

Workshop Report

Customary IHL: Revisiting the ICRC’s Study at 20

Bochum, 18–19 September 2025

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1. Introduction

On 18–19 September 2025, the international academic workshop entitled “*Revisiting Customary IHL: the ICRC’s Study at 20*” was held at Ruhr-University Bochum’s Institute for International Law of Peace and Armed Conflict. The program revolved around central contemporary issues of customary international humanitarian law and attracted between approximately 50 participants on each of the two workshop days.

The event was held on the occasion of the twentieth anniversary of the International Committee of the Red Cross’s (ICRC) *Study on Customary International Humanitarian Law*, which was published in 2005, and which identified 161 rules of customary international humanitarian law (IHL). The Study has since become the most widely relied-upon work of reference for

customary IHL worldwide. It is frequently cited by international and domestic courts, relied upon by States and international organisations, and used extensively by humanitarian practitioners and scholars, as has been examined in 2022 by a study conducted by Marko Milanovic and Sandesh Sivakumaran.¹

The workshop's focus was not merely commemorative. Rather, it sought to reassess the continuing authority, methodological foundations, and political legitimacy of the ICRC Study at a time when the law of armed conflict is subject to increasing strain. These pressures arise both from substantive changes in the conduct of hostilities and from broader scepticism toward international legal constraints and the institutions associated with their articulation.

2. Background

The identification of customary international law is contested across all areas of international law, but the challenges are particularly acute in the field of IHL. Customary IHL applies independently of treaty ratification and therefore often constitutes the only common normative framework binding all parties to an armed conflict. Its practical relevance is correspondingly high in contemporary conflicts, many of which involve non-State armed groups, so-called “hybrid” constellations of violence, or States that contest the applicability or the scope of treaty-based obligations. In this vein, it presents an unresolved issue how exactly non-state armed actors are bound by the rules of IHL, whether they can participate in the development of customs in war, and how the intersection of IHL and international human rights law or international criminal law influences customary IHL.

Despite the contested nature of customary IHL, the ICRC's Study has developed an unprecedented authority in the international community. Since its publication in 2005, the Study has become comparable to an encyclopaedia on customary IHL. It has shaped how the law is understood, operationalised, and taught. It is regularly invoked by international and domestic courts, including the International Court of Justice, international criminal tribunals, and national constitutional or supreme courts. It informs military manuals and legal advice in action, underpins humanitarian advocacy, and serves as a foundational reference point for academic research.

At the same time, the Study has been accompanied from the outset by sustained methodological and doctrinal controversy. Critics have questioned the evidentiary standards applied, the reliance on written and declaratory sources, the treatment of *opinio juris*, the role attributed to international criminal jurisprudence, and the limited engagement with doctrines such as persistent objection and specially affected States. More fundamental concerns have also been raised about the propriety and legitimacy of a non-State actor, such as the ICRC, exercising such significant influence over the identification of customary international law.

¹ Milanovic, Marko & Sivakumaran, Sandesh; Assessing the Authority of the ICRC Customary IHL Study, *International Review of the Red Cross*, Vol. 104, Nr. 920-921, November 2022, [1856–1897].

These doubts regarding the Study have persisted over the past twenty years. And since contemporary armed conflict is increasingly characterised by the use of technology that was unavailable twenty years ago, including the use of drones, cyber operations, and artificial intelligence, by the predominance of non-international armed conflicts, and by a more fragmented and polarised international order, the workshop sought to spark a conversation on adjustments to the Study that might be needed or on areas of improvement. It is clear that, against this background, the accuracy of the rules identified in the Study may have decreased.

The workshop therefore sought to re-examine the ICRC's Study not as a static monument of the post-Cold War legal order, but as a living reference whose legitimacy depends on continued critical engagement and methodological reflection.

3. Target Audience and Objectives of the Workshop

The workshop was designed to foster exchange across academic generations, international legal disciplines, and professional roles. Particular emphasis was placed on the inclusion of early-career researchers, whom the workshop sought to connect and whose work will likely shape future debates on the development of IHL. These scholars often have limited opportunities to engage directly with senior scholars and practitioners in their field in a sustained discussion and open environment.

Participants comprised doctoral and postdoctoral researchers working on IHL, international criminal law, international human rights law, and public international law, as well as senior academics with established expertise in the respective fields. The workshop also included insights provided by practitioners involved in the documentation and dissemination of IHL. In this vein, members of the British and German national Red Cross and Red Crescent Societies presented their work in the collection of State practice to upkeep the Study. The keynote speaker, Jean-Marie Henckaerts, one of the study's co-authors, provided an in-depth overview of how the ICRC conceptualized and conducted the Study. The workshop's target audience went beyond those present, however: The workshop was accompanied by an online symposium,² hosted by two leading international blogs (Articles of War and Völkerrechtsblog) and the workshop's results will be published open access in a special edited volume of the *Cologne Studies on International Peace and Security Law*. Thus, the workshop's results are accessible to its broader target audience: Academics and practitioners working in the field of international humanitarian law.

The main contributions to the workshop were presented in five thematic panels. Each of the first four panels brought together two early-career scholars with one senior academic to discuss their research on certain areas of customary IHL. On the final panel, culminating the

² Available at <https://lieber.westpoint.edu/revisiting-customary-ihl-series-icrcs-study-20/> and <https://voelkerrechtsblog.org/de/symposium/revisiting-customary-ihl-the-icrc-study-at-20/>.

discussions led throughout the two days, four senior experts discussed whether the Study should be renewed. With this approach, the workshop pursued several interrelated objectives:

It aimed, *first*, to critically reassess the authority and continuing relevance of the Study in legal practice and scholarship. *Secondly*, it sought to revisit foundational methodological questions concerning the identification and interpretation of customary IHL. *Thirdly*, it was conceived as a capacity-building exercise, supporting early-career scholars by integrating their research into high-level debates on legal methodology and institutional authority. *Fourthly*, the workshop aimed to contribute to the identification of plausible pathways for the future evolution of customary IHL and areas of improvement for the Study. *Finally*, the workshop aimed to contribute to the study of customary IHL more generally, particularly by making the workshop's results available open access.

5. Substantive Contributions and Synthesis

The following will provide an overview of the arguments presented by each panelist in the order of appearance at the workshop and the synergies and common themes developed and identified throughout of the discussions.

5.1. Introduction: Authority, Legitimacy, and Contestation of the Study

While the Study has become the most influential reference on customary international humanitarian law in judicial practice, military manuals, and scholarship, the participants stressed that this authority is not formal or hierarchical. Rather, it is relational and contingent, continuously reproduced through patterns of reliance by courts, States, and practitioners. Precisely because of its success, the Study has become a focal point for methodological and normative contestation.

The workshop exemplified that the authority of customary international law cannot be secured by insulating it or a reference work (such as the Study) from critique. Instead, its legitimacy depends on sustained engagement with criticism and openness to reassessment in light of changing conflict realities, technological developments, and shifts in the international legal order. This framing set the tone for the workshop by positioning the Study neither as an untouchable codification nor as a failed positivist exercise, but as a living work of reference whose authority must be continuously maintained.

5.2. Evidence, Practice, and Contemporary Conflict

Vincent Widdig focused on the evidentiary foundations of customary IHL in contemporary conflicts. While recognising the Study's practical utility, he argued that its methodology privileges declaratory sources—such as military manuals and official statements—at the expense of operational practice. This imbalance is particularly problematic in non-international armed conflicts, where formal documentation is limited and practice on the ground often diverges from official doctrine. Widdig called for a broader and more nuanced evidentiary

approach, incorporating operational materials, open-source information, and documented patterns of restraint or non-use. He also highlighted the need for more systematic engagement with the conduct and normative commitments of non-State armed groups, given their central role in modern warfare. His contribution underscored that methodological refinement, rather than wholesale revision, is necessary to ensure that customary IHL remains credible and responsive to contemporary conflict realities.

5.3. The Study's Encyclopaedic Value Across (Legal) Disciplines

Nadia Kornioti shifted the focus from doctrinal questions to the Study's broader encyclopaedic and research value. Beyond its role in identifying custom, the Study provides an unparalleled compilation of materials documenting the historical development, semantic evolution, and legal culture of humanitarian norms. Kornioti argued that this dimension is particularly valuable for interdisciplinary research and for understanding how legitimate expectations in IHL are formed over time. By offering a snapshot of customary IHL as understood in its period of development, the Study enables scholars and practitioners to trace normative changes and contextualize them. Kornioti's emphasis on this function of the Study broadens the criteria by which its success and continued relevance could be assessed.

5.4. The Significance of Non-state Armed Groups' Practice

Lizaveta Tarasevich examined the lack of substantial involvement of non-state actors in the development of customary IHL. Tarasevich argued that customary (international) law is, by its nature, inclusive, which presupposes the alignment of its contributors and addressees. From this perspective, she argued that a vertical imposition of customary obligations on actors whose contributions have not been thoroughly considered in the identification process stands in contradiction with the very nature of custom as a source of law. And yet, she observes that there are several examples to support that a vertical imposition of customary obligations on actors other than states is not a theoretical "oddity", but rather a "regularity" within the international legal system. Yet, these actors are considered bound by custom without sufficient explanation, largely due to the indeterminacy of the theory of customary international law. Such unreflective application risks turning customary international law into a weak and incoherent source in Tarasevich's view, especially when actors are bound without contributing to its formation or without a convincing justification for their exclusion. Against this background, Tarasevich criticized the Study for its lack of explanation as to why armed groups are bound by customary IHL despite not being duly considered in the identification process.

5.5. The Underexplored Value in Identifying Unsettled Norms

Mina Radončić advanced the proposal that the Study could enhance its practical and normative value by explicitly identifying areas where customary IHL has not yet crystallised. Using the contested issue of prisoner-of-war status for a state's own nationals as a case study, she demonstrated how legal ambiguity can be exploited to justify restrictive practices with serious humanitarian consequences. Radončić argued that acknowledging unsettled law does not

undermine authority but instead improves legal clarity and protection. By distinguishing between established custom, emerging norms, and unresolved questions, the Study could provide more precise guidance to courts, practitioners, and humanitarian actors, while avoiding the false appearance of consensus. This approach could better reflect the realities of customary law formation and reduce the risk of strategic misuse of alleged custom.

5.6. The Turn to International Human Rights Law and Structural Imbalance

Ilya Ivanov examined the Study's use of human rights as a source of inspiration for certain customary IHL rules. He showed that some rules heavily influenced by human rights concepts appear to be less accepted in the practice of international courts and tribunals, a pattern he attributed to structural differences between IHL and international human rights law (IHRL). Whereas IHL governs relations between parties to a conflict, IHRL structures obligations of states vis-a-vis individuals. Ivanov argued that transposing human rights concepts into IHL without addressing these structural differences reduces normative traction. By contrast, rules grounded in existing IHL provisions—even when extended to new contexts such as non-international armed conflicts—have proven more resilient. His contribution highlighted the importance of methodological restraint and regime sensitivity in any form of progressive development.

5.7. The Influence of International Criminal Law on Customary IHL

Tom Gal addressed the increasingly common practice of treating international criminal law jurisprudence as evidence of the formation of customary IHL. While acknowledging the important role of international criminal tribunals in clarifying IHL rules and strengthening accountability, she cautioned against conflating interpretative authority with evidentiary value for custom formation. Gal emphasised the structural differences between international criminal law and customary international law. Criminal adjudication is retrospective and individualised, whereas custom is prospective, general, and rooted in State practice and *opinio juris*. Overreliance on criminal judgments risks transforming customary IHL into a by-product of adjudication rather than a reflection of decentralized State law-making. She therefore argued for a disciplined approach in which criminal jurisprudence serves as an interpretative aid, but not as a substitute for evidence of State practice. Maintaining this distinction, she stressed, is essential for the methodological integrity and legitimacy of both IHL and international criminal law.

5.8. Specially Affected States and a Calibrated Approach to Weighting Practice

Stanislau Lashkevich revisited the doctrine of specially affected States, which the ICRC Study deliberately downplayed in favour of a universalist methodology. He argued that treating all State practice as equivalent risks obscuring the views of States most exposed to specific rules, particularly in relation to the conduct of hostilities. Proposing a calibrated weighting approach, Lashkevich suggested that the practice and legal positions of States with sustained operational involvement should carry greater evidentiary weight, without amounting to a veto over norm

formation. His case studies on reprisals against civilians and environmental protection demonstrated how this method produces a more candid and legitimate account of where custom is consolidated and where it remains contested. The approach exemplified the workshop's overarching aim: to refine, rather than displace, the methodological foundations of the ICRC Study in order to strengthen its continued authority.

5.9. The Global South in the Development of Customary IHL

Avni Bahri re-centred Global South actors in debates on customary IHL, challenging the assumption that humanitarian norms are primarily shaped by Western state practice and authority. Through a comparative look at India, Colombia, and the African Union, Bahri showed that Global South states actively shape custom through cultural and regional approaches, operational doctrines and traditions. Bahri argued that the focus on Western sources and military manuals distorts what could be a plural and genuinely global normative system. These findings called for scholarly and practical shifts toward interdisciplinary methods, greater attention to regional legal cultures, and a broader evidentiary lens that captures informal and context-specific practices alongside the conventional sources of customary IHL. Such an approach would treat Global South practice as central rather than supplementary. Bahri thus advanced a more inclusive and empirically grounded understanding of customary IHL, which would be essential for its legitimacy and relevance in contemporary as well as future conflict environments.

5.10. Final discussion: Authority and the Risks of Revision

The final expert panel offered a cautious assessment of proposals to publish a new edition of the ICRC Study. Linus Mührel, Panos Merkouris, and Jennifer Maddocks each focused on the Study's authority as the product of several reinforcing factors, including the expertise of its authors, the institutional standing of the ICRC, the inclusiveness of the drafting process, the clarity of its form, and two decades of sustained reliance in practice. Against this background, the panellists soon agreed that reopening the Study's core rules in today's polarized international environment could weaken rather than strengthen its authority. Renewed criticisms, questions on methodological standards, and high political sensitivity around IHL could expose a new edition to significant contestation. It was therefore argued that the ICRC's incremental approach—updating commentaries, issuing thematic studies, and maintaining the practice database—currently offers a more prudent strategy for preserving the ICRC's legitimacy. Nevertheless, the panellists also recognized that this assessment might change. As the Study itself foresaw the possibility that a new edition of the Study may be needed in the future, the panellists encouraged further research into and engagement with customary IHL.

6. Overall Results and Added Value

The workshop produced a set of clear and converging findings regarding the present and future role of the ICRC's Study. Across panels and individual contributions, participants consistently emphasised the Study's standing as an indispensable point of reference for courts, practitioners,

military lawyers, and scholars. Its authority, however, is not self-sustaining. Rather, it depends on continued methodological clarity, disciplined use, and openness about the limits of what can credibly be described as customary law. The workshop underscored that the Study's strength lies not in asserting definitive answers in all areas, but in providing a reliable framework within which legal arguments can responsibly operate.

A second overarching result concerned the question of institutional strategy. While participants widely acknowledged that the Study cannot remain static indefinitely, there was broad consensus that a comprehensive revision or "Study 2.0" would, at present, carry significant risks, likely outweighing benefits. In a highly polarized international environment, reopening foundational questions on methodology could invite renewed State resistance and undermine hard-won acceptance of customary humanitarian norms. Instead, incremental development—through updated commentaries, thematic studies, and the continuous expansion of the online practice database—was identified as the more sustainable path for preserving both the authority of the Study and the credibility of the ICRC as a guardian of IHL.

At the same time, the workshop highlighted that legitimacy in customary international law is enhanced by candour rather than by overstated certainty. Explicitly acknowledging contested areas and unsettled norms was widely seen as a way to strengthen, rather than weaken, the Study's normative impact. By distinguishing between established custom, emerging tendencies, and unresolved questions, the Study can provide clearer guidance to legal practitioners and reduce the risk of strategic misuse of alleged customary norms in armed conflict. This insight represents a significant conceptual contribution to debates on the identification and communication of customary international law.

Beyond its substantive findings, the workshop generated considerable added value in terms of capacity-building and academic networking. Early-career researchers were able to engage directly with senior scholars and practitioners on core methodological questions, strengthening their ability to contribute to high-level debates in the future. The associated online symposium, published across *Völkerrechtsblog* and *Articles of War*, further amplified the workshop's impact by ensuring global accessibility, long-term visibility, and engagement beyond the immediate academic community. This way, the project combined scholarly excellence with broad dissemination.

7. Outlook and Publication

Building on the momentum and intellectual coherence of the workshop, the organisers are currently preparing an edited volume to be published with Nomos Verlag in the *Cologne Studies on International Peace and Security Law*. The volume will bring together revised and expanded versions of the workshop contributions, offering a sustained and systematic reassessment of the ICRC Customary IHL Study on its twentieth anniversary.

Rather than producing a celebratory account, the volume will preserve the workshop's distinctive achievement: a methodologically rigorous, pluralistic, and critically engaged examination of the most influential instrument in contemporary customary IHL. The planned volume will be published in an open access format, making its findings accessible not only to academic audiences but also for practitioners, judicial actors, and institutions involved in the application and development of IHL.

The workshop has also already gained attention across the international legal community. On November 28, 2025, the organisers were invited to present on the topic of "Customary IHL: The ICRC's Study at 20" at the Annual International Humanitarian Law Half-Day Seminar at the Victoria University of Wellington's Faculty of Law. A further event with the United Nations Association of Germany is currently being planned. Overall, the organisers are committed to ensuring that the insights generated over the course of the workshop will have a lasting impact, extending well beyond the event itself and reinforcing the broader objectives of research and dialogue on customary IHL.

Finally, also the intended further collaboration between the Institute for International Law of Peace and Armed Conflict (IFHV) at Ruhr-University Bochum and the Institute for International Peace and Security Law (IIPSL) at the University of Cologne is already bearing fruit: Prof. Claus Kreß has joined Prof. Pierre Thielbörger as one of the editors of the journal *Die Friedenswarte* ("The Peace Watch"). Further cooperation projects are currently being planned.