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Finding war crimes : the criminalization of international humanitarian law / Thomas Liefländer

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Abstract:	<p>The chapter starts by considering the legal structure of war crimes law. It addresses its fundamental elements : the existence of primary rules binding individuals in times of armed conflict and the existence of a secondary rule imposing individual criminal liability (rule of criminalization). The second section deals more precisely with the content of the secondary rule that imposes criminal liability. It demonstrates that various approaches have been employed in the jurisprudence of international criminal tribunals and that complete coherence has so far not been achieved. The third section briefly considers whether special rules apply where a rule applicable to international armed conflicts is extended to cover non-international armed conflicts as well. It is argued that the need for criminalization of individual rules is in part dependent on whether the rules of international armed conflicts and those of non-international armed conflicts are perceived as forming two separate, if related systems, or whether they are part of the same body of rules, merely having different scopes of application. Finally, the author briefly explores the means by which the existence of a secondary rule criminalizing certain conduct in international law can be discerned.</p>
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