

Contents

<i>Foreword by Ambassador Thomas Greminger</i>	<i>page</i> xv
<i>Preface</i>	xvii
Introduction	1
I.1 Who are ‘Civilians’?	2
I.2 What is ‘Protection’?	6
I.3 Who Protects Civilians?	10
I.4 A Brief History of the Protection of Civilians	11
PART I THE INTERNATIONAL LEGAL FRAMEWORK	17
1 Jus ad Bellum and the Protection of Civilians	19
1.1 Introduction	19
1.2 The General Prohibition on Inter-State Use of Force	20
1.3 UN Security Council ‘Authorisation’ of Military Action	21
1.4 UN Peacekeeping Operations and the Protection of Civilians	22
1.4.1 Responsibility to Protect and the Protection of Civilians	24
1.5 Humanitarian Intervention and the Protection of Civilians	27
1.6 The Right of Self-Defence and the Protection of Civilians	29
2 Protection of Civilians under International Humanitarian Law	30
2.1 Introduction	30
2.2 The Protection of Civilians in the Conduct of Hostilities	32
2.2.1 The Rule of Distinction	33
2.2.2 The Rule of Proportionality in Attack	39
2.2.3 The Rule of Precautions in Attack	40
2.2.4 The Protection of Civilian Objects	41
2.2.5 Protection of Civilians under Foreign Military Occupation	44
2.2.6 Civilians in the Power of the Enemy	46

viii	<i>Contents</i>	
3	Protection of Civilians under Human Rights Law	50
3.1	Introduction	50
3.2	The Right to Life of Civilians in Armed Conflict	51
3.2.1	Arbitrary Deprivation of Life	51
3.2.2	The Duty to Investigate Suspicious Death	56
3.3	The Right to Freedom from Torture and Other Ill-Treatment	60
3.3.1	The Prohibition on Torture or Other Ill-Treatment	60
3.3.2	The Duty to Investigate Ill-Treatment	61
3.4	The Right to Freedom from Arbitrary Detention	61
3.5	The Right of Peaceful Assembly	63
3.6	The Application of Human Rights Law to Non-State Actors	64
4	The Protection of Refugees	67
4.1	Introduction	67
4.2	The Right to Seek and Enjoy Asylum	68
4.3	International Humanitarian Law and Refugees	70
4.4	The 1969 OAU Refugees Convention	72
5	Disarmament Law and the Protection of Civilians	74
5.1	Introduction	74
5.2	The 1992 Chemical Weapons Convention	75
5.3	The 1997 Anti-personnel Mine Ban Convention	77
5.4	The 2008 Convention on Cluster Munitions	81
5.5	The 2013 Arms Trade Treaty	84
6	International Criminal Law and the Protection of Civilians	86
6.1	Introduction	86
6.2	War Crimes	87
6.3	Crimes against Humanity	92
6.4	Genocide	95
7	The Prohibition of Sexual and Gender-Based Violence	97
7.1	Introduction	97
7.1.1	The Work of the Special Representative of the Secretary-General on Sexual Violence in Conflict	98
7.2	The Prevalence of Sexual and Gender-Based Violence in Armed Conflict	99
7.3	IHL Rules on Sexual and Gender-Based Violence in Armed Conflict	102
7.4	Sexual and Gender-Based Violence as a War Crime	103
7.5	Sexual and Gender-Based Violence as a Crime against Humanity	104
7.6	Sexual and Gender-Based Violence as Genocide	106

<i>Contents</i>		ix
PART II	SPECIFIC PROTECTION OF CERTAIN HIGH-RISK GROUPS	107
8	Protection of Women in Armed Conflict	109
8.1	Introduction	109
8.2	IHL Rules on the Protection of Women	110
8.3	Women and the Death Penalty	112
8.4	The Protection of Women in a UN Peacekeeping Mission	114
9	Protection of Children in Armed Conflict	115
9.1	Introduction	115
9.1.1	The Definition of a Child	115
9.2	The Application of the Convention on the Rights of the Child in Armed Conflict	116
9.3	IHL Rules on the Protection of Children	117
9.4	Enlistment in Armed Forces or Groups	118
9.5	The Six Grave Violations	122
9.6	Children and the Death Penalty	123
9.7	Child Protection in a UN Peacekeeping Mission	124
10	Protection of Persons with Disabilities in Armed Conflict	126
10.1	Introduction	126
10.1.1	The Threats to Persons with Disabilities in Armed Conflict	127
10.2	The Global Normative Framework	130
10.2.1	IHL Rules on the Protection of Persons with Disabilities	131
10.2.2	Protection under International Human Rights Law	132
10.2.3	IASC Guidelines on Inclusion of Persons with Disabilities in Humanitarian Action (2019)	133
10.2.4	Camp Coordination and Camp Management	138
10.2.5	Food Security and Nutrition	138
11	Protection of Older Persons in Armed Conflict	140
11.1	Introduction	140
11.2	The Threats to Older Persons in Armed Conflict	141
11.3	Protection under International Human Rights Law	141
11.4	Older Persons and the Death Penalty	143
11.4.1	The Death Penalty under IHL	143
11.5	Protection of Older Persons under IHL	144
12	Protection of Medical and Humanitarian Personnel	145
12.1	Introduction	145
12.1.1	The Definition of Medical Personnel	145
12.2	The Protection of Medical Personnel	146
12.3	The Protection of Humanitarian Personnel	148

13	Protection of Internally Displaced Persons	151
13.1	Introduction	151
13.2	The Normative Framework	151
13.2.1	The Guiding Principles on Internal Displacement	153
13.2.2	The Kampala Convention	156
14	Protection of LGBTI Civilians	160
14.1	Introduction	160
14.2	Attacks against LGBTI Civilians in Armed Conflict	161
14.3	LGBTI Persons and the Death Penalty	163
	PART III STATE AND INSTITUTIONAL POLICIES ON THE PROTECTION OF CIVILIANS	165
15	The United Nations and the Protection of Civilians	167
15.1	Introduction	167
15.2	The Protection of Civilians in UN Peacekeeping Missions	168
15.2.1	The 2019 DPO Policy	171
15.3	Protection of Civilians by UN Agencies and Bodies	181
15.3.1	Protection of Civilians and the Global Protection Cluster	181
15.3.2	The Role of the Office of the UN High Commissioner for Human Rights	183
15.3.3	The Role of UNICEF in Child Protection in Armed Conflict	184
15.3.4	The UNHCR and the Protection of Refugees	185
15.3.5	WFP and the Protection of Civilians	187
16	NATO and the Protection of Civilians	190
16.1	Introduction	190
16.2	The Policy Framework	191
16.3	NATO and International Humanitarian Law	194
16.4	NATO and International Human Rights Law	196
16.5	Operation Unified Protector in Libya	197
17	The African Union and the Protection of Civilians	201
17.1	Introduction	201
17.2	‘Tiered’ Protection of Civilians under the AU Guidelines	201
17.3	Mandates to Protect Civilians	203
17.4	The Power of the AU to Intervene to Protect Civilians	207
18	The European Union and the Protection of Civilians	209
18.1	Introduction	209
18.2	The 2015 Concept on Protection of Civilians in EU-Led Military Operations	210

<i>Contents</i>		<i>xi</i>
18.3	DG ECHO Thematic Policy Document on Humanitarian Protection	213
18.4	The European Union and International Humanitarian Law	215
18.5	The European Union and International Human Rights Law	216
18.6	The 2020 UN Security Council Debate on the Protection of Civilians	217
19	The ICRC and the Protection of Civilians	219
19.1	Introduction	219
19.2	ICRC Policy on Protection	219
19.2.1	Guiding Principle 1: A Neutral and Independent Approach	220
19.2.2	Guiding Principle 2: Dialogue and Confidentiality	220
19.2.3	Guiding Principle 3: The Holistic and Multidisciplinary Character of ICRC Action	220
19.2.4	Guiding Principle 4: Search for Results and Impact	221
19.2.5	Ethical and Professional Standards for Protection	221
19.2.6	The Principle of Humanity	221
19.2.7	The Principle of Non-Discrimination	222
19.2.8	The Principle of Impartiality	222
19.2.9	‘Do No Harm’	222
19.2.10	Participation of Affected Communities	223
19.3	Particular Challenges for the ICRC	223
20	Switzerland and the Protection of Civilians	225
20.1	Introduction	225
20.2	The Swiss Strategy on the Protection of Civilians	225
20.3	The 2020 UN Security Council Debate on the Protection of Civilians	227
21	The United Kingdom and the Protection of Civilians	229
21.1	Introduction	229
21.2	The 2010 UK Strategy	230
21.2.1	Policy Area 1: Political Engagement	230
21.2.2	Policy Area 2: Protection by Peace Support Operations	231
21.2.3	Policy Area 3: Humanitarian Action	231
21.2.4	Policy Area 4: State Capacity	232
21.3	The Development of the 2020 Policy Paper	232
21.4	The 2020 Policy Paper	234
21.5	The 2020 UN Security Council Debate on the Protection of Civilians	238
22	The United States and the Protection of Civilians	239
22.1	Introduction	239
22.2	The US Department of Defense <i>Law of War Manual</i>	242
22.3	The 2016 Executive Order	244
22.4	The Army War College Military Reference Guide	245
22.5	The National Strategy on Women, Peace, and Security	246
22.6	The 2020 UN Security Council Debate on the Protection of Civilians	247

xii	<i>Contents</i>	
23	Brazil and the Protection of Civilians	249
23.1	Introduction	249
23.2	Responsibility While Protecting	250
23.3	The 2020 UN Security Council Debate on the Protection of Civilians	252
24	India and the Protection of Civilians	254
24.1	Introduction	254
24.2	Responsibility to Protect	255
24.3	The 2020 UN Security Council Debate on the Protection of Civilians	256
25	Norway and the Protection of Civilians	258
25.1	Introduction	258
25.2	The 2020 UN Security Council Debate on the Protection of Civilians	259
26	South Africa and the Protection of Civilians	262
26.1	Introduction	262
26.2	The 2020 UN Security Council Debate on the Protection of Civilians	263
27	The Future of Protecting Civilians	265
27.1	Enhancing the Protection of Civilians through the Law	266
27.1.1	Clarity and Normative Development of IHL	266
27.1.2	Making Refugee Law More Protective of Those Fleeing Armed Conflict	269
27.1.3	More Force or Less?	270
27.2	Enhancing the Protection of Civilians through Policy	271
27.2.1	State Policy on the Protection of Civilians	271
27.2.2	Organisational Policy on the Protection of Civilians	272
27.3	New Challenges to the Protection of Civilians	275
27.3.1	Urban Warfare	275
27.3.2	Cyber Operations	277
27.3.3	Great Power Conflict and Hybrid Warfare	279
27.3.4	Protection of the Environment	280
	Conclusion	282
<i>Appendix 1</i>	<i>Overview of Relevant International Law</i>	284
A1.1	<i>Introduction</i>	284
A1.1.1	<i>The Definition of a State</i>	284
A1.1.2	<i>The Definition of an International Organisation</i>	285
A1.1.3	<i>The Definition of a Corporation</i>	286
A1.1.4	<i>The Definition of a Non-State Actor</i>	286
A1.2	<i>The Sources of International Law</i>	287
A1.2.1	<i>Treaties</i>	287
A1.2.2	<i>Soft-Law Instruments</i>	288

	<i>Contents</i>	xiii
	A1.2.3 <i>Customary International Law</i>	290
	A1.2.4 <i>General Principles of Law</i>	290
	A1.3 <i>Applicable International Legal Regimes</i>	291
	A1.4 <i>The Relationship between International and Domestic Law</i>	292
Appendix 2	<i>The Two Types of Armed Conflict under International Humanitarian Law</i>	294
	A2.1 <i>International Armed Conflict</i>	294
	A2.2 <i>Non-international Armed Conflict</i>	296
	A2.3 <i>Armed Conflicts May Exist in Parallel</i>	297
	A2.4 <i>The Key Differences in Applicable Rules in Armed Conflicts</i>	297
	A2.5 <i>The Prevalence of International and Non-international Armed Conflicts</i>	297
Index		300