INDEX

Abboud, Ibrahim 266
pardoning human rights violations, 266
Abuja (Nigeria) 291
Darfur Peace Agreement (DPA) 265
accountability mechanisms 266
accountability and complementarity 139
Accountability and Reconciliation Accords (A&R Accords) (Uganda) 133–6
Acholi 125–7
admissibility 261
challenges 11, 22, 41, 49, 57, 80–1, 101–2, 107, 122, 133, 261
complementarity as rule of 11, 14–15, 20, 101, 334, 339, 409
see also complementarity
decisions not to prosecute, 61–2
discretion of proprio motu admissibility assessment, 81–2
gravity as rule of see gravity
‘investigation’, requirement for, 59–61
African Union (AU) 265
Darfur Peace Agreement, 291–3
High-Level Panel on Darfur (AUPD), 276–8, 294, 297–8, 304, 315, 333, 343
UNAMID, 265, 275, 278, 315
ajaweed
and Darfur situation, 299–300, 302–6
al-Bashir, Omar
admissibility assessment, 261
arrest warrant, 23, 244, 251, 269–73, 276–9
break with Hassan al-Turabi, 264
opposition to ICC proceedings, 249–50
al-Turabi, Hassan
break with Omar al-Bashir, 264
on ICC, 273
amnesties
catalysing effect of complementarity, 206–27, 316–20
prohibition?, 18–19, 41–3, 104
in Sudan, 266–7, 295, 297, 316–20
in Uganda, 128–9, 133, 142, 149, 159, 166, 169, 177, 206–27, 232, 388–9, 411–12
Armed Forces Act 1986 (Sudan)
amendment, 284–6, 289, 317
arrest warrants
and admissibility assessments, 82
admissibility challenge after issue, 80–1
domestic proceedings initiated after issue of ICC warrants, 79
article 16, Rome Statute: see deferral
article 17, Rome Statute: see complementarity
article 21(3), Rome Statute
human rights, 68–9
article 93(10), Rome Statute
cooperation, 99–102, 379
positive complementarity, 98–103, 109
Bigombe, Betty
peace initiatives in northern Uganda, 128–9, 138, 196
‘bilateral immunity agreement’ Uganda/USA, 119, 194
‘case’
– ‘same case’ requirement, 45–59, 61, 70, 106, 121, 261, 298, 334, 351, 408–9
catalysing effect of complementarity
assumptions as to, 24–6, 337, 397
– catalysing effect paradox, 14, 396, 400–3, 408
constructivist perspective, 25
‘cosmetic’ reforms, 12, 336, 406
cost of ICC intervention, 12, 26, 114, 234–5, 273, 330, 367–9, 386–9, 398, 406–7
domestic proceedings increased?, 12, 228–33, 320–8, 337, 407
drummers personae, 21–4
effect in Uganda and Sudan summarised, 10–14, 233–43, 328–36, 337, 406–10
expectations as to, 8–10, 24–6

© in this web service Cambridge University Press www.cambridge.org
INDEX

factors influencing, 86–104
normative assumptions, 25–6, 40, 104, 234–7, 331, 337–8, 397–8, 407–8
paradoxes
   analysis of, 13–14, 396–405, 408
catalysing effect paradox, 14, 396, 400–3, 408
normative paradox of complementarity, 13, 345–51, 397–8, 408
paradox of positive complementarity, 395–6
potential for, 104–10
rational-choice perspective, 25–6
weakness, reasons for
   ambiguity of big idea, 338, 344–61, 397–8
   assumptions as to states’ cost–benefit analysis, 367–96, 398–9
generally, 337, 396–405
ICC policy weaknesses, 399–405
inhospitable domestic environment, 338–9, 361–7, 398
misrepresentation of principle and content, 338–44, 397
no obligation on states to conduct proceedings, 338, 397
see also domestic justice systems; Sudan; Uganda

Central African Republic, 31, 119, 173, 344, 346, 400

 Chad
   Chad–Sudan relations, 262, 264–5, 311–12
   Darfur mediation and peace talks, 264–5

 China
   and Darfur, 248–9
   ‘comparative gravity-test’
   alternative to same-conduct test, 59
   complementarity
      actors involved, 21–4, 235–8, 329–35, 406
      admissibility see admissibility
      arguments for, 15–16, 56–8, 82, 108, 409
      assessment
         case-specificity, 72–5, 90–1, 106, 157, 292–3, 339
dynamic nature of, 79–83, 105, 339–40
      independence from trigger mechanism, 75–6
      challenges to admissibility on grounds of see admissibility
      ‘complementarity obligations’, 17–21
      as concept, 11, 14–21
      definition, popular shorthand description, 17, 34, 43–5, 120–1
      ‘division of labour’ concept, 11–12, 341–4, 350, 360, 381–2, 397, 399–401, 407
      dramatis personae, 21–4
double life of, 11, 14–21, 104, 108–10
      as duty or obligation to prosecute see states and fair trial rights, 67–70, 104
      under fire, 410
      as ‘foundational principle’ of Rome Statute, 17
      and ‘Global Criminal Justice System’, 19–20
      and human rights see human rights
      inadmissibility see admissibility
      institutions involved, 21–4, 406
      and ‘international standards’ see international standards
      literal concept of, ICC’s use of, 11–12, 340–2, 407
      modified approach to, 410
      normative character of, 338–67
      normative paradox of, 13, 345–51, 397–8, 408
      object and purpose, 56–8
      paradoxes see paradoxes of complementarity
      persons involved, 21–4, 406
      popular shorthand description, 17, 34, 43–5, 120–1
      primacy distinguished, 14–15, 31–2, 49–51, 86, 97–8, 191, 205, 241, 354, 359, 382
      as primary right see states
      as primary responsibility see states
      as priority rule, 11, 14–15, 20, 51, 107, 409
      procedural aspects, 70–86
      and ‘Rome System’, 19–20, 25, 345–6, 359, 397–8
      substantive aspects, 43–70
      as technical admissibility rule, 11, 14–15, 20, 35–86, 409
      see also catalysing effect of complementarity; domestic justice systems; International Criminal Court (ICC); Rome Statute; states; Sudan; Uganda
      Comprehensive Peace Agreement (CPA) in Sudan, 130–1, 161, 264, 267–8, 273–4, 288
      ‘comprehensive conduct-test’
      alternative to same-conduct test, 59
      concurrent jurisdiction, 14–15
      conflict paradigm
      catalysing effect of complementarity, 171–9, 306–16
      inhibition on domestic proceedings, 362
      Congo, Democratic Republic see Democratic Republic of the Congo (DRC)

© in this web service Cambridge University Press www.cambridge.org
INDEX

cooperation and admissibility assessments, 60–1, 69–70, 101
and domestic proceedings, 13–14, 97–8
facilitation by national law, 40–1, 104, 195–7, 201–2
ICC’s dependence on, 14, 118–22, 171–2, 174–5, 250, 381, 389–403, 408, 410
lack of, 65, 274–5, 325, 330, 379–82, 393–4, 408
norm entrepreneurs and local actors, 22–3, 165
‘positive complementarity’ as policy of, 21, 97–9, 108–9
referrals and, 96, 118–22
Rome Statute, 41–2, 54, 98–110

‘cosmetic’ reforms see catalysing effect of complementarity
cost–benefit analysis see domestic justice systems

Côte d’Ivoire, 31, 344, 346
Criminal Act 1991 (Sudan) amendment, 286–8, 291, 325
Criminal Procedure Act 1991 (Sudan) amendment, 287
‘culture talk’ risk of, 32

Darfur situation
African Union initiatives, 265, 276–8, 329–30, 356–7
ajaweed, 299–302, 302–6
conflict, 261–5, 369–77
Commission of Inquiry, 279–80
Darfur Peace Agreement (DPA), 265, 291–2, 373
deferral, hope for, 253, 276, 294, 328, 331–5, 391
Doha Document for Peace in Darfur (DDPD), 265, 296–7, 301–3, 319
domestic justice systems cost–benefit analysis (domestic v. ICC proceedings)
assumptions as to catalysing effect of complementarity, 25–6, 367–9
combining of analyses, 392–6
costs of domestic action not reduced by ICC involvement, 378–85
costs of inaction avoidance by use of alternatives to complementarity, 389–92
low costs, 385–9
expectation of benefit, 113–14, 171–5
high cost of action, 369–78
weak effect of complementarity on, 12, 337
‘division of labour’ with ICC, 11–12, 341–4, 350, 360, 381–2, 397, 399–401, 407
deferral article 18(2) basis, 77–9
ICC and other international criminal tribunals contrasted, 78–9, 83–6
by ICC Prosecutor, 77–9, 84–6
by Security Council request, 11, 90, 253, 97–9, 128, 326, 331–5, 357, 359–89
Sudan context, 253, 328, 331–5, 357, 391
Uganda context, 135, 138
Democratic Republic of the Congo (DRC) claims against Uganda, 111–12
conflict in eastern DRC, 111–12, 119
Katanga case see Katanga, Germain
Lubanga case see Lubanga, Thomas
referred to ICC, 31, 346
domestic proceedings and ICC catalysing effect paradox generally, 14, 396, 400–3, 408
ICC as alternative, 13, 345
normative paradox of complementarity, 13, 345–51, 397–8, 408
pro-ICC ideology, 13, 352–61, 407–8
prosecutorial discretion lost to ICC, 52–3
self-referral to ICC, encouragement of, 13, 31, 407–8
in Sudan, 298–9, 320–8
in Uganda, 113–14, 120–3, 228–35, 238

UNAMID, 265, 275, 278, 315
see also International Commission of Inquiry on Darfur (ICID); Sudan; referral; Justice and Equality Movement; Security Council defendants
as actors with respect to complementarity, 22
deferral
article 18(2) basis, 77–9
ICC and other international criminal tribunals contrasted, 78–9, 83–6
by ICC Prosecutor, 77–9, 84–6
by Security Council request, 11, 90, 253, 97–9, 128, 326, 331–5, 357, 359–89
Sudan context, 253, 328, 331–5, 357, 391
Uganda context, 135, 138
Democratic Republic of the Congo (DRC) claims against Uganda, 111–12
conflict in eastern DRC, 111–12, 119
Katanga case see Katanga, Germain
Lubanga case see Lubanga, Thomas
referred to ICC, 31, 346
‘division of labour’ concept, 11–12, 341–4, 350, 360, 381–2, 397, 399–401, 407
Doha Document for Peace in Darfur (DDPD), 265, 296–7, 301–3, 319
weak effect of complementarity
see catalysing effect of complementarity.
see also ‘international standards’
ICC’s jurisdiction where domestic proceedings initiated, 62–6
incorporation of Rome Statute crimes, 10, 12, 40–1, 194–206, 284–91, 406
mimicry/mirroring of ICC see International Criminal Court (ICC)
obligation to criminalise?, 40–1
primacy, 37, 53, 57–8, 61, 257, 337, 341–2, 348–9
same-conduct test and, 51–2
special courts as ‘cosmetic’ reform, 12, 406
see also states; Sudan; Uganda
domestic proceedings initiated after issue of ICC warrants, 79
donors
as actors in complementarity, 12, 24, 383–5, 406, 412
and human rights treaty ratification, 366–7
and ‘international standards’, 152
and NGOs, 24, 165–6, 190
in Sudan, 283
and ‘traditional justice’, 149–50, 152, 154–5
and transitional justice, 164–8, 179, 181–4, 186–7, 190, 193, 237
in Uganda see Uganda
see also non-governmental organisations (NGOs)
dramatis personae, 21–4
‘ethnophilosophy’
risk of, 32
fair trial rights
ICC overseeing compliance, 67–70
see also international standards; human rights
Final Peace Agreement (Uganda), 136–41,
Gaddafi, Saif
admissibility challenge by, 22
‘Global Criminal Justice System’
complementarity and, 19–20
gravity
‘comparative gravity’ test, 59
criterion for admissibility, 71, 82, 90–1
role in Uganda, 116, 390
‘grounded theory’
methodological approach, 28–9
Harun, Ahmad Muhammad
admissibility assessment, 47–8, 260–1
arrest warrant, 250, 269
rejection of complementarity, 244
Haskanita (Darfur)
war crimes case, 251–2, 261
human rights
article 21(3), 69–70
human rights activists, 10–11, 23–4
ICC jurisdiction to review, 67–70
ICC Act 2010 (Uganda), 199, 216–17
lifting of, 317, 369
upholding of, 309
impunity
anti-impunity agenda, 8, 19–20, 29–30, 42, 57–9, 106–8
inability to investigate or prosecute absolute inability, 394–5
as admissibility criterion, 35–6, 43, 61–5, 191
avoidance of findings of, 351
claims as to, 121–3, 139, 259, 346, 387
fair trial rights and, 67–9
ICCID’s assessment, 260, 289, 292–3
paradoxes of complementarity, 392–6
as part of shorthand description, 17, 34, 43–5
partial inability, 395–6
reputational damage due to, 25–6, 347, 387
spectrum of, 393–4
subordination to patronage networks, 14
see also unwillingness to investigate or prosecute
‘interests of justice’
nor proceedings because of, 71, 91–2, 94–5, 159, 333
International Commission of Inquiry on Darfur (ICCID)
assessment of inability to investigate or prosecute, 260, 289, 292–3
‘list of fifty-one’, 248, 280, 317
supports referral to ICC, 248
views on complementarity as to Sudan, 258–60, 289, 292–3, 333
international courts
see also entries for specific courts and tribunals
<table>
<thead>
<tr>
<th>INDEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Crimes Division (Uganda) establishment, 179–87</td>
</tr>
<tr>
<td>mimicry/mirroring of ICC, 185, 205</td>
</tr>
<tr>
<td>International Criminal Court (ICC) as actor in shaping complementarity’s catalysing effect, 21–2</td>
</tr>
<tr>
<td>admissibility see admissibility as alternative to domestic proceedings, 13, 345</td>
</tr>
<tr>
<td>civil-law/common-law divide, 120</td>
</tr>
<tr>
<td>complementarity see complementarity cooperation see cooperation cost–benefit analysis, domestic v. ICC proceedings see domestic justice</td>
</tr>
<tr>
<td>deferrals see deferral ‘division of labour’ approach, 11–12, 341–4, 350, 360, 381–2, 397, 399–401, 407</td>
</tr>
<tr>
<td>expectations as to influence on domestic justice systems, 8–10, 24–6</td>
</tr>
<tr>
<td>first referrals to, 31, 111</td>
</tr>
<tr>
<td>first Prosecutor see Moreno-Ocampo, Luis inadmissibility see admissibility independence, 14, 174–5, 408</td>
</tr>
<tr>
<td>intervention as stimulus to norm entrepreneurs, 362</td>
</tr>
<tr>
<td>investigation opening, 60–1 state’s inability to terminate investigation, 70, 78</td>
</tr>
<tr>
<td>state’s influence on complementarity grounds, 76–8</td>
</tr>
<tr>
<td>jurisdiction complementary jurisdiction, 14–15, 84, 86, 205, 382–3, 394</td>
</tr>
<tr>
<td>see also complementarity concurrent jurisdiction, 14–15</td>
</tr>
<tr>
<td>to monitor human rights compliance, 67–70</td>
</tr>
<tr>
<td>primacy of domestic justice systems, 37, 53, 57–8, 61, 257, 337, 341–2, 348–9</td>
</tr>
<tr>
<td>primacy of international court jurisdiction, 14–15, 31–2, 51, 86, 97–8, 205, 241, 354, 359–60, 382 of the state unaffected, 78–9</td>
</tr>
<tr>
<td>triggers assessment independent of, 75–6, 86 types of, 86–90 see also proprio motu actions; referrals; Security Council; self-referrals</td>
</tr>
<tr>
<td>mimicry/mirroring by domestic courts implications for international justice, 413–14</td>
</tr>
<tr>
<td>by SDHC, 185, 205 story of, 10, 412</td>
</tr>
<tr>
<td>Ugandan detention facilities, 189–90</td>
</tr>
<tr>
<td>Office of the Prosecutor (OTP) boat trip with Ugandan officials, 230</td>
</tr>
<tr>
<td>prosecutorial policy, 92–7, 108–9, 389 and Sudan, 245–7, 249–50, 260–1, 280–1, 289–90, 300–1, 316, 327, 330</td>
</tr>
<tr>
<td>organs, 21–2 pro-ICC ideology emergence, 13, 345 and political expectation on states to conduct proceedings, 352–61 promotion, 407–8</td>
</tr>
<tr>
<td>referrals to see referrals requests US military assistance for arrests, 173</td>
</tr>
<tr>
<td>‘self-referral’ by states to, 13, 31, 407–8 subordination to patronage networks, 14, 403, 408</td>
</tr>
<tr>
<td>success, measure of, 2, 8–9, 404 and Sudan see Sudan and Uganda see Uganda UK support for, 120</td>
</tr>
<tr>
<td>US opposition to, 118–19, 248–9 see also complementarity; international criminal justice movement; Rome Statute</td>
</tr>
<tr>
<td>International Criminal Court Act (Uganda) adoption, 194–206</td>
</tr>
<tr>
<td>international-criminal-justice movement as actor in complementarity, 23–4 donors and, 24 pro-ICC ideology, 352–3</td>
</tr>
<tr>
<td>in Uganda, 192, 241 International Criminal Tribunal for the former Yugoslavia (ICTY) amnesty, 219</td>
</tr>
<tr>
<td>catalysing effects, 31, 382–3 complementarity, 97–8 current jurisdiction, 14–15 conditional deferral procedure, 71, 83–6, 191–2, 383</td>
</tr>
<tr>
<td>see also rule 11 bis below conflation with ICC, 171–2, 190 deferral to, 78</td>
</tr>
<tr>
<td>human rights monitoring of domestic proceedings, 69, 85–6 model, 189, 241 ordinary crimes, 49–51</td>
</tr>
<tr>
<td>primacy, 14–15, 31–2, 51 rule 11 bis, 69–71, 86, 188, 192 see also conditional deferral procedure above</td>
</tr>
<tr>
<td>and state sovereignty, 16</td>
</tr>
</tbody>
</table>
INDEX

INDEX

Libya (cont.)
Gaddafi (Saif) case, 22
referral, 31
line-of-fire perspective
challenges for research, 30
choice of, 30–2
complementarity under fire, 410
local justice practices
ajaweed, 299–303, 302–6
catalysing effect of complementarity, 141–59, 299–306
jadra, 268, 302–3, 305–6
Lord's Resistance Army (LRA)
admissibility of ICC cases against members of, 120–4, 137–41, 188–9, 230–1, 241–2, 360, 379–80, 388–9, 402
agreement to Juba peace talks, 129–31
amnesty for, 128, 159, 206–27
conflict involving, 124–9
deferral of proceedings against, 138, 334
domestic proceedings against, 160, 179, 186–7, 193, 205–6, 213–14, 231–3
ICC investigation’s focus on, 115–16, 228–30
ICC warrants issued against leaders, 115, 142
negotiations with, 116–17, 128–37, 159, 196–7
referral to ICC, 111–23, 171–2
see also Kony, Joseph; Kwoyelo, Thomas; Juba peace talks
low punishment
admissibility on grounds of, 66
Lubanga, Thomas
admissibility assessment, 46, 51–2, 60–1
‘case’, meaning of, 46–8, 51–4
DRC supports ICC prosecution, 51
and Uganda, 111–12
Mali
referral, 31, 346
mato oput
‘Meridionalism’
risk of, 32
methodological perspective, overview, 28–30
mimicry/mirroring of ICC: see International Criminal Court (ICC)
Moreno-Ocampo, Luis
appointment supported by UK, 120
on complementarity, 2, 8–9, 25, 111
concerns over Uganda peace talks, 138–9, 239–40
Darfur investigation, 248–50, 260, 280, 330
Haskanuta war crimes case, 251–2
on ICC’s success, 2, 8–9
on ‘positive complementarity’, 20, 25, 344–5
on duty of states to prosecute, 19–20, 25, 37
requests arrest warrant for Sudanese President, 23, 244, 251, 269–70, 273–4, 276–9, 289–90, 330
on ‘Rome System’, 19–20, 25
on situation in eastern DRC, 111
Sudan’s opposition to, 244–6, 250–1, 284, 289, 312–13
and Uganda’s referral to ICC, 111, 122, 239–40
and Ugandan state actors, 91, 230
see also International Criminal Court (ICC), Office of the Prosecutor (OTP)
Museveni, Yoweri
on amnesty, 129, 207, 211
and situation in northern Uganda, 124–9, 131–2, 169–71, 389
and South Sudan, 131–2
N’Djamena (Chad)
Darfur ceasefires, 264–5
Nehru, Jawaharlal
on theory and reality, 26
networks
inclusion into, 176, 182–3, 236–8, 314–15
as actors in complementarity, 22–4
theory, 176
see also patronage
Nigeria
Darfur peace talks, 265
non-governmental organisations (NGOs)
as actors in complementarity, 22–4
and donors, 24, 165–6, 190
expectations as to complementarity, 9
promoting complementarity as big idea, 11, 20, 33, 195–6, 200–1
and Sudan, 22–3, 275, 385
and Uganda see Uganda
see also donors; international criminal justice movement	norm entrepreneurs
as actors in complementarity, 12, 22–3
changing conflict paradigm, 362
in Uganda, 169–70, 177–8, 182–4, 235–7,
376
norm hijacking
literal over legal meaning of ‘complementarity’, 340–1
Uganda, 192–3
see also ‘division of labour’ concept
INDEX

normative perspective
overview, 27–8
northern Uganda conflict see Lord’s Resistance Army (LRA); Uganda Office of the Prosecutor (OTP)
see International Criminal Court (ICC); Moreno-Ocampo, Luis ordinary crimes, 49–51 Otti, Vincent
arrest warrant for, 115–16, 122 and mato oput, 150 reference to Lubanga case, 136–7 referred to, 142 outreach by ICC, 199, 230, 343, 360 as ‘international standard’, 190–1 by NGOs, 190, 353 paradoxes of complementarity
admissibility on grounds of, 66 see also amnesties patronage
cover up, 389 and domestic proceedings, 406–7 entrepreneurs, 237 impunity and, 373–8, 402 institutional subordination to, 12, 14, 167, 371–3, 408 liberation from, 403–4 maintenance of, 182 potential for, 237 price of, 371–2 see also networks political economy
assumptions as to catalysing effect of complementarity, 25–6, 317 see also cost–benefit analysis; norm entrepreneurs; patronage politics
head-of-state-driven politics, 168 ICC politics, 357 and law, 359 Real Politics, 403–4 rewards of international politics, 167 transitional justice, 187 see also patronage ‘positive complementarity’ see complementarity primacy as to jurisdiction complementarity distinguished, 14–15, 31–2, 49–51, 86, 97–8, 191, 205, 241, 354, 359, 382 pro-ICC ideology see International Criminal Court (ICC) proprio motu actions
admissibility assessment, 81–2, 138 interests-of-justice assessment, 92 OTP investigation, 71–2, 77, 87–8, 94, 96, 118 prosecution by states
duty or obligation to prosecute, 11, 13, 18–20, 25, 36–42 responsibility to prosecute, 11, 13, 18, 25, 36–40, 344–67, 410 see also states prosecutorial discretion
in study of complementarity, 26–30 referrals
approaches to, 26–30 ethics, 30 line-of-fire perspective
choice of, 30–2 conclusions as to, 406–10 methods, 28–30 scope of present study, 10–11, 27, 30–2 structure of present study, 33 responsibility to conduct proceedings see states right to conduct proceedings see states Rome Statute
complementarity see complementarity complementarity as ‘foundational principle’, 17

© in this web service Cambridge University Press www.cambridge.org
INDEX

Rome Statute (cont.)
gravity see gravity
incorporation of crimes into domestic law, 10, 12, 40–1, 194–206, 284–91, 406
normative paradox of complementarity, 13, 345–51, 397–8, 408
object and purpose, 29–30, 39–40, 58
prohibition of amnesties?, 18–19, 41–3, 104
realism in analysis of, 29–30
states’ responsibility to prosecute, 11, 13, 18, 25, 36–42, 344–67, 410
states’ right to prosecute, 15–16, 25, 70, 331, 408, 410
‘unsigned’, 251

‘Rome System’
complementarity and, 19–20, 25, 345–6, 359, 397–8

scope of present study, 10–11, 27, 30–2
Security Council
as actor in shaping complementarity’s catalysing effect, 22–3
complementarity as decision-making factor, 11, 23, 259, 331–5, 344–5
Darfur resolution, 31, 248–9, 357
referrals, 31, 75–6, 87–90
request for deferral, 11, 90, 253, 328, 331–5, 357, 391, 398–9
UNAMID, 265, 275, 278, 315
Sirte (Libya)
Darfur peace talks, 265
sovereignty
benefits, 386
complementarity in relation, 16, 27–8, 355, 358–60, 409–10
costs, 12, 25–6, 359, 367–9, 378, 385–9, 398–9
international justice in relation, 27–8, 56–7, 359–60, 409–10
invocation, 26, 57
recognition of, 365–6
Special Court for Sierra Leone (SCSL)
amnesty, 219
concurrent jurisdiction, 14–15
primacy, 14–15, 359
role model, 184, 241, 359
Ugandan judge on, 181, 189
special courts
as ‘cosmetic’ reform, 12, 406
and human rights law, 281

Special Criminal Court on the Events in Darfur (SCCJD)
establishment and role of, 280–1, 322–3, 342

Special Division of the High Court (SDHC)
see International Crimes Division (Uganda)

Special Tribunal for Lebanon (STL)
concurrent jurisdiction, 14–15
primacy, 14–15
states
as actors in complementarity, 22
duty or obligation to prosecute, 11, 13, 18–20, 25, 36–42
expectations as to complementarity, 9
inability to investigate or prosecute see inability to investigate or prosecute
interaction with ICC jurisdiction see International Criminal Court (ICC), jurisdiction

Sudan
al-Bashir case see al-Bashir, Omar
catalysing effect of complementarity accountability on agenda peace negotiations, 291–9
accountability mechanisms, establishment of, 279–84
amnesties discouraged?, 318–20
Armed Forces Act 1986 amendment, 284–6, 289, 317
cost benefit analysis, 14–15
context generally, 245–65
crime paradigm, expansion?, 306–16
criminological considerations underlying, 26
criminal act of 1991 amendment, 286–8, 291, 325
Criminal Procedure Act 1991 amendment, 287
domestic proceedings increased?, 320–8
effect summarised, 10–14, 266, 328–37
insensitive to crime, 326–27
immunities discouraged?, 316–17, 319–20
inhospitable environment for responsibility to conduct proceedings, 361–7

© in this web service Cambridge University Press www.cambridge.org
laws on international crimes, adoption of, 284–91
local justice practices, promotion of, 299–306
special mechanisms as ICC alternatives, 279–84
transitional justice debate, 266–79
Uganda compared
accountability mechanisms, 283
accountability on agenda peace negotiations 293, 298
effect summarised, 328–30
expected effects not experienced, 306
ICC’s attention to complementarity, 246–7, 330
legal dimension included in conflict resolution?, 307–9, 314–15
responsibility to conduct proceedings as norm, 361–7
traditional justice practices, 301, 304–5
transitional justice, 278
unlikeliness of a catalysing effect, 244
see also catalysing effect of complementarity
complementarity
allusions to, 257, 342
catalysing effect see catalysing effect of complementarity above
denial of applicability, 244, 252–8, 261
ICC’s views, 260–1, 289–90
ICID’s views, 258–60, 289, 292–3, 333
choice as case study, 31
Darfur see Darfur situation
honors and, 283
Harun case see Harun, Ahmad Muhammad
human rights treaties, ratification of, 365–7
Hussein, Abdel Raheem, arrested warrant, 252
and ICC
admissibility challenge?, 22, 261, 331
deterioration of relations, 245–52
ICC’s views on complementarity, 260–1, 289–90
initial support for ICC’s establishment, 247–8
legal response to ICC proceedings, 246–7, 254–7, 261
limited cooperation, 249–50
political response to ICC proceedings, 246–7, 254–7, 261
‘unsigning’ of Rome Statute, 251
inhospitable environment for responsibility to conduct proceedings, 361–7
Kushayb case see Kushayb, Ali
NGOs and, 22–3, 275, 385
President see Abboud, Ibrahim; al-Bashir, Omar
South(ern) Sudan
conflict, 161, 256, 263–4, 266–8, 290, 307–8, 321
and ICC, 274–5
and LRA, 125, 128–32, 137, 139, 175, 225
support for LRA, 121, 128
support for Uganda against LRA, 129
see also al-Bashir, Omar; Darfur situation
Sudan Liberation Movement (SLM)
Darfur conflict, 264–5
Sudan People’s Liberation Movement (SPLM), 130–2, 161, 264, 273–5, 288, 307
Tabra (Darfur)
investigation into market attack, 282, 326
‘traditional’ justice practices see local justice practices
transitional justice
as alternative to international justice, 315, 329–30
catalysing effect of complementarity, 10, 159–70, 242–3, 266–79
donors and, 164–8, 179, 181–4, 186–7, 190, 193, 237
Transitional Justice Working Group
(Uganda), 148, 164–8, 176, 180–1, 198, 236
treaty interpretation, 29–30
Uganda
Acholi, see Achdi
‘bilateral immunity agreement’ with US, 119, 194
catalysing effect of complementarity
A&R Accords, 133–6, 139–40, 150–3, 160–1, 176, 179–80, 201, 212–13, 223
accountability on agenda peace negotiations, 159–62
amnesties discouraged, 206–27
attempts to find alternatives to ICC, 137–41, 237
conclusions as to, 234–43, 406–10
conflict paradigm expansion, 171–9
considerations underlying, 26
domestic proceedings increased?, 228–33
effect summarised, 10–14, 141, 234–43, 337
expected effects not experienced, 228–33
inhospitable environment for responsibility to conduct proceedings, 361–7

INDEX
INDEX

Uganda (cont.)

- International Crimes Division, establishment of, 179–87
- International Criminal Court Act, 194–206
- 'international standards', attention to, 187–94
- local justice practices, promotion of, 141–59

Sudan compared

- accountability on agenda of peace negotiations, 293, 298
- accountability mechanisms, 283
- effect summarised, 328–30
- expected effects not experienced, 306
- ICC’s attention to complementarity, 246–7, 330
- legal dimension included in conflict resolution?, 307–9, 314–15
- responsibility to conduct proceedings as norm, 361–7
- traditional justice practices, 301, 304–5
- transitional justice, 278
- transitional justice debate, 162–70
- transitional justice on peace talks agenda, 159–62

choice as case study, 31

complementarity

- catalysing effect see catalysing effect of complementarity above
downplaying of, 120–4
- see also and ICC below

conflict in northern Uganda

- Agreement and Annexure on Accountability and Reconciliation (A&R Accords)
  see Accountability and Reconciliation Accords
- Bigombe peace initiatives, 128–9, 138, 196
- collapse of negotiations, 136–7
- conflict prior to referral, overview of, 124–9
- dominant conflict paradigm, 171–9, 362
- Final Peace Agreement (FPA) see Final Peace Agreement
government forces, 126–7
- see also Uganda People’s Defence Forces (UPDF)
- Juba peace talks see Juba peace talks

North–South political divisions, 125–7

US support for government, 127, 173–4
- see also Kony, Joseph; Kwoyelo, Thomas;
  Lord’s Resistance Army (LRA);
  Otti, Vincent
detention centres, mirroring of ICC, 189–90

donors in

- and Amnesty Act 2000, 222–3, 225–6, 236
- and human rights treaty ratification, 366–7
- and ICC Act 2010, 200–1
- and ICC ideology, 356–8
- influence on government, 117, 194–5, 243
- and ‘international standards’, 152
- and outreach, 190
- and patronage, 373
- and transitional justice, 149–50, 152, 155
- and transitional justice, 164–8, 179, 181–4, 186–7, 190, 193, 237

and DRC see Democratic Republic of the Congo (DRC)

- first ever referral to ICC, 31, 111
- gravity test, 116, 390
- human rights treaties, ratification of, 195, 365–7
- and ICC
  - admissibility assessment
    - ICC’s position, 122–3, 138–40, 238–9
    - Uganda’s position, 121–2, 153, 157, 190–1, 238–9
  - admissibility challenge, 22, 122, 133,
    135, 140–1, 157, 190–1, 202, 237–9
  - attempts to find alternatives to ICC, 137–41, 237
  - complementarity downplayed, 120–4
  - convergence of interests, 114, 116–19
  - ICC concerns over peace talks, 138–40
  - inability/unwillingness to prosecute, 121–2, 139, 387, 393–5
  - Juba peace talks, 129–33
  - referral, 111–14, 120–1
  - right to withdraw referral assumed, 129
  - scope of investigation, 114–16
  - International Crimes Division
    - see International Crimes Division
  - International Criminal Court Act, 194–206
  - Juba peace talks, see Juba peace talks
  - Justice, Law and Order Sector (JLOS), 164–5, 172–3, 176, 180–1, 184–5, 188–90, 192–3, 203
  - NGOs in
    - capacity building, 165–6, 182–3
    - and domestic proceedings, 192–3
    - and ICC, 115, 133, 176–7
    - and International Criminal Court Act, 195–6, 200–1
    - and Kwoyelo case, 223–4
    - outreach, 190, 238
    - and transitional justice, 147, 152–3, 176
    - and War Crimes Court, 182–3
    - norm entrepreneurs in, 169–70, 177, 182–4, 235–8, 241
President see Museveni, Yoweri
securitisation, 178
Special Division of the High Court
(SDHHC) see International Crimes
Division (Uganda)
support for South Sudan, 128, 132
Transitional Justice Working Group, 148,
164–8, 176, 180–1, 198, 236
Uganda People’s Defence Forces (UPDF),
114–20, 124–32, 136–7, 141–2, 159,
169–74
War Crimes Court see International Crimes
Division (Uganda).
see also Lord's Resistance Army (LRA);
Museveni, Yoweri
UNAMID
265, 278, 278, 315
United Kingdom
support for ICC, 120
United Nations Security Council see Security
Council
United States
‘bilateral immunity agreement’ with
Uganda, 119, 194
and Darfur resolution, 248–9
ICC requests military assistance for arrests,
173
lists LRA as terrorist organisation, 119
opposition to ICC, 118–19, 248–9
support for Uganda, 127, 173–4
‘unsigning’ of Rome Statute, 251
unwillingness to investigate or prosecute
absolute unwillingness, 394–5
as admissibility criterion, 35–6, 43, 61–4, 66
avoidance of findings of, 351
claims as to, 121, 259, 387
fair trial rights and, 67–9
ICID’s assessment, 260, 289, 292–3
paradoxes of complementarity, 392–6
as part of the shorthand description, 17, 34,
43–5
partial unwillingness, 395
reputational damage due to, 25–6, 347, 387
spectrum of, 393–4
subordination to patronage networks, 14
see also inability to investigate or
prosecute
Vienna Convention on the Law of Treaties
(VCLT)
general rule on treaty interpretation,
29–30, 241
treaties and third parties, 38, 254–5
War Crimes Division see International Crimes
Division (Uganda)