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978-1-107-10205-7 - Inducing Compliance with International Humanitarian Law:

Lessons from the African Great Lakes Region

Edited by Heike Krieger

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## INDUCING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW

The number of armed conflicts featuring extreme violence against the civilian population in areas with no or little State authority has risen significantly since the early 1990s. This phenomenon has been particularly prevalent in the African Great Lakes Region.

This collection of essays evaluates from an interdisciplinary perspective the various traditional and alternative instruments for inducing compliance with international humanitarian law. In particular, it explores the potential of persuasion as well as hierarchical means, such as criminal justice on the international and domestic level or quasi-judicial mechanisms by armed groups. Furthermore, it evaluates the role and potential of human rights bodies, peacekeeping missions and the UN Security Council's special compliance system for children and armed conflicts. It also considers how both Common Article 1 to the Geneva Conventions and the law of State responsibility could potentially increase compliance with international humanitarian law.

HEIKE KRIEGER is Professor of Public International Law at the Freie Universität Berlin. Between 2007 and 2014, she acted as Judge at the Constitutional Court of the State of Berlin.

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Edited by

HEIKE KRIEGER

Assistant editor

JAN WILLMS



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## PREFACE

At the time of finalizing this book, the focus of the international community has turned to the ongoing conflict in Syria. There are widespread violations of international humanitarian law committed by State and non-State actors. This book is intended to shed some light on the methods for inducing compliance with international humanitarian law in war-torn areas of limited statehood. While focusing on the African Great Lakes Region, the book's conclusions will hopefully contribute to a better understanding of compliance mechanisms for conflicts between State and non-State actors in other regions as well.

The book is part of a broader research project on compliance with international humanitarian law in areas of limited statehood. The project forms part of the Collaborative Research Center 700 at the Freie Universität Berlin – a coordinated research programme funded by the German Research Foundation (DFG). The Center focuses on the questions as to how effective and legitimate governance can be sustained in areas of limited statehood and which problems emerge under such conditions.

The volume is conceived as an edited collection because improving compliance with international humanitarian law requires an exchange of ideas and experiences between lawyers, social scientists and practitioners. A profound understanding of the reasons why armed groups and States' armed forces commit acts of violence against the civilian population is an important basis for evaluating the efficiency and legitimacy of the norms of international humanitarian law and for considerations of legal policy. On the other hand, legal analysis helps political scientists to apply the appropriate variables in their empirical research. For the book's coherence, the authors participated in a workshop, 'Enforcing International Humanitarian Law in Contemporary African Conflicts', which was funded by the DFG and the German Foundation for Peace Research (DSF).

As the editor I am grateful to the authors of the volume for engaging with the project, participating in the workshop and contributing to

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PREFACE

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the book. The volume profited from the help and support of a number of people working at the Research Center and the law faculty of the Freie Universität Berlin. Special thanks are due to my assistant editor, Jan Willms, for his commitment and diligent work. My research assistants Björnstjern Baade, Anna Dieter, Anna Hankings-Evans, Linus Mührel, Yasemin Skowronek and Sebastian Walther conformed the text and the footnotes to the style guide. Anton Petrov and Moritz Thörner prepared the index. Kirsten Leube and Antonina Sanchez helped with the English language: thank you all for your work! Finally, I am grateful to Elizabeth Spicer and Richard Woodham at Cambridge University Press for their advice and support.

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African Charter on Human and Peoples' Rights, Banjul, 27 June 1981, in force 21 October 1986, OAU Doc. CAB/LEG/67/3 rev.5; (1982) 21 I.L.M. 58 (African Charter)

American Convention on Human Rights, San José, 22 November 1969, in force 18 July 1978, 1144 U.N.T.S. 123 (ACHR)

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Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, in force 26 January 1910, 3 Martens Nouveau Recueil (ser. 3) 461 (Hague Regulations)

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, entry into force 3 September 1953, E.T.S. No. 5 (European Convention on Human Rights, ECHR)

Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948, in force 12 January 1951, 78 U.N.T.S. 277 (Genocide Convention)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Oslo, 18 September 1997, in force 1 March 1999, 2056 U.N.T.S. 211

Convention on the Rights of the Child, New York, 20 November 1989, in force 2 September 1990, 1577 U.N.T.S. 3 (CRC)

Convention on the Safety of United Nations and Associated Personnel, New York, 9 December 1994, in force 15 January 1999, 2051 U.N.T.S. 391 (Safety Convention)

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 26 November 1987, in force 1 February 1989, C.E.T.S. No. 126



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- Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Geneva, 12 August 1949, in force 21 October 1950, 75 U.N.T.S. 85 (Geneva Convention II, GC II)
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- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977, in force 7 December 1978, 1125 U.N.T.S. 609 (Additional Protocol II, AP II)
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- Statute of the International Criminal Court, Rome, 17 July 1998, in force 1 July 2002, 37 I.L.M. 1002 (ICC Statute)
- Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, in force 27 January 1980, 1155 U.N.T.S. 331