Index

accused as distinct from perpetrator 372–373, 380–381
extension of definitions of crimes beyond 372–373, 380–381
mental state of, as factor in war crimes 222, 238–239
‘acts of genocide’, definition of 153–154, 209
‘acts of terrorism’, definition of 247, 248, 309–310
actual membership of group as element of genocide 147, 173–176
‘actus reus’, meaning of 10
Ad Hoc Tribunals see International Criminal Tribunal for Rwanda (ICTR); International Criminal Tribunal for the Former Yugoslavia (ICTY)
Additional Protocol II see under Geneva Conventions
aiding and abetting see under forms of responsibility
alternative charging 319–323
Appeal Chamber’s intervention in sentencing 334, 367–369
arbitrary deprivation of liberty, elements of 390
armed conflict and crimes against humanity under ICTY 19, 32–33
definition 222, 233
distinction between international and non-international conflict in war-crimes law 217, 227–230
as element of war crimes 233–239
grave breaches of Geneva Conventions 223, 243–256
knowledge of nature of armed conflict, requirement for 244–250
protected persons or property, requirement for 223, 250–256
knowledge of conflict as element 221, 236–239
nexus between conflict and underlying offences 222, 239–243
violations of laws or customs of war under ICTY Statute Art. 3 224–226, 258–263
specific characteristics of, influence on work of courts and tribunals 380–381
Armenian Genocide (1915) 20, 21, 140, 145, 378
‘attack directed against any civilian population’, definition of 45, 104
attack requirement as element in crimes against humanity 24, 41–42
attempt to commit genocide 152, 197, 399
Belgian Congo, early use of ‘crimes against humanity’ for atrocities in 19, 20
B시스ero (Rwanda), attack on 46, 53, 151–152, 190, 192–193
bodily harm, causing, and genocide 148, 181–183
Bosnia see International Criminal Tribunal for the Former Yugoslavia (ICTY)
Cambodia see Extraordinary Chambers in the Courts of Cambodia (ECCC)
causing serious bodily or mental harm, and genocide 148, 181–183
Čelebići test
pre-Čelebići cases 321, 324–326
and ‘inter-article’ convictions 322–323, 331–334
and ‘intra-article’ convictions 323, 334–335
for crimes against humanity 324–325, 335–348
for genocide 325–326, 349–354
for war crimes 325–349
charging, cumulative and alternative 319–323
children
conscription of, as war crime 304–310
forcible transfer as underlying offence in genocide 150, 187–188
mental element 150–151, 188
civilian objects
definition of 241, 286
unlawful attack on, as war crime 409
civilians
‘civilian’, definition of 25, 43–49, 241, 286
‘civilian population’, definition of 26, 49–50
‘attack directed against’ 45, 104
unlawful attack on, as war crime 240–243, 285–287, 408
Common Article 3 see under Geneva Conventions

435
Index

436

and Internationalised Tribunals 55, 111, 115–137
‘intra-article’ convictions 324–325, 335–348
murder see under underlying offences below
other inhumane acts
forcible transfer 396–397
specific requirements 396
as underlying offence 99–100
persecution
deporation as form of 394–395
destruction of property as form of 396
enslavement as form of 394
forcible transfer as form of 395
imprisonment as form of 395
murder as form of 394
rape as form of 395–396
specific requirements 394
persecution
as underlying offence 88–36
rape 33–34, 78–80, 393
as form of persecution 395–396
as underlying offence 36–37, 84–88
relationship to international criminal and humanitarian law 1, 2–4
and SCSL 55–56, 115–120
and Second World War 21, 22–26
and SICT 59, 132
and SPSC 56, 120–128
torture
as form of persecution in 395
as underlying offence see under underlying offences below
underlying offences 30–31, 36–57
deporation 31, 68–75
enslavement 31–68
extermination 31, 60–65
as form of persecution, and superior responsibility 417–418
imprisonment 32–33, 75–78
murder 31, 57–60, 392
murder as form of persecution 394
and aiding and abetting 418–419
and instigating 420
and JCE 415–416, 417
and ordering 420–421
and planning 419
other inhumane acts 99–100
as part of attack (1st contextual requirement) 30, 53–54
persecution 88–36
qualifying as inhumane acts 28, 102–104
qualifying as persecution as crime against humanity 44, 97–99
rape 36–37, 84–88
torture 33–34, 78–80
and aiding and abetting 413–414
and instigating 414–415
and JCE 411, 412
and ordering 415
and planning 414
prohibited purpose requirement 35–36, 83–84

conscription
of children 304–310
definition 246–247, 308–309
conspiracy to commit genocide
elements 151, 188–191, 399
incitement to commit 151, 189, 191–197
contextual requirements for crimes against humanity
1st – underlying offence is part of the attack 30, 53–54
2nd – knowledge that the offence is part of the attack
30, 54–56
convictions
cumulative see cumulative convictions
‘intra-article’ see ‘intra-article’ convictions
need for coherence in practice 379, 383–385
crimes against humanity 16–18
and Ad Hoc Tribunals 21–22, 26–31
and Armenian Genocide 20, 21
in Belgian Congo 19, 20
and Çelebiçi test for ‘intra-article’ convictions
324–325, 335–348
comparison with genocide 377–379
comparison with war crimes 16, 19
definition 16, 18–19
ECCC 59, 128–129
Rome Statute 44–45, 104
SCSL 56, 115
ICTY 19, 32
ICTR 19, 33, 75
SCSL 56, 115
variation between ICTY and ICTR 379–380
deportation 31, 68–75, 393
as form of persecution 394–395
destruction of property as form of persecution in 396
and ECCC 59, 128–132
elements 22–24, 31, 104
Ad Hoc Tribunals, unique to armed conflict as jurisdictional requirement for ICTY 19, 32–33
discriminatory basis as jurisdictional requirement for ICTR 24, 33–35
general requirements 391–392
attack requirement 24, 41–42
contextual requirements see contextual requirements for crimes against humanity
persons who satisfy 24, 35–41
targeting requirement 24–25, 42–43
‘widespread or systematic’ 27, 51
and ICC 53, 110–114
underlying offences see under underlying offences below
enslavement 31–68, 392
as form of persecution 392
extermination 31, 60–65, 392
and First World War 20–22
forcible transfer as form of persecution in 395
historical development 18–31
importance for prosecutors 17–18, 19–20, 376–377
imprisonment, as form of persecution in 395
as underlying offence 32–33, 75–78
and International Criminal Court (ICC) see International Criminal Court (ICC)
Index

crime against humanity

- 'cumulative convictions' 318
- 'cumulative charging' 319
- extension beyond accused & physical perpetrators
- 'general requirements' 35
- prosecution 31–32
- Trial Chamber
- Hague Law
- 'ethnic group' 241
- humanitarian law
- 'forces of war' 35

Darfur (Sudan), crimes against humanity in 63, 114 definitions
- 'acts of genocide' 153–154, 209
- 'acts of terrorism' 247, 248, 309–310
- 'actus reus' 10
- 'armed conflict' 222, 233
- 'attack directed against any civilian population' 45, 104
- 'civilian' 25, 43–49, 241, 286
- 'civilian objects' 241, 286
- 'civilian population' 24–25, 26, 42–43, 49–50
- 'conspiracy' 246–247, 308–309
- 'forcible transfer as' 395
- infringement 395
- 'protected group' 144, 168–173
- 'protected persons' 223–224, 251
- 'protected property' 223–224, 251
- 'racial group' 146, 171–172
- 'rape' 51, 52, 84, 87
- 'religious group' 146, 171–172
- 'serious bodily harm' 181–183
- 'serious mental harm' 181–183
- 'serious violation' 227–228, 262
- 'specific requirements' of 5–9
- 'systematic' 29–30, 52
- 'targeted group' 144, 168–173
- 'terror' 237–239, 283
- 'torture' 51, 78
- 'underlying offence' 3, 10
- variations in different courts & tribunals 379–383
- 'violation of laws or customs of war' 259
- 'wanton destruction' 266–268
- 'widespread' 28–29, 52

Democratic Republic of the Congo, crimes against humanity in 63, 114
- deportation 393
- and crimes against humanity 31, 68–75
- form of persecution 394–395
- forcible transfer as 395
- displacement across international borders as
- additional element of offence 48, 73–75
- distinction between legal and illegal displacement 47–48, 71–72
- forcible displacement, elements of 390
- forcible transfer
- of children in genocide 150, 187–188, 399
- mental element 150–151, 188
- and crimes against humanity as
- form of persecution in 395
- as inhumane act in 396–397
- as inhumane act
- forcible transfer as crime against humanity 396–397
- intention for permanent displacement as element in
- offence 47–48, 72–73
- lack of genuine choice by displaced persons 48–49, 69–70
- lawful presence of persons in area as element in
- offence 46–47, 70–71
- underlying offences, mental element in forcible
- transfer of children 150–151, 188
- 'deporty', definition of 143, 159–167
- destruction of property
- and aiding and abetting 427
- elements of 390
- form of persecution in crimes against humanity 396
- and instigating 428
- and JCE 424–426
- and ordering 428–429
- and planning 427–428
- and superior responsibility 426
- and war crimes 263
- destruction or damage to cultural property 230–231, 268–270, 402

© Cambridge University Press

www.cambridge.org
destruction of property (cont.)
  extensive destruction 263, 401
  wanton destruction & unjustified devastation
  266–268, 401

destructive conditions of life, infliction of
  and genocide 148, 183
  examples 148–149, 183–186
  mental element 149, 183, 186

detention see imprisonment

direct or indirect intent requirement for persecution as a
  crime against humanity 26, 102
  ‘directed against’, meaning of 26, 50–51

discrimination ‘in fact’ requirement for persecution as a
  crime against humanity 43, 91–94

discriminatory basis as jurisdictional requirement for
  as a ‘generic crime’ against humanity 24, 33–35

discriminatory intent requirement for persecution as a
  crime against humanity 43–44, 94–96


displaced persons
  lack of genuine choice in deportation 48–49, 69–70
  lawful presence in area as element in deportation
  46–47, 70–71
  displacement of persons, forcible see deportation

domestic legal systems’ contribution to international
  criminal law 8, 9

Dubrovnik (Croatia), bombardment of 230, 267, 269–270

East Timor see Special Panels for Serious Crimes
  (SPSC, East Timor)

elements of crime 371, 373–374, 381–383, 385 see also
  general requirements; specific requirements

crimes against humanity see under crimes against
  humanity

genocide see under genocide

sample combinations with forms of responsibility see
  forms of responsibility

should answer different legal enquiries from
  elements of forms of responsibility 373–374,
  381–383

war crimes see under war crimes

enslavement and crimes against humanity 31–68, 392
  form of persecution 394

equal gravity requirement for persecution as a crime
  against humanity 41, 90–91

‘ethnic group’, definition of 146, 171–172

extensive appropriation as war crime 278–280, 405–406

extermination and crimes against humanity 31,
  60–65, 392

Extraordinary Chambers in the Courts of Cambodia
  (ECCC)

and crimes against humanity 59, 128–132

and genocide 153, 207–210

as a ‘genocide tribunal’ 375–376

relative importance of crimes 375–379

variations in definitions of crimes 379–383

and war crimes 249–250, 312–314

First World War (1914–18) and crimes against humanity
  20–22

forcible displacement/transfer of persons see
  deportation

forms of responsibility

as aid in assigning criminal responsibility 373

elements to answer different legal enquiries to
  elements of crimes 373–374, 381–383

within structure of crimes 11, 12–13

forms of responsibility, sample combinations with
  elements of crimes 410–411

aiding and abetting

extensive destruction of property 427

genocide by killing 423

murder as form of persecution 418–419

plunder as violation of laws or customs of war 432

torture as crime against humanity 413–414

instigating

extensive destruction of property 428

murder as form of persecution 420

plunder as violation of laws or customs of war 433

torture as crime against humanity 414–415

joint criminal enterprise

extensive destruction of property as grave breach
  424–426

genocide by killing 421, 422

murder as form of persecution as crime against
  humanity 415–416, 417

plunder as violation of laws or customs of war 429,
  430–431

torture as crime against humanity 411, 412

ordering

extensive destruction of property 428–429

genocide by killing 424

murder as form of persecution 420–421

plunder as violation of laws or customs of war
  433–434

torture as crime against humanity 415

planning

extensive destruction of property 427–428

genocide by killing 423

murder as form of persecution 419

plunder as violation of laws or customs of war
  432–433

torture as crime against humanity 414

superior responsibility

extensive destruction of property as grave
  breach 426

murder as form of persecution 417–418

plunder as violation of laws or customs of war 431

torture as crime against humanity 412–413

general requirements see also crimes against humanity;

  genocide; war crimes

within structure of crimes 6, 10–11

Geneva Conventions

breaches of Common Article 3 or Additional
  Protocol II as war crimes 400

outrages upon personal dignity 405

definition of ‘Geneva Law’ 3, 5, 224, 251

grave breaches as element of war crimes 223, 243–256

cruel treatment 404

torture as crime against humanity 412–413

geneva

deliberate

destruction of persons

distress

distraction

district

distributable

different

dispersed

displaced persons

disciplinary

disciplinary responsibility

disciplinary sanctions

disciplinary tribunal

discipline

discipline of an armed force

direct

direct action

direct aids

direct assistance

direct beneficiary

direct cause

direct consequences

direct crime

direct criminal responsibility

direct contribution

direct criminal enterprise

directly

directly caused

directly connected

directly responsible

directly responsible party

directly involved

directly liable

directly causing

directly participating

directly participated

directly participating in

directly/indirectly

directly involved

directly responsible

directly responsible party

directly involved

directly liable

directly causing

directly participating

directly participated

directly participating in

directly

directly

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct

direct
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
</table>
inhumane acts (cont.)
  specific requirements 99–100, 396
  suffering or attack on dignity requirement 44, 100–101
  underlying offences qualifying as 28, 102–104
  injury, causing, and war crimes 244–290
  instigating see under forms of responsibility
  intention to commit as element of genocide 142, 157–171
  ‘inter-article’ convictions and Čelebići test 322–323,
  331–334
international armed conflict see armed conflict
international borders, displacement of persons across
as additional element in deportation 48, 73–75
international crimes 1–5 see also crimes against
  humanity; genocide; war crimes
definitions
  extension beyond accused & physical perpetrators
  372–373, 380–381
  factors in drafting of 377, 381–383
  sources of 5–9
  variations in different courts & tribunals
  379–383
differences in importance of crimes in different
courts & tribunals 375–379
elements see elements of crime
hierarchy of crimes 332–333, 363–367
‘inter-article’ convictions and Čelebići test 322–323,
  331–334
overview 1–5
relative importance in different courts & tribunals
  375–379
structure 3, 9–13
variations in definitions 379–383
International Criminal Court (ICC)
  coherence in conviction and sentencing practice 379,
  383–385
  and crimes against humanity
  elements of crimes 53, 110–114
  Rome Statute 32–33, 104–110
  definitions of crimes
  factors in drafting 377, 381–383
  variations in 379–383
  and genocide
  elements of crimes 201–205
  Rome Statute 152, 198–201
  and war crimes
  elements of crimes 246, 297–303
  Rome Statute 245–246, 291–297
International Criminal Tribunal for Rwanda (ICTR)
  Appeals Chamber’s intervention in sentencing 334,
  367–369
  and crimes against humanity 22–24, 31, 104
  armed conflict as jurisdictional requirement 19,
  32–33
  difference in definition with ICTR 379–380
  general requirements 35–56, 63
  ‘inter-article’ convictions and Čelebići test
  324–325, 335–348
  underlying offences 56–104
  and cumulative and alternative charging 319–323
  cumulative convictions and Čelebići test 321–322,
  324–326–330
  effect of failure to use 326–330, 354–356
  ‘inter-article’ convictions 322–323, 331–334
  ‘inter-article’ convictions 323, 334–335
  for crimes against humanity 324–325, 335–348
  for genocide 325–326, 349–354
  for war crimes 325–349
  and genocide 141, 153–154
  elements 141, 154–188
  ‘inter-article’ convictions and Čelebići test
  325–326, 349–354
  as a ‘genocide tribunal’ 375–376
  influence of characteristics of conflict on work of
  380–381
  relative importance of crimes 375–379
  and sentencing policy 334, 356–359
  coherence in practice 331–332, 359–363
  hierarchy of crimes 332–333, 363–367
  intervention by Appeals Chamber in sentencing
  334, 367–369
  variations in definitions of crimes 379–383
  and war crimes
general requirements 219–263
ICTR Statute
  statutory provisions 215–216, 217–218
  violations of Common Article 3 & Additional
  Protocol II under Art. 4 224, 256–257
  ‘inter-article’ convictions and Čelebići test 325–349
  overview 217–218, 231–232
  underlying offences 219–220, 263–291
International Criminal Tribunal for the Former
Yugoslavia (ICTY)
  Appeals Chamber’s intervention in sentencing 334,
  367–369
  conviction practice, coherence in 379, 383–385
  and crimes against humanity 22–24, 31, 104
  armed conflict as jurisdictional requirement 19,
  32–33
  difference in definition with ICTR 379–380
  general requirements 35–56, 63
  ‘inter-article’ convictions and Čelebići test
  324–325, 335–348
  underlying offences 56–104
  and cumulative and alternative charging 319–323
  cumulative convictions and Čelebići test 321–322,
  324–326–330
  effect of failure to use 326–330, 354–356
  ‘inter-article’ convictions 322–323, 331–334
  ‘inter-article’ convictions 323, 334–335
  for crimes against humanity 324–325, 335–348
  for genocide 325–326, 349–354
  for war crimes 325–349
  and genocide 141, 153–154
  elements 141, 154–188
  ‘inter-article’ convictions and Čelebići test
  325–326, 349–354
  as a ‘genocide tribunal’ 375–376
  influence of characteristics of conflict on work of
  380–381
  relative importance of crimes 375–379
  and sentencing policy 334, 356–359
  coherence in practice 331–332, 359–363
Index

hierarchy of crimes 332–333, 363–367
intervention by Appeals Chamber in sentencing 334, 367–369
variations in definitions of crimes 379–383
and war crimes
general requirements 219–263
ICTY Statute
destruction or damage to cultural property: Art 3(d) 230–231, 268–270, 402
extensive destruction of property: Art 2(d) 263
violations of laws or customs of war: Art 3 224–226, 258–263, 400–401
wanton destruction & unjustified devastation: Art 3(b) 266–268, 401, 402
war crimes provisions 215–217
‘intra-article’ convictions and Čelebići test 325–349
overview 217, 230–231
underlying offences 219–220, 263–291
as a ‘war crimes tribunal’ 375–376
international humanitarian law see humanitarian law
International Law Commission (ILC)
contribution to international criminal law 9
and crimes against humanity 22, 28–30
international treaties as sources of definitions for crimes 6–8, 9
Internationalised Tribunals see Extraordinary Chambers in the Courts of Cambodia (ECCC); Special Court for Sierra Leone (SCSL); Special Panels for Serious Crimes (SPSC, East Timor); Supreme Iraqi Criminal Tribunal (SICT)
‘intra-article’ convictions and Čelebići test 323, 334–335
crimes against humanity 324–325, 335–348
genocide 325–326, 349–354
war crimes 325–349
Iraq see Supreme Iraqi Criminal Tribunal (SICT)
joint criminal enterprise (JCE) see under forms of responsibility
judgements, need for specificity 374–375, 384
Kaznezno-Popravni Dom (KP Dom), illegal detention at 49, 75–76
Kibuye (Rwanda), attack on 46, 53
Kigali (Rwanda), killings in 145, 169
killing and genocide 147, 178–181
and aiding and abetting 397, 423
and instigating 424
and JCE 421, 422
and ordering 424
and planning 423
and superior responsibility 422–423
knowledge as element of war crimes
knowledge of armed conflict 221, 236–239, 244–250
knowledge of status of targets of underlying offences 263
Kosovo see International Criminal Tribunal for the Former Yugoslavia (ICTY)
Kurdish people, attacks on 158, 211–212, 251–317
laws and customs of war, violations of
in crimes against humanity 396
plunder
and aiding and abetting 432
and instigating 433
and JCE 429, 430–431
and ordering 433–434
and planning 432–433
and superior responsibility 431
in war crimes 224–226, 258–263
general requirements under ICTY Statute, Art 3 400–401
hostage-taking 403
murder 404–405
plunder 406
rape 406
slavery 407
terror 407
torture 408
‘unjustified devastation’ of property 402
unlawful attack on civilian objects 409
unlawful attack on civilians 408
unlawful confinement 409
unlawful labour 407
‘wanton destruction’ of property 401
material destruction as element of genocide 143, 159–167
mens rea, meaning of 10
mental harm and genocide 148, 181–183
murder
and crimes against humanity 31, 57–60, 392
as form of persecution 394
and aiding and abetting 418–419
and instigating 420
and JCE 415–416, 417
and ordering 420–421
and planning 419
and superior responsibility 417–418
elements of 391
and war crimes 273–275, 404–405
‘national group’, definition of 146, 171–172
non-international armed conflict see armed conflict
nulla poena sine lege, meaning of 8
nullum crimen sine lege, meaning of 8
‘occupied territory’, definition of 224, 254–255
offences see underlying offences
ordering see under forms of responsibility
outrages upon personal dignity as war crime 234–235, 275–278, 405
perpetrator see also physical perpetrator
definition of 55, 111, 115–137, 153, 203–204
distinction from accused 372–373, 380–381
mental state of, as factor in war crimes 222, 238–239
persecution (political, racial & religious)
and crimes against humanity 88–36
deportation as form of persecution 394–395
destruction of property as form of persecution 396
persecution (political, racial & religious) (cont.)
  enslavement as form of persecution 394
forcible transfer as form of persecution 395
imprisonment as form of persecution 395
murder as form of persecution 394
rape as form of persecution 395–396
specific requirements 394
rape as form of persecution 395
definition of ‘persecution’ 45, 105
specific requirements for persecution as crime
against humanity 53, 89–90
discrimination ‘in fact’ requirement 43, 91–94
discriminatory intent requirement 43–44, 94–96
equal gravity requirement 41, 90–91
underlying offences qualifying as 44, 97–99
physical perpetrator
in crimes against humanity
involvement in attack as contextual requirement
30, 53–54
knowledge of attack as contextual requirement 30, 54–56
definition 11
extension of definitions of crimes beyond 372–373, 380–381
plunder
as violation of laws or customs of war and aiding and abetting 432
and instigating 433
and JCE 429, 430–431
and ordering 433–434
and planning 432–433
and superior responsibility 431
and war crimes 278–280
prevention of births
and genocide 149–150, 186, 398
examples 150, 186
mental element 150, 187
Prijedor, attack on 46, 51
prohibited purpose requirement for torture as element in crimes against humanity 35–36, 83–84
‘protected group’, definition of 144, 168–173
protected persons or property requirement as element of war crimes 223, 250–256
‘racial group’, definition of 146, 171–172
rape
and crimes against humanity 36–37, 84–88, 393
form of persecution 395–396
definition 51, 52, 84, 87
elements of 391
and war crimes 235, 280
as grave breach of Geneva Conventions 406
as violation of laws or customs of war 406
‘religious group’, definition of 146, 171–172
Rome Statute
and crimes against humanity 32–33, 104–110
and genocide 152, 198–201
and war crimes 250–251, 314–317
‘systematic’, meaning of 29–30, 52
‘targeted group’, definition of 144, 168–173
targeting requirement as element in crimes against
humanity 24–25, 42–43
terror
‘acts of terrorism’, definition of 247, 248, 309–310
and war crimes 236, 281–284, 407
torture
and crimes against humanity 33–34, 78–80
and aiding and abetting 413–414
form of persecution 395
and instigating 414–415
and JCE 411, 412
and ordering 415
and planning 414
and superior responsibility 412–413
definition 51, 78
elements of 391
and war crimes 239–240, 284–285
as grave breach of Geneva Conventions 408
as violation of laws or customs of war 408
transfer of persons, forcible see deportation
Trial Chamber, failure to use cumulative convictions
326–330, 354–356
Uganda, crimes against humanity in 62–63, 113–114
underlying offences 390
arbitrary deprivation of liberty 390
crimes against humanity see under crimes against
humanity
destruction of real or personal property 390
forcible displacement 390
genocide see under genocide
‘intra-article’ convictions and Celebici test 325–326,
334–335, 349–354
murder 391
rape 391
within structure of crimes 3, 10
torture 391
war crimes see under war crimes
unjustified devastation as underlying offence in war
crimes 266–268, 402
unlawful attack on civilians or civilian objects as war
civilian objects 409
civilians 408
unlawful confinement as war crime 242, 287–288
as grave breach of Geneva Conventions 409
as violation of laws or customs of war 409
unlawful deportation or transfer as war crime
242–243, 288
as grave breach of Geneva Conventions 410
unlawful labour as war crime 407
violence to life and person and war crimes 243,
288–289
wanton destruction as underlying offence in war crimes
266–268, 401
war crimes
breaches of Common Article 3 or Additional
Protocol II 400
and Celebici test for ‘intra-article’ convictions
325–349
comparison with crimes against humanity 16, 19
and criminal responsibility 228, 262–263
and distinction between international and non-
international armed conflict 217, 227–230
destruction of property see under underlying
offences below
elements 220, 232
general requirements 220, 221, 232–233, 399–400
existence of armed conflict 233–239
grave breaches of Geneva Conventions 223,
243–256, 400
knowledge of nature of armed conflict
requirement 244–250
knowledge of status of targets of underlying
offences 263
mental state of accused and perpetrator 222,
238–239
 nexus between underlying offences and armed
conflict 222, 239–243
protected persons or property requirement 223,
250–256
violation of humanitarian law under ICTY
Statute Article 3 226–227, 260–262, 400–401
violations of Additional Protocol II and
Common Article 3 224, 256–257, 400
violations of laws or customs of war under
Article 3 of ICTY Statute 224–226,
258–263
and ICC 246, 297–303
extensive destruction of property as grave breach of
Geneva Conventions 401
historical development 216–217, 219–232
hostage taking see under underlying offences below
and ICC
and elements of crimes 246, 297–303
Rome Statute 245–246, 291–297
and ICTR
general requirements 219–263
overview 217–218, 231–232
statutory provisions 215–216, 217–218
underlying offences 219–220, 263–291
and ICTY
general requirements 219–263
overview 217, 230–231
statutory provisions 215–217
underlying offences 219–220, 263–291
inhuman or cruel treatment see under underlying
offences below
and Internationalised Tribunals
ECCC 249–250, 312–314
SCSL 304–310
ICTT 250–251, 314–317
SPSC 247–249, 310–311
‘intra-article’ convictions 325–349
war crimes (cont.)
murder and wilful killing see under underlying
offences below
outrages upon personal dignity 234–235, 275–278, 405
plunder, pillage or extensive appropriation see under
underlying offences below
rape see under underlying offences below
relationship to international criminal and humanitarian
law 1, 2–4
slavery or unlawful labour see under underlying
offences below
terror 236, 281–284, 407
torture see under underlying offences below
underlying offences
destruction of property 229, 264
destruction or damage to cultural property
230–231, 268–270, 402
extensive destruction 229, 264, 401
wanton destruction & unjustified devastation
266–268, 401, 402
hostage-taking 232, 270–271
as grave breach of Geneva Conventions 403
as violation of laws or customs of war 403
inhuman or cruel treatment 233–234, 271–273
as grave breach of Geneva Conventions 403
as violation of laws or customs of war 403
cruel treatment 404
inhuman treatment 403–404
murder and wilful killing 273–275
murder 404–405
wilful killing 404
other underlying offences 245, 290–291
outrages upon personal dignity 234–235, 275–278, 405
plunder, pillage or extensive appropriation 278–280
extensive appropriation 405–406
plunder 406
rape 235, 280
as grave breach of Geneva Conventions 406
as violation of laws or customs of war 406
slavery or unlawful labour 235, 281
slavery 407
unlawful labour 407
terror 236, 281–284, 407
torture 239–240, 284–285
as grave breach of Geneva Conventions 408
as violation of laws or customs of war 408
unlawful attack on civilians or civilian objects
240–243, 285–287
civilian objects 409
civilians 408
unlawful confinement 242, 287–288
as grave breach of Geneva Conventions 409
as violation of laws or customs of war 409
unlawful deportation or transfer 242–243, 288, 410
violence to life and person 243, 288–289
wilfully causing suffering or injury
244–290, 410
‘widespread’, meaning of 28–29, 52
‘widespread or systematic’ requirement as element in
crimes against humanity 27, 51
wilful killing as war crime 273–275, 404
wilfully causing suffering or injury as war crime
244–290, 410
Yugoslavia see International Criminal Tribunal for the
Former Yugoslavia (ICTY)
Zagreb (Croatia), shelling of 241, 286–287
Zasavica (Bosnia), illegal detention at 49–50, 77