

Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies

Derek Jinks · Jackson N. Maogoto
Solon Solomon
Editors

Applying International Humanitarian Law in Judicial and Quasi- Judicial Bodies

International and Domestic Aspects



ASSER PRESS



Springer

Editors

Derek Jinks
School of Law
University of Texas
Austin, TX
USA

Solon Solomon
Dickson Poon School of Law
King's College London
London
UK

Jackson N. Maogoto
School of Law
University of Manchester
Manchester, Lancashire
UK

ISBN 978-94-6265-007-7
DOI 10.1007/978-94-6265-008-4

ISBN 978-94-6265-008-4 (eBook)

Library of Congress Control Number: 2014936006

© T.M.C. ASSER PRESS and the authors 2014

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl

Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg
No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work. The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

Contents

1	Introducing International Humanitarian Law to Judicial and Quasi-Judicial Bodies.	1
	Derek Jinks, Jackson Nyamuya Maogoto and Solon Solomon	
Part I The Judicial Factual Expansion of International Humanitarian Law		
2	Applicability Test of Additional Protocol II and Common Article 3 for Crimes in Internal Armed Conflict	31
	Noëlle Quénivet	
3	The Role of the U.S. Judicial Branch During the Long War: Drone Courts, Damage Suits, and Freedom of Information Act (FOIA) Requests	61
	Lesley Wexler	
4	International Humanitarian Law in the Maritime Context: Conflict Characterization in Judicial and Quasi-Judicial Contexts	103
	Rob McLaughlin and Dale Stephens	
5	Domestic Humanitarian Law: Developing the Law of War in Domestic Courts.	133
	Ashley Deeks	
6	The Interaction of the International Terrorism Suppression Regime and IHL in Domestic Criminal Prosecutions: The UK Experience	165
	Kimberley N. Trapp	

Part II The Thematic Expansion of International Humanitarian Law**A. The Interaction of International Humanitarian Law with Psychology**

- 7 **Beyond Life and Limb: Exploring Incidental Mental Harm Under International Humanitarian Law** 185
Eliav Lieblich

B. The Interaction of International Humanitarian Law with Human Rights Law

- 8 **Armed Conflict and the Inter-American Human Rights System: Application or Interpretation of International Humanitarian Law?** 219
Shana Tabak
- 9 **The European Court of Human Right's Engagement with International Humanitarian Law** 257
Samuel Hartridge

C. The Interaction of International Humanitarian Law with Domestic Law

- 10 **The Interaction Between Domestic Law and International Humanitarian Law at the Extraordinary Chambers in the Courts of Cambodia** 289
Patricia Hobbs

Part III The Institutional Expansion: Applying International Humanitarian Law in Domestic Jurisdictions and Quasi-Judicial Bodies

- 11 **Applying the Laws of Armed Conflict in Swiss Courts** 317
Roberta Arnold
- 12 **International Humanitarian Law in the Courts of Australia** 335
Emily Crawford
- 13 ***Aut Deportare Aut Judicare*: Current Topics in International Humanitarian Law in Canada** 355
James Yap

Contents	vii
14 International Humanitarian Law in Indian Courts: Application, Misapplication and Non-application	389
Chintan Chandrachud	
15 Interpretations of IHL in Tribunals of the United States	415
Michael W. Lewis and Peter Margulies	
16 The International Commission of Inquiry on Darfur and the Application of International Humanitarian Norms	451
Makane Moïse Mbengue and Brian McGarry	
17 The <i>Mavi Marmara</i> Incident and the Application of International Humanitarian Law by Quasi-Judicial Bodies	479
Russell Buchan	
Index	505