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The ICRC study on customary international humanitarian law as viewed through the prism of 14th-18th century jurisprudential thought / Albert Nell

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Abstract:	<p>The editors of the 1995 International Committee of the Red Cross (ICRC) Study on customary international humanitarian law (CIHL) made a methodological decision to prioritize State practice over academic writings. In response, the author focuses on historically significant academic literature in order to reflect upon the historicity and normativity of the Study's proposed rules. The author follows the divisions of Pre-Grotians, Naturalists, Positivists, and Grotians against the backdrop of just war theory, which shaped each paradigm in varying degrees. Within each of these tradition he selects the writers which were the most influential in the formulation of international legal theory as it pertains to the regulation of warfare. He concludes that a comparison of the substantive norms of war offered by these academics with the proposed rules of the ICRC Study strengthens the normative standard of the Study by confirming its historicity. He also identifies certain core rules which have been at the forefront of IHL publications and codifications since the 14th century, such as the rule of distinction between civilians and combatants or the rule of proportionality in attack. [Summary by students at the University of Toronto, Faculty of Law (IHRP)]</p>
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Keyword in English:	ICRC IHL (INTERNATIONAL HUMANITARIAN LAW) CUSTOMARY INTERNATIONAL LAW PRINCIPLES OF IHL SOURCE OF INTERNATIONAL LAW LEGAL WRITING DEVELOPMENT OF THE LAW
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