In addition to treaties [1], rules of IHL can also be found in customary law. Such rules are established by way of repetitive and uniform practice of States involved in armed conflicts or of third States concerning armed conflicts, in the belief that the behaviour that is practiced is obligatory.

Two elements are considered in determining the existence of customary law: practice and *opinio iuris*. Practice refers to State conduct that is consistent (but not necessarily absolutely uniform) over time. *Opinio iuris* is a subjective element, i.e., the belief that that specific pattern of action is required by law.

In the field of IHL, examples of practice include expressions in official statements, military manuals and can also be found in allegations of violations by one state against another state, or in defences against violations. Such practice is particularly relevant because not all States are involved in armed conflicts, and therefore their practice related to IHL will be more readily found in statements and military manuals. In addition, in the case of belligerents, it is difficult to determine the battlefield practice and whether it is accompanied by *opinio iuris*.

In determining the existence of customary IHL, recourse is had to the practice and *opinio juris* of States. Whether the practice and *opinio juris* of other types of actors - such as non-state armed groups [2], international tribunals and international organizations - may also
contribute to custom is controversial.

See Treaties [1];

**OUTLINE**

Chapter 4, II. Customary Law [3]

**DOCUMENTS**

ICRC Customary IHL database [4]

United States Military Tribunal at Nuremberg, United States v. Wilhelm List [5] (para. 3(ii) [8])

ICRC Appeals on the Near East [7]

**CASES**

ICRC, CIHL [8]

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Israel, Cases Concerning Deportation Orders [15] (paras 4-7 [15])

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European Court of Human Rights, Kononov v. Latvia [26]

United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments) [27]

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Links
[1] https://casebook.icrc.org/glossary/treaties
[22] https://casebook.icrc.org/case-study/icty-prosecutor-v-kupreskic-et-al#para_527