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International humanitarian law in the maritime context : conflict characterization in judicial and quasi-judicial contexts / Rob McLaughlin and Dale Stephens

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Abstract:	<p>The development and application of modern international humanitarian law to the maritime environment has a considerably long pedigree, going back at least to the nineteenth century. The invocation of this body of law is frequent and is applied in highly calibrated ways by numerous States, particularly in recent times and especially by those States possessing 'blue water' Navies. Notwithstanding this considerable practice, international Judicial bodies such as the ICJ have been extremely resistant to exploring, applying or even opining on this volume of law, even in cases where such issues are squarely presented. It is unclear why this is so, especially given the recent growth of jurisprudence and scholarship on IHL in the land context. This article explores the opportunities presented to the ICJ to deal with this body of law and compares this nugatory experience with the role of quasi-judicial bodies that were commissioned in the wake of the 'Flotilla incident of 10 May 2010' where there was deep attention paid to issue of maritime IHL. The various Commissions of Inquiry in that instance were compelled to tackle key IHL issues in the maritime context and provided a valuable insight into the interpretation of this law, even if the outcomes reached resulted in widely divergent trajectories of reasoning. It is likely that this experience will provide fertile ground for international judicial machinery to draw upon in years to come. The analysis will encompass the issue of characterization of conflict, the challenges associated with particular problems of the law of blockade, the use of force, international human rights and the law-policy interface. It will also examine the methodologies employed and will touch on the nature of the liberal promise of invoking law to regulate violence in armed conflict.</p>
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