

SUB Hamburg



A/571123

International Civil Tribunals and Armed Conflict

By

Michael J. Matheson

MARTINUS
NIJHOFF
PUBLISHERS

LEIDEN • BOSTON
2012

Contents

Table of Cases	ix
Preface	xiii

Part One

The Involvement of International Civil Tribunals in Armed Conflict

Chapter One The Role of International Civil Tribunals	3
1.1. Purposes Served	5
1.2. Difficulties Encountered	9
Chapter Two Prior Cases Concerning Armed Conflict	13
2.1. Arbitrations during the 19th Century	13
2.2. The Hague Peace Conferences	16
2.3. The Post-World War I System	19
2.4. The Post-World War II System	23
2.5. Initial ICJ Cases Involving Armed Conflict	28
2.6. Assessment	30
Chapter Three Involvement of Civil Tribunals in the Current Period	33
3.1. The Central American Conflict	33
3.2. The Iran-Iraq War	36
3.3. The Gulf War	39
3.4. The Conflict in Yugoslavia	41
3.5. Territorial Disputes	48
3.6. The Conflict in the Congo	50
3.7. The Eritrea-Ethiopia Conflict	53
3.8. The Arab-Israeli Conflict	55
3.9. The Conflict in Sudan	57
3.10. The Conflict in Georgia	58

3.11. Italian Suits against Germany	59
3.12. Use of Nuclear Weapons	60
3.13. Assessment	61

Part Two

The Process of Deciding Cases Involving Armed Conflict

Chapter Four Jurisdiction	65
4.1. The International Court of Justice	66
4.1.1. Declarations under Article 36(2)	67
4.1.2. Treaty Provisions Consenting Generally to the Court's Jurisdiction	73
4.1.3. Treaty Provisions Consenting to Jurisdiction over Disputes under That Treaty	74
4.1.4. Cases Brought with the Specific Consent of the Parties to the Dispute	83
4.1.5. Advisory Cases	84
4.2. Other Tribunals	87
4.2.1. The UN Compensation Commission	87
4.2.2. The Eritrea-Ethiopia Claims Commission	88
4.3. Assessment	91
Chapter Five Admissibility	95
5.1. Objections to Claims	96
5.2. Objections to Counter-Claims	104
5.3. Advisory Cases	108
5.4. Assessment	114
Chapter Six Provisional Measures	117
6.1. The Framework for Provisional Measures	118
6.2. Types of Provisional Measures	126
6.3. Relationship to Political Processes	136
6.4. Assessment	145
Chapter Seven Determining the Facts on the Merits	149
7.1. The Burden and Standard of Proof	151
7.2. Forms of Evidence	159
7.3. Reliance on Other Fact-Finders	173
7.4. Independent Tribunal Fact-Finding	179
7.5. Assessment	182

Chapter Eight Adjudicating the Law on the Merits	185
8.1. Contentious Cases	186
8.2. Advisory Cases	194
8.3. Articulation of the Law	197
8.4. What Substantive Issues the Tribunal Addresses	198
8.5. Interaction among Tribunals	201
8.6. Interaction with Non-Judicial Organs	204
8.7. Assessment	209

Chapter Nine Determining Relief	211
9.1. Legal Findings	213
9.2. Remedial Actions	218
9.3. Compensation	224
9.4. Assessment	244

Part Three

Substantive Law Concerning Armed Conflict

Chapter Ten Resort to Force	249
10.1. Response to Attacks by the Forces of Another State	251
10.2. Support or Tolerance of Non-State Groups	256
10.3. Collective Response to Attacks	262
10.4. Necessity and Proportionality in the Use of Force	264
10.5. Involvement of the Security Council	271
10.6. Issues Not Decided	273
10.7. Assessment	279

Chapter Eleven Law of Armed Conflict	281
11.1. Applicability of Agreements	282
11.2. Conduct of Military Operations	289
11.3. Treatment of Persons	295
11.4. Responsibility for the Actions of Others	306
11.5. Assessment	310

Chapter Twelve Application of Other Legal Norms	313
12.1. Genocide	314
12.2. Human Rights Obligations	323
12.3. Protection of Diplomats	332
12.4. Commercial Agreements	336
12.5. Assessment	339

Chapter Thirteen Territorial Status	341
13.1. Secession	341
13.2. Territorial Claims	345
13.3. Occupied Territory	350
13.4. Assessment	362
Conclusion	363
Selected Bibliography	371
Index	381