

Index

- abduction of suspects 106–7, 455–6
 - abuse of process doctrine 106–7
 - accountability for international crimes 588–90
 - see also* criminal liability
 - accused 431–3
 - absence of 472
 - admission of guilt by 470, 471–2
 - as mitigating circumstance 507–8
 - disclosure of evidence to 465–7
 - legal representation of 431–2
 - rights of
 - to judicial review 453–5
 - to remain silent 439
 - see also* suspects
 - acquittals
 - and appeals 474
 - effects of 39
 - of ICTY 136
 - mid-trial 473
 - ad hoc tribunals
 - creation of 584, 589
 - decline of 593
 - human rights law used by 13–15
 - for Lockerbie prosecutions 198
 - see also* ICTR; ICTY; internationalized courts
 - adjudicative jurisdiction 50
 - admissibility
 - of cases 442–4
 - at ICC 161–2, 443
 - challenges to 155, 158–9, 162, 443–4
 - and national amnesties and reconciliation commissions 159–60
 - and *ne bis in idem* principle 87–8, 160–1
 - of evidence 469
 - African Union
 - non-cooperation with/criticism of ICC by 176–7, 178–9, 585–6
 - arrest warrant for Al Bashir 176
 - Senegal Extraordinary Chambers created by 190–1
 - on universal jurisdiction 65
 - age, minimum
 - for ICC jurisdiction 169
 - for soldiers 305
 - aggravating circumstances in sentencing 506–7, 508
 - aggression 35, 307, 410–11
 - criminal liability for 313–14
 - historical development of 307–10
 - ICC Statute on/jurisdiction over 310–13, 314, 315–16, 322–6, 327, 592
 - material elements 313
 - acts 315–17
 - perpetrators 313–14
 - planning, preparation, initiation or execution 314–15
 - mental elements of 322
 - prosecutions of 35, 307, 313, 326–8, 592
 - superior orders defences for 414–15
 - thresholds for 313–14, 320–1
- aiding and abetting
 - criminal liability for 370–5
 - and joint criminal enterprise 360, 370–1
 - Akayesu, Jean-Paul 141, 223
 - allegiance test 284
 - amnesties
 - and admissibility of ICC prosecutions 159–60
 - as alternative for prosecutions 569–76
 - for torture 570
 - Amnesty International, on ICC Statute 588
 - anonymity
 - of victims 488
 - of witnesses 138, 487
 - anti-personnel mines, legality of use of 299–300
 - anti-terrorism treaties 92, 333–5, 338–9, 340–1, 343
 - anticipatory self-defence 317–18
 - apartheid
 - as crime against humanity 260–1
 - transition in South Africa from regime of 568
 - appeals proceedings 474–7, 510
 - arbitrary imprisonment 249
 - Arendt, Hannah 43
 - armed conflicts

- categorization of 276–9
- and crimes against humanity 233–4
- internal
 - assessment of existence of 275, 279–81
 - war crimes in 272–5
- laws of *see* international humanitarian law
- and war crimes 281–2
 - assessment of existence of conflict 275–6
 - knowledge of conflict 282–3
- see also* wars
- armed forces *see* military personnel
- arrest warrants
 - European 93, 94, 100, 103, 106
 - of ICC 586
 - and immunities 562
 - non-compliance with 536
 - procedures for 452–3, 456, 528
 - of ICTY and ICTR 451–2
 - of SCSL 561–2
- arrests, duty to assist international courts/tribunals in 527–9
- attacks
 - on civilian populations 235–40
 - prohibition of 291
 - and terrorism 339
 - widespread/systematic 234–5
 - on prohibited targets, as war crime 290–2
 - on property, as persecution 258–9
 - proportionality principle 292–7
 - attempts, criminal liability for 380
 - attribution of conduct to States 16–17
 - Australia
 - forcible transfer of Aboriginal children in 218
 - prosecutions of international crimes in 80
 - aut dedere aut judicare* principle (to extradite or prosecute) 74–5, 98–9
 - as customary international law 77–8
 - as *erga omnis* obligation 78–9
 - jurisprudence on 75–7, 349–50
- Barayagwiza, Jean-Bosco 141
- Barbie, Klaus 74, 79, 80, 83
- Al Bashir, Omar 561, 562
- Bassiouni, M. Cherif 4, 78
- Belgium
 - extradition of Habré requested by 75–6
 - universal jurisdiction law in 60, 61
 - amendments to 62
 - prosecutions based on 61–2
- Bemba (Gombo), Jean-Pierre 155
- Benito, Odio 304
- Bernard, Henri 122
- Bingham, Lord 346
- biological weapons, legality of use of 298–9
- births, prevention of, as element of genocide 217–18
- Bormann, Martin 322
- Bosnia and Herzegovina
 - ethnic cleansing in 216
 - War Crimes Chamber 194–5
 - Browne-Wilkinson, Lord 548
 - Bula-Bula, Judge 67
- Calley, William 55
- Cambodia, Khmer Rouge regime in 185
- Cambodia Extraordinary Chambers (ECCC)
 - 185–8, 199
 - on amnesties 572, 574
 - Internal Rules 187
 - on joint criminal enterprise 360–1
 - victim participation in 484
- Canada
 - legislation in
 - on international crimes 85, 414
 - on universal jurisdiction 64
 - prosecutions of international crimes in 73
- Caroline* incident 317
- case law *see* jurisprudence
- Cassese, Antonio 241, 405, 415
- causation
 - and command responsibility 392–3
 - in duress defences 408–9
- charges 459–61
 - alternative/cumulative 461–2
 - confirmation of 463–4
- chemical weapons, legality of use of 298–9
- child soldiers
 - and jurisdiction of Special Court for Sierra Leone 183
 - war crime of conscripting/enlisting of 303–5
- children
 - forcible transfer of, as element of genocide 218
 - minimum age for soldiers 305
- civil law tradition 424–5, 478–9
- civil proceedings, for international crimes 581–2
- civilians/civilian populations 290
 - attacks on 235–40
 - prohibition of 291
 - and terrorism 339
 - widespread/systematic 234–5
 - war crimes against
 - causing excessive damage among 292–7
 - unjustified delays in repatriation of 289
 - see also* non-combatants
- cluster munitions, banning of use of 300
- co-perpetration 363–7
 - indirect 368–70
- coercive measures 450–1
 - challenges to 453–6
 - liberty deprivation/restriction 451–3
 - State cooperation with international courts/tribunals in 533
- Cohen, Stanley 576
- command responsibility 384–6, 393–6
 - causation element of 392–3
 - and failure to take measures 390–2

- command responsibility (cont.)
 - mental elements of 388–90
 - and superior-subordinate relationship 386–8
 - commission *see* perpetration
 - common law tradition 424–5, 478–9
 - complementarity principle
 - in enforcement of international criminal law 5
 - of ICC 81, 154–8, 198–9, 587
 - and internationalized courts 198–9, 201
 - and State cooperation 536–7
 - conditional releases, and State cooperation with
 - international courts/tribunals 528–9
 - conditional universal jurisdiction 58
 - conduct of individuals attributable to States 16–17
 - conflicts *see* armed conflicts
 - Congo Democratic Republic of the (DRC), and ICC 155, 524–5
 - consent
 - defences 416–17, 469
 - of States to ICC jurisdiction 167, 172
 - conspiracy 314
 - criminal liability for 380–1
 - and joint criminal enterprise 356
 - prosecutions of 123, 380–1
 - contempt of court 478
 - context
 - of genocide 209, 218–20
 - of mass killing 245
 - threshold for crimes against humanity 231, 233–44
 - cooperation *see* State-to-State cooperation in criminal matters; States, cooperation with international courts/tribunals
 - corporations, criminal liability of 592
 - costs, of international criminal tribunals 42
 - counsel *see* legal representation
 - crimes
 - extraditable 101–2
 - multiple, requirement for crimes against humanity 236
 - see also* international crimes; transnational crimes
 - crimes against humanity
 - definitions of 184, 229, 232
 - contextual threshold 231, 233–44
 - and genocide 207–8, 232–3
 - and war crimes 232, 592
 - historical development of 229–32
 - mental elements of 243–4
 - prohibited acts 244–5, 261–2
 - apartheid 260–1
 - deportation 247–8
 - enforced disappearances 259–60
 - extermination 245–6
 - imprisonment 248–9
 - murder 245
 - persecution 14, 256–9
 - sexual violence 247, 251–6, 262
 - slavery/enslavement 246–7
 - sexual 247, 253–4
 - terrorism 345–6
 - torture 249–51
 - superior orders defences excluded for 414–15
 - criminal law
 - philosophy of 24–5
 - see also* international criminal law
 - criminal liability 353–4
 - for aggression 313–14
 - of corporations 592
 - forms of
 - aiding and abetting 370–5
 - attempting 380
 - co-perpetration 363–7
 - indirect 368–70
 - command responsibility 384–6, 393–6
 - causation element of 392–3
 - and failure to take measures 390–2
 - mental elements of 388–90
 - and superior-subordinate relationship 386–8
 - conspiracy 380–1
 - incitement to genocide 377–8
 - indirect perpetration 367–8
 - instigation 376–7
 - joint criminal enterprise 356–63
 - ordering 375–6
 - perpetration 354–6
 - planning and preparing 379–80
 - grounds for exclusion of *see* defences
 - of individuals 3, 7–8, 118–19, 590
 - for enforced disappearances 259–60
 - for genocide 227–8
 - and obligation to obey orders 412–13
 - see also* superior orders defences
 - treaty-based 9–10
 - for war crimes 9, 270–1
 - mental elements of 381–4
 - and sentencing 505
 - of States 7, 16–17, 327–8, 590
 - for aggression 312–13
 - for crimes against humanity 240
 - and immunity from civil proceedings 544–5
 - for prevention and punishment of genocide 206
 - for terrorism 339–40
- criminal proceedings *see* procedures
- critical legal studies 23–4
- cultural genocide 218, 225
- customary international law 591
 - on aggression 308
 - on crimes against humanity 237–8
 - humanitarian 9, 268
 - and ICC Statute 152
 - as international criminal law source 10–11
 - on non-applicability of statutory limitations to international crimes 84
 - on *nullum crimen sine lege* principle 19

- on obligation to prosecute international crimes 77–8
- on terrorism 341
- Darfur (Sudan)
 - Commission, on genocide concept 210
 - and intent 222
 - and protected groups 213
 - referral to ICC of situation in 164, 561
- death
 - indirect means of causing of 246
 - see also* killing; murder
- death penalty
 - as ground for refusal of extradition 103
 - prohibition of 501
- defences 398–9
 - consent 416–17, 469
 - duress and necessity 406–9, 415
 - failure of proof 399
 - ICC Statute on 399–400
 - intoxication 402–4
 - mental incapacity 401–2
 - military necessity 418
 - mistakes of fact and law 409–11, 415
 - reprisals 417–18
 - self-defence 404–6
 - superior orders 375, 411–15
- defendants *see* accused
- Demjanjuk, John 60, 71–2
- Democratic Republic of the Congo (DRC), and ICC 155, 524–5
- denunciation, as aim of punishment 36–7
- deportation
 - as crime against humanity 247–8
 - as genocide 216–17
 - of suspects, to circumvent extradition 107
- destruction
 - of groups element of genocide 216–17, 224–7
 - of understanding by intoxication 403–4
- deterrence, as aim of punishment 32–4
- diplomatic immunity 543
- disappearances, enforced 83, 259–60
- discriminatory intent
 - genocide motive of 227
 - ground for refusal of extradition 104
 - requirement for crimes against humanity 234
 - persecution 257–8
- distinction principle, war crime of violations of 290–2
- domestic courts
 - on extradition requests and human rights considerations 105
 - foreign jurisprudence used by 82
 - and ICTR
 - collapse of cooperation 141
 - primacy over 140
 - referrals to 105, 141, 142
 - and ICTY
 - primacy over 129–30, 131–2
- referrals to 72–3, 194–5
- jurisdiction of 50
- prosecutions of international crimes by 5, 70–4, 587–8, 593–4
 - and amnesties 573–4
 - and immunities 546–9, 550–1, 553
 - and inadmissibility of cases for ICC prosecution 154–6
 - and *ne bis in idem* principle 85–7
 - and non-retroactivity principle 84–5
 - practical obstacles 88
 - statutory limitations 83–4
 - terrorism 341–3
 - torture 75–6, 350
 - universal jurisdiction as basis for 61–2, 68
 - see also* State-to-State cooperation in criminal matters
- victims' role in 482
- domestic jurisprudence
 - on crimes against humanity 236–7
 - international criminal courts/tribunals making use of 12, 82
- double-criminality rule in mutual legal cooperation 94–5
- double jeopardy principle (*ne bis in idem*)
 - in international prosecutions 87–8, 160–1
 - in mutual legal cooperation in criminal matters 95–6
 - in national prosecutions 85–7
- Draft Articles on State Responsibility (ILC), on internationally wrongful acts 17
- Dunant, Henri 264–5
- duress defences 406–9, 415
- East Timor, Serious Crimes Panels 191–2, 193, 194
- ECCC *see* Cambodia Extraordinary Chambers (ECCC)
- ECtHR (European Court of Human Rights)
 - on extradition requests, grounds for refusal of 103, 104–5
 - on obligations to protect against serious breaches human rights other States 97
 - on torture 348
- education, as aim of punishment 36–7
- effective control test 278, 386–8
- Eichmann, Adolf 59–60, 71
- enforced disappearances 83, 259–60
- enforcement of international criminal law 34
 - complementarity principle in 5
 - dissatisfaction with 29
 - ICC judgments/decisions 170–1
 - indirect 70
 - selectivity in 44–5, 74
 - sentences 110–11, 511–12
 - State-to-State cooperation in 110–11
- enslavement *see* slavery
- equality of arms principle 441–2
- erga omnis* obligations 78–9

- Eser, Albin 398
- essential contribution requirement for co-perpetration 365–6
- ethnic cleansing, as genocide 216–17
- ethnic groups
 definition of 211
 identification of 211, 213–14
- EU
 extradition agreements of 99
 with United States 100
 see also European Arrest Warrant
 Framework Decision on Combating Terrorism 335
 human rights law in 97
 mutual legal assistance agreements of 108–9
 mutual recognition of foreign judicial
 decisions in 93, 96
- EULEX, presence in Kosovo 192
- European Arrest Warrant 93, 94, 100, 103, 106
- European Court of Human Rights *see* ECtHR
- evidence
 defences of failure of 399
 difficulties in obtaining of 88
 of genocidal intent 222–3
 procedural rules on 467–70
 disclosure of evidence 465–7
 presentation of evidence 473
 requirements in extradition requests 101
 of victim status 490–1
- exclusions
 from extradition
 of certain crimes 101–2
 of own nationals 102–3
 to mutual legal assistance 109
 of national liberation movements from terrorism
 conventions 339
 to personal immunity 554–5
 to public hearings 440
 of superior orders defences for crimes against
 humanity 414–15
- excuses 399
- executive jurisdiction 50–1
- expeditious proceedings, rights to 442
- extermination, as crime against humanity 245–6
- external perspectives, on international criminal law 23–4
- extradition 98–9
 circumvention of 106–7
 crimes qualifying for 101–2
 European conventions on 99
 grounds for refusal of requests for
 human rights violations 101, 103–5
 and ICC surrender requests 527–8
 nationality 102–3
ne bis in idem principle 96
 statutory limitations 95
 procedures 100–1
 prohibition to re-extradite 105–6
 treaties 100
- EU–US agreement 100
see also *aut dedere aut judicare* principle; State-to-State cooperation in criminal matters
- failure of proof defences 399
- fair trial rights/processes
 assurance of 39, 440–2
 in ICTY proceedings 134–5, 138
 and State cooperation with international
 courts/tribunals 526–7
 and victim participation 491
 and victim/witness protection schemes 138, 487
- denial of
 and admissibility of cases for ICC 157
 as ground for refusal of extradition 104–5
 at Tokyo Tribunal 123–4
- feminist perspectives on international criminal law 23
- first appearance hearings 462–3
- First World War, commission on the responsibility for
 start of 115–16
- forced labour, prohibition of 247
- forced migration
 as genocide 216–17
see also deportation
- forced pregnancy, as crime against humanity 254–5
- forced prostitution, as crime against humanity 254
- forced sterilization, as crime against humanity 255
- foreign jurisprudence
 domestic courts making use of 82
 recognition of 86, 93, 96
- foreign policy, impact of universal jurisdiction on 67
- Forsythe, David 589
- forum shopping 66
- France
 legislation on command responsibility in 384
 prosecutions of international crimes in 74, 79,
 80, 83, 552
- Freeman, Mark 569
- Fulford, Judge 366
- functional immunity 542–3
 and prosecution of international crimes 546–52
 and sovereign equality of States 545
- funding, of internationalized courts 199–200
- Gaddafi, Saif al-Islam 158–9
- Galić, Stanislav 344–5
- genocide
 criminal liability for 227–8, 377–8, 381
 superior orders defences excluded for 414–15
 cultural 218, 225
 definitions of crime of 36–7, 205–6, 208
 and crimes against humanity 207–8,
 232–3
 extermination 246
 persecution 258
 expansion of 209
 and Holocaust 207

- elements of crime 209
 - contextual 209, 218–20
 - mental 219, 220
 - intent 208–9, 210, 220–2
 - to destroy 224–7
 - knowledge-based approaches to 223–4
 - proof of 222–3
 - motive 227
 - prohibited acts 214–18
 - birth prevention measures 217–18
 - causing serious harm 215–16
 - destruction of groups 216–17, 224–7
 - forcible transfer of children 218
 - killing 215
 - prosecutions of 72, 207
 - obligation to prosecute or extradite 76–7
 - and superior orders defences 412
 - protected groups 210–11, 212
 - ICTR/ICTY on 211–12, 213
 - identification of members of 212–14
 - Rwandan 225–6
 - and ethnic groups 211
 - extradition of suspects to Rwanda/national prosecutions 72, 105
- Germany
 - Allied occupation of, prosecution of international crimes by 124–5, 313
 - legislation in
 - on command responsibility 395
 - universal jurisdiction in 64
 - governments *see* States
 - grave breaches regime of Geneva Conventions 59, 74–5, 270
 - gravity
 - of international crimes, hierarchies of 504–5
 - thresholds of
 - for admissibility of prosecutions 161–2
 - for crimes against humanity 208
 - for genocide 208
 - for torture 347–8
 - Green, Leslie 592
 - Greenawalt, Alexander 223–4
 - Guillaume, Gilbert 67
 - guilt
 - pleas of 470, 471–2
 - as mitigating circumstance 507–8
 - prosecutor's burden of proof of 439–40
 - guilty agency concept 367
 - Habré, Hissène 75–6, 190–1
 - Hague Regulations 265
 - Hariri, Rafiq 188
 - harm
 - causing of, as element of genocide 215–16
 - imminence of, in duress defences 407–8
 - suffered by victims 485
 - hate speech, as persecution 258
 - heads of State, immunities of 543–4, 547, 553
 - history
 - of aggression as crime 307–10
 - of crimes against humanity 229–32
 - of international criminal law 3, 115, 116, 590–5
 - and international jurisprudence 82
 - of international humanitarian law 264–5
 - writing of, and international jurisprudence 38–40
 - Holocaust, and crime of genocide 207
 - Hope, Lord 548–9
 - hors de combat* persons/combatants, rules on treatment of 300
 - hostage taking, as war crime 289
 - human rights courts
 - on *nullum crimen sine lege* principle 20
 - on universal jurisdiction 65
 - see also* European Court of Human Rights; Inter-American Court of Human Rights
 - human rights law
 - and international criminal law 13–15, 18, 429, 435–7, 479
 - independence and impartiality of proceedings 437–8
 - nulla poena sine lege* principle 21
 - nullum crimen sine lege* principle 18–21
 - presumption of innocence 439–40
 - see also* fair trial rights
 - and mutual cooperation in criminal matters 96–8
 - obligations to prosecute in 77, 570–1
 - violations of, and extradition requests 101, 103–5
 - human shields, war crime of use of 302
 - humanitarian interventions 319
 - humanitarian law *see* international humanitarian law
 - humanity *see* crimes against humanity
 - Hunt, Judge 134–5
 - Hutton, Lord 548
 - hybrid courts *see* internationalized courts
 - ICC (International Criminal Court) 150–1
 - arrest warrants 586
 - and immunities 562
 - non-compliance with 536
 - procedures 452–3, 456, 528
 - Elements of Crimes 151, 153
 - on aggression 322
 - on crimes against humanity 243–4
 - enforced disappearances 259–60
 - enslavement 246–7
 - sexual violence 252–3, 254, 255–6
 - torture 251
 - on genocide 214–15, 216, 218
 - contextual element 209, 218–20
 - on sexual violence offences, and consent 416–17
 - on war crimes 282–3
 - and proportionality in attack 294, 296–7
 - functioning of

- ICC (International Criminal Court) (cont.)
- achievements and future challenges 177–9, 588, 593
 - creation 146–8, 588–9
 - criticisms/non-cooperation 172–3, 437, 449–50, 536, 584–6
 - by African Union/African States 176–7, 178–9, 585–6
 - length of proceedings 479–80
 - referral to UN Security Council 171
 - by United States 173–6
 - victims-centric approach 498
 - independence and impartiality of 438
 - State cooperation regime 536–7, 538
 - investigations 163, 447–9, 450, 586
 - closing of 447
 - commencement of 445–6
 - criticisms of 449–50
 - Prosecutor initiated 164–5
 - selection of 178–9, 446–7
 - State Party initiated 163
 - self-referrals 166
 - UN Security Council referrals/deferrals 41, 164, 167
 - and immunities 559–61
 - victim participation in 493
 - judges 151, 430
 - jurisdiction of 151–3, 166–8
 - ad hoc acceptance of 168–9
 - over aggression 322–6, 592
 - and internationalized courts 198–9
 - minimum age 18 169
 - State consent to 167, 172
 - temporal limitations 169
 - over terrorism 343, 344, 345–6
 - over torture 350–1
 - and UN Security Council deferrals 170, 174
 - over war crimes 284
 - jurisprudence
 - on crimes against humanity, attacks on civilian populations 239–40
 - on criminal liability
 - co-perpetration 364–7, 369
 - command responsibility 390, 391
 - joint criminal enterprise 362–3
 - mental elements 383
 - enforcement of 170–1
 - on genocide 222
 - deprivation of resources 216
 - protected groups 213–14
 - on human rights standards 439
 - on immunities 562, 564
 - on procedural rules
 - appeals 476–7
 - evidence 466–7, 468–9
 - indictments 459, 460–1, 462
 - rights to judicial review 454–5
 - on sentencing 504, 505–6, 507, 509–10
 - sources, general principles of law 11–12, 153
 - on State cooperation with court 531
 - on victims
 - participation of 488–9, 494
 - reparations for 495–6, 497–8
 - on war crimes, child soldiers 304
 - Preparatory Commission 150
 - prosecutions/proceedings
 - admissibility of 161–2, 443
 - challenges to 155, 158–9, 162, 443–4
 - and national amnesties and reconciliation commissions 159–60
 - and *ne bis in idem* principle 87–8, 160–1
 - of aggression, possibilities for 326–8, 592
 - confirmation of charges 463–4
 - on-site 532
 - victim participation in 485, 488–94
 - of war crimes 274–5
 - witnesses in 433–4, 486–7
 - Prosecutor 430–1, 587
 - on amnesties 572–3
 - disclosure obligations of 466–7
 - discretionary powers of 442–3
 - on local justice mechanisms 582
 - Registry units for victims and witnesses 486
 - Regulations, on DCCs (documents containing the charges) 459, 460–1
 - Rules of Procedure and Evidence 427
 - on counsel 432–3
 - on disclosure of evidence 466–7
 - on sentencing 507
 - on sexual violence offences 417
 - on victims 485, 494–5
 - Statute of 8–9, 152, 590–1
 - on aggression 310–13, 314, 315–16, 327
 - on amnesties 572
 - complementarity principle in 81, 154–8, 198–9, 587
 - and internationalized courts 198–9, 201
 - and State cooperation 536–7
 - on cooperation with court
 - by individuals 522
 - by international organizations 525
 - by States 175–6, 518, 519–21, 527–8, 529, 530–1, 535, 557–9
 - on crimes against humanity 231–2, 234
 - attacks against civilian populations 236, 237–8
 - prohibited acts 244, 251–2, 254–5, 255–6, 257, 259, 260, 261
 - on criminal intent 220–1
 - on criminal liability
 - aiding and abetting 374
 - attempting 380
 - co-perpetration 369
 - command responsibility 385, 389, 393, 395
 - joint criminal enterprise 362
 - mental elements of 382–4

- perpetration 355–6
- planning and preparing 379–80
- on defences 399–400
 - superior orders 412, 414–15
- on deterrence 33
- drafts/drafting of
 - ILC draft 147–8, 167, 168, 325
 - Rome conference 148–50
- human rights standards in 15, 436–7, 439, 440, 448
- on immunities 557–9
- national legislation influenced by 81–2, 85, 162–3, 179
- nulla poena sine lege* principle in 21
- nullum crimen sine lege* principle in 20–1
- on peace and security 41
- on procedural rules
 - appeals 475–6
 - arrest warrants 452–3
 - decision to prosecute 457
 - guilty pleas 471–2
 - review/revision 477
 - sources of law hierarchy 428–9
- on prosecute or extradite obligation 78
- ratification of 150, 168
 - personal immunities relinquished by 557–9
- on sentencing 502, 505, 511, 512
- victims-related provisions in 483–4, 494–5
- on war crimes 269, 271, 274, 284, 285
 - child soldier related crimes 303–4
 - in internal armed conflicts 273–4, 281
 - prohibited targets 291
 - and proportionality in attack 293–4, 295
 - sexual violence as 288
- Trust Fund for Victims 495, 496–7
- ICJ (International Court of Justice)
 - jurisprudence
 - on *aut dedere aut judicare* principle 75–7, 349–50
 - on genocide 217, 225, 226
 - State responsibility to prevent and punish 206
 - on immunities 541, 544, 551, 554–5
 - on politics and ICJ jurisdiction 131
 - on universal jurisdiction 61–2, 67
 - Statute of 8–9
- ICRC (International Committee of the Red Cross and Red Crescent)
 - on amnesties 571
 - privileged status of 525
 - on war crimes 9
- ICTR (International Criminal Tribunal for Rwanda) 139
 - and domestic courts
 - collapse of cooperation 141
 - primacy over 140
 - referrals to 105, 141, 142
 - functioning of
 - achievements 142–3
- completion strategy 141–2
- creation 139
- criticisms 140, 143–4
- independence 437–8
- jurisdiction of 139–40
- jurisprudence
 - on consent defences 416
 - on crimes against humanity
 - persecution 258
 - systematic attacks 235
 - torture/sexual violence 251, 252
 - on criminal liability
 - command responsibility 391
 - incitement to genocide 377–8
 - perpetration 354–5
 - on genocide concept 207, 210
 - birth prevention measures 217
 - causing serious harm 216
 - intent 222–3, 224
 - protected groups 211–12, 213
 - sexual violence as 215
 - on immunities 557
 - on procedures
 - evidence rules 468
 - rights of the accused to judicial review of 453–4, 455
 - on sentencing 504–5, 506, 507–8, 510–11
 - sources, human rights law 14
- prosecutions/proceedings 140–1, 207, 222–3
 - appeals 474–5
 - and *ne bis in idem* principle 87
 - review/revision 477
 - victims in 483
- Prosecutor, disclosure obligations of 465–7
- Residual Mechanism of 135, 142, 426
- Rules of Procedure and Evidence 426
 - on arrest warrants 451–2
 - on sentencing 507
 - on witnesses 433
- Statute of 10, 273
 - on conspiracy to commit genocide 381
 - on crimes against humanity 231, 234
 - on sentencing 501–2, 506–7
 - on State cooperation with tribunal 519
 - on war crimes 271
 - sexual violence as 288
- ICTY (International Criminal Tribunal for the former Yugoslavia) 129, 132
 - and domestic courts
 - primacy over 129–30, 131–2
 - referrals to 72–3, 194–5
 - functioning of
 - achievements 136–7
 - completion strategy 133–6, 194–5
 - creation 127–9, 131–2
 - criticisms 136, 137–8

ICTY (cont.)

- independence 437–8
- and Yugoslavia conflict 34, 132, 518–19
- investigations, of NATO Kosovo intervention 133
- judges, pre-trial 430
- jurisdiction of 50–1, 129, 130–1, 344
- jurisprudence
 - on cooperation with tribunal
 - of international organizations 525
 - of States 517–18, 519, 521–2, 530, 535
 - on crimes against humanity
 - attacks against civilian populations 235, 237, 242
 - persecution 256–7, 258–9
 - sexual violence 253
 - on criminal liability
 - aiding and abetting 371, 372–3, 374
 - attribution of individual conduct to States 16–17
 - co-perpetration 363
 - command responsibility 386–8, 389, 391, 392–3, 394–5
 - individual 3–4, 10
 - instigation 376–7
 - joint criminal enterprise 356–60, 370–1
 - mental elements of 381–2
 - ordering 376
 - planning and preparing 379
 - on defences
 - consent 416
 - duress 407
 - reprisals 417–18
 - self-defence 404, 406
 - on genocide 36–7, 208–9, 211–12, 219, 225, 226–7
 - and ethnic cleansing 216–17
 - intent 221–2, 223, 224
 - on immunities 38, 551, 557
 - on *nullum crimen sine lege* principle 19–20
 - on obligation to prosecute or extradite 78
 - on procedural rules
 - appeals 474–5
 - cumulative charges/convictions 461–2
 - decision to prosecute 456–7
 - evidence 468
 - plea bargaining 471
 - rights of the accused to judicial review of 453–4, 455–6
 - self-representation rights 432
 - on sentencing 503, 504–5, 506, 507–8, 510–11
 - sources
 - case law 12
 - general principles of law 11
 - human rights law 14
 - international customary law 11
 - on status of ICC Statute 152
 - on torture 347–8
 - on war crimes 268–9, 591
 - and allegiance test 284

- and effective/overall control tests 278
- and existence of armed conflict 282
- in internal armed conflicts 273, 275, 279–80
- and knowledge of armed conflict 282
- and proportionality in attack 296
- terrorism 344–5

prosecutions/proceedings 130–1, 132–3, 135

- appeals 474–5
- confirmation of indictments 464
- and *ne bis in idem* principle 87
- and reconciliation/peace 40–1
- review/revision 477
- victims in 483

Prosecutor, disclosure obligations of 465–7

Residual Mechanism of 135, 426

Rules of Procedure and Evidence 426

- on arrest warrants 451–2
- on sentencing 507
- on witnesses 433

sentencing

- aims of 30, 31
- deterrence element in 33
- educational element in 36
- rehabilitation element in 35
- vindication of victims' rights in 37

Statute

- on command responsibility 385, 394
- on crimes against humanity 231, 234
- on perpetration 354
- on sentencing 501–2, 506–7
- on State cooperation with tribunal 519
- on war crimes 270–1
 - sexual violence as 288

Ieng Sary, prosecution of 187

ILC (International Law Commission)

- draft ICC Statute by 147–8, 167, 168, 325
- draft international criminal code by 78, 308–10

on internationally wrongful acts 17

- on serious breaches of peremptory norms of international law 17

imminence

- of threat of death or serious bodily harm, in duress
 - defences 407–8
- of use of force in self-defence 405

immunities 540–2, 543, 588

- diplomatic 543
- functional 542–3, 545, 546–52
- of heads of State 543–4, 547, 553

ICTY/ICTR policies on 38, 522

of international organizations' officials 544

non-cooperation ground for States with international courts/tribunals 520–1

- personal 542–3, 545–6
- removal of 556–7

- and prosecution of international crimes 540–2, 543, 546, 549–52, 561–5
 - by domestic courts 546–9, 550–1, 553
 - by international courts/tribunals 551, 554–5, 556, 557, 561–4
- purposes of 545
- of State representatives 544
- of States, from civil proceedings 544–5
- impartiality, of proceedings 437–8
- imprisonment
 - arbitrary, as crime against humanity 248–9
 - life 104
 - releases from
 - conditional/interim 528–9
 - early 510–11
 - see also* liberty deprivation/restriction
- inability to carry out proceedings genuinely, assessment of 157–8
- incapacitation, as aim of punishment 35
- incapacity, mental 401–2
- independence, of proceedings 437–8
- indictments 456–7, 458–9
 - amendments/withdrawals of 457–8
 - charges of 459–61
 - alternative/cumulative 461–2
 - confirmation of 463–4
- indirect co-perpetration 368–70
- indirect international criminal law enforcement 70
- indirect perpetration 367–8
- individuals
 - conduct attributable to States 16–17
 - cooperation with international courts/tribunals 521–3
 - criminal liability of 3, 7, 590
 - for enforced disappearances 259–60
 - for genocide 227–8
 - Nuremberg Tribunal on 7–8, 118–19
 - and obligation to obey orders 412–13
 - see also* superior orders defences
 - treaty-based 9–10
 - for war crimes 9, 270–1
 - inhumane acts 260, 261–2
 - see also* crimes against humanity
 - innocence presumption 439–40
 - innocent agency concept 367
 - insanity *see* mental incapacity
 - instigation, criminal liability for 376–7
 - Institut de Droit International, on universal jurisdiction 58
 - intensity requirement for internal armed conflicts 279–80
 - intent, criminal 382
 - of aggression 322
 - of genocide 208–9, 210, 220–2
 - to destroy 224–7
 - knowledge-based approaches to 223–4
 - proof of 222–3
 - ICC Statute on 220–1, 382–3
 - of terrorism 340–1
 - see also* discriminatory intent
 - Inter-American Court of Human Rights
 - on amnesties 570–1
 - on obligations to prosecute international crimes 77
 - interim releases, and State cooperation with
 - international courts/tribunals 528–9
 - interlocutory appeals 476–7
 - internal armed conflicts
 - assessment of existence of 275, 279–81
 - categorization of 276–9
 - war crimes in 272–5
 - International Committee of the Red Cross and Red Crescent *see* ICRC
 - international community 594
 - and international crimes/criminality 6–7, 43–4
 - International Court of Justice *see* ICJ
 - international crimes 4–5
 - accountability for 588–90
 - see also* criminal liability
 - definitions of 7–8
 - by ICC 151–2
 - by Special Court for Sierra Leone 184
 - State involvement essential to 7
 - as violations of values of international law 6–7
 - gravity hierarchies of 504–5
 - jurisdiction over 49, 57
 - prosecutions of 43–4, 590
 - alternatives for 567–9, 594
 - amnesties 569–76
 - civil proceedings 581–2
 - local justice mechanisms 582–3
 - lustration 580–1
 - reparations 581
 - truth commissions 576–80
 - benefits of 41–2
 - history writing 38–40
 - post-conflict reconciliation 40–1
 - and immunities 540–2, 543, 546, 549–52, 561–5
 - by international(ized) courts/tribunals
 - Cambodia Extraordinary Chambers 187–8
 - and immunities 551, 561–4
 - Iraqi High Tribunal 197
 - Lebanon Special Tribunal 5, 189–90
 - and *ne bis in idem* principle 87–8, 160–1
 - Special Court for Sierra Leone 184–5
 - see also* ICC; ICTR; ICTY
 - by national courts 5, 70–4, 587–8, 593–4
 - and amnesties 573–4
 - and immunities 546–9, 550–1, 552
 - and *ne bis in idem* principle 85–7
 - and non-retroactivity principle 84–5
 - practical obstacles 88
 - and statutory limitations 83–4
 - universal jurisdiction basis of 61–2, 68

- see also* State-to-State cooperation in criminal matters
- State obligation of
 - as customary international law obligation 77–8
 - as *erga omnis* obligation 78–9
 - as human rights law obligation 77, 570–1
 - as treaty obligation 74–7
 - victim participation in 37–8
 - see also* procedures
- sentencing of 500–2, 504–6
 - aggravating circumstances 506–7, 508
 - cumulative/joint 509
 - enforcement of 511–12
 - mitigating circumstances 507–9
 - pardon/early release 510–11
 - procedures 509–10
 - purposes of 28–30, 31
 - deterrence 32–4
 - education 36–7
 - incapacitation 35
 - rehabilitation 35, 503
 - retribution 30–2
 - vindication of victims' rights 37–8
 - review of 511
 - see also* aggression; crimes against humanity; genocide; terrorism; torture; transnational crimes; war crimes
- international criminal courts/tribunals 127
 - cooperation with
 - duty to assist in arrest and surrender 527–9
 - individuals 521–3
 - international organizations 525
 - non-State actors 524
 - States 517–18, 523–4
 - authority of courts/tribunals 526–7
 - coercive measures 533
 - and complementarity principle 536–7
 - criticism of 537–9
 - domestic implementation of 533–5
 - enforcement of sentences 511–12
 - non-compliance/refusal grounds 529–31, 535–6, 537–9
 - obligations 518–22, 527–9
 - on-site investigations and trials 531–3
 - UN peacekeeping forces 524–5
 - functioning of
 - criticisms of 42–5
 - future 584–6
 - judges 41–2, 429–30
 - jurisprudence
 - on crimes against humanity 238–9
 - domestic case law used in 12, 82
 - history writing by 38
 - national legislation used in 11–12
 - on universal jurisdiction 65
 - prosecutions
 - and immunities 551, 557, 561–4
 - and *ne bis in idem* principle 87–8, 160–1
 - see also* ad hoc tribunals; internationalized courts
- international criminal law 4, 17–18
 - and amnesties 570–2
 - enforcement of 34
 - complementarity principle in 5
 - dissatisfaction with 29
 - ICC judgments/decisions 170–1
 - indirect 70
 - selectivity in 44–5, 74
 - sentencing 511–12
 - see also* prosecutions of international crimes
 - historical development of 3, 115, 116, 590–5
 - and international jurisprudence 82
 - and human rights law 13–15, 18, 429, 435–7, 479
 - impartiality and independence of proceedings 437–8
 - nulla poena sine lege* principle 21
 - nullum crimen sine lege* principle 18–21
 - presumption of innocence 439–40
 - see also* fair trial rights
 - and international humanitarian law 15–16
 - limitations of 43
 - national legislation on 79–81, 587
 - cooperation with international courts/tribunals 533–5
 - ICC influences on 81–2, 85, 162–3, 179
 - and international jurisprudence 82–3
 - and philosophy 21–6
 - purposes of 28
 - sources of 8–9
 - customary international law 10–11
 - general principles of law 11–12, 153
 - jurisprudence 12, 429
 - scholars' views 12
 - treaties 9–10
 - uniformity of 42
 - Western character of 44
 - see also* criminal liability
- international criminal procedures *see* procedures
- International Criminal Tribunal for the former Yugoslavia *see* ICTY
- International Criminal Tribunal for Rwanda *see* ICTR
- international humanitarian law 266–8
 - applicable to UN peacekeeping forces 277
 - civilian concept in, and crimes against humanity 241, 242
 - compliance of States with 295–6
 - customary 9, 268
 - historical development of 264–5
 - on *hors de combat* persons/combatants 300
 - and international criminal law 15–16
 - property protection rules of 297
 - proportionality principle in 292–6
 - on reprisals 417
 - violations of 115–16, 268–70
 - individual liability for 9, 270–1

- sexual violence 287–8
- targeting rules 290–2
- see also* war crimes
- international law
 - creations of, international crimes defined as 7–8
 - customary 591
 - on aggression 308
 - on crimes against humanity 237–8
 - humanitarian 9, 268
 - and ICC Statute 152
 - as international criminal law source 10–11
 - on non-applicability of statutory limitations to international crimes 84
 - nullum crimen sine lege* principle 19
 - on obligation to prosecute international crimes 77–8
 - on terrorism 341
 - ICTY impact on 137
 - jurisdiction in
 - delegation to an international court 172
 - executive 50
 - peremptory norms of, serious breaches of 17
 - philosophy of, and international criminal law 22–4
 - prohibitions of, and international crimes 6–7
 - values of, international crimes as violations of 6–7
 - see also* human rights law; international criminal law; international humanitarian law
 - international organizations
 - cooperation with international courts/tribunals 525
 - immunities of officials of 544
 - and international criminal proceedings 435
 - on mutual cooperation in criminal matters 92
 - international relations
 - and immunities 545–6
 - justice in 589
 - internationalized courts 181–2
 - advantages of 200–1
 - and ICC 198–9, 201
 - problems of 199–200
 - see also* Bosnia and Herzegovina War Crimes Chamber; Cambodia Extraordinary Chambers; Lebanon Special Tribunal; Special Court for Sierra Leone
 - internationally wrongful acts 17
 - Interpol 92
 - intoxication defences 402–4
 - investigations 447–50
 - closing of 447
 - commencement of 445–6
 - on-site 531–2
 - State cooperation with 531–3
 - selection of 446–7
 - victim participation in 493
 - see also* ICC (International Criminal Court), investigations
 - involuntary intoxication 403
 - Iraqi High Tribunal 195–7
 - Statute of, on war crimes 271
 - Israel, prosecutions of Second World War crimes by 60, 71–2, 216
 - and immunities 550
 - and *male captus, bene detentus* principle 106
 - and universal jurisdiction 59–60
 - Italy, prosecutions of international crimes in 552
 - iura novit curia* principle (the court knows the law) 460
 - ius ad bellum* 266–7, 312, 316–17, 327
 - humanitarian intervention 319
 - self-defence rights 317–18
 - UN Security Council Chapter VII authorizations 319
 - ius in bello* 266–7
 - ius cogens* norms
 - human rights treaties as 98
 - serious breaches of 17
 - Jackson, Robert 29, 118
 - Jaranilla, Delfin 123
 - joint criminal enterprise 356–63
 - and aiding and abetting 360, 370–1
 - judges of international courts/tribunals 41–2, 429–30
 - ICC 151, 430
 - ICTY 430
 - judgments *see* jurisprudence
 - jurisdiction 49
 - bases of
 - nationality 53–5
 - passive personality principle 55–6
 - protective principle 56
 - territoriality 50, 51, 52–3
 - for transnational crimes 331
 - forms of 49
 - adjudicative 50
 - executive 50–1
 - legislative 49–50
 - of international(ized) courts/tribunals
 - Bosnia and Herzegovina War Crimes Chamber 195
 - Cambodia Extraordinary Chambers 186
 - ICC 151–3, 166–8
 - ad hoc acceptance of 168–9
 - over aggression 322–5, 592
 - and UN Security Council 325–6
 - and internationalized courts 198–9
 - minimum age 18 169
 - temporal limitations 169
 - over terrorism 343, 344, 345–6
 - over torture 350–1
 - and UN Security Council deferrals 170, 174
 - over war crimes 284
 - ICTR 139–40
 - ICTY 50–1, 129, 130–1, 344
 - Iraqi High Tribunal 196
 - Lebanon Special Tribunal 189
 - Special Court for Sierra Leone 183–4

- procedures 442–4
 State exercise of 49–50, 51
 passed on to another State 51–2
 universal 56–7, 58, 587–8
 conditional 58
 criticism of/problems with 66, 67–8
 mandatory 79
 pure 57–8
 reduction/limiting of 61–5
 rise of 58–61
- jurisprudence
 domestic, international criminal courts/tribunals
 making use of 12, 82
 foreign
 domestic courts making use of 82
 recognition of 86, 93, 96
 international
 and history writing 38–40
 and international criminal law development 82
 mid-trial 473–4
 on prosecute or extradite principle 75–7,
 349–50
 as source of law 12, 429
see also specific courts
- just wars 266–7
- justice
 international 589
 local mechanisms for 582–3
 miscarriage of, and review proceedings
 477–8
 offences against the administration of 478
 and peace 40–1, 575–6, 589
 selective 44–5
 in national prosecutions 74
 and universal jurisdiction 67, 68
 victors' 119–20, 123
 justifications 399
- Kambanda, Jean 140–1
 Katanga, Germain 155, 166
 Kaul, Judge 240
 Keenan, Joseph 121
 Kenya, ICC prosecution of inter-communal violence
 in 158, 240
 African Union opposition to 176
- killing
 as element of genocide 215
 intentional/wilful *see* murder
 mass, context of 245
 treacherous, as war crime 301–2
see also extermination
- knowledge
 of aider and abettor 373–4
 of armed conflict, and war crimes 282–3
 of attacks
 and crimes against humanity 243–4
 and proportionality principle 296–7
 and command responsibility/superior orders
 defences 388–90, 413
 of context of mass killing 245
 and genocidal intent 223–4
- Koskeniemmi, Martti 43
- Kosovo
 EULEX in 192
 NATO intervention in, ICTY investigations into 133
 Regulation 64 Panels 191–2, 194
 Krštić, Radislav 221–2, 224
- Lauterpacht, Hersch 22, 216
- law
 general principles of, as international criminal law
 source 11–12, 153
 natural 22–3
- Lebanon Special Tribunal 188–90
 jurisdiction of 5, 189–90
 on terrorism 341
 victim participation in 484
- legal representation
 of accused 431–2
 rights to self-representation 432
 of victims 491–2
- legislative jurisdiction 49–50
- Li, Judge 131
- liability *see* criminal liability
- liberation
 movements, excluded from terrorism
 conventions 339
 wars of, categorization of 276–7
- Liberia, Truth and Reconciliation Report/Commission
 in 578, 581
- liberty deprivation/restriction 451–3
 challenges to 453–6
see also imprisonment
- life imprisonment, refusal of extradition
 based on 104
- Liu, Judge 372
- local justice mechanisms 582–3
- Lockerbie bombing, prosecution of suspects of 198,
 335–6
- Luban, David 586
- Lubanga, Thomas 155
- lustration 580–1
- MacArthur, Douglas 120
- McGregor, Lorna 583
- MacKinnon, Catharine 253
- male captus, bene detentus* (bad capture, good
 detention) principle 50, 106–7
- manifest illegality test, in superior orders defences
 413–14
- mass killing, context of 245
- May, Larry 24
- mens rea see* mental elements of criminal liability
- mental elements of criminal liability 381–4

- aggression 322
 - command responsibility 388–90
 - crimes against humanity 243–4
 - and duress defences 409
 - genocide 219, 220
 - intent 208–9, 210, 220–2
 - to destroy 224–7
 - knowledge-based approaches to 223–4
 - proof of 222–3
 - motive 227
 - terrorism 340–1
 - torture 349
 - mental harm, causing of 215–16
 - mental incapacity defences 401–2
 - Meron, Theodor 11, 269
 - migration, forced *see* deportation
 - military advantage, and proportionality in attack 294–6
 - military necessity, defences 418
 - military objectives 290
 - targeting of, and proportionality principle 292–6
 - military offences, excluded from extradition 102
 - military personnel
 - abroad, prosecuted for war crimes 55
 - crimes against humanity by 241
 - proxy forces, and categorization of armed conflicts 278
 - of UN
 - and categorization of armed conflicts 277
 - and cooperation with international courts/tribunals 524–5
 - military tribunals, international *see* Nuremberg International Military Tribunal; Tokyo International Military Tribunal
 - Millett, Lord 548, 549
 - Milošević, Slobodan 132–3, 135
 - Minear, Richard 123
 - mines, legality of use of 299–300
 - minimum age, for soldiers 305
 - miscarriage of justice, review proceedings in cases of 477–8
 - mistakes of fact and law defences 409–11, 415
 - mitigating circumstances in sentencing 507–9
 - motives
 - for genocide 227
 - and sentencing 509
 - for terrorism 341
 - multiple crimes requirement, for crimes against humanity 236
 - murder
 - as crime against humanity 245
 - of non-combatants, as war crime 286
 - see also* extermination; killing
 - mutual legal assistance *see* State-to-State cooperation in criminal matters
 - mutual recognition of foreign judicial decisions 86, 93, 96
 - My Lai massacre, prosecution of perpetrators of 55
 - national courts *see* domestic courts
 - national groups, definition of 211
 - national jurisprudence *see* domestic jurisprudence
 - national law/legal systems
 - on amnesties 573–4
 - on command responsibility 393–4
 - common law and civil law traditions 424–5
 - implementation of international criminal law in 79–81, 587
 - cooperation with international courts/tribunals 533–5
 - ICC influences on 81–2, 85, 162–3, 179
 - and international jurisprudence 82–3
 - international criminal courts/tribunals making use of 11–12
 - and internationalized courts 200–1
 - statutory limitations in 83–4
 - universal jurisdiction in 64
 - victims in 482
- national liberation movements, excluded from terrorism conventions 339
 - national security
 - ground for objection to cooperate with international courts/tribunals 530–1
 - and peace 41, 316–17
 - nationality
 - extradition refusals based on 102–3
 - jurisdiction based on 53–5
 - NATO, Kosovo intervention, ICTY investigations into 133
 - natural law 22–3
 - ne bis in idem* principle (double jeopardy)
 - in international prosecutions 87–8, 160–1
 - in mutual assistance in criminal matters 95–6
 - in national prosecutions 85–7
 - necessity defences 406–9
 - military 418
 - negative identification of group membership 214
 - negligence, criminal 381–2
 - Netherlands, prosecutions of international crimes in 550
 - New Zealand, legislation on international crimes in 85
 - Ngudjolo Chui, Mathieu 155
 - Nikitchenko, Timofeyevich 118
 - non-combatants
 - war crime of offences against protection of 286–90
 - see also* civilians/civilian populations
 - non-compliance, of States to cooperate with international courts/tribunals 535–6, 537–9
 - non-inquiry rule in mutual legal cooperation/extradition requests 96–7, 101
 - non-international armed conflicts *see* internal armed conflicts
 - non-refoulement* principle 97
 - non-retroactivity principle (*nullum crimen sine lege*) 18–21, 118
 - in national prosecutions of international crimes 84–5

- non-State actors
 - cooperation with international courts/tribunals 524
 - self-defence rights against 318
- Nottebohm* test for nationality 54
- Ntaganda, Bosco 161
- nuclear weapons, legality of 299
- nulla poena sine lege* principle (defined penalties for prohibitions) 21
- nullum crimen sine lege* principle (non-retroactivity) 18–21, 118
 - in national prosecutions of international crimes 84–5
- Nuremberg International Military Tribunal 22, 116–17
- Charter of
 - on aggression 308, 313, 314
 - on crimes against humanity 230
 - on criminal liability
 - joint criminal enterprise/conspiracy 356
 - planning and preparing 379
 - on superior orders defences 411
 - on war crimes 270
- criticisms of 119–20
- jurisprudence 230–1, 308
 - on aggression 322
 - on conspiracy 380–1
 - on immunities 549–50
 - on individual criminal liability 7–8, 118–19
 - on superior orders/duress 407
- procedures 425
- prosecutions by 117–19, 207
 - and *nullum crimen sine lege* principle 18–19, 118
 - sexual violence omitted from 288
- sentencing 500–1
- objectives *see* purposes
- obligations
 - of individuals
 - to cooperate with international courts/tribunals 521–3
 - to obey, and superior orders defences 412–13
 - of prosecutors, to disclose evidence 465–7
 - of States
 - to cooperate with international tribunals/courts 518–22, 527–9
 - domestic implementation of 533–5
 - non-compliance 535–6, 537–9
 - to prosecute international crimes 74–7, 570
 - as customary international law 77–8
 - erga omnis* obligation 78–9
 - in human rights law 77, 570–1
 - to protect individuals against human rights abuses in another State 97
- occupied territory, transferring population into, as war crime 302–3
- offences *see* crimes
- ordering, liability for 375–6
- organization of parties requirement for internal armed conflicts 280
- organizations, indirect perpetration through control of 367–8
- overall control test 278
- Pacific theatre, prosecution of Second World war crimes in 125
- Pal, Radhabind 122–3
- pardon 510–11
- passive personality principle, jurisdiction based on 55–6
- PCIJ (Permanent Court of International Justice), on individual applicability of treaties 9
- peace
 - ICC proceedings disrupting processes of 178 and justice 40–1, 575–6, 589
 - and security 41, 316–17
- peacekeeping forces of UN
 - and cooperation with international courts/tribunals 524–5
 - international humanitarian law applicable to 277
- penalties *see* sentencing
- peremptory norms of international law *see ius cogens* norms
- perfidy, as war crime 301
- permanent residents, jurisdiction over 55
- perpetration 354–6
 - co-perpetration 363–7
 - indirect 368–70
 - indirect 367–8
 - joint criminal enterprise 356–63
- perpetrators
 - of aggression 313–14
 - and truth commissions 579
 - of war crimes 282–3, 296–7
- persecution
 - attacks on property as 258–9
 - as crime against humanity 14, 256–9
- personal immunity 542–3, 545–6, 554–6
 - and prosecution of international crimes 546, 552, 557–9, 561–4
- personal interests, of victims 491
- Phillips, Lord 548
- philosophy, and international criminal law 21–6
- pillage, as war crime 297–8
- Pinochet, Augusto 60–1, 103, 546–9, 552–3
- planning and preparing, criminal liability for 379–80
- Plavšić, Biljana 40–1
- plea bargaining 40, 471, 503–4
- pleas
 - of guilt 470, 471–2
 - as mitigating circumstance 507–8
- policy requirement, for crimes against humanity 236–40
- political offences, excluded from extradition 101–2

- politics
 - and ICTY jurisdiction 131
 - influences of
 - on ICC proceedings 178
 - on national prosecutions 74
 - on Tokyo Tribunal 124
 - on universal jurisdiction 67–8
- positivist legal philosophy 22–3
- pre-trial judges 430
- pre-trial proceedings 462–7
- pregnancy, forced, as crime against humanity 254–5
- prisoners-of-war, war crime of unjustified delays in repatriation of 289
- procedures 423–9, 478–9
 - appeals 474–7, 510
 - coercive measures in 450–1
 - challenges to 453–6
 - liberty deprivation/restriction 451–3
 - State cooperation with international courts/tribunals in 533
 - evidence rules in 465–70, 473
 - disclosure of evidence 465–7
 - presentation of evidence 473
 - human rights standards in 435–7, 479
 - of independence and impartiality 437–8
 - presumption of innocence 439–40
 - see also* fair trial rights
 - joint 464–5
 - judgments 473–4
 - of jurisdiction and admissibility 442–4
 - length of 480
 - pleas
 - guilty pleas 470, 471–2, 507–8
 - plea bargaining 40, 471, 503–4
 - pre-trial proceedings 462–7
 - review proceedings 477–8
 - sentencing 509–10
 - transfer from one State to another of 110
 - trial hearings 472–3
 - see also* arrest warrants; indictments; investigations; prosecutions
- prohibitions
 - in attacks
 - disproportionality 292–7
 - recklessness 291–2
 - to target civilian populations 291
 - of death penalty 501
 - of forced labour 247
 - to re-extradite 105–6
 - see also* crimes against humanity, prohibited acts; genocide, prohibited acts; war crimes, offences
- proof *see* evidence
- property
 - attacks on, as persecution 258–9
 - war crimes against 297–8
- proportionality principle
 - in attacks 292–7
 - in punishments for international crimes 31
 - in self-defence 406
- prosecutions of international crimes 43–4, 590
 - alternatives for 567–9, 594
 - amnesties 569–76
 - civil proceedings 581–2
 - local justice mechanisms 582–3
 - lustration 580–1
 - reparations 581
 - truth commissions 576–80
 - benefits of 41–2
 - history writing 38–40
 - post-conflict reconciliation 40–1
 - decisions to initiate 456–7
 - and immunities 540–2, 543, 546, 549–52, 561–5
 - by international(ized) courts/tribunals
 - Cambodia Extraordinary Chambers 187–8
 - and immunities 551, 556, 561–4
 - Iraqi High Tribunal 197
 - Lebanon Special Tribunal 189–90
 - and *ne bis in idem* principle 87–8, 160–1
 - Special Court for Sierra Leone 184–5
 - see also* ICC; ICTR; ICTY
 - by national courts 5, 70–4, 587–8, 593–4
 - and amnesties 573–4
 - and immunities 546–9, 550–1, 552
 - and *ne bis in idem* principle 85–7
 - non-retroactivity principle in 84–5
 - practical obstacles 88
 - and statutory limitations 83–4
 - universal jurisdiction basis of 61–2, 68
 - see also* State-to-State cooperation in criminal matters
 - State obligation to 74–7, 570
 - as customary international law 77–8
 - as *erga omnis* obligation 78–9
 - in human rights law 77, 570–1
 - victim participation in 37–8, 491
 - see also* specific crimes
- prosecutors 430–1
 - burden of proof of 439–40
 - disclosure obligations of 465–7
- prostitution, forced, as crime against humanity 254
- protected groups (genocide) 210–11, 212
 - Darfur Commission on 213
 - ICTR on 211–12, 213
 - ICTY on 211–12
 - identification of members of 212–14
- protection
 - of non-combatants, offences against 286–90
 - of property, in international humanitarian law 297
 - of victims and witnesses 485–8, 498

- protective principle, jurisdiction based on 56
 proxy forces, and categorization of armed conflicts 278
 public procedures 440
 punishment
 illustration as 580–1
 see also sentencing
 pure universal jurisdiction 57–8
 purpose-based approaches to genocidal intent 224
 purposes
 of immunities 545
 of sentencing 28–30, 31, 502–4
 deterrence 32–4
 education 36–7
 incapacitation 35
 rehabilitation 35, 503
 vindication of victims' rights 37–8
 of truth commissions 577
 of universal jurisdiction 57
 of victim participation 489, 498
- quasi-territorial jurisdiction 52
- racial groups, definition of 211
- rape
 as crime against humanity 252–3
 as war crime 287–8
 see also sexual violence
- re-extradition, prohibition of 105–6
 reasonableness test, in duress defences 408
 recklessness
 criminal 382, 383
 in prohibited targeting 291–2
 recognition of foreign judicial decisions 86, 93, 96
 reconciliation
 and amnesties 159–60, 575–6
 prosecutions of international crimes as 40–1
 and truth commissions 579–80
 rehabilitation, as aim of punishment 35, 503
 releases
 conditional/interim 528–9
 early 510–11
 religious groups 211
 rendition, irregular/extraordinary 106–7
 reparations 494–6, 497–8, 581
 repatriation of prisoners-of-war and civilians, war crime
 of unjustified delays in 289
 reprisals, defences 417–18
 Residual Mechanisms of ICTR and ICTY 135, 142, 426
 retribution, as aim of punishment 30–2
 revision/review proceedings 477–8
 Rezek, Judge 67
 Robinson, Darryl 15
 Röling, B. V. A. 35, 38–9, 122
 Rome Statute *see* ICC (International Criminal Court),
 Statute of
 Roxin, Claus 367–8
 rule of law, international 594
- Rumsfeld, Donald 552
- Rwanda
 cooperation with ICTR 141, 142
 genocide in 225–6
 and ethnic groups 211
 extradition of suspects and national prosecutions
 72, 105
 International Criminal Tribunal for *see* ICTR
- Sachs, Albie 579
 Sadat, Leila 590
 Saddam Hussein
 prosecution of 197
 regime in Iraq 195–6
 same conduct test (ICC) 155–6
 Schabas, William 209
 Schacht, Hjalmar 322
 scholars, as international criminal law source 12
 Schwarzenberger, Georg 4
 SCSL *see* Special Court for Sierra Leone
 Second World War, prosecution of crimes committed in
 124–5
 in Allied-occupied Germany 124–5, 313
 national 71, 72
 in Pacific theatre 125
 and statutory limitations 83–4
 see also Israel; Nuremberg International Military
 Tribunal; Tokyo International Military
 Tribunal
 secondary liability, ordering as form of 376
 security *see* national security
 Security Council *see* United Nations, Security Council
 selective justice 44–5
 in national prosecutions 74
 and universal jurisdiction 67, 68
 self-defence
 pleas to exclude international criminal liability 404–6
 rights of States 317–18, 405–6
 self-representation, rights to 432
 Senegal Extraordinary African Chambers 190–1
 sentencing 500–2, 504–6
 aggravating circumstances 506–7, 508
 cumulative/joint 509
 enforcement of 511–12
 State-to-State cooperation in 110–11
 mitigating circumstances 507–9
 pardon/early release 510–11
 procedures 509–10
 purposes of 28–30, 31, 502–4
 deterrence 32–4
 education 36–7
 incapacitation 35
 rehabilitation 35, 503
 retribution 30–2
 vindication of victims' rights 37–8
 review of 511
 Serbia War Crimes Chamber 197

- serious harm, genocidal element of causing of 215–16
- Seromba, Athanase 222–3
- sexual violence
- and consent defences 416–17, 469
 - as crime against humanity 247, 251–6, 262
 - as genocide 215
 - as torture 251
 - as war crime 287–9
- Shahabuddeen, Judge 361–2, 394
- Sidhwa, Judge 131
- Sierra Leone
- conflict 182
 - Special Court *see* Special Court for Sierra Leone
- silent, rights of accused to remain 439
- slavery, as crime against humanity 246–7
- sexual slavery 247, 253–4
- sources of international criminal law 8–9
- customary international law 10–11
 - general principles of law 11–12, 153
 - jurisprudence 12, 429
 - scholars' views 12
 - treaties 9–10
- South Africa
- transition from apartheid to majority rule in 568
 - Truth and Reconciliation Report/Commission in 577–8, 579, 582
- Spain, universal jurisdiction in 63
- Special Court for Sierra Leone (SCSL) 182–5, 199
- creation of 182–3
 - jurisdiction of 183–4
 - jurisprudence
 - on aiding and abetting 371, 373, 374
 - on amnesties 571, 573
 - on child soldiers 304
 - on immunities 561–4
 - on sentencing 509
 - on sexual violence/slavery 254, 262
 - on terrorism 345
 - prosecutions by 184–5
 - Statute of
 - on war crimes 271
 - child soldier related crimes 304
 - and Truth and Reconciliation Commission 578
- Srebrenica massacre, as genocide 226–7
- State-to-State cooperation in criminal matters 88, 90–1, 92–3, 107–10, 588
- double-criminality rule in 94–5
 - enforcement of sentences 110–11
 - and human rights law 96–8
 - and internationalized courts 200
 - ne bis in idem* principle in 95–6
 - speciality rule in 95
 - transfer of proceedings 110
 - treaties 91–2, 107–10
- States
- attribution of conduct to 16–17
 - compliance with international humanitarian law 295–6
 - cooperation between *see* State-to-State cooperation in criminal matters
 - cooperation with international courts/tribunals 517–18, 523–4
 - authority of courts/tribunals 526–7
 - coercive measures 533
 - and complementarity principle 536–7
 - criticism of 537–9
 - domestic implementation of 533–5
 - enforcement of sentences 511–12
 - non-compliance/refusal grounds 529–31, 535–6, 537–9
 - obligations 518–22, 527–9
 - on-site investigations and trials 531–3
 - criminal liability of 7, 16–17, 327–8, 590
 - for aggression 312–13
 - for crimes against humanity 240
 - and immunity from civil proceedings 544–5
 - for prevention and punishment of genocide 206
 - for terrorism 339–40
 - and ICC
 - arrest warrant procedures 456
 - consent to ICC jurisdiction 167, 172
 - cooperation with 171, 536–7, 538–9
 - initiation of proceedings 163
 - intervention rights 435
 - immunities of heads of 543–4, 547, 553
 - immunities of representatives of 544
 - jurisdiction exercised by 49–50, 51
 - passed on to another State 51–2
 - obligations of
 - to cooperate with international tribunals and courts *see* States, cooperation with international courts/tribunals, obligations
 - to prosecute international crimes
 - as customary international law 77–8, 570
 - erga omnis* obligations 78–9
 - in human rights law 77
 - treaty obligations 74–7
 - to protect individuals against human rights abuses in another State 97
 - policy requirement for crimes against humanity 236–40
 - rights of
 - to intervene in international criminal proceedings 434–5
 - to self-defence 317–18, 405–6
 - sovereignty of
 - and arrest/abduction of suspects 455–6
 - and immunities 545
 - and recognition of foreign judgments 86
 - statutory limitations
 - extradition refused on grounds of 95
 - on prosecution of international crimes 83–4

- sterilization, forced, as crime against humanity 255
- subjective approaches, to identification of group membership 213–14
- Sudan
- Darfur Commission, on genocide concept 210 and intent 222 and protected groups 213 referral to ICC of Darfur situation 164, 561
 - superior orders defences 375, 411–15
 - superior responsibility *see* command responsibility
 - supranational criminal law 8
 - suspects 431
 - abduction of 106–7, 455–6
 - see also* accused
 - symbols, war crime of improper use of 301–2
 - systematic attacks 235
- Tadić, Duško 130–1, 356–7
- targeting rules of international humanitarian law, war crime of violations of 290–2
- Taylor, Charles 184–5, 561
- territoriality, jurisdiction based on 50, 51, 52–3
- terrorism 331–3, 336–8
- customary international law on 341
 - fight against 332
 - treaties on 92, 333–5, 338–9, 340–1, 343
 - UN Security Council resolutions on 335–6
 - as international crime 5, 343–4
 - crime against humanity 345–6
 - war crime 344–5
 - material elements of 338–40
 - mental elements of 340–1
 - prosecution of 332–3
 - national 341–3
- theories, in international criminal law 26
- threats
- of aggression 315
 - of death or serious bodily harm 407–8
- thresholds
- for aggression 313–14, 320–1
 - contextual, for crimes against humanity 231, 233–44
 - of gravity/severity
 - for admissibility of prosecutions 161–2
 - for crimes against humanity 208
 - for genocide 208
 - for torture 347–8
 - for internal armed conflicts 279–81
 - for systematic attacks 235
- Tokyo International Military Tribunal 22, 120–1
- criticisms of 123–4
 - procedures 425
 - prosecutions by 121–3
 - of aggression 35
 - of conspiracy 123, 380–1
 - and history writing 38–9
 - of sexual violence 288
 - sentencing 500–1
- Statute of, on criminal liability
- conspiracy/joint criminal enterprise 356
 - planning and preparing 379
- torture 346–7
- definitions of 347, 349
 - as international crime 350–1
 - and amnesties 570
 - crime against humanity 249–51
 - extradition requirements 99
 - and immunity 547–8, 549
 - war crime 286
 - material elements 347–9
 - mental elements of 349
 - national prosecutions of 75–6, 350
 - refusal ground for extradition 103–4
 - State obligations regarding 350
 - to prosecute or extradite 75–6, 349–50
- transfer
- of people
 - forcible *see* deportation
 - into occupied territory 302–3
 - of proceedings 110
- transnational conflicts, categorization of 278–9
- transnational crimes 329–30
- conventions on suppression of 51–2, 330–1
 - criminal law dealing with 5–6
 - see also* terrorism; torture
- treacherous killing, as war crime 301–2
- treaties
- on extradition 100
 - as international criminal law source 9–10
 - obligations of
 - consent of States to 172
 - for signatories 173
 - to prosecute international crimes 74–7
 - on passing jurisdiction from one State to another 51–2
 - on State-to-State cooperation in criminal matters 91–2, 107–10
 - on suppression of transnational crimes 51–2, 330–1
 - terrorism 333–5, 338–9, 340–1, 343
- trials *see* procedures
- truth commissions 576–80
- Tutsi, as ethnic group 211
- TWAIL (Third World Approaches to International Law)
- approaches, to international criminal law 23–4
- ubiquity principle in jurisdiction 53
- uniformity, of international criminal law 42
- United Kingdom
- legislation in
 - Offences Against the Person Act (1861) 54
 - on universal jurisdiction 64
 - War Crimes Act (1991) 80
 - litigation on Pinochet extradition 60–1, 103, 546–9
- United Nations

- Charter
 - on peace and security 316–17
 - use of force authorizations in
 - Chapter VII 319
 - humanitarian intervention 319
 - self-defence 317
 - violations of, and aggression 320–1
- Commission on Crime Prevention and Criminal Justice 90
- General Assembly
 - on aggression as crime 308–10, 316
 - on Cambodia Extraordinary Chambers creation 186
 - on ICC creation 146–7
 - on terrorism 333, 334–5
 - on victims 483
- Model Treaty on Extradition 104
- peacekeeping forces
 - and cooperation with international courts/tribunals 524–5
 - international humanitarian law applicable to 277
- Secretary-General, on *nullum crimen sine lege* principle 19
- Security Council
 - anti-terrorism resolutions by 335–6, 337
 - on Darfur situation and genocide 210, 561
 - and ICC 41, 175
 - deferrals/suspensions 170, 174
 - jurisdiction over aggression 325–6
 - non-compliance/non-cooperation issues 171, 536
 - referrals to 164, 167
 - and immunities 559–61
 - and ICTR
 - completion strategy 141–2
 - creation 139, 273
 - and ICTY
 - completion strategy 133, 134, 135
 - creation 128–9, 131–2
 - Lebanon Special Tribunal created by 188–9
 - personal immunity removal powers of 556–7
 - Special Court for Sierra Leone created by 182–3
 - transitional administrations
 - for East Timor (UNTAET) 191–2, 193
 - for Kosovo (UNMIK) 191–2
- United States
 - extradition agreement with EU 100
 - and ICC 173–6
 - legislation in
 - on civil actions against international crimes 581
 - on universal jurisdiction 64
 - war on terror, and torture definitions 347–8
 - universal jurisdiction 56–7, 58, 587–8
 - conditional 58
 - criticism of/problems with 66, 67–8
 - mandatory 79
 - pure 57–8
 - reduction/limiting of 61–5
 - rise of 58–61
- unlawfulness
 - knowledge of, and superior orders defences 413
 - of use of force, and self-defence 405
- unwillingness to carry out proceedings genuinely 156–7
- utilitarian views of punishment
 - deterrence 32–4
 - incapacitation 35
- values of international law, international crimes as
 - violations of 6–7
- Van den Wyngaert, Judge 366, 369–70
- Van Wicquefort, A. 542
- Versailles, Treaty of 116, 307
- victims 433, 482–5
 - anonymity of 488
 - participation of 37–8, 491
 - in ICC proceedings 485, 488–94
 - protection of 485–8, 498
 - reparations for 494–6, 497–8, 581
 - rights of 497
 - and truth commissions 579–80
 - of war crimes 283–4
- victors' justice 119–20, 123
- violations
 - of human rights law, and extradition requests 101, 103–5
 - of international humanitarian law 115–16, 268–70
 - individual liability for 9, 270–1
 - sexual violence 287–8
 - targeting rules 290–2
 - see also* war crimes
 - of international law values, international crimes as 6–7
 - of UN Charter, and aggression 320–1
- voluntary intoxication 403
- war crimes 264, 591–2
 - and armed conflicts 281–2
 - assessment of existence of 275–6
 - internal armed conflicts 272–5
 - knowledge of conflict 282–3
 - definitions of 184
 - and crimes against humanity 232, 592
 - as violations of international humanitarian law 268–70
 - individual criminal liability for 9, 270–1
 - offences 285–6
 - causing excessive civilian damage 292–7
 - conscripting/enlisting of child soldiers 303–5
 - non-combatant protection violations 286–90
 - population transfer into occupied territory 302–3
 - prohibited means and methods of warfare 298–302

- war crimes (cont.)
 - property offences 297–8
 - targeting rules violations 290–2
 - terrorism 344–5
- perpetrators of 282–3
- prosecutions of 55
 - armed forces abroad 55
 - First World War crimes 115–16
 - by ICC 274–5
 - national 70–1
 - passive personality principle in 55–6
 - Second World War 124–5
 - in Allied-occupied Germany 124–5, 313
 - national 71, 72
 - in Pacific theatre 125
 - see also* Israel; Nuremberg International Military Tribunal; Tokyo International Military Tribunal
 - and statutory limitations 83–4
 - universal jurisdiction in 58–9, 60
- victims of 283–4
- warfare, prohibited means and methods of 298–302
- wars
 - of aggression 320
 - just 266–7
 - laws of *see* international humanitarian law
 - of liberation, categorization of 276–7
 - see also* armed conflicts
 - weapons, prohibited 298–300
 - Webb, William 121, 122
 - West, international criminal law as product of 44
 - Wicquefort, A. van 542
 - widespread attacks 235
 - wilful killing *see* murder
 - Wilhelm II (Kaiser) 307
 - witnesses 433–4
 - anonymity of, and fair trial rights 138, 487
 - ordering appearance of 522–3
 - preparation of 464
 - protection of 485–8, 498
 - written testimonies of 469–70
 - Wright, Quincy 22
 - wrongful acts, international 17
 - Wyngaert, Judge Van den 366, 369–70
 - Yerodia, Abdulay 61–2, 67, 554
 - Yugoslavia conflict 127
 - prosecutions of crimes committed in
 - cooperation with ICTY 133, 134
 - national 72–3
 - role of ICTY in 34
 - Yugoslavia International Criminal Tribunal *see* ICTY