CONTENTS

xii

Acknowledgements

	List of abbreviations and acronyms xiv
	Introduction 1
1	Towards a workable definition of internal armed conflicts 5 1 Establishment of an armed conflict 6 1.1 Definition of armed conflicts in international treaties 7 1.2 Definition of armed conflicts in international case law 9 2 International and internal armed conflicts 13 2.1 Recognition of belligerency 14 2.2 Wars of self-determination 14 2.3 Foreign intervention in internal armed conflicts 15 2.4 UN intervention in internal armed conflicts 19
2	The laws of war applicable in internal armed conflicts 32 1 The laws of war applicable in internal armed conflicts before 1949 1.1 The laws of war and internal armed conflicts prior to the twentieth century 33 1.2 The laws of war and internal armed conflicts at the beginning of the twentieth century 37
	 2 Treaty law applicable in internal armed conflicts after 1949 2.1 Adoption and content of common Article 3 of the 1949 Geneva Conventions 39 2.2 Adoption and content of Additional Protocol II to the 1949 Geneva Conventions 43 2.3 Other relevant treaties 47 3 Customary laws of war applicable in internal armed conflicts
	in the twenty-first century 49 3.1 Introduction 49

	3.2 Common Article 3 and Additional Protocol II as customary international law 51		
	3.3 Customary international law and the particularities of the laws of armed conflicts 54		
	3.4 The protection of civilians from the effects of hostilities 3.4.1 Practice of belligerents during internal armed conflicts 3.4.2 Practice of third states and international organisations 61	57	
	3.5 The means of warfare prohibited in internal armed conflicts 3.5.1 Practice of belligerents during internal armed conflicts 3.5.2 Practice of third states and international organisations 4 Conclusion 73		
3	The regime of war crimes 104		
	 1 The customary right to try belligerents for violations of the laws of war: brief historical survey 104 2 The current regime of war crimes committed in international 		
	armed conflicts 107		
	3 The extension of the concept of war crimes to internal armed conflicts: some conceptual issues 110 3.1 Nexus between the crime and the armed conflict 110		
		111	
	 3.2 Potential perpetrators of war crimes 115 3.3 Categories of victims of war crimes 117 3.4 How can rebel forces be bound by the laws of war in internal armed conflicts? 119 3.5 Conclusion 121 		
4	Individual criminal responsibility for war crimes committed in internal armed conflicts 131		
	1 International treaties and the principle of individual criminal responsibility for war crimes committed in internal armed conflicts 133		
	 1.1 The statutes of the two ad hoc International Criminal Tribunals 134 1.1.1 The statute of the International Criminal Tribunal 		
	for the former Yugoslavia 134 1.1.2 The statute of the International Criminal Tribunal for		
	Rwanda 136 1.2 The statute of the International Criminal Court 138		

CONTENTS

	1.3	The s	statute o	f the Special Court for Sierra Leone	144
	1.4	Othe	r treaties	s 147	
2	2 Customary international law and the principle of individual				
	criminal responsibility for war crimes in internal				
	armed conflicts 148				
	2.1	Pract	ice of sta	ates 150	
		2.1.1	Nationa	al legislation, criminal codes and military	
			manual	s 150	
			2.1.1.1	National legislation implementing the 19	949 Geneva
				Conventions and the 1977 Additional	
				Protocols 151	
			2.1.1.2	Military manuals 154	
			2.1.1.3	National legislation implementing Secur	ity Council
				resolutions establishing the ICTR	
				and the ICTY 155	
			2.1.1.4	National legislation implementing the sta	atute of an
				International Criminal Court 157	
			2.1.1.5	Conclusion 160	
		2.1.2	Declara	tion of states 161	
				Unilateral declarations of states during d	ebates in th
				Security Council 161	
			2.1.2.2	Declarations of states during the Rome d	liplomatic
				conference on the ICC 162	
		2.1.3		option of multilateral treaties as evidence	of state
			practice		
	2.2			ternational organisations 166	7.
				curity Council resolutions 166	
		2.2.2		neral Assembly resolutions and Secretary-	General
		2 2 2	reports		
	2.2		_	actice of the European Union 169	
2			clusion	170	170
3	1 er	itative	e list of w	var crimes in internal armed conflicts	172
N	atio	onal 1	prosecu	itions of war criminals and interna	1
		-	nflicts	216	
				tion and war crimes in international law	218
_			•	isdiction over war crimes in international	
			,	orical background and contemporary	
			cations	221	
	1.2			diction provided in international	
			•	ar crimes committed in internal armed	
		confl		224	

War crimes committed in internal armed conflicts and the principle				
of universal jurisdiction under customary law 227				
2.1 Practice of states: national legislation and criminal codes				
2.1.1 National legislation implementing the 1949 Geneva				
Convention and Additional Protocols as well as domestic				
criminal codes 228				
2.1.2 National legislation implementing the Rome statute for an				
International Criminal Court 230				
2.2 Practice of international organisations and judicial				
institutions 236				
2.2.1 The UN Security Council 236				
2.2.2 The ICJ and the DRC v. Belgium case 237				
2.2.3 The Lomé Accord Amnesty decision of the Special Court fo				
Sierra Leone 241				
2.3 The exercise by domestic courts of universal jurisdiction over w				
crimes committed in internal armed conflicts 243				
2.3.1 Austria 243				
2.3.2 Belgium 245				
2.3.3 Denmark 247				
2.3.4 France 247				
2.3.5 Germany 249				
2.3.6 The Netherlands 251				
2.3.7 Switzerland 252				
2.4 Conclusion 253				
Prosecutions of war criminals by the domestic courts of war-torn				
countries 256				
3.1 Bosnia-Herzegovina 256				
3.2 Cambodia 259				
3.3 Croatia 261				
3.4 East Timor 263				
3.5 Ethiopia 265				
3.6 Indonesia 265				
3.7 Iraq 266				
3.8 Kosovo 267				
3.9 Russia 269				
4 Conclusion: domestic v. foreign prosecutions 270				
International prosecutions of war criminals and				

6 International prosecutions of war criminals and internal armed conflicts 317

1 The ad hoc International Criminal Tribunals as a means of enforcing individual responsibility for war crimes committed in internal armed conflicts 318

CONTENTS

	1.1 The contributions of the International Criminal Tribunals in the
	enforcement of individual responsibility for war crimes in internal
	armed conflicts 319
	1.1.1 The definition of internal armed conflict in the case law of the
	Tribunals 320
	1.1.2 The constitutive elements of war crimes in internal armed
	conflicts 322
-	1.1.3 List of war crimes in internal armed conflicts 325
	1.1.4 Prosecuting war crimes 326
	1.2 The limitations of the International Criminal Tribunals in the
	enforcement of individual responsibility for war crimes in internal
	armed conflicts 328
	1.2.1 The case law of the Tribunals: constructive interpretation or
	faithful determination of the content of customary
	international law? 328
	1.2.2 Issues of co-operation 333
	1.2.3 The legacy of the international tribunals: failings and
	achievements 336
	2 The International Criminal Court as a means of enforcing individual
	criminal responsibility for war crimes committed in internal armed
	conflicts 339
	2.1 The jurisdiction ratione materiae of the International Criminal
	Court 340
	2.2 The establishment of the jurisdiction of the International Criminal
	Court 341
	2.2.1 Preconditions for the exercise of the ICC jurisdiction 342
	2.2.2 The exercise of jurisdiction by the court 344
	2.2.3 Issues of admissibility: the principle of
and the state of	complementarity 347
	2.3 Co-operation between national courts and the International
	Criminal Court 349
	2.3.1 The forms of co-operation between the states and the
	ICC 349
	2.3.2 Consequences of failure to co-operate with the court 350
	2.3.3 Limits on the obligation to co-operate 351
	2.4 Conclusion and assessment of the first four years of the life
	of the International Criminal Court 354
	Concluding remarks 380
	Select hibliography 397
	Select bibliography 387
	Index 412