CONTENTS

Acknowledgements xii
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 33
    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 39
    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
null
## Contents

1.3 The statute of the Special Court for Sierra Leone 144
1.4 Other treaties 147

2 Customary international law and the principle of individual criminal responsibility for war crimes in internal armed conflicts 148
2.1 Practice of states 150
   2.1.1 National legislation, criminal codes and military manuals 150
      2.1.1.1 National legislation implementing the 1949 Geneva Conventions and the 1977 Additional Protocols 151
      2.1.1.2 Military manuals 154
      2.1.1.3 National legislation implementing Security Council resolutions establishing the ICTR and the ICTY 155
      2.1.1.4 National legislation implementing the statute of an International Criminal Court 157
      2.1.1.5 Conclusion 160
   2.1.2 Declaration of states 161
      2.1.2.1 Unilateral declarations of states during debates in the Security Council 161
      2.1.2.2 Declarations of states during the Rome diplomatic conference on the ICC 162
   2.1.3 The adoption of multilateral treaties as evidence of state practice 165
2.2 Practice of international organisations 166
   2.2.1 UN Security Council resolutions 166
   2.2.2 UN General Assembly resolutions and Secretary-General reports 168
   2.2.3 The practice of the European Union 169
2.3 Conclusion 170

3 Tentative list of war crimes in internal armed conflicts 172

5 National prosecutions of war criminals and internal armed conflicts 216
1 Universal jurisdiction and war crimes in international law 218
   1.1 Universal jurisdiction over war crimes in international armed conflicts: historical background and contemporary applications 221
   1.2 Title of jurisdiction provided in international treaties for war crimes committed in internal armed conflicts 224
2 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 228

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 for Sierra Leone 241

2.3 The exercise by domestic courts of universal jurisdiction over war 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

3 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

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 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 bibliography* 387  
*Index* 412