Preface

A look at the growing national and international case law on war crimes in the last decades shows that serious breaches of international humanitarian law rules governing the conduct of hostilities constitute the basis of war crimes charges only in a limited number of cases, as compared with the more frequent charges for violations of the rules on the treatment of protected persons in an armed conflict. This is at least partly due to the looseness of the rules on the conduct of hostilities in light of the margin of appreciation that the application of the principles of distinction and proportionality implies, as well as to the difficulty of implementing rules shaped for traditional international armed conflicts between States with respect to contemporary national asymmetrical conflicts involving non-State armed groups. These considerations and the consequential evidentiary problems that they raise, may explain the reluctance of prosecutors to charge this class of war crimes. The present book aims at identifying the challenges faced by prosecutors, investigators and courts and tribunals in the definition, investigation and adjudication of war crimes based on violations of the rules of international humanitarian law on the conduct of hostilities, with a view to contributing to, and clarifying, this somewhat neglected area of international criminal law. A comprehensive consideration of the multifaceted issues implied in these challenges is more topical as we are witnessing an extensive and increasing involvement of civilians in current armed conflicts and a growing debate on the use of new weapons.

The realization of this book is the result of a research project financed by the Italian Ministry of University and Research and conducted by a research group of the University of Milan led by professors Fausto Pocar and Marco Pedrazzi in collaboration with research groups in the Universities of Bari, Florence, Turin and Trento, respectively led by professors Andrea Cannone, Paola Gaeta, Edoardo Greppi and Giuseppe Nesi. The directors and the members of the research groups are the contributing authors to the volume, and each one has extensive experience in international criminal law and in the issues related thereto and all deserve the editors’ gratitude for their work. A special note of appreciation goes to Nicole Rangel, a former student at Pacific McGeorge School of Law and an intern at the International Criminal Tribunals for the former
Yugoslavia and for Rwanda, who conducted a full and accurate revision of the entire manuscript, and to Laura Paredi, a PhD student at the University of Milan for the compilation of the table of cases. We also express our gratitude to everyone at Edward Elgar Publishing Ltd for their editorial cooperation and their support in the publication of this book.

In the first phase of this project the leader of the research group in the University of Florence was Professor Antonio Cassese, whose authority and expertise in the field of international criminal law fundamentally contributed to the elaboration of its guidelines. This book is dedicated by the editors and contributors to his memory, which continues to be an invaluable source of inspiration for their work.

Fausto Pocar
Marco Pedrazzi
Micaela Frulli