Detailed Contents

V
ix
xix
xxxi
1
2
2
5
9
of
10
10
12
to
14
16
nst
18
20
22
22
e
24
26
29
21
flict 33
flict 33 35

xiv Detailed Contents

	III	States of Emergency and Terrorist Threats					
		A	Distinguishing a State of Emergency from a State of				
		_	Necessity	42			
		В	States of Emergency under Human Rights Treaties	43			
			i The Scope of the Notion of States of Emergency	44			
			ii The Proportionality Test to Assess Derogations	47			
			iii Non-derogable Rights	48			
			iv Procedural Obligations	51			
		C	Interrelationship between Applicable Rules of IHL and				
			Human Rights Law During States of Emergency	53			
	IV	Co	onclusion	54			
2.	Int	ern	ational Armed Conflicts	55			
	T	Inf	troduction	55			
			e Traditional Paradigm: the Geneva Conventions and				
			dditional Protocol I	58			
		Α	The Armed Conflict Requirement	64			
			State Involvement	66			
	III		ecent practice	73			
		A	Extraterritorial Enforcement Operations and Uses of				
			Force in Situations Short of Armed Conflict	73			
		B	Use of Armed Force in a Foreign State's Territory not				
			Controlled by that State	77			
		C	Occupation	82			
	IV	Co	onclusion	87			
3.	No	n-iı	nternational Armed Conflicts	94			
	т	Tool	tro du ation	94			
		Introduction The Changing Context of Internal Violence and the Use of					
	11		rrorism by Non-state Actors	96			
	III		ommon Article 3 of the Geneva Conventions of 1949	102			
			Scope of Application	102			
			The Drafting History of Common Article 3	104			
			The Definition of Armed Conflict in the Geneva	101			
			Convention's Preparatory Works	108			
		D	The Tadić Criteria for Armed Conflict and their Influence				
			on Subsequent Practice	110			
		E	Interpretation of Common Article 3 by the United States				
			Supreme Court in Hamdan	118			

		F	The Use of Force by Organs of the State as a Means to Distinguish Armed Conflict	126
		G	'International Concern' as a Criterion for Establishing	
			an Armed Conflict	129
		Η	The Interpretation of the Scope of Application of Common Article 3 and its Underlying Stakes Minimum Standards of Humanity Applicable in all	132
			Circumstances	134
	IV	Ac	Iditional Protocol II Armed Conflicts	148
			Material Field of Application Scope of Application of Article 1(1)	148151
			 i A Conflict Involving the Armed Forces and Dissident Armed Forces or other Organised Armed Groups ii The Requirement of Responsible Command iii The Requirement to Control Territory iv The Requirement for Military Operations to be 'Sustained' v The Ability to Implement Humanitarian Protections 	151 152 153 154
		C	Practice	155
			i Chechnya ii Colombia	156 159
			iii Conclusions	163
4.	Co	ndı	ct of Hostilities and Terrorist and Counter-terrorist Acts	164
	I	Ba	sic Rules and Principles of the Law of The Hague	166
		A	Status of Unprivileged Combatants	169
	II	Me	eans and Methods of Warfare	174
			Means of Warfare	174
			Methods of Warfare	176
	III		otection of the Civilian Population	178
		A	Immunity of the Civilian Population from Attack	178
			i Direct Participation in Hostilities ii Applying the Principle of Distinction to Non-State	179187
			Actors iii Weapon Technology: 'Non-lethal' Weapons and the Use of Drones in Counter-terrorist Operations	188
		В	Definition of Military Objective and the Principle of	
			Proportionality	191
			Prohibition of Attacks Intended to Spread Terror Terrorism vs Guerrilla Warfare	196 199

xvi Detailed Contents

			Prohibition of Using Civilian Shields Precautionary Measures	201				
	IV		eciprocity	204				
5.		ndividual Criminal Responsibility for Acts of Terror or errorism						
	rer			208				
	1		rrorism as a War Crime	209				
			Historical Background The Recognition of Terrorism as a War Crime	209				
		C	Post-Nuremburg The Calif Indoments of the ICTV	214 215				
			The Galić Judgments of the ICTY The Trial Chamber Indoment					
			i The Trial Chamber Judgmentii The Appeals Chamber Judgment	215 220				
		D	Assessing the <i>Galić</i> Precedent in Terms of its					
			Determination of Customary International Law	222				
			The Meaning of 'Terror'	224				
		F	Jurisprudence of the Special Court for Sierra Leone	228				
			i Brima, Kamara and Kanu Judgments (AFRC Case)	228				
			ii Fofana and Kondewa Judgments (CDF Case)iii The Sesay, Kallon and Gbao Judgments (RUF Case)	233237				
		C	The US Military Commission Act	242				
	TT			247				
	11		rrorism as a Crime Against Humanity	247				
			Historical Background Elements of the Crime and the Meaning of a	249				
		_	'Widespread or Systematic Attack'	252				
		C	The Requirement of an Attack upon the 'Civilian					
			Population'	255				
	III	Te	rrorism as Genocide	257				
		A	The Use of Terror to Commit Genocide	257				
			rrorism as a Crime of Aggression	261				
	V		rrorism as an International Crime per se	263				
		A	Rationale for International Terrorism to be Recognised	200				
		B	as a Discrete International Crime Definition of International Terrorism	266 269				
		D	i Generic versus Enumerated Acts Approach	270				
			ii The Requirement of an 'International' Element	273				
			iii Whether a Political Motive is Relevant	275				
			iv The Relationship with International Humanitarian Law	278				
		C	International Terrorism as a Crime under Customary					
			International Law	281				

Sta	f110	D_{ϵ}	Detailed Contents etention and Treatment of Terrorist Suspects	286
T		atus		286
1	A	Co	ombatants vilians	287 294
II	Sta	atus	upon Capture	294
			isoners of War vilian Detainees and Internees	294 301
		i ii	International Armed Conflict (IAC) Non-international Armed Conflict (NIAC)	301
III	Tr	eat	ment/Detention	304
	A	A	prehension and Arrest	304
			Prisoners of War Civilian Detainees and Internees	304 305
	B	Tra	ansfer	305
			Prisoners of War Civilian Detainees and Internees	306 308
			a IAC b NIAC	308 311
IV	De	eten	ation	317
	A	Gr	ounds for Detention	317
			Prisoners of War Civilian Detainees and Internees	319 326
			a IAC b NIAC	326 329
	В	Tre	eatment While Detained	335
		i	Prisoners of War	336
			a General Rules on Treatmentb Rules on Interrogationc Judicial Proceedings	336 338 344
		ii	Civilian Detainees and Internees	346
			a IAC	346
			 1 General Rules on Treatment 2 Rules on Interrogation 3 Judicial Proceedings 	346 357 357
			b NIAC	359

1 General Rules on Treatment

2 Rules on Interrogation

359

361

xviii Detailed Contents

				3 Judicial Proceedings	362
		C	Er	nd of Detention/Repatriation	367
				Prisoners of War Civilian Detainees and Internees	367 370
				a IAC b NIAC	370 370
	V	Co	ncl	uding Remarks	371
7.		1		Revision of IHL for the Regulation of Terrorism and	
	Terrorist Acts			374	
Inc	Index			391	