## **The Additional Protocols** TO THE GENEVA CONVENTIONS *in Context*

ANNYSSA BELLAL AND STUART CASEY-MASLEN



## Contents

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

## X CONTENTS

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

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 hors de combat	293
	The war crime of making perfidious use of the red cross or	2-0
	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
Dil	liagraphy	313
Bibliography Index		333
ma	1111112	