civilians and persons hors de combat be treated humanely (see Rule 87), whereas arbitrary deprivation of liberty is not compatible with this requirement."</p>	One (rules)	Rule 99	Agreed	Part of broader discussion	Fn	Ibid
445	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid	<p>p. 160: 'The ICRC considers that the prohibition of rape during conflict has attained the status of customary international law, meaning that, irrespective of whether the party to the conflict is a party to the Geneva Conventions, rape committed by one of their members is a punishable crime.537'</p> <p>Fn 537: International Committee of Red Cross, Customary International Humanitarian Law, rule 93 (see footnote 129). Rape and other forms of sexual violence are prohibited.</p>	One (rules)	Rule 93	Agreed	Part of broader discussion	Fn	Ibid

					pp. 180-181: '10.2.2 International Humanitarian Law Corresponding requirements can be found in IHL. Individuals can be held criminally responsible for war crimes whether or not they were obeying orders when perpetrating the acts. ⁶⁹⁷ Commanders and superiors are also individually criminally responsible if they knew, or should have known, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had already been committed, to punish the persons responsible. ⁶⁹⁸ States are obliged to investigate allegations of war crimes committed by their nationals or State forces, or on their territory, and to prosecute the suspects if warranted. ⁶⁹⁹ Elements of the right to a fair trial are also guaranteed under IHL during armed conflict, either international or non-international. For example, no one may be convicted or sentenced without a fair trial affording all essential judicial guarantees. ⁷⁰⁰ ' Fn 697: International Committee of the Red Cross, Customary International Humanitarian Law, Rule 151 (see footnote 129). Fn 698: Ibid. Rule 153. Fn 699: Ibid. Rule 158.								
446	Commission of Inquiry into Nepal	Ibid	Ibid	Ibid		One (rules)	Rules 151, 153	Agreed	Part of broader discussion	Fn			Ibid
447	Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	Unofficial translation from French original	01.08.2010	482. '... "Making property essential to the survival of the civilian population unusable" in this way could be classified as a war crime under the rules of international humanitarian law. ⁸⁹⁹ ' Fn 899: 'See Rule 54 of customary international humanitarian law and sect. a iii), para. 2 of article 8 of the Rome Statute of the ICC: "Wilfully causing great suffering, or serious injury to body or health". See also the rules on the principle of distinguishing civilian property from military property and the principle of the proportionality of the attack, Rules 7 to 10 and 14 (Customary international humanitarian law, vol. I: Rules, ICRC publication, 2006).'	One (rules)	Rule 54	Agreed	Part of broader discussion	Fn			https://www.ohchr.org/Documents/Countries/CD/DR_C_MAPPING_REPORT_FINAL_EN.pdf
448	Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	Ibid	Ibid	Ibid	Fn 483: '... Furthermore, the use on this occasion of highly imprecise home-made bombs, as in Businga, would also appear to violate the rules of international humanitarian law, which prohibit "attacks which employ a method or means of combat which cannot be directed against a specific military target, or the effects of which cannot be limited". ⁹⁰² ' Fn 902: See Rule 12 of customary international humanitarian law.	One (rules)	Rule 12	Agreed	Part of broader discussion	Fn			Ibid
449	Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	Ibid	Ibid	Ibid	486. '... In fact, some of the most serious incidents that took place during this period, in particular the bombardments that the FAC carried out indiscriminately in Ankoro, in November 2002, which cost the lives of over 100 civilians and caused the destruction, most frequently by fire, of over 4,000 houses, including schools and hospitals, could be classified as serious violations of international humanitarian law and war crimes. ⁹¹² ' Fn 912: Under international humanitarian law, it is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, Rule 14 of customary international humanitarian law. See also Rule 13 of customary international humanitarian law which prohibits: "Attacks by bombardment, by any methods or means, which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area, containing a similar concentration of civilians or civilian objects...". See also, in particular, sect. b iv) and b v) and sect. e i) and e iv), para. 2 of article 8 of the Rome Statute.	One (rules)	Rules 13, 14	Agreed	Part of broader discussion	Fn			Ibid

450	Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	Ibid	Ibid	Ibid	799. 'In terms of identifying the content of rules of customary international law, it is important to consider the comprehensive study published in 2005 by the ICRC which took over 10 years to be completed. This study establishes the existence of 161 customary rules of international humanitarian law applicable to international and noninternational armed conflicts.1431' Fn 1431: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, two volumes, Volume I. Rules, Volume II. Practice (Two Parts), Cambridge University Press, 2005.	Two	N/A	Agreed	Part of broader discussion	Fn	Ibid
451	Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003	Ibid	Ibid	Ibid	815. 'With regard to what conduct "is not justified by the laws and customs of war", international treaties and customary international humanitarian law list a series of prohibited acts which, when committed against a protected group,1453 notably civilians, during an internal or international armed conflict, constitute a war crime. When these acts, prohibited by the laws and customs of war, also constitute violations "of the laws of Zaire or the DRC", they can therefore be classified as war crimes under Congolese law. The list that follows sets out some of the main actions prohibited by international humanitarian law applicable under Congolese domestic law: (GC: Geneva Convention; AP: Additional Protocol; ICC: Rome Statute of the International Criminal Court; CIHL: Customary international humanitarian law according to the ICRC study).'	One (rules)	N/A	Agreed	Part of broader discussion	Main text	Ibid
452	United Nations Fact-Finding Mission on the Gaza Conflict	Report of the Independent International Fact-Finding Mission: Note by the President of the General Assembly	A/64/490	29.oct.09	385. 'The fundamental rule of international humanitarian law applicable to attacks against buildings and infrastructure is enshrined in article 52 of Additional Protocol I ("General Protection of civilian objects"). This provision is generally recognized as codifying customary law applicable to both international and non-international armed conflicts:249' Fn 249: International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, vol. I, JeanMarie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2005), rules of customary law 7–9. The Israeli Government recognizes this principle. See "The operation in Gaza...", para. 95.	One (rules)	Rules 7-9	Agreed	Part of broader discussion	Fn	https://digitallibrary.un.org/record/669889?n=en
453	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	431. ' ... Thirdly, individual members of the law-enforcement agency, like any civilians, may not be targeted "unless and for such time as they take a direct part in hostilities."289 ...' Fn 289: Pursuant to article 51 (3) of Additional Protocol I, civilians enjoy immunity from attack "unless and for such time as they take a direct part in hostilities." According to ICRC, this rule also reflects customary international law: "Civilians are protected against attack unless and for such time as they take a direct part in hostilities" (rule 6). Customary International Humanitarian Law... The Mission is aware that Israel is not a party to Additional Protocol I and reportedly does not accept the qualifying phrase "and for such time" as reflective of customary law (see Y. Dinstein, "The ICRC customary international humanitarian law study", Israel Yearbook on Human Rights, vol. 36 (2006), p. 11). In its report on the military operations, the Government of Israel refers to a definition of direct participation in hostilities by Israel's High Court of Justice as "involving all persons that perform the function of combatants, including "a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them against the army, at such place, or on his way back from it," as well as "a person who collected intelligence on the army, whether on issues regarding the hostilities ... or beyond those issues...; a person who transports unlawful combatants to or from the place where the hostilities are	One (rules)	Rule 6	Agreed	Yes. Dinstein article; AP I art 51(3).	Fn	Ibid

					489. 'Customary international humanitarian law establishes that all "parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks."340'							
454	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	490. 'Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.341 Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.342' Fn 340: Customary International Humanitarian Law..., rule 22. Fn 341: Ibid., rule 23. Fn 342: Ibid., rule 24	One (rules)	Rules 22, 23, 24	Agreed	Part of broader discussion	Fn		Ibid
455	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	492. 'In addition to the general duty to take constant care to spare the civilian population in the conduct of military operations, international humanitarian law establishes a specific prohibition against the use of civilians as human shields. Article 28 of the Fourth Geneva Convention specifically addresses this issue: "The presence of a protected person may not be used to render certain points or areas immune from military operations". This is reinforced by article 51 (7) of Additional Protocol I: [...] These provisions reflect rules of customary law.344'	One (rules)	Rule 97	Agreed	Part of broader discussion	Fn		Ibid
456	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	528. 'The Mission regards both these provisions to be norms of customary international law.364 In addition, Israel appears to consider itself bound by the obligation to provide effective warnings under customary law.' Fn 364: 'According to ICRC, article 57 (1) codifies the principle of precautions in attack and article 57 (2) (c) is a rule of customary international law applicable to international and non-international armed conflict. Customary International Humanitarian Law..., pp. 51 and 62.	One (rules)	Rules 15, 22	Agreed	Part of broader discussion	Fn		Ibid
457	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	818. 'The Mission recalls that article 10 (2) of Additional Protocol I provides that "In all circumstances [the wounded] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. ..." This provision enjoys customary international law status. The Mission is mindful that "the obligation to protect and care for the wounded ... is an obligation of means." It applies whenever circumstances permit. However, "each party to the conflict must use its best efforts to provide protection and care for the wounded,... , including permitting humanitarian organizations to provide for their protection and care."457'	One (rules)	Rule 110	Agreed	Part of broader discussion	Fn		Ibid
458	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	1097. '... The prohibition of the use of human shields also has customary law status (rule 97 of the ICRC rules of customary humanitarian law536), both in international and in non-international armed conflict. The Mission, therefore, finds that the Israeli armed forces have violated article 28 of the Fourth Geneva Convention and the prohibition under customary international law that the civilian population as such will not be the object of attacks, as reflected in article 51 (2) of Additional Protocol I.'	One (rules)	Rule 97	Agreed	Part of broader discussion	Fn		Ibid
459	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	Fn 536: Customary International Humanitarian Law..., p. 337. The Israeli Government recognizes the customary nature of the principle enshrined in Additional Protocol I, article 51 (7) ("The operation in Gaza...", para. 151). 1216. '... Even if such actions could be considered a lawful reprisal, they do not meet the stringent conditions imposed, in particular they are disproportionate,596 ...' Fn 596: Customary International Humanitarian Law..., pp. 513–518.	One (rules)	Rule 145	Agreed	Part of broader discussion	Fn		Ibid

460	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	1322. 'This language is similar to that of a resolution adopted by consensus at the 26th International Conference of the Red Cross and Red Crescent that calls upon parties to a conflict to "take all feasible measures to avoid in their military operations, all acts liable to destroy or damage water sources."671'	Fn 671: Customary International Humanitarian Law..., p. 150.	One (rules)	Rule 44	Agreed	Part of broader discussion	Fn	Ibid
461	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	1328. 'The Mission also considered whether the Gaza population was subject to collective punishment or penalty. According to article 33 of the Fourth Geneva Convention, "collective penalties and likewise all measures of intimidation or of terrorism are prohibited". Article 75(2)(d) of Additional Protocol I includes collective punishment as an act that is "prohibited at any time and in any place whatsoever". Reprisals against protected persons are also prohibited under article 33. These prohibitions are part of customary international law.675'	Fn 675: See Customary International Humanitarian Law..., p. 374.	One (rules)	Rule 103	Agreed	Part of broader discussion	Fn	Ibid
462	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	B. Legal assessment 1804. Both international humanitarian law and international human rights law establish a clear obligation for States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel whether during military operations or not. This rule finds expression in articles 49 of the First Geneva Convention, article 50 of the Second Geneva Convention, article 129 of the Third Geneva Convention and article 146 of the Fourth Geneva Convention; in articles 2 and 6 of ICCPR and article 6 of the Convention against Torture. The Mission considers the obligations on States to investigate and, if appropriate, to prosecute war crimes and other crimes allegedly committed by their armed forces or in their territory as a norm of international customary law.1151'	Fn 1151: Customary International Humanitarian Law..., rule 158, p. 607; E/CN/4/2006/53, paras. 33-43.	One (rules)	Rule 158	Agreed	Part of broader discussion	Fn	Ibid
463	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	1850. 'It is uncontroversial today that States may confer upon their courts the right to exercise universal jurisdiction over international crimes, including war crimes, crimes against humanity and genocide.1182 ...'	Fn 1182: See Customary International Humanitarian Law..., rule 157, p. 604.	One (rules)	Rule 157	Agreed	Part of broader discussion	Fn	Ibid
464	United Nations Fact-Finding Mission on the Gaza Conflict	Ibid	Ibid	Ibid	1863. 'This principle was codified by the International Law Commission in article 31 of its draft articles on responsibility of States for internationally wrongful acts.1192'	Fn 1192: General Assembly resolution 56/83, annex; see also Customary International Humanitarian Law..., rule 150, p. 537.	One (rules)	Rule 150	Agreed	Yes. DARSIIWA art 31; GA Res 56/83.	Fn	Ibid
465	United Nations Fact-Finding Mission on the Gaza Conflict	HUMAN RIGHTS IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES Report of the United Nations Fact-Finding Mission on the Gaza Conflict	A/HRC/12/48	25.sept.09	Note that the reference in this Report to the CIHL Study mirror those in the above Report (A/64/490, 29 October 2009).		Both	N/A	Agreed	N/A	N/A	https://www.un.org/ruleoflaw/files/UNFFMGC_Report.pdf
466	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	A/HRC/3/2	23.nov.06	67. 'In addition to the international treaty obligations, rules of customary international human rights and humanitarian law bind States and other actors. In other words, all of the parties to the conflict are also subject to customary international humanitarian law.40 ...'	Fn 40: This includes the provisions reflected in the Hague Regulations and GC Additional Protocol I. See also Jean Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law, 3 vols., University Press, Cambridge, 2004 (hereafter "ICRC Study"), as well as case law of the International Criminal Tribunals for Rwanda and Former Yugoslavia.	Both	N/A	Neutral	N/A	N/A	https://digitallibrary.un.org/record/587605?n=en

467	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	<p>83. '... In essence, this means that attacks may be directed only at military objectives, that is those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁵² Civilians may only be targeted for such time as they participate directly in the hostilities.⁵³ Attacks on civilian objects are strictly prohibited unless, at the time of the attack, they were used for military purposes and their destruction offered a definite military advantage.⁵⁴'</p> <p>Fn 52: GC Additional Protocol I, articles 48 and 52(2); ICRC Study, rules 7, 8, 9, 10; see also ICC Statute, article 8(2)(b)(ii).</p> <p>Fn 53: GC Additional Protocol I, article 51(3); GC Additional Protocol II, article 13(3); see also ICRC Study, rule 6.</p> <p>Fn 54: ICC Statute, article 8(2)(b)(ii); see also ICRC Study, rule 10.</p>	One (rules)	Rules 6-10	Agreed	Part of broader discussion	Fn	Ibid
468	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	<p>84. 'According to the principle of distinction, indiscriminate attacks are strictly prohibited.⁵⁵ This includes attacks which are not directed at a specific military objective, employ a method or means of combat which cannot be directed at a specific military objective, or employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law, and consequently are of a nature to strike military objectives and civilians or civilian objects without distinction. Attacks by bombardment, including with rockets, which treat as a single military objective a number of clearly separated and distinct military objectives located in an urban area or rural village are prohibited.⁵⁶ The prohibition of indiscriminate attacks must not only determine the strategy adopted for a particular military operation but also limit the use of certain weapons in situations where the civilian population will be affected.⁵⁷'</p> <p>Fn 55: GC Additional Protocol I, article 51(4); see also CRC Study, rules 11, 12.</p> <p>Fn 56: GC Additional Protocol I, article 51(5)(a); see also ICRC Study, rule 13.</p> <p>Fn 57: CCW Protocol II, article 3(3)(a), CCW Amended Protocol II, article 3(8)(a). See also ICRC Study, rule 12.</p>	One (rules)	Rules 11, 12, 13	Agreed	Yes. AP I arts 51(4), 51(5)(a); CCW Protocol II, article 3(3)(a), CCW Amended Protocol II, article 3(8)(a).	Fn - 'see also'	Ibid
469	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	<p>85. 'Attacks on legitimate military objectives which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.⁵⁸'</p> <p>Fn 58: GC Additional Protocol I, article 51(5)(b) and article 57; CCW Protocol II, article 3(3); and CCW Amended Protocol II, article 3(8). See also ICRC Study, rule 14.</p>	One (rules)	Rule 14	Agreed	Yes. AP I arts 51(5)(b), 57; CCW Protocol II, article 3(3); and CCW Amended Protocol II, article 3(8).	Fn	Ibid
470	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	<p>86. 'All feasible precautions must be taken in order to avoid, or in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.⁵⁹ International humanitarian law prescribes specific precautionary measures in relation to the planning and conduct of attacks, including an obligation to give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.⁶⁰</p> <p>Fn 59: GC Additional Protocol I, article 57(1); 1907 Hague Convention, article 2(3); ICRC Study, rule 15.</p> <p>Fn 60: GC Additional Protocol I, article 57(2); Hague Regulations, article 26; ICRC Study, rules 15-21.</p>	One (rules)	Rules 15-21	Agreed	Yes. AP I art 57(1) and (2); Hague Regulations arts 2(3) and 26.	Fn	Ibid
471	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	<p>87. 'Ensuring the protection of civilians in armed conflict also requires that civilians be kept away from military targets. In addition, international law prohibits the intentional use by a party to the conflict of civilians to immunize otherwise legitimate military objectives from lawful attack.⁶¹'</p> <p>Fn 61: Third Geneva Convention, article 23; Fourth Geneva Convention, article 28; GC Additional Protocol I, article 51(7); ICC Statute, article 8(2)(b)(xxiii); ICRC Study, rule 97.</p>	One (rules)	Rule 97	Agreed	Yes. GC III art 23; GC IV art 28; AP I art 51(7); Rome Statute art 8(2)(b)(xxiii).	Fn	Ibid

472	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	88. 'Other fundamental principles of international law related to the protection of civilians in armed conflict should be recalled prior to the Commission's consideration of specific issues. For example, States must exert their influence, to the degree possible, to stop violations of international humanitarian law.62 ...' Fn 62: ICRC Study, rule 144.	One (rules)	Rule 144	Agreed	Part of broader discussion	Fn		Ibid
473	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	88. '... Where they are not prohibited by international law, belligerent reprisals are subject to strict conditions.64 They are prohibited altogether against persons protected by the Geneva Conventions.65 And in addition, reprisals against objects protected under the Geneva Conventions and Hague Convention for the Protection of Cultural Property are strictly prohibited.66' Fn 64: ICRC Study, rule 145. Fn 65 ICRC Study, rule 146. Fn 66: ICRC Study, rules 147.	One (rules)	Rules 145, 146, 147	Agreed	Part of broader discussion	Fn		Ibid
474	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	89. 'Forcible displacement of civilians for reasons related to an armed conflict is prohibited, unless the security of the civilians involved or military necessity so require.67 Where displacement occurs, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition, and that members of the same family are not separated.68' Fn 67: E/CN.4/1998/53/Add.2, Guiding Principles on Internal Displacement, principle 6; ICRC Study, rule 129. Fn 68: E/CN.4/1998/53/Add.2, Guiding Principles on Internal Displacement, principle 7; ICRC Study, rule 131.	One (rules)	Rules 129, 131	Agreed	Yes. Guiding Principles on Internal Displacement, principles 6 and 7; E/CN.4/1998/53/Add.2.	Fn		Ibid
475	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	90. '... and all parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need.70 ...' Fn 70: Fourth Geneva Convention article 23; GC Additional Protocol I, article 70(2); see also GC Additional Protocol II, article 18(2); and ICRC Study, rules 55 and 56.	One (rules)	Rules 55, 56	Agreed	Yes. GC IV art 23; AP I art 70(2); AP II art 18(2).	Fn		Ibid
476	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	151. '... Threats in the past, for example that all remaining civilians would be considered liable to attack, have been condemned and withdrawn.122 ...' Fn 122: ICRC Study, rule 20, p. 65, note 93.	One (rules)	Rule 20	Agreed	Part of broader discussion	Fn		Ibid
477	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	192. 'Under international humanitarian law, religious property and places of worship are protected during a conflict.162 Most of these rules are norms of customary international law,163 ...' Fn 163: See ICRC Study, Vol. 1, p. 25.	One (rules)	Rule 7	Agreed	Part of broader discussion	Fn		Ibid
478	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	217. 'Furthermore, as indicated by the International Court of Justice (ICJ)192 and reiterated in the legal literature,193 ...' Fn 193: ICRC Study, Vol. 1, p. 143	One (rules)	Rule 43	Agreed	Part of broader discussion	Fn		Ibid
479	Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1	Ibid	Ibid	Ibid	241. 'State practice treats United Nations peacekeeping forces as civilians because they are not members of a party to the conflict and are deemed to be entitled to the same protection against attack as that accorded to civilians, as long as they are not taking a direct part in hostilities. By the same token, objects involved in a peacekeeping operation are considered to be civilian objects, protected against attack.206 ...' Fn 206: ICRC Study, rule 33.	One (rules)	Rule 33	Agreed	Part of broader discussion	Fn		Ibid

480	Panel of Experts on Yemen	Letter dated 22 January 2021 from the Panel of Experts on Yemen addressed to the President of the Security Council	S/2021/79	25.janv.21	<p>98. 'Based on past and current investigations, the Panel compiled a list of individuals and companies whose assets have been illegally confiscated by the judicial guard for the past three years (see annex 27). The list will be updated as more information on Alshaer's confiscations is collected. The Panel considers that unlawful appropriation is a violation of applicable human rights norms and international humanitarian law. 48'</p> <p>Fn 48: 'Article 17 of the Universal Declaration of Human Rights (1948); article 25 of the Arab Charter on Human Rights (1994); article 4 (2) (g) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977); and rules 50 and 52 of the International Committee of the Red Cross study on customary international humanitarian law (available at https://ihl-databases.icrc.org/customaryihl/eng/docs/v1_rul).'</p>	One (rules)	Rules 50, 52	Agreed	Yes. UDHR art 17; Arab Charter art 25; AP I art 4(2)(g).	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/372/40/pdf/N2037240.pdf?OpenElement
481	Ibid	Ibid	Ibid	Ibid	<p>D. Acts and incidents attributed to the Houthis</p> <p>1. Indiscriminate use of explosive ordnance against civilians</p> <p>134. 'The Panel investigated nine incidents of the use of explosive ordnance against civilians attributed to the Houthis in Dali', Ma'rib, and Ta'izz, which led to the death of 22 people, including three children, and injuries to at least 180 others (see table 3). Two of these attacks hit medical facilities in Ta'izz (see annex 33). 72'</p> <p>Fn 72: Medical personnel and medical units exclusively assigned to medical purpose must be respected and protected in all circumstances. They must not be the object of attack. See common article 3 of the Geneva Conventions, articles 9 and 11 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), and customary international humanitarian law rules 25 and 28.</p>	One (rules)	Rules 25, 28	Agreed	Yes. Common Article 3; AP II arts 9 and 11.	Fn	Ibid
482	Ibid	Ibid	Ibid	Ibid	<p>135. Cases investigated by the Panel demonstrate a blatant disregard by the Houthi forces for the principle of distinction and the protection of civilians. The use of mortar bombs and artillery shells in populated areas, such as the cities of Ta'izz and Ma'rib, is likely to have indiscriminate effects. 73'</p> <p>Fn 73: 'Especially when used at long range at targets in proximity to civilians and civilian objects. See common article 3 of the Geneva Conventions and customary international humanitarian law rule 1.</p> <p>74 The Panel refrains from identifying them for their protection.'</p>	One (rules)	Rule 1	Neutral	Yes. Common Article 3.	Fn - 'see'	Ibid
483	Ibid	Ibid	Ibid	Ibid	<p>137. 'The Panel investigated 38 cases of violations of international humanitarian law and human rights norms associated with detention committed by Houthis, including enforced disappearances, arbitrary arrest and detention, ill-treatment, sexual violence, torture, denial of medical assistance and a lack of due legal process. 75'</p> <p>Fn 75: 'See, among others, common article 3 of the Geneva Conventions, articles 4, 5 and 6 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) and customary international humanitarian law rules 90, 93, 98, 100, 123 and 125.'</p>	One (rules)	Rules 90, 93, 98, 100, 123 and 125	Agreed	Yes. Common Article 3; AP II arts 4, 5 and 6.	Fn - 'see, among others'	Ibid
484	Ibid	Ibid	Ibid	Ibid	<p>138. 'Since 2017, the Panel has documented ongoing cases in which civilians held by Houthis are instrumentalized for the purposes of being exchanged for Houthi fighters. The detention of civilians, including foreigners, as leverage for future prisoner exchanges amounts to hostage-taking, which is prohibited under international humanitarian law.78'</p> <p>Fn 78: 'Common article 3 of the Geneva Conventions and customary international humanitarian law rule 96.'</p>	One (rules)	Rule 96	Agreed	Yes. Common Article 3.	Fn	Ibid

485	Ibid	Ibid	Ibid	Ibid	142. 'The Panel also received evidence that, in both locations, anti-vehicle mines were modified with sensitive pressure plates to become large anti-personnel landmines. ⁸² ' Fn 82: 'Although not binding on non-State armed groups, it is worth noting that Yemen is party to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. On the international humanitarian law rules relating to landmines, see customary international humanitarian law rule 81, 82, and 83.'	One (rules)	Rules 81, 82 and 83	Agreed	Part of broader discussion	Fn - 'see'	Ibid
486	Panel of Experts on Yemen	Letter dated 27 January 2020 from the Panel of Experts on Yemen addressed to the President of the Security Council	S/2020/326	28.avr.20	86. 'The Panel also considers that unlawful appropriation is a violation of applicable international human rights law and international humanitarian law. ⁷⁶ ...' Fn 76: 'Article 17 of the Universal Declaration of Human Rights (1948); article 25 of the Arab Charter on Human Rights (1994); article 4 (2) (g) of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts; and rules 50 and 52 of the International Committee of the Red Cross study on customary international humanitarian law (available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul).'	One (rules)	Rules 50, 52	Agreed	Yes. UDHR art 17; Arab Charter art 25; AP I art 4(2)(g).	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N20/106/86/pdf/N2010686.pdf?OpenElement
487	Ibid	Ibid	Ibid	Ibid	89. 'Alshaer has used a Sana'a-based network comprising family members, the specialized criminal court, the national security bureau, the Central Bank of Yemen in Sana'a, the registrar services of the ministry of trade and industry and some private banks.' Fn 79: 'The Panel finds that the court orders were not issued after due legal process and were issued in the absence of the victims. Furthermore, the Panel has not seen any language in the court orders nor received evidence that would suggest that "the seizure [was] imperatively demanded by the necessities of the conflict" (see customary international humanitarian law rule 50).'	One (rules)	Rule 50	Neutral	Part of broader discussion	Fn	Ibid
488	Ibid	Ibid	Ibid	Ibid	96. '... Under international humanitarian law, parties to the conflict have to take all feasible precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. ⁸⁶ ...' Fn 86: 'Customary international humanitarian law rule 15.'	One (rules)	Rule 15	Agreed	Part of broader discussion	Fn	Ibid
489	Ibid	Ibid	Ibid	Ibid	96. '... This requires military commanders and others involved in attacks to assess information from all sources at their disposal and to obtain the best intelligence possible. ⁸⁷ ...' Fn 87: 'See customary international humanitarian law rule 15 and commentary.'	One (rules)	Rule 15	Agreed	Part of broader discussion	Fn	Ibid
490	Ibid	Ibid	Ibid	Ibid	2. Violations of international humanitarian law and international human rights law associated with detention and attributable to the Coalition 100. 'The Panel investigated four cases of violations of international humanitarian law and international human rights law by Saudi Arabia and the United Arab Emirates involving arbitrary arrest and detention, ill-treatment, torture and enforced disappearance. ⁸⁸ ' Fn 88: 'See customary international humanitarian law rules 90, 98, 99, 100, 117, 123 and 126. See also the Arab Charter on Human Rights, articles 3, 5, 6, 8, 13 and 16.'	One (rules)	Rules 90, 98, 99, 100, 117, 123 and 126	Agreed	Yes. Arab Charter arts 3, 5, 6, 8, 13 and 16	Fn - 'see'	Ibid
491	Ibid	Ibid	Ibid	Ibid	109. '... Mortar bombs and artillery shells have a high level of inaccuracy, and the likelihood of indiscriminate effects increases when those weapons are used at long range on targets in proximity to civilians and civilian objects. 92 ...' 92. 'See common article 3 of the Geneva Conventions and customary international humanitarian law rule 1.'	One (rules)	Rule 1	Agreed	Yes. Common Article 3.	Fn - 'see'	Ibid

492	Ibid	Ibid	Ibid	Ibid	114. 'The evidence received by the Panel, including judicial documents, show a lack of respect of judicial guarantees by the courts under Houthi control. In addition, the cases investigated demonstrate a pattern of keeping detainees in undisclosed locations, subjecting them to torture and not allowing them to communicate with their families in contravention of applicable international humanitarian law and human rights norms.94' Fn 94: 'Customary international humanitarian law rules 90, 98, 100, 123 and 125.'	One (rules)	Rules 90, 100, 123 and 125	Agreed	Part of broader discussion	Fn	Ibid
493	Ibid	Ibid	Ibid	Ibid	117. 'The Panel also received evidence that Houthi forces deployed a significant number of landmines along the west coast, especially between Dhubab and the north of Khawkah, in Ta'izz Governorate. For example, in Ruways village, 96 hundreds of landmines were deployed, and, despite demining operations, numerous remain in place, creating an impediment to the return of civilians previously displaced by Houthi forces.97' Fn 97: 'See customary international humanitarian law rules 81, 82 and 132.'	One (rules)	Rules 81, 82, 132	Neutral	Part of broader discussion	Fn - 'see'	Ibid
494	Ibid	Ibid	Ibid	Ibid	122. 'The Panel investigated nine medical and nutritional shipments that were delayed for a period between 16 and 169 days at the port of Aden. The Government of Yemen confirmed these delays but did not provide reasons. The authorities' obligation to ensure rapid and unimpeded passage of humanitarian relief covers the initial entry of aid into the country.100'	One (rules)	Rule 55	Agreed	Part of broader discussion	Fn	Ibid
495	Panel of Experts on Yemen	Letter dated 25 January 2019 from the Panel of Experts on Yemen addressed to the President of the Security Council	S/2019/83	25.janv.19	46. 'There have been repeated attacks by Houthi forces against oil tankers carrying up to 2.2 million barrels of crude oil. Any of those attacks could have led to an environmental and economic disaster for Yemen and the region. Furthermore, attacks against commercial vessels carrying humanitarian workers of food could seriously impede the delivery of humanitarian assistance in Yemen. The Panel considered those attacks to be violations of international humanitarian law.45' Fn 45: 'See International Committee of the Red Cross (ICRC), Customary International Humanitarian Law database, attack against civilian object (rules 7–10) and attack against object indispensable to the survival of the civilian population (rule 54). Available at https://ihl-databases.icrc.org/customary-ihl . See also article 14 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), of 8 June 1977.'	Database	Rules 7-10	Agreed	Yes. AP II art 14.	Fn - 'see'	Document cites the CIHL rules on the database rather than the Study itself. https://documents-dds-ny.un.org/doc/UNDOC/GE/N/19/006/48/pdf/N1900648.pdf?OpenElement
496	Ibid	Ibid	Ibid	Ibid	86. 'The Panel is of the view that the deployment of loitering munitions against civilian targets, such as the confirmed attacks by Qasef-1 unmanned aerial vehicles on 11 April and 26 May against the civilian airport of Abha in Saudi Arabia and the unconfirmed attack of loitering munitions against the civilian airports in Abu Dhabi and Dubai in the second half of 2018 may constitute a violation of international humanitarian law.88' Fn 88: See common article 3; article 4 of Protocol II to the Geneva Conventions of 12 August 1949; and ICRC Customary International Humanitarian Law database, rules 1, 14 and 15.	Database	Rules 1, 14, 15	Agreed	Yes. Common Article 3; AP II art 4	Fn - 'see'	Ibid
497	Ibid	Ibid	Ibid	Ibid	138. '... Under international humanitarian law, parties to a conflict must take all feasible precautions to avoid, and in any event minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects (see table 6).119' Fn 119: ICRC Customary International Humanitarian Law database, rule 15.	Database	Rule 15	Agreed	Part of broader discussion	Fn	Ibid
498	Ibid	Ibid	Ibid	Ibid	140. '... Under international humanitarian law, States must investigate war crimes allegedly committed by their nationals or armed forces or in territory over which they have jurisdiction and, if appropriate, prosecute the perpetrators.122 ...' Fn 122: ICRC Customary International Humanitarian Law database, rule 158.	Database	Rule 158	Agreed	Part of broader discussion	Fn	Ibid

499	Ibid	Ibid	Ibid	Ibid	143. 'Under international humanitarian law, States must investigate war crimes allegedly committed by their nationals or armed forces or in territory over which they have jurisdiction, and, if appropriate, prosecute the perpetrators.125 ...' Fn 125: ICRC Customary International Humanitarian Law database, rule 158.	Database	Rule 158	Agreed	Part of broader discussion	Fn	Ibid	Ibid
500	Ibid	Ibid	Ibid	Ibid	B. Acts and incidents attributed to the Houthis forces 1. Indiscriminate use of explosive ordnance against civilians in populated areas 145. 'The Panel investigated four incidents showing, almost certainly, cases of indiscriminate use of explosive ordnance in densely populated areas in Ta'izz and Ma'rib, which resulted in the death of 13 civilians and injury to 43 others (see table 7).126' Fn 126: Indiscriminate use of explosive ordnance is a violation of international humanitarian law. See article 3 common to the Geneva Conventions of 1949 (common article 3) and ICRC Customary International Humanitarian Law database, rule 1.	Database	Rule 1	Agreed	Yes. Common Article 3.	Fn - 'see'	Ibid	Ibid
501	Ibid	Ibid	Ibid	Ibid	147. '... Targeting civilians who are not directly participating in hostilities is prohibited under international humanitarian law.129 ...' Fn 129: Common article 3; article 4 of Protocol II to the Geneva Conventions of 12 August 1949; and ICRC Customary International Humanitarian Law database, rules 1 and 89	Database	Rules 1, 89	Agreed	Yes. Common Article 3; AP II art 4.	Fn.	Ibid	Ibid
502	Ibid	Ibid	Ibid	Ibid	151. 'The Panel documented eight cases enforced disappearances, in which detainees were kept in places unknown to their relatives for a period of between three months and four years. In five of those cases, the fate of the detainees is still unknown to their relatives. International humanitarian law specifically requires the detaining authorities to record the details of the persons detained135 and to allow them to correspond with their family.136' Fn 135: ICRC Customary International Humanitarian Law database, rule 123. Fn 136: Subject to reasonable conditions relating to frequency and the need for censorship by the authorities; see ICRC Customary International Humanitarian Law database, rule 125.	Database	Rules 123, 125	Agreed	Part of broader discussion	Fn	Ibid	Ibid
503	Ibid	Ibid	Ibid	Ibid	152. '... The Panel reasserts that any detention of civilians solely as leverage for future prisoner exchanges amounts to hostage-taking, which is prohibited under international humanitarian law.137 ...' Fn 137: Common article 3 and ICRC Customary International Humanitarian Law database, rule 96. See also ICRC, Commentary on the Geneva Conventions of August 12 1949 (2016), para. 651.	Database	Rule 96	Agreed	Yes. ICRC Commentary (2016) to GCs para 651.	Fn - 'see also'	Ibid	Ibid
504	Ibid	Ibid	Ibid	Ibid	153. '... The Panel found that, in the cases investigated, the Houthi authorities committed several violations of international humanitarian law and human rights norms, including arbitrary arrest and deprivation of liberty, ill-treatment and violations of the right to correspond with family and receive visits, the right to a fair trial and the right to freedom of expression.138' Fn 138: See article 4 of Protocol II to the Geneva Conventions of 12 August 1949; ICRC Customary International Humanitarian Law database, rules 87, 90, 99, 100, 125, 126; article 19 of the International Covenant on Civil and Political Rights; and article 19 of the Universal Declaration of Human Rights.	Database	Rules 87, 90, 99, 100, 125, 126	Agreed	Yes. AP II art 4; ICCPR art 19; UDHR art 19.	Fn - 'see'	Ibid	Ibid
505	Ibid	Ibid	Ibid	Ibid	154. 'The deprivation of liberty or seizure of property from a group of individuals on account of their faith-based activities violates human rights norms.140' Fn 140: See article 4 of Protocol II to the Geneva Conventions of 12 August 1949 and ICRC Customary International Humanitarian Law database, rule 88. See also articles 2, 7 and 17–20 of the Universal Declaration of Human Rights.	Database	Rule 88	Agreed	Yes. UDHR arts 2, 7, 17-20.	Fn - 'see'	Ibid	Ibid

506	Ibid	Ibid	Ibid	Ibid	161. 'The Panel investigated three cases of theft of cultural artefacts (see para. 127; see also S/2018/594, paras. 137–139). Under international humanitarian law, any form of theft, pillage or misappropriation of property of importance to the cultural heritage of any and every people is prohibited.146' Fn 146: See articles 4 and 19 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict and ICRC Customary International Humanitarian Law database, rule 40 (b).	Database	Rule 40(b)	Agreed	Yes. Convention for the Protection of Cultural Property in the Event of Armed Conflict arts 4, 19.	Fn - 'see'	Ibid	Ibid
507	Ibid	Ibid	Ibid	Ibid	162. '... Under applicable rules of international humanitarian law, and in addition to the general protection against direct attack,148 cultural property also enjoys additional and specific protections.149' Fn 148: ICRC Customary International Humanitarian Law database, rule 7. Fn 149: See article 16 of Protocol II to the Geneva Conventions of 12 August 1949. See also ICRC Customary International Humanitarian Law database, rule 38, and articles 4 and 19, Convention for the Protection of Cultural Property in the Event of Armed Conflict.	Database	Rules 7, 38	Agreed	Yes. AP II art 16; Convention for the Protection of Cultural Property in the Event of Armed Conflict arts 4, 19.	Fn - 'see also'	Ibid	Ibid
508	Panel of Experts on Yemen	Letter dated 26 January 2018 from the Panel of Experts on Yemen mandated by Security Council resolution 2342 (2017) addressed to the President of the Security Council	S/2018/594	26.janv.18	176. '... Any detention of civilians, solely as leverage for future prisoner exchanges, is hostage taking, which is prohibited under international humanitarian law.184' Fn 184: Customary international humanitarian law rule 96 on hostage-taking (see https://ihldatabases.icrc.org/customary-ihl/eng/docs/v_rul_rule96). Under the terms of international humanitarian law, civilians are to be detained only if they pose an imminent security threat and then, only for as long as that threat is existent.	One (rules)	Rule 96	Agreed	Part of broader disussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/267/20/pdf/N1826720.pdf?OpenElement
509	Panel of Experts on Yemen	Letter dated 27 January 2017 from the Panel of Experts on Yemen addressed to the President of the Security Council	S/2018/193	31.janv.17	85. 'Given that the final impact locations of the missiles and free-flight rockets cannot be accurately predicted owing to the inherent inaccuracy of these weapon systems,109 it is not possible for the users to adequately distinguish between civilians and military objectives, making them indiscriminate by nature, which is a violation of international humanitarian law.110' Fn 110: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, vol. I, Rules (Cambridge, United Kingdom, International Committee of the Red Cross and Cambridge University Press, 2005), rule 71 (hereinafter "customary international humanitarian law").	One (rules)	Rule 76	Agreed	Part of broader disussion	Fn		https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N18/075/92/pdf/N1807592.pdf?OpenElement
510	Ibid	Ibid	Ibid	Ibid	90. 'The deployment of improvised explosive devices in civilian areas violates international humanitarian law because such devices affect civilians and military objectives indiscriminately.113' Fn 113: Customary international humanitarian law, rules 1, 7, 11 and 22.	One (rules)	Rules 1, 7, 11, 22	Agreed	Part of broader disussion	Fn		Ibid
511	Ibid	Ibid	Ibid	Ibid	125. 'The Panel, having carried out technical and international humanitarian law assessments, finds that: ... (b) Given the nature of the event and those in attendance, the attack resulted in a very high number of civilian casualties, which should have been anticipated before the attack.137 The Panel is unconvinced that the relevant international humanitarian law requirements relating to proportionality were met;138' Fn 138: 'An attack that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited under international humanitarian law (customary international humanitarian law, rule 14).'	One (rules)	Rule 14	Agreed	Part of broader discussion	Fn		Ibid

512	Ibid	Ibid	Ibid	Ibid	<p>(c) The cumulative factors in (a) and (b) above also indicate that, if precautionary measures had been taken, they were largely inadequate and ineffective.¹³⁹ ...'</p> <p>Fn 139: 'International humanitarian law requires that all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. This obligation is particularly incumbent on those who plan and decide on the air strikes (customary international humanitarian law, rules 15–22).'</p>	One (rules)	Rules 15-22	Agreed	Part of broader discussion	Fn		Ibid
513	Ibid	Ibid	Ibid	Ibid	<p>(e) Even if an individual officer within the coalition acted negligently in carrying out the strike, coalition forces are still responsible for international humanitarian law violations.¹⁴³ An official acting against instructions may not be an adequate justification under broader international law for the relevant States members of the coalition to evade State responsibility for those wrongful acts;¹⁴⁴</p> <p>Fn 143: Customary international humanitarian law, rules 14–22.</p> <p>Fn 144: 'See article 7 of the articles on the responsibility of States for internationally wrongful acts, which states that "the conduct of ... a person or entity empowered to exercise elements of the governmental authority shall be considered an act of the State under international law if the ... person or entity acts in that capacity, even if it exceeds its authority or contravenes instructions". See also customary international humanitarian law, rule 139, which calls upon each party to the conflict to 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".'</p>	One (rules)	Rules 14-22, 139	Agreed	Yes. ARSIWA art 7.	Fn - 'see also'		Ibid
514	Ibid	Ibid	Ibid	Ibid	<p>127. 'In 8 of the 10 investigations, the Panel found no evidence that the air strikes had targeted legitimate military objectives.¹⁴⁷ For all 10 investigations, the Panel considers it almost certain that the coalition did not meet international humanitarian law requirements of proportionality and precautions in attack. The Panel considers that some of the attacks may amount to war crimes.¹⁴⁸</p> <p>Fn 148: 'Serious violations of international humanitarian law constitute war crimes (customary international humanitarian law, rule 156). See also William Boothby and Michael N. Schmitt, <i>The Law of Targeting</i> (Oxford University Press, 2012), on some legal aspects relating to bombardments.'</p>	One (rules)	Rule 156	Agreed	Yes. Boothby and Schmitt (2012) book.	Fn		Ibid
515	Ibid	Ibid	Ibid	Ibid	<p>128. 'In the investigation relating to Abs hospital (table 7, air strike No. 6) the Panel finds that the coalition violated principles relating to the protection of and respect for hospitals and medical personnel;¹⁴⁹ ...'</p> <p>Fn 149: 'See customary international humanitarian law, rules 25 and 28. See also Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, arts. 9 and 11.'</p>	One (rules)	Rules 25, 28	Neutral	Yes. AP I and II arts 9, 11	Fn - 'see'		Ibid
516	Ibid	Ibid	Ibid	Ibid	<p>134. 'The Panel finds that, even if these individuals were associated with AQAP, the Government is obliged under international humanitarian law and international human rights law to ensure that the Hadrami Elite Forces, or any other forces operating on the ground under the authority and/or control and/or with the consent of the Government, comply with relevant legal requirements and procedural safeguards regarding deprivation of liberty.¹⁶¹ This includes taking active steps to prevent disappearances, including through the regularization of the procedure relating to the registration of detainees and notification of whereabouts to family members.¹⁶²</p> <p>Fn 161: 'See customary international humanitarian law, rules 98, 99, 117 and 123. See also Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, arts. 4 and 5, and International Covenant on Civil and Political Rights, arts. 9, 10, 17 and 26.'</p> <p>Fn 162: Ibid., and customary international humanitarian law, rule 99.</p>	One (rules)	Rules 98, 99, 117 and 123	Agreed	Yes. AP I and II arts 4, 5 and ICCPR arts 9, 10, 17, 26.	Fn - 'see'		Ibid

517	Ibid	Ibid	Ibid	Ibid	<p>138. 'The Panel finds that these violations associated with deprivation of liberty are sufficiently widespread as to reflect a wider policy. Consequently, individuals responsible for committing these serious violations, as well as their leaders, fall within the designation criteria set out in paragraph 17 of resolution 2140 (2014) as those who threaten peace and security of Yemen. Their acts may also fall under paragraph 18 of the resolution. Some of these violations are war crimes. 167 ...'</p> <p>Fn 167: 'For example, grave breaches of the Geneva Conventions of 12 August 1949 are war crimes. The commission of torture is a grave breach. See common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law, rule 156.'</p>	One (rules)	Rule 156	Agreed	Yes. Common Article 3.	Fn	Ibid
518	Ibid	Ibid	Ibid	Ibid	<p>142. '(b) The hospital and its medical personnel are protected from attack under international humanitarian law.171 There is no demonstrable evidence to indicate that at the time of the attack they had lost that protected status. 172 The hospital staff deny receiving any communication that would have constituted the warning required under international humanitarian law; 173'</p> <p>Fn 171: Customary international humanitarian law, rules 25 and 28.</p> <p>Fn 172: Ibid.</p> <p>Fn 173: Customary international humanitarian law, rule 28.</p>	One (rules)	Rules 25, 28	Neutral	Part of broader discussion	Fn	Ibid
519	Ibid	Ibid	Ibid	Ibid	<p>2. Panel assessment relating to ground operations</p> <p>143. 'The Houthi and Saleh forces have not provided the Panel with access to information on the four events listed in table 9. In all the investigations, the Panel finds it highly unlikely that the Houthi or Saleh forces met international humanitarian law requirements of proportionality and precautions in attack. Some of these attacks may also amount to war crimes.174'</p> <p>Fn 174: Serious violations of international humanitarian law constitute war crimes (customary international humanitarian law, rule 156).</p>	One (rules)	Rule 156	Agreed	Part of broader discussion	Fn	Ibid
520	Ibid	Ibid	Ibid	Ibid	<p>153. 'The Panel subsequently investigated another incident relating to the forced deportation of three workers from a factory in Lahij to Ta'izz on or about 12 May. The Yemeni military forcefully removed them from their workplace and transported them to the "north" of Yemen. One worker was given time to go to Aden, before being deported, to enable him to relocate his family to the north. This incident violates several provisions of international humanitarian law and international human rights law, including the rights relating to occupation, prohibition of forced displacement and discrimination.179 ...'</p> <p>Fn 179: 'See Additional Protocol II of 8 June 1977 to the Geneva Conventions of 12 August 1949, art. 17 (1), and customary international humanitarian law, rules 87, 88 and 129. See also International Covenant on Civil and Political Rights, arts. 17, 25 and 26.'</p>	One (rules)	Rules 87, 88, 129	Agreed	Yes. AP II art 17(1); ICCPR arts 15, 25 and 26	Fn - 'see'	Ibid
521	Ibid	Ibid	Ibid	Ibid	<p>2. Obstructions to provision of medical services</p> <p>155. '... The Panel notes that compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited under international humanitarian law. 180.'</p> <p>Fn 180: Customary international humanitarian law, rule 26.</p>	One (rules)	Rules 26	Agreed	Part of broader discussion	Fn	Ibid

522	Commission of Inquiry on	Letter dated 19 December 2014 from the Secretary-General addressed to the President of the Security Council	S/2014/928	22.déc.14	<p>ii) International Humanitarian Law</p> <p>110. 'International humanitarian law binds all parties to an armed conflict. The CAR is a party to the four Geneva Conventions of 12 August 1949 as well as Additional Protocols I and II to the Geneva Conventions.⁵⁶ As noted above, the provisions of Common Article 3 of the Geneva Conventions are of particular relevance to the situation in the CAR as are those of Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Non International Armed Conflict. In addition, the provisions of customary international humanitarian law are also binding on all parties to the conflict.⁵⁷'</p> <p>Fn 57: See Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, Customary International Humanitarian Law (3 vols.), (Cambridge, Cambridge University Press, 2005).</p>	Both	N/A	Agreed	Part of broader discussion	Fn - 'see'	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N14/712/29/pdf/N1471229.pdf?OpenElement	
523	Ibid	Ibid	Ibid	Ibid	<p>iii. Applicable Law and Legal Findings</p> <p>231. 'In times of armed conflict, international humanitarian law is generally assumed to be the <i>lex specialis</i>. That body of law prohibits the intentional targeting of civilians,¹¹⁹ and indiscriminate attacks against the civilian population.¹²⁰'</p> <p>Fn 120: See ICRC Study on Customary International Humanitarian Law, Rule 11, p. 37.</p>	One (rules)	Rule 11	Agreed	Part of broader discussion	Fn - 'see'	Ibid	
524	Ibid	Ibid	Ibid	Ibid	<p>601. 'In addition, an authoritative ICRC study has confirmed various rules of customary international humanitarian law that protect medical personnel (Rule 25), medical activities (Rule 26), medical units (Rule 28), and medical transports (Rule 29) and must be respected and protected under all circumstances, as long as the personnel are exclusively assigned to medical duties. Rule 30 protects medical personnel and objects displaying the distinctive emblems of the Geneva Conventions, and Rules 31 and 32 protect humanitarian personnel and objects, respectively.²⁸⁰'</p> <p>Fn 280: Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law, vol. 1 (Cambridge University Press and ICRC, 2005).</p>	One (rules)	Rules 25, 26, 28, 29, 30, 31, 32	Agreed	Part of broader discussion	Fn	Describes the CIHL Study as 'authoritative'.	Ibid
525												
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530	Other											
531	CAT	Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 854/2017	CAT/C/67/D/854/2017	11.sept.19	<p>2.13. 'She observes that rape is outlawed under customary international humanitarian law¹¹ and, in certain circumstances, it may amount to a war crime.¹²'</p> <p>Fn 11: 'Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules (International Committee of the Red Cross and Cambridge University Press, 2009), rule 93. See also common article 3 to the Geneva Conventions of 12 August 1949; article 27, second paragraph, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and articles 76 (1) and 77 of the Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).'</p>	One (rules)	Rule 93	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G19/269/77/pdf/G1926977.pdf?OpenElement	

532	Committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254	Report of the Committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness, genuineness of these investigations and their conformity with international standards	A/HRC/15/50	23.sept.10	19. '... The duty to investigate and prosecute allegations of war crimes arises also under customary international law.8 ...' Fn 8: International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, vol. I, Jean Marie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2005), rule 158.	One (rules)	Rule 158; 117	Agreed	Part of broader discussion	Fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G10/162/25/pdf/G1016225.pdf?OpenElement
533	Ad Hoc Committee established by General Assembly resolution 51/210	Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 Ninth session (28 March-1 April 2005)	Supplement No. 37 (A/60/37)		Consideration of the suggestions contained in the report of the High-level Panel on Threats, Challenges and Change and the report of the Secretary-General ... 16. 'Other delegations cautioned against drawing a distinction between the provisions applicable in respect of combatants and civilians. Such an exercise would require the renegotiation of international humanitarian law, a task which is beyond the mandate of the Ad Hoc Committee. In this regard, attention was drawn to the recent study identifying 161 rules of customary international humanitarian law, sponsored by the International Committee of the Red Cross.'	One (rules)	N/A	Neutral	N/A	Main text	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/N05/296/44/pdf/N0529644.pdf?OpenElement
534	Sub-Commission	CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY Issue of the administration of justice through military tribunals Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux	E/CN.4/2006/58	13.janv.06	Principle No. 4 Application of humanitarian law In time of armed conflict, the principles of humanitarian law, and in particular the provisions of the Geneva Convention relative to the Treatment of Prisoners of War, are fully applicable to military courts. 17. 'International humanitarian law also establishes minimum guarantees in judicial matters. Article 75, paragraph 4, of Protocol I to the Geneva Conventions of 12 August 1949 provides the fundamental guarantees in judicial matters that must be respected even during international conflicts, referring to an "impartial and regularly constituted court", which, as the International Committee of the Red Cross (ICRC) has stated, "emphasizes the need for administering justice as impartially as possible, even in the extreme circumstances of armed conflict, when the value of human life is sometimes small".3 ...' Fn 3: 'CICR, Commentaires du Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés non internationaux, par. 3084. Voir aussi CICR, Customary International Humanitarian Law, vol. I, Rules (sous la direction de J.-M. Henckaerts et L. Doswald-Beck), règle 100, Cambridge University Press, 2005, p. 356.'	One (rules)	Rule 100	Agreed	Yes. ICRC Commentary to GC IV para 3084.	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G06/106/77/pdf/G0610677.pdf?OpenElement
535	Ibid	Ibid	Ibid	Ibid	19. '... Courts of appeal shall preferably sit in the occupied country (art. 66). The Convention stipulates that "the court shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence" (art. 67). The reference to "general principles of law", even in the application of lex specialis, is worthy of particular note.5' Fn 5: 'CICR, Customary International Humanitarian Law, vol. I, Rules (sous la direction de J.-M. Henckaerts et L. Doswald-Beck), règle 100, Cambridge University Press, 2005, p. 356.'	One (rules)	Rule 100	Agreed	Part of broader discussion	Fn	Ibid

536	Sub-Commission	ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY Issue of the administration of justice through military tribunals Report submitted by the Special Rapporteur, Emmanuel Decaux	E/CN.4/Sub.2/2005/9	02.juin.05	Principle No. 3 Application of humanitarian law In time of armed conflict, the principles of humanitarian law, and in particular the provisions of the Geneva Convention relative to the Treatment of Prisoners of War, are fully applicable to military courts. 13. 'International humanitarian law also establishes minimum guarantees in judicial matters. Article 75, paragraph 4, of Protocol I to the Geneva Conventions of 12 August 1949 provides the fundamental guarantees in judicial matters that must be respected even during international conflicts, referring to an "impartial and regularly constituted court", which, as the International Committee of the Red Cross (ICRC) has stated, "emphasizes the need for administering justice as impartially as possible, even in the extreme circumstances of armed conflict, when the value of human life is sometimes small".4 ...' Fn 4: CICR, Commentaires du Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés non internationaux, par. 3084. Voir aussi Customary International Humanitarian Law, vol. I, Rules, ICRC, Cambridge University Press, 2005, p. 356 (règle	One (rules)	Rule 100	Agreed	Yes. ICRC Commentary to GC IV para 3084.	Main text and fn	https://documents-dds-ny.un.org/doc/UNDOC/GE/N/G05/144/99/pdf/G0514499.pdf?OpenElement
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CIHL citations, international courts

	Entity	Case/decision (specify if in dissent/sep op)	Passage	Vol One/Vol Two/Both	ICRC Study rule number	Agreed/Disagreed	Other material cited alongside?	How used? (See eg; fn; etc)	Other comments	Link to decision/judgment
2	ICJ	Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia), Merits, 3 February 2015 (Dissenting Opinion of Judge Cañado Trindade)	<p>68. 'It is clear that the principle of humanity permeates the law of the United Nations. It encompasses the whole corpus juris of the international protection of the human person, comprising its converging trends of international humanitarian law, international law of human rights, and international law of refugees. In effect, when one evokes the principle of humanity, there is a tendency to consider it in the framework of international humanitarian law. It is beyond doubt that, in this framework, for example, civilians and persons hors de combat are to be treated with humanity. The principle of humane treatment of civilians and persons hors de combat is provided for in the 1949 Geneva Conventions on International Humanitarian Law⁷⁰. Such a principle, moreover, is generally regarded as one of customary international humanitarian law⁷¹.'</p> <p>Fn 71: 'For a study in depth, cf. ICRC, Customary International Humanitarian Law (eds. J.-M. Henckaerts and L. Doswald-Beck), Geneva/Cambridge, Cambridge University Press, 2005, Vol. I: Rules, pp. 3-621 ; Vol. II, Part I: Practice, pp. 3-1982 ; Vol. II, Part II: Practice, pp. 1983-4411.'</p>	Both	All rules 1-161	Agreed	Primary or sole authority (PSA)	Reliance (RE); No independent assessment (NOIND); Fn - 'cf'.	The only references to the ICRC Study found in ICJ judgments and advisory opinions between 2005 and 2021 are in the separate or dissenting opinions of Judge Cañado Trindade. No other ICJ judge or judge ad hoc has referred to the Study.	https://www.icj-cij.org/public/files/case-related/118/118-20150203-JUD-01-05-EN.pdf
3	ICJ	Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), Merits, 20 July 2012 (Separate Opinion of Judge Cañado Trindade)	<p>XII. Obligations under Customary International Law: A Precision as to the Court's Jurisdiction</p> <p>134. 'I turn now to another issue, dealt with in the present Judgment, in relation to which my reasoning is distinct from that of the Court. May I begin by recalling the fundamental human values underlying the absolute prohibition of torture, which I have already referred to (cf. supra). May I add, at this stage, that such prohibition is one of both conventional as well as customary international law. And it could not be otherwise, being a prohibition of jus cogens. In this sense, the 2005 study on Customary International Humanitarian Law undertaken by the International Committee of the Red Cross (ICRC) sustains that: "Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited" (Rule 90) 128. And it goes on to summarize, on the basis of an extensive research, that "State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts" 129.'</p> <p>Fn 128: 'ICRC, Customary International Humanitarian Law — Vol. I: Rules, Cambridge University Press, 2005 [reprint 2009], p. 315.'</p> <p>Fn 129: 'Ibid., Vol. I: Rules, p. 315, and cf. pp. 316-319; and cf. also ICRC, Customary International Humanitarian Law — Vol. II: Practice — Part 1, Cambridge University Press, 2005, pp. 2106-2160.'</p>	Both	Rule 90	Agreed	PSA	RE NOIND; Study as epistemic authority; Vol I: main text and fn; Vol II: fn - 'cf. also'.		https://www.icj-cij.org/public/files/case-related/144/144-20120720-JUD-01-04-EN.pdf

4	ICJ	Jurisdictional Immunities of the State (Germany v Italy), Merits, 3 February 2012 (Dissenting Opinion Judge Cançado Trindade)	<p>101. 'The forced labour regime, as organized by Nazi Germany, could be equated to "enslavement", given the presence of the elements constitutive of this crime, namely, the subjection of a part of a population of an occupied territory, in order to sever forced or compulsory labour, meant to be permanent, and undertaken in conditions similar to slavery under the heel of private persons 118. It was the policy of Nazi German authorities to let exhausted forced labourers die; sometimes they actively killed forced labourers when they could no longer work. Such circumstances could make their policy fall under the "enslavement" definition.119'</p> <p>Fn 119: 'Cf. ICRC, Customary International Humanitarian Law, Rule 95: Forced Labour, Deportation to Slave Labour, No. 19.'</p>	Both	Rule 95	Agreed	PSA	RE NOIND; Main text and fn - 'cf.'	https://www.icj-cij.org/public/files/ase-related/143/143-20120203-JUD-01-04-EN.pdf
5	ICJ	Ibid	<p>116. 'The fact remains that the prohibition of forced labour as a form of slavery soon marked its presence in endeavours of codification, not only of the ILC in the mid-twentieth century, but also of the International Committee of the Red Cross (ICRC) in the middle of last decade. In fact, in accordance with a study undertaken by the ICRC entitled Customary International Humanitarian Law, published in 2005, uncompensated and abusive forced labour is prohibited; the study asserts that such prohibition of forced labour attained the status of "a norm of customary international law applicable in both international and non-international armed conflicts"131 (Rule 95).'</p> <p>Fn 131: ICRC, Customary International Humanitarian Law — Vol. I: Rules (eds. J.-M. Henckaerts and L. Doswald-Beck), Geneva/Cambridge, ICRC/Cambridge University Press, 2005, p. 330, and cf. pp. 331-334; and cf. also ICRC, Customary International Humanitarian Law — Vol. II: Practice — Part I (eds. J. M. Henckaerts and L. Doswald-Beck), Geneva/Cambridge, ICRC/Cambridge University Press, 2005, pp. 2225-2262.'</p>	Both	Rule 95	Agreed	PSA	RE NOIND; Vol I: main text and fn. Vol II: fn - 'cf. also'.	Ibid
6	ICJ	Ibid	<p>1945), or the close relatives of those murdered in Distomo, Greece, or in Civitella, Italy, in 1944, during the Second World War, or victimized by other State atrocities, are the titulaires (with their ayantsdroits) of the corresponding right to reparation. Victims are the true bearers of rights, including the right to reparation, as generally recognized nowadays. Illustrations exist nowadays also in the domain of international humanitarian law. A study of the International Committee of the Red Cross (ICRC) on customary international humanitarian law rules 274 can be recalled in this connection. Rule 150 reads as follows: "A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused."275 As to, specifically, the question of "reparation sought directly by individuals", Rule 150 refers to "an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State"276.'</p> <p>Fn 274: 'ICRC, Customary International Humanitarian Law (eds. J. M. Henckaerts and L. Doswald-Beck), Vol. I: Rules, Geneva/Cambridge, Cambridge University Press, 2005, esp. pp. 537-550.'</p> <p>Fn 275: 'Ibid., p. 537; according to the appended summary, State practice establishes this Rule as one of "customary international law applicable in both international and noninternational armed conflicts".'</p> <p>Fn 276: 'Ibid., p. 541; in this regard, Rule 150 refers to Article 33 (2) of the ILC Articles on State Responsibility and the commentary thereof, and asserts that reparations have been granted directly to individual victims through different procedures, ranging from mechanisms set up by inter-State agreements to reparations sought by individuals directly before national courts.'</p>	One (rules)	Rule 150	Agreed	PSA	RE NOIND; Main text and fn.	Ibid

7	ECTHR	Case of Hanan v Germany, App No 4871/16, Judgment (Merits and Just Satisfaction), Grand Chamber, 16 February 2021 (majority opinion)	<p>1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 ("Additional Protocol I"), which is applicable to international armed conflicts, defines civilians as persons who are not members of the armed forces. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977 ("Additional Protocol II"), which is applicable to non-international armed conflicts, does not contain a definition of civilians. The definition of civilians in Additional Protocol I is a norm of customary international law which also applies to non-international armed conflicts (see Rule 5 of the Customary International Humanitarian Law study by the International Committee of the Red Cross ("ICRC") and the commentary thereon[2]). Civilians are protected against attack in non-international armed conflict, unless and for such time as they take a direct part in hostilities (Article 13 (3) of Additional Protocol II and Rule 6 of the Customary International Humanitarian Law study). In respect of non-international armed conflicts, the Customary International Humanitarian Law study indicated that there was ambiguity whether members of armed opposition groups could be considered civilians and be attacked lawfully only for such time as they took a direct part in hostilities, or whether they were, due to their membership, either considered to be continuously taking a direct part in hostilities or considered not to be civilians (see commentary on Rules 5 and 6). In 2009, the ICRC published Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law,[3] stating, inter alia, that in non-international armed conflict organised armed groups constituted the armed forces of a non-State party to the conflict and consisted only of individuals whose continuous function it was to take a direct part in hostilities ("continuous combat function"). Such members of organised armed groups belonging to a non-State party to an armed conflict ceased to be civilians, and lost protection against direct attack, for</p>	One (rules)	Rules 5; 6; 14	Agreed	PSA	RE NOIND; Main text and fn.	https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-208279%22]}
8	ECTHR	Ibid	<p>Protocol I, constitutes a norm of customary international law applicable in both international and non-international armed conflicts (see Rules 11 to 13 of the Customary International Humanitarian Law study and the commentaries thereon). The principle of proportionality in attack, codified in Article 51(5)(b) and repeated in Article 57(2)(a)(iii) of Additional Protocol I, is recognised as a norm of customary international law which is applicable in both international and non-international armed conflict (see paragraph 77 above and Rule 14 of the Customary International Humanitarian Law study). It provides that launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. State practice indicates that an ex ante perspective is decisive in this respect and Germany made a declaration to that effect upon ratification of Additional Protocol I. The principle of precautions in attack, codified in Article 57 of Additional Protocol I, is a norm of customary international law applicable in both international and non-international armed conflicts (see Rules 15 to 21 and the commentaries thereon). It provides that in the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects and that all feasible precautions must be taken, including in the choice of means and methods of warfare, to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects. Everything feasible must be done to verify that targets are military objectives and to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit, such as in cases where the element of surprise is</p>	One (rules)	Rules 11-21	Agreed	PSA	RE NOIND; Main text	Ibid

9	ECtHR	Ibid	83. 'It is an established norm of customary international humanitarian law which is also applicable in non-international armed conflicts, that States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects (see Rule 158 of the Customary International Humanitarian Law study and the commentary thereon). States engaging in multinational operations under the auspices of an international organisation are under the obligation to ensure respect for the entire body of international humanitarian law, including customary international humanitarian law, by their national contingent, including by the exercise of disciplinary and criminal powers retained by them.[5]'	One (rules)	Rule 158	Agreed	PSA	RE NOIND;	Ibid
10	ECtHR	Ibid	84. 'International humanitarian law assigns duties to commanders to ensure compliance with its rules, including in respect of initiating disciplinary or penal action against subordinates or other persons under their control (see Article 87 of Additional Protocol I and the ICRC commentary thereon[6] as well as Rule 153 of the Customary International Humanitarian Law study and commentary thereon in respect of the corresponding rule of command responsibility for failure to prevent, repress or report war crimes).'	One (rules)	Rule 153	Agreed	PSA	RE NOIND; Main text	Ibid
11	ECtHR	Ibid	137. 'In the present case, the Court considers, firstly, that Germany was obliged under customary international humanitarian law to investigate the airstrike at issue, as it concerned the individual criminal responsibility of members of the German armed forces for a potential war crime (see, in particular, rule 158 of the Customary International Humanitarian Law study by the ICRC, and the obligation of States engaging in multinational operations under the auspices of an international organisation to ensure respect for the entire body of international humanitarian law, including customary international humanitarian law, by their national contingent, including by the exercise of disciplinary and criminal powers retained by them, paragraph 83 above, see also the UN Basic Principles and Guidelines, paragraph 86 above, and further guidance from international human rights bodies, paragraphs 87-89 above). The existence of a duty to investigate under international law, with which the respondent Government agreed in the present case, reflects the gravity of the alleged offence (see also Georgia v. Russia (II), cited above, § 331).'	One (rules)	Rule 158	Agreed	PSA	RE NOIND + Application to Facts (APF); Main text	Ibid

12	ECTHR	Case of Hanan v Germany, App No 4871/16, Judgment (Merits and Just Satisfaction), Grand Chamber, 16 February 2021 (Joint Partly Dissenting Opinion of Judges Grozev, Ranzoni and Eicke)	20. 'The first purported "special feature" consists of Germany's obligation under international law to investigate the airstrike. This obligation is largely based on customary international law as reflected in Rule 158 of the Customary International Humanitarian Law Study by the International Committee of the Red Cross (see paragraphs 80-84 of the judgment). As the accompanying material thereto suggests, this obligation (a) is derived in large part from and reflects the obligations and the State practice flowing from the Rome Statute of the International Criminal Court ("the Rome Statute"; see paragraphs 94-95 of the judgment), and (b) is not limited to a duty to investigate "war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects" but also includes a duty to "investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects". In relation to the former (which may also become relevant in relation to the third "special feature"), the legal obligations flowing from the Rome Statute are of course common to the overwhelming majority of the Contracting Parties to the Convention, and it is not therefore clear what makes this feature "special". In relation to the latter duty to investigate war crimes beyond those committed by the State's own armed forces and its expansion to (i) all "nationals" and (ii) all other war crimes over which the State has jurisdiction, this is clearly capable of duplicating (and possibly detracting from) the creation of the kind of universal jurisdiction in relation to war crimes envisaged (so as to avoid impunity), inter alia, by the Rome Statute. This is a factor further highlighted by the express emphasis on the "gravity of the offence" in paragraph 137 of the judgment.'	One (rules)	Rule 158	Agreed	PSA	RE NOIND; Main text	Mention of accompanying material; some analysis re the Rome Statute	https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22:[%22001-208279%22]]}
13	ECTHR	Case of Georgia v Russia (II), App No 38263/08, Judgment (Merits), Grand Chamber, 21 January 2021 (majority opinion)	290. 'The relevant provision in this connection is Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. Moreover, under Rule 132 of the International Committee of the Red Cross's study of customary international humanitarian law, "Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist".'	One (rules)	Rule 132	Agreed	PSA	RE NOIND; Main text		https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-207757%22]}
14	ECTHR	Ibid	318. 'The Human Rights Centre of the University of Essex stated that although the law of armed conflict (LOAC) could require investigations in certain circumstances, there could be perceived differences between LOAC and human rights law (HRL) in this regard. For example, while under LOAC there was a need for investigation if there appeared to have been a violation which amounted to a war crime[35], civilian deaths which appeared to be lawful under LOAC (e.g. circumstances whereby it was indisputably within the proportionality formula) could fall outside this obligation.' Fn 35: 'See the analysis set out in the ICRC study of customary international law: J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, International Committee of the Red Cross, Cambridge, 2005, Rule 158.'	One (rules)	Rule 158	Neutral	Yes	Neutral mention (NM); Fn.	summarizing argument of third party intervenor	Ibid
15	ECTHR	Ibid	324. 'Moreover, under Rule 158 of the International Committee of the Red Cross's study of customary international humanitarian law, "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects".'	One (rules)	Rule 158	Agreed	PSA	RE NOIND; Main text		Ibid

16	ECtHR	Case of Trivkanović v Croatia, App No 12986/13, Judgment (Merits and Just Satisfaction), Court (First Section), 6 July 2017 (Partly Dissenting and Partly Concurring Opinion of Judge Wojtyczek)	'I fully agree with my colleagues that offences committed in time of war should be prosecuted efficiently and punished. In particular, as stated by the International Committee of the Red Cross, there is a rule of customary international law according to which States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects (see Customary International Humanitarian Law, Rule 158, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158). War crimes cannot remain unpunished.'	One (rules)	Rule 158	Agreed	PSA	RE NOIND; Main text	https://hudoc.echr.coe.int/eng#%22tabview%22:%22document%22:%22itemid%22:%22001-174966%22
17	ECtHR	Case of Tagayeva v Russia, App nos 26562/07, 49380/08, 21294/11, 37096/11, 49339/08 and 51313/08, Judgment, Court (First Section), 13 April 2017	471. 'Volume I of the updated version of the International Committee of the Red Cross (ICRC) "Study on Customary International Humanitarian Law" (2005) contains Rule 11, which provides: "Indiscriminate attacks are prohibited". Rule 12, which is entitled "Definition of Indiscriminate Attacks", reproduces the definition contained in Article 51 § 4 of Protocol I to the Geneva Convention (cited above). Rule 84, which is entitled "The Protection of Civilians and Civilian Objects from the Effects of Incendiary Weapons", reads: "If incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects." The ICRC comment summary to each of those Rules indicates that "State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts".'	One (rules)	Rules 11 and 12	Agreed	PSA	RE NOIND; Main text	https://hudoc.echr.coe.int/eng#%22tabview%22:%22document%22:%22itemid%22:%22001-172660%22
18	ECtHR	Case of J and Others v Austria, App no 58216/12, Judgment (Merits and Just Satisfaction), Court (Fourth Section), 17 January 2017	14. 'Deportation to slave labour and enslavement were listed as a war crime and a crime against humanity, respectively, in Article 6 (b) and (c) of the Nuremberg Charter. After the Second World War, the US Military Tribunal Nuremberg found, in the Pohl et al. case, that prisoners in the Nazi concentration camps were in a state of slavery and those responsible for these camps were guilty of war crimes and crimes against humanity[53]. Article 52 of the Third Geneva Convention provided that prisoners of war should not be compelled to carry out unhealthy, dangerous or humiliating work. Article 4 (2) (f) of the Additional Protocol II to the Geneva Conventions prohibited at any time and in any place slavery and slave trade in all their forms of persons who do not take direct part or have ceased to take part in hostilities[54].' Fn 54: 'The Red Cross Rule 95 on Forced Labour dictates that "Uncompensated or abusive forced labour is prohibited", considering that State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts (Henckaerts and Doswald-Beck, Customary International Humanitarian Law, volume I, Rules, Cambridge, 2005, pp. 330-334). See also Articles 29-32 of the 1929 Geneva Convention, Articles 49-68 of the 1949 Third Geneva Convention and Articles 40, 51 and 95 of the 1949 Fourth Geneva Convention.'	One (rules)	Rule 95	Agreed	PSA	RE NOIND; Fn.	https://hudoc.echr.coe.int/eng#%22tabview%22:%22document%22:%22itemid%22:%22001-170388%22

19	ECTHR	Case of Muršić v Croatia, App no 7334/13, Judgment, Grand Chamber, 20 October 2016, Separate Opinion of Judge Pinto de Albuquerque	<p>23. 'Yet, as has been demonstrated, there is no water-tight, binary distinction between hard law and non-law, since European human rights law evolves by means of a rich panoply of sources that do not necessarily share the classical, formal features of hard international law.⁴³'</p> <p>Fn 43: 'The typology of these forms is immensely rich. They include non-conventional international agreements, like the Helsinki Final Act (see for example, Freedom and Democracy Party (ÖZDEP) v. Turkey, no. 23885/94, § 40, 8 December 1999); treaties not ratified by the respondent State (see for example, Marckx, cited above); declarations of international organisations, like the Universal Declaration on Human Rights and other General Assembly Declarations (see for example, K.-H. W. v. Germany [GC], no. 37201/97, § 95, ECHR 2001-II); resolutions and recommendations of international organisations, like those of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe (see for example, Mosley v. United Kingdom, no. 48009/08, §§ 87, 119 and 124, 10 May 2011); General Comments of international organisations, like those adopted by the United Nations treaties bodies (see for example, Bayatyan v. Armenia [GC], no. 23459/03, § 105, ECHR 2007); and Codes of Conduct and Guidelines of international organisations, like those of the World Health Organisation (see for example, Oluic v. Croatia, no. 61260/08, § 60, 20 May 2010); commentaries and studies by ONGs, like the International Committee of the Red Cross study on customary international humanitarian law and commentaries on the Geneva conventions (see for example, Korbely v. Hungary, no. 9174/02, §§ 50, 51 and 90, ECHR 2008), and reports of individuals, like those of the United Nations Secretary General (Korbely, cited above, § 90). This latter case is also remarkable due to the high relevance given to scholarly opinion in paragraphs 82 and 87.'</p>	Both	N/A	Neutral	Yes. Part of broader academic discussion.	Fn.	The ICRC Study is used as an example of a source of law that does not share the traditional characteristics of hard law.	https://johan-callewaert.eu/wp-content/uploads/2019/12/CASE-OF-MURSIC-v.-CROATIA.pdf
20	ECTHR	Case of Sargsyan v Azerbaijan, App No, 40167/06, Judgment (Merits), Grand Chamber, 16 June 2015 (majority opinion)	<p>95. '... Article 49 of the Fourth Geneva Convention applies in occupied territory, while there are no specific rules regarding forced displacement on the territory of a party to the conflict. Nonetheless the right of displaced persons "to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist" is regarded as a rule of customary international law (see Rule 132 in Customary International Humanitarian Law by the International Committee of the Red Cross (ICRC)[4]) that applies to any kind of territory.'</p> <p>Fn 4: 'J.-M. Henckaerts, and L. Doswald-Beck, Customary International Humanitarian Law, (Geneva/Cambridge: ICRC/Cambridge University Press, 2005).'</p>	One (rules)	Rule 132	Agreed	PSA	RE NOIND; Main text and fn.		https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-155662%22]}
21	ECTHR	Ibid	<p>232. 'What is rather of relevance in the present case is the right of displaced persons to return voluntarily and in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist, which is regarded as a rule of customary international humanitarian law applying to all territory whether "occupied" or "own" (see Rule 132 in Customary International Humanitarian Law by the ICRC – paragraph 95 above). However, it may be open to debate whether the reasons for the applicant's displacement have ceased to exist. In sum, the Court observes that international humanitarian law does not appear to provide a conclusive answer to the question whether the Government are justified in refusing the applicant access to Gulistan.'</p>	One (rules)	Rule 132	Agreed	PSA	RE NOIND, APF; Main text		Ibid

22	ECTHR	Case of Sargsyan v Azerbaijan, App No, 40167/06, Judgment (Merits), Grand Chamber, 16 June 2015 (Dissenting Opinion of Judge Pinto de Albuquerque)	<p>(i) Formation of the customary rule (§§ 21-31)</p> <p>(a) United Nations practice (§§ 21-24)</p> <p>21. Article 2 § 4 of the United Nations Charter on prohibition of the use of force is a jus cogens rule, which applies in both inter-State and intra-State cases. This rule may be restricted only by another rule of a similar nature (see Article 53 of the Vienna Convention on the Law of Treaties). The targeting of a population by their own government, which perpetrates, seeks to perpetrate or allows the perpetration of genocide, crimes against humanity or war crimes, directly or through private agents acting under its direction or with its connivance, constitutes criminal conduct under treaty and customary law. The prevention and punishment of such crimes is a jus cogens obligation of a non-derogable, imperative nature, in times of both peace and war. In case of the deliberate selection of a part of the population on the basis of a racial, ethnic, religious or other identity-based criterion as a target of a systematic attack, the unlawfulness of the conduct is compounded by the discriminatory intent, which also calls for mandatory prevention and punishment[50]. Thus, the jus cogens prohibition of the use of force may be restricted for reasons of protecting a population from the commission of jus cogens crimes, the application of Article 103 of the UN Charter being excluded in this conflict of norms.</p> <p>Fn 50: 'Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide and Article 89 of the Protocol additional I to the Geneva Conventions. See also on jus cogens crimes, Human Rights Committee, General Comment No. 29, States of Emergency (Article 4), CCPR/C/21/Rev.1/Add.11 (2001), § 11 ("States</p>	One (rules)	Rules 156-161	Agreed	Yes. Part of broader academic discussion.	Fn - 'see also'.	unclear why the Study is even cited/citation does not support specific proposition	https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-155662%22]}
23	ECTHR	Ibid	<p>their populations. This is not only their right, but their obligation as well. Each government has the obligation to maintain or re-establish law and order in the State or to defend its national unity and territorial integrity by "all legitimate means"[88]. While fulfilling these obligations, "all reasonable precautions" are due to avoid any losses of civilian lives and damage to civilian objects[89]. When absolutely necessary, civilian property may be destroyed for military purposes[90]. Civilians should not be arbitrarily displaced from their homes or places of habitual residence, imperative military reasons being necessary to justify such displacement[91]. In the case of forced displacement of civilians, their rights to return to and enjoy their homes and property should be implemented as soon as the reasons for their displacement cease to exist[92].'</p> <p>Fn 89: 'Article 13 of the 1977 Protocol additional II to the Geneva Conventions and Article 57 of the 1977 Protocol additional I to the Geneva Conventions, and Rules 1 to 10 and 15 of the ICRC Study on Rules of customary international humanitarian law (cited above).'</p> <p>Fn 90: 'Article 52 of the 1977 Protocol additional I to the Geneva Conventions, Article 14 of the 1977 Protocol additional II to the Geneva Conventions, Article 53 of the 1949 Fourth Geneva Convention relative to the protection of civilian persons in time of war, Article 6 (b) of the Charter of the International Military Tribunal, Articles 46 and 56 of the Hague Regulations Respecting the Laws and Customs of War on Land, and Rules 51 and 52 of the ICRC Study on Rules of customary international humanitarian law (cited above).'</p> <p>Fn 91: 'Article 17 of the 1977 Protocol additional II to the Geneva Conventions, Rules 129 and 130 of the ICRC Study on Rules of customary international</p>	One (rules)	Rules 1-10; 15; 51; 52.	Agreed	PSA (treaties also cited)	RE NOIND; Fn.	Ibid	

24	ECTHR	Case of Chiragov and Others v Armenia, App no 13216/05, Judgment (Merits), Grand Chamber, 16 June 2015	<p>97. '... Article 49 of the Fourth Geneva Convention applies in occupied territory, while there are no specific rules regarding forced displacement on the territory of a party to the conflict. Nonetheless, the right of displaced persons "to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist" is regarded as a rule of customary international law (see Rule 132 in Customary International Humanitarian Law by the International Committee of the Red Cross (ICRC)[6]) that applies to any kind of territory.'</p> <p>Fn 6: 'J.-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (Geneva/Cambridge: ICRC/Cambridge University Press, 2005).'</p>	One (rules)	Rule 132	Agreed	PSA	RE NOIND; Main text and fn.	https://hudoc.echr.coe.int/eng#{%22tabview%22:%22document%22,%22itemid%22:%22001-155353%22}}
25	ECTHR	Case of Mocanu and Others v Romania, App nos 10865/09, 45886/07 and 32431/08, Judgment (Merits and Just Satisfaction), Grand Chamber, 17 September 2014 (Concurring Opinion of Judge Pinto de Albuquerque, Joined by Judge Vučinić)	<p>punishability of crimes against humanity without any time-limit can be considered as a principle of customary international law, binding on all States[6]. Such a principle of international criminal law was set out in Article 29 of the Rome Statute of the International Criminal Court (1998)[7], which followed similar principles, established by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968)[8], the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974)[9] and Economic and Social Council (ECOSOC) Resolution 1158 (XLI), adopted in 1966[10]. After some hesitation during the 1970s and 1980s, States had massively adhered to the principle of the imprescriptibility of the crime of genocide and of crimes against humanity by the end of the twentieth century[11]. No such limitation was provided for international crimes in the Nuremberg and Tokyo Charters, the Statutes of the ad hoc tribunals or the Special Court of Sierra Leone. The precedent of the Rome provision was Article II (5) of Control Council Law no. 10, which stated explicitly that "the accused shall not be entitled to the benefits of any statute of limitation in respect to [sic] the period from 30 January 1933 to 1 July 1945"[12]. In recent years, State practice has confirmed the choice made in Rome, since similar provisions were included in Article 17.1 of the United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/15[13], Article 17 (d) of the Statute of the Iraqi Special Tribunal (2003)[14] and Articles 4 and 5 of the Law on the establishment of Extraordinary Chambers in the courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea (2004)[15].'</p> <p>Fn 11: 'This also applies to, if not all, at least some war crimes. The International Committee of the Red Cross (ICRC) presented in 2005 a Study on Customary International Humanitarian Law (J.-M. Henckaerts and L. Doswald-Beck (eds.),</p>	Both	Rule 160	Agreed	PSA. Part of broader academic discussion	RE NOIND; Fn.	https://hudoc.echr.coe.int/eng#{%22tabview%22:%22document%22,%22itemid%22:%22001-146540%22}}

26	ECTHR	Case of Margaš v Croatia, App no 4455/10, Judgment (Merits and Just Satisfaction), Grand Chamber, 27 May 2014	<p>F. Customary Rules of International Humanitarian Law</p> <p>45. Mandated by the States convened at the 26th International Conference of the Red Cross and Red Crescent, the International Committee of the Red Cross (ICRC) presented in 2005 a Study on Customary International Humanitarian Law[4] (J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, 2 Volumes, Cambridge University Press & ICRC, 2005). This Study contains a list of customary rules of international humanitarian law. Rule 159, which refers to non-international armed conflicts, reads:</p> <p>“At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes”.’</p> <p>Fn 4: 'J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, vols. I and II, Cambridge University Press and ICRC, 2005.'</p>	Both	Rule 159	Agreed	Part of broader discussion	Main text and fn.	https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-144276%22]}
27	ECTHR	Case of Janowiec and Others v Russia, Application Nos 55508/07 and 29520/09, Judgment (Merits and Just Satisfaction), Grand Chamber, 21 October 2013	<p>Conventions of 1949[7]. At the Nuremberg trial, the Soviet prosecutor attempted to charge leading Nazis with the Katyn massacre, thereby showing that Russia considered the prohibition of war crimes such as those concerned here to be a binding principle of international law (see paragraph 140 of the Chamber judgment). According to both the rules of State continuity and those of State succession, and plainly in view of the applicable rules of customary law, the Government's submission that they are not bound by the international humanitarian law on war crimes thus violates the principle of venire contra factum proprium. In light of the above, we must conclusively find that the massacre of the Polish prisoners of war in 1940 constituted a violation of the prohibition of war crimes and crimes against humanity. Under customary international humanitarian law, States have an obligation “to investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects”[8]. There is no time-limit on this obligation, for war crimes and crimes against humanity are imprescriptible[9].’</p> <p>Fn 8: 'J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, Volume I: Rules, Cambridge University Press: Cambridge 2005, Rule 158, p. 607; First Geneva Convention (Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, 195 States Parties, in force since 21 October 1950), Art. 49; Second Geneva Convention (Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, 195 States Parties, in force since 21 October 1950), Art. 50; Third Geneva Convention (Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, 195 States Parties, in force since 21 October 1950), Art. 129; Fourth Geneva Convention (Convention (IV) relative to the Protection of</p>	One (rules)	Rule 158	Neutral	GC I art 49; GC II art 50; GC III art 129; GC IV art 146.	Fn.	https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-127684%22]}

28	ECtHR	Case of Maktouf and Damjanović v Bosnia and Herzegovina, App Nos 2312/08 and 34179/08, Judgment (Merits and Just Satisfaction), Grand Chamber, 18 July 2013 (Concurring Opinion of Judge Pinto de Albuquerque, Joined by Judge Vučinić)	<p>9. 'Summing up, there is to be no retroactive penal law, except in favour of the defendant[56]. No one may be held guilty of a criminal offence that did not constitute a criminal offence under national or international law at the time when it was committed, nor may a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed (the negative version of the principle of legality). Conversely, a lighter penalty is to be imposed if, in the period since the criminal offence was committed, a new law has provided for a penalty lighter than that which was applicable at the time the offence was committed (the positive version of the principle of legality). These principles are part of the rules of customary international law, binding on all States, and are peremptory norms with the effect that no other rule of international or national law may derogate from them[57]. In other words, the principle of legality in the field of criminal law, both in its positive and negative versions, is jus cogens.'</p> <p>Fn 57: 'The International Committee of the Red Cross shares the view that the non-retroactivity of crimes and penalties is a principle of customary international law, in times of both peace and war (Rule 101 of the Study on Customary International Humanitarian Law, conducted by the International Committee of the Red Cross).'</p>	One (rules)	Rule 101	Agreed	Part of broader discussion	Fn.	https://hudoc.echr.coe.int/eng#{%22tabview%22:%22document%22:%22001-122716%22}}
29	ECtHR	Case of Marguš v Croatia, App No 4455/10, Judgment, Court (First Section), 13 November 2012	<p>B. Customary Rules of International Humanitarian Law</p> <p>29. Mandated by the States convened at the 26th International Conference of the Red Cross and Red Crescent, the International Committee of the Red Cross (ICRC) presented in 2005 a Study on Customary International Humanitarian Law (J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, 2 Volumes, Cambridge University Press & ICRC, 2005). The Study contains a list of customary rules of international humanitarian law. Rule 159 which refers to non-international armed conflicts reads: "At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes".'</p>	Both	Rule 159	Neutral	Part of broader discussion	Main text	https://hudoc.echr.coe.int/eng#{%22tabview%22:%22document%22:%22001-114487%22}}

30	ECTHR	Case of Korbely v Hungary, App no 9174/02, Judgment (Merits and Just Satisfaction), Grand Chamber, 19 September 2008	<p>E. Customary international humanitarian law</p> <p>51. In the view of the International Committee of the Red Cross (ICRC), the rule that any person hors de combat cannot be made the object of attack has become a customary rule applicable to both international and non-international armed conflicts. The ICRC has reminded the parties concerned of the obligation to observe this rule in a number of armed conflicts[4]. Accordingly, the ICRC's study on customary international humanitarian law (2005) proposes the following rule in the section on specific methods of warfare:</p> <p>"Rule 47. Attacking persons who are recognised as hors de combat is prohibited. A person hors de combat is:</p> <p>(a) anyone who is in the power of an adverse party; (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape." [5]</p> <p>Fn 5: Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law, ICRC, Cambridge, 2005, vol. I, pp. 164-70.</p>	One (rules)	Rule 47	Neutral	No.	NM; Main text and fn.	The Court does not endorse the customary status of the rule here, and uses the term 'proposes' to refer to the Study, which diminishes its authority	https://hudoc.echr.coe.int/eng#{%22tabview%22:%22document%22,%22itemid%22:%22001-88429%22}}
31	ECTHR	Ibid	<p>90. 'The question therefore arises whether Tamás Kaszás was a member of the insurgent forces who had "laid down his arms", thereby taking no further part in the fighting. In this connection, the Court finds it to be crucial that, according to the domestic court's finding, Tamás Kaszás was secretly carrying a handgun, a fact which he did not reveal when facing the applicant. When this circumstance became known, he did not seek to surrender in a clear manner. The Court notes that it is widely accepted in international legal opinion that in order to produce legal effects such as the protection of common Article 3, any intention to surrender in circumstances such as those in issue in the present case needs to be signalled in a clear and unequivocal way, namely by laying down arms and raising hands or at the very least by raising hands only (see, for example, the Commentary on Additional Protocol I to the Geneva Conventions, published by the ICRC (see paragraph 50 above); the proposed Rule 47 of the ICRC's study on customary international humanitarian law (2005) (see paragraph 51 above); and the Report of the [United Nations] Secretary-General on respect for human rights in armed conflict, UN Doc. A/8052, 18 September 1970, § 107). For the Court, it is reasonable to assume that the same principles were valid in 1956.'</p>	One (rules)	Rule 47	Agreed	Yes.	RE NOIND; Main text	Again the Court uses the term 'proposed' rule; the Study is treated as one source among several, at a lower degree of authority than in later cases.	Ibid

32	ECTHR	Case of Kononov v Latvia, App no 36376/04, Judgment, Court (Third Section), 24 July 2008, Separate Opinion of Judges Fura-Sandström, Björgvinsson, Ziemele	<p>10. 'This is a mistake in terms of the international humanitarian law applicable at the time. First of all, it is true that the regulation concerning the protection of civilians was in a relatively rudimentary state at that time, but it did exist. It is well-known that: "A central feature of the laws of armed conflict ever since the eighteenth century has been the distinction between combatants and civilians". [11] Where the text of the Hague Regulations was not sufficiently clear to the majority and since it considered that the reasoning of the national courts was insufficient, it should have resorted to all the other means available in international law to establish the scope of the relevant regulations in order to assess whether the national courts had arrived at arbitrary findings. This would have led the Court to pay attention among other things to the Preamble to the 1907 Hague Convention which includes the so-called Martens clause, which provides: "[T]he high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders". It goes on to explain: "[I]n cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience".'</p> <p>Fn 11: 'See Ch Greenwood, 'The law of war (International Humanitarian Law)', in M. D. Evans, International Law, Oxford: University Press, 2003, p. 794. The ICRC has commented that: "The principle of distinction between civilians and combatants was first set forth in the St. Petersburg Declaration". See J-M. Henckaerts & L. Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, Cambridge: University Press, 2005, p. 3.'</p>	One (rules)	Rule 1	N/A	Yes. Part of broader academic discussion.	NM; Fn - 'see'.	Used for one isolated proposition on the origins of the principle of distinction.	https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-87934%22]}
33	ICC	Prosecutor v Ntaganda, Appeals Chamber, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', 30 March 2021, ICC-01/04-02/06/2666-Red	<p>549. 'The relevant framework of the international law of armed conflict applicable to article 8(2)(e)(viii) of the Statute is provided by article 17 of Additional Protocol II and customary international humanitarian law. Article 17(1), first sentence, prohibits the displacement of civilians in non-international armed conflicts in terms that are almost identical to article 8(2)(e)(viii) of the Statute: '[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand'. 1071 Article 17(2) provides that '[c]ivilians shall not be compelled to leave their own territory for reasons connected with the conflict'. A similar prohibition exists under customary law and is set out in rule 129(B) of the ICRC's compilation of customary rules of international humanitarian law, again in terms that are almost identical to those of article 17(1), first sentence, of Additional Protocol II and article 8(2)(e)(viii) of the Statute: '[p]arties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand'.1072'</p> <p>Fn 1072: 'ICRC's Compilation of Customary Rules, p. 457.'</p>	One (rules)	Rules 129(B)	Agreed	PSA	RE NOIND; Main text and fn.		https://www.icc-cpi.int/CourtRecords/CR2021_03027.PDF

34	ICC	Ibid	<p>requirement in article 8(2)(e)(viii) of the Statute, the Elements of Crimes, article 17 of Additional Protocol II, or customary international humanitarian law that, to order the displacement of the civilian population in the context of a non-international armed conflict, the perpetrator must be in occupation of, or exercise territorial control over, the relevant area.'</p> <p>551. 'In contrast, the Appeals Chamber notes that article 8(2)(b)(viii) of the Statute, a similar provision applicable in international armed conflicts, explicitly includes such a requirement when it criminalises '[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory'.1073 Had the drafters intended to include a similar requirement in relation to article 8(2)(e)(viii) of the Statute, the Appeals Chamber considers that it would have been explicitly set out in the Elements of Crimes.'</p> <p>Fn 1073: 'Emphasis added. The legal elements of this crime are set out in the Elements of Crimes: (i) '[t]he perpetrator: (a) [t]ransferred, directly or indirectly, parts of its own population into the territory it occupies; or (b) [d]eported or transferred all or parts of the population of the occupied territory within or outside this territory'; (ii) '[t]he conduct took place in the context of and was associated with an international armed conflict'; and (iii) '[t]he perpetrator was aware of factual circumstances that established the existence of an armed conflict' (footnote omitted). The law of international armed conflict applicable in this context is article 85(4)(a) of Additional Protocol I, the wording of which is almost identical to article 8(2)(b)(viii): 'the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in</p>	One (rules)	Rule 129(A)	Agreed	PSA	RE NOIND, APF. Fn.	Study clearly perceived as more authoritative than an academic article, on par with formally binding instruments.	Ibid
35	ICC	Ibid ('Table of Designations and Cited Materials')	P. 21: 'J.-M. Henckaerts and L. Doswald-Beck (eds), 'Chapter 38, Displacement and Displaced Persons', in ICRC, Customary International Humanitarian Law, Vol. I: Rules (Cambridge University Press 2005).'	One (rules)	Ch 38 (rules 129-133)	Neutral	N/A	NM; Table of cited materials		https://www.icc-cpi.int/RelatedRecords/CR2021_03019.PDF
36	ICC	Prosecutor v Ntaganda, Trial Chamber VI, Judgment pursuant to Article 74 of the Statute, 8 July 2019, ICC-01/04-02/06-2359	<p>883. 'Under IHL, civilians are protected and they lose that protection only through active participation in hostilities and for such time they participate.2585'</p> <p>Fn 2585: 'Article 13(3) of Additional Protocol II; Yves Sandoz et al. (eds), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1986), para. 1453; Rule 6 and the related practice of the ICRC Customary IHL Study; ICTY, Kordić and Čerkez Appeal Judgment, para. 50; and International Committee of the Red Cross, Interpretive guidance on the notion of direct participation in hostilities under humanitarian law (2009), pp. 53-60.'</p>	Both	Rule 6	Agreed	Yes. (reference to generic content of IHL, rather than customary IHL specifically)	RE NOIND; Fn.		https://www.icc-cpi.int/CourtRecords/CR2019_03568.PDF

37	ICC	Ibid	<p>921. '... The crime under Article 8(2)(e)(i) of the Statute may encompass attacks that are carried out in an indiscriminate manner, that is by targeting an area, as opposed to specific objects, or not targeting specific military objects or persons taking a direct part in hostilities,2667 so long as the perpetrator was aware of the presence of civilians in the relevant area. It may also include attacks that are launched without taking necessary precautions to spare the civilian population or individual civilians.2668 Therefore, the use of weapons that have inherently indiscriminate effects in an area where civilians are present may constitute an attack directed at the civilian population or individual civilians.'</p> <p>Fn 2668: 'The attacker must ensure that civilians do not become the actual object of attack. For example, in case the attacker failed to seek information on the status of the objects or persons attacked. The duty to take precautions has been found to also be applicable in times of non-international armed conflict in ICTY, Kupreškić et al. Trial Judgment, paras 524 to 525, which concerned this type of conflict. It has also been considered as a rule of customary IHL, applicable in both international and non-international by the ICRC: see Rule 15 of the ICRC Study on Customary IHL, and underlying practice.'</p>	Both	Rule 15	Agreed	PSA	RE NOIND. Fn.	Ibid
38	ICC	Ibid	<p>1146. 'In principle, all objects are protected under IHL as being civilian, apart from those 'objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage'.3156 ...'</p> <p>Fn 3156: 'Article 52(2) of Additional Protocol I. This definition, through customary international law, has also become applicable to non-international armed conflicts. See Rule 8 of the ICRC Study on Customary IHL, and the underlying State practice referred to in the study.'</p>	Both	Rule 8	Agreed	PSA	RE NOIND. Fn.	Practice only being cited generally, no specific pages Ibid
39	ICC	Ibid	<p>1146. '... In order to fall under Article 8(2)(e)(iv) of the Statute, the attacked objects must have performed the function of buildings dedicated to religion or education, hospitals, or places where the sick and wounded are brought at the time of the attack. With respect to medical facilities, the Chamber notes that these structures enjoy enhanced protection which 'shall not cease unless they are used to commit hostile acts, outside their humanitarian function'.3157'</p> <p>Fn 3157: 'See Article 13(1) of Additional Protocol I and Article 11(2) of Additional Protocol II, found to be a norm of customary international law applicable in both international and non-international armed conflicts: Rule 28 of the ICRC Study on Customary IHL, and the underlying State practice referred to in the study.'</p>	Both	Rule 28	Agreed	PSA	RE NOIND. Fn.	Practice only being cited generally, no specific pages Ibid
40	ICC	Prosecutor v Bemba, Appeals Chamber, Judgment on the Appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber II's "Judgment pursuant to Article 74 of the Statute", 8 June 2018, ICC-01/05-01/08-3636-Anx1-Red (Dissenting Opinion Judges Monageng and Hofmański)	<p>559. 'We note that an absolute prohibition on pillaging is a part of customary1218 and conventional1219 international law, applicable to both international and non-international armed conflicts.'</p> <p>Fn 1218: 'See ICRC Database on Customary International Humanitarian Law, "Rule 52. Pillage", accessed at: https://ihl-databases.icrc.org/customary-ihl/eng/print/v1_rul_rule52.'</p>	One (rules)	Rule 52	Agreed	PSA	RE NOIND. Fn - 'see'.	https://www.icc-cpi.int/RelatedRecords/CR2018_02987.PDF

41	ICC	Prosecutor v Bemba, Trial Chamber III, Judgment pursuant to Article 74 of the Statute, 21 March 2016, ICC-01/05-01/08-3343	<p>120. 'In relation to the concept of the appropriation of property for private or personal use, the Chamber notes that this requirement is not explicitly expressed in customary or conventional international humanitarian law and has not been established, as such, in the jurisprudence of other international criminal tribunals.284 ...'</p> <p>Fn 284: 'See SCSL, Fofana and Kondewa Trial Judgment, para. 160, considering that the requirement of private or personal use in the Elements of Crimes constituted an unwarranted restriction on the application of the offence of pillage; and SCSL, Brima et al. Trial Judgment, para. 753, considering that the requirement of private or personal use in the Elements of Crimes' definition of pillage "is framed to apply to a broad range of situations". See contra SCSL, Fofana and Kondewa Appeal Judgment, paras 403 to 404, finding that the finalised text of the Elements of Crimes was a useful indication of the opinio juris of states and that the ICRC Compendium on Customary International Humanitarian Law, published in 2005, surveyed state practice and concluded that pillage is the "specific application of the general principle of law prohibiting theft" thereby involving the "appropriation" of property "for private or personal use" (internal citations omitted).'</p>	Both	Rule 52	Neutral	Yes, part of broader discussion	RE NOIND. Fn - 'see contra'.	The Trial Chamber does not disagree with the ICRC's assessment of the customary position, but holds that it must apply the more restrictive definition in the ICC Elements of Crimes.	https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF
42	ICC	Ibid	<p>b) Directed against any civilian population</p> <p>152. ' ... Article 50 of Additional Protocol I provides a definition of a "civilian population", which the Chamber considers to be customary in nature and therefore relevant to the consideration of crimes against humanity.342 The Chamber endorses that definition.'</p> <p>Fn 342: Additional Protocol I, Article 50. See Jean-Marie Henckaerts and Louise Doswald Beck, Customary International Humanitarian Law, Volume I: Rules (2005), at Rule 5. See also Katanga Trial Judgment, para. 1102; ICTY, Blaškić Appeal Judgment, paras 110, and 113 to 114; ICTY, Kordić and Čerkez Appeal Judgment, para. 97; ICTY, Mrkšić and Šljivančanin Appeal Judgment, para. 35; and ECCC, Nuon and Khieu Trial Judgment, para. 185.</p>	One (rules)	Rule 5	Agreed	Yes.	RE NOIND. Fn - 'see'.	No independent analysis of state practice or opinio juris; Study treated on par with the text of AP I. Followed by a 'see also' citation to the judgments of other criminal tribunals.	Ibid
43	ICC	Ibid	<p>156. 'Finally, it is noted that, despite the requirement that the attack be directed against a civilian population, there is no requirement that the individual victims of crimes against humanity be "civilians".352 Indeed, considering the purpose of Article 7, it is the Chamber's view that the notion must be construed in a manner which does not exclude other protected persons. 353'</p> <p>Fn 353: 'See, inter alia, Geneva Conventions of 1949, Common Article 3; First Geneva Convention, Articles 12 to 13, 19, and 24 to 26; Fourth Geneva Convention, Articles 16 and 63; Additional Protocol I, Articles 12, 15, 22, 23(5), 41(1), and 51; Additional Protocol II, Articles 9 and 13; Jean-Marie Henckaerts and Louise DoswaldBeck, Customary International Humanitarian Law, Volume I: Rules (2005), at Rules 3, 25, 27 to 31, 33 to 34, 47 to 48, 111, and 134 to 138; and Jean-Marie Henckaerts, "Study on Customary International Humanitarian Law: A contribution to the Understanding and Respect for the Rule of Law in Armed Conflict", 87 International Review of the Red Cross (2005), pages 198 to 212. For a similar approach, see ICTY, Martić Appeal Judgment, paras 307 to 313; and SCSL, Sesay et al. Trial Judgment, para. 82.'</p>	One (rules)	Rules 3; 25; 27-31; 33-34; 47-48; 111; 134-138	Agreed	Yes.	RE NOIND. Fn - 'see, inter alia,'.		Ibid

44	ICC	Ibid	<p>172. 'The fundamental responsibilities which such superiors assume, and the potential for irreparable harm from a failure to properly fulfil those responsibilities, has long been recognised as subject to regulation by criminal law. Historically, this is most clearly seen in the context of military commanders, whose individual criminal responsibility has been recognised in domestic law, in jurisprudence since at least the aftermath of the Second World War, and was subsequently reflected in Article 86 of Additional Protocol I to the Geneva Conventions.³⁸⁷'</p> <p>Fn 387: 'Article 86(2) of Additional Protocol I reads: "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach." The jurisprudence arising in the context of the Second World War has been recounted in detail in the jurisprudence of other courts and tribunals, including, for example, ECCC, Ieng Sary et al., Decision on Appeals by Nuon Chea and Ieng Thirith Against the Closing Order, paras 230 to 232. In respect of the well-established nature of the principle of command responsibility generally, see also ICTY, Delalić et al. Trial Judgment, para. 195; Jean-Marie Henckaerts & Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules (2005), at Rule 153. For an overview of practice relating to command responsibility, see Jean-Marie Henckaerts & Louise Doswald-Beck, Customary International Humanitarian Law, Volume II: Practice, Part 2 (2005), pages 3733 to 3791.'</p>	Both	Rule 153	Agreed	Yes.	RE NOIND. Fn - 'see also'. Citation of state practice, but no examination of the practice. Citation to other courts.	Ibid
45	ICC	Prosecutor v Lubanga, Appeals Chamber, Public redacted Judgment on the Appeal of Thomas Lubanga Dyilo against his Conviction, 1 December 2014, ICC-01/04-01/06-3121-Red	<p>277. 'According to article 31 of the Vienna Convention on the Law of Treaties, treaty provisions are to be interpreted according to their ordinary meaning in their context and in the light of the object and purpose of the treaty. The ordinary meaning of conscription is the "compulsory enlistment of persons into military service".⁵²¹ The purpose of articles 8 (2) (b) (xxvi) and 8 (2) (e) (vii) of the Statute, as well as the provisions of international law upon which they are based, ⁵²² specifically article 77 (2) of Additional Protocol I,⁵²³ article 4 (3) (c) of Additional Protocol II,⁵²⁴ and article 38 (3) of the Convention on the Rights of the Child,⁵²⁵ is to protect children who are under the age of fifteen years from being recruited into armed forces or groups.⁵²⁶'</p> <p>Fn 526: 'J.M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, Vol. I (ICRC and Cambridge University Press, 2009), pages 482-484. See also article 4 of the Optional Protocol to the Convention on the Rights of the Child, which reads, in relation to non-government actors, that: "Armed groups that are distinct from the armed forces of a State should not [...] recruit [...] persons under the age of 18 years."'</p>	One (rules)	Rule 136	Neutral	Yes.	Authoritative mention (AM), but no reliance for any specific customary rule. Fn.	https://www.icc-cpi.int/CourtRecords/CR2014_09844.PDF

46	ICC	Ibid	<p>Chamber finds that the term 'participate actively in hostilities' in article 8 (2) (e) (vii) of the Statute does not have to be given the same interpretation as the terms active or direct participation in the context of the principle of distinction between combatants and civilians, as set out, in particular, in Common Article 3 of the Geneva Conventions. This is because, despite the use of similar terminology, the purpose of article 8 (2) (e) (vii) of the Statute is different from that of Common Article 3 of the Geneva Conventions. The latter provision establishes, inter alia, under which conditions an individual loses protection as a civilian because he or she takes direct part in hostilities.⁶⁰⁶ On the other hand, article 8 (2) (e) (vii) of the Statute seeks to protect individuals under the age of fifteen years from being used to 'participate actively in armed hostilities' and the concomitant risks to their lives and well being.⁶⁰⁷ Therefore, the Appeals Chamber finds that the interpretation given to Common Article 3 of the Geneva Conventions in the context of the principle of distinction cannot be simply transposed to that of article 8 (2) (e) (vii) of the Statute. Rather, the term 'participate actively in hostilities' must be given an interpretation that bears in mind that provision's purpose.'</p> <p>Fn 607: Y. Sandoz et al., Commentary on the Additional Protocols of June 1977 to the Geneva Conventions of 12 August 1949 (ICRC, 1987), page 901, para. 3187; G. P. Suárez, Kindersoldaten im Völkerstrafrecht (BVW, 2009), page 101; S. SáCouto and K. Cleary, "The Adjudication Process and Reasoning at the International Criminal Court: The Lubanga Trial Chamber Judgment, Sentencing and Reparations", 30 IUS Gentium (2014), page 131 at pages 140-141; H. Von Hebel, "Crimes Within the Jurisdiction of the Court" in R. S. K. Lee (ed.), The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results (Kluwer Law International, 1999), page 79 at page 119; MT. Dulti and A. Bouvier, "Protection of children in armed conflict: the rules of international law and the role</p>	One (rules)	Rule 136	Neutral	Yes, part of broader discussion	Fn.	Study used like any other academic authority	Ibid
47	ICC	Ibid	<p>327. 'Thus, the ICRC suggests that article 77 (2) of Additional Protocol I should be interpreted based on the provision's purpose to protect children. It does not suggest an interpretation of the term based on the principle of distinction between combatants and civilians. In this regard, the Appeals Chamber observes that articles 8 (2) (b) and 8 (2) (e) of the Statute do not make any such distinction between international and non-international armed conflicts in terms of the requisite level of participation; both equally criminalise the use of children under the age of fifteen years "to participate actively in hostilities". It is notable in this regard that, referring inter alia to the relevant articles of the Statute, rule 137 of the ICRC Study on Customary International Humanitarian Law indicates that "State practice establishes [...] as a norm of customary international law applicable in both international and noninternational armed conflicts" that "[c]hildren must not be allowed to take part in hostilities".⁶¹¹ Once again, no suggestion is made that the term be interpreted based on the principle of distinction.'</p> <p>Fn 611: See J-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, Vol. I (ICRC and Cambridge University Press, 2009), page 485.</p>	One (rules)	Rule 137	Agreed	PSA.	RE NOIND. Main text and fn. Engagement.	Establishing custom not the main point of the discussion.	Ibid

48	ICC	Ibid (Dissenting Opinion Judge Sang-Hyun Song)	<p>II. OBJECT AND PURPOSE OF THE PROVISIONS UNDERLYING ARTICLES 8 (2) (B) (XXVI) AND 8 (2) (E) (VII) OF THE STATUTE</p> <p>6. 'Furthermore, I note that the provisions of international humanitarian law, upon which articles 8 (2) (b) (xxvi) and 8 (2) (e) (vii) of the Statute are based, have the same object and purpose, namely to keep children under the age of fifteen years away from harm associated with armed conflict.¹¹ It is therefore irrelevant whether children under the age of fifteen years voluntarily join an armed force or are forced to join them or used to participate actively in hostilities. In this context, it is worth recalling that people who become members of an armed force (combatants) generally lose the protection that civilians enjoy in times of war.¹²'</p> <p>Fn 12: 'See generally N. J. Udombana, "War is not a child's play! International law and the prohibition of children's involvement in armed conflicts", 20 Temple International and Comparative Law Journal (2006), p. 57 at 74-78; see also J.-M. Henckaerts and L. Doswald Beck, Customary International Humanitarian Law, Volume I: Rules, (ICRC and Cambridge University Press, 2009), pp. 3-8.'</p>	One (rules)	Rule 1	Agreed	Yes.	RE NOIND. Fn - 'see also'.	Study treated like an academic authority.	https://www.icc-cpi.int/RelatedRecords/CR2014_09848.PDF
49	ICC	Prosecutor v Katanga, Trial Chamber II, Judgment pursuant to Article 74 of the Statute, 01/04-01/07-3436-tENG	<p>b. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities</p> <p>800. 'Article 8(2)(e)(i) of the Statute enshrines the prohibition on the direct targeting of civilians.¹⁸³⁹'</p> <p>Fn 1839: 'Additional Protocol II, article 13(2); ICTY, Prosecutor v. Milan Martić, Case No. IT-95-11-R61, Decision, 8 March 1996, para. 11; ICTY, Prosecutor v. Tadić, Case No. IT-94-1 A, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 100. See also J-M. Henckaerts, L. Doswald-Beck (Eds.), Customary International Humanitarian Law, Volume I: Rules, International Committee of the Red Cross, Bruylant (2006), pp. 3-10.'</p>	One (rules)	Rules 1 and 2	Agreed	Yes.	RE NOIND. Fn - 'see also'.		https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF
50	ICC	Ibid	<p>893. '... The Chamber recalls in this regard that it is for the Prosecution to establish that the destruction is not justified by military necessity. In such a case, civilian objects lose their protection only for such time as they are military objectives.²¹¹⁵'</p> <p>Fn 2115: 'Henckaerts, J-M. and L. Doswald-Beck (Eds), Customary International Humanitarian Law, Volume 1: Rules, Bruylant, 2006, p. 46, rule 10.'</p>	One (rules)	Rule 10	Agreed	PSA	RE NOIND. Fn.		Ibid
51	ICC	Ibid	<p>895. 'Additionally, under customary law, attacks directed at military objectives may cause "collateral civilian damage" which is not unlawful per se, provided that the rules of custom prescribing proportionality in the conduct of hostilities were respected.²¹²²'</p> <p>Fn 2122: 'Decision on the confirmation of charges, para. 313. See also ICTY, Kordić and Čerkez Appeals Judgment, para. 52; J-M. Henckaerts, and L. Doswald-Beck (Eds), Customary International Humanitarian Law, Volume 1: Rules, Bruylant, 2006, pp. 62-68, rule 14.'</p>	One (rules)	Rule 14	Agreed	Yes.	RE NOIND. Fn.		Ibid

52	ICC	Prosecutor v Lubanga, Trial Chamber, Judgment pursuant to Article 74 of the Statute, 14 March 2012, ICC-01/04-01/06-2842	<p>539. It is to be observed at the outset that some academics, 1640 practitioners, 1641 and a line of jurisprudence from the ad hoc tribunals 1642 have questioned the usefulness of the distinction between international and non-international armed conflicts, particularly in light of their changing nature. In the view of the Chamber, for the purposes of the present trial the international/non-international distinction is not only an established part of the international law of armed conflict, but more importantly it is enshrined in the relevant statutory provisions of the Rome Statute framework, which under Article 21 must be applied. The Chamber does not have the power to reformulate the Court's statutory framework.</p> <p>Fn 1641: In 1947, the ICRC proposed that a paragraph be added to Article 2 of the draft Geneva Conventions. This paragraph stated that "[i]n all cases of armed conflict which are not of an international character, especially cases of civil war, colonial conflicts, or wars of religion, which may occur in the territory of one or more of the High Contracting Parties, the implementing of the principles of the present Convention shall be obligatory on each of the adversaries." Although this provision was not adopted, it demonstrates that concerns about the distinction between international and non-international armed conflicts existed early on: see Jean Pictet (ed.), The Geneva Conventions of 12 August 1949: Commentary - Volume III: Geneva Convention relative to the Treatment of Prisoners of War (2002), page 31. More recently, a study undertaken under the auspices of the ICRC makes reference to a large body of customary rules, the majority of which are equally applicable regardless of the classification of the relevant armed conflict: see Jean-Marie Henckaerts, "Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed</p>	One (rules)	N/A	Neutral	Yes, part of broader academic discussion.	NM; Fn.	The Chamber refers to the Study but references an article by Henckaerts about the ICRC Study, rather than the Study itself. No specific customary rule relied upon.	https://www.icc-cpi.int/CourtRecords/CR2012_03942.PDF
53	STL	Prosecutor v Ayyash et al, Trial Chamber, Judgment, 18 August 2020, Case no STL-11-01/T/TC	<p>36. 'Courts have relied on an extremely wide range of sources as evidence of custom. Treaties, national legislation, state declarations, domestic and international case law, as well as reports from the ICRC and other international agencies are amongst the sources that have been reviewed by international and internationalised criminal courts and tribunals. 57'</p> <p>Fn 57: 'ICTY, Prosecutor v. Tadić, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ('Tadić Decision on the Defence motion for Interlocutory Appeal on Jurisdiction'), paras 83, 97, 108-109, 121-122, 131-133; ICTY, Prosecutor v. Stakić, IT-97-24-A, Judgement, 22 March 2006, paras 296-297; Nahimana and others Trial Judgment, paras 1075-1077; SCSL, Prosecutor v. Norman, SCSL-2004-14-AR72E, Decision on Preliminary Motion Based on Lack of Jurisdiction, ('Norman child recruitment decision') 31 May 2004, paras 44-49.'</p>	N/A	N/A	Neutral	Part of broader discussion	Main text	The Court does not cite the 2005 Study but notes that 'reports from the ICRC' have been relied upon as evidence of custom by other courts and tribunals, which may refer to the 2005 Study.	https://www.stl-tsl.org/crs/assets/Uploads/20200818-F3839-PUBLIC-Full-Judgement-Annexes-FILED-EN-WEB-Version-v0.2.pdf
54	ECCC	Case 002/02, Trial Chamber, Judgment, 16 November 2018, Case no 002/19-09-2007/ECCC/TC	<p>680. 'The Chamber also considers sources concerning deportation as a war crime to be "instructive because deportation as a crime against humanity developed out of deportation as a war crime". 2096 Article 23 of the 1863 Lieber Code prohibited deportation during times of war, instructing that "[p]rivate citizens are no longer [to be] [...] carried off to distant parts". 2097 While the Lieber Code made no express reference to a cross-border requirement, it was a precursor to later prohibitions with respect to deportation that did include such a requirement. 2098 ...'</p> <p>Fn 2098: 'ICRC Customary International Humanitarian Law, Rule 129 (noting that the "prohibition of the deportation or transfer of civilians goes back to the Lieber Code"). The ICRC database on international humanitarian law further notes in its introduction that the Lieber Code "strongly influenced the further codification of the laws of war and the adoption of similar regulations by other states".'</p>	One (rules)	Rule 129	Neutral	Part of broader discussion. Also cited is the ICRC database on IHL.	Fn.	Used academically.	https://www.eccc.gov.kh/en/document/court/case-00202-judgement

55	ECCC	Case 001, Trial Chamber Judgment, 26 July 2010, Case no 001/18-07-2007/ECCC/TC	405. 'Further, the Geneva Conventions, and particularly their grave breaches provisions, codified core principles of customary international law.742 The list of grave breaches was included in the Geneva Conventions largely on the basis of crimes pursued by the Nuremberg-era tribunals and recognised at the time of enactment as criminal according to general principles of law across national legal systems.743' Fn 743: 'See ICRC, Customary International Humanitarian Law, Vol. I: Rules, (J-M. Henckaerts and L Doswald-Beck eds. 2005) p. 574; ICRC, Commentary to Geneva Convention I, (Pictet ed. 1952), specifically Article 50, p. 371.'	One (rules)	Rule 156	Neutral	Part of broader discussion	Fn - 'see'.	Used academically.	https://www.eccc.gov.kh/sites/default/files/documents/court_doc/20100726_Judgment_Case_001_ENG_PUBLIC.pdf
56	SCSL	Prosecutor v Fofana and Kondewa ('CDF Case'), Appeals Chamber, Judgment, 28 May 2008, Case no SCSL-04-14-A	404. 'The ICRC compendium on Customary International Humanitarian Law, published in 2005, surveyed State practice and concluded that pillage is the "specific application of the general principle of law prohibiting theft" thereby involving the "appropriation" of property "for private or personal use." Fn 785: 'Jean-Marie Henckaerts, Louise Doswald-Beck. ICRC, Customary International Humanitarian Law, Volume I: Rules, Cambridge, University Press (2005), p. 185.'	One (rules)	Rule 52	Agreed	Yes	RE. Independent analysis of custom, even if a brief one (IND). Study one source; focus on the elements of the crime of pillage. Main text and fn.		See third document listed: http://www.rscsl.org/CDF_Appeals_Chamber_Decisions.html
57	SCSL	Ibid	405. 'The Prosecution's argument that Australia, Canada and the United Kingdom consider pillage to include the destruction of property is unavailing. The Prosecution appears to suggest that these three military manuals demonstrate State practice and therefore are indicative of the rule in customary international law. In determining customary international law with reference to State practice, the International Court of Justice in the North Sea Continental Shelf cases stated that the "State practice ... [should be] both extensive and virtually uniform in the sense of the provision invoked; - and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."786 Here, no such uniform practice is indicated by an isolated examination of the military manuals of three States. Notably, the Prosecution provides no submissions regarding the practice of the remaining States.' Fn 786: 'ICJ, North Sea Continental Shelf cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), Judgment, 20 February 1969, ICJ Reports 1969, para. 74. Applying the approach to determining customary international law elaborated in the North Sea Continental Shelf cases, the ICRC summarized the requirements as follows, "State practice has to be weighed to assess whether it is sufficiently dense to create a rule of customary international law. To establish a rule of customary international law, State practice has to be virtually uniform, extensive and representative." ICRC, Customary International Humanitarian Law, Volume I: Rules, at xxxii. Australia Commanders' Guide (1994), § 610.'	One (intro)	N/A	Neutral	Part of broader discussion	Fn.		Ibid
58	SCSL	Prosecutor v Sesay et al ('RUF Case'), Trial Chamber I, Judgment, 2 March 2009, Case no SCSL-04-15-T	86. 'If there is any doubt as to whether an individual is a civilian he should be presumed to be a civilian and cannot be attacked merely because he appears dubious.178' Fn 178: 'Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 609 (entered into force 7 December 1978), Article 50(1) [Additional Protocol I]; Jean-Marie Henckaerts and Louise Doswald-Beck, eds., Customary International Humanitarian Law, Volume 1: Rules (Cambridge: Cambridge University Press: 2005), pp. 23-24 [Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Volume I].'	One (rules)	Rule 6	Agreed	Yes.	RE NOIND.Fn.	Arguably a misrepresentation of the Study, which does NOT say that there is a presumption of civilian status in cases of doubt, i.e. it does not say that Art. 50(1) AP I is customary	http://www.rscsl.org/Documents/Decisions/RUF/1234/SCSL-04-15-T-1234-searchable.pdf

59	SCSL	Ibid	<p>missions have traditionally relied on their identification as United Nations representatives to ensure that their personnel and equipment are not targeted.³⁸⁸ As attacks on United Nations personnel have increased, in particular since the 1990s, these attacks have been condemned and criminalised. The Chamber takes cognisance of the observation of the International Committee of the Red Cross (“ICRC”) that “no official contrary practice was found. Attacks against peacekeeping personnel and objects have generally been condemned by States.”³⁸⁹ This Chamber notes further that they have also been condemned by the United Nations and other international organisations,³⁹⁰ which have in some cases specifically condemned attacks on United Nations personnel in internal conflicts.³⁹¹ We further note that some of these condemnations have explicitly characterised these acts as criminal.³⁹²</p> <p>Fn 389: Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Volume I, p. 113, citing the practice of Australia (Statement before the UN General Assembly, UN Doc. A/50/PV.116, 25 April 1996, p. 6); Finland (Statement before the UN Security Council, UN Doc. S/PV.3367, 21 April 1994, p. 34); Germany (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11); Liberia (UN Secretary-General, Sixteenth Progress Report on UNOMIL, UN Doc. S/1996/232, 1 April 1996, s. 6); Russia (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 9); Ukraine (Appeal of the Ministry of Foreign Affairs to the President of the UN Security Council, annexed to Letter dated 10 August 1992 to the President of the UN Security Council, UN Doc. S/24403, 10 August 1992, p. 2); United Kingdom (Statement before the UN Security Council, UN Doc. S/PV.3553, 12 July 1995, p. 11, and Statement before the UN Security Council, UN Doc. S/PV.3621, 25 January 1996, p. 19) and the United States (Former Yugoslavia: Grave Breaches of the Fourth Geneva Convention (Third Submission),</p>	One (rules)	Rule 33	Agreed	PSA. Also citing practice from the practice part, but no independent examination of that practice.	RE NOIND. Fn.	Ibid
60	SCSL	Ibid	<p>p. 805: ANNEX E: Table of Authorities</p> <p>4. Secondary sources</p> <p>Books</p> <p>'Jean-Marie Henckaerts and Louise Doswald-Beck, eds., Customary International Humanitarian Law, Volume 1: Rules (Cambridge: Cambridge University Press: 2005)'</p>	One (rules)	N/A	N/A	N/A	AM; Table of authorities	Ibid

61	SCSL	Prosecutor v Taylor, Trial Chamber II, Judgment, 18 May 2012, SCSL-03-01-T	<p>Counts 2 and 3: Unlawful Killings (Articles 2(a) and 3(a) of the Statute)</p> <p>411. In Count 2, the Indictment charges the Accused with murder as a crime against humanity, punishable under Article 2(a) of the Statute.¹⁰¹² In addition, or in the alternative, Count 3 charges the Accused with violence to life, health and physical or mental well-being of persons, in particular murder, a violation of Article 3 common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3(a) of the Statute.¹⁰¹³</p> <p>Fn 1013: 'Indictment, paras 9-13. The Trial Chamber is satisfied that this crime was a part of customary international law at the time of its commission. See Prosecutor v. Fofana, SCSL-2004-14-AR72(E), Decision on Preliminary Motion on Lack of Jurisdiction Materiae: Nature of the Armed Conflict (AC), 25 May 2004 [CDF Appeal Decision on Nature of Armed Conflict], para. 24; Prosecutor v. Tadić, IT-94-1-T, Decision on the Defence Motion on Jurisdiction (TC), 10 August 1995 [Tadić Decision on Jurisdiction], paras 66-73; Prosecutor v Karemera et al., ICTR-98-44-A4(a), Decision on Count Seven of the Amended Indictment – Violence to Life, Health and Physical or Mental Well-Being of Persons (TC), 5 August 2005 [Karemera Decision on Count Seven of the Amended Indictment], paras 5-10. See also Vasiljević Trial Judgement, para. 195, where in analyzing the offence of violence to life and person, the Trial Chamber recognized that it is a breach of customary international law when the underlying act is murder, cruel treatment and torture. See also ICRC, Customary International Humanitarian Law Online Database, Rule 89 (Violence to Life), and Jean Marie Henckaerts, Louise Doswald Beck. ICRC, Customary International Humanitarian Law, Volume I: Rules, Cambridge, University Press (2005), p. 311.'</p>	One (rules)	Rule 89	Neutral	Yes.	RE, NOIND. Fn - 'see also'.	Reliance on judgments plus the Study, no independent examination of state practice or opinio juris.	http://www.rscsl.org/Documents/Decisions/Taylor/1283/SCSL-03-01-T-1283.pdf
62	SCSL	Ibid	<p>ANNEX C: TABLE OF AUTHORITIES</p> <p>(I) Secondary Sources</p> <p>(i) Books</p> <p>'Jean-Marie Henckaerts, Louise Doswald-Beck. ICRC, Customary International Humanitarian Law, Volume I: Rules, Cambridge, University Press (2005)'</p>	One (rules)	N/A	N/A	N/A	AM. Table of authorities		Ibid
63	SCSL	Prosecutor v Fofana and Kondewa ('CDF Case'), Trial Chamber I, Judgment, 2 August 2007, Case no SCSL-04-14-T	<p>135. 'If there is any doubt as to whether an individual is a civilian he should be presumed to be a civilian and cannot be attacked merely because he appears dubious.¹⁷⁵</p> <p>Fn 175: 'Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 U.N.T.S. 609, Article 77(2) (entered into force 7 December 1978; accession by Sierra Leone on 21 October 1986), Article 50(1) [Additional Protocol I]; Jean-Marie Henckaerts & Louise DoswaldBeck, International Committee of the Red Cross, Customary International Humanitarian Law, Volume 1: Rules (United Kingdom: Cambridge University Press: 2005), p. 24.'</p>	One (rules)	Rule 6	Agreed	Part of broader discussion	RE NOIND. Fn.	Same formulation as in Sesay above, misconstruing the Study. The Sesay TC clearly took this language and the references.	http://www.worldcourts.com/scsl/eng/decisions/2007.08.02_Prosecutor_v_Fofana_Kondewa1.htm
64	SCSL	Ibid	<p>ANNEX G: TABLE OF AUTHORITIES</p> <p>8. Secondary Sources</p> <p>'Jean-Marie Henckaerts & Louise Doswald-Beck, International Committee of the Red Cross, Customary International Humanitarian Law, Volume 1: Rules (United Kingdom: Cambridge University Press: 2005).'</p>	One (rules)	N/A	N/A	N/A	AM. Table of authorities		Ibid

65	ICTY	Prosecutor v Karadžić, Trial Chamber III, Public Redacted Version of Judgment, 24 March 2016, Case no IT-95-5/18-T	5949. 'In the law of armed conflict, a belligerent reprisal is an act that would otherwise be unlawful but, in exceptional circumstances and if strict conditions are met, is considered lawful when it is used as an enforcement measure in reaction to unlawful acts of an adversary.20404' Fn 20404: 'ICRC Customary IHL, Rule 145; Martić Trial Judgement, paras. 465–467.'	One (rules)	Rule 145	Agreed	PSA	RE, NOIND Fn.		https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgment.pdf
66	ICTY	Ibid	5949. 'However, the prohibition of reprisals against protected persons is absolute and can therefore not be used as a defence for the crime of taking protected persons hostage.20405' Fn 20405: 'ICRC Customary IHL, Rule 146. The Geneva Conventions prohibits belligerent reprisals against "persons in the power of a party of the conflict, including the wounded, sick and shipwrecked, medical and religious personnel, captured combatants, civilians in occupied territory and other categories of civilians in the power of an adverse party to the conflict". ICRC Customary IHL, Rule 146, citing First Geneva Convention, art. 46; Second Geneva Convention, art. 47; Third Geneva Convention, art. 13; and Fourth Geneva Convention, art. 33.'	One (rules)	Rule 146	Agreed	PSA	RE, NOIND Fn.		Ibid
67	ICTY	Ibid	p. 2590. 'B GLOSSARY AND TABLE OF AUTHORITIES 2. List of authorities e. Treaties and commentaries Customary International Humanitarian Law, Volume I: Rules (Jean-Marie Henckaerts and Louise Doswald-Beck, eds., 2005) ("ICRC Customary IHL")'	One (rules)	N/A	N/A	N/A	AM. Table of authorities		Ibid
68	ICTY	Prosecutor v Popović et al, Appeals Chamber, Judgment, 30 January 2015, Case no IT-05-88-A	571. 'The Appeals Chamber considers that the execution of detained combatants and civilians cannot be in pursuit of a legitimate military goal.1618' Fn 1618: 'See Common Article 3 of the Geneva Conventions of 12 August 1949 ("Common Article 3"); Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Vol. I, Rule 89, pp. 311-314.'	One (rules)	Rule 89	Agreed	Yes. Common Article 3.	RE, NOIND. Fn.		https://www.icty.org/x/cases/popovic/acjjug/en/150130_judgment.pdf
69	ICTY	Ibid	615. 'The Appeals Chamber observes that according to customary international law applicable both in international and non-international armed conflicts "[t]he parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control".1746' Fn 1746: 'Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Vol. I, Rule 55, pp. 193-200. See also Article 23 of Geneva Convention IV; Article 70 of Additional Protocol I; Article 18 of Additional Protocol II.'	One (rules)	Rule 55	Agreed	PSA	RE, NOIND. Fn.		Ibid
70	ICTY	Ibid	774. '... While remaining cognisant of the fact that Miletić was convicted for forcible transfer as a crime against humanity, not as a war crime, the Appeals Chamber further notes that forcible displacement of enemy soldiers is not prohibited under international humanitarian law.2253 ...' Fn 2253: 'Cf. Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Vol. I, Rule 129, pp. 457-462.'	One (rules)	Rule 129	Agreed	PSA	RE, NOIND. Fn - 'cf'.		Ibid

71	ICTY	Ibid	1897. 'When faced with manifestly unlawful orders that were issued by his superiors – orders that were invalid domestically and which were in violation of the laws of war – he was legally obligated to ensure that international humanitarian law was applied. ⁵³⁶⁵ Fn 5365: 'Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Vol. I, Rule 154: Every combatant has a duty to disobey a manifestly unlawful order.'	One (rules)	Rule 154	Agreed	PSA	RE, NOIND. Fn.	Ibid
72	ICTY	Ibid	1928. 'The focus on the superior's personal sphere of power to assess feasibility is also in line with Article 86 of Additional Protocol I which refers to the taking of "all feasible measures within [a superior's] power". ⁵⁴⁶⁸ Fn 5648: 'The measures concerned are described in the Commentary on Additional Protocols as those "within [a superior's] power" and only those". Commentary on Additional Protocols, para. 3548. The ICRC Customary International Humanitarian Law Study similarly finds as a customary rule the criminal responsibility of commanders and other superiors who "did not take all necessary and reasonable measures in their power [...] to punish the persons responsible". Henckaerts and Doswald-Beck, Customary International Humanitarian Law, Vol. I, Rule 153, p. 558 (emphasis added).'	One (rules)	Rule 153	Agreed	PSA	RE, NOIND. Fn.	Ibid
73	ICTY	Ibid	XVII. ANNEX II: GLOSSARY E. TABLE OF OTHER AUTHORITIES 2. Select list of other legal authorities 'Customary International Humanitarian Law, Volume I: Rules, Jean-Marie Henckaerts and Louise Doswald-Beck (eds), ICRC, Cambridge'	N/A	N/A	N/A	N/A	AM. Table of authorities	Ibid
74	ICTY	ICTY, Trial Chamber III, Prosecutor v Prlić et al, Judgment Vol 5 of 6, 29 May 2013, Case no IT-04-74-T	ANNEX 1: GLOSSARY C. International Legal Instruments and Doctrine J-M Henckaerts, L. Doswald-Beck (ed.), Customary International Humanitarian Law, Cambridge University Press, Cambridge, 2005'	N/A	N/A	N/A	N/A	AM Table of authorities	The Study is cited as a source in the glossary but is not referred to in the judgment. https://ucr.irmct.org/Search/PreviewPage/?link=http%253A//icr.icty.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-04-74/JUD251R2000462228.pdf
75	ICTY	Prosecutor v Gotovina et al, Trial Chamber I, Judgment Volume II of II, 15 April 2011, Case no IT-06-90-T	1779. ' ... Under international humanitarian law there is a general exception to the prohibition of appropriation of property when the appropriation is justified by military necessity. ⁸⁷³ Fn 873: 'Geneva Convention IV, Art. 147; J.-M. Henckaerts, L. Doswald-Beck (eds), Customary International Humanitarian Law, Cambridge 2005, Rule 50, pp. 175-177. See also Krajišnik Trial Judgement, para. 769.'	One (rules)	Rule 50	Agreed	PSA	RE, NOIND. Fn.	https://ucr.irmct.org/Search/PreviewPage/?link=http%253A//icr.icty.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-06-90/JUD229R0000333164.pdf

76	ICTY	Prosecutor v Dordević, Trial Chamber II, Judgment, 23 February 2011, Case no IT-05-87/1-T	<p>2066. 'The Chamber also recalls the principle of international humanitarian law that in case of doubt whether a person is a civilian, that person shall be presumed to be a civilian.7110'</p> <p>Fn 7110: 'In international armed conflicts, the rule is codified in Additional Protocol I, Article 50(1). While Article 13 of Additional Protocol II does not contain the same text, the Chamber is of the view that the principle also applies in non-international armed conflicts. The ICRC Commentary to Article 13 of Additional Protocol II notes that "in case of doubt regarding the status of an individual, he is presumed to be a civilian". ICRC Commentary to Additional Protocol II, para 4789. More recently, the ICRC's Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law states that "The presumption of civilian status protection applies, a fortiori, in case of doubt as to whether a person has become a member of an organized armed group belonging to a party to the conflict". Interpretive Guidance on the Notion of Direct Participation in Hostilities (Geneva, ICRC, 2009), pp 75-76. While the ICRC's Customary International Humanitarian Law Study stopped short of finding this to be a customary rule of international humanitarian law given the lack of relevant State practice in regard to non-international armed conflicts, the Study noted that "the same balanced approach [...] with respect to international armed conflicts seems justified in non-international armed conflicts". Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I (Cambridge, Cambridge University Press, 2009), p 24.'</p>	One (rules)	Rule 6	Disagreed	Yes. ICRC Commentary to AP II art 13; ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities.	Fn.	<p>jurisprudence above. The Study does not endorse the AP I presumption of doubt as not a customary rule in either IAC or NIAC. The TC engages in no independent assessment of state practice/opinio juris - its reasoning is entirely based on other authorities and AP I. There is no detailed examination of literature, practice or the actual extent of the difference between its</p> <p>https://www.icty.org/x/cases/djordjevic/tjug/en/110223_djordjevic_judgt_en.pdf</p>
77	ICTY	Prosecutor v Milošević, Appeals Chamber, Judgment, 12 November 2011, Case no IT-98-29/1-A (Partially Dissenting Opinion of Judge Liu Daqun)	<p>6. 'To establish a rule of customary international law, state practice has to be virtually uniform, extensive and representative.9'</p> <p>Fn 9: 'ICRC, Customary International Humanitarian Law, Vol. 1, (Cambridge, 2005), ("Customary Law Study") at p. xxxvi.'</p>	One (intro)	N/A	Agreed	Part of broader discussion	Fn.	<p>Used academically.</p> <p>https://www.refworld.org/cases/ICTY,4b41e1942.html</p>
78	ICTY	Ibid	<p>10. 'Although it is not usually necessary to demonstrate separately the existence of an opinio juris when there is sufficiently dense state practice, in cases of ambiguous practice, a clear opinio juris is decisive in assessing the probative value of the practice that is found.'</p> <p>'Fn 27: 'Customary Law Study, at p. xl: "When there is sufficiently dense practice, an opinio juris is generally contained within that practice and, as a result, it is not usually necessary to demonstrate separately the existence of an opinio juris. Opinio juris plays an important role, however, in certain situations where the practice is ambiguous, in order to decide whether or not that practice counts towards the formation of custom." See also Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), International Court of Justice, Merits, Judgement, I.C.J. Reports 1986, para. 186: "The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules [...]."</p>	One (intro)	N/A	Agreed	Yes. ICJ Nicaragua Judgment.	Fn.	<p>Used academically.</p> <p>Ibid</p>

79	ICTY	Prosecutor v Martić, Appeals Chamber, Judgment, 8 October 2008, Case no IT-95-11-A	<p>277. 'The Prosecution submits that the broad interpretation of the term "civilians" adopted in Kordić and Čerkez accords with the overall object and purpose of crimes against humanity of protecting human dignity in all circumstances.⁷³⁹ The Prosecution claims further that the term "civilians" in the sense of Article 5 of the Statute should be interpreted to mean all individuals covered by Common Article 3 of the Geneva Conventions ("Common Article 3"), to whom the Prosecution refers as "non-combatants" in a generic sense. This interpretation would exclude as possible victims those civilians who, by taking active part in the hostilities, have lost their protected status, but still remain civilians according to the laws of war.⁷⁴⁰'</p> <p>Fn 740: '... See also AT. 108 and Prosecution Appeal Brief, paras 28-31, citing Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005), vol. I, p. 3.'</p>	One (intro)	N/A	Neutral	N/A	NM. Fn - 'see also'. Citation of Appeal brief referring to the Study.	https://www.icty.org/x/cases/martic/acju/en/mar-aj081008e.pdf
80	ICTY	Ibid	<p>XIV ANNEX B: GLOSSARY</p> <p>B. Other Authorities</p> <p>1. Doctrine</p> <p>Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, International Committee of the Red Cross (Cambridge: Cambridge University Press, 2005).'</p>	N/A	N/A	N/A	N/A	AM. Table of authorities	Ibid
81	ICTY	Prosecutor v Strugar, Appeals Chamber, Judgment, 17 July 2008, Case no IT-01-42-A	<p>286. '... Finally, the Prosecution argues that its position is supported by authorities establishing that notice of prior commission of crimes is, per se, notice of an unacceptable risk of similar future crimes⁷⁰⁷ as well as that a superior has an obligation to refrain from using troops with a known criminal propensity⁷⁰⁸ and to prevent the recurrence of crimes.⁷⁰⁹'</p> <p>Fn 709: 'Prosecution Appeal Brief, para. 2.64, citing military manuals (Croatia, Commander's Manual, para. 20; France, LOAC Summary Note, para. 5.1; Hungary, Military Manual, p. 40; Togo, Military Manual, p. 15; Italy, Law of Armed Conflict Elementary Rules Manual, para. 20; Madagascar, Military Manual, para. 20; Russia, Military Manual, para. 14(b); Spain, LOAC Manual, paras 10.8.c., 11.4.b, Benin, Military Manual, p. 15; US Final report to Congress on the Gulf War, pp. 633-634; SFRY Military Manual, para. 21(2); Israel, Final report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut (February 7, 1983), p. 8; Canada, Court Martial Appeal Court, Boland Case, Judgement, 16 May 1995, cited in ICRC Customary International Law Study, p. 3752, para. 650.'</p>	Two	Rule 153	N/A	N/A	NM. Fn. Citation of Appeal Brief referring to the practice cited in the Study.	https://www.icty.org/x/cases/strugar/acju/en/080717.pdf
82	ICTY	Ibid	<p>XIII: ANNEX B - GLOSSARY OF TERMS</p> <p>'Jean-Marie Henckaerts & Louise Doswald-Beck, eds., Customary International Humanitarian Law (Cambridge: Cambridge University Press, 2005).'</p>	Both	N/A	N/A	N/A	AM. Table of authorities	Ibid

83	ICTY	Prosecutor v Boškoski and Tarčulovski, Trial Chamber II, Judgment, 10 July 2008, Case no IT-04-82-T	<p>205. 'Where members of armed groups engage in acts that are prohibited under international humanitarian law, such as "acts of terrorism",⁸³⁰ "acts or threats the primary purpose of which is to spread fear in the civilian population",⁸³¹ hostage taking,⁸³² the use of human shields,⁸³³ feigning protected status,⁸³⁴ attacking historic or religious monuments or buildings⁸³⁵ or using such objects in support of the military effort,⁸³⁶ or serious violations of Common Article 3, they are liable to prosecution and punishment.'</p> <p>Fn 832: 'Common Article 3(1)(b) to the Geneva Conventions; Article 34 Geneva Convention IV; Article 4(2)(c) Additional Protocol II. See also Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I (Cambridge: CUP, 2005), Rule 96, pp 334-336.'</p> <p>Fn 833: 'Article 51(7) of Additional Protocol I. See also Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I (Cambridge: CUP, 2005), Rule 97, p 337; Rome Statute, Article 8(2)(b)(xxiii).'</p> <p>Fn 834: 'Article 37 Additional Protocol I. This rule has customary character. See Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I (Cambridge: CUP, 2005), Rule 65, p 224. A similar rule is contained in Article 23(b) of the Hague Regulations annexed to Hague Convention IV of 1907, which contains the prohibition: "To kill or wound treacherously individuals belonging to the hostile nation or army".'</p>	One (rules)	Rules 65, 97 and 97	Agreed	Yes	RE, NOIND. Fn.	https://www.icty.org/x/cases/boskoski_tarculovski/tjug/en/080710.pdf
84	ICTY	Prosecutor v Orić, Appeals Chamber, Judgment, 3 July 2008, Case no IT-03-68-A	<p>3. 'In its appeal, the Prosecution has challenged the ratio decidendi of the Hadžihasanović Appeal Decision on Jurisdiction.⁶'</p> <p>Fn 6: 'Prosecution Notice of Appeal, para. 15; Prosecution Appeal Brief, paras. 105 et seq., referring inter alia to CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (Jean-Marie Henckaerts & Louise Doswald-Beck eds, Cambridge, 2005) ("ICRC Study on Customary International Law") as well as to COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (Yves Sandoz et al. eds, Geneva, 1987), paras. 3541 and 3543-3545.'</p>	Both	N/A	N/A	N/A	NM. Fn. Citation of Prosecution Notice of Appeal referring to the Study.	https://www.icty.org/x/cases/oric/acjug/en/080703.pdf

85		ibid	<p>14. This line of argument is contradictory to both the reasoning elsewhere in the Hadžihasanović Appeal Decision on Jurisdiction and the jurisprudence of the International Tribunal. Indeed, the Appeals Chamber in Hadžihasanović held that there is a fundamental principle of superior responsibility under customary international law and that criminal responsibility can arise from the failure to prevent or to punish crimes committed during an internal armed conflict.³³ It also stated that “where a principle can be shown to be [...] established [under customary international law], it is not an objection to the application of the principle to a particular situation to say that the situation is new if it reasonably falls within the application of the principle.”³⁴ This approach has been followed in the jurisprudence of both the International Tribunal and the ICTR.³⁵</p> <p>Fn 35: 'See Brđanin Trial Judgement, para. 715. See Prosecutor v. Édouard Karemera et al., Case No. ICTR-98-44-T, Decision on the Preliminary Motions by the Defence of Joseph Nzirorera, Édouard Karemera, André Rwamakuba and Mathieu Ndirumpatse Challenging Jurisdiction in Relation to Joint Criminal Enterprise, 11 May 2004, para. 37. See Prosecutor v. Édouard Karemera et al., Case Nos. ICTR-08-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise, 12 April 2006, paras. 15-16. Therefore, there is no need to enter into a renewed detailed analysis of national law, such as military manuals or domestic legislation, as argued by the Prosecution when it referred to the ICRC Study on Customary International Law. See in this context the detailed discussion in the Hadžihasanović Trial Decision on Jurisdiction as regards the principle of superior responsibility with further references.'</p>	Both	N/A	Neutral	Yes.	NM. Fn.		ibid
86	ICTY	ibid	<p>30. 'The principle of command responsibility may be seen in part to arise from one of the basic principles of international humanitarian law aiming at ensuring protection for protected categories of persons and objects during armed conflicts,⁴³ and this protection is at the very heart of international humanitarian law.⁴⁴</p> <p>Fn 44: 'See also J-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005, Vol. I, Introduction, p. XXV; and F. Kalshoven and L. Zegveld, Constraints on the Waging of War, 3rd ed, ICRC 2001, pp. 53-54.'</p>	One (intro)	N/A	Agreed	Yes. Kalshoven and Zegveld book.	AM. Fn - 'see also'.	Used as academic authority.	ibid
87	ICTY	Prosecutor v Martić, Trial Chamber I, 12 June 2007, Case no IT-95-11-T	<p>102. '... According to the Hague Regulations, forcible contribution of money, requisition for the needs of the occupying army, and seizure of material obviously related to the conduct of military operations, though restricted, are lawful in principle.¹⁹²</p> <p>Fn 192: 'Hague Regulations, Articles 51-53. Article 52 provides that “Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible”. See also Geneva Convention IV, Articles 55(2) and 57; Naletilić and Martinović Trial Judgement, para. 616; Simić et al. Trial Judgement, para. 100. Article 4(2)(g) of Additional Protocol II prohibits pillage in non international armed conflicts, see Hadžihasanović and Kubura Trial Judgement, para. 52; Customary International Humanitarian Law, ICRC, Volume I, pp 181-182.'</p>	One (rules)	Rule 52	Agreed	Yes. Hague Regulations arts 51-53; GC IV arts 55(2) and 57; Naletilić and Martinović Trial Judgment; Simić et al Trial Judgment; AP II art 4(2)(g); Hadžihasanović and Kubara Trial Judgment.	AM. Fn - 'see also'.	No examination of custom as such	https://www.icty.org/x/cases/martic/tjug/en/070612.pdf

88	ICTY	Ibid	<p>466. 'Reprisals may be used only as a last resort and only when all other means have proven to be ineffective.1256'</p> <p>FN 1256: 'Ibid. For example, the YPA Military Manual of the SFRY (FRY) (1988), para. 29 states that "before they undertake reprisals, the armed forces of the SFRY shall try to force the enemy to respect the laws of war by means of other methods for preventing violations of such laws". A similar wording is contained in the military manuals of numerous States, including, inter alia, Canada, LOAC Manual (1999), p. 15-3, para. 17; United States, Field Manual (1956), para. 497(b); Germany, Military Manual (1992), para. 478; Netherlands, Military Manual (1993), p. IV-5; United Kingdom Military Manual (1958), para. 646; Ecuador's Naval Manual (1989), para. 6.2.3.1; New Zealand, Military Manual (1992), para. 1606(4)(c) and (d); Spain, LOAC Manual (1996), Vol. I, para.2.3.b. (6). Several of the above references to military manuals were extracted from Customary International Humanitarian Law, Volume II, pp 3328-3337.'</p>	Two	Rule 145	Neutral	Yes, part of broader discussion	IND. Fn. Citation of state practice only. Study used only as a source of material.	Ibid
89	ICTY	Ibid	<p>ANNEX B: LIST OF CASES, SOURCES AND SHORT CITES</p> <p>P. 198: Jean-Marie Henckaerts and Louise Doswald-Beck, eds., International Committee of the Red Cross: Customary International Humanitarian Law, Volume I: Rules and Volume II: Practice (Cambridge: Cambridge University Press, 2005)'</p>	Both	N/A	N/A	N/A	AM. Table of authorities	Ibid
90	ICTY	Prosecutor v Brdanin, Appeals Chamber, Judgment, 3 April 2007, IT-99-36-A	<p>XV. ANNEX B: GLOSSARY</p> <p>B. List of Other Legal Authorities</p> <p>1. Booked, edited volumes and collections</p> <p>P. 198: 'Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. 1: Rules (Cambridge: Cambridge University Press 2005) ("Henckaerts and Doswald-Beck, Customary Humanitarian Law").</p>	One (rules)	N/A	N/A	N/A	AM. Table of authorities	The Study is cited as a source in the glossary but is not referred to in the judgment. https://www.icty.org/x/cases/brdanin/acjug/en/brd-aj070403-e.pdf
91	ICTY	Prosecutor v Galić, Appeals Chamber, Judgment, 30 November 2006, Case no IT-98-29-A	<p>89. ' ... Similarly, in 1991, in response to an inquiry of the ICRC as to the application of international humanitarian law in the Gulf region, the US Department of the Army pointed out that its troops were acting in respect of the prohibition of acts or threats of violence the main purpose of which was to spread terror among the civilian population.285 ... '</p> <p>Fn 285: 'Letter from the Department of the Army to the Legal Adviser of the US Army Forces Deployed in the Gulf Region, 11 January 1991, § 8(F), Report on US Practice, 1997, ch. 1.4, cited in Henckaerts, J-M. and Doswald-Beck, L. Customary International Humanitarian Law, Volume II (Cambridge 2005), p. 73. See also ibid., § 4(B)(6): "Acts or threats of violence the main purpose of which is to spread terror among the civilian population are prohibited."</p>	Two	Rule 2	Citation of practice	Yes,	Fn. Citation of state practice, Study used as a source only.	https://www.icty.org/x/cases/galic/acjug/en/gal-aciud061130.pdf
92	ICTY	Ibid	<p>95. 'The Penal Code of Ethiopia punishes anyone who organises, orders or engages in "measures of intimidation or terror" against the civilian population in time of war, armed conflict or occupation.299'</p> <p>Fn 299: 'Netherlands, Law Concerning Trials of War Criminals, art. 1, in Law R. Trials War Crim., Vol. 11, pp. 86, 93. See also Slovenia, Kazenski zakonik (Penal Code) 29 September 1994, art. 374(1) (criminalising the imposition of measures of "intimidation [and] terrorism" against the civilian population). Several of the above references to military manuals and national legislation were extracted from Henckaerts, J-M. and Doswald-Beck, L. Customary International Humanitarian Law, Volume II (Cambridge 2005).'</p>	Two	N/A	Citation of practice	Yes.	Fn. Citation of state practice, Study used as a source only.	Ibid

93		Ibid	<p>XXIV. ANNEX BL GLOSSARY OF TERMS</p> <p>B. List of Other Legal Authorities</p> <p>1. Books, Edited Volumes and Collections</p> <p>Jean-Marie Henckaerts and Louise Doswald-Beck, eds., International Committee of the Red Cross: Customary International Humanitarian Law, Vol. I (Rules) and Vol. II (Practice) (Cambridge: Cambridge University Press, 2005) ("Henckaerts, J.-M. and Doswald-Beck, L. Customary International Humanitarian Law, Volumes I and II (Cambridge 2005)").</p>	Both	N/A	N/A	N/A	AM. Table of authorities		Ibid
94	ICTY	Ibid (Separate and Partially Dissenting Opinion of Judge Schomburg)	<p>19. 'With regard to opinio juris, it is undisputed, as mentioned above, that there were many statements by states concerning the prohibition of acts and threats of violence the primary purpose of which is to spread terror among the civilian population but not referring to its penalization. In any case, as the recent Study on Customary International Humanitarian Law carried out by the International Committee of the Red Cross recognizes: "[I]n the area of international humanitarian law, where many rules require abstention from certain conduct, omissions pose a particular problem in the assessment of opinio juris because it has to be proved that the abstention is not a coincidence but based on a legitimate expectation."48'</p> <p>Fn 48: 'Henckaerts/Doswald-Beck (eds), Customary International Law Humanitarian Law (2005), Vol. I: Rules, p. xli.'</p>	One (intro)	N/A	Agreed	Part of broader discussion	Main text and fn.	Used academically.	Ibid
95	ICTY	Prosecutor v Naletilić and Martinović, Appeals Chamber, 3 May 2006, Case no IT-98-34-A (Separate and Partially Dissenting Opinion of Judge Schomburg)	<p>Jurisprudence and in Customary International Law</p> <p>15. 'State practice in relation to punishment of violations of international humanitarian law provides a rather unclear picture as to the definition of deportation. The recently published ICRC study on the status of customary international humanitarian law¹³⁸⁸ shows that even prior to 1993 many countries had penalized forced displacement of civilians in times of armed conflict. Although elements of specific crimes are not provided, some implications may be drawn from the national legislations analyzed in this study. The study lists various national military manuals and legislative acts which use the term "deportation" to describe (criminal) forced displacement within national borders¹³⁸⁹ or, conversely the term "transfer" to describe (criminal) displacement across State borders.¹³⁹⁰ Other States punish only "deportation".¹³⁹¹</p> <p>Fn 1388: 'J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, Vol. I and II. (2005).'</p> <p>Fn 1389: 'J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, Vol. II Part 2 (2005), Ch. 38, for example: para. 71 (Bangladesh's International Crimes (Tribunal) Act of 1973, quoted as punishing "... deportation to slave labour or for any other purpose of civilian population in the territory of Bangladesh."); para. 105 (Israel's Nazi and Nazi Collaborators (Punishment) Law of 1950, quoted as punishing as a war crime "deportation to forced labour or for any other purpose of the civilian population of or in occupied territories.")'</p> <p>Fn 1390: 'J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International</p>	Both	Ch 38	Neutral	Yes.	IND. Citation of state practice in main text and fn. Study used as source.		https://www.icty.org/x/cases/naletilic_martinovic/acjug/en/nal-aj060503e.pdf

96	ICTY	Ibid	<p>17. 'Before going further into details, I should like to emphasize that the question of whether or to what extent deportation requires transfer across borders does not affect in any way the principle of nullum crimen sine lege. Forced displacement constitutes a crime under international law, be it within a State or across its borders. The labelling of such conduct either as "deportation" or "forcible transfer" (or any other term) has no impact on criminal liability. This is settled Tribunal jurisprudence¹³⁹² and is anchored in customary international law.¹³⁹³'</p> <p>Fn 1393: 'See also J.-M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, Vol. I (2005), Ch. 38, p. 457.'</p>	One (rules)	Rule 129	Agreed	PSA	RE NONIND. Fn - 'see also'.	Ibid
97	ICTY	Prosecutor v Stakić, Appeals Chamber, Judgment, 22 March 2006, Case no IT-97-24	<p>296. 'In 2005, the ICRC published its study on the current state of customary international humanitarian law.⁶²⁶ In this study, Rule 129 provides as follows: A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. Deportation is clearly prohibited as a crime where the conflict encompasses an occupied territory. This rule confirms the law as established under Article 49 of Geneva Convention IV that deportation applies to displacements crossing the border of an occupied territory.²⁹⁷ The Appeals Chamber is fully cognisant that the ICRC study post-dates the period relevant to the Indictment in the current case. Rule 129 is nonetheless instructive because it demonstrates that, as of the time the crimes at issue in this case were committed, the offence of deportations still required displacement across a border – though Rule 129 says little about what type of borders satisfy this requirement.'</p> <p>Fn 626: 'Henckaerts, J.-M. and Doswald-Beck, L. Customary International Humanitarian Law, Vol. 1: Rules (Cambridge 2005)'</p>	One (rules)	Rule 129	Agreed	Yes.	RE, IND. Main text. Engagement	<p>Independent analysis, but mainly one based on jurisprudence re elements of the crime of deportation. Not much examination of customary IHL as such.</p> <p>https://www.icty.org/x/cases/stakic/acju/g/en/sta-aj060322e.pdf</p>
98	ICTY	Ibid	<p>B. List of Other Legal Authorities</p> <p>1. Books, Edited Volumes and Collections</p> <p>Henckaerts, J.-M. and Doswald-Beck, L. Customary International Humanitarian Law, Vol. 1: Rules (Cambridge 2005)'</p>	One (rules)	N/A	N/A	N/A	AM. Table of authorities	Ibid
99	ICTY	Ibid (Partially Dissenting Opinion of Judge Shahabuddeen)	<p>28. 'Nor do I see that Rule 129 of the Rules published by the ICRC in 2005⁹⁵⁴ and reproduced in paragraph 296 of the judgement of the Appeals Chamber assists in the determination of what was customary international law provided at the time of the offence, or how the Security Council used the term "deportation" in article 5(d) of the Statute. Indeed, the Appeals Chamber concedes that the Rule "says little about what type of borders satisfy [the] requirement" for forcible displacement across a border.'</p> <p>Fn 954: 'Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law (Cambridge, 2005), Vol. 1, p. 457.'</p>	One (rules)	Rule 129	Neutral	Part of broader discussion	AM, IND. Main text and fn.	Ibid

100	ICTY	Ibid	<p>30. 'There are provisions which seemingly use the term "deportation" to include an internal transfer. Thus, section 6(4) of Australia's War Crimes Act, as amended in 1945, provides that "the deportation of a person to, or the internment of a person in, a death camp, or a place where persons are subjected to treatment similar to that undergone in a death camp or slave labour camp, is a serious war crime".⁹⁵⁸ See likewise article 3(2)(d-e) of Bangladesh's 1973 International Crimes (Tribunal) Act.⁹⁵⁹'</p> <p>Fn 958: 'Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), Customary International Humanitarian Law (Cambridge, 2005), Vol.II, part 2, p. 2917, para. 67.'</p>	Two	Rule 129	Citation of practice	Part of broader discussion	State practice in main text	Ibid
101	ICTY	Prosecutor v Hadžihasanović and Kubara, Trial Chamber, Judgment, 15 March 2006, Case no IT-01-47-T	<p>44. 'The question arises as to whether acts of partial destruction can constitute an offence punishable under Article 3(b) of the Statute. The Chamber takes note of national practice here and observes that many military manuals and national criminal codes prohibit the partial or total destruction of property when it is not justified by military necessity.¹⁰¹'</p> <p>Fn 101: 'See Canada, LOAC Manual (1999), p. 12-8; Netherlands, Military Manual (1993), p. IX-6; New Zealand, Military Manual (1992), para. 1335; UK, Military Manual (1958), para. 588; Ghana, Armed Forces Act (1962), Section 18 (d); Iraq Military Penal Code (1940), Art. 113; Jordan, Military Criminal Code (1952), Art. 12 (2); Malaysia, Armed Forces Act (1972), Section 46 (c); Nicaragua, Military Penal Code (1996), art. 59; Norway, Military Penal Code (1902), paras. 103 and 108; Paraguay, Military Penal Code (1980), Art. 282-283; Romania, Penal Code (1968), art. 359; Spain, Military Criminal Code (1985), Art. 73; Sri Lanka, Army Act (1949), Section 96 (b); Uganda, National Resistance Army Statute (1992), Section 35 (c); Vietnam, Penal Code (1990), Art. 274. Cited in Customary International Humanitarian Law, ICRC, Volume II, pp. 1004-1021.'</p>	Two	Rule 50	Citation of practice	Part of broader discussion	State practice in fn. Study used solely as source.	https://www.icty.org/x/cases/hadzihasanovic_kubura/tjug/en/had-judg060315e.pdf
102	ICTY	Ibid	<p>46. 'The Chamber considers that wanton destruction need not be committed within the context of military action to constitute an offence punishable by Article 3 of the Statute. It is sufficient for the crimes stipulated by Article 3(b) of the Statute to be closely related to the hostilities.¹⁰⁴'</p> <p>Fn 104: 'See Tadić Jurisdiction Decision, para. 70; See Naletilić Trial Judgement, para. 589, in which the Chamber found that the destruction was not justified by military necessity because it took place after the shelling had stopped; See Customary International Humanitarian Law, ICRC, Volume I, Rule 50, pp. 176-177.'</p>	One (rules)	Rule 50	Agreed	Yes. Tadić Jurisdiction Decision; Naletilić Trial Judgment.	RE, NOIND. Fn - 'see'.	Ibid
103	ICTY	Ibid	<p>51. 'According to national practices, war booty includes enemy property or military equipment captured on the battlefield. Personal effects belonging to prisoners of war are an exception.¹¹²'</p> <p>Fn 112: 'See Argentina, Law of War Manual (1969), para. 1020; Australia, Commanders' Guide (1994), paras. 712 and 967; Canada, LOAC Manual (1999), paras. 27 and 48; Germany, Military Manual (1992), paras. 706 and 707; Kenya LOAC Manual (1997), pp. 7 and 8; Netherlands, Military Manual (1993), p. IV-5; New Zealand, Military Manual (1992), paras. 526 and 527; US Field Manual (1956), para. 59; UK Military Manual (1958), para. 615. Cited in Customary International Humanitarian Law, ICRC, Volume II, pp. 992-998.'</p>	Two	Rule 49	Citation of practice	Part of broader discussion	State practice in fn.	Ibid
104	ICTY	Ibid	<p>52. 'The Chamber notes, however, that in non-international conflicts such regulations authorising or prohibiting war booty and requisitions have not been identified.¹¹⁴'</p> <p>Fn 114: 'See Customary International Humanitarian Law, ICRC, Volume I, pp. 174, 181-182.'</p>	One (rules)	Rule 49	Agreed	Part of broader discussion	RE, NOIND. Fn - 'see'.	Ibid

105	ICTY	Ibid	65. 'In the pre-trial phase of this case, the Chamber found that command responsibility was an integral part of customary international law at the time of the events, to the extent that it applied to war crimes committed in the context of an internal or international armed conflict. ¹⁴⁷ ' Fn 147: 'Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility paras. 11 and 31; see also Customary International Humanitarian Law, Vol I, Rule 153, pp. 559 and 560.'	One (rules)	Rule 153	Agreed	Yes.	RE, NOIND. Fn - 'see also'.	Ibid	
106	ICTY	Ibid	253. 'The 2005 ICRC study on customary international law, ⁴¹⁶ considered an authoritative source on the subject, says nothing about whether a State is obligated to prosecute war crimes per se. It would be logical to infer from the absence of such an analysis that there is no customary rule requiring States to rely on the characterisation of international law as the only basis for prosecution.' Fn 416: 'Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I, Rules (Cambridge University Press, 2005). See nonetheless the discussion on Rule 158 (pp. 607-610). The study examines the duty of States to investigate war crimes and prosecute the suspects thereof. In this regard, it acknowledges the difficulty of determining whether that duty is based on an obligation or a right. The study does not, however, deal with the question of the basis of such prosecutions.'	One (rules)	Rule 158	Agreed	Yes.	RE, IND. Main text and fn. Engagement.	Describes the ICRC Study as an 'authoritative source'. The issue the TC was deciding was whether there was an obligation on states to prosecute war crimes while basing such prosecutions on international law and not on their domestic law. The TC answers in the negative.	Ibid
107	ICTY	Ibid	XI. ANNEX II: GLOSSARY C. International Instruments and Authorities Henckaerts J-M., Doswald-Beck L. (eds.), Customary International Humanitarian Law. ICRC (Cambridge University Press), Cambridge 2005.'	Both	N/A	N/A	N/A	AM. Table of authorities	Ibid	
108	ICTY	Prosecutor v Halilović, Appeals Chamber, Judgment, 16 November 2005, Case no IT-01-48	39. 'The principle of command responsibility may be seen in part to arise from one of the basic principles of international humanitarian law aiming at ensuring protection for protected categories of persons and objects during armed conflicts. This protection is at the very heart of international humanitarian law. ⁹⁰ ' Fn 90: 'See also J-M. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005, Vol. I, Introduction, p. XXV; and F. Kalshoven and L. Zegveld, Constraintson the Waging of War, ICRC, Mar '01. pp. 53-54.'	One (intro)	N/A	Agreed	Yes. Kalshoven and Zegveld book	RE. Fn - 'see also'.	Used as academic authority. No examination of custom as such.	https://www.icty.org/x/cases/halilovic/tjug/en/tcj051116e.pdf
109	ICTY	Ibid	VI. ANNEX I: GLOSSARY C. List of other legal authorities Henckaerts J-M., Doswald-Beck L. (eds.), Customary International Humanitarian Law. International Committee of the Red Cross, (Cambridge University Press), Cambridge 2005.'	Both	N/A	N/A	N/A	AM. Table of authorities	Ibid	

110	ICTR	Bagosora et al v Prosecutor, Appeals Chamber, Judgment, 14 December 2011, Case no ICTR-98-41-A	<p>remaining contentions. The Appeals Chamber underscores that the desecration of Prime Minister Uwilingiyimana's corpse constituted a profound assault on human dignity meriting unreserved condemnation under international law.1680'</p> <p>Fn 1680: In this regard, the Appeals Chamber notes that, in 1994, many domestic criminal codes, including the Rwandan criminal code, explicitly criminalised acts degrading the dignity of the corpse or interfering with a corpse. Any review of customary international law regarding this issue would need to take into account the large number of jurisdictions that criminalise degrading the dignity of or interfering with corpses. See, e.g., Botswana, Penal Code (1964) Ch. 08:01, s. 138; Canada, Criminal Code, R.S., 1985, c.C-34, s. 182(b); Costa Rica, Código Penal (1971), art. 207; Ethiopia, Penal Code, (1957), art. 287(b); Germany, Strafgesetzbuch (StGB), 1998, s. 168 (this section was added in 1987); India, Penal Code (1860), s. 297; Kenya, Penal Code (1970) Ch. 63, s. 137; Japan, Penal Code (Act No. 45 of 1907), art. 190; Lithuania, Criminal Code as amended (1961), art. 335; New Zealand, Crimes Act 1961 No. 43, art. 150(b); Nigeria, Criminal Code Act (1990), (Ch. 77), s. 242; United States of America (Oregon State), (1971), ORS.166.087; Pakistan, Criminal Code (1860), s. 297; Rwanda, Décret-loi N°21/77 du 18 août 1977 instituant le Code pénal, art. 352; Switzerland, Code pénal suisse du 21 décembre 1937, art. 262; Uganda, Penal Code Act 1950 (Ch. 120), s. 120; Vietnam, Penal Code (1985), s. 246. Humanitarian law also prohibits the maltreatment of corpses. See, e.g., The Laws of War on Land, Institute of International Law, Oxford, 9 September 1880, art. 19; Manual of the Laws of Naval War, Institute of International Law, Oxford, 9 August 1913, art. 85; Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva, 6 July 1906, art. 3; Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Geneva, 27 July 1929, art. 3; Convention</p>	Two	N/A	Citation of practice	Yes.	Fn - 'see, eg'. Study solely used as source.	https://unictr.irmct.org/sites/unictr.org/files/case-documents/ictr-98-41/appeals-chamber-judgements/en/111214.pdf
111	IRMCT	Prosecutor v Šešelj, Appeals Chamber, Judgment, 11 April 2018, Case no MICT-16-99-A	<p>46. 'In relation to those violations which were not found established, the Prosecution suggests that the Trial Chamber may have applied an erroneous legal standard and illustrates this point by referring to a seeming inconsistency in the Trial Chamber's description of the shelling of Mostar as "indiscriminate" and its later conclusion that it could not be excluded that the destruction was justified by military necessity.139'</p> <p>Fn 139: 'Appeal Brief, paras. 122, 123. In this respect, the Prosecution emphasizes that indiscriminate attacks are never permitted. See Appeal Brief, para. 123, referring to, inter alia, J-M. Henckaerts and L. Doswald-Beck, eds., International Committee of the Red Cross: Customary International Humanitarian Law, Vol. I (Rules) (Cambridge: Cambridge University Press, 2005), Rule 11; Galic Appeal Judgement, para. 130.</p>	One (rules)	Rule 11	Neutral	Yes.	NM. Citation of Appeal Brief referring to the Study.	https://ucr.irmct.org/Search/PreviewPage/?link=http%253A//icr.icty.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/MICT-16-99-A/JUD282R0000519025.pdf
112	KSC	Prosecutor v Taçi et al, Basic Court Chamber, Public Redacted Version on the Confirmation of the Indictment against Hashum Taçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi, 26 October 2020, KSC-BC-2020-05-F00026-RED	<p>34. '... The requirement of humane treatment constitutes a fundamental obligation of international humanitarian law ("IHL") and reflects customary international law.39'</p> <p>Fn 39: 'See Rule 87, in Henckaerts J.-M., Doswald-Beck L., Customary International Humanitarian Law ("CIHL Study"), Vol. I (Rules), Cambridge University Press 2005, p. 306. See also ICJ, Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, para. 218; ICTY, Prosecutor v. Tadić, IT-94-1-AR72, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction ("Tadić Decision on Jurisdiction"), 2 October 1995, para. 98.'</p>	One (rules)	Rule 87	Agreed	PSA.	RE NOIND. Fn - 'see'.	https://repository.scp-ks.org/details.php?doc_id=091ec6e98039bda9&doc_type=stl_filing&lang=eng
113	KSC	Ibid	<p>35. 'Deprivation of liberty without a legal basis or in violation of basic safeguards is not compatible with and violates the requirement of humane treatment of all persons placed hors de combat, including by detention, as enshrined in Common Article 3.41'</p> <p>Fn 41: 'Rule 99, CIHL Study, Vol. I (Rules), p. 344.'</p>	One (rules)	Rule 99	Agreed	PSA	RE NOIND. Fn.	Ibid

			<p>36. 'Customary international law prohibits arbitrary deprivation of liberty. Extensive state practice, in the form of, inter alia, military manuals, criminal legislation, documents of international organisations and conferences, and international judicial and quasi-judicial bodies, establishes the applicability of this prohibition in both international and non international armed conflicts.⁴² This has also been confirmed by the ICRC in Rule 99 of its 2005 Customary International Humanitarian Law Study.⁴³'</p> <p>Fn 42: 'See the practice referred to in Rule 99, CIHL Study, Vol. I (Rules), p. 347; Vol. II (Practice), pp. 2331-2344, in particular pp. 2331 (para. 2555), 2332 (para. 2563), 2333 (paras 2576, 2579, 2580), 2334 (para. 2593), 2335 (paras 2599, 2600, 2605), 2336 (paras 2606, 2607, 2608, 2611); UN Security Council Resolutions: 1019 (1995), U.N. Doc. S/RES/1019, 9 November 1995; 1034 (1995), U.N. Doc. S/RES/1034, 21 December 1995; UN General Assembly Resolution 50/193 (1996), U.N. Doc. A/RES/50/193, 11 March 1996; UN Commission on Human Rights, Situation of human rights in the Republic of Bosnia and Herzegovina, the State of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), U.N. Doc. E/CN.4/RES/1996/71, 23 April 1996; UN Commission on Human Rights, Situation of human rights in the Sudan, U.N. Doc. E/CN.4/RES/1996/73, 23 April 1996, para. 15. See also Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (1976) ("SFRY Criminal Code").'</p>								
114	KSC	Ibid	<p>Fn 43: 'Rule 99, CIHL Study, Vol. I (Rules), p. 344.'</p>	Both	Rule 99	Agreed and citation of practice	Yes.	RE NOIND. Main text and fn.	While practice is cited it is not analysed in any way.	Ibid	
115	KSC	Ibid	<p>Fn 123: 'The prohibition of enforced disappearance in armed conflict, whether international or noninternational, and the obligation to account for missing persons and provide their families with any information on their fate is also incumbent on all parties to the conflict, including armed groups, see Rules 98 and 117, CIHL Study, Vol. I (Rules), pp. 340-343 and 421-427; General Assembly, "Assistance and co-operation in accounting for persons who are missing or dead in armed conflicts", Resolution 3220 (XXIX), 6 November 1974, Article 2 ("Calls upon parties to armed conflicts, regardless of their character or locations, during and after the end of hostilities and in accordance with the Geneva Conventions of 1949, to take such actions as may be within their power to help locate and mark the graves of the dead, to facilitate the disinterment and the return of remains, if requested by their families, and to provide information about those who are missing in action"). If these obligations exist for armed groups during armed conflict, then it can be expected that they exist outside of an armed conflict, including in the context of a widespread or systematic attack.'</p>	One (rules)	Rules 98 and 117	Agreed	PSA.	RE NOIND. Fn - 'see'.		Ibid	
116	KSC	Ibid	<p>95. 'The basic procedural safeguards encompass, in particular: ... (iii) the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention. 173'</p> <p>Fn 173: 'Rule 99, CIHL Study, Vol. I (Rules), pp. 349-350. See also Article 6, Additional Protocol II.'</p>	One (rules)	Rule 99	Agreed	PSA,	RE NOIND. Fn.		Ibid	

117	KSC	Prosecutor v Shala, Basic Court Chamber, Public Redacted Version of the Decision on the Confirmation of the Indictment Against Pjetër Shala, 12 June 2020, KSC-BC-2020-04/F00007/RED/1	24. '... The requirement of humane treatment constitutes a fundamental obligation of international humanitarian law ("IHL") and reflects customary international law. ²⁸ ...' Fn 28: 'See Rule 87, in Henckaerts J.-M., Doswald-Beck L., Customary International Humanitarian Law ("CIHL Study"), Vol. I (Rules), Cambridge University Press 2005, p. 306. See also ICJ, Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, para. 218; ICTY, Prosecutor v. Tadić, IT-94-1-AR72, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction ("Tadić Decision on Jurisdiction"), 2 October 1995, para. 98.'	One (rules)	Rule 87	Agreed	PSA.	RE NOIND. Fn - 'see'.	Entire discussion below is then reused in the Thaci decision above	https://repository.scps.org/details.php?doc_id=091ec6e980463900&doc_type=stfiling&lang=eng
118	KSC	Ibid	25. 'Deprivation of liberty without a legal basis or in violation of basic safeguards is not compatible with and violates the requirement of humane treatment of all persons placed hors de combat, including by detention, as enshrined in Common Article 3.30' Fn 30: 'Rule 99, CIHL Study, Vol. I (Rules), p. 344.'	One (rules)	Rule 99	Agreed	PSA	RE NOIND, Fn		Ibid
119	KSC	Ibid	Fn 31: 'See the practice referred to in Rule 99, CIHL Study, Vol. I (Rules), p. 347; Vol. II (Practice), pp. 2331-2344, in particular pp. 2331 (para. 2555), 2332 (para. 2563), 2333 (paras 2576, 2579, 2580), 2334 (para. 2593), 2335 (paras 2599, 2600, 2605), 2336 (paras 2606, 2607, 2608, 2611); UN Security Council Resolutions: 1019 (1995), U.N. Doc. S/RES/1019, 9 November 1995; 1034 (1995), U.N. Doc. S/RES/1034, 21 December 1995; UN General Assembly Resolution 50/193 (1996), U.N. Doc. A/RES/50/193, 11 March 1996; UN Commission on Human Rights, Situation of human rights in the Republic of Bosnia and Herzegovina, the State of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), U.N. Doc. E/CN.4/RES/1996/71, 23 April 1996; UN Commission on Human Rights, Situation of human rights in the Sudan, U.N. Doc. E/CN.4/RES/1996/73, 23 April 1996, para. 15. See also Article 142 of the SFRY Criminal Code.'	Both	Rule 99	Agreed and citation of practice	Yes.	RE NOIND. Fn - 'see'.	While practice is cited it is not analysed in any way.	Ibid
120	KSC	Ibid	26. 'Customary international law prohibits arbitrary deprivation of liberty. Extensive state practice, in the form of, inter alia, military manuals, criminal legislation, documents of international organisations and conferences, and international judicial and quasi-judicial bodies, establishes the applicability of this prohibition in both international and non international armed conflicts. ³¹ This has also been confirmed by the ICRC in Rule 99 of its 2005 Customary International Humanitarian Law Study. ³² ' Fn 32: 'Rule 99, CIHL Study, Vol. I (Rules), p. 344.'	One (rules)	Rule 99	Agreed	PSA	RE NOIND. Fn.		Ibid
121	KSC	Ibid	51. 'The basic procedural safeguards encompass, in particular ... (iii) the obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention. ⁶² ' Fn 62: 'Rule 99, CIHL Study, Vol. I (Rules), pp. 349-350. See also Article 6, Additional Protocol II.'	One (rules)	Rule 99	Agreed	PSA	RE NOIND. Fn.		Ibid

122	Ethiopia-Eritrea Claims Commission	Eritrea v Ethiopia, Western Front, Aerial Bombardment and Related Claims, Eritrea's Claims 1, 3, 5, 9-13, 14, 21, 25 & 26, Partial Award, 19 December 2005	<p>105. 'While the Protocol had not attained universal acceptance by the time these attacks occurred in 1999 and 2000, it had been very widely accepted. The Commission believes that in those circumstances, a treaty provision of a compelling humanitarian nature that has not been questioned by any statements of reservation or interpretation and is not inconsistent with general State practice in the two decades since the conclusion of the treaty may reasonably be considered to have come to reflect customary international humanitarian law.²³ Recalling the purpose of Article 54, the Commission concludes that the provisions of Article 54 that prohibit attack against drinking water installations and supplies that are indispensable to the survival of the civilian population for the specific purpose of denying them for their sustenance value to the adverse Party had become part of customary international humanitarian law by 1999 and, consequently was applicable to Ethiopia's attacks on the Harsile reservoir in February 1999 and June 2000. Therefore, those aerial bombardments, which fortunately failed to damage the reservoir, were in violation of applicable international humanitarian law. As no damage has been shown, that finding, by itself, shall be satisfaction to Eritrea for that violation.'</p> <p>Fn 23: 'The Commission notes with appreciation the new, exhaustive study of customary law by the ICRC, JEANMARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (Cambridge University Press 2005). That study concludes that a broader prohibition than the one stated in Article 54(2) has become customary law. The Commission need not, and does not, endorse the study's broader conclusion.'</p>	One (rules)	Rule 54	Disagreed	No.	IND. Fn.	<p>conducted its own analysis of custom and concluded that Art. 54(2) AP I became reflective of customary IHL. To the extent the Study can be interpreted as saying that a rule broader than that in Art. 54(2) became custom, the Commission disagrees. The 'need not, and does not' formulation is especially curious. The extent to which there is any difference between the</p> <p>https://pcacases.com/web/sendAttach/757</p>
123	IACtHR	Case of Herzog et al v Brazil, Judgment (Preliminary Objections, Merits, Reparations and Costs), 15 March 2018, Series C No 353	<p>297. 'The concept of universal jurisdiction has been developed in recent decades and has been recognized by diverse States, especially following the adoption of the Rome Statute of the International Criminal Court. It may be said that, at the present time: (a) the universal jurisdiction is an accepted customary norm, so that it does not have to be established in an international treaty;330 (b) it may be exercised with regard to the international crimes identified in international law as pertaining to international law, such as genocide, crimes against humanity and war crimes;331 ...'</p> <p>Fn 331: 'Cf. Institute of International Law. Universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes, Resolution of the Seventeenth Commission at the Krakow Session, 2005. See Customary International Humanitarian Law – Vol. I: Rules, ICRC, Cambridge University Press, p. 604 and ff (Rule No. 157). Similarly, the Princeton Principles on Universal Jurisdiction list the following crimes under international law that are subject to this type of jurisdiction: (1) piracy; (2) slavery; (3) war crimes; (4) crimes against peace; (5) crimes against humanity; (6) genocide, and (7) torture. United Nations. The Princeton Principles on Universal Jurisdiction, A/56/677, December 4, 2001, Principle 2.'</p>	One (rules)	Rule 157	Agreed	Yes.	RE NOIND. Fn - 'see'.	<p>https://www.corteidh.or.cr/docs/casos/articulos/seriec_353_ing.pdf</p>

124	IACtHR	Case of Vásquez Durand et al v Ecuador, Judgment (Preliminary Objections, Merits, Reparations and Costs) 15 February 2017, Series C No 332	para. 104 - general reference to customary IHL, fn to Study; para. 108 prohibition of enforced disappearance is customary IHL; para. 128 custom that personal details of persons deprived of their liberty must be recorded; para. 144 (again referring to Rule 98 in footnote); para. 157 (reference to customary status of Rule 117 in fn);	One	Rules 98, 117, 123	Agreed	PSA.	RE NOIND.	Judgment is only available in Spanish. Court repeatedly cites the Study as the PSA for specific rules of customary IHL. No independent analysis.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_332_esp.pdf
125	IACtHR	Case of Gonzales Lluy et al v Ecuador, Judgment (Preliminary Objections, Merits, Reparations and Costs) 1 September 2015, Series C No 298, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot	interpretation does not undermine the legitimacy of the Court. Neither has this legitimacy been lessened by adopting case law criteria that had less normative grounds, as occurred when declaring the existence of certain rights that were not named or established in the Convention. ²⁴ Fn 24: 'Thus, for example, in the Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, the Court interpreted the "right to prior, free and informed consultation" of indigenous and tribal peoples and communities by the recognition of the right to their own culture or cultural identity recognized in ILO Convention 169. In the Case of Chitay Nech v. Guatemala, the Court established the special obligation to ensure the "right to cultural life" of indigenous children. Also, in the Case of the Las Dos Erres Massacre v. Guatemala, when analyzing the State's responsibility in relation to the rights to a name (Article 18), of the family (Article 17) and of the child (Article 19 of the American Convention), the Court considered that the right of every individual to receive protection against arbitrary or unlawful interference in the family forms part, implicitly, of the right to protection of the family and of the child. Similarly, in the Case of Gelman v. Uruguay, the Court developed the so-called "right to identity (which is not expressly established in the American Convention), based on the provisions of Article 8 of the Convention on the Rights of the Child, which establishes that this right includes, among other matters, the right to nationality, name and family relations. In the Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil, the Inter-American Court declared the violation of the "right to know the truth" (a right that is not established autonomously in the American Convention). In addition, in the Case of the Massacres of El Mozote and nearby places v. El Salvador, the Court supplemented its case law in relation to the right to property established in Article 21 of the Convention when referring to Articles 13 and 14 of Protocol II Additional to the	One (rules)	Rule 7	Neutral	Part of broader academic discussion.	Fn - discussion of another IACtHR that used rule 7 to give meaning and content to the right to property in art 21 of the American Convention.	Used academically.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_298_ing.pdf
126	IACtHR	Case of Cruz Sánchez et al v Peru, Judgment (Preliminary Objections, Merits, Reparations and Costs) 17 April 2015, Series C No 292	para. 273 proportionality and precaution in attack principles are customary rules of IHL, citing the Study.	One	Rules 14, 15, 17	Agreed	PSA.	RE NOIND, Fn	Judgment is only available in Spanish.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_292_esp.pdf
127	IACtHR	Case of Rodríguez Vera et al (Disappeared from the Palace of Justice) v Colombia, Judgment (Preliminary Objections, Merits, Reparations and Costs), 14 November 2014, Series C No 287	18. 'The International Committee of the Red Cross (ICRC) has asserted that the right to the truth is a rule of international customary law applicable in both international and internal armed conflicts, so that each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate. ³⁹ Fn 39: 'Cf. Resolution II of the XXIV International Conference of the Red Cross and Red Crescent (Manila, 1981). See also: Rule 117 in Henckaerts, Jean Marie and Doswald-Beck, Louise. Customary International Humanitarian Law, Volume I, Rules, Cambridge Press University, 2005, p. 421.'	One (rules)	Rule 117	Agreed	Yes. Resolution II of the XXIV International Conference of the Red Cross and Red Crescent (Manila, 1981)	RE NOIND. Main text and fn - 'see also'.	Study does not fully support the proposition for which it is being cited.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_287_ing.pdf

128	IACtHR	Ibid	<p>402. 'Furthermore, the Court emphasizes that the prohibition of arbitrary deprivation of liberty is a non-derogable right, which cannot be suspended and is applicable even in cases in which the detention is carried out to ensure public safety.609 The International Committee of the Red Cross has established that the prohibition of arbitrary deprivation of liberty is a norm of customary international humanitarian law, applicable in both international and noninternational armed conflicts.610 Consequently, pursuant to the "obligations under international law,"611 the prohibition of arbitrary detention or imprisonment cannot be suspended during an internal armed conflict.</p> <p>Fn 610: 'Cf. ICRC, Customary International Humanitarian Law, Vol. I, rule 99, edited by Jean Marie Henckaerts and Louise Doswald-Beck, 2007.'</p>	One (rules)	Rule 99	Agreed	PSA.	RE NOIND. Main text and fn.	Ibid
129	IACtHR	Ibid	<p>B.4) Failure to search for the disappeared victims</p> <p>478. 'In this case, eleven victims are still disappeared, inasmuch as their fate or whereabouts remain unknown. As mentioned previously, even in the hypothesis of the death of these persons, the State had and has the obligation to take all pertinent measures to clarify and determine their whereabouts. The Court notes that this obligation is independent of whether the disappearance of the person is the result of the wrongful act of forced disappearance, or of other circumstances such as their death in the operation to retake the Palace of Justice, errors in the return of their remains, or other reasons.738'</p> <p>Fn 738: 'Similarly, under international humanitarian law applicable in situations of non international armed conflicts such as this one, States must "take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate." Cf. ICRC, Customary International Humanitarian Law, Vol. I, Rule 117, edited by Jean-Marie Henckaerts and Louise Doswald Beck, 2007.'</p>	One (rules)	Rule 117	Agreed	PSA	RE NOIND. Fn - 'cf'.	Ibid
130	IACtHR	Ibid	<p>reigned among the State authorities when the operation to retake the Palace of Justice concluded. However, it notes that even in a situation of armed conflict, international humanitarian law includes obligations of due diligence concerning the correct and adequate removal of corpses and the efforts that should be made to identify and to bury them in order to facilitate their subsequent identification.776 ...'</p> <p>Fn 776: 'In this regard, the Court notes that this obligation is established for cases of international armed conflicts in the four 1949 Geneva Conventions (Articles 17, 20, 120 and 130, respectively). In the case of non-international conflicts, Article 8 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts establishes that "[w]henver circumstances permit, and particularly after an engagement, all possible measure shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them." This Protocol entered into force on December 7, 1978; however, it was ratified by Colombia on August 15, 1995. Nevertheless, the compilation of rules of customary international humanitarian law sponsored by the ICRC includes the following, applicable to noninternational armed conflicts: "Rule 112. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction"; "Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited"; "Rule 115. The dead must be disposed of in a respectful manner and their graves respected and properly maintained"; "Rule 116. With a view to the identification of the dead,</p>	One (rules)	Rules 112, 113, 115 and 116	Agreed	PSA	RE NOIND. Fn. II	Although treaty law also cited, the Study is the sole source for the customary status of the rule which applied before ratification of AP II Ibid

131	IACtHR	Case of Rochac Heranández et al v El Salvador, Judgment (Merits, Reparations and Costs), 14 October 2014, Series C No 285	109. 'In analyzing and interpreting the scope of the provisions of the American Convention in the instant case, in which the facts occurred in the context of a non-international armed conflict, and in keeping with Article 29 of the American Convention, the Court finds it useful and appropriate, as it has on other occasions,189 to have recourse to other international treaties, such as the Geneva Conventions of August 12, 1949,190 and in particular, Article 3 common to the four conventions,191 Additional Protocol II to the 1949 Geneva Conventions relating to the Protection of Victims of NonInternational Armed Conflicts, of June 8, 1977 (hereinafter "Additional Protocol II") to which the State is a party, 192 and customary international humanitarian law,193 as complementary instruments and in consideration of their specificity on this subject.' Fn 193: 'Cf. International Committee of the Red Cross, Customary International Humanitarian Law, Vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007.'	One (rules)	N/A	Neutral	Part of broader discussion	AM. Fn - 'cf'.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_285_ing.pdf
132	IACtHR	Case of Suárez Peralta v Ecuador, Judgment (Preliminary Objections, Merits, Reparations and Costs) 21 May 2013, Series C No 261	55. 'Meanwhile, in the Case of the Massacres of El Mozote and nearby places v. El Salvador, the Court complemented its case law with regard to the right to private property established in Article 21 of the Convention when referring to Articles 13 and 14 of Protocol (II) Additional to the 1949 Geneva Conventions relating to the Protection of Victims of NonInternational Armed Conflicts of 8 June 1977.93 Subsequently, in the Case of the Massacre of Santo Domingo v. Colombia, the Court interpreted the scope of the same Article 21 using treaties other than the American Convention. Thus, it referred to Rule 7 of Customary International Humanitarian Law regarding the distinction between civilian objects and military objectives and Article 4.2.g of Protocol II, concerning pillage,94 to provide content to the right to property established in Article 21 of the American Convention.'	One (rules)	Rule 7	Agreed	Yes.	RE NOIND. Main text. Discussion of reference to the Study by another IACtHR judgment.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_261_ing.pdf
133	IACtHR	Case of Osorio Rivera and Family Members v Peru, Judgment (Preliminary Objections, Merits, Reparations and Costs), 26 November 2013, Series C No 274	120. 'This Court has established that the suspension of guarantees constitutes an exceptional situation in which it is licit for the Government to apply certain restrictive measures on rights and freedoms that, under normal conditions, are prohibited or subject to more rigorous requirements. The Court notes that the Convention does not prohibit the suspension of the right to personal liberty under Article 7 of the Convention, temporarily and to the extent strictly necessary to deal with the exceptional situation. Nevertheless, this Court has already indicated that, "according to Article 27(2) of this instrument, the legal procedures established in Articles 25(1) and 7(6) of the American Convention [...] cannot be suspended, because they constitute essential judicial guarantees to protect rights and freedoms that cannot be suspended according to this same provision."222 Similarly, international human rights bodies have expressed a similar opinion that, as in the case of the right of everyone deprived of liberty to have recourse to a competent judge or court to decide the legality of his detention or habeas corpus, the prohibition of the arbitrary deprivation of liberty is a non derogable right that cannot be suspended.223 In addition, the International Committee of the Red Cross has established that the prohibition of arbitrary deprivation of liberty is a rule of customary international humanitarian law, applicable to both international and non international armed conflicts.224 Consequently, pursuant to "the obligations that [...] are imposed by international law,"225 the prohibition of arbitrary detention or imprisonment cannot be suspended during an internal armed conflict.' Fn 224: 'Cf. International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by JeanMarie Henckaerts and Louise Doswald-Beck, 2007, Rule 99.'	One (rules)	Rule 99	Agreed	PSA.	RE NOIND. Main text and fn.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_274_ing.pdf

134	IACtHR	Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v Colombia, Judgment (Preliminary Objections, Merits, Reparations and Costs), 20 November 2013, Series C No 270	<p>349. 'According to Rule 7 of Customary International Humanitarian Law, "[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects."593 Also, Rule 133 stipulates that "[t]he property rights of displaced persons must be respected."594 Principle 21.3 of the United Nations Guiding Principles on Forced Displacement indicates that "[p]roperty and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use."595'</p> <p>Fn 593: 'Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations, para. 271. In addition, relevant rules of Customary International Humanitarian Law in this case are: "Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage. Rule 9. Civilian objects are all objects that are not military objectives. Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objectives." Henckaerts, Jean-Marie, Doswald Beck, Louise, Customary International Humanitarian Law, volume I, Rules, ICRC, Cambridge University Press, 2005, pp. 29 to 36.</p>	One (rules)	Rules 7-10 and 133	Agreed	Yes. IACtHR Case of Santo Domingo Massacre v Colombia Judgment	RE NOIND. Main text and fn.		https://www.corteidh.or.cr/docs/casos/articulos/seriec_270_ing.pdf
135	IACtHR	Case of the Santo Domingo Massacre v Colombia, Judgment (Preliminary Objections, Merits and Reparations), 30 November 2012, Series C No 259	<p>B. Considerations of the Court</p> <p>B.1. The obligation to respect and guarantee the rights to life and to personal integrity and measures of protection for children</p> <p>187. 'In light of the arguments of the parties, the Court will now examine the alleged international responsibility of Colombia for the presumed violation of the rights to life, personal integrity and measures of protection for children in relation to the obligations of respect and guarantee.252 The Court finds it pertinent to make a joint analysis of these alleged violations owing to the complex nature of the circumstances inherent in the events that occurred in this case, which reveals interrelated effects on different rights and prevents a fragmented analysis. Similarly, since the events occurred in the context of a non-international armed conflict, as already mentioned (supra paras.21 and ff.), as it has on other occasions,253 the Court considers it useful and appropriate to interpret the scope of the treaty-based norms and obligations in a way that complements the norms of international humanitarian law, based on their specificity in this matter,254 in particular the 1949 Geneva Conventions255 and, in particular, Article 3 common to the four conventions256 (hereinafter also "common Article 3"), the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non International Armed Conflicts (hereinafter "Protocol II"), to which the State is a party,257 and customary international humanitarian law.258'</p> <p>Fn 258: 'Cf. International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by JeanMarie Henckaerts and Louise Doswald-Beck, Cambridge, 2007.'</p>	One (rules)	N/A	Neutral	Part of broader discussion	AM. Fn - 'cf'.	Extensive citations to the Study in this case; subsequent cases frequently mention the Santo Domingo massacre judgment together with the Study	https://www.corteidh.or.cr/docs/casos/articulos/seriec_259_ing.pdf

136	IACtHR	Ibid	<p>a) The principle of distinction between civilians and combatants</p> <p>212. 'As established in international humanitarian law, the principle of distinction refers to a customary rule for both international and non-international armed conflicts which establishes that "[t]he parties to the conflict must at all times distinguish between civilians and combatants," that "attacks may only be directed against combatants" and that "[a]ttacks must not be directed against civilians."³⁰⁷ In addition, customary international humanitarian law establishes that: "[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives," so that "[a]ttacks may only be directed against military objectives," while "attacks must not be directed against civilian objects."³⁰⁸ Similarly, paragraph 2 of Article 13 of Protocol II Additional to the Geneva Conventions prohibits attacks being directed against civilians or the civilian population.³⁰⁹ The jurisprudence of the international criminal courts has also referred to this principle.³¹⁰</p> <p>Fn 307: 'Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge 2005, Rule 1.'</p> <p>Fn 308: 'Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge, 2005, Rule 7.'</p> <p>Fn 309: 'Similarly, Rule 87 of customary international humanitarian law and Article 3 common to the four Geneva Conventions establish that "[c]ivilian persons and non combatants shall be treated with humanity." Henkaerts, Jean–Marie, Doswald–Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge 2005, Rule 87.'</p>	One (rules)	Rules 1, 7 and 87	Agreed	PSA	RE NOIND. Fn.	Ibid
137	IACtHR	Ibid	<p>b) The principle of proportionality</p> <p>214. 'As established by international humanitarian law, the principle of proportionality refers to a customary rule for both international and non-international armed conflicts that stipulates that "[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited."³¹¹</p> <p>Fn 311: 'Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge, 2005, Rule 14.'</p>	One (rules)	Rule 14	Agreed	PSA	RE NOIND. Fn.	Ibid

			<p>c) The principle of precaution in attack</p> <p>216. 'According to international humanitarian law, the principle of precaution in attack refers to a customary rule for both international and non-international armed conflicts which establishes that "[i]n the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects," and that "[a]ll feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects." 313 Similarly, rule 17 of customary international humanitarian law stipulates that "[e]ach party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects," and rule 18 indicates that "[e]ach party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."314'</p> <p>Fn 313: 'Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge, 2005, Rule 15.'</p> <p>Fn 314: 'Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge, 2005, Rules 17 and 18.'</p>							
138	IACtHR	Ibid		One (rules)	Rules 15, 17-18	Agreed	PSA	RE NOIND. Fn.		Ibid
			<p>234. 'Regarding the principle of distinction between civilians and combatants, the Court recalls that, according to the norms of international humanitarian law indicated above (supra para. 212), conducts that constitute indiscriminate attacks are also prohibited "which employ a method or means of combat which cannot be limited as required by international humanitarian law [...] and, consequently, [...] are of a nature to strike military objectives and civilians or civilian objects without distinction."342'</p> <p>Fn 342: 'Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge, 2005, Rule 12.'</p>							
139	IACtHR	Ibid		One (rules)	Rule 12	Agreed	PSA	RE NOIND. Fn.		Ibid

			<p>B.2. Right to Property</p> <p>...</p> <p>271. 'In this way, Rule 7 of customary international humanitarian law establishes that international humanitarian law stipulates that: "[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.'"391'</p> <p>Fn 391: 'In addition, the rules of customary international humanitarian law relevant to this case include: "Rule 8. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. Rule 9. Civilian objects are all objects that are not military objectives. Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objectives." Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International humanitarian law, volume I, rules, ICRC, Cambridge, 2005.'</p>	One (rules)	Rules 7-10	Agreed	PSA	RE NOIND. Fn.	ibid
141	IACtHR	ibid	<p>272. 'Regarding the looting, the Court also observes that the said act is expressly prohibited by Article 4(2)(g) of Protocol II of 1977 and that appropriating property in the context of an armed conflict without the consent of its owner is an act prohibited by humanitarian law.392 ...'</p> <p>Fn 392: 'According to customary International humanitarian law, the following is a customary rule for international and noninternational armed conflicts: "Rule 52. Pillage is prohibited". See: Henkaerts, Jean – Marie, Doswald – Beck Louise, Customary International Humanitarian Law, volume I, rules, ICRC, Cambridge, 2005, p. 182.'</p>	One (rules)	Rule 152	Agreed	PSA	RE NOIND. Fn - 'see'.	ibid
142	IACtHR	Case of Gudiel Álvarez et al ("Diario Militar") v Guatemala, Judgment (Merits, Reparations and Costs), 20 November 2012, Series C No 253	<p>299. 'Owing to the particular circumstances of the instant case, it is necessary to make a specific ruling on the right to know the truth of the next of kin of the victims recorded in the Diario Militar. The United Nations has recognized the importance of determining the truth about gross violations of human rights for the consolidation of peace and reconciliation processes.356 This is supported by international humanitarian law, according to which family members have the right to know the truth about the fate of the disappeared victims, including the victims of forced disappearance, and this is applicable to both international and non-international armed conflicts.357'</p> <p>Fn 357: 'Rule 117 of Customary International Humanitarian Law, applicable to both international and noninternational armed conflicts establishes: "[e]ach party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate." International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, p. 477. See also, Office of the High Commissioner for Human Rights, Resolution of the Commission on Human Rights 2002/60, Missing Persons, fiftyfifth session, 25 April 2002, paras. 2-4; General Assembly of the United Nations, Resolution 3220 (XXIX), Assistance and Cooperation in account for persons who are missing or dead in armed conflicts, twenty ninth session, 6 November 1974, para. 2.'</p>	One (rules)	Rule 117	Agreed	Yes. OHCHR resolution 2002/60 (2002); UNGA resolution 3320 (XXIX) (1974).	RE NOIND. Fn.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_253_ing.pdf

143	IACtHR	Case of the Massacres of El Mozote and Nearby Places v El Salvador, Judgment (Merits, Reparations and Costs), 25 October 2012, Series C No 253	<p>141. ' ... Similarly, as it has on other occasions, 162 the Court finds it useful and appropriate when analyzing and interpreting the scope of the provisions of the American Convention in this case in which the facts occurred in the context of a non-international armed conflict, and in keeping with Article 29 of the American Convention, to have recourse to other international treaties, such as the Geneva Conventions of August 12, 1949,163 and in particular to Article 3 common to the four conventions,164 Protocol II Additional to the 1949 Geneva Conventions and relating to the Protection of Victims of Non-international Armed Conflicts of June 8, 1977 (hereinafter "Additional Protocol II) to which the State is a party,165 and customary international humanitarian law,166 as complementary instruments and considering their specificity in this matter.'</p> <p>Fn 166: 'Cf. International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007.'</p>	One (rules)	N/A	Neutral	Part of broader discussion	AM. Fn - 'cf'.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_252_ing1.pdf
144	IACtHR	Ibid	<p>286. 'However, this norm is not absolute, because, under international humanitarian law, States also have an obligation to investigate and prosecute war crimes.461 ...'</p> <p>Fn 461: Cf. Rule 159: "[a]t the end of hostilities, the authorities in power must endeavor to grant the broadest possible amnesty to persons who have participated in a non international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes." In this regard, the International Committee of the Red Cross has stated that "[w]hen Article 6(5) of Additional Protocol II was adopted, the USSR stated, in its explanation of vote, that the provision could not be construed to enable war criminals, or those guilty of crimes against humanity, to evade punishment. The ICRC shares this interpretation. Such amnesties would also be incompatible with the rule obliging States to investigate and prosecute persons suspected of having committed war crimes in non international armed conflicts." [citations omitted]. Cf. International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by Jean-Marie Henckaerts and Louise DoswaldBeck, 2007, pp. 691 and 692.'</p>	One (rules)	Rule 159	Agreed	PSA	RE NOIND. Fn - 'cf'.	Ibid
145	IACtHR	Case Gelman v Uruguay, Judgment (Merits and Reparations), 24 February 2011, Series C No 221	<p>210. 'Likewise, in an interpretation of Article 6-5 of the Protocol II Additional to the Geneva Convention on International Humanitarian Law,256 the ICRC stated that amnesties cannot protect perpetrators of war crimes: "[w]hen it adopted paragraph 5 of Article 6 of Additional Protocol II, the USSR declared, in the reasoning of its opinion, that it could not be interpreted in such a way that it allow war criminals or other persons guilty of crimes against humanity to escape severe punishment. The ICRC agrees with this interpretation. An amnesty would also be inconsistent with the rule requiring States to investigate and prosecute those suspected of committing war crimes in international armed conflicts257(...)'.</p> <p>Fn 257: 'Cf. International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, page 692. Also, the standard 159 of Customary International Humanitarian Law states that the persons suspected or accused of committing war crimes, or sentenced for them, may not receive amnesties. Standard 159,International Committee of the Red Cross, Customary International Humanitarian Law, vol. I, edited by JeanMarie Henckaerts and Louise Doswald-Beck, 2007, page 691.</p>	One (rules)	Rule 159	Agreed	PSA	RE NOIND. Fn - 'cf'.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf

146	IACtHR	Case of the Miguel Castro-Castro Prison v Peru, Judgment (Merits, Reparations and Costs), 25 November 2006, Series C No 160 (Concurring Opinion Judge Cançado Trindade)	36: 'The armed attack on the Castro Castro Prison did not form part of an armed conflict: it was a real massacre. The flagrant illegality of the acts of brutality imputable to the State, that make up ab initio its international responsibility under the American Convention, assumes a truly central position in the judicial reasoning of an international human rights tribunal such as this Court; the principle of proportionality appears as an additional element, in a tangential position, before a previously established international responsibility of the case. In its substantial study on Customary International Humanitarian Law, diffused by the International Committee of the Red Cross,25 the principle of proportionality marks presence as a prohibition to attack causing death and injuries in the civil population in an excessive manner with foreseeable military advantages.' Fn 25: 'International Committee of the Red Cross, Customary International Humanitarian Law (eds. J.-M. Henckaerts, L. Doswald-Beck et alii), vols. I-III, Cambridge, University Press, 2005.'	Both	N/A	Agreed	Part of broader discussion	RE NOIND. Main text and fn.	Recall Judge Cançado Trindade's subsequent references to the Study in ICJ opinions.	https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf
147	IACHR	Report No 121/18, 'Jose Isabel Salas Galindo and Others United States', Merits Report, 5 October 2018, Case 10.573	1.1 Distinction 347. 'The Commission notes that this principle, in addition to being customary in nature, is set forth in Articles 48, 51.2, and 52.2 of Additional Protocol I, in respect of which no reservations have been entered. Thus, "Attacks" means "acts of violence against the adversary, whether in offense or in defense." Based on the principle of distinction, the Parties to the conflict shall at all times distinguish between the civilian population and combatants. Accordingly, attacks may only be directed at combatants and civilians must not be attacked.624' Fn 624: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, CICR, Buenos Aires, 2007, p. 3. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'	One (rules)	Rule 1	Agreed	PSA	RE NOIND. Fn.		https://www.oas.org/en/iachr/decisions/2018/USPU10573-EN.pdf
148	IACHR	Ibid	349. 'The rules governing international humanitarian law prohibit conduct constituting indiscriminate attacks "which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law [...] and consequently, [...] are of a nature to strike military objectives and civilians or civilian objects without distinction." 627 ...' Fn 627: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, CICR, Buenos Aires, 2007, p. 40. Rule 12. [https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf]'	One (rules)	Rule 12	Agreed	PSA	RE NOIND. Fn.		Ibid

149	IACHR	Ibid	<p>350. 'The principle of distinction is universally grounded in customary rules of international humanitarian law and therefore encompasses, inter alia: i) prohibition of acts or threats of violence the principal purpose of which is to terrify the civilian population; ii) proper identification of members of the armed forces in order to be able to show subsequently that persons not pertaining to that group could be classified as civilians; iii) protection of civilians against attacks; iv) distinction between civilian and military property; v) prohibition of indiscriminate attacks; and vi) prohibition of bombings that treat as a single military target several precise and clearly distinct military targets located in a city, town, village, or other zone in which there is an analogous concentration of civilians or civilian assets.⁶³⁰'</p> <p>Fn 630: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm], pp. 9-52 Rules 2-13.'</p>	One (rules)	Rules 2-13	Agreed	PSA	RE NOIND. Fn.	Ibid
150	IACHR	Ibid	<p>352. 'Likewise, those rules provide for prohibiting acts or threats of violence, the principal purpose of which is to spread terror among the civilian population. The ban on acts or threats of violence aimed at spreading terror among the civilian population is consistent with the broader prohibition in Article 33 of the IV Geneva Convention, which states that "all measures of intimidation or of terrorism are prohibited."⁶³¹'</p> <p>Fn 631: 'IV Geneva Convention (1949), Article 33 (ibid. paragraph 476). The applicability of that provision to these rules is explained in: Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, Comentario del Protocolo del 8 de junio de 1977 adicional a los Convenios de Ginebra de 1949 (Protocol II), ICRC and Plaza and Janés Editores Colombia, S.A., Santa Fe de Bogotá, Vol. II, 1998, paragraph Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 10. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 2	Agreed	Yes. .	AM. Fn.	Ibid
151	IACHR	Ibid	<p>359. 'The IACHR also takes into account that, under certain circumstances, even civilian objects could lose their entitlement to protection. Those circumstances may arise when, for example, a civilian object is used in such a way that it matches the definition of a "military target" according to the rules of IHL, and in that case may legitimately be attacked. This occurs in cases of "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."⁶³⁶'</p> <p>Fn 636: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p.29; Protocol II of the Convention on Certain Conventional Weapons (1980), Article 2, paragraph 4; Amended Protocol II of the Convention on Certain Conventional Weapons (1996), Article 2, paragraph 6; Protocol II of the Convention on Certain Conventional Weapons (1980), Article 1, paragraph 3; Second Protocol of the Convention for the Protection of Cultural Property in Time of Armed Conflict (Hague Convention, 1999), Article 1.f).'</p>	One (rules)	Rule 8	Agreed	Yes.	RE NOIND. Fn.	Ibid

152	IACHR	Ibid	<p>1.2 Proportionality</p> <p>360. 'In international humanitarian law, the principle of proportionality refers to a customary rule for both international and non-international armed conflicts, according to which "[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited."637</p> <p>Fn 637: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 46. Rule 14. [https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf].'</p>	One (rules)	Rule 14	Agreed	PSA	RE NOIND. Fn.	Ibid
153	IACHR	Ibid	<p>1.4 Precaution</p> <p>365. 'Under international humanitarian law, the principle of precaution refers to a customary rule for international and non-international armed conflicts, according to which "[i]n the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects" and "all feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects."642'</p> <p>Fn 642: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 51. Rule 15. [https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf].'</p>	One (rules)	Rule 15	Agreed	PSA	RE NOIND. Fn.	Ibid
154	IACHR	Ibid	<p>366. 'Along the same lines, the same source provides that "[e]ach party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects." It also provides that "[e]ach party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."643'</p> <p>Fn 643: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, pp. 56-58. Rules 17 and 18. [https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf].'</p>	One (rules)	Rules 17-18	Neutral	PSA	RE NOIND. Fn.	Ibid
155	IACHR	Ibid	<p>369. 'Along similar lines, the ICRC has underscored that many states have construed the obligation to take all "feasible" precautions as an obligation limited to precautions that are practicable or practically possible in practice, taking into account all the circumstances at the time, including humanitarian and military considerations.646 ...'</p> <p>Fn 646: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 67. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 21	Agreed	PSA	RE NOIND. Fn.	Ibid

156	IACHR	Ibid	<p>371. 'Along the same lines, the customary rules of IHL establish that "Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects." It is important to point out that this rule must be applied independently of the simultaneous application of the principle of proportionality.649'</p> <p>Fn 649: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 57. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 17	Agreed	PSA	RE NOIND. Fn.	Ibid
157	IACHR	Ibid	<p>372. 'For its part, the ICRC points out that examples of the application of this rule include considerations about the timing of attacks, avoiding combat in populated areas, the selection of means of warfare proportionate to the target, and the use of precision weapons and target selection.651 In addition, IHL customary rules set out a specific requirement with respect to target selection.'</p> <p>Fn 651: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 58. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 18	Agreed	PSA	RE NOIND. Fn.	Ibid
158	IACHR	Ibid	<p>376. 'The Commission notes that, complementing the protection for civilians in international armed conflicts, IHL Customary Rule 21 establishes that "When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects." Accordingly, the IACHR establishes, in light of that requirement, that, when a choice is possible, states have an obligation to choose the military objective where an attack may be expected to cause the least danger to civilians.654'</p> <p>Fn 654: 'On this, the ICRC points out that there is only one instance of apparently contrary practice. In response to an ICRC memorandum on the applicability of international humanitarian law in the Gulf region, the United States denied that this rule was customary but then restated the rule and recognized its validity. Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 67. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 21	Agreed	PSA	RE NOIND. Main text and fn.	Ibid
159	IACHR	Ibid	<p>380. 'The ICRC stresses that practice has shown that some of the measures that can be taken to spare the civilian population and civilian objects under the control of a party to the conflict are: the construction of shelters, digging of trenches, distribution of information and warnings, withdrawal of the civilian population to safe places, direction of traffic, guarding of civilian property and the mobilization of civil defense organizations.655'</p> <p>Fn 655: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 70. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 22	Agreed	PSA	RE NOIND. Fn.	Ibid

160	IACHR	Ibid	<p>381. 'On the other hand, with respect to how such phrases as "to the maximum extent feasible" are to be interpreted, the IACHR notes that the Rapporteur of the Working Group of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which finally adopted the Additional Protocols, pointed out that the inclusion of that language reflected the concern of small and densely populated countries which would find it difficult to separate civilians and civilian objects from military objectives and that even large countries would find such separation difficult or impossible to arrange in many cases.656'</p> <p>Fn 656: 'Steering Committee for Human Rights (CDDH), Report to Committee III on the work of the Working Group, paragraph 65; Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 71. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm]'</p>	One (rules)	Rule 23	Agreed	Yes. CDDH Report.	RE NOIND. Fn.	Ibid
161	IACHR	Ibid	<p>382. 'The Inter-American Commission considers that in those cases in which demographic changes cause military bases to be located within or near cities where this was originally not the case, it is even more important that States party to the conflict comply with IHL Customary Rule 24, which establishes that each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.657 It should be noted that this duty of each party to the conflict, to the extent feasible, to remove civilian persons and objects under its control from the vicinity of military objectives is also set forth in Additional Protocol I [Article 58.a].'</p> <p>Fn 657: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 74. [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 24	Agreed	PSA	RE NOIND. Main text and fn.	Ibid
162	IACHR	Ibid	<p>402. 'The IACHR underscores the customary rule of international humanitarian law that provides that the obligation to respect and enforce international humanitarian law "does not depend on reciprocity."661'</p> <p>Fn 661: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, Rule 140 [https://www.icrc.org/eng/resources/documents/publication/pcustom.htm].'</p>	One (rules)	Rule 140	Agreed	PSA	RE NOIND. Fn.	Ibid
163	IACHR	Ibid	<p>438. 'Regarding reparation, the Commission notes that international humanitarian law provides for the obligation of a state responsible for violating international humanitarian law to make full reparation for the loss or injury caused.681'</p> <p>Fn 681: 'Henkaerts, Jean Marie, Doswald Beck Louise, Customary International Humanitarian Law, Volume I, Rules, ICRC, Buenos Aires, 2007, p. 40. Rule 150. [https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf]'</p>	One (rules)	Rule 150	Agreed	PSA	RE NOIND. Fn.	Ibid
164	African Court and Commission	No records found							

CIHL citations, domestic courts

Entity	Case/decision (specify if in dissent/sep op)	Passage	Vol One/Vol Two/Both	ICRC Study rule number	Agreed/Disagreed	Other material cited alongside?	How used? (See eg; fn; etc)	Other comments	Link to decision/judgment
EW Court of Appeal (Civil Division)	R (Campaign against Arms Trade) v Secretary of State for International Trade [2019] 1 WLR 5765 (20 June 2019)	106. 'So far as particular striking episodes are concerned, Mr Chamberlain emphasised three. Taking them in chronological order, the first is the declaration by the Saudi General Assiri on 8 May 2015 that the city of Sa'dah and the region of Mar were "military targets". Mr Chamberlain began by taking us to the rules of Customary International Humanitarian Law, published by the International Committee of the Red Cross. Rule 13 reads: "Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilian or civilian objects are prohibited."	One (rules)	Rule 13	Neutral	Part of broader discussion	NM. Main text		Saved in zip folder
EW High Court	Alseran and ors v Ministry of Defence [2019] QB 1251	p. 1265. 'The necessity of detention must relate to a particular risk posed by that individual and there must be a reasonable and compelling factual basis for believing it to be necessary. The concept of imperative reasons of security does not permit internment for the purpose of intelligence gathering or interrogation. During detention, procedural safeguards must be applied. The basic legal principle underpinning detention is humane treatment. Detainees are entitled to be informed promptly of the reasons for their detention in a language they understand. There must be a periodical review by an impartial and objective authority to ensure that, if prior to the cessation of hostilities there cease to be imperative reasons of security to detain a person, he should be released. Detention must end as soon as the reasons justifying it cease to exist: see Prosecutor v Delalic (Case No IT-96- 21-T) 16 November 1998; R (Al-Jedda) v Secretary of State for Defence [2007] QB 621; [2008] 1 AC 332; Tymoshenko v Ukraine 58 EHRR 3 and Mohammed (Serdar) v Ministry of Defence [2017] AC 649. [Reference was also made to Lawless v Ireland (No 3) (1961) 1 EHRR 15; Ireland v United Kingdom (1978) 2EHRR25; Aksoy v Turkey 23 EHRR 553; Demir v Turkey (1998) 33 EHRR 43; Imakayeva v Russia (2006) 47 EHRR 4; Chitayev v Russia 47 EHRR 1; Gisayev v Russia CE:ECHR:2011:0120JUD001481104; Commentary IV on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958), ed J Pictet, pp 258—259; P Nevill, "Reconciling the clash between United Kingdom obligations under the UN Charter and the ECHR in domestic law: towards systemic integration?" [2008] CLJ 447, 449; International Committee of the Red Cross ("ICRC") study on Customary International Humanitarian Law (2005), eds JM Henckaerts & L Doswald-Beck, vol 1, p 451; K Dörmann, "Detention in Non-International Armed Conflicts" (2012) 88 International Law Studies 347, 356; D p. 1271: 'Further or alternatively, the court should disapply the Iraqi limitation law under the broader public policy ground in section 2(1) of the 1984 Act. A foreign law should be disregarded if it represents a serious infringement of human rights. The court can and should give effect to clearly established rules of international law, including the prohibitions on torture, inhuman and degrading treatment and arbitrary detention, the prohibitions on torture and arbitrary detention also being long established in the common law: see In re Claim by Helbert Wagg & Co Ltd [1956] Ch 323; Oppenheimer v Cattermole [1976] AC249; Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5) [2002] 2 AC 883; A v Secretary of State for the Home Department [2005] 2 AC 68; A v Secretary of State for the Home Department (No 2) [2006] 2 AC 221 and the ICRC's Customary International Humanitarian Law.'	One (rules)	Rule 128	Agreed	Yes.	RE NOIND. Main text	Used as academic authority.	Saved in zip folder
EW High Court	Ibid	p. 1271: 'Further or alternatively, the court should disapply the Iraqi limitation law under the broader public policy ground in section 2(1) of the 1984 Act. A foreign law should be disregarded if it represents a serious infringement of human rights. The court can and should give effect to clearly established rules of international law, including the prohibitions on torture, inhuman and degrading treatment and arbitrary detention, the prohibitions on torture and arbitrary detention also being long established in the common law: see In re Claim by Helbert Wagg & Co Ltd [1956] Ch 323; Oppenheimer v Cattermole [1976] AC249; Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5) [2002] 2 AC 883; A v Secretary of State for the Home Department [2005] 2 AC 68; A v Secretary of State for the Home Department (No 2) [2006] 2 AC 221 and the ICRC's Customary International Humanitarian Law.'	One (rules)	N/A	Agreed	Yes.	AM. Main text	Used as academic authority.	Saved in zip folder
UKSC	Mohammed (Serdar) v Ministry of Defence and another (No 2) [2017] 2 WLR 327	Arguments relating to customary international humanitarian law 271. 'Considering next the contention that detention in a non-international armed conflict is authorised by customary international humanitarian law, the arguments against that view can be summarised as follows. It is argued that the contention lacks sufficient support in either opinio juris or state practice. So far as the former is concerned, the contention is disputed by many experts in this area of the law, as explained in para 258 above. It is argued that it is also unsupported by the ICRC's major international study into state practice, Henckaerts & Doswald-Beck, Customary International Humanitarian Law (2005). That study concludes that the arbitrary deprivation of liberty is prohibited (pp 347—349), but not that there are grounds on which the deprivation of liberty is authorised under customary international humanitarian law. The ICRC's catalogue of the rules of customary international humanitarian law is also said to give no support to the idea that they include an authority to detain: ICRC, Customary IHL, www.icrc.org/customary-ihl/eng/docs/v1.'	One (rules)	Rule 99	Neutral	Part of broader discussion	NM. Main text	Summarizing argument; seen as academic authority.	Saved in zip folder
UKSC	Ibid	273. 'In addition, it has been pointed out that the ICRC itself accepts that customary international humanitarian law prohibits the arbitrary deprivation of liberty: see ICRC, Customary IHL, rules 87 and 99. That prohibition is said to be a rule applicable in both international and non-international armed conflict, established by state practice in the form of military manuals, national legislation and official statements, and also international human rights law. The arguments discussed in paras 268—270 above are therefore also relevant in this context.'	One (rules)	Rules 87 and 99	Neutral	Part of broader discussion	NM. Main text		Ibid

7	EW High Court	Al-Saadoon v Defence Secretary [2015] EWHC 715 (Admin)	para 271, n 9: See e g Geneva Convention III, art 130; Geneva Convention IV, art 147; and the International Committee of the Red Cross, Customary International Humanitarian Law, rule 158.'	One (rules)	Rule 158	Neutral	Part of broader discussion	AM. Fn.		Saved in zip folder
8	EW Court of Appeal	Mohammed (Serdar) v Ministry of Defence [2016] 2 WLR 247	(iii) Academic commentaries 183. 'Thirdly, the dominant approach in the international humanitarian law literature put before us (see para 241 below) is that power to detain in a non-international armed conflict is to be determined by the domestic law of the place at which detention took place or of the detaining power. Alternatively, it can be found in an appropriately drafted UNSCR. Moreover, the rules of international humanitarian law are principally prohibitory rather than facilitative. This is seen in the approach in Henckaerts & Dodsward-Beck, Customary International Humanitarian Law (2005), undertaken for the ICRC.'	One (rules)	N/A	Neutral	Part of broader discussion	AM. Main text	Used as academic authority.	Saved in zip folder
9	EW Court of Appeal	Ibid	(d) Considerations supporting the Secretary of State's submissions (i) A convergence of legal regimes in respect of international armed conflicts and non-international armed conflicts 188. 'The first of the considerations which favour the Secretary of State's critique of the judgment below is that it is broadly accepted that most modern conflicts are non international armed conflicts, and that there has been a convergence of the regimes governing international armed conflicts and non-international armed conflicts by extending the protection formerly only available in an international armed conflict to individuals involved in a non-international armed conflict. The proliferation of "internationalised" non-international armed conflicts where not all the parties to the conflicts are sovereign states, has led some to state that, notwithstanding the categorisation of a conflict such as that in Afghanistan as a non-international armed conflict, the legal regime governing it differs from that in a purely internal armed conflict, a "traditional" non-international armed conflict. The introduction by Jakob Kellenberger, then President of the ICRC, to Customary International Humanitarian Law (2005), p xvi states that state practice concerning non-international armed conflicts: "goes beyond what those same states have accepted at diplomatic conferences, since most of them agree that the essence of customary rules on the conduct of hostilities applies to all armed conflicts, international and non-international." See also the thesis advanced by E Crawford, The Treatment of Combatants and Insurgents under the Law of Armed Conflict (2010), pp 2, 37.'	One (intro)	N/A	Neutral	Yes. Emily Crawford article.	NM. Main text. Discussion of parties' submissions.	Used as academic authority.	Ibid
10	EW Court of Appeal	Ibid	(iv) The logic of international humanitarian law 193. 'Fourthly, if international humanitarian law is limited to or principally about prohibitions, it remains necessary to explain why the rules (for example, set out in Customary International Humanitarian Law (2005)) distinguish between the positions of combatants and civilians, and delineate who is entitled to be protected from lethal force and military operations.'	One (rules)	N/A	Neutral	Part of broader discussion	AM. Main text		Ibid
11	EW Court of Appeal	Ibid	(f) Is it necessary to show a positive power to detain, or does an absence of prohibition suffice? 196. 'Rule 99 of Customary International Humanitarian Law (2005) states only that "arbitrary deprivation of liberty is prohibited" (emphasis added). Does international humanitarian law therefore "allow for", "permit" or "licence" non-arbitrary detention? This would only be so if the absence of prohibition is sufficient to constitute legal authority.'	One (rules)	Rule 99	Neutral	Part of broader discussion	AM. Main text		Ibid
12	EW Court of Appeal	Ibid	207. 'The next stage of the Secretary of State's submission was that, if there was an implied power or licence to kill, that "logically encompassed operational detention" and a fortiori must include an implied power or licence to detain. It was said that this reflected the balance required between military necessity and the requirements of humanity that underpin all the rules of international humanitarian law. One requirement of humanity is to give quarter rather than using lethal force. Rule 46 of Customary International Humanitarian Law (2005) states "ordering that no quarter will be given . . . is prohibited". The corollary of that position in the case of a person who is taking a direct part in hostilities and represents an imminent threat is to permit the detention of that person so as to render him or her hors de combat. The Secretary of State submitted that was the only way of encouraging armed forces to take a lesser step than exercising lethal force and, in this way, to promote the humanitarian side of international humanitarian law. He argued that it would be legally incoherent not to recognise a power to detain those posing an imperative security threat to whom quarter has been given in battle. Although he did not expressly refer to rule 46 of the ICRC's study, it supports his submission.'	One (rules)	Rule 46	Agreed	PSA	RE NOIND. Main text. Discussion of parties' submissions.		Ibid

			(v) Academic commentaries 235. 'Turning from state practice to commentary, Customary International Humanitarian Law states (Introduction, at para 6) that "common sense would suggest that [the rules of international humanitarian law], and the limits they impose on the way war is waged, should be applicable in international and non-international armed conflicts". It is stated that the study provides evidence "that many rules of customary international law apply in both international and non-international armed conflicts, and shows the extent to which state practice has gone beyond existing Treaty law and expanded the rules applicable to non-international armed conflicts". In particular: "the gaps in the regulation of the conduct of hostilities in Additional Protocol II have 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: Introduction, para 7.'	One (intro)	N/A	Neutral	Part of broader discussion	AM. Main text	Used as academic authority.	Ibid
			(vi) The a fortiori argument in the context of customary international law 237. 'Part of the Secretary of State's argument under this heading was, in effect, the a fortiori argument we considered, at paras 207—219 above, but without tying it to provisions in common article 3 and APII or the analogical application of provisions about international armed conflicts in the Geneva Conventions. The argument was that the principle of distinction means that states are authorised to target non-state actors participating in a non-international armed conflict: see ICRC, Melzer, Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (2009), pp 12 and 73; Customary International Humanitarian Law, rule 1, which is stated to apply in a non-international armed conflict as well as an international armed conflict; Schmidt in The Handbook of the International Law of Military Operations, eds Gill and Fleck, para 16.02; Abella v Argentina 18 November 1997, Case 11.137, Report 55/97, Inter-American Commission of Human Rights, paras 177—179. The balance required between military necessity and the requirements of humanity that underpin international humanitarian law meant that there was authority to detain in a non international armed conflict. The Secretary of State submitted that it would be very odd to say that there was no authority to do so when there was such authority in an international armed conflict. The conclusion that there was such authority flows from the structure and nature of international humanitarian law, which is to temper the savagery of war with humanitarian concerns.'	One (rules)	Rule 1	Neutral	Yes.	NM. Main text. Discussion of parties' submissions.		Ibid
			241. 'Others take the view that there is no such rule. The team instructed on behalf of SM has produced a table summarising the views in 14 academic contributions which conclude that authorisation to detain in a non-international armed conflict cannot be found in international humanitarian law but must rest elsewhere, principally in domestic law, either of the state which detains or the state on the territory of which the detention occurs: see in particular Debuf, p 465; Rona, "Is There aWay Out of the Non-international Armed Conflict Detention Dilemma?" (2015) 91 ILS 32, 37; Ashley S Deeks "Administrative Detention in Armed Conflict" (2009) 40 Case W Res J Int'l L 403, 404—405; Françoise J Hampson "Is Human Rights Law of Any Relevance to Military Operations in Afghanistan?" (2009) 85 ILS 485, 497; and Hill-Cawthorne & Akande, EJIL Talk! 7 May and 2 June 2014. Moreover, Customary International Humanitarian Law, the comprehensive study of customary international humanitarian law undertaken for the ICRC by Henckaerts and Dodsald-Beck, does not give any positive support for a power to detain in a non-international armed conflict based on international humanitarian law. All it does is to describe the minimum conditions international humanitarian law requires for those who are detained, reflecting the principally prohibitory nature of international humanitarian law.'	One (rules)	N/A	Agreed	Part of broader discussion	AM. Main text	Used as academic authority, but there seems to be more emphasis on the ICRC's epistemic authority/Study is given more weight than 'mere' academic authorities.	Ibid
			278. 'If such procedural safeguards could be identified from custom aided by the ICRC's institutional guidelines and the Copenhagen Principles, their alternative position was that, in SM's case, the minimum procedural safeguards for the lawful exercise of a power to detain imposed by customary international humanitarian law were not satisfied. It was submitted on behalf of SM that there were three safeguards. They were the obligations to: (i) inform the person who is detained of the reasons for the detention; (ii) bring a person arrested on a criminal charge promptly before a judge; and (iii) provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention (see Customary International Humanitarian Law, pp 349—351). While the first might have been met, the second and third were not.'	One (rules)	Rule 99	Neutral	Part of broader discussion	AM. Main text. Recounting arguments of the parties.		Ibid

			(f) The opportunity of the detainee to participate in the reviews of his detention 293. 'The Secretary of State's statement of core safeguards did not include providing the detainee an opportunity to participate in any way in the reviews of his detention or to challenge its lawfulness. However, that is one of the three safeguards identified in Customary International Humanitarian Law, and reflects the views set out in the ICRC's November 2014 opinion paper referred to at para 279 above. The ICRC stated that, in practice, mounting an effective challenge to legality presupposes the fulfilment of a number of practical steps, including providing detainees with evidence of the allegations against them and making sure that they understand the various stages of the process. No such opportunity was afforded to SM.'	One (rules)	N/A	Agreed	Part of broader discussion	Main text		Ibid
17	EW Court of Appeal	Ibid								
			(h) The overall failure to meet the requisite procedural requirements 295. 'The procedural practices of some other members of ISAF provide some support for the broad proposition that reviews may be carried out by a military person within the chain of command and that there is no need for the detainee to be afforded an opportunity to provide input to such reviews. The United States' practice, however, is that an opportunity to provide input and assistance in doing so is provided. The practice of the other states relied on does not seem to comply with what the ICRC's Procedural Principles state are the procedural requirements in a non-international armed conflict. Moreover, the provision of an opportunity for a detainee to participate in some way in reviews of detention, and to challenge its lawfulness, which are part of the necessary safeguards identified in Customary International Humanitarian Law and in the ICRC's November 2014 opinion paper, were not met in this case. Additionally, other states whose troops served in ISAF considered their detention powers to be limited to the 96-hour period.'	One (rules)	Rule 99	Agreed	PSA	RE NOIND. Main text		Ibid
18	EW Court of Appeal	Ibid								
			260. 'An influential study of customary international humanitarian law has been carried out by the ICRC: see ICRC, Henckaerts & Doswald-Beck, 'Customary International Humanitarian Law' (2005) vol.1, pp.344-352. This study identifies what the authors consider to be 161 rules of customary IHL, one of which (rule 99) relates to deprivation of liberty. This rule is said to be that "arbitrary deprivation of liberty is prohibited". In relation to non-international armed conflicts, the commentary on the rule states that: "The prohibition of arbitrary deprivation of liberty ... is established by State practice in the form of military manuals, national legislation and official statements, as well as on the basis of international human rights law. While all States have legislation specifying the grounds on which a person may be detained, more than 70 of them were found to criminalise unlawful deprivation of liberty during armed conflict. Most of this legislation applies the prohibition of unlawful deprivation of liberty to both international and non-international armed conflicts. Several military manuals which are applicable in or have been applied in non-international armed conflicts also prohibit unlawful deprivation of liberty". The commentary goes on to identify what are said to be three procedural requirements established by human rights law. These are: (i) an obligation to inform a person who is arrested of the reasons for arrest; (ii) an obligation to bring a person arrested on a criminal charge promptly before a judge; and (iii) an obligation to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention.'						Describes the ICRC Study as 'influential' but questions whether Rule 99 is custom/describes the Study as setting out 'what the authors consider' to be custom. The key question for the Court was however the existence of authority to detain and not the procedural safeguards upon detention. There is no independent analysis of state practice, but only an expression of doubt.	
19	EW High Court	Mohammed v Ministry of Defence [2014] EWHC 1369 (QB)	261. 'Whether these matters can properly be regarded as established rules of customary international humanitarian law seems to me questionable. Even assuming that they can, however, rule 99 does not itself provide a legal basis'	One (rules)	Rule 99	Disagreed (doubting)	PSA	AM, NOIND. Main text. Engagement		Saved in zip folder
			64. 'It is noteworthy that Mr Drabble (rightly) accepts that, if the appellant had been guilty of fighting UNAMA, he would in principle have been guilty of acts contrary to the purposes and practices of the United Nations. We say "in principle", because it would still be necessary to examine all the facts (as per Germany v B [2012] 1 WLR 1076). So why does it make any difference that the appellant was fighting ISAF rather than attacking UNAMA? That the aims and objectives of ISAF and UNAMA are congruent is amply borne out by the Security Council Resolutions: see para 58 above. The answer given by Mr Drabble and Mr Fordham is that the 1994 Convention and 2005 Protocol would apply to attacks on UNAMA, but not to attacks on ISAF. Peacekeeping forces, unlike combat forces, are entitled to the same protection against attack as that accorded to civilians under international humanitarian law, as long as they are not taking a direct part in hostilities. Under the Statute of the International Criminal Court (articles 8(2)(b)(iii) and 9(e)(iii)), intentionally directed attacks against personnel involved in a peacekeeping mission in accordance with the Charter of the United Nations constitute a war crime: see rule 33 in Customary International Humanitarian Law vol 1: Rules (2005, International Committee of the Red Cross). We accept the points made by Mr Drabble and Mr Fordham about the differences between ISAF and UNAMA which are summarised at paras 60 and 61 above.'							
20	UKSC	Al-Sirri v Secretary of State for the Home Department; [2013] 1 AC 745 (21 November 2012)		One (rules)	Rule 33	Agreed	PSA	RE NOIND. Main text		Saved in zip folder

21	EW Court of Appeal	R v Gul (Mohammed) [2012] 1 WLR 3432 (22 February 2012)	(f) The laws of armed conflict (international humanitarian law) draw a distinction between attacks on civilians and attacks on the military 44. Mr Moloney's next argument was that there was a clear distinction in the laws relating to armed conflict (international humanitarian law) between attacks on civilians and attacks on military forces, whether the conflict be international armed conflict or non international armed conflict. He referred principally to the following. (i) In the ICRC publication by Jean-Marie Henckaerts, Customary International Humanitarian Law (2005), vol 1, which has formulated the applicable rules, rule 1 states: "The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians".' 141. 'To the extent that there has been a failure to comply with the procedural requirements of Article 78, what is the consequence? In his reply, Mr Giffin drew our attention to a work by Jean-Marie Henckaerts and Louise Doswald-Beck on Customary International Humanitarian Law, which refers in paragraph 2774 of volume 1 to a judgment of 20 February 2001 of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, in the case of Delalić: "The involuntary confinement of a civilian where the security of the Detaining Power does not make this absolutely necessary will be unlawful. Further, an initially lawful internment clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative body as prescribed in Article 43 of Geneva Convention IV".'	One (rules)	Rule 1	Neutral	Part of broader discussion	NM. Main text. Discussion of parties' submissions.	Saved in zip folder
22	EW High Court	R (on the application of Al-Jedda) v Secretary of State for Defence [2005] EWHC 1809 (12 August 2005)	141. 'To the extent that there has been a failure to comply with the procedural requirements of Article 78, what is the consequence? In his reply, Mr Giffin drew our attention to a work by Jean-Marie Henckaerts and Louise Doswald-Beck on Customary International Humanitarian Law, which refers in paragraph 2774 of volume 1 to a judgment of 20 February 2001 of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, in the case of Delalić: "The involuntary confinement of a civilian where the security of the Detaining Power does not make this absolutely necessary will be unlawful. Further, an initially lawful internment clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative body as prescribed in Article 43 of Geneva Convention IV".'	One (rules)		Neutral	Part of broader discussion	NM. Main text. Discussion of parties' submissions. Primarily relying on ICTY Delalić judgment	Saved in zip folder
23	Israeli Supreme Court (sitting as the High Court of Justice)	Alian v Commander of IDF Forces in the West Bank (2017) HCJ 4466/16; HCJ8503/16; HCJ285/17; HCJ6524/17 (14 December 2017) (Opinion of Justice Y. Danziger)	31. 'Furthermore, the First Protocol adds and anchors a specific requirement to return bodies in certain circumstances. The Protocol establishes that the remains of people who died as a result of occupation situations or acts of hostility should be buried respectfully, and that as soon as circumstances permit, the parties to a conflict are expected to reach an agreement on their return (art. 34 §2(c)). The Protocol further states that, if no such agreement is concluded, the party holding the bodies may offer to return them (art. 34 §3). While the articles of the Protocol state that the parties "shall conclude agreements" without imposing an obligation to return bodies, their tenor is clear. The commentary on the Protocol even clarifies that although this arrangement seemingly applies in certain circumstances only, it might serve as a good platform for returning bodies in other circumstances as well (Commentary on the Additional Protocols to the Geneva Conventions of 12 August 1949, para. 1330 (1977)). Guidelines in a similar spirit also exist in the accepted interpretations of customary international law. Thus, the rules in the study by the International Committee of the Red Cross explain that a party to an international armed conflict must make every effort to facilitate the return of a dead person's remains to the other side upon its request (see: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, Rule 114 (2006)). As it transpires from this study, similar instructions appear in a number of military manuals, including in the United States, which announced its support of the rules of the First Protocol relative to the return of bodies in an international armed conflict.'	One (rules)	Rule 114	Agreed	PSA	RE NOIND. Main text.	https://versa.cardozo.yu.edu/opinions/alian-v-commander-idf-forces-west-bank
24	Israeli Supreme Court (sitting as the Court of Criminal Appeals)	A v State of Israel (2008) CrimA 6659/06 (11 June 2008)	(6) The length of internment under the Law 46. '... As we have said, the purpose of the Internment of Unlawful Combatants Law is to prevent "unlawful combatants" as defined in s. 2 of the Law from returning to the cycle of hostilities, as long as the hostile acts are continuing and threatening the security of the citizens and residents of the State of Israel. On the basis of a similar rationale, the Third Geneva Convention allows prisoners of war to be interned until the hostilities have ceased, in order to prevent them from returning to the cycle of hostilities as long as the fighting continues. Even in the case of civilians who are detained during an armed conflict, the rule under international humanitarian law is that they should be released from detention immediately after the concrete cause for the detention no longer exists and no later than the date of cessation of the hostilities (see J. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (vol. 1, 2005), at page 451; also cf. Hamdi v. Rumsfeld, 542 U.S. 507 (2004), at pages 518-519, where the United States Supreme Court held that the detention of members of forces hostile to the United States and operating against it in Afghanistan until the end of the specific dispute that led to their arrest is consistent with basic and fundamental principles of the laws of war).	One (rules)	Rule 128	Agreed	PSA	RE NOIND. Main text.	https://versa.cardozo.yu.edu/opinions/v-state-israel-1

25	Israeli Supreme Court (sitting as the High Court of Justice)	Ahmed v Prime Minister (2008) HCJ9132/07 (30 January 2008)	14. 'The state's pleadings in this regard are based upon norms that are part of customary international law, which set out basic obligations that govern combatants engaged armed conflict, and require them to ensure the welfare of the civilian population and respect its dignity and basic rights. It should also be noted that under the rules of customary international humanitarian law, each party to a conflict is obliged to refrain from disrupting the passage of basic humanitarian relief to populations in need of such relief in areas under its control (J. Henckaerts & L. Doswald-Beck, Customary International Humanitarian Law (ICRC, vol. 1, 2005), at pp. 197, 199). In the commentary to art. 70 of the First Protocol, too, it is stated that arts. 54 and 70 of the First Protocol should be read together, to the effect that a party to a conflict may not refuse to allow the passage of foodstuffs and basic humanitarian equipment necessary for the survival of the civilian population (Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Y. Sandoz, C. Swinarski, B. Zimmermann, eds., (ICRC, Geneva, 1987), at p. 820).'	One (rules)	Rule 55	Agreed	Yes.	RE NOIND. Main text.	https://versa.cardozo.yu.edu/opinions/ahmed-v-prime-minister
26	Israeli Supreme Court (sitting as the High Court of Justice)	Public Committee against Torture in Israel v Government of Israel et al (2006) HCJ 769/02 (14 December 2006)	23. '... In contrast to the combatants and military targets there are the civilians and civilian targets. They may not be subjected to a military attack that is directed at them. Their lives and bodies are protected against the risks of combat, provided that they do not themselves take a direct part in the combat. This customary principle was formulated as follows: 'Rule 1: The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians. Rule 6: Civilians are protected against attack unless and for such time as they take a direct part in hostilities. Rule 7: The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects' (J. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (vol. 1, 2005), at pp. 3, 19, 25).'	One (rules)	Rules 1, 6 and 7	Agreed	PSA	RE NOIND. Main text.	https://versa.cardozo.yu.edu/opinions/public-committee-against-torture-v-government
27	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	29. 'In a similar vein, art. 8(2)(b)(i)-(ii) of the Rome Statute of the International Criminal Court provides, in its definition of war crimes, that if an order is given intentionally to direct attacks against civilians, it is a war crime. This crime is applicable to those civilians who are 'not taking a direct part in hostilities.' Similarly civilians may not be attacked indiscriminately, i.e., an attack that, inter alia, is not directed at a specific military target (see art. 51(4) of the First Protocol, which constitutes customary international law: see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, supra, at p. 37).'	One (rules)	Rule 11	Agreed	PSA	RE NOIND. Main text.	Ibid
28	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	30. 'It is well known that Israel is not a party to the First Protocol. Therefore it has not been adopted in Israeli legislation. Does this basic principle reflect customary international law? The position of the Red Cross is that this is indeed a principle of customary international law (see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, supra, at p. 20. We accept this position. It is consistent with the provisions of common article 3 of the Geneva Conventions, to which Israeli is a party and which everyone agrees reflect customary international law, according to which protection is given to — 'Persons taking no active part in the hostilities...'	One (rules)	Rule 6	Agreed	PSA	RE NOIND. Main text.	Multiple academic authors cited subsequently to confirm conclusion - clear that the ICRC Study is treated as a more weighty authority. No independent analysis of state practice or opinio juris.
29	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	D. First part: 'take a ... part in hostilities' 33. '... A similar approach was adopted by the Inter-American Commission on Human Rights which is cited with approval by Henckaerts and Doswald-Beck (Customary International Humanitarian Law, supra, at p. 22). It would appear that to this definition we should add those acts that by their nature and purpose are intended to cause harm to civilians. According to the accepted definition, a civilian takes part in hostilities when he uses weapons within the framework of the armed conflict, when he collects intelligence for this purpose or when he prepares himself for the hostilities. With regard to taking part in the hostilities, there is no requirement that the civilian actually uses the weapons that he has, nor is it a requirement that he carries weapons on him (openly or concealed).'	One (rules)	Rule 6	Agreed	Part of broader discussion	AM. Main text.	Ibid

30	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	<p>E. Second part: 'take a direct part'</p> <p>34. Civilians lose their protection against the attack of armed forces that is given to them under customary international law relating to international armed conflicts ((as adopted in art. 51(3) of the First Protocol) if 'they take a direct part in hostilities.' The provision therefore distinguishes between civilians who are taking a direct part in hostilities (who lose the protection from attack) and civilians who take an indirect part in the hostilities (who continue to enjoy protection from attack). What is this distinction? A similar provision appears in common article 3 of the Geneva Conventions, which adopts the expression 'active part in hostilities.' A judgment of the International Criminal Tribunal for Rwanda held that these two expressions have the same content (see Prosecutor v. Akayesu [691]). What is this content? It would appear that it is accepted in international literature that there is no agreed definition of the word 'direct' in the context before us (see Direct Participation in Hostilities under International Humanitarian Law, Report Prepared by the International Committee of the Red Cross (2003); Direct Participation in Hostilities under International Humanitarian Law (2004)). Henckaerts and Doswald-Beck (Customary International Humanitarian Law, supra, at p. 23) rightly said:</p> <p>'It is fair to conclude... that a clear and uniform definition of direct participation in hostilities has not been developed in state practice.'</p> <p>In such circumstances, and in the absence of a complete and agreed customary criterion, there is no alternative to judging each case on its own merits, while limiting the scope of the dispute (cf. Prosecutor v. Tadić [73]). In this regard we</p>	One (rules)	Rule 6	Agreed	Yes. ICRC Direct Participation in Hostilities Reports (2003 and 2004)	AM. Main text.		Ibid
31	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	<p>40. '... The burden of proof of the armed forces in this matter is a heavy one (see Kretzmer, 'Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?' supra, at p. 203; Gross, Democracy's Struggle against Terrorism: Legal and Moral Aspects, at p. 606). In case of doubt, a careful examination is required before an attack is carried out. This was discussed by Henckaerts and Doswald-Beck:</p> <p>'... when there is a situation of doubt, a careful assessment has to be made under the conditions and restraints governing a particular situation as to whether there are sufficient indications to warrant an attack. One cannot automatically attack anyone who might appear dubious' (Customary International Humanitarian Law, supra, at p. 24).'</p>	One (rules)	Rule 6	Agreed	Yes.	AM. Main text.	Using commentary for interpretative purposes.	Ibid
32	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	<p>(7) Proportionality</p> <p>A. The principle of proportionality and its application in customary international law</p> <p>41. The principle of proportionality is a general principle in the law. It is a part of our legal approach to human rights (see s. 8 of the Basic Law: Human Dignity and Liberty; see also A. Barak, A Judge in a Democracy (2004), at p. 346). It is an important element in customary international law (see R. Higgins, Problems and Process – International Law and How We Use It (1994), at p. 219; J. Delbruck, 'Proportionality,' in R. Bernhardt (ed.), Encyclopedia of Public International Law (1997), at p. 1144). It is an integral part of the law of self-defence. It is a major element in the protection of civilians in situations of armed conflicts (see Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict, at p. 119; Gasser, The Handbook of Humanitarian Law in Armed Conflicts, supra, at p. 220; Cassese, International Law, supra, at p. 418; Ben-Naftali and Shani, ' "We Must Not Make a Scarecrow of the Law": A Legal Analysis of the Israeli Policy of Targeted Killings,' supra, at p. 154; Henckaerts and Doswald-Beck, Customary International Humanitarian Law, supra, at p. 60; J.G. Gardam, 'Proportionality and Force in International Law,' 87 Am. J. Int'l L. 391 (1993); J.S. Pictet, Development and Principles of International Humanitarian Law (1985), at p. 62; W.J. Fenrick, 'The Rule of Proportionality and Protocol I in Conventional Warfare,' 98 Mil. L. Rev. 91 (1982); T. Meron, Human Rights and Humanitarian Norms as Customary International Law (1989), at p. 74). It has a central role in the law of belligerent occupations (see Hass v. IDF Commander in West Bank [20], at p. 461 [71];</p>	One (rules)	Rule 19	Agreed	Yes. Numerous primary and secondary sources on proportionality.	AM. Main text.	Used academically.	Ibid

33	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	<p>B. Proportionality in an international armed conflict</p> <p>42. The principle of proportionality plays a major role in the international law of armed conflicts (cf. arts. 51(5)(b) and 57 of the First Protocol; see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, supra, at p. 46; Ben-Naftali and Shani, '“We Must Not Make a Scarecrow of the Law”': A Legal Analysis of the Israeli Policy of Targeted Killings,' supra, at p. 154). These laws are of a customary nature (see Henckaerts and Doswald-Beck, ibid., at p. 53; Duffy, The 'War on Terror' and the Framework of International Law, supra, at p. 235; Prosecutor v. Kupreškić [76]). The principle of proportionality arises when the military activity is directed against combatants and military targets, or against civilians for such time as they take a direct part in hostilities, and in the course of this civilians are also harmed. The rule is that the harm to innocent civilians that is caused as collateral loss in the course of the combat activities should be proportionate (see Dinstein, The Conduct of Hostilities under the Law of International Armed Conflict, at p. 119). Civilians are likely to be harmed because of their presence inside a military target, such as civilians who work in a military base; civilians are likely to be hurt when they live, work or pass close to military targets; sometimes because of an error civilians are harmed even if they are not close to military targets; sometimes civilians are used, by means of coercion, as a 'human shield' against an attack on a military target, and they are hurt as a result. In all of these situations and others similar to them, the rule is that the harm to innocent civilians should, inter alia, satisfy the principle of proportionality.</p>	One (rules)	Rule 15	Agreed	Yes. Duffy article; Kupreškić Judgment.	RE NOIND. Main text.	Ibid
34	Israeli Supreme Court (sitting as the High Court of Justice)	Ibid	<p>Due proportion between the advantage and the damage</p> <p>...</p> <p>46. 'Proportionality in this sense is not required with regard to an attack on a combatant or a civilian who is at that time taking a direct part in the hostilities. Indeed, a civilian who is taking part in hostilities endangers his life and he may, like a combatant, constitute a target for an attack that causes death. This is a permitted killing. By contrast, proportionality is required in any case where an innocent civilian is hurt. Therefore the requirements of proportionality in the narrow sense should be satisfied in a case where the attack on a terrorist causes collateral damage to innocent civilians in the vicinity. The rule of proportionality applies to the attack on these innocent civilians (see art. 51(5)(b) of the First Protocol). The rule is that combatants or terrorists may not be attacked if the expected damage to innocent civilians in their vicinity is excessive in relation to the military benefit of attacking them (see Henckaerts and Doswald-Beck, Customary International Humanitarian Law, supra, at p. 49). ...'</p>	One (rules)	Rule 14	Agreed	PSA	RE NOIND. Main text - 'see'	Ibid
35	Israeli Supreme Court (sitting as the High Court of Justice)	Adalah Legal Center for Arab Minority Rights in Israel v. IDF Central Commander (2005) HCJ 3799/02 (6 October 2005)	<p>20. 'An army in an area under belligerent occupation is permitted to arrest local residents wanted by it, who endanger its security (see HCI 102/82 Tsemel v. The Minister of Defense, 37 (3) PD 365, 369; HCI 3239/02 Marab v. The Commander of IDF Forces in the Judea and Samaria Area, 57 (2) PD 349, 365). In this framework – and to the extent that it does not frustrate the military action intended to arrest the wanted person, the army is permitted – and at times even required – to give the wanted person an early warning. Thus it is possible to ensure the making of the arrest without injury to the civilian population (see regulation 26 of Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (hereinafter – The Hague Regulations); article 57(2) of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (hereinafter – The First Protocol); see also Fleck The Handbook of Humanitarian Law in Armed Conflicts (1995) 171, 223 (hereinafter – Fleck); rule 20 of 1 Customary International Humanitarian Law: Rules (2005) 62 (hereinafter – International Humanitarian Law)).'</p>	One (rules)	Rule 20	Agreed	Yes.	RE NOIND. Main text - 'see also'.	https://versa.cardozo.yu.edu/opinions/adalah-legal-center-arab-minority-rights-israel-v-idf-central-commander
36	US Court of Appeals Fourth Circuit	US v Hamidullin 888 F 3d 62 (18 April 2018)	<p>P. 67-8: '... Thus, Article 3 allows for combatants captured during non-international conflicts to face trial and judgment for their actions as long as they are tried in the opposing force's country's "regularly constituted court." Id.; see also 1 Int'l Comm. of Red Cross (ICRC), Customary International Humanitarian Law 354–55 (2005) (stating that pursuant to Article 3 of the Third Geneva Convention, captured combatants can be sentenced in a "regularly constituted court" that is "established and organised in accordance with the laws and procedures already in force in a country.")3.</p> <p>Fn 3: 'Although non-binding, the ICRC's interpretation of the Geneva Conventions has been treated as persuasive by the Supreme Court. Hamdan, 548 U.S. at 632, 126 S.Ct. 2749.'</p>	One (rules)	Rule 100	Agreed	PSA	MA. Main text - 'see also'.	Used to interpret CA3, not really for establishing custom. Saved in zip folder

37	US Court of Appeals - Fourth Circuit	Ibid	P. 71: 'Pursuant to Article 3, Hamidullin can be sentenced in a "regularly constituted court" that is "established and organised in accordance with the laws and procedures already in force in a country." 1 ICRC, Customary Int'l Humanitarian Law 355 (2005) (interpreting Third Geneva Convention, art. 3). A U.S. federal district court is one such court ...'	One (rules)	Rule 100	Agreed	Part of broader discussion	MA. Main text.	Ibid
38	US Court of Appeals - Fourth Circuit	Ibid	P. 75: 'Article 3 only requires that Hamidullin be tried "by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Third Geneva Convention, art. 3. The U.S. federal district courts are "established and organised in accordance with the laws and procedures already in force" in the United States. See 1 ICRC, Customary International Humanitarian Law 355 (2005); 18 U.S.C. § 3231. Accordingly, the district court did not err in determining that Hamidullin was properly tried in a regularly constituted American court.'	One (rules)	Rule 100	Agreed	Part of broader discussion	MA. Main text - 'see'	Ibid
39	US Court of Military Commissions Review	US v Mohammad 280 F Supp 3d 1305 (29 June 2017)	pp. 1325-6: 'The parties contest whether under international law the statute of limitations for violations of the law of war is unlimited. Appellant Br. 11–12, 21–23; Appellee Br. 43–50; Appellant Reply 11–12. Various experts and scholars in international law opine that unlimited statutes of limitations do or do not constitute customary international law.61 "In 2005, the International Committee of the Red Cross (ICRC), which carried out an extensive study on customary international humanitarian law ... concluded in 2005 that "[s]tatutes of limitation are not applicable to war crimes."62' Fn 62: 'Klamberg, supra n. 42, at 311 (citing Jean-Marie Henckaerts & Louise Doswald-Beck eds., Customary International Humanitarian Law, Int'l Comm. of the Red Cross, vol. II, ch. 43, § E at 614 (2005). See Hamdan, 548 U.S. at 619 n. 48, 126 S.Ct. 2749 ("The International Committee of the Red Cross is referred to by name in several provisions of the 1949 Geneva Conventions and is the body that drafted and published the official commentary to the Conventions. Though not binding law, the commentary is, as the parties recognize, relevant in interpreting the Conventions' provisions.").'	Two	Ch 43	Agreed	Yes. Klamberg commentary; Hamdan Judgment.	Main text and fn.	ICRC as epistemic authority. However the Study practice part is only cited according to Klamberg's article. Saved in zip folder
40	US Court of Military Commissions Review	US v Al Bahlul 820 F Supp 2d 1141 (9 September 2011)	p. 1165: 'In the 2006 M.C.A., Congress endeavored "to enumerate or define by statute" the acts punishable by military commission in a conflict characterized by the Supreme Court as "not of an international character occurring in the territory of one of the High Contracting Parties." See Hamdan, 548 U.S. at 629, 126 S.Ct. 2749. This is an area of law where explicit international treaty law is generally characterized as "rudimentary" and customary international law is appropriately described as evolving.15' Fn 15: 'Jean-Marie Henckaerts, 1 Customary International Humanitarian Law xxxiv-xxxv (Cambridge U. Press 2009)("While common Article 3 is of fundamental importance, it only provides a rudimentary framework of minimum standards and does not contain much detail ... Additional Protocol II contains only a very rudimentary regulation of conduct of hostilities."), http://www.icrc.org/eng/assets/files/other/customaryinternationalhumanitarian-law-i-icrc-eng.pdf . APII, infra n. 39, at art. 13 (art. 13 is quoted, infra at p. 34).'	One (intro)	N/A	Neutral	Yes.	AM. Fn.	Used academically. Saved in zip folder
41	US Court of Military Commissions Review	Ibid	p. 1179: 'Common Article 3, applicable to the United States' conflict with al Qaeda, reflects elementary considerations of humanity, "provides a rudimentary framework of minimum standards[,] and does not contain much detail." Customary International Humanitarian Law (IHL), International Committee of the Red Cross (ICRC), 2005, vol. I at Intro. XXXV.'	One (intro)	N/A	Neutral	Part of broader discussion	AM. Main text.	Used academically. Ibid
42	US District Court - District of Columbia	Gherebi v Obama 609 F Supp 2d 43 (22 April 2009)	pp. 66-67: 'Interpreting Common Article 3 and Additional Protocol II in this manner comports with customary international law. As the International Committee of the Red Cross noted in its recent study of that body of law, "[s]tate practice establishes" the rule distinguishing civilians from fighters "as a norm of customary international law applicable in both international and non-international armed conflicts." 1 Int'l Comm. of the Red Cross, Customary International Humanitarian Law 3 (Jean-Marie Henckaerts & Louise Doswald-Beck, eds., Cambridge Univ. Press 2005) (the "ICRC Study").'	One (rules)	Rule 1	Agreed	PSA	RE NOIND. Main text.	Saved in zip folder

43	US District Court - District of Columbia	Ibid	<p>P. 67: 'Several states have either explicitly or impliedly required that their armed forces distinguish between fighters and civilians, see id. at 6 (listing states with military manuals, legislation, or official statements imposing this rule), "to the effect that only the former may be targeted," id. And the International Committee of the Red Cross "has called on parties to both international and non-international armed conflicts to respect the distinction between [fighters] and civilians." Id. at 8.16'</p> <p>Fn 16: 'Throughout its study, the International Committee of the Red Cross distinguishes between "combatants" and civilians rather than "fighters" and civilians, but it clarifies that "[t]he term 'combatant' is used in its generic meaning, indicating persons who do not enjoy the protection against attack accorded to civilians," and not as "imply[ing] a right to combatant status or prisoner-of-war status." ICRC Study, supra, at 3. To avoid confusion between the "generic" use of the term "combatant" and the use of the term in Additional Protocol I, the Court has substituted the appellation "fighters" in place of the potentially confusing term "combatant." At least one commentator has suggested just this approach. See Kleffner, supra, at 330 (opining that "[o]ne could refer" to members of the enemy armed forces in a non-international armed conflict "as 'fighters' in order to avoid any confusion about their lacking the entitlement to combatant-privilege and prisoner of war status").'</p>	One (rules)	Rule 1	Neutral. Citation of state practice.	Part of broader discussion. Citation of Kleffner article also.	RE NOIND. Main text and fn.	Practice cited only indirectly, by reference to the Study, and not evaluated independently.	Saved in zip folder
44	US Court of Military Commissions Review	US v Khadr 717 F Supp 2d 1215 (24 September 2007)	<p>Fn 9: 'Article 3, GPW—an Article common to all four Geneva Conventions—suggests that even unlawful combatants are entitled to be tried in a "regularly constituted court." The Supreme Court in Hamdan explained: "Common Article 3, then, is applicable here and, ... requires that Hamdan be tried by a "regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people." 6 U.S.T., at 3320 (Art. 3, ¶ 1(d)). While the term "regularly constituted court" is not specifically defined in either Common Article 3 or its accompanying commentary, other sources have disclosed its core meaning. The commentary accompanying [Article 66 of the Fourth Geneva Convention] defines "'regularly constituted" tribunals to include "ordinary military courts" and "definitely exclude[e] all special tribunals." GCIV Commentary 340 (defining the term "properly constituted" in Article 66, which the commentary treats as "regularly constituted"); see also [In re] Yamashita, 327 U.S. [1], at 44, 66 S.Ct. 340, 90 L.Ed. 499 [(1946)] (Rutledge, J., dissenting) (describing military commission as a court "specially constituted for a particular trial"). And one of the Red Cross' own treatises defines "regularly constituted court" as used in Common Article 3 to mean "established and organized in accordance with the laws and procedures already in force in a country." Int'l Comm. of Red Cross, 1 Customary International Humanitarian Law 355 (2005); see also GCIV Commentary 340 (observing that "ordinary military courts" will "be set up in accordance with the recognized principles governing the administration of justice").'</p>	One (rules)	Rule 100	Agreed	Yes.	AM Fn.	Used academically.	Saved in zip folder
45	US District Court - District of New York	Almog v Arab Bank PLC 471 F Supp 2d 257 (29 January 2007)	<p>p. 278: 'The prohibition against attacks on innocent civilians that is reflected in both of these Conventions is not a new one. The three-century-old "principle of distinction," which requires parties to a conflict to at all times distinguish between civilians and combatants, forbids the deliberate attacking of civilians. See 2 L. OPPENHEIM, INTERNATIONAL LAW § 214 ea, at 524 (H. Lauterpacht ed., 7th ed.1961); 1 JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW 3-4 (2005). State practice establishes the principle of distinction as a long-established norm of the customary law of armed conflict. HENCKAERTS & DOSWALD-BECK, supra, at 3.'</p>	One (rules)	Rule 1	Agreed	Yes. Oppenheim's International L	RE NOIND. Main text.		Saved in zip folder
46	US Supreme Court	Hamdan v Rumsfeld 126 S. Ct 2749 (29 June 2006) Kennedy J concurrence	<p>P. 2803: Common Article 3's standard of a "regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples," ibid., supports, at the least, a uniformity principle similar to that codified in § 836(b). The concept of a "regularly constituted court" providing "indispensable" judicial guarantees requires consideration of the system of justice under which the commission is established, though no doubt certain minimum standards are applicable. See ante, at 2796-2797; 1 Int'l Comm. of Red Cross, 1 Customary Int'l Humanitarian Law 355 (2005) (explaining that courts are "regularly constituted" under Common Article 3 if they are "established and organised in accordance with the laws and procedures already in force in a country").'</p>	One (rules)	Rule 100	Agreed	Part of broader discussion	AM. Main text - 'see ante'.	Study used to interpret CA3. This approach to the Study by the SC in Hamdan is then subsequently replicated by several lower courts, above.	Saved in zip folder

47	US Supreme Court	Hamdan v Rumsfeld 126 S. Ct 2749 (29 June 2006) Stevens J opinion for the Court	p. 2796-7: 'Common Article 3, then, is applicable here and, as indicated above, requires that Hamdan be tried by a "regularly S 632constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." 6 U.S.T., at 3320 (Art. 3, ¶ 1(d)). While the term "regularly constituted court" is not specifically defined in either Common Article 3 or its accompanying commentary, other sources disclose its core meaning. The commentary accompanying a provision of the Fourth Geneva Convention, for example, defines "regularly constituted" tribunals to include "ordinary military courts" and "definitely exclud[e] all special tribunals." GCIV Commentary 340 (defining the term "properly constituted" in Article 66, which the commentary treats as identical to "regularly constituted"); 64 see also Yamashita, 327 U.S., at 44, 66 S.Ct. 340 (Rutledge, J., dissenting) (describing military commission as a court "specially constituted for the particular trial"). And one of the Red Cross' own treatises defines "regularly constituted court" as used in Common Article 3 to mean "established and organised in accordance with the laws and procedures already in force in a country." Int'l Comm. of Red Cross, 1 Customary Int'l Humanitarian Law 355 (2005); see also GCIV Commentary 340 (observing that "ordinary military courts" will "be set up in accordance with the recognized principles governing the administration of justice").'	One (rules)	Rule 100	Agreed	Yes.	AM Main text.	Study used to interpret CA3. This approach to the Study by the SC in Hamdan is then subsequently replicated by several lower courts, above.	Ibid
48	Bosnia and Herzegovina	Prosecutor's Office v Anić, Preliminary Hearing, S1 1 K 005596 11 Kro, ILDC 1907 (BA 2011), 31st May 2011	35. 'The criminal offence of War Crimes against Civilians with which the Accused is charged is a criminal offence in customary international law and therefore encompassed by "general principles of international law"3 pursuant to Article 4a) of the Law on Amendments to the CC of BiH and "general principles of law recognized by civilized nations" pursuant to Article 7(2) of the European Convention. Accordingly, the CC of BiH may be applied in this case.' Fn 3: 'The customary status of criminal liability for crimes against humanity and war crimes against civilians and individual responsibility for war crimes committed in 1992 was confirmed by UN Secretary General, International Law Commission and jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). These institutions established that the criminal liability for crimes against humanity and war crimes against civilians is an imperative standard of the international law, or ius cogens. It therefore appears indisputable that crimes against humanity and war crimes against civilians in 1992 were a part of customary international law. This conclusion was confirmed in the Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck.'	One (rules)	Rule 151	Agreed	Yes. General reference to UN Secretary-General, ILC and jurisprudence of ICTY and ICTR.	RE NOIND. Fn.	Oxford Reports on International Law in Domestic Courts (ORIL)	
49	Bosnia and Herzegovina	Ibid	44. 'Article 16 of the Fourth Geneva Convention is a provision applied to international armed conflicts. However, individual state practices establish this rule as a norm of customary law, which is applicable in both international and non-international conflicts.4 In the context of non-international armed conflicts this rule is based on the common Article 3 of the Geneva Conventions which provides that "the wounded and sick shall be collected and cared for"5 which is further elaborated in Protocol II Additional to the Convention.6 This rule applies to all those wounded, sick, shipwrecked, regardless of the side to which they belong and whether they participated in hostilities directly or not.7 The application of this rule to civilians was encompassed by Article 16 of the Fourth Geneva Convention. This article pertains to the entire population of the warring countries. This is also repeated in Article 10 of the Protocol I Additional to the Convention.8 With reference to non-international armed conflicts, common Article 3 of the Geneva Convention is applied to all persons who do not actively participate in hostilities, civilians included.9' Fn 4: 'Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 404.' Fn 7: 'Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 407.' Fn 9: 'Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 408.'	One (rules)	Rules 111-112	Agreed	PSA	RE NOIND. Fn.	Ibid	
50	Bosnia and Herzegovina	Ibid	47. 'Similarly to Article 16 of the Fourth Geneva Convention, Article 33 is a provision that is generally applied to international armed conflicts. However, the practice of individual states determined that the prohibition from pillaging is a norm of international customary law that applies to international and non-international armed conflicts.' Fn 10: 'Study on Customary International Humanitarian Law, ICRC, Jean-Marie Henckaerts and Louise Doswald-Beck, p. 487.'	One (rules)	Rule 52	Agreed	PSA	RE NOIND. Fn.	Ibid	

51	Sweden (no court specified)	Public Prosecutor (on behalf of Behram (Hussein) and ors) v Arklöf (Jackie), Judgment, Case No B 4084-04, ILDC 633 (SE 2006), 18th December 2006	[Translated by OUP from Swedish] 138. 'It should stand clear that all of the rules indicated here are for all intents and purposes covered by customary law and are thus applicable to the circumstances in the case regardless of whether the parties can be considered contractually bound. In support thereof, we may refer to the list of fundamental international humanitarian rules with customary law status prepared by the International Red Cross Committee (ICRC). The list was drawn up with the collaboration of legal scientists from a large number of countries and expresses their collective understanding. It was published in Customary International Law, Volume 1, ICRC, Cambridge 2005, and in the main takes up the rules referenced above by the Court.'	One (rules)	N/A	Agreed	PSA	RE NOIND. Main text	The OUP analysis makes an interesting observation about the Court's use of the ICRC Study as a basis for its finding that unlawful confinement was a war crime at the relevant time (contrary to the views of some scholars): A2. 'The judgment was interesting in two respects. First, the Swedish legal system had traditionally been described as dualist—where international law and, more specifically, treaties were mainly implemented through transformation, but also through incorporation. As the Swedish Penal Code illustrates, Chapter 22, section 6 of the BrB, parts of customary law could be incorporated into Swedish law by reference (renvoi). Second, Sweden, like many other states, subscribed to the principle of legality, at the core of which were the requirements on specificity, non-retroactivity, foreseeability, and accessibility of the	ORIL
52	Sweden (no court specified)	Ibid	146. 'It should be noted that torture means any act by which severe physical or mental pain or suffering is intentionally inflicted on a person regardless of whether the purpose is to obtain information or a confession, or coerce the subject into committing criminal acts or only aims to punish the subject, or has its basis in some form of discrimination (see Customary International Humanitarian Law, Volume 1 p. 317 and ICTY, inter alia, case Prosecutor v Kunarac et al., Decision on motion for acquittal, Case Nos IT-96-23 and IT-96-23/1; ICL 102 (ICTY 2000)). The definition that prevails within international humanitarian law is thus broader than the definition laid down in the Torture Convention, cited by the prosecutor. Having regard to the extent and nature of the assault that Arklöf perpetrated and other circumstances, there is no doubt that his acts constitute torture.'	One (rules)	Rule 90	Agreed	Yes.	RE NOIND. Main text		Ibid
53	Germany, North Rhine-Westphalia Higher Administrative Court	Prevention of the use of Ramstein Air Base for United States armed drone strikes in Yemen, Yemeni citizen living in Sana'a and ors v Germany (represented by the Minister of Defence), Appeal, Higher Administrative Court for North Rhine-Westphalia, 4 A 1361/15, ILDC 3059 (DE 2019), 19th March 2019	References to the Study at pp. 77 ff	One (rules)	numerous	Agreed	Yes (many)	RE NOIND. Main text	The Study is used on par with numerous other mainly academic authorities, but also international judgments. No independent evaluations of practice. Unofficial English translation used.	ORIL; http://www.nuhanovicfoundation.org/en/reparation-cases/federal-republic-of-germany-higher-administrative-court-for-the-state-of-north-rhine-westphalia-faisal-bin-ali-jaber-et-al-v-federal-government-of-germany-case-no-4-a-136115-vg-klm-3-k-562514/
54	Germany, Constitutional Court	Varvarin Bridge Case, 36 citizens of Yugoslavia v Germany, Constitutional complaint, 2 BvR 2660/06, 2 BvR 487/07, ILDC 2238 (DE 2013), EuGRZ 2013, 563, DÖV 2013, 946, 13th August 2013	Reference to the Study on p. 13 (no individual right to reparation under customary IHL; the Study does not clearly asser that such a right exists)	One (rules)	Rule 150	Neutral	Yes	MA. Main text	The Study is used on par with numerous other mainly academic authorities, but also international judgments. No independent evaluations of practice. Unofficial English translation used.	ORIL; https://reparations.qub.ac.uk/assets/uploads/Varvarin-EN.pdf

55	German Federal Court of Justice, Criminal Division	L v Germany, Appeals judgment, 3 STR 57/17, ILDC 2967 (DE 2017), 27th July 2017	<p>24. 'Finally, there is no reason to treat war crimes involving the grievous demeaning or degrading treatment differently in international armed conflict than in non-international armed conflict (Berster, p. 265 f.). Rather, both the ICRC and the PrepCom spoke in favour of equal treatment (UN Doc. PCNICC / 1999 / WGEC / INF.2, p. 48; Dörmann, Elements of War Crimes, 2003, p. 404).'</p> <p>25. (2) The prohibition under customary international humanitarian law against the desecration of corpses in armed conflicts results from the rules of international humanitarian law in international and non-international armed conflicts published by the ICRC (Customary International Humanitarian Law). The customary international legal anchoring of the rules summarized by the ICRC is based on an appropriate global practice by nation states. According to Rule no. 113, it is recognized that each party to a conflict must take all possible measures to prevent dead bodies from being plundered, while mutilation of corpses is prohibited.</p> <p>26. Rule no. 113 of the customary international humanitarian law published by the ICRC is in accordance with Article 8 of Protocol II of 8 June 1977 to the Geneva Convention of 12 August 1949 relating to the protection of victims of non-international armed conflicts. According to this, "whenever circumstances permit, and particularly after an engagement", all feasible measures must be taken without delay in order, inter alia, "to search for the dead, prevent their being despoiled, and decently dispose of them".'</p>	One (rules)	Rule 113	Agreed	PSA	RE NOIND. Main text. Engagement	ORIL
56	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Momčilo Mandić case, Case no X-KR-05/58, 18 July 2007	<p>p. 168: This conclusion was confirmed by the Study on Customary International Humanitarian Law⁴⁷⁹ conducted by the International Committee of the Red Cross. The Study concluded that "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158).</p> <p>Fn 479: Jean-Marie Henchaerts and Louise Doswald-Beck; Customary International Humanitarian Law; ICRC, Cambridge University Press, 2005; page 568 et seq.</p>	One (rules)	Rules 151, 156 and 158	Agreed	Part of broader discussion	Main text and fn. Uses CIHL Study to confirm the conclusion that criminal responsibility for war crimes was a rule of custom in 1992, which it deduced from ICTY and ICTR jurisprudence, ILC and Secretary-General documents.	ICRC: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=B7D48D4090B96FE9C12584D900558D7E&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state
57	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Section for War Crimes, Radmilo Vuković case, Case no X-KR/06/217, 16 April 2007	<p>p. 17: Also, the customary status of criminal liability of war crimes against civilians and individual responsibility for the commission of war crimes in 1992 has been confirmed by the UN Secretary General⁸, International Law Commission⁹, and the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)¹⁰. These institutions found that criminal liability for war crimes against civilians represents an imperative standard of international law or jus cogens¹¹. Therefore, it appears to be beyond dispute that in 1992 war crimes against civilians was part of International Customary Law. That conclusion was confirmed by the Study on Customary International Humanitarian Law¹² of the International Committee of Red Cross. According to that Study "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158).</p> <p>Fn 12: Jean-Marie Henchaerts and Louise Doswald-Beck; Customary International Humanitarian Law. ICRC, Cambridge University Press, 2005, pg 568 and following.</p>	One (rules)	Rules 151, 156 and 158	Agreed	Part of broader discussion	Main text and fn. Ibid	ICRC: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=FC26744B76DA802DC12576EF005654C1&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state

58	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Section for War Crimes, Ćerim Novalić case, Case no X-KR-09/847, 21 May 2010	<p>p. 12: Similarly, the customary status of criminal responsibility for war crimes against civilians and individual responsibility for war crimes committed in 1992 was confirmed also by the UN Secretary General⁸, International Law Commission⁹, as well as the ICTY jurisprudence and the International Criminal Tribunal for Rwanda (ICTR)¹⁰. These institutions have established that criminal responsibility for war crimes against civilians is an imperative standard of international law, or ius cogens.¹¹ This is why it seems indisputable that war crimes against civilians in 1992 were part of customary international law. This conclusion was also confirmed by the Study on Customary International Humanitarian Law¹² done by the International Committee of the Red Cross. According to that Study „Serious violations of international humanitarian law constitute war crimes“ (Rule 156), „Individuals are criminally responsible for war crimes they commit“ (Rule 151) and „States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.“ (Rule 158).</p> <p>Fn 12: Jean-Marie Henchaerts and Luise Doswald-beck; Customary International Humanitarian Law; ICRC, Cambridge University Press 2005, pg.568 onward.</p>	One (rules)	Rules 151, 156 and 158	Agreed	Part of broader discussion	Main text and fn.	Ibid	ICRC: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=403D3CA845702804C1257C7500697366&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state
59	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Zrinko Pinčić case, Case no X-KR-08/502, 28 November 2008	<p>p. 18: Also, customary status of criminal responsibility for War Crimes against Civilians and individual responsibility for war crimes committed in 1992 was recognized by the UN Secretary-General², the International Law Commission³, as well as jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)⁴. These institutions have established that criminal responsibility for War Crimes against Civilians constitutes a peremptory norm of international law or jus cogens.⁵ That is why it appears undisputable that War crimes against Civilians constituted part of customary international law in 1992. This conclusion was confirmed by the Study on Customary International Humanitarian Law⁶ conducted by the International Committee of the Red Cross. According to that study “serious violations of international humanitarian law constitute war crimes” (Rule 156), “individuals are criminally responsible for war crimes they commit” (Rule 151) and “States must investigate war crimes allegedly committed by their nationals or armed forces, or in their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects” (Rule 158).</p> <p>Fn 12: Jean-Marie Henchaerts and Louise Doswald-Beck, Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005, pages 568 et seq.</p>	One (rules)	Rules 151, 156 and 158	Agreed	Part of broader discussion	Main text and fn.	Ibid	ICRC: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=9092D4A9D8581B0CC125755C004F2EBF&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state
60	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Suljo Karajić case, Case no X-KR-07/336, 13 April 2010	<p>78. The ICRC (International Committee of the Red Cross) Customary International Humanitarian Law Rules and Study 2005 concludes that some articles of this Convention, additional to Common Article 3, have attained customary law status and are now applicable in both internal and international armed conflict. Article 27 of the Fourth Geneva Convention provides a general legal framework prohibiting the harming of a civilian population. There are various references in the ICRC Customary International Humanitarian Law Rules and Study 2005 that the rules contained in Article 27 are norms of customary international law and applicable in internal armed conflicts.¹⁵ Additionally, sections of Additional Protocol II, relating to the protection of victims of non-international armed conflicts, contain provisions similar to Article 27.¹⁶ The ICRC Commentaries also explain that Article 27, “...proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women.”¹⁷ Further support that Article 27 is a norm of customary international law and applicable to an internal armed conflict is the Special Agreement of 22 May 1992 brokered by the ICRC in Geneva, and was signed by the conflicting parties in Bosnia and Herzegovina. The Autonomy was not a party to the Special Agreement, but the Republic of BiH (Army of BiH)(of whom the accused was a member) was a party to the agreement. Clause 2.3 provides “The civilians and the civilian population are protected by Articles 13 to 34 of the Fourth Geneva Convention of 12 August 1949.”</p> <p>Fn 15: ICRC Customary International Humanitarian Law Rules and Study 2005 Volume 1: Rules, Rule 93. Rape and other forms of sexual violence are prohibited; Rule 104. The Convictions and religious practices of civilians and persons hors de combat must be respected, pgs. 375-376; Rule 105. Family life</p>	One (rules)	Rules 93, 104	Agreed	Part of broader discussion	Main text and fn.	Uses the CIHL Study to discern that GC IV art 27 is custom. Backs this up by reference to AP II, the ICRC commentary to the GCs and the Special Agreement of 22 May 1992.	ICRC: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=194EB543554E5903C1257C7600598C2E&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state

61	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Ferid Hodžić case, Case no X-KR-07/430, 29 June 2009	50.The ICRC (International Committee of the Red Cross) Customary International Humanitarian Law Rules and Study 2005 concludes that some articles of this Convention, additional to Common Article 3, have attained customary law status and are now applicable in both internal and international armed conflicts. It is, however, silent as to the current customary law status of Article 121 in internal armed conflicts. In addition, the relevant sections of Additional Protocol II contain no provision similar to Article 121. The Prosecution has provided no submissions, legal authority or material evidencing that Article 121 has obtained customary status applicable in internal armed conflicts. It has also made no submission as to how a breach of its provisions is criminalized in international humanitarian law.	Both	N/A	Neutral	Part of broader discussion	Main text	Discussion of GC III art 121 and the CIHL Study being silent on its customary status.	ICRC: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=FA191758B041366DC12576D9005C0B70&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state
62	Colombia	Constitutional Court, Sentencia C-910 DE 2013	En el marco de conflictos armados no internacionales, este principio de naturaleza consuetudinaria ha sido cristalizado en numerosos instrumentos del DIH, como consta en el trabajo recopilatorio realizado por el Comité Internacional de la Cruz Roja[26]: “El párrafo 2 del artículo 13 del Protocolo adicional II prohíbe que tanto las personas civiles como la población civil como tal sean objeto de ataques.[[27]] La prohibición de dirigir ataques contra la población civil se expresa asimismo en el Protocolo II enmendado de la Convención sobre ciertas armas convencionales.[[28]] También se establece en el Protocolo III de esta misma convención, que es aplicable a los conflictos no internacionales a raíz de una enmienda de su artículo 1, aprobada por consenso en 2001.[[29]] En la Convención de Ottawa que prohíbe las minas terrestres antipersonal se afirma, entre otras cosas, que esta convención se basa “en el principio de que se debe hacer una distinción entre civiles y combatientes”. Fn 26: Jean-Marie Henckaerts y Louise Doswald-Beck, El derecho internacional humanitario consuetudinario, Vol. I: Normas, Comité Internacional de la Cruz Roja, Buenos Aires, 2007.	One (rules)	N/A			Main text and fn.		https://www.corteconstitucional.gov.co/Relatoria/2013/C-910-13.htm
63	Colombia	Ibid	La definición de ataque indiscriminado se encuentra en el derecho internacional humanitario consuetudinario, y ha sido cristalizado en la Convención sobre Ciertas Armas Convencionales. Se consideran “indiscriminados los ataques: a) que no están dirigidos contra un objetivo militar concreto; b) en los que se emplean métodos o medios de combate que no pueden dirigirse contra un objetivo militar concreto; o c) en los que se emplean métodos o medios de combate cuyos efectos no sea posible limitar como exige el derecho internacional humanitario; y que, en consecuencia pueden alcanzar indistintamente, en cualquiera de tales casos, tanto a objetivos militares como a personas civiles o bienes de carácter civil”.[30] Fn 30: Jean-Marie Henckaerts y Louise Doswald-Beck, El derecho internacional humanitario consuetudinario, Vol. I: Normas, Comité Internacional de la Cruz Roja, Buenos Aires, 2007, p. 46.	One (rules)	Rule 14			Fn		Ibid
64	Colombia	Constitutional Court, Sentencia C-388/14	3.8.4. En tercer lugar, se precisa que el proyecto de ley estatutaria “busca desarrollar el Acto Legislativo No. 02 de 2012” y que, en esa tarea, parte de varias premisas básicas sobre la aplicación del Derecho Internacional Humanitario para la protección de la población civil, las cuales se resumen en los siguientes términos: (3) El proyecto ha seguido las fuentes más autorizadas en el Derecho Internacional Humanitario. En particular el estudio del CICR que codifica el Derecho Internacional Humanitario Consuetudinario aplicable a conflictos armados no internacionales. Fn 13: Comité Internacional de la Cruz Roja, el Derecho Internacional Humanitario Consuetudinario, regla 153.	N/A	N/A			Fn		https://www.corteconstitucional.gov.co/Relatoria/2014/C-388-14.htm
65	Colombia	Ibid		One	Rule 153			Fn		Ibid

			<p>En este orden de ideas es claro que el Derecho Internacional de los Derechos Humanos y el Derecho Internacional Humanitario son mecanismos de protección recíprocos y concurrentes, sin embargo, el primero está integrado por normas que son mucho más adecuados para hipótesis de conflicto armado que los mandatos del Derecho Internacional de los Derechos Humanos. En concordancia con lo anterior el informe publicado por el Comité Internacional de la Cruz Roja titulado "Estudio de Derecho Internacional Humanitario Consuetudinario" expresó lo siguiente:</p> <p>"La aplicabilidad ininterrumpida del derecho de los derechos humanos durante los conflictos armados la han confirmado, en numerosas ocasiones, tanto la práctica de los Estados como los organismos de defensa de los derechos humanos y la Corte Internacional de Justicia. Recientemente, la Corte, en su opinión consultiva sobre las consecuencias jurídicas de la construcción de un muro en los territorios palestinos ocupados, confirmó que la protección que ofrecen los convenios y convenciones de derechos humanos no cesa en caso de conflicto armado y que, si bien algunos derechos pueden estar contemplados exclusivamente en el derecho internacional humanitario, otros pueden estar contemplados exclusivamente en el derecho de los derechos humanos y otros pueden estar contemplados en ambas ramas del derecho internacional[212]."</p>						
66	Colombia	Constitutional Court, Sentencia C-084/16	Fn 212: Comité Internacional de la Cruz Roja - Estudio de Derecho Internacional Humanitario Consuetudinario.	One (rules)	N/A			Main text and fn.	https://www.corteconstitucional.gov.co/Relatoria/2016/C-084-16.htm
67	Colombia	Constitutional Court, Sentencia T-564/19	<p>35. La Comisión Interamericana de Derechos Humanos, en la versión final del Derecho a la Verdad en las Américas, expresó que "El derecho a la verdad tuvo sus orígenes en el DIH al establecerse la obligación de los Estados de buscar a las personas desaparecidas en el marco de conflictos armados internacionales o no internacionales[57]. Asimismo, se resaltó la existencia del derecho de los familiares a conocer la suerte de las víctimas en dichos contextos"[58].</p> <p>Fn 57: CICR, Henckaerts, Jean-Marie y Doswald-Beck, Louis, El derecho internacional humanitario consuetudinario, 2007, norma 117.</p>	One (rules)	Rule 117			Fn	https://www.corteconstitucional.gov.co/Relatoria/2019/T-564-19.htm
68	Colombia	Constitutional Court, Sentencia C-281/17	<p>6.3. El principio de distinción en el Derecho Internacional Humanitario</p> <p>6.3.1. El Derecho Internacional Humanitario es el cuerpo normativo que rige en las situaciones de conflicto armado con el fin de proteger a las víctimas del conflicto así como limitar los medios y métodos de la guerra. Estas normas están contenidas en una serie de tratados internacionales, entre los cuales se encuentran los cuatro Convenios de Ginebra y sus Protocolos Adicionales, así como la costumbre internacional recogida, entre otros documentos, en el estudio de Derecho Internacional Humanitario Consuetudinario realizado por el Comité Internacional de la Cruz Roja.[98]</p>	One (rules)	N/A			Main text	https://www.corteconstitucional.gov.co/Relatoria/2017/C-281-17.htm
69	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Sentencia TP-SA-AM-203 de 2020, En el asunto de Jaime Aguilar Ramírez, 20 October 2020	<p>Fn 70: HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise. El derecho internacional humanitario consuetudinario. Volumen I. Primera Edición. Buenos Aires: Centro de apoyo en comunicación para América Latina y el Caribe. Comité Internacional de la Cruz Roja, 2007. Norma 101. Nadie puede ser acusado o condenado por una acción u omisión que no constituía delito según el derecho nacional o internacional en el momento en que se cometió. Tampoco puede imponerse una pena mayor que la que era aplicable cuando se cometió la infracción penal.</p> <p>Translation: HENCKAERTS, Jean-Marie and DOSWALD-BECK, Louise. Customary International Humanitarian Law. Volume I. First Edition. Buenos Aires: Communication Support Center for Latin America and the Caribbean. International Committee of the Red Cross, 2007. Norm 101. No one may be charged or convicted of an act or omission that did not constitute an offence under national or international law at the time it was committed. Nor can a penalty be imposed greater than that which was applicable when the criminal offence was committed.</p>	One (rules)	Rule 101			Fn	
70	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 95: HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise. El derecho internacional humanitario consuetudinario... Op. Cit., Norma 80.	One (rules)	Rule 80			Fn	
71	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 108: HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise. El derecho internacional humanitario consuetudinario... Op. Cit., Norma 8.	One (rules)	Rule 8			Fn	

81	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución_SAI-AOI-SUBA-D- 022-2019, 13 May 2019	Fn 146: Las normas de derecho consuetudinario a aplicar en la presente resolución se encuentran consignadas en el tomo de Derecho Internacional Humanitario Consuetudinario del Comité Internacional de la Cruz Roja. La fuente empleada es Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007. Este tomo tiene su origen en la Conferencia Internacional para la Protección de Víctimas de la Guerra, realizada del 30 de agosto al 1 de septiembre de 1993, en cuya Declaración Final se dispuso encargar al gobierno suizo la designación de un grupo de expertos para "investigar los medios prácticos para promover la plena observancia del derecho internacional humanitario y la aplicación de sus disposiciones y de preparar un informe destinado a los Estados y a la siguiente Conferencia Internacional de la Cruz Roja y de la Media Luna Roja" (ibidem, XXXI-XXXII). Como resultado de la reunión de expertos, se sugirió la realización de un informe para distribuir a los Estados y organismos internacionales competentes, sobre las normas consuetudinarias del derecho internacional humanitario aplicables en conflictos internacionales y no internacionales. En la XXVI conferencia de la Cruz Roja y de la Media Luna Roja, se encargó la confección de dicho informe al CICR. El tomo que se consulta es el producto de este encargo y demuestra que "la práctica de los Estados ha ido más allá del derecho convencional vigente y ha extendido las normas aplicables a los conflictos armados no internacionales" (ibidem, XXXIV).	One (intro)	N/A					Fn
82	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 147: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, norma 6, pág.22.	One (rules)	Rule 6					Fn
83	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 148: Artículo 13. 2 del Protocolo Adicional II a los Convenios de Ginebra. Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, norma 1, pág.3. "Las partes en conflicto deberán distinguir en todo momento entre personas civiles y combatientes. Los ataques sólo podrán dirigirse contra combatientes. Los civiles no deben ser atacados". TPIY. Prosecutor v. Zoran Kupreki et al. Sentencia del 14 de enero de 2000. Párrafo. 522.	One (rules)	Rule 1					Fn
84	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 150: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, norma 2, pág.9. Aunque en el Protocolo II adicional no existe una referencia específica sobre ataques indiscriminados, el Comité Internacional de la Cruz Roja ha establecido que la prohibición de dichos ataques es una norma de derecho consuetudinario aplicable a los conflictos armados no internacionales. Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, normas 11, 12 y 13, págs. 43 ss.	One (rules)	Rules 11, 12, 13					Fn
85	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 157: SCHMITT, Michael N. "Targetin in Operational Law" en: The Handbook of The International Law of Militar Operations. Oxford U. Press. (New York), 2010. p. 255. Ver: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, norma 12, pág.46. "Son indiscriminados los ataques: a) que no están dirigidos contra un objetivo militar concreto; b) en los que se emplean métodos o medios de combate que no pueden dirigirse contra un objetivo militar concreto; o c) en los que se emplean métodos o medios de combate cuyos efectos no sea posible limitar como exige el derecho internacional humanitario; y que, en consecuencia pueden alcanzar indistintamente, en cualquiera de tales casos, tanto a objetivos militares como a personas civiles o bienes de carácter civil".	One (rules)	Rule 12					Fn
86	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 159: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, norma 71, Buenos Aires (Argentina), 2007, pág. 265.	One (rules)	Rule 76					Fn
87	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 162: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, norma 14, pág.53.	One (rules)	Rule 15					Fn

88	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 170: TPIY, Prosecutor vs. Zoran Kupreki et al. Case No. IT-95-16-T, 14 January 2000, párr. 524: “attacks, even when they are directed against legitimate military targets, are unlawful if conducted using indiscriminate means or methods of warfare, or in such a way as to cause indiscriminate damage to civilians”. Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, normas 70-86, pág. 265 y ss.	One (rules)	Rule 276				Fn
89	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 171: En particular, es importante tener en cuenta las normas 2, 7, 8, 9, 10, 11, y 12. La compilación de estas normas consuetudinarias pueden ser encontradas en el siguiente texto: Henckaerts, Jean-Marie y Doswald-Beck, Louise. Derecho Internacional Humanitario Consuetudinario. Comité Internacional de la Cruz Roja. Disponible en: https://www.icrc.org/es/doc/assets/files/other/icrc_003_pcustom.pdf	One (rules)	Rules 2, 7, 8, 9, 10, 11, 12				Fn
90	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 173: Henckaerts, Jean-Marie y Doswald-Beck, Louise. Derecho Internacional Humanitario Consuetudinario. Comité Internacional de la Cruz Roja. Pág. 9. Disponible en: https://www.icrc.org/es/doc/assets/files/other/icrc_003_pcustom.pdf	One (rules)	Rule 2				Fn
91	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 174: Henckaerts, Jean-Marie y Doswald-Beck, Louise. Derecho Internacional Humanitario Consuetudinario. Comité Internacional de la Cruz Roja. Pág. 10 y 11. Disponible en: https://www.icrc.org/es/doc/assets/files/other/icrc_003_pcustom.pdf	One (rules)	Rule 2				Fn
92	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-SUBA-D-045, 7 June 2019	Fn 92: Las normas de derecho consuetudinario a aplicar en la presente resolución se encuentran consignadas en el tomo de Derecho Internacional Humanitario Consuetudinario del Comité Internacional de la Cruz Roja. La fuente empleada es Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007. Este tomo tiene su origen en la Conferencia Internacional para la Protección de Víctimas de la Guerra, realizada del 30 de agosto al 1 de septiembre de 1993, en cuya Declaración Final se dispuso encargar al gobierno suizo la designación de un grupo de expertos para “investigar los medios prácticos para promover la plena observancia del derecho internacional humanitario y la aplicación de sus disposiciones y de preparar un informe destinado a los Estados y a la siguiente Conferencia Internacional de la Cruz Roja y de la Media Luna Roja” (ibidem, XXXI-XXXII).	One (intro)	N/A				Fn
93	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 93: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, norma 6, pág.22.	One (rules)	Rule 6				Fn
94	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 94: Artículo 13. 2 del Protocolo Adicional II a los Convenios de Ginebra. Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, norma 1, pág.3. “Las partes en conflicto deberán distinguir en todo momento entre personas civiles y combatientes. Los ataques sólo podrán dirigirse contra combatientes. Los civiles no deben ser atacados”. TPIY. Prosecutor v. Zoran Kupreki et al. Sentencia del 14 de enero de 2000. Párrafo. 522.	One (rules)	Rule 3				Fn
95	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 96: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, norma 2, pág.9. Aunque en el Protocolo II adicional no existe una referencia específica sobre ataques indiscriminados, el Comité Internacional de la Cruz Roja ha establecido que la prohibición de dichos ataques es una norma de derecho consuetudinario aplicable a los conflictos armados no internacionales. Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, normas 11, 12 y 13, págs. 43 ss.	One (rules)	Rules 11, 12, 13				Fn
96	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 103: SCHMITT, Michael N. “Targetin in Operational Law” en: The Handbook of The International Law of Militar Operations. Oxford U. Press. (New York), 2010. p. 255. Ver: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, norma 12, pág.46. “Son indiscriminados los ataques: a) que no están dirigidos contra un objetivo militar concreto; b) en los que se emplean métodos o medios de combate que no pueden dirigirse contra un objetivo militar concreto; o c) en los que se emplean métodos o medios de combate cuyos efectos no sea posible limitar como exige el derecho internacional humanitario; y que, en consecuencia pueden alcanzar indistintamente, en cualquiera de tales casos, tanto a objetivos militares como a personas civiles o bienes de carácter civil”.	One (rules)	Rule 12				Fn

115	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 45: Los ataques indiscriminados son “[...] aquellos que no están dirigidos contra un objetivo militar específico, o que emplean métodos o medios de guerra cuyos efectos no pueden ser limitados como es requerido por el DIH y que, en consecuencia, tiene la naturaleza de alcanzar objetivos militares y civiles u objetos civiles, sin distinción” SCHMITT, Michael N. “Targetin in Operational Law” en: The Handbook of The International Law of Militar Operations. Oxford U. Press. (New York), 2010. p. 255. Ver: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, norma 12, pág.46. “Son indiscriminados los ataques: a) que no están dirigidos contra un objetivo militar concreto; b) en los que se emplean métodos o medios de combate que no pueden dirigirse contra un objetivo militar concreto; o c) en los que se emplean métodos o medios de combate cuyos efectos no sea posible limitar como exige el derecho internacional humanitario; y que, en consecuencia pueden alcanzar indistintamente, en cualquiera de tales casos, tanto a objetivos militares como a personas civiles o bienes de carácter civil”.	One (rules)	Rule 12					Fn
116	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto No. 125 de 2021, 2 July 2021	Fn 1040: Ver Henckaerts, Jean-Marie / Doswald-Beck. El Derecho Internacional Humanitario Consuetudinario, Volumen 1: Normas, 2007. Buenos Aires: Comité Internacional de la Cruz Roja. Pág. 643 ss. (norma 156). En este mismo sentido, JEP, Sección de Apelación sentencia 203 de 2020.	One (rules)	Rule 156					Fn
117	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 1057: Ver Henckaerts, Jean-Marie / Doswald-Beck. El Derecho Internacional Humanitario Consuetudinario, Volumen 1: Normas, 2007. Buenos Aires: Comité Internacional de la Cruz Roja. Óp.. Cit.. Pág. 182 (Norma 47), 349 (Norma 87) y 355 (Norma 89).	One (rules)	Rules 47, 87, 89					Fn
118	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 1072: Ver Henckaerts, Jean-Marie / Doswald-Beck. El Derecho Internacional Humanitario Consuetudinario, Volumen 1: Normas, 2007. Buenos Aires: Comité Internacional de la Cruz Roja. Nota al pie 1048. Pág. 182 (Norma 47).	One (rules)	Rule 47					Fn
119	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 1256: Protocolo Adicional I art. 87. Henckaerts, Jean-Marie y Doswald-Beck. El Derecho Internacional Humanitario Consuetudinario, Volumen 1: Normas, 2007. Pág. 632 ss. (norma 153).	One (rules)	Rule 153					Fn
120	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-RC-JCP-0419-2020, 6 July 2018	30: De conformidad con el estudio de derecho internacional humanitario consuetudinario del Comité Internacional de la Cruz Roja (en adelante CICR), el principio de distinción tiene como fin “[...] garantizar el respeto y la protección a la población civil y de los bienes de carácter de carácter civil, las Partes en conflicto harán distinción en todo momento entre la población civil y combatientes, y entre bienes de carácter civil y objetivos militares y, en consecuencia, dirigirán sus operaciones únicamente contra objetivos militares” .24 Fn 24: J. -M. Henckaerts - Estudio sobre el derecho Internacional humanitario consuetudinario. Pg. 25-26.	One (rules)	Rule 7					Fn
121	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 28: J. -M. Henckaerts - Estudio sobre el derecho Internacional humanitario consuetudinario, regla No. 5 aplicable tanto en conflictos armados internacionales como no internacionales.	One (rules)	Rule 5					Fn
122	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 33: Los ataques indiscriminados son “[...] aquellos que no están dirigidos contra un objetivo militar específico, o que emplean métodos o medios de guerra cuyos efectos no pueden ser limitados como es requerido por el DIH y que, en consecuencia, tiene la naturaleza de alcanzar objetivos militares y civiles u objetos civiles, sin distinción”SCHMITT, Michael N. “Targetin in Operational Law” en: The Handbook of The International Law of Militar Operations. Oxford U. Press. (New York), 2010. p. 255. Ver: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, Buenos Aires (Argentina), 2007, norma 12, pág.46. “Son indiscriminados los ataques: a) que no están dirigidos contra un objetivo militar concreto; b) en los que se emplean métodos o medios de combate que no pueden dirigirse contra un objetivo militar concreto; o c) en los que se emplean métodos o medios de combate cuyos efectos no sea posible limitar como exige el derecho internacional humanitario; y que, en consecuencia pueden alcanzar indistintamente, en cualquiera de tales casos, tanto a objetivos militares como a personas civiles o bienes de carácter civil”.	One (rules)	Rule 12					Fn
123	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 35: Henckaerts, Jean-Marie y Doswald-Beck, Louise. Derecho Internacional Humanitario Consuetudinario. Comité Internacional de la Cruz Roja. Pág. 9. Disponible en: https://www.icrc.org/es/doc/assets/files/other/icrc_003_pcustom.pdf	One (rules)	Rule 2					Fn

154	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 180: Constituye una norma de derecho imperativo internacional y posee un carácter perentorio de conformidad con lo reconocido por la CC. El principio de distinción es uno de los axiomas nucleares del DIH en su dimensión convencional y consuetudinaria, así como norma de ius cogens o derecho imperativo internacional. Junto a los principios de precaución y el principio humanitario, tienen un carácter perentorio e imperativo e integra el bloque de constitucionalidad. Al respecto: Henckaerts, & Doswald-Beck. (2007). El Derecho..., pág. 8. CC. Sentencia C-291/07, MP Manuel José Cepeda Espinosa, considerando 2.2. Ver entre muchas otras, las sentencias T-280A/16, MP. Luis Ernesto Vargas Silva; C-1189/00, MP. Carlos Gaviria Díaz; C-156/99, MP Martha Victoria SÁCHICA Méndez; C-225/95, MP Alejandro Martínez Caballero; y C-574/92, MP. Ciro Angarita Barón.. La jurisprudencia constitucional ya se ha pronunciado sobre el rango de normas de ius cogens de los principios nucleares del DIH, por lo tanto, integrados al bloque de constitucionalidad. Ver, entre otras decisiones: CC. Sentencia C-291/07, MP. Manuel José Cepeda Espinosa; C-225/95, MP. Alejandro Martínez Caballero y C-574/92.	One (rules)	Rule 2				Fn
155	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 184: En la Norma 1 de la compilación de derecho consuetudinario internacional del CICR, principio de distinción, se señala: "Esta norma se enuncia a veces en otros términos, en particular como principio de distinción entre combatientes y no combatientes, de modo que los civiles que no participan directamente en las hostilidades están incluidos en la categoría de no combatientes". Henckaerts, & Doswald-Beck. (2007). El Derecho..., pág. 7. La jurisprudencia constitucional entiende por no combatientes a quienes han participado en las hostilidades, pero han sido puestos fuera de combate. CC. Sentencia C-291/07, considerandos 3.3.3 y 3.4.6.	One (rules)	Rule 1				Fn
156	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 185: Se trata de una distinción entre combatientes y no combatientes que se remonta al Reglamento de la Haya en relación con los CAI. En la Norma 3 de la compilación de derecho consuetudinario internacional del CICR, se señala: "Todos los miembros de las fuerzas armadas de una parte en conflicto son combatientes, excepto el personal sanitario y religioso". Henckaerts, & Doswald-Beck. (2007). El Derecho..., pág. 75.	One (rules)	Rule 24				Fn
157	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 189: Señala la compilación de DIH. "El Reglamento de La Haya establece que está especialmente prohibido "[d]ar muerte o herir a un enemigo que habiendo depuesto las armas o no teniendo medios para defenderse se haya rendido a discreción". Henckaerts, & Doswald-Beck. (2007). El Derecho..., pág. 244.	One (rules)	Rule 71				Fn
158	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-D-RJC-0083-2020, 22 May 2020	Fn 8: SCHMITT, Michael N. "Targetin in Operational Law" en: The Handbook of The International Law of Military Operations. Oxford U. Press. (New York), 2010. p. 255. Ver: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, Buenos Aires (Argentina), 2007, norma 12, pág.46.	One (rules)	Rule 14				Fn
159	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	Fn 10: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, "El Derecho Internacional humanitario consuetudinario", volumen I: Normas, norma 71, Buenos Aires (Argentina), 2007, pág. 265.	One (rules)	Rule 76				Fn
160	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Ibid	53. En efecto, cuando la norma 12 del Derecho Internacional Humanitario Consuetudinario explica a cuáles ataques se pueden considerar indiscriminados, señala una serie de características alternativas al advertir: "Norma 12. Son indiscriminados los ataques: a) que no están dirigidos contra un objetivo militar concreto; b) en los que se emplean métodos o medios de combate que no puede dirigirse contra un objetivo militar concreto; o c) en los que se emplean métodos o medios de combate cuyos efectos no sea posible limitar como exige el derecho internacional humanitario; y que, en consecuencia, pueden alcanzar indistintamente, en cualquiera de tales casos, tanto a objetivos militares como a personas civiles o bienes de carácter civil". ¹³ Fn 13: Obra citada, página 46.	One (rules)	Rule 12				Fn

182	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-DAI-PMA-533-2020, 27 October 2020	84. El artículo 3 común a los Convenios de Ginebra de 1949, aplicable a los conflictos armados no internacionales, establece la prohibición, en todo tiempo y lugar, de la toma de rehenes respecto de "personas que no participen directamente en las hostilidades, incluidos los miembros de las fuerzas armadas que hayan depuesto las armas y las personas puestas fuera de combate por enfermedad, herida, detención o por cualquier otra causa." La misma prohibición se encuentra contenida en el artículo 4.2.c) del Protocolo Adicional II a los referidos Convenios, aplicable a los conflictos armados no internacionales, usando términos semejantes. Además de su prohibición convencional, el Estudio de Derecho Internacional Humanitario Consuetudinario del CICR determinó que la prohibición de toma de rehenes tiene también carácter consuetudinario. ²⁶ Fn 26: Jean-Marie Henckaerts and Louise Doswald-Beck, Derecho Internacional Humanitario Consuetudinarios. Volumen I: Normas, Comité Internacional de la Cruz Roja, 2007, Norma 96.	One (rules)	Rule 96				Main text and fn.
183	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-DAI-PMA-100-2021	84. El artículo 3 común a los Convenios de Ginebra de 1949, aplicable a los conflictos armados no internacionales, establece la prohibición, en todo tiempo y lugar, de la toma de rehenes respecto de "personas que no participen directamente en las hostilidades, incluidos los miembros de las fuerzas armadas que hayan depuesto las armas y las personas puestas fuera de combate por enfermedad, herida, detención o por cualquier otra causa." La misma prohibición se encuentra contenida en el artículo 4.2.c) del Protocolo Adicional II a los referidos Convenios, aplicable a los conflictos armados no internacionales, usando términos semejantes. Además de su prohibición convencional, el Estudio de Derecho Internacional Humanitario Consuetudinario del CICR determinó que la prohibición de toma de rehenes tiene también carácter consuetudinario. ²⁶ Fn 26: Jean-Marie Henckaerts and Louise Doswald-Beck, Derecho Internacional Humanitario Consuetudinarios. Volumen I: Normas, Comité Internacional de la Cruz Roja, 2007, Norma 96.	One (rules)	Rule 96				Main text and fn.
184	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-DAI-PMA-505-2020, 15 October 2020	84. El artículo 3 común a los Convenios de Ginebra de 1949, aplicable a los conflictos armados no internacionales, establece la prohibición, en todo tiempo y lugar, de la toma de rehenes respecto de "personas que no participen directamente en las hostilidades, incluidos los miembros de las fuerzas armadas que hayan depuesto las armas y las personas puestas fuera de combate por enfermedad, herida, detención o por cualquier otra causa." La misma prohibición se encuentra contenida en el artículo 4.2.c) del Protocolo Adicional II a los referidos Convenios, aplicable a los conflictos armados no internacionales, usando términos semejantes. Además de su prohibición convencional, el Estudio de Derecho Internacional Humanitario Consuetudinario del CICR determinó que la prohibición de toma de rehenes tiene también carácter consuetudinario. ²⁷ Fn 27: Jean-Marie Henckaerts and Louise Doswald-Beck, Derecho Internacional Humanitario Consuetudinarios. Volumen I: Normas, Comité Internacional de la Cruz Roja, 2007, Norma 96.	One (rules)	Rule 96				Main text and fn.
185	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SDSJ-1061, 5 March 2021	58. Si bien durante el desarrollo de un conflicto armado es posible la privación de la libertad de las personas, ello solo está permitido bajo determinadas circunstancias, como que la ley lo establezca o medie una orden judicial, que sea realizada por quienes están facultados para hacerlo y se respete el debido proceso. La privación arbitraria de la libertad en el marco jurídico del DIH está prohibida, así lo señalan las normas de carácter consuetudinario. ⁵⁶ Fn 56: Comité Internacional de la Cruz Roja. El Derecho Internacional Humanitario Consuetudinario. Vol. I. Editado por Jean-Marie Henckaerts y Louise Doswald-Beck, 2007, norma 99	One (rules)	Rule 99				Main text and fn.

186	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SDSJ-0225, 30 January 2020	<p>80. La desaparición forzada no es solo una violación al Derecho Internacional de los Derechos Humanos -DIDH-, sino que constituye en una infracción al DIH cuando la perpetra una de las partes del conflicto armado. Al respecto se ha señalado que la prohibición de la desaparición forzada de personas es una regla de derecho consuetudinario aplicable a los CANI:</p> <p>Los tratados de derecho internacional humanitario no mencionan el término “desaparición forzada” como tal. Sin embargo, las desapariciones forzadas infringen, o podrían infringir, una serie de normas consuetudinarias de derecho internacional humanitario, en particular la prohibición de la privación arbitraria de la libertad (véase la norma 99), la prohibición de la tortura y de otros tratos crueles o inhumanos (véase la norma 90) y la prohibición del homicidio (véase la norma 89). Además, en los conflictos armados internacionales, la existencia de requisitos estrictos en cuanto al registro de los datos de las personas privadas de libertad, las visitas y la transmisión de información que les concierna tiene, entre otros, como objetivo prevenir las desapariciones forzadas (véase el capítulo 37).</p> <p>En los conflictos armados no internacionales, las partes deben adoptar asimismo medidas para prevenir las desapariciones, incluido el registro de los datos de las personas privadas de libertad (véase la norma 123). Esta prohibición debe interpretarse también a la luz de la norma que exige el respeto de la vida familiar (véase la norma 105) y de la norma que impone a cada parte en conflicto la adopción de todas las medidas factibles para averiguar lo acaecido a las personas dadas por desaparecidas a raíz de un conflicto armado y de transmitir a los familiares de éstas toda la información</p>	One (rules)	Rule 106				Main text and fn.
187	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-RC-MGM- 220-2021, 30 June 2021	Fn 38: J. -M. Henckaerts - Estudio sobre el derecho Internacional humanitario consuetudinario. Pg. 55.	One (rules)	Rule 16				Main text and fn.
188	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SAI-AOI-D-RJC-0139- 2020, 4 September 2020	Fn 39: Comité Internacional de la Cruz Roja, HENCKAERTS, Jean-Marie y DOSWALD-BECK, Louise, “El Derecho Internacional humanitario consuetudinario”, volumen I: Normas, norma 71, Buenos Aires (Argentina), 2007, pág. 273.	One (rules)	Rule 71				Fn
189	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución SDSJ N° 4646, 25 November 2020	Fn 52: CICR. Henckaerts Jean-Marie y Doswald-Beck Louise. El derecho internacional humanitario consuetudinario. Volumen I: Normas. Pág. 388.	One (rules)	Rule 106				Fn
190	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 277, 13 September 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 224: Henckaerts, Jean-Marie y Doswald-Beck, Louise. (2007). El Derecho internacional humanitario consuetudinario. Volumen I. Normas. Buenos Aires: Comité Internacional de la Cruz Roja, pág. 402.	One (rules)	Rule 110				Fn
191	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA GNE 254, 28 July 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 135: Henckaerts, Jean-Marie y Doswald-Beck, Louise. (2007). El Derecho internacional humanitario consuetudinario. Volumen I. Normas. Buenos Aires: Comité Internacional de la Cruz Roja, pág. 402.	One (rules)	Rule 110				Fn
192	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 865 , 30 June 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 12: Incluso la doctrina internacional encuentra que del artículo 3 común a los Convenios de Ginebra, así como del Protocolo Adicional II “no se prevé régimen alguno equiparable al de las infracciones graves consignadas en los Convenios de 1949 y completadas en el Protocolo I”. Graditzky, Thomas. “La responsabilidad penal por violación del derecho internacional humanitario aplicable en situación de conflicto armado no internacional”. Revista Internacional de la Cruz Roja. N° 145, marzo de 1998, (31-61). No obstante, debe reconocerse, como lo ha hecho el CICR, que estos procesamientos se desarrollaban con anterioridad al ER, con fundamento en el derecho consuetudinario internacional a través de la jurisdicción universal y que se reiteró con el “Protocolo II enmendado de la Convención sobre ciertas armas convencionales, el Estatuto de la Corte Penal Internacional y el Segundo Protocolo de la Convención de La Haya para la protección de los bienes culturales”. Norma 151. “Las personas que cometen crímenes de guerra son penalmente responsables de ellos”: “La práctica de los Estados establece esta regla como una norma de derecho internacional consuetudinario aplicable tanto en los conflictos armados internacionales como en los no internacionales”. Henckaerts, Jean-Marie y Doswald-Beck, Louise. (2007). El Derecho internacional humanitario consuetudinario. Vol. I: Normas. Buenos Aires: CICR.	One (rules)	Rule 151				Fn

201	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 207, 19 June 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
202	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 199, 11 June 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
203	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 155, 3 May 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 24, 26, 27, 32																	
204	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 715 DE 2021, 3 February 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
205	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Resolución TP-SA 709, 27 January 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
206	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 647, 25 November 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
207	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 287, 18 September 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
208	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 616, 7 October 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
209	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 527, 22 April 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 30																	
210	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 307, 2 October 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 24, 26, 27, 34																	
211	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 743, 3 March 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 18, 19																	
212	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 624, 21 October 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 18, 19																	
213	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 701, 20 January 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 12, 13, 14																	
214	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 623, 21 October 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25																	
215	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 619, 21 October 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 18, 19																	

216	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 802, 28 April 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 8, 9, 10																	
217	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 609, 23 September 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 18, 19																	
218	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 750, 10 March 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 16, 17, 18																	
219	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 630, 5 November 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 24, 25, 26																	
220	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 691, 14 January 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 11, 12, 13																	
221	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 687, 14 January 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 35, 36, 37																	
222	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 685, 27 January 2021 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 26, 27, 28																	
223	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 674, 16 December 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 37, 38, 39																	
224	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 640 , 19 November 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 18, 19																	
225	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 546, 22 April 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 16, 17, 23																	
226	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA No. 144, 23 May 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 19, 20, 27																	
227	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA n.° 165 de 2019, 27 August 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 17, 19, 20, 28	One (rules)	Rule 13															
228	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 642, 19 November 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 24, 26, 27, 34	One (rules)	Rule 3															
229	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA No. 149 de 2019, 24 April 2019 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 21, 23, 24, 29	One (rules)	Rule 3															
230	Colombia Jurisdicción Especial Para La Paz (Jurisdiction for Peace)	Auto TP-SA 614, 2 December 2020 (Opinion of SANDRA GAMBOA RUBIANO)	Fn 22, 24, 25, 28	One (rules)	Rule 3															

235	Netherlands	Hague District Court, Criminal Law Section, Mpambara case, Case No. 09/750009-06 and 09/750007-07, Landelijk Jurispr BK0520, Judgment of 23 March 2009.	De in het GA 3 en een aanzienlijk deel van de in het APII vervatte normen hebben zich ontwikkeld tot internationaal gewoonterecht waarvan ernstige schendingen kunnen worden beschouwd als een oorlogsmisdrijf. De rechtbank baseert zich hierbij op een recent (2005) en uitgebreid onderzoek van het Internationale Rode Kruis naar het bestaan en de inhoud van gewoonterechtelijk oorlogsrecht, waaruit dit blijkt.(910) Uit dit onderzoek volgt verder dat gewoonterechtelijke regels, waarvan ernstige schending beschouwd moet worden als oorlogsmisdrijf - voor wat betreft een niet-internationaal gewapend conflict - kunnen worden vastgesteld op basis van de inhoud van het GA 3 en het APII. Volgens de Internationale Rode Kruis-studie hebben deze verdragen zich, als het gaat om oorlogsmisdrijven, voor een aanzienlijk deel ontwikkeld tot gewoonterecht.(911) Verder worden schendingen van het humanitair recht, die in het Statuut van Rome inzake het Internationaal Strafhof zijn gecodificeerd als oorlogsmisdrijven in een niet-internationaal gewapend conflict, gezien als basis voor gewoonterechtelijke normen.(912) 20. Verdachte heeft zich tegenover de inzittenden van de ambulance schuldig gemaakt aan zeer ernstige geweldsmisdrijven. Verdachte heeft zowel de inzittenden van de ambulance als mevrouw [getuige 3] en de heer [getuige 4] wreed en onmenselijk behandeld en hen groot geestelijk lijden	Vol one (rules)						https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=98E4A3063452C460C12576DA003B7014&action=openDocument&xp_countrySelected=NL&xp_topicSelected=GVAL-992BU6&from=state
236	Netherlands	Court of Appeal of The Hague, Public Prosecutor v. Joseph Mpambara, 7 July 2011, Landelijk Jurispr Nr. BR0686, Case No. 22-002613-09, Judgment of 7 July 2011	De Verdragen van Geneve zijn in hun volle omvang van toepassing op internationale gewapende conflicten en, voor een beperkt onderdeel, op niet-internationale (interne) conflicten. Deze vier verdragen bevatten een gelijkkluidend artikel 3, ook Gemeenschappelijk artikel 3 genoemd. Dit Gemeenschappelijk artikel 3 bevat minimumgedragsnormen ten aanzien van de (menswaardige) bejegening van "personen, die niet rechtstreeks aan de vijandelikheden deelnemen", waaraan de strijdende partijen zich bij een niet-internationaal gewapend conflict dienen te houden.139 Uit de (vaste) jurisprudentie van de internationale ad hoc tribunaal volgt dat Gemeenschappelijk artikel 3, zoals omschreven in de Verdragen van Genève, de status heeft van internationaal gewoonterecht.140 140 Prosecutor v. Tadic, Case No. IT-94-1, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 ('Tadic, Jurisdiction Decision'), §§ 98 en 134; Prosecutor v. Kunarac et al., Case No. IT-96-23-T & IT-96-23/1, Judgement, 22 February 2001 ('Kunarac Trial Judgement'), § 406; Prosecutor v. Delalic et al., Case No. IT-96-21-A, Judgement, 20 February 2001 ('Celebici Trial Judgement'), § 143. Zie voorts: J-M Henckaerts en L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules, Cambridge, 2005, blz. 590-591 en blz. 593.							https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHSGR:2011:BR0686
237		Ibid	Een schending is ernstig indien daardoor elementaire humanitair-rechtelijke normen, zoals die zijn vastgelegd in verdragen of onderdeel uitmaken van het internationaal gewoonterecht, worden geschonden en de schending ernstige gevolgen heeft voor het slachtoffer.145 Aan deze eis is voldaan indien de gedraging die het humanitaire recht schendt beschermde personen of goederen in gevaar brengt of in strijd is of een schending inhoudt van regels die belangrijke waarden beschermen.146 146 Zie: J.-M. Henckaerts en L. Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, Cambridge, 2005, blz. 569 e.v.							
238		Ibid	De in Gemeenschappelijk artikel 3 en een aanzienlijk deel van de in het Aanvullend Protocol II vervatte normen hebben zich ontwikkeld tot internationaal gewoonterecht waarvan ernstige schendingen kunnen worden beschouwd als een oorlogsmisdrijf. Uit een onderzoek van het Internationale Rode Kruis naar het bestaan en de inhoud van gewoonterechtelijk oorlogsrecht, volgt verder dat gewoonterechtelijke regels, waarvan ernstige schending beschouwd moet worden als oorlogsmisdrijf - voor wat betreft een niet-internationaal gewapend conflict - kunnen worden vastgesteld op basis van de inhoud van Gemeenschappelijk artikel 3 en het Aanvullend Protocol II. Volgens de Internationale Rode Kruis-studie hebben deze verdragen zich, als het gaat om oorlogsmisdrijven, voor een aanzienlijk deel ontwikkeld tot gewoonterecht.156 Verder worden schendingen van het humanitair recht, die in het Statuut van Rome inzake het Internationaal Strafhof zijn gecodificeerd als oorlogsmisdrijven in een niet-internationaal gewapend conflict, gezien als basis voor gewoonterechtelijke normen.157 156 J-M Henckaerts en L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules, Cambridge, 2005, pblz. 590 en 593. 157 J-M Henckaerts en L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules, Cambridge, 2005, blz. 591, blz. 593 en 597.							

239		Ibid	De verdachte en zijn mededaders hebben voorts de persoonlijke waardigheid aangerand van J.M. en W.B., hen onterend en vernederend behandeld. Gemeenschappelijk artikel 3, eerste lid, onder c en Aanvullend Protocol II artikel 4, tweede lid, sub e verbieden aanranding van de persoonlijke waardigheid, in het bijzonder vernederende en onterende behandeling. Uit het hiervoor genoemde onderzoek van het Internationale Rode Kruis blijkt dat dit verbod tevens behoort tot het gewoonterecht.196 196 J-M Henckaerts en L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules Cambridge, 2005, blz. 575.						
240		Ibid	De verdachte c.s. hebben voorts J.M. en W.B. bedreigd met geweld tegen het leven in het bijzonder moord. Het 'dreigen met geweld' is - anders dan de in de vorige paragrafen besproken ernstige schendingen - niet vermeld als een verboden gedraging in Gemeenschappelijk artikel 3 en heeft ook niet te gelden als schending van een gewoonterechtelijke regel van humanitair oorlogsrecht.197 Deze gedraging is echter op grond van artikel 4 lid 2 sub h Aanvullend Protocol II wel te allen tijde verboden. Dit verbod is in het Aanvullend Protocol II geplaatst in Deel II (menselijke behandeling) in het artikel dat ziet op fundamentele waarborgen. Deze gedraging is daarnaast zelfstandig strafbaar gesteld in artikel 4 sub h van het ICTR Statuut en bovendien - zoals hierboven reeds overwogen - verwijst artikel 4 van dit statuut ook naar het Aanvullend Protocol II. 197 Evenmin als de rechtbank heeft het hof dit kunnen afleiden uit het genoemde onderzoek van het Internationale Rode Kruis: J-M Henckaerts en L. Doswald-Beck, Customary International Humanitarian Law - Volume I: Rules, Cambridge, 2005.						
241	Germany	Oberverwaltungsgericht für das Land Nordrhein-Westfalen, case 4 A 1361/15 (Jemen; I. Instanz: VG Köln 3 K 5625/14)	374. Eine elementare Regel des humanitären Völkerrechts ist es, dass weder die Zivilbevölkerung als solche noch einzelne Zivilpersonen, sofern und solange sie nicht unmittelbar an Feindseligkeiten teilnehmen, angegriffen werden dürfen. Eine entsprechende Regel gilt für zivile Objekte. Diese Regeln und das ihnen zugrunde liegende Gebot der Unterscheidung zwischen Zivilisten und – im Recht des internationalen bewaffneten Konflikts – Kombattanten bzw. – im Recht des nicht internationalen bewaffneten Konflikts, das einen Kombattantenstatus nicht kennt – Kämpfern sowie zwischen zivilen und militärischen Objekten sind Inhalt des Völkerrechts (vgl. insbesondere den gemeinsamen Art. 3 der Genfer Abkommen, Art. 48, 51 Abs. 2 Satz 1, Abs. 3, 52 Abs. 1 und 2 ZP I, Art. 13 Abs. 2 und 3 ZP II, Art. 8 Abs. 2 Buchst. b) Ziff. i) und ii), Buchst. e) Ziff. i) und ii) IStGH-Statut [BGBl. 2000 II S. 1393]) und Teil des Völkergewohnheitsrechts für sowohl internationale als auch nicht internationale bewaffnete Konflikte. 375 Vgl. ICTY, Prosecutor v. Tadić, Decision of the Defense Motion for Interlocutory Appeal on Jurisdiction, 2.10.1995, IT-94-1, Rn. 98, 117 ff., 127, www.icty.org/x/cases/tadic/acdec/en/51002.htm (zuletzt aufgerufen am 1.3.2019); IGH, Gutachten vom 8.7.1996: „Legality of the Threat or Use of Nuclear Weapons“, ICJ Reports 1996, S. 226 (S. 257 f. Rn. 78 ff.); Supreme Court of Israel, Entscheidung vom 11.12.2005: The Public Committee against Torture in Israel et al. v. The Government of Israel et al., HCJ 769/02, Rn. 23, 26, 29 f.; International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 3 ff. (Rule 1), 19 ff. (Rule 6), 25 ff. (Rule 7), 34 ff. (Rule 10).	Vol one (rules)	Rules 1, 6, 7, 10				https://www.iustiz.nrw.de/nrwe/ovgs/ovg_nrw/j2019/4_A_1361_15_Urteil_20190319.html
242		Ibid	376 Nach Art. 50 Abs. 1 Satz 2 ZP I gelten Personen in internationalen bewaffneten Konflikten in Zweifelsfällen als Zivilpersonen. Für den nicht internationalen bewaffneten Konflikt existiert eine entsprechende Vermutungsregel zwar nicht. Aus dem Unterscheidungsgebot und dem Verbot des Angriffs auf nicht unmittelbar an Feindseligkeiten beteiligte Zivilpersonen folgt aber, dass stets eine sorgfältige Prüfung stattfinden muss, ob es sich um eine geschützte Zivilperson handelt. Der dabei anzuwendende Sorgfaltsmaßstab hängt von den Umständen der konkreten Situation ab, namentlich von der Dringlichkeit der zu treffenden Entscheidung und den dem jeweiligen Entscheidungsträger zur Verfügung stehenden oder mit angemessenem Aufwand zugänglichen Informationen. 377 Vgl. International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 24; Heyns/Akande/Hill-Cawthorne/Chengeta, The international law framework regulating the use of armed drones, ICLQ vol. 65, 2016, 791 (812 f.), https://doi.org/10.1017/S0020589316000385 (zuletzt aufgerufen am 2.3.2019)	Vol one (rules)					
243		Ibid	378 Zum Schutz der Zivilbevölkerung und ziviler Objekte verbietet das humanitäre Völkerrecht unterschiedslose Angriffe. Für internationale bewaffnete Konflikte ist dieses Verbot in Art. 51 Abs. 4 und 5 ZP I niedergelegt und konkretisiert. Es gilt als Völkergewohnheitsrecht auch für nicht internationale bewaffnete Konflikte. 379 Vgl. ICTY, Prosecutor v. Kupreskić et al., Entscheidung vom 14.1.2000 – IT-95-16 –, Rn. 524, www.icty.org/case/kupreskic/4 (zuletzt aufgerufen am 2.3.2019); International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 37 ff. (Rule 11).	Vol one (rules)	Rule 11				

244	Ibid	380 Entsprechend der Definition in Art. 51 Abs. 4 Satz 2 ZP I, die dem auch für nicht internationale Konflikte geltenden Völkergewohnheitsrecht entspricht, 381 vgl. International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 40 ff. (Rule 12).	Vol one (rules)	Rule 12					
245	Ibid	382 sind unterschiedslose Angriffe solche, die nicht gegen ein bestimmtes militärisches Ziel gerichtet werden, bei denen Kampfmethoden oder -mittel angewendet werden, die nicht gegen ein bestimmtes militärisches Ziel gerichtet werden können, oder bei denen Kampfmethoden oder -mittel angewendet werden, deren Wirkungen nicht entsprechend den Vorgaben des humanitären Völkerrechts begrenzt werden können und die daher in jedem dieser Fälle militärische Ziele und Zivilpersonen oder zivile Objekte unterschiedslos treffen können. Nach Art. 51 Abs. 5 Buchst. b) ZP I ist ein Angriff unter anderem dann als unterschiedslos anzusehen, bei dem damit zu rechnen ist, dass er auch Verluste an Menschenleben unter der Zivilbevölkerung, die Verwundung von Zivilpersonen, die Beschädigung ziviler Objekte oder mehrere derartige Folgen zusammen verursacht, die in keinem Verhältnis zum erwarteten konkreten und unmittelbaren militärischen Vorteil stehen. Diese Regelung ist zugleich Ausdruck des Grundsatzes der Verhältnismäßigkeit und findet eine Wiederholung in Art. 57 Abs. 2 Buchst. a) Ziff. iii ZP I, wonach derjenige, der einen Angriff plant oder beschließt, von jedem Angriff Abstand zu nehmen hat, bei dem damit zu rechnen ist, dass er auch Verluste unter der Zivilbevölkerung, die Verwundung von Zivilpersonen, die Beschädigung ziviler Objekte oder mehrere derartige Folgen zusammen verursacht, die in keinem Verhältnis zum erwarteten konkreten und unmittelbaren militärischen Vorteil stehen. Auch dieses Verbot von Angriffen mit unverhältnismäßigen Kollateralschäden gilt als Völkergewohnheitsrecht gleichermaßen für den internationalen wie für den nicht internationalen bewaffneten Konflikt. 383 Vgl. ICTY, Prosecutor v. Kupreškić et al., Entscheidung vom 14.1.2000 – IT-95-16 –, Rn. 524, www.icty.org/case/kupreskic/4 ; Supreme Court of Israel, Entscheidung vom	Vol one (rules)	Rule 14					
246	Ibid	384 Darüber hinaus haben die Konfliktparteien bei der Bestimmung der Angriffsziele, bei der Wahl der Angriffsmittel und -methoden sowie bei der Durchführung von Angriffen alle praktisch möglichen Vorsichtsmaßnahmen zu ergreifen, um Angriffe auf zivile Ziele zu vermeiden und Verluste unter der Zivilbevölkerung, die Verwundung von Zivilpersonen und die Beschädigung ziviler Objekte als Nebenfolgen von Angriffen auf militärische Ziele auf ein Mindestmaß zu beschränken. Angriffen, durch welche die Zivilbevölkerung in Mitleidenschaft gezogen werden kann, muss eine wirksame Warnung vorausgehen, es sei denn, die gegebenen Umstände erlauben dies nicht. Diese Sorgfaltspflichten, die in Bezug auf internationale Konflikte in Art. 57 Abs. 1 und 2 ZP I geregelt sind, gelten als Völkergewohnheitsrecht gleichermaßen für den internationalen wie für den nicht internationalen bewaffneten Konflikt. 385 Vgl. International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 51 ff. (Rules 15-20); siehe auch ICTY, Prosecutor v. Kupreškić et al., Entscheidung vom 14.1.2000 – IT-95-16 –, Rn. 524 f., www.icty.org/case/kupreskic/4 (zuletzt aufgerufen am 2.3.2019).	Vol one (rules)	Rules 15-20					
247	Ibid	392 überzeugt nicht. Er beruht auf einer unzutreffenden Prämisse. Eine Befugnis zur Gewaltausübung räumt das humanitäre Völkerrecht nur Kombattanten in internationalen bewaffneten Konflikten ein (vgl. Art. 43 Abs. 2 ZP I). Das Recht der nicht internationalen bewaffneten Konflikte kennt keinen Kombattantenstatus und keine daran anknüpfende Rechtsstellung nichtstaatlicher Akteure, die zu Kampfhandlungen berechtigt. Die Gewaltausübung in nicht internationalen bewaffneten Konflikten ist zudem nicht nur durch internationales Recht begrenzt, sondern auch eine Frage des innerstaatlichen Rechts, nach dem sich Mitglieder einer nichtstaatlichen Konfliktpartei für etwaige Rechtsverstöße, zu denen Angriffe auf rechtmäßig handelnde Mitglieder der Streitkräfte zählen, zu verantworten haben. 393 Vgl. Herdegen, Völkerrecht, 12. Auflage 2013, § 56 Rn. 27; International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 3, 11 ff.; International Committee of the Red Cross, Melzer, Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, 2009, S. 33, 83.	Vol one (rules)						

248	ibid	<p>402 Eine allgemein akzeptierte Definition dessen, was als „unmittelbare“ Teilnahme anzusehen ist, existiert nicht. Geboten ist letztlich eine fallbezogene Bewertung, die einerseits dem Schutz der Zivilbevölkerung, andererseits militärischen Notwendigkeiten Rechnung tragen muss. Zweifellos sind der im Zusammenhang mit einem bewaffneten Konflikt stehende Einsatz von Waffen sowie andere Formen der Gewaltanwendung gegen das Personal oder Material einer Konfliktpartei eine unmittelbare Teilnahme an Feindseligkeiten. Andererseits kann als gesichert zugrunde gelegt werden, dass eine nur politische, ideelle, propagandistische oder finanzielle Unterstützung ebenso wenig genügt wie etwa die Versorgung einer der Konfliktparteien mit Lebensmitteln oder Medizin. 403 Vgl. Supreme Court of Israel, Entscheidung vom 11.12.2005: The Public Committee against Torture in Israel et al. v. The Government of Israel et al., HCJ 769/02, Rn. 34 f.; International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 22 f., m. w. N.</p>	Vol one (rules)						
249	ibid	<p>419 Keine willkürlichen Tötungen in diesem Sinne sind insbesondere solche, die im Rahmen eines bewaffneten Konflikts nach dem dann anwendbaren humanitären Völkerrecht zulässig sind. 420 Vgl. IGH, Gutachten vom 8.7.1996: „Legality of the Threat or Use of Nuclear Weapons“, ICJ Reports 1996, 226 (240 Nr. 25); International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 313 f., m. w. N.</p>	Vol one (rules)						
250	ibid	<p>425 Das Verbot willkürlicher Tötungen gemäß Art. 6 Abs. 1 Satz 3 IPbPR wäre praktisch unwirksam, wenn es kein Verfahren zur Prüfung der Rechtmäßigkeit der Anwendung tödlicher Gewalt gäbe. Die Verpflichtung nach Art. 6 Abs. 1 Satz 2 IPbPR, das Recht auf Leben zu schützen, in Verbindung mit der allgemeinen Pflicht der Staaten nach Art. 1 Abs. 1 IPbPR, „die in diesem Pakt anerkannten Rechte zu achten und sie allen in seinem Gebiet befindlichen und seiner Jurisdiktion unterstehenden Personen [...] zu gewährleisten“, verlangt deshalb auch ohne ausdrückliche Regelung, dass wirksame amtliche Ermittlungen durchgeführt werden, wenn Personen durch Gewaltanwendung insbesondere durch Vertreter des Staates getötet werden. Wesentliches Ziel solcher Ermittlungen ist es, eine wirksame Anwendung staatlicher Rechtsvorschriften zum Schutz des Lebens zu gewährleisten und in Fällen, in denen staatliche Vertreter oder Stellen beteiligt sind, deren Verantwortlichkeit für Todesfälle, die sich unter ihrer Verantwortung ereignet haben, sicherzustellen. Ermittlungen über angeblich rechtswidrige Tötungen durch Repräsentanten des Staates sind nur wirksam, wenn die für die Ermittlungen Verantwortlichen von den an den Ereignissen Beteiligten unabhängig sind. 426 Vgl. für die entsprechenden Gewährleistungen in Art. 1 und 2 Abs. 1 EMRK: EGMR, Urteil vom 7.7.2011 – 55721/07 (Al-Skeini u. a. ./ Vereinigtes Königreich –, NJW 2012, 283 (288 f. Rn. 163, 167), m. w. N. Für Art. 6 IPbPR: Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 2018, U.N. Doc. CCPR/C/GC/36, Rn. 29. Allgemein für das Menschenrecht auf Leben: Aide-mémoire zur Erklärung der Präsidentschaft des Sicherheitsrats vom 21.9.2018 zum Schutz von Zivilpersonen in bewaffneten Konflikten, U.N. Doc. S/PRST/2018/18, S. 19 ff.; Office of the United Nations High Commissioner for</p>	Vol one (rules)						
251		<p>427 Diese Pflicht besteht – situationsangemessen – auch unter schwierigen Sicherheitsverhältnissen einschließlich eines bewaffneten Konflikts. 428 Vgl. EGMR, Urteil vom 7.7.2011 – 55721/07 (Al-Skeini u. a. ./ Vereinigtes Königreich –, NJW 2012, 283 (288 Rn. 164); Office of the United Nations High Commissioner for Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), 2017, Rn. 20 f.; International Committee of the Red Cross, Henckaerts/Doswald-Beck (Hrsg.), Customary International Humanitarian Law, 2005, Vol. I: Rules, S. 314, jeweils m. w. N.</p>							

		BVerfG (Bundesverfassungsgericht, Federal Constitutional Court), Order of the First Senate of 13 July 2018 - 1 BvR 1474/12 - paras. (1-167).	para. 135: (English version does not mention the references). Das humanitäre Völkerrecht zielt nicht nur darauf, die Mittel der Kampfführung zu begrenzen, sondern auch, die Zivilbevölkerung zu schützen. Daher sollen die Regelungen für die Leistung humanitärer Hilfe in bewaffneten Konflikten mit dem Genfer Abkommen zum Schutz der Zivilpersonen in Kriegszeiten vom 12. August 1949 (GA IV; BGBl II 1954 S. 917) und dem ersten Zusatzprotokoll über den Schutz der Opfer internationaler bewaffneter Konflikte (ZP I; BGBl II 1990 S. 1550) eine ausreichende Versorgung der Bevölkerung, insbesondere mit Lebensmitteln, Arzneimitteln und Unterkünften, in bewaffneten Konflikten ermöglichen. Staaten, die nicht an einem bewaffneten Konflikt beteiligt sind, trifft nach humanitärem Völkerrecht die Pflicht, Gütern und Personal für ohne jede nachteilige Unterscheidung unparteiisch erbrachte Hilfeleistungen in bewaffneten Konflikten Durchlass zu gewähren (Art. 23 Abs. 1 und Art. 59 Abs. 3 GA IV, Art. 70 Abs. 2 ZP I). Das gilt nach Art. 23 Abs. 2 GA IV jedoch nur, wenn daraus kein offensichtlicher Vorteil für militärische Anstrengungen erwächst. Zudem muss die Hilfeleistung für die Versorgung der Bevölkerung erforderlich sein und die allgemeinen Prinzipien der Menschlichkeit, Neutralität und Unparteilichkeit achten. Wie das Deutsche Rote Kreuz in diesem Verfahren ausführlich dargelegt hat, soll damit gesichert werden, dass die humanitäre Hilfe allein auf die Linderung von Not zielt (dazu Henckaerts/ Doswald-Beck, Customary International Humanitarian Law, 2009, S. 197; Schüller, Humanitäres Völkerrecht 2009, S. 35 ff.; Kälin, in: Festschrift für Daniel Thürer, 2015, S. 351 <356>). Das gilt in Besatzungssituationen (Art. 59 Abs. 3 GA IV) und ist auch auf Situationen zu übertragen, in denen die Schwelle zum bewaffneten Konflikt nicht überschritten oder eine Besatzung im formellen Sinne nicht gegeben ist.							http://www.bverfg.de/e/rs20180713_1bvr147412en.html
252	Germany	Office of the Federal Prosecutor General at the Federal Court of Justice (Bundesgeneralanwalt beim Bundesgerichtshof), Investigation proceedings against Colonel Klein and Company Sergeant Major Wilhem because of suspected offences under the International Crimes Code and other, Termination of proceedings pursuant to § 170 para. 2 sentence 1 of the Penal Procedure Code, 3 BJs 6/10-4, 16 April 2010.	f) Bei der Prüfung, ob es sich bei nach allgemeinem Strafrecht zu beurteilenden Delikten um ein Kriegsverbrechen im Sinne des Grundgesetzes handelt, sind die Maßstäbe des gewohnheitsrechtlich geltenden humanitären Völkerrechts heranzuziehen. Nach diesen ist Voraussetzung eines Kriegsverbrechens, dass ein spezifischer Zusammenhang zwischen der Tat und dem bewaffneten Konflikt besteht, nicht erfasst sind Taten, die lediglich bei Gelegenheit des Konflikts begangen werden (zur Abgrenzung vgl. Ambos a.a.O. Rdnrn. 34 ff., Werle a.a.O. Rdnrn. 971 ff. m.w.N.; zum Verständnis der Kriegsverbrechen als ernsthafte Verletzung des humanitären Völkerrechts vgl. ICRC: Customary International Humanitarian Law, Hrsg. Henckaerts/Doswald-Beck, Cambridge 2005, S. 568 ff. m.w.N.).							ILDC 2179 (DE 2010)
254	Germany	ibid	dd) In der öffentlichen Diskussion ist eine Reihe von mutmaßlichen Verstößen des Oberst Klein gegen innerdienstliche Vorgaben, insbesondere gegen einzelne Einsatzregeln (Rules of Engagement — RoE) der ISAF, erörtert worden. [die fraglichen VS-eingestuften Punkte werden aufgezählt] Bei den Einsatzregeln der ISAF, wie auch bei Dienstvorschriften der Bundeswehr, handelt es sich um reines Innenrecht, dem keine Rechtswirkung nach außen zukommt (vgl. Frister/Korte/Kreß a.a.O. S. 16 m.w.N.). Bei den Rules of Engagement wird dies nicht zuletzt dadurch deutlich, dass diese nicht veröffentlicht werden, sondern der Geheimhaltung unterliegen (vgl. Frister/Korte/Kreß a.a.O.). Auch soweit dienstlichen Vorschriften Befehlscharakter zukommt (vgl. zu den insoweit bestehenden Anforderungen BVerwG NVwZ 2007, 475 m.w.N.), hat dies nur binnenrechtliche Bedeutung. Die — hier als Rechtfertigungsgrund erhebliche — Zulässigkeit militärischen Verhaltens ist aber nach dem geltenden Völkerrecht, nicht nach dem jeweiligen Binnenrecht der Konfliktparteien zu beurteilen. Zwar wird das Völkerrecht auch durch die Staatenpraxis bestimmt. Dies gilt aber nur soweit mit dieser Praxis verbindlichen Rechtsgrundsätzen Rechnung getragen werden soll (vgl. ICRC: Customary International Humanitarian Law, Hrsg. Henckaerts/Doswald-Beck, Cambridge 2005, S. XXXII ff.; Dinstein S. 5 f. m.w.N.). Schöpfen die Staaten demgegenüber das ihnen völkerrechtlich Gestattete nicht aus, sei es aus militärischen oder politischen Erwägungen, ändert dies an der völkerrechtlichen Zulässigkeit weitergehenden Verhaltens nichts (Dinstein a.a.O. 4 m.w.N.). So ist es etwa dann, wenn aus Erwägungen zum „Kampf um die Herzen und Köpfe“ den eigenen Truppen jegliche Gewaltanwendung bis zur Grenze der Selbstverteidigung untersagt wird (vgl. M.N. Schmitt a.a.O. S. 328). Bei den hier als verletzt in Frage stehenden Vorschriften handelt es sich um							

255	Sweden	Prosecutor v Omar Haisam Sakhanh, Stockholms tingsrätt (Stockholm District Court), B 3787-16, Judgment of 16 February 2017	28. In addition to the above, there is also reason to point to what may be considered to be applicable on basis of customary law. The ICRC has made a study of existing customary international law. The study states in rule 100 that 'no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees'. In the study, the ICRC reasons about the requirements that on basis of customary law may be imposed on legal proceedings, and notes that 'a court is regularly constituted if it has been established and organised in accordance with the laws and procedures already in force in a country'. ⁸ The emphasis in the proposed rule, as in the commentary, however, is the requirement that the court must be independent and impartial. 8. J.-M. Henckaerts and M. Doswald Beck, Customary International Humanitarian Law, Volume 1: Rules (Cambridge University Press, 2009), 100.							ILDC 3154 (SE 2017)
256		ibid	Utöver vad som angetts ovan finns det även anledning att peka på vad som kan anses vara tillämpligt på sedvanerättslig grund. ICRC har gjort en studie av gällande internationell sedvanerätt. Studien anger i regel 100 att ingen kan bli fälld eller ådömas påföljd såvida inte det sker genom en rättvis rättegång som upprätthåller grundläggande rättsliga garantier. ICRC resonerar i studien kring vilka krav som på sedvanerättslig grund kan uppställas på ett rättsligt förfarande och konstaterar att kravet på att en domstol ska vara tillsatt i laga ordning innebär den ska vara tillsatt och upprättad i enlighet med de lagar och processuella regler som gäller i ett specifikt land. ¹² Tonvikten i den föreslagna regeln liksom i kommentaren ligger dock på kravet att domstolen ska vara oberoende och opartisk. 12 Henckaerts, Jean-Marie och Doswald Beck, Louise, Customary International Humanitarian Law, volume I; Rules, Cambridge, Cambridge University Press, 2009, s. 100.							
257		ibid	34. Av GA3 framgår inte vilka krav som kan ställas för att en rättegång ska anses ha varit rättvis i konventionens mening. Skrivningen i GA3 att domstolens rättsskipning ska erbjuda de garantier vilka hållas för oeftergivliga av civiliserade folk kan inte förstås på något annat sätt än att det utgör en hänvisning till de krav på en rättvis rättegång som följer av internationell sedvanerätt. Det innebär i huvudsak följande krav (1) oskyldighetspresumtion (2) rätt till försvar före och efter rättegång (3) rätten att inte vittna mot sig själv (4) rätt till en rättegång inom skälig tid (5) rätten att höra vittnen och att åberopa egen bevisning (6) rätten till en offentlig rättegång och en offentlig dom samt (7) rätt att överklaga. ¹⁵ 15 A.a.a, s 423–425; Henckaerts och Doswald-Beck, s. 352f.							
258	Israel	High Court of Justice, Gaber Albasyouni Ahmad and Others v. The Prime Minister and Others, HCJ 9132/07, Judgment of 30 January 2008	14. The State's arguments are based on norms of international customary law, which specifies the basic obligations applying to parties engaged in an armed conflict, and requires the parties to ensure the wellbeing of the civilian population and protect its dignity and fundamental rights. It would not be superfluous to add that, under customary international humanitarian law, every party to the conflict must refrain from impeding the passage of basic humanitarian relief to the population requiring such in areas under the control of that party to the conflict (J. Henckaerts and L. Doswald-Beck, Customary International Humanitarian Law (ICRC, Vol. 1, 2005), p. 197, 199).	Vol one (rules)						ICRC website
259	Israel	Military Court of Appeals for Judea and Samaria, Hassan Yusef Daud Dar-Halil v. the Military Prosecutor, Appeal 3335/07, Judgment of 29 May 2008	However, in more recent conventions, the principle of trial in open court has been more widely expressed. Thus, Article 14(1) of the ICCPR (International Convention on Civil and Political Rights) determines that every person has the right to have his arguments heard in public. However, that convention also recognizes the possibility of holding trial in camera for reasons of morals, order public or national security. The convention also recognizes the possibility of holding trial in camera if, in the opinion of the court, that is necessary in order to do justice. In its commentary on the ICCPR, the UN Commission on Human Rights emphasized that cases in which hearings are held in camera must be exceptional in nature. Similar provisions can be found in the American Convention on Human Rights (Article 8(5) of the convention) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6(a) of the convention, and see the extensive discussion in HENCKAERTS & DOSWALD-BECK, II CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (2005), 2473-2478).	Vol Two						https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/07936D7CAA4CE026C12575C3005352B2
260	Israel	Supreme Court sitting as the High Court of Justice, Shlomo Valero et al. v. The State of Israel et al., Judgment of 6 February 2011:	39. The rule that an occupying country must administer public property it has seized in accordance with the rules of usufruct constitutes customary international law (Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Vol. I: Rules, 178-179 (2009)).	Vol one (rules)						http://www.hamoked.org/files/2014/1156710_eng.pdf

261	Colombia	Constitutional Court, Sentencia, C- 291/07, of April 25, 2007.	Humanitario en un gran número de tratados internacionales[81], no obsta para afirmar que el derecho consuetudinario continúa siendo una parte fundamental de esta rama del derecho, que ha sido identificada y aplicada por distintos organismos y tribunales internacionales[82], y ha merecido cuidadosos trabajos de identificación y sistematización por parte de cuerpos internacionales especializados. Recientes estudios y esfuerzos de codificación doctrinal, particularmente el proyecto de investigación emprendido y culminado entre 1995 y 2005 por el Comité Internacional de la Cruz Roja, han confirmado que el Derecho Internacional Humanitario cuenta con un amplio e importantísimo componente de naturaleza consuetudinaria[83], no sólo por tratarse del cuerpo normativo que ha contado con un mayor desarrollo a lo largo del tiempo, sino porque proporciona regulaciones del conflicto mucho más detalladas que aquellas incluidas en los tratados internacionales que le codifican, por lo cual constituye un instrumento de interpretación e integración de cardinal importancia, y porque en virtud de su naturaleza consuetudinaria, resulta vinculante para todas las partes en un conflicto armado internacional o interno, independientemente de que hayan ratificado o no el tratado correspondiente. FN 83:						http://www.corteconstitucional.gov.co/relatoria/2007/c-291-07.htm
262	Colombia	Sentencia C-579/13 INSTRUMENTOS JURIDICOS DE JUSTICIA TRANSICIONAL No sustituye elementos estructurales y definitivos de la Constitución Política/MARCO JURIDICO PARA LA PAZ-Contenido y alcance, Judgment of 28 August 2013	p. 280, fn. 510. Comité Internacional de la Cruz Roja, CICR. Norma consuetudinaria 159: “[c]uando hayan cesado las hostilidades, las autoridades en el poder se esforzarán por conceder la amnistía más amplia posible a quienes hayan participado en un conflicto armado no internacional o a las personas privadas de libertad por razones relacionadas con el conflicto armado, salvo a las personas sospechosas o acusadas de haber cometido crímenes de guerra, o que estén condenadas por ello”. Al respecto, el Comité Internacional de la Cruz Roja ha sostenido que “[c]uando se aprobó el párrafo 5 del artículo 6 del Protocolo II adicional, la USSR declaró, en su explicación de voto, que no podía interpretarse la disposición de modo que permitiese a los criminales de guerra, u otras personas culpables de crímenes de lesa humanidad, eludir un castigo severo. El CICR coincide con esa interpretación. Esas amnistías serían también incompatibles con la norma que obliga a los Estados a investigar y enjuiciar a los sospechosos de haber cometido crímenes de guerra en conflictos armados no internacionales”. Cfr. Comité Internacional de la Cruz Roja, El derecho internacional humanitario consuetudinario, vol. I, editado por Jean-Marie Henckaerts y Louise Doswald-Beck, 2007, 691 a 692.						https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=A2CFC7F42612F2B3C1257D250042E9DD&action=openDocument&xp_counrySelected=CO&xp_topicSelected=GVAL-992BUA&from=state
263			p. 239, fn. 544: La cuidadosa sistematización del derecho internacional humanitario consuetudinario emprendida por el CICR en 2005 establece el contenido consuetudinario de esta norma, aplicable a conflictos armados internos e internacionales, así: “Los Estados deberán investigar los crímenes de guerra presuntamente cometidos por sus ciudadanos o sus fuerzas armadas, así como en su territorio, y encausar, si procede, a los imputados. Deberán asimismo investigar otros crímenes de guerra que sean de su competencia y encausar, si procede, a los imputados”. [Sistematización CICR, Norma 158].						
264			p. 294: Al respecto, la Norma Consuetudinaria 158 del CICR señala claramente: “Los Estados deberán investigar los crímenes de guerra presuntamente cometidos por sus ciudadanos o sus fuerzas armadas, así como en su territorio, y encausar, si procede, a los imputados. Deberán asimismo investigar otros crímenes de guerra que sean de su competencia y encausar, si procede, a los imputados”.						

265			p. 303, fn. 562: Comité Internacional de la Cruz Roja, CICR. Norma consuetudinaria 159: "[c]uando hayan cesado las hostilidades, las autoridades en el poder se esforzarán por conceder la amnistía más amplia posible a quienes hayan participado en un conflicto armado no internacional o a las personas privadas de libertad por razones relacionadas con el conflicto armado, salvo a las personas sospechosas o acusadas de haber cometido crímenes de guerra, o que estén condenadas por ello". Al respecto, el Comité Internacional de la Cruz Roja ha sostenido que "[c]uando se aprobó el párrafo 5 del artículo 6 del Protocolo II adicional, la USSR declaró, en su explicación de voto, que no podía interpretarse la disposición de modo que permitiese a los criminales de guerra, u otras personas culpables de crímenes de lesa humanidad, eludir un castigo severo. El CICR coincide con esa interpretación. Esas amnistías serían también incompatibles con la norma que obliga a los Estados a investigar y enjuiciar a los sospechosos de haber cometido crímenes de guerra en conflictos armados no internacionales". [citas omitidas] Cfr. Comité Internacional de la Cruz Roja, El derecho internacional humanitario consuetudinario, vol. I, editado por Jean-Marie Henckaerts y Louise Doswald-Beck, 2007, 691 a 692.						
266	Colombia	Corte Suprema de Justicia, Sala de Casación Penal, Guillermo Pérez Alzate - otros., Appeal No. 45143, Bogotá D.C., dieciséis (16) de diciembre de dos mil quince (2015).	99: Los objetivos militares son definidos por el artículo 52.2 del Protocolo Adicional I como aquellos que por su naturaleza, locación, propósito o uso brinden una contribución a las acciones militares y que su destrucción total o parcial, captura o neutralización, en las circunstancias del momento, ofrecen una ventaja militar definida. Se considera que, a pesar de que esta definición no se incluyó en el Protocolo Adicional II de 1977, ésta es vinculante para los conflictos armados internos, toda vez que se ha reconocido que la misma es una regla del derecho internacional consuetudinario aplicable en este tipo de conflictos. Reconocimiento que se hizo por el compendio de derecho internacional consuetudinario aplicable en los conflictos armados, auspiciado por el Comité Internacional de la Cruz Roja (reglas 8, 9 y 10).						https://www.fiscalia.gov.co/colombia/wp-content/uploads/2016/08/2015-12-16-Guillermo-Perez-Alzate-17548.pdf
267	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, The Prosecutor v. Krešo Lucic, Case no. X-KR/06/298, Judgment of 19 September 2007.	Pages 60-61: "This conclusion was confirmed by the Study on Customary International Humanitarian Law conducted by the International Committee of the Red Cross. The Study concluded that "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed b) their nationals or armed forces, or in their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158)."	Vol one (rules)	Rule 156, 151, 158				https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=016B216FCE348C5C12576EF005491B9&action=openDocument&xp_countrySelected=BA&xp_topicSelected=GVAL-992BU6&from=state
268	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel, Section I for War Crimes, The Prosecutor's Office of Bosnia and Herzegovina v. Jadranko Palija, Case No. X-KR-06/290, Judgment of 28 November 2007	p.21: "This conclusion was confirmed by the Study on Customary International Humanitarian Law conducted by the International Committee of the Red Cross. According to that Study 'serious violations of international humanitarian law constitute war crimes' (Rule 156), 'individuals are criminally responsible for war crimes they commit' (Rule 151) and 'States must investigate war crimes allegedly committed by their nationals or armed forces, or in their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects' (Rule 158)."	Vol one (rules)	Rule 156, 151, 158				http://www.sudbih.gov.ba/?jezik=e
269	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel, Section I for War Crimes, Prosecutor's Office for Bosnia and Herzegovina v. Ivica Vrdoljak, Case No. X-KR-08/488, Judgment of 10 July 2008	pp. 11-12: "This conclusion was confirmed by the Study on Customary International Humanitarian Law conducted by the International Committee of the Red Cross. According to that Study 'serious violations of international humanitarian law constitute war crimes' (Rule 156), 'individuals are criminally responsible for war crimes they commit' (Rule 151) and 'States must investigate war crimes allegedly committed by their nationals or armed forces, or in their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects' (Rule 158)."	Vol one (rules)	Rule 156, 151, 158				

270	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel of the Appellate Division, Section I for War Crimes, Prosecutor's Office of Bosnia and Herzegovina v. Zijad Kurtović, Case No. X-KRŽ-06/299, Judgment of 25 March 2009	124. In this case, within the context of international law to which this stipulation refers, the provisions apply that are set forth under Article 56 of the Hague Convention on the Laws and Customs of War on Land (Hague Convention IV) (including the Hague Book of Rules, the so-called Hague Regulations on the War on Land) of 1907 (as stated in the Indictment), which the International Military Court in Nuremberg found to constitute part of Customary International Law. ¹⁹ Customary International Law, IRC (Jean Marie Henckaerts, Louise Doswald-Beck), 2005, p. XXVIII "The great majority of the provisions of the Geneva Conventions, including common Article 3, are considered to be part of customary international law, the same applies to the Hague Book of Rules of 1907"; The example of the Nuremberg Judgment mentioned in the History of the UN War Crimes Commission and the Development of the Laws of the War, London, 1948, p. 220, to which the study Penal and Historical Aspects of the Bleiberg Crime by Dominik Vuletić, LLB, refers on its page 133: "The Hague Convention of 1907 prohibited certain methods of warfare and those prohibitions include inhuman treatment of prisoners, use of war gases, improper use of a flag of truce and similar issues. Many of those prohibitions were being implemented (were in force) long before the Convention was adopted, but as of 1907 they became punishable as criminal offenses that constitute violation of laws of war. Nowhere in the Hague Convention such actions are proscribed as criminal offenses or any							
271	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel, Section I for War Crimes, Prosecutor's Office of Bosnia and Herzegovina v. Predrag Kujundžić a.k.a. Predo, Case No. X-KR-07/442, Judgment of 30 October 2009	para. 414: "Although the Protocol Additional I refers to international conflicts, the above described principle of command responsibility is not limited to such kind of conflict. On the contrary, as the International Committee of Red Cross stated: "State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts law". ¹⁵⁰ International Committee of Red Cross, "Customary International Law", Volume I, Rule 153.							
272	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Appellate Division Panel, Section I for War Crimes, Prosecutor's Office of Bosnia and Herzegovina v. Suljo Karajić, Case No. X-KRŽ-07/336, Judgment of 28 November 2011, para 307	The Study on Customary International Humanitarian Law made by the International Committee of Red Cross has confirmed this conclusion too. According to the Study, "Serious violations of international humanitarian law constitute war crimes" (Rule 156); "Individuals are criminally responsible for war crimes they commit" (Rule 151); and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects." (Rule 158).							
273	Bosnia and Herzegovina	The Court of Bosnia and Herzegovina, Appellate Division of the War Crimes Section, Prosecutor's Office of Bosnia and Herzegovina v. Boban Šimšić Case No. X-KRZ-05/04, Judgement of 7 August 2007	Page 44: "[...] This conclusion was confirmed by the Study on Customary International Humanitarian Law (Jean-Marie-Henckaens and Louise Doswald-Beck; Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005), produced by the International Committee of the Red Cross. According to the Study, "Serious violations of international humanitarian law constitute war crimes" (Rule 156), "Individuals are criminally responsible for war crimes they commit" (Rule 151), and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects (Rule 158)"							
274	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel, Section I for War Crimes, Prosecutor's Office of Bosnia and Herzegovina v. Zrinko Pinčić, Case No. X-KR/08/502, Judgment of 28 November 2008	p. 19: "This conclusion was confirmed by the Study on Customary International Humanitarian Law conducted by the International Committee of the Red Cross. According to that Study 'serious violations of international humanitarian law constitute war crimes' (Rule 156), 'individuals are criminally responsible for war crimes they commit' (Rule 151) and 'States must investigate war crimes allegedly committed by their nationals or armed forces, or in their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects' (Rule 158)."							
275	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel of the Appellate Division, Prosecutor's Office of Bosnia and Herzegovina v. Marko Radić et al., Case No. X-KR-05-139, Judgment of 9 March 2011	148. Therefore, it is indisputable that crimes against humanity in 1992 were an integral part of customary international law. The Study on Customary International Humanitarian Law of the International Committee of the Red Cross also confirmed this conclusion. 149. According to this Study, "Serious violations of international humanitarian law constitute war crimes" (Rule 156), "Individuals are criminally responsible for war crimes they commit" (Rule 151), and the "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects." (Rule 158).							

276	Bosnia and Herzegovina	Court of Bosnia and Herzegovina, Panel, Section I for War Crimes, Prosecutor's Office of Bosnia and Herzegovina v. Novak Đukić, Case No. X-KR-07/394, Djukic Novak, Judgment of 12 June 2009	Para. 145, with FN 17, Rules 156, 151, 158; Para. 174, with FN 36, Para 193, with FN 52 and 53 (indiscriminate attacks prohibited in IAC and NIAC, reference to Study)			
						https://www.legal-tools.org/doc/2b3320/pdf/
						http://www.sudbih.gov.ba/predmet/
						http://www.sudbih.gov.ba/bundles/
						http://www.sudbih.gov.ba/bundles/
						http://www.worldcourts.com/wcsbil/