

# Contents

<i>Table of cases</i>	xiii
<i>Table of treaties</i>	xix
<i>About the authors</i>	xxv
Introduction: The Development and Significance of the Additional Protocols	1
The aim of the book	5
1. The Scope of Application of the Three Additional Protocols	7
Introduction	7
The scope of application of the Additional Protocol I	7
Material scope of application	8
Geographical scope of application	15
Temporal scope of application	15
The scope of application of the Additional Protocol II	16
The existence of a non-international armed conflict	16
The additional criteria under the Additional Protocol II	20
Geographical scope of application	22
Who is bound by the Additional Protocol II?	22
Temporal scope of application	24
The scope of application of the Additional Protocol III	25
Concluding remarks and outlook	25
2. Fundamental Guarantees	26
Introduction	26
The prohibition of murder	28
The prohibition of denial of quarter	31
The prohibition of torture and other ill-treatment	31
The principle of non-discrimination	33
The prohibition of enslavement	34
The prohibition of collective punishment	36
The prohibition of hostage-taking	37
Fair-trial rights	38
Concluding remarks and outlook	39
3. The Protection of Women	41
Introduction	41
The prohibition of sexual violence in international humanitarian law	42
The prohibition of sexual violence under international criminal law	44
Sexual and gender-based violence as a war crime	45
Sexual and gender-based violence as a crime against humanity	46
Sexual and gender-based violence as genocide	48
Women and the death penalty	48
Concluding remarks and outlook	49



4. The Protection of Children	51
Introduction	51
Child recruitment and use in hostilities	51
The legal situation under international humanitarian law	51
The legal situation under human rights law	60
Child protection in armed conflict	62
The prohibition of the death penalty for child offenders	66
Concluding remarks and outlook	67
5. Protection of Detainees and Prisoner-of-War Status	68
Introduction	68
Detention in international armed conflict	69
The protection of civilian detainees	70
The death penalty	71
The duty and nature of humane treatment	72
The treatment of detained combatants	73
The right to POW status	77
Release and return of POW	82
Detention in non-international armed conflict	85
Arbitrary deprivation of liberty	85
The duty of humane treatment	86
Concluding remarks and outlook	88
6. Relief Operations	89
Introduction	89
The trigger for humanitarian relief operations	90
Consent to humanitarian relief operations	93
Implementation of relief operations and protection of humanitarian personnel	96
International criminal law	98
Armed non-State actors' perspectives on humanitarian relief operations	99
Concluding remarks and outlook	101
7. The Distinctive Emblems	102
Introduction	102
A brief (tormented) history of the emblems	104
The protective functions of the distinctive emblems	108
The indicative functions of the emblems	110
Misuse of the emblems	111
Concluding remarks and outlook	112
8. The Rule of Distinction (Objects)	113
Introduction	113
The definition of 'civilian object' and 'military objective'	114
The 'nature' of an object	115
The 'location' of an object	115
The 'use' of an object	117
The 'purpose' of an object	119
The requirement of definite military advantage	120
Civilian objects	121
The principle of distinction	122
Special protection of hospitals	126



Special protection of cultural property	128
Special protection of installations containing dangerous forces	130
Concluding remarks and outlook	131
9. The Rule of Distinction (Persons)	132
Introduction	132
The definition of 'combatant' and 'civilian'	134
The definition of combatant	134
The definition of a civilian	139
The principle of distinction	140
Indiscriminate attacks	145
Loss of protection from attack as a consequence of direct participation in hostilities	147
Concluding remarks and outlook	149
10. The Rule of Proportionality	151
Introduction	151
The treaty rules of proportionality in attack	152
Proportionality in attack under general international law	155
The interpretation and application of the rule	157
The war crime of disproportionate attacks	160
Disproportionate attacks affecting the natural environment	165
Concluding remarks and outlook	169
11. Precautions in Attack and Defence	170
Introduction	170
Precautions in attack	172
The duty to verify a target is a lawful military objective	172
The duty to choose and use weapons and methods of attack with a view to minimising civilian harm	174
The duty to give an effective warning to civilians of an attack	176
Precautions in defence	177
The duty to remove civilians from the vicinity of military objectives	178
The duty to locate military objectives away from densely populated areas	179
Concluding remarks and outlook	180
12. Prohibited Weapons	182
Introduction	182
The right of parties to use weapons is not unlimited	183
Weapons of a nature to cause superfluous injury	185
Inherently indiscriminate weapons	191
Weapons that may be inherently indiscriminate	194
Weapons causing widespread, severe, and long-term damage to the environment	202
Prohibited means and methods of warfare	203
The legality of weapons must be verified	204
Concluding remarks and outlook	206
13. Terrorism and Acts of Terror	207
Introduction	207
Measures and acts of terrorism	209



Acts of violence intended to terrorise the civilian population	211
Terrorising civilians as a war crime under customary law	213
The definition of terrorism under international law	215
Threats to terrorise the civilian population	217
Counterterrorism operations	218
Concluding remarks and outlook	222
14. Starvation and Sieges	223
Introduction	223
The legality of sieges under international humanitarian law	225
The prohibition on starvation of civilians as a method of warfare	230
Concluding remarks and outlook	232
15. Reprisals	233
Introduction	233
The definition of reprisals and their exercise under customary law	235
Reprisals under the 1949 Geneva Conventions	236
Reprisals under the 1977 Additional Protocol I	240
Reprisals in non-international armed conflict	243
Reprisals and defences to war crimes charges	245
Concluding remarks and outlook	246
16. National Implementation	247
Introduction	247
The duty to adopt national implementing legislation	249
The duty to disseminate international humanitarian law	252
Orders to armed forces	254
Legal advisers in the armed forces	255
Duty to investigate possible breaches	256
Duty to suppress breaches of international humanitarian law	258
Concluding remarks and outlook	259
17. Application and Implementation by Armed Non-State Actors	260
Introduction	260
Armed non-State actors under the 1977 Additional Protocol I	263
Armed non-State actors under the 1977 Additional Protocol II	266
The problematic absence of a definition of ‘organized armed groups’	267
Core rules and noteworthy normative silences	269
Armed non-State actors under customary international humanitarian law	271
Challenges	272
Lack of compliance	272
The counterterrorism narrative	273
Concluding remarks and outlook	274
18. Application of International Humanitarian Law to United Nations Operations	276
Introduction	276
When do United Nations forces become party to an armed conflict?	277
What rules apply to United Nations forces that are party to an armed conflict?	281
Implementation of international humanitarian law rules binding United Nations forces	284
Concluding remarks and outlook	286



19. International Criminal Law	287
Introduction	287
War crimes in the conduct of hostilities	290
The war crime of attacking civilians	290
The war crime of disproportionate attacks affecting civilians	291
The war crime of attacking a person <i>hors de combat</i>	293
The war crime of making perfidious use of the red cross or red crescent emblems	295
Other war crimes	296
The war crime of unjustifiable delay in the repatriation of prisoners of war	296
The war crime of an unfair trial	298
Alleged war crimes	299
Concluding remarks and outlook	300
20. The Role of the International Committee of the Red Cross	301
Introduction	301
The humanitarian activities of the International Committee of the Red Cross under international humanitarian law	303
The action of the International Committee of the Red Cross in ‘other situations of violence’	306
Controversies and challenges	308
Concluding remarks and outlook	310
<i>Bibliography</i>	313
<i>Index</i>	333