

```
Cambridge University Press
978-0-521-66122-5 - International Law Reports, Volume 119
Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer
Index
More information
```

# **INDEX**

For references to particular articles of treaties, see the Table of Treaties, p. xxxiii

```
abuse of process
  arbitration (Law of the Sea Convention (1982)) 554
  extradition 251
act of State
  acts of
     Head of State
       act in violation of international law 106-7
       private acts 82
     Head of State, former 106-7
       personal gain 82
  basis, comity 73-4
  classification as
     drug-trafficking, Noriega 65, 82-3
     torture 96
  common law doctrine 94
  definition 73-4
  judicial restraint 74, 92
  jurisprudence
     Buttes Gas and Oil Co. v. Hammer 63, 74, 91, 95
     International Association of Machinists and Aerospace Workers v. OPEC 73
     Kirkpatrick v. Environmental Tectonics 74, 91, 95-6
     Oetjen v. Central Leather Co. 92
     Sabbatino 73
     Underhill v. Hernandez 95
  justiciability and 73-4, 90-3, 95-6
     preferred term 78
  public policy and 106
  State immunity from jurisdiction and 73, 240
     distinction 223
  territorial limitation 95
     act in own State 95-6
amnesty
  as res judicata 344
  legality under international law 86
     competence to determine whether 92
Amnesty International Charity Limited, effect of relationship
 with on impartiality requirement 113-35
applicable law
  arbitration
     applicable rules of international law 633, 653
     international law 598
     NAFTA (1992) 633, 653
     non-contractual dispute 582, 586
       PCA Optional Rules 582-3
       UNCITRAL Rules 571-2, 582-3, 584-6
     where neither party a State 582-3
  Head of State, functions 61, 97-9, 104-5, 193-4
arbitral award, annulment, grounds, failure to state reasons, failure to deal
 with every question submitted 678-9
```



```
arbitral award, review
  by municipal courts 648-82
  standard of review 659-61
    award based on deception 675-6
    conflict with public policy 673-5
    decisions beyond scope of submission to jurisdiction 659-68, 670
       misinterpretation of treaty and 665-6
    error of law 671
    failure to address every question 676-81
    patently unreasonable error 670-3
    pragmatic and functional approach 660-1
     ultra vires award 661
arbitral award, revision, compensation, effect on 681-2
arbitral tribunal
  admissibility, amendment of claim, in light of developments subsequent to original
   finding 631-3, 669-70
  confidentiality of proceedings 622
  dispute, need for
     continuing dispute, need for 587-8
       Northern Cameroons 587-8
    dispute arising under separate treaties 536-44, 546-9, 557-65
       as single dispute 550
     existence as objective matter to be determined by Tribunal 546-7
    legal dispute 577, 578, 587
     termination of dispute, effect 545-6
  jurisdiction
    between parties to dispute 577-8
     third parties, dispute involving rights and obligations 578, 588-92, 594-7. See also
      International Court of Justice (ICJ), third States and
  nature, international court distinguished 410
  precedent, decisions of another arbitral tribunal 639, 667-8
  procedure, determination of, arbitral tribunal 579-80
arbitration
  applicable law. See applicable law, arbitration
  commercial arbitration, definition 657-9
  consent, need for 585-6
  two-stage process, relevance, Eritrea/Yemen (1998 and 1999) 449-50
arbitration (Law of the Sea Convention (1982))
  abuse of process 554
  dispute
     arising under both UNCLOS (1982) and Convention for the Preservation
      of Southern Bluefin Tuna (1993) 546-9, 557-65
       Convention as sole basis of jurisdiction 554
       parties' arguments 536-44
    as single dispute 550
    disagreement relating to performance of treaty obligations 546-9
     existence as objective matter to be determined by Tribunal 546-7
     termination of dispute, effect 545-6
  ICSID role 512
  jurisdiction
     agreement to alternative procedure with binding effect (Art. 282) and 529
     exclusion of compulsory measures entailing binding provisions, Convention
      for the Conservation of Southern Bluefin Tuna (1993) dispute provisions as
      557-65
    lack of, effect on provisional measures 554-5
```



```
title of proceedings 513
  Tribunal, constitution 511-12
"artisanal fishing" 450-3
  FAO Fisheries Infrastructure Development Project Report (1995) 451
baselines
  low-water line
     customary international law 458
     Law of the Sea Convention (1982) 458
  straight, territorial sea 459-61
  territorial sea
     internal waters, seaward edge 459
     reefs 460-1
     straight 459-61
basepoints
  islands, Eritrea-Yemen 455-6
  islets 459-61
  low-tide elevations, lighthouses, need for 460
Belgium
  crimes against humanity
     as part of municipal law 355
     definition 353-4
     immunity from legislation providing for removal 360
    jurisdiction
       aut dedere aut punire 356-7
       universal 357, 360
    jus cogens 355
     offence under municipal law, whether 354-6
     prosecution, possibility of, municipal legislation 354-5
       absence of precise penalty at time of offence 355
       customary international law, relevance 354-5
     statutory limitation 354-9
  customary international law
     as part of municipal law 355
     crimes against humanity, retroactivity and 354-5
  double criminality, Geneva Convention (Treatment of Prisoners of War)
   (Convention III) (1949) 351
  Geneva Convention (Treatment of Prisoners of War) (Convention III) (1949)
     double criminality 351
     legality requirement 351
  Genocide Convention (1948), incorporation, need for, where principles
   already part of law 355
  Head of State, recognition, immunity from jurisdiction and 349
  Head of State, immunity from jurisdiction
     international crimes 349
     statutory limitation, suspension 358
  international crimes
     Head of State, immunity from jurisdiction 349
     legislation, retroactive, procedural provisions distinguished 350-1
     universal jurisdiction 350
       presence of offender, relevance 350
  international criminal law, primacy 355
  international humanitarian law, requirements, nexus with armed conflict
   351-2
```



```
686
                                      INDEX
  iurisdiction
    universal
       international crimes 350
       presence of offender, relevance 350
  jus cogens, crimes against humanity 355
     Criminal Code, s 2 351, 355
     Criminal Investigation Code, Art. 61 quinquies 348
     Criminal Procedure Code, s 12 350
    Judicial Code, s 3 350
  Laws of
    20 July 1990 (preventative detention)
s 16 359
       s 34 359
     16 June 1993 (crimes against international law) 349-53
       retroactive effect 350-1
       s 7(2) 350
       s 8 358
     22 March 1996 (recognition of ICTY and ICTR) 350, 355
    February 1999 (crimes against humanity: universal jurisdiction) 360
  legislation, retroactive, international crimes, procedural provisions
   distinguished 350-1
  military courts, jurisdiction, foreign soldier 350
  statutory limitation
    crimes against humanity 354-9
    suspension during period of immunity 358
BITS (bilateral investment treaties), standard of treatment, customary
 international law 663-4
boundaries, definition, limit, distinguished 456
Canada
  arbitral award, review
    applicable law, International Commercial Arbitration Act RSBC 1966
      and Commercial Arbitration Act RSBC 1996 distinguished 656-9
    standard of review 659-61
       award based on deception 675-6
       conflict with public policy 673-5
       decisions beyond scope of submission to jurisdiction 659-61, 665-8, 670
       error of law 671
       failure to address all questions 676-81
       patently unreasonable error 670-3
       pragmatic and functional approach 660-1
       ultra vires award 661
  arbitral award, revision, compensation, effect on 681-2
  arbitration, commercial arbitration, definition 657-9
  British Columbia
    arbitral award, review, International Commercial Arbitration Act RSBC 1966
      and Commercial Arbitration Act RSBC 1996 distinguished 656-9
    International Commercial Arbitration Act RSBC 1966
       Commercial Arbitration Act RSBC 1996 distinguished 656-9
       review of award, limitations 679
       s 5 659-61
       s 34 659-61, 673, 679-80
```



> s 34(1) 659 s 34(2) 660, 675 s 34(3) 659 s 36 679-80 Channel Tunnel dispute settlement provisions applicable law principles of equity (if parties agree) 409 relevant principles of international law 409 rules of English or French law as appropriate 408-9 forum 409-11 conveniens 410-11 for determining validity of UK legislation 409-11 France-UK agreements relating to Concession Agreement (Eurotunnel) arbitration clause 408-11 Clause 15.1 414 Clause 23.2 411, 413, 414-16 Clause 40 408 Clause 40.4 409 extracts 402-3 dispute settlement provisions. See dispute settlement provisions above implementation consultation, need for 411-16 joint action, need for 413-16 interpretation, agreements as a whole 411-12 Special Arrangements on Security Matters relating to the Channel Fixed Link (1993), extracts 403-4 Treaty concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link 400-16 Joint Security Committee (JSC) 403 advisory status 412 UK legislation relating to. See United Kingdom, Channel Tunnel (Security) Order 1994 (Part III) and Channel Tunnel Act 1987 genocide in 340-2 Head of State, General Pinochet's status as 56-7, 94, 100 internal armed conflict in 352 law of

Decree-Law 2191 (1978) (Amnesty) 72-3, 86 universal jurisdiction and 344

consultation with requesting State 308-9 Head of State immunity and 45, 62, 97 State immunity from jurisdiction and 45

concession agreements, oil concessions

coastal State, disputes affecting sovereign rights under UNCLOS (1982)

INDEX

© Cambridge University Press

552-3, 563 **comity** 

act of State 73-4 extradition 305-6

common law, torture 189

Ethiopia/Eritrea 443-6 sovereignty 443-6

687



```
conspiracy, torture 148, 183-4, 188-9, 190-2, 250
Control Council Law No 10
  crimes against humanity 353
  statutory limitation 357
crimes against humanity
  as part of municipal law 355
  classification as
    genocide 229
    responsibility of courts 352
    torture 229
  customary international law 106-7, 353-4
  definition
     Control Council Law No 10 353
    decisions of municipal courts 353
    French Criminal Code (1994) 353
    International Criminal Court, Rome Statute (1998) 354
    International Criminal Tribunal for the Former Yugoslavia 353
    International Criminal Tribunal for Rwanda 217, 353
    Nuremberg Charter (1945) 67, 68, 353
    serious crimes against civilian population 217
  Head of State immunity from jurisdiction 45-8, 98-9
  immunity from legislation providing for removal 360
  judicial assistance, UNGA Resolution 3074 (1973) 99
  jurisdiction
    aut dedere aut punire 356-7
    extraterritorial 227
    possibility and obligation distinguished 356-7
    universal 67, 228-9
       creation of international tribunals as evidence against 364
       customary international law 67, 357, 363-4, 366-7
       legislation providing for 360
  jus cogens 355
  offence under municipal law, whether 354-6
  prosecution, possibility of, municipal legislation 354-5
  requirements
    armed conflict 67
    war crime, nexus
       ILC Draft Code of Crimes against the Peace and Security of Mankind
        (1949/1976/1989/1996) 148, 163, 226
       Nuremberg Tribunal 226
  responsibility, individual, Nuremberg Charter (1945) 148
  retroactivity
    absence of precise penalty at time of offence 355
    customary international law, relevance 354-5
  statutory limitation
    customary international law 358
    European Convention on the Non-Applicability of Statutory Limitation to
      Crimes against Humanity and War Crimes (1974) 357-8
    France 358
     UN Convention on the Non-Applicability of Statutory Limitations to War Crimes
     and Crimes against Humanity (1968) 357-8
critical date, double criminality 41, 55, 146-7, 159-60, 175-6, 182, 189-93, 202,
 214, 250
customary international law
  as aid to interpretation of legislation implementing treaty 161
```



INDEX 689

```
as primary source of international law 236
  baselines 458
  BITS (bilateral investment treaties) 663-4
  crimes against humanity 106-7, 353-4
    retroactivity and 354-5
    statutory limitation 358
  development 232-3
    slow pace 68-9
  diplomatic privileges and immunities, matters not covered by the Vienna
   Convention on Diplomatic Relations (1961) 59
  genocide 106-7
  Head of State
    functions 61, 104-5, 193-6
    immunity from jurisdiction 43-8, 62-70, 78-87, 104-5
       ratione personae 219
  Head of State, former, immunity from jurisdiction 43-8, 62-70, 78-87, 99-100,
    106-7, 203-4, 208-11
     ratione materiae 219, 236-7
  hostage-taking 106-7
  international crimes 65-70
  jurisdiction, universal, crimes against humanity 67, 357, 363-4, 366-7
  municipal law and, as part of 78-9, 87, 355
  requirements, constant and uniform practice 364
  standard of treatment of aliens 663-5
     transparency 664-6
  State immunity from jurisdiction 378
  State responsibility, Head of State 200-1
  statutory limitation, crimes against humanity 358
  torture 106-7
  treaties and other international instruments reflecting
    European Convention on State Immunity (and Protocol) (1972) 378
    Law of the Sea Convention (1982) 458
    Torture Convention (1984) 198
     Vienna Convention on Diplomatic Relations (1961) 59
       preservation of customary international law 59
diplomatic agent, Head of State as 60-1
diplomatic mission, functions, protection of interests of sending State and its
 nationals, within the limits permitted by international law 246-7
diplomatic privileges and immunities
  criminal jurisdiction, immunity 60
  distinction 61
  entitlement
    Head of State. See Head of State, diplomatic privileges and immunities,
      entitlement nationals of receiving State 60
    permanent resident in receiving State 60
  functional, termination of status, after 153
  State immunity and 153, 222
    distinction 210
  termination
     Vienna Convention on Diplomatic Relations (1961)
       acts performed in respect of functions 3
       "when he leaves the country or on expiry of a reasonable period in which
        to do so" 153
```

diplomatic protection, right to, individual and State distinguished 450



Cambridge University Press 978-0-521-66122-5 - International Law Reports, Volume 119 Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer More information 690 **INDEX** diplomatic status, evidence of/requirements, diplomatic passport 78 disappearances, as torture 285-6, 328 dispute settlement compulsory, conventions. See also Law of the Sea Convention (1982), disputes under methods, parallel, Convention for the Conservation of the Southern Bluefin Tuna (1993) 555-6, 559-61 double criminality critical date, commission of offence 41, 55, 146-7, 159-60, 175-6, 182, 189-93, 202, 214, 250 determination on basis of law as set out in request 259-60 evidence of foreign law 259-60 Geneva Convention (Treatment of Prisoners of War) (Convention III) (1949) 351 retroactivity 230 dual criminality. See double criminality effective remedy, right to, State immunity as bar to suit and 372, 373, 376, 377-8, 383-5 equidistance equitable result, need for 464 median line as coastal line 458 definition Law of the Sea Convention (1982) 458 legal writings 458 Eritrea / Yemen 443-6, 453-65 islands, sovereignty over and 443-6, 453-65 opposite States, between 445 special circumstances and, Eritrea/Yemen boundary 464 FAO Fisheries Infrastructure Development Project Report (1995) 451 Joint Yemeni-Eritrean Committee for Bilateral Cooperation, Treaty of 16 October 1998 492-4 Memorandum of Understanding with Yemen of 15 November 1994 488-91 Eritrea/Yemen Arbitration Tribunal (1998). See also Eritrea/Yemen Arbitration Tribunal (1999); Red Sea Islands applicable law, Islamic 448 Eritrea/Yemen Arbitration Tribunal (1999)

applicable law, Law of the Sea Convention (1982) 457-8, 460-1 experts, designation 425 parties' arguments fishing in the Red Sea 436-9 proportionality 432-3 proposed boundary line 426-30 sovereignty 431-2 relevant/special circumstances, Tribunal's opinion on territorial sovereignty 457

task, delimitation of maritime boundaries 456, 464 two-stage nature of process, relevance 449-50, 475-81

Eritrea/Yemen boundary. See also Red Sea Islands

as determined by Tribunal 456-67 islands, relevance 445 median line 443-6, 453-65 absence of special factors requiring variation 464 equity 464 proportionality 465-6



```
Ethiopia, territorial sea, primacy of International Law of the Sea Convention
 (1982)458
European Convention on Human Rights (1950)
  access to courts, non-disclosure of evidence and 277, 307
  effective remedy before national authority, State immunity as bar to suit and 372,
   373, 376, 377-8, 383-5
  private life, respect for
     disclosure of medical reports in extradition proceedings 304, 316-17
    interference by public authority, proportionality 316-17
European Convention on Mutual Assistance in Criminal Matters (1959),
 obligation to execute letters rogatory "in manner provided for by its law" 283-4
European Convention on State Immunity (and Protocol) (Basle) (1972),
 customary international law 378
evidence, disclosure, obligation, non-disclosure, as denial of access to courts 277
evidence of, Head of State, status 49, 56-7, 94, 100
experts, Eritrea/Yemen Arbitration Tribunal (1999) 401, 425
expropriation/nationalization, indirect, building permit, failure to issue 638-40,
 655-6, 666-8
expropriation/nationalization, compensation
  measure
     applicable law, treaty provision 641
    bundling of costs and 643
    investment 642-3
    loss of opportunity 641
    remediation costs 643
  method, discounted cash flow (DCF), in absence of evidence of future profits
   641-2
extraditable offence
  conspiracy
    to hostage-taking 182-3
    to murder 148, 184-8
    to torture 148, 188-9, 190-2, 250
  "extradition crime" 2, 75-6, 93, 109, 139, 144-8, 181-2, 218-19, 249, 258
    critical date 76, 109, 140, 145, 284-5
    disappearances 285-6, 328
  extraterritorial offence 32
    crime committed outside requested State 2, 32, 37-8
    jurisdiction of requesting State based on nationality of offender 2, 32, 38
    jurisdiction of requesting State based on nationality of victim 38
    torture 190
  hostage-taking 76, 93, 147-8, 182-3
  torture 76, 93, 150-1, 190, 249
extradition
  applicable law, European Convention on Extradition (1957) 31
  arrest warrant
    provisional 33-6, 92
       multiple 39, 76-8
  comity 305-6
    consultation with requesting State 308-9
  definition 30
  discretion 38, 92, 108-9, 110-11, 249
    abuse of process 251
    as protection of accused 326-7
    interests of claimants for compensation 277-8, 305, 326
    interests of requesting State 277-8
```



```
medical condition 265-6, 318-24
       fitness to stand trial 322-4, 328
    possibility of trial in home State 326
     treaty obligations 325
  evidence
     assumption of validity 258-60
     disclosure of medical reports
       assurance of confidentiality and 298-9
       to human rights organizations 266-79
       to requesting States 282-3, 284, 287-317
  evidence of, foreign law 259-60
  fairness 293-317
     as matter of law 313
     representations and 307
     requested State's right to take decision in case of international crime
      without consultation 301, 307-10
  foreign relations and 72, 111
  habeas corpus, as appeal 317-18
  judicial review, grounds, lawful, fair and reasonable action, whether 275-8,
  ministerial responsibilities 36, 38
  motivation of requesting State, prosecution for race, religion, nationality or
    political opinion 110, 250
  passive personality principle 75-6
  procedure 33-6
     European Convention on Extradition (1957)
       accusation case 255-6, 259
       between non-parties to 146
       between parties to 146
     inter partes hearing 39-40
     legal nature 254
     ministerial signature, need for 33
     reasons, need for 256
     representations, admissibility 248, 318
     review of extradition warrant 38
  refusal, grounds
     effect on stability of country in which offences committed 111, 252
     humanitarian considerations 111, 250, 252
     national interest 111, 252, 326
     need for 256
  request for
     imperfect 31
     multiple, standing of second requesting State 282-3
     need for 32-3, 251-2
  requirements
     authority to proceed 108-11, 146, 247-52, 318, 328-9
     good faith 110, 251
     ministerial authority 33
     reciprocity 75-6
  statutory limitation 110
extradition agreements, reciprocity, relevance 75-6
Extradition, European Convention on (1957)
  applicability, between parties to 31
  implementation, flexibility 325
```



```
municipal law, incorporation 2, 31
    primacy of municipal law in absence of incorporation 324-5
  procedure
    accusation case 255-6, 259
    between non-parties to 146
    between parties to 146
  purpose, streamlining of process 254-5
  reciprocity and 75-6
  requested party's right to request supplementary information 180-1, 250, 256-7
     Re Cuoghi 257
  requesting party's rights, limited nature 294-5
fair hearing, access to courts, right to, non-disclosure of evidence and 277, 307
federal States, State responsibility 634, 639, 654-5
fisheries, historic, Red Sea 440, 447-53
fishing practices 440-3, 447-53
foreign law, evidence of, extradition 259-60
foreign relations, extradition and 72
France
  law of
     2 January 1995 (ICTY Statute) 367
     Criminal Code 1994, s 212-1, 353
     Criminal Procedure Code, s 689-2, 367
  statutory limitation, crimes against humanity, non-applicability to 358
  treaties, direct effect
     clear provision, need for 365
     Geneva Conventions (1949) 365
general principles of international law, State immunity from jurisdiction 204-5,
 238-42
Geneva Convention (Treatment of Prisoners of War) (Convention III)
 (1949)
  double criminality requirement 351
  legality requirement 351
Geneva Conventions (1949), Second Additional Protocol relating to the
 Protection of Victims of Non-International Armed Conflicts (1977)
  applicability
     internal conflict 352
       determination by trial judge 352
genocide
  as terrorism 342-3
  Chile, in 340-2
  crime against humanity 229
  customary international law 106-7
  definition 338-42
     Spain
       "intent to destroy, in part or in whole, a national ethnic, racial or religious
        group" 339-40
       "intent to destroy, in part or in whole, a national ethnic, social or religious
        group" 339
       UNGA Resolution No 96 (I) (1946) 338
  jurisdiction
     extraterritorial 336-7, 338
     passive personality principle 56
```



> 694 INDEX possibility and obligation distinguished 336-7 universal 56, 70-1, 72 offence under municipal law, whether 338-42 time of events constituting, relevance, events prior to legislation providing for jurisdiction 336-7 torture as part of 343 Genocide Convention (1948) applicability, Head of State 46, 65-6, 71, 85 definition of genocide, "acts committed with intent to destroy in whole or in part any identifiable group . . . distinguished by colour, race, religion or ethnic origin" 339 dispute settlement provisions, reservations 335 jurisdiction competent tribunal of State in which act committed 66, 335-6 extraterritorial jurisdiction 335-6 international penal tribunal 66, 335-6 States parties' right to exercise "universal" where their law permits 334-6 territorial, whether 72 municipal law and, incorporation, need for, where principles already part of law 355 reservations, dispute settlement provisions 335 State/Head of State immunity 65-6 other than in State where act committed 66 Germany, Federal Republic (FRG) ambassador, State immunity from jurisdiction, entitlement 208-11 diplomatic privileges and immunities, State immunity and, distinction 210 good faith, extradition 110, 251 habeas corpus applicant outside jurisdiction 393-8 as means to test validity of detention 393-4 in case of detention by peacekeeping forces 393-8 Hawaiian Kingdom annexation, effect 584-5, 594, 597 Joint Resolution of 23 November 1993 610-15 President Cleveland's message to the Senate and House of Representatives of 18 December 1893 598-610 status as independent State in the nineteenth century 581 head of government, immunity from jurisdiction 222 **Head of State** as diplomatic agent 60-1 as "public official or person acting in that capacity" 71-2 Genocide Convention (1948) 70, 243-4 International Criminal Tribunal for the Former Yugoslavia (Statute) 71, 87, 162-3, 212, 243 International Criminal Tribunal for Rwanda (Statute) 71, 87, 162-3, 212, 243 Nuremberg Charter (1945) 71, 87, 162-3, 243 Torture Convention (1984) 70-1, 92-3, 100, 151, 152, 156, 163, 164, 196-8, 213-14, 221-2 evidence of status as 49, 56-7, 94, 101 functions 61-2 applicable law 61, 62, 97, 104-5 customary international law 61, 104-5, 193-6 international law 61-2, 104 municipal law of own country 61, 104-5 crimes against international law and 43-8, 61-70, 83-7, 97-9, 104-7, 155-6, 169-70 jus cogens and 155, 195



```
legality of act, relevance 62, 194-6, 224
     murder 84
     official nature of acts, relevance 103
     torture 4, 45, 47-8, 61-70, 97-100, 104, 151-7, 169-70, 204-18
       as instrument of State policy 224
  private acts, act of State and 82
  recognition, immunity from jurisdiction and 349
  responsibility for international crimes, customary international law 200-1
Head of State, diplomatic privileges and immunities, entitlement 42-8,
 60-1, 96-9, 102-3, 109, 210-11
  time-limitation and 60-1, 89-90, 96-7
  Vienna Convention on Diplomatic Relations (1961), application 42-8, 59-61, 89-90,
   96-7, 102-3
     criminal proceedings 193
Head of State, former
  act of State and 106-7
     personal gain 82
  Vienna Convention on Diplomatic Relations (1961) and 59-61
Head of State, former, immunity from jurisdiction
  arrest 61
  as courtesy 234
  as former diplomat 59-60, 89-90, 96-7, 102-3, 154, 160-1, 193, 196, 223-4, 245-7
  criminal proceedings 246-7
     customary international law 203-4, 208-11
  customary international law 43-8, 62-70, 78-87, 99-100, 106-7, 203-4
     ratione materiae 219, 236-7
  genocide 72
  hostage-taking 72, 98
  official acts in exercise of functions 2-3, 43-8, 55, 62-5, 79-83, 90, 103, 153-4, 161,
    169-70, 193-6, 202-18, 234-47, 349. See also ratione materiae below
     Hatch v. Baez 65, 81, 235
  private acts 79
  ratione materiae 223-4, 231, 240. See also official acts in exercise of functions above
     customary international law 219
     Torture Convention (1984), effect 200-1, 215-16, 220, 231, 245
  ratione personae 79, 96-9, 103
  torture 45, 61-70, 97-100, 151-7, 219-21, 244-5, 250
  Torture Convention (1984)
     as waiver 216-17, 221, 231-2
     exclusion 219-21, 245
  treaty exception 68-70
     acts prior to coming into force of treaty exception 68-70
     acts prior to legislation implementing treaty exception 69-70
     critical date 69-70, 140
     need for 68-70
     requirements 195-6
       aut dedicare aut judicare provision regardless of nationality or place of offence 69
       clear definition of crime against international law 69
       convention to which requested and requesting States both party 69
       provision for national jurisdiction to try former Head of State 69
     strict interpretation 69, 72
  waiver, Torture Convention (1984) as 216-17, 221, 231-2, 245
Head of State, immunity from jurisdiction
  absolute 49, 80, 102, 222
  acts committed abroad 60, 161, 236
```



```
acts committed in own country 60-1, 90, 203
  acts committed within forum State 45, 56, 90, 194, 231, 237, 246
  basis
     comity 45, 62, 97
     foreign relations considerations 72-3
  common law 89-90
  crimes against humanity 45-8, 98-9
  criminal proceedings 45, 58, 87-9, 96, 155, 162, 204-18
     gravity of crimes, relevance 62, 84, 169
  customary international law 43-8, 62-70, 78-87, 99-100
     ratione personae 219
  de facto Head of State, Noriega 82-3
  functional basis 59-70
  genocide 72
  Genocide Convention (1948), applicability 65-6
     other than in State where act committed 66
  head of government distinguished 222
  Hostages Convention (1979), applicability 65
  ILC and 69, 72
  international crimes 67-70, 83-7, 212-13, 223-33, 349
  international tribunals
     International Criminal Court 66-7, 155
     International Criminal Tribunal for the Former Yugoslavia 66, 71, 87, 155, 212
     International Criminal Tribunal for Rwanda 46, 66, 155
     International Military Tribunal for the Far East (Tokyo Tribunal) 66
     Nuremberg Military Tribunal 46, 66, 87, 98-9, 155
  jurisdiction, effect of grant to municipal courts 155-6
  justiciability 73-4, 90-3
  legality of act, relevance 62, 194-6, 224
  official acts, while in power 41-9
  personal sovereign 99
  Pinochet proceedings, background 1-5
  private acts 239
  ratione materiae 153-4, 156, 161, 172-3, 194-5, 200-1, 215, 223, 231, 239-42
     Duke of Brunswick v. King of Hanover 63, 80-2
     Torture Convention (1984), effect 200-1, 215-16, 220, 231
  ratione personae 79, 96-9, 161, 214, 222, 239
     former Head of State distinguished 79, 96-9, 222-3
  State immunity and 57, 62-5, 140, 152-7, 235
  State practice 67
  statutory limitation, suspension 358
  waiver
     absence of objection by government 83
     by State, need for 79, 87
hostage-taking
  act of State 96
  conspiracy 182-3
  customary international law 106-7
  definition, UK law 93, 147-8
  extraditable offence 76, 93, 147-8, 182-3
  jurisdiction, Hostages Convention (1979) 100
Hostages Convention (1979)
  applicability
     "any offender whatsoever" 65
     Head of State 65
```



Cambridge University Press 978-0-521-66122-5 - International Law Reports, Volume 119 Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer More information 697 INDEX aut dedere aut judicare 65 State/Head of State immunity and 65, 72, 85, 96, 98, 100 ICSID Convention (Convention on Settlement of Investment Disputes between States and Nationals of other States (1965)), award, grounds for annulment, failure to deal with every question submitted 678-9 ICSID (International Centre for the Settlement of Investment Disputes) Additional Facility, NAFTA provision for 621 n. 4 Additional Facility Rules (Arbitration) 3 677 4(2) 622-3 21 622 28 622 48(1) 632 48(2) 633 49 677-8 53(1) 677, 678, 680 58 680-1 amendment of claims, admissibility, in light of developments subsequent to original filing 631-3, 669-70 ICSID (International Centre for the Settlement of Investment Disputes), arbitral tribunal confidentiality of proceedings 622-3 precedent, decisions of another arbitral tribunal 639, 667-8 procedure, production of documents 624 interest, compensation for expropriation/nationalization 644 internal armed conflict applicability of, Geneva Conventions (1949), Second Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts (1977) 352 in Chile 352 internal waters areas of sea on landward side of territorial sea baseline 459 seaward edge 459 International Court of Justice (ICI), third States and Certain Phosphate Lands in Nauru 510, 589-90, 591 East Timor 590, 592 Monetary Gold 588-92, 594-7 rights/legal interests distinguished 592 international crimes classification as torture 149-50, 155-6, 199-201, 217 Torture Convention (1984), relevance 229-30 customary international law 65-70 definition instigation of State authorities, need for 226-7, 243 scale, relevance 217, 229, 250 extradition, requested State's right to decide without consultation 301 Head of State, immunity from jurisdiction 43-8, 61-70, 83-7, 97-9, 104-7, 155-6, 169-70, 212-13, 223-33, 349 jurisdiction 139 immunity from/right of distinguished 69 legislation, retroactive, procedural provisions distinguished 336-7, 350-1

statutory limitation

Control Council Law No 10 357 customary international law 358



698 INDEX

European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974) 357-8 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) 357-8 universal jurisdiction 67, 229-33, 243, 350 as breach of UN Charter 344-5 breach of jus cogens, need for 229 creation of international tribunals as evidence against 364 effectiveness, need for 325-6 gravity, relevance 229 presence of offender, relevance 350, 367 relevance to classification as 156 **International Criminal Court** Head of State immunity 66-7, 155 jurisdiction, most serious crimes of concern to the international community 212-13 International Criminal Court, Rome Statute (1998) applicability, Head of State 67, 212-13 crimes against humanity, definition 354 international criminal law nature, as international law 355 primacy 355 international humanitarian law, requirements nexus with armed conflict 351-2 internal armed conflict 351-2 international law development by municipal courts 67 progressive 67 dualist theory 69 Islamic law and 448 sources 236 judicial and arbitral decisions 237 teachings of publicists 237-8 International Law Commission (ILC) Draft Articles on State Responsibility (1977), conduct of territorial government entity 634 Draft Code of Offences against the Peace and Security of Mankind (1949/1976/1989/1996) 211-12 crimes against humanity 217 war crimes, nexus 148, 163, 226 Head of State responsibility 211, 212, 218, 226 Head of State immunities and 69, 72 Report on the Jurisdictional Immunities of States and their Property (1991), express waiver, need for 167 International Military Tribunal for the Far East (Tokyo Tribunal) crimes against humanity 68 Head of State, immunity from jurisdiction 66 International Tribunal for the Law of the Sea (ITLOS), provisional measures Order of 27 August 1999 (Australia and New Zealand v. Japan), text 525-9 pending arbitration 523-30 requirements, prima facie jurisdiction 529

subsequent finding that tribunal lacks jurisdiction, effect 554-5 international tribunals, jurisdiction, consensual nature 67



```
Islamic law, sovereignty 448
islands
  as basepoints, Eritrea-Yemen 455-6
  leap-frogging 462-3
  maritime delimitation and, enclave solution, Red Sea Islands 455-6, 463
  proportionality, Eritrea / Yemen 454-5
  sovereignty over, median line principle 443-6, 453-65
  territorial sea
     breadth 463
     chain of islands 463
     enclave principle 462-3
     entitlement 462-4
     Law of the Sea Convention (1982) 463
     median line 463
     overlapping 462-4
islets 459-61
Israel, customary international law, part of the law of 227
joint exploitation of maritime resources
  Eritrea / Yemen 445-6
    Joint Yemeni-Eritrean Committee for Bilateral Cooperation, Treaty of
      16 October 1998 492-4
     Memorandum of Understanding of 15 November 1994 488-91
  oil 445-6
  overlapping areas 445-6
  State practice 445-6
judicial assistance, crimes against humanity, UNGA Resolution 3074 (1973) 99
judicial impartiality
  appearance of bias 120-4, 127-35
     Amnesty International Charity Limited, relationship with 113-35
  nemo judex in sua (propria) causa/ "no-one should be judge in his own cause" 120-4,
  "real danger" 124, 132
  "real suspicion" 130, 132
judicial restraint, act of State and 74, 92
judicial review
  arbitral award 648-82
  extradition. See extradition, judicial review
  standing, "sufficient interest" 279-80
     human rights groups 279-80
jurisdiction
  as procedural matter 336-7, 350-1
  extraterritorial
     airport transit zone, genocide 335-6
     crimes against humanity 227
     Geneva Conventions (1949) 365
     territorial sovereignty and 77
     Torture Convention (1984) 40, 70-1, 76, 85, 100, 139-40, 156, 230-1
  genocide, passive personality principle 56
  nationals abroad, murder or manslaughter 55, 184
  passive personality principle
     extradition based on 75-6
     genocide 56
     torture 363
```



```
700
                                       INDEX
   territorial, State immunity and 236
  universal
     crimes against humanity 67, 212-13, 228-9, 357, 360
     genocide 56, 72, 336-7
     international crimes 67, 229-33, 243, 350
     requirements, presence of offender 350, 367
     terrorism 342
     torture 2, 70-1, 76, 85, 149-50, 155-6, 229-31, 343
     war crimes 227-8
jus cogens
   crimes against humanity 355
   Head of State immunity from jurisdiction and 155, 195, 197
   State immunity from jurisdiction and 67, 225
   torture 85, 86, 149, 200, 206-7, 214, 244, 310-11
justiciability
   Head of State, immunity from jurisdiction and 73-4, 90-3
  legislature's role 96
   private law principle 78
   State immunity from jurisdiction and 78
  substantive issue 78
Law of the Sea Convention (1982)
   applicability, States not party to 457, 460-1
   coastal States, disputes relating to sovereign rights 552-3, 563
   customary international law 458
   disputes under
     agreement to seek settlement by peaceful means of own choice (Art. 281(1)) 550-1
       Convention for the Conservation of Southern Bluefin Tuna (1993), Art. 16
         provisions as 549-51, 557-65
     compulsory procedures entailing binding provisions
       agreement of all parties to dispute, need for 553, 561-5
       agreement to seek settlement by peaceful means of own choice (Art. 281(1))
         and 551-4
       limitations (Art. 297) 552-3, 562-5
       obligation to seek peaceful settlement 563-6
       subsequent treaty practice 553-4, 561
     disputes affecting coastal States rights 552-3, 563
     obligation to exchange views (Art. 283), "no settlement has been reached" and
      550-1
  interpretation
     aids
       parallel texts 561
       structure of treaty 562-3
       subsequent treaty practice 553-4, 561
     context, related agreement 559-60
     guidelines, object and purpose 563, 565
     interrelationship of ss 1, 2 and 3 of Part XV 552, 562-3
   natural resources, "economic needs of coastal fishing community" 442 n. 18
   obligations, in case of parallel or implementation treaties 548-9, 560-1
  phrases, "economic needs of coastal fishing community" 442 n. 18
  reefs 460
   travaux préparatoires, aid to interpretation 563-5
legislation, legality of, foreign court's right to determine 92
```



```
legislation, interpretation
    legislative history 154, 161
    preamble to treaty 59
    treaty 59-60
  presumption of conformity with international law 234
     customary international law 87
legislation, retroactive
  international crimes, procedural provisions distinguished 336-7, 350-1
  legislation implementing Torture Convention (1984) 230
  procedural legislation 336-7
  State immunity legislation 193
legitimate expectation, public interest and 278
letters rogatory, European Convention on Mutual Assistance in Criminal Matters
 (1959), obligation to execute "in manner provided for by its law" 283-4
Luxembourg
  crimes against humanity, jurisdiction
     customary international law 363-4
     universal 366-7
  customary international law, requirements, constant and uniform practice 364
  jurisdiction, passive personality principle, torture 363
     Criminal Code 364
     Criminal Investigation Code 364
  opinio juris, deliberate practice, need for 364
  Refugees, Geneva Convention on the Status of (1951) and Protocol (1967), courts,
   right of access 365
  Torture Convention (1984), direct effect 363, 365
  treaties, direct effect
     clear provision, need for 363, 365
     parties' intention 363
     Torture Convention (1984) 363, 365
maritime delimitation
  determination of boundary distinguished 456, 464
  enclaves and 455-6, 463
  equitable result, Eritrea/Yemen 454-5
  islets 459-61
  proportionality. See proportionality, maritime delimitation
  relevant/special circumstances
     "any other pertinent factors" 456-7
     economic, Eritrea/Yemen 440-1
     fishing practices, Eritrea/Yemen 441-3, 447-53
     social 441-2
  single boundary, all-purpose, Red Sea Islands 457-8
  third States 459, 465
maritime jurisdiction, single regime, whether 457-8
maritime zone, Law of the Sea Convention (1982), Red Sea 452
Mexico
  environmental protection measures
     fair and equitable treatment under NAFTA, whether 634-8
     responsibility for 634-8
  federal State, State responsibility 634, 639, 654-5
```



Cambridge University Press

978-0-521-66122-5 - International Law Reports, Volume 119 Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer More information 702 INDEX law of Ecological Decree (San Luis Potosi) (20 September 1997), as measure tantamount to expropriation/nationalization 640, 655-6, 671-3 General Ecology Law (LGEEPA) 1988, constituent State responsibilities under 645-6military courts, jurisdiction, foreign soldier 350 **NAFTA Arbitral Tribunal** applicable law applicable rules of international law 633, 653 ICSID Additional Facility Rules as amended by NAFTA (1992) 621-2 NAFTA (1992) 633, 653 awards, review by courts of place of arbitration 646-82 third party submissions 625-6 NAFTA (North American Free Trade Agreement) (1992) breach, inconsistent legislation as 633, 653-4 expropriation/nationalization 'measure tantamount to nationalization or expropriation", building permit, failure to issue 638-40, 655, 666-8 requirements for legality due process 620 non-discrimination 620 public purpose 620 expropriation/nationalization, compensation interest 644 measure bundling of costs and 643 fair market value 641-2 investment 642-3 loss of opportunity 641 remediation costs 643 method, discounted cash flow (DCF), in absence of evidence of future profits 641-2 objectives, transparency 635, 653, 665-6 obligations exceptions, application to federal States or local governments 634 to "ensure all necessary measures are taken to give effect... by state and provincial governments" 634 standard of treatment in accordance with (customary) international law 663-5 fair and equitable 634-8, 654-5 transparency 633, 635, 638, 653 minimum international standard 662-4 national treatment 662 NAFTA (North American Free Trade Agreement) (1992), interpretation aids context annexes 633

between all parties in connection with conclusion of treaty 633

BITS (bilateral investment treaties) 664

preamble 633 other treaties

"commercial arbitration" 657-9



INDEX 703

```
guidelines
     object and purpose 633, 653-4
     ordinary meaning 663-5
  phrases, "state or province" 634
national interest, extradition 111, 252, 326
natural resources, maritime delimitation and, oil concessions, relevance
 443-6
North American Free Trade Agreement (NAFTA) (1992). See NAFTA
 Arbitral Tribunal; NAFTA (North American Free Trade Agreement) (1992)
North Atlantic Treaty Organization Status of Forces Agreement (1951),
 phrases,
  "civilian component" 377
Nuremberg Charter (1945)
  crimes against humanity 67, 68, 353
     war crimes, nexus 226
  Head of State immunity 46, 66, 87, 98-9, 155
  individual responsibility 148
     Head of State 162-3, 211, 243
  legality 148
     UN Resolution 95(I) and 67, 99, 148
  State immunity 46, 66
Nuremberg Tribunal, status
  joint tribunal 225
  occupation court 225
opinio juris, deliberate practice, need for 364
Permanent Court of Arbitration (PCA)
  fact-finding role 597-8
  Optional Rules for Arbitrating Disputes between Two Parties of which Only One
   is a State 582-3
    non-contractual disputes 582
     where neither party a State 582-3
political offence, extradition 250
precedent, arbitral tribunals 639, 667-8
private international law, justiciability 78
private life, respect for
  disclosure of medical reports in extradition proceedings 304-5, 316-17
  interference by public authority, proportionality 316-17
proportionality, private life, respect for, interference by public authority 316-17
proportionality, maritime delimitation
  Anglo-French Arbitration 465
  between coastal lengths, opposite coasts, Eritrea/Yemen 465-6
  disproportion, avoidance 465-6
  islands, mid-sea islands 454-5
  method of delimitation, as 465-6
  North Sea 465
provisional measures. See also International Tribunal for the Law of the Sea,
 provisional measures
```

admissibility, non-parties to arbitration agreement 578

public policy, act of State and 106

public interest, disclosure of confidential information and 275-7, 299-306,

310, 312



```
Red Sea Islands
  British Admiralty (BA) Charts 458, 460
  Dahlak islands 459-61
     as integral part of coastal configuration 459-60
     straight baselines and 460-1
  delimitation
     coastal median line 443-6, 453-65
     enclave solution 455-6, 463
     geodetic line 464-5
     single all-purpose line 457-8
  historic fishing regime
     entitlement to engage in artisanal fishing 450-3
     freedom of access 451-2
       Memorandum of Understanding between Eritrea and Yemen (1994)
         451-2
     guano and mineral extraction 451
     perpetuation 441-3, 447-53
       in absence of agreement 452
     res communis 450
  historic title, Eritrean claim, succession through Italy 451
  historic title, Yemeni claim, evidence of, Ottoman rule, relevance 448
  Jabal al-Tayr/Zubayr Group 461
  Kamaran, as basepoint 461-2
  maps, Petroconsultants 443-5
  Negileh Rock 460
  oil concessions, Ethiopia/Eritrea 443-6
  reefs as basepoints
     islands north of Kamaran 462
     Negileh Rock 460
  sovereignty
    fishing regime, compatibility 447-53
     oil concessions 443-6
  status, indeterminate 445
  Zuqar-Hanish group 464
reefs, Law of the Sea Convention (1982) 461, 462
refugees, access to courts 365
res judicata, amnesty, relevance 343-4
Rwanda, International Criminal Tribunal for, Statute
  Article 6 (individual responsibility) 46, 66-7
  crimes against humanity, definition 217, 353
  Head of State immunity 66, 71, 87, 155
  Head of State responsibility 162-3, 212, 243
Sierra Leone, UN peacekeeping operations 389-98
  custody or control of rebel leader 389-98
  habeas corpus proceedings in UK and 386-98
sovereignty
  fishing regime, compatibility 447-53
  Islamic law 448
Spain
  Constitution
    s 9(3) 337
    s 25 337
    s 96 (treaties: primacy) 336
```



```
s 96(1) (treaties as part of law) 335
     Genocide Convention (1948) 335
genocide
  as terrorism 342-3
  Chile, in 340-2
  definition 338-42
     "intent to destroy, in part or in whole, a national ethnic, racial or religious
      group" 339-40
     "intent to destroy, in part or in whole, a national ethnic, social or religious
      group" 339
  jurisdiction
     extraterritorial 336-7, 338
     passive personality principle 56
     possibility and obligation distinguished 336-7
     universal 56, 336-7
  time of events constituting, relevance 336-7
     events prior to legislation providing for jurisdiction 336
  torture as part of 343
Genocide Convention (1948)
  incorporation 335
  jurisdiction
     competent tribunal of State in which act committed 335-6
     extraterritorial jurisdiction 335-6
     international penal tribunal 335-6
     States parties' right to exercise "universal" where their law permits 334-6
  reservations, dispute settlement provisions 335
Head of State, former, immunity from jurisdiction, official acts in exercise of
 functions 349
international crimes, universal jurisdiction, as breach of UN Charter 344-5
jurisdiction, universal
  genocide 56, 336-7
  torture 343
law of
  Civil Code (New), s 1(5) 335
  Criminal Code 1995, s 607 340
  Criminal Code (old), s 137 339-40, 341
  Law 44/71 (introduction of genocide into Criminal Code) 339
  Organic Law on the Judiciary 1870, s 336 337
  Organic Law on the Judiciary 1985
     non-retroactivity 336
     procedural nature 336-7
     s 23(2) 336, 343-4
     s 23(4) 336-7, 338, 341, 342, 343, 344-5
     s 197 333
legislation, retroactive
  international crimes, procedural provisions distinguished 336-7
  procedural legislation 336-7
res judicata, amnesty, relevance 343-4
State-sponsored terrorism 343
terrorism
  definitions/requirements
     intention to subvert constitutional order 342
     organized group 342
  jurisdiction, universal 342
```



> 706 INDEX time of events constituting, relevance, events prior to legislation providing for jurisdiction 336-7, 342 torture as element of genocide 343 jurisdiction, universal 343 standard of treatment of aliens in accordance with (customary) international law 663-5 fair and equitable 634-8, 654-5 BITS 663-4 transparency 633, 635, 638, 653 minimum international standard 662-4 national treatment 662 State immunity from jurisdiction act of State and. See act of State, State immunity from jurisdiction and acts of, general in successful revolutionary forces, Underhill v. Hernandez 82 applicable law customary international law 233-4 forum State 233-4 as procedural bar 57-73, 78 basis comity 45 equality of States 223 non-interference in the affairs of another State 222 non-intervention in affairs of another State 223 par in parem non habet jurisdictionem 161, 172, 174, 222, 374 territorial jurisdiction/sovereignty 236 civil and criminal jurisdiction distinguished 205, 208, 217-18, 222, 226, 234-6, 239 classification of act legislative attempts at 374-5 military base 371 training and education contract 370-6, 380-3 common law, acts of armed forces 88-90, 371, 373, 374-5, 380, 381-2 criminal proceedings 58 customary international law 378 development of concept 238-9 diplomatic immunity and. See diplomatic privileges and immunities, State effective remedy, right to and 372, 373, 376, 377-8, 383-5 exceptions, violation of international law 224-9, 241-2 general principle of international law 204-5, 238-42 individual, in respect of 221-2 jus cogens violation 67, 225 justiciability and 73-4, 78 legality of act, relevance 224 ratione materiae 153, 173-4, 223-33 ratione personae 153, 173-4 torture 45, 47-8, 85-7, 205-8 treaty exception, Torture Convention (1984) 165-75, 201, 219-21 waiver, express, ILC Report on the Jurisdictional Immunities of States and their Property (1991) 167 waiver, treaty as express provision, need for 166-9, 170 Torture Convention (1984) 166-75, 196-9, 201, 216-17, 231-2, 245



Cambridge University Press 978-0-521-66122-5 - International Law Reports, Volume 119 Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer More information INDEX 707 State practice aut dedere aut judicare obligation 86 joint exploitation of maritime resources 445-6 State responsibility federal States 634, 639, 644-5 ultra vires act 205, 207, 639 State-sponsored terrorism 343 States annexation effect, right to determine 584-5, 594 Hawaiian Kingdom 584-5, 594, 597 status, right to determine 584-5, 594, 597 statutory limitation crimes against humanity Control Council Law No 10 357 customary international law 358 European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974) 357-8 France 358 international crimes European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974) 357-8 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) 357-8 suspension during period of immunity 358 Straddling Stocks and Highly Migratory Fish Stocks Agreement (1995), dispute settlement provisions 556 superior orders, Torture Convention (1984) 150, 152 territorial sea, baselines internal waters, seaward edge 459 low-water line, Law of the Sea Convention (1982) 458 straight 459-61 terrorism definitions/requirements intention to subvert constitutional order 342 organized group 342 jurisdiction, universal 342 time of events constituting, relevance, events prior to legislation providing for jurisdiction 336-7, 342 torture act of State 96 armed conflict and, necessary elements, nexus with armed conflict 148-9 as crime against humanity 229 as element of genocide 343 as function of Head of State 4, 45, 47-8, 61-70, 97-100, 104, 151-7, 169-70, 204-18 as instrument of State policy 224 as international crime 149-50, 199-201 scale, relevance 217, 250

Torture Convention (1984), relevance 229-30 universal jurisdiction, relevance 156 classification as, disappearances 285-6, 328

conspiracy 148, 183-4, 188-9, 190-2

common law 189



> 708 INDEX customary international law 106-7 definition critical date 328 intentional infliction of severe pain or suffering 328 UK criminal law 2-3, 70-1, 93, 183-4 extraditable offence 76, 93, 150-1, 190, 249 Head of State, former, immunity from jurisdiction 45, 47-8, 61-70, 97-100, 151-7, 219-21, 244-5, 250 immunity from jurisdiction, Torture Convention and. See Torture Convention (1984), State immunity and jurisdiction extraterritorial 70-1, 76, 85, 190 passive personality principle 85, 363 universal 2, 70-1, 76, 85, 149-50, 155-6, 229-31 jus cogens 85, 86, 149, 200, 206-7, 214, 244, 310-11 State immunity from jurisdiction 45, 47-8, 85-7, 205-8 Torture Convention (1984) customary international law and 198 definition 70, 183, 196-7 action "by a public official or other person acting in an official capacity" 2-3, 70-2, 92-3, 100, 150, 152, 156, 163, 188, 244-5 Head of State and 70-1, 92-3, 100, 151, 152, 156, 164, 196-8, 213-14, 220-1, 244-5 direct effect 363, 365 Head of State, former, immunity from jurisdiction Convention as exclusion 219-21, 245 Convention as waiver 216-17, 221, 231-2, 245 implementing legislation, retroactive, whether 230 non-refoulement to country of origin or any other country where risk of expulsion or torture 163-4 obligations aut dedere aut judicare 70-1, 85, 150, 151, 164 creation of criminal offence 150, 164, 197-8, 215 effective measures to prevent torture 163, 215 State immunity from jurisdiction ratione materiae and 85, 163-75 as waiver 166-9, 196-9, 201, 216-17, 231-2, 245 exclusion 165-6, 170-5, 245 superior orders 150, 152 torture as extraditable offence 150-1 travaux préparatoires 170, 171-4 universal jurisdiction 70-1, 76, 100, 139-40, 150, 164, 230-1 dependence on waiver of immunity 156, 214-15 passive personality principle 85, 363, 364 travaux préparatoires Law of the Sea Convention (1982) 563-5 Torture Convention (1984) 170, 171-4 treaties breach, justification, municipal law 633-4, 653-4 direct effect clear provision, need for 363, 365 parties' intention 363 Torture Convention (1984) 363, 365 implementing legislation, interpretation, consistency with customary international law 161



```
Cambridge University Press
978-0-521-66122-5 - International Law Reports, Volume 119
Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer
Index
More information
```

```
obligations, under parallel treaties 555-6, 559-61
    effect of implementing treaty on framework convention 548-9
  unincorporated, obligation of compliance 407-8
treaty exception, Head of State, former, immunity from jurisdiction 68-70
treaty interpretation
  aids
    context
       annexes to treaty 633
       preamble 633
       related agreement 559
    customary international law 196
    other treaties concluded by parties
       in connection with conclusion of treaty 633
       contemporaneous 411-12
    structure of treaty 562-3
    subsequent treaty practice 553-4, 561
  by municipal courts, Channel Tunnel agreements 409-11
  guidelines
    avoidance of implied term 170
    object and purpose, Law of the Sea Convention (1982) 563, 565
    ordinary meaning 663-5
    plain language 565
    treaty as a whole 411-12
    uniformity 196
  multilingual, parallel texts as interpretative aid 561
tuna, measures to protect
  Convention for the Conservation of Southern Bluefin Tuna (1993)
    dispute settlement provisions (Art. 16)
       agreement to alternative dispute settlement procedure with binding effect
        (UNCLOS Art. 282), whether 529
       Antarctic Treaty (1959) compared 552
       parallel methods 555-6, 559-61
       "peaceful means of settlement" under 550-2
    EFP (Experimental Fishing Programme) 515-21, 545-6, 547
    exclusion of compulsory procedures entailing binding provisions, whether 551-4,
    Law of the Sea Convention (1982) and 521-4, 546-9
       continuing obligations under UNCLOS 548-9, 560-1
       UNCLOS obligations extending beyond CCSBT 549
    TAC (total allowable catch) 515, 517
      Japanese attempts to increase 519-21, 547
    text 515-24
UNCITRAL (United Nations Commission on International Trade Law),
 Model Law of International Commercial Arbitration
  commercial arbitration, definition 657-9
  need for
    adoption by parties to dispute 585
    incorporation into domestic law 585
UNCITRAL (United Nations Commission on International Trade Law),
 Rules
  1 577
  15(1) 572, 578, 579
  32 580-1
```



> 710 INDEX 32(1) 579 33(1) 578 as applicable law 571-2, 582, 583-6 dispute involving State 586 need for adoption by parties 585-6 non-contractual dispute 586 legal dispute, need for 578 United Kingdom abuse of process, extradition 251 act of State act in own State, limitation to 95-6 classification as, torture 96 common law doctrine 94 definition 74 hostage-taking 96 judicial restraint 74, 92 jurisprudence, Buttes Gas and Oil Co. v. Hammer 63, 74, 91, 95 justiciability and 73-4, 90-3, 95-6 as preferred term 78 public policy 106-7 State immunity from jurisdiction and 73-4, 240 Amnesty International Charity Limited, effect of relationship with on impartiality requirement 113-35 arrest warrant, provisional 33-6, 92 Channel Tunnel Act 1987 extracts 404 s 1(1) 407 s 11 (implementation of international arrangements) 406, 407-8 "international arrangements" 404 obligation to give directions consistent with Treaty and Concession 407-8 s 11(1) 407 Channel Tunnel (Security) Order 1994 (Part III) Art. 14 405 Art. 16(1)(b) 405 Art. 16(2)(b) 405 validity of directions under 400-16 competence of UK courts to determine 409-11 comity, extradition, consultation with requesting State 308-9 common law State immunity from jurisdiction, acts of armed forces 88-90, 371, 373, 374-5, 380, 381-2 torture 189 conspiracy, torture 148, 183-4, 188-9, 190-2, 250 courts, municipal, jurisdiction, foreign legislation, determination of legality 92 crimes against humanity customary international law 106-7 Head of State immunity from jurisdiction 45-8, 98-9 criminal proceedings, effect on immunity 88 customary international law as aid to interpretation of legislation implementing treaty 161 crimes against humanity 106-7 genocide 106-7 Head of State, immunity from jurisdiction 44-8, 62-70, 78-87, 99-100, 104-5, 219 Head of State, responsibility for international crimes 200-1



```
hostage-taking 106-7
  municipal law and, part of 78-9, 87
  State immunity from jurisdiction 233-4, 378, 384
  torture 106-7
diplomatic agent, Head of State as 60-1
Diplomatic Privileges Act 1964 160-1, 223
  acts committed in own country 60-1, 90, 203
  "generally recognized principles of international law" and 62
  Head of State 42-8, 59-60
     "subject to any necessary modifications" 59-60, 89-90, 96-7, 102-3, 154, 160-1,
      193, 196, 223-4, 245-7
  Head of State, former 59-60, 89-90, 96-7, 102-3, 154, 160-1, 193, 196, 223-4,
  interpretation in conformity with customary international law 161
  s 1 42, 59, 89
  s 2 42, 59, 168-9, 203
  Schedule 1 78, 203
    Art. 29 203, 245
    Art. 31 42, 203, 245
    Art. 32(2) 168-9
    Art. 39 245-6
diplomatic privileges and immunities
  distinction 61
  entitlement, Head of State 42-8, 59-61, 96-9, 102-3, 109
  functional, termination of status, after 153
  State immunity and 222
diplomatic status, evidence of/requirements, diplomatic passport 78
double criminality
  critical date, commission of offence 41, 55, 146-7, 159-60, 175-6, 182, 189-93,
   202, 214, 250
  determination of
    on basis of law as set out in request 259-60
    evidence of foreign law 259-60
effective remedy before national authority, State immunity as bar to suit and 372,
 373, 376, 377-8, 383-5
European Convention on Human Rights (1950), effective remedy before national
 authority, State immunity as bar to suit and 372, 373, 376, 377-8, 383-5
evidence, disclosure, obligation, non-disclosure as denial of access to courts 277,
 307
extraditable offence
  conspiracy
    to hostage-taking 182-3
    to murder 148, 184-8
    to torture 148, 188-9, 190-2, 250
  "extradition crime" 31, 75-6, 93, 109, 139, 144-8, 181-2, 218-19, 249, 258
    critical date 45, 76-7, 109, 140, 284-5
    disappearances 285-6, 328
  extraterritorial offence
    crime committed outside requested State 2, 32, 37-8
    jurisdiction of requesting State based on nationality of offender 2, 32, 38
    jurisdiction of requesting State based on nationality of victim 38
    torture 190
  hostage-taking 76, 93, 147-8, 182-3
  torture 76, 93, 150-1, 190, 249
```



```
extradition
  comity, consultation with requesting State 308-9
  definition 30
  disclosure of medical reports
     assurance of confidentiality and 298-9
     to human rights organizations 266-79
     to requesting States 282-3, 284, 287-317
  discretion
     abuse of process 251
     as protection of accused 326-7
     fitness to stand trial 322-4, 328
     interests of claimants for compensation 277-8, 305, 326
     interests of requesting State 277-8
     medical condition 265-6, 318-24
     possibility of trial in home State 277-8, 305, 326
     treaty obligations 325
  evidence, assumption of validity 258-60
  fairness 293-317
     as matter of law 313
     representations and 307
     requested State's right to take decision in case of international crime without
      consultation 301, 307-10
  foreign relations and 72, 111, 252
  habeas corpus and 317-18
  Home Secretary's responsibilities 36, 38
     discretionary nature of powers 38, 92, 108-9, 110-11, 248. See also discretion
      above
     treaty basis 277-8
  judicial review, lawful, fair and reasonable action, whether 275-8, 282-3
  motivation of requesting State, prosecution for race, religion, nationality or
   political opinion 110, 250
  procedure 33-6
     accusation case 255-6, 259
     between non-parties to 146
     between parties to 146
     legal nature 254
     reasons, need for 256
     representations, admissibility 248, 318
  proceedings, leave to intervene 69
  refusal, grounds
     effect on stability of country in which offences committed 111,
     humanitarian considerations 111, 250, 252
     national interest 111, 252, 326
  request for
     imperfect 31
     need for 32-3, 251-2
     standing of second requesting State 282-3
  requirements
     authority to proceed 108-11, 146, 318
     good faith 110, 251
     ministerial authority 33
  review of extradition warrant 38
  statutory limitation and 110
```



```
Extradition Act 1870
  double criminality, critical date 146-7, 176, 182, 189-93, 202, 250
  Schedule 1 146-7
Extradition Act 1989 139, 288, 308
  as implementation of European Convention on Extradition (1957) 30, 254-5
     Act as applicable law 324-5
  s 1 109, 246
  s 1(1) 31, 144-5, 181
  s 2 2, 31-2, 41, 109, 144-5
  s 2(1) 31, 190-1
  s 2(1)(a) 37-8, 41, 76, 145, 177, 181-2, 184-5, 187, 258
  s 2(1)(b) 2, 38, 55, 75, 92, 93, 181-2, 185, 187
  s 2(2) 32, 41, 188
  s 2(3) 2, 32
  s 2(3)(a) 38, 55
  s 2(3)(b) 38
  s 2(3)(c) 38, 145
  s 4(1) 32, 189
  s 6 109, 110, 249
  s 6(1)(a) 110, 250
  s 6(1)(c) 110, 250
  s 6(1)(d) 110, 250
  s 6(4)(b) 176
  s 6(5) 176
  s 7 77, 157, 256, 264, 281, 318
  s 7(1) 32, 115
  s 7(2) 33
  s 7(2)(b) 146, 257
  s 7(4) 33, 108-9, 178, 201-2, 248, 251, 286, 327, 329, 330
  s 7(5) 146, 250
  s 8 33-4
  s 8(1)(b) 1, 33-4, 53, 75, 77, 113, 176-7
  s 8(3) 34, 146
  s 8(4) 30, 34, 37, 53, 77
  s 9 251
  s 9(1) 35
  s 9(4) 35
  s 9(5) 35
  s 9(6) 35
  s 9(7) 35
  s 9(8) 35, 36, 178, 189-90, 202, 249, 260, 284
  s 9(8)(a) 146, 325
  s 9(9) 35
  s 10 35-6
  s 11 36, 304
  s 11(3) 251, 326
  s 12 36, 39, 92, 100, 108, 109, 110-11, 249, 251, 252, 265, 273, 276, 277, 278,
   284, 293-4, 295, 297, 306, 310-17, 325
  s 12(1) 324
  s 12(2)(a) 324, 326
  s 12(2)(a)(ii) 110, 250-1, 294
  s 12(2)(a)(iii) 110, 253
  s 12(5) 28, 111, 251-2, 281
  s 13 36, 295
```



714

Cambridge University Press 978-0-521-66122-5 - International Law Reports, Volume 119 Edited by Elihu Lauterpacht, C. J. Greenwood and A. G. Oppenheimer Index More information

> s 13(2) 294 s 13(6) 36, 294 s 16 39 s 18(2) 295 s 22 295 s 22(4) 182 s 22(6) 182, 189 s 24 110, 250 Schedule 1, para. 20 147 text (ss 1-14) 6-20 extradition agreements Extradition, European Convention on (1957) 108, 248 reciprocity, relevance 75-6 Extradition, European Convention on (1957) Extradition Act 1989 as applicable law 324-5 incorporation into UK law 2, 30, 31, 180-1, 254-5. See also Extradition Act 1989 above; law of, European Convention on Extradition Order 1990 below absence 324-5 procedure, accusation case 255-6, 259 procedure between non-parties to 146 procedure between parties to 146 requested party's right to request supplementary information 180-1, 250, 256-7 Re Cuoghi 257 requesting party's rights, limited nature 294-5 fair hearing, access to courts, right to, non-disclosure of evidence and 277, 307 foreign relations, extradition and 72 genocide customary international law 106-7 Head of State, immunity from jurisdiction 72 Genocide Act 1969 Head of State and 46, 72, 85 incorporation of Genocide Convention (1948) 46, 65-6, 72 "constitutionally responsible rulers", omission 46, 72, 85 Genocide Convention (1948) applicability, Head of State 46, 65-6, 71, 85 State/Head of State immunity 46, 65-6, 71, 85 good faith, extradition 110, 251 habeas corpus applicant outside jurisdiction 393-8 as means to test validity of detention 393-4 in case of detention by peacekeeping forces 393-8 head of government, immunity from jurisdiction 222 Head of State as diplomatic agent 60-1, 246 State Immunity Act 1978 and 245-6 as "public official or person acting in that capacity" 70-2, 92-3, 100, 151, 152, 156, 162-3, 164 Diplomatic Privileges Act 1964 and 42-8, 59-61 evidence of status as 49, 56-7, 94 applicable law 61, 62, 97, 104-5 crimes against international law and 43-8, 61-70, 83-7, 97-9, 104-7, 155-6, 169-70



```
customary international law 61, 104-5, 193-6
     international law 61-2, 104
     municipal law of own country 61, 104-5
     murder 84
     official nature of acts, relevance 103
     torture 4, 45, 47-8, 61-70, 97-100, 104, 151-7, 169-70, 204-18
  Genocide Act 1969 and 46, 72, 85
  responsibility for international crimes, customary international law 200-1
  State Immunity Act 1978 and 58-60, 89, 94-5
Head of State, diplomatic privileges and immunities, entitlement 42-8, 60-1, 96-9,
 102-3, 109
  time-limitation and 60-1, 89-90, 97
  Vienna Convention on Diplomatic Relations (1961), application, criminal
   proceedings 193
Head of State, former
  act of State and 106-7
  State Immunity Act 1978 and 58-61, 89-90
Head of State, former, immunity from jurisdiction
  arrest 61
  as courtesy 234
  criminal proceedings 246-7
     customary international law 203-4, 208-11, 219
  customary international law 43-8, 62-70, 78-87, 99-100, 106-7, 204
     ratione materiae 219, 236-7
  official acts in exercise of functions 4, 43-8, 55, 62-5, 79-83, 103, 153-4, 161,
   169-70, 193-6, 202-18, 234-47
  private acts 79-83
  ratione materiae 223-4, 231, 240
     customary international law 219, 236-7
    Torture Convention (1984), effect 200-1, 215-16, 220, 231, 245
  ratione personae 79, 96-9, 103
  torture 45, 61-70, 97-100, 151-7, 219-21, 244-5, 250
  Torture Convention (1984), exclusion 219-21, 245
  treaty exception 69-70
     acts prior to legislation implementing treaty exception 69-70
    critical date 69-70, 140
    requirements 69-70, 72, 195-6
    strict interpretation 69, 72
  treaty exception, need for 68-70
     acts prior to coming into force of treaty exception 68-70
  waiver, Torture Convention (1984) as 216-17, 221, 245
Head of State, immunity from jurisdiction
  absolute 49, 102
  acts committed abroad 60-1, 161, 236
  acts committed in own country 60-1, 90, 203
  acts committed within forum State 45, 56, 90, 194, 231, 237, 246
  basis, foreign relations considerations 72-3
  common law 88-90
  crimes against humanity 45-8, 98-9
  criminal proceedings 45, 58, 87-9, 96, 155, 162, 204-18
     gravity of crimes, relevance 62, 85, 169
  customary international law 44-8, 62-70, 78-87, 99-100, 104-5
     ratione personae 219
```



```
genocide 72
  Genocide Convention (1948), applicability 65-6
  head of government distinguished 222
  hostage-taking 4
  Hostages Convention (1979), applicability 65
  international crimes 67-70, 83-7, 212-13, 223-33
  jurisdiction, effect of grant to municipal courts 155-6
  justiciability 73-4, 90-3
  legality of act, relevance 62, 194-6, 224
  official acts, while in power 41-9
  Pinochet proceedings, background 1-5
  private acts 239
  ratione materiae 153-4, 156, 161, 172-3, 194-5, 200-1, 215, 231, 239-42
     Duke of Brunswick v. King of Hanover 63, 80-2
     Torture Convention (1984), effect 200-1, 215-16, 220, 231, 245
  ratione personae 79, 96-9, 161, 214, 222, 239
     former Head of State distinguished 79, 96-9, 222
  State immunity and 57, 62-5, 140, 152-7, 235
  waiver, by State, need for 79, 87
hostage-taking
  act of State 96
  customary international law 106-7
  definition, Taking of Hostages Act 1982 93, 147-8
  extraditable offence 76, 93, 147-8, 182-3
Hostages Convention (1979)
  applicability, Head of State 65
  State/Head of State immunity and 65, 72, 85, 96, 98, 100
House of Lords, jurisdiction to rescind or vary an earlier order 120
international crimes
  classification as
     torture 149-50, 155-6, 199-201, 217
     Torture Convention (1984), relevance 229-30
  definition
     instigation of State authorities, need for 226-7, 243
     scale, relevance 217, 229, 250
  Head of State, immunity from jurisdiction 67-70, 83-7, 212-13, 223-33
  iurisdiction 139
     immunity from/right of distinguished 69
  universal jurisdiction 67, 229-33, 243
     effectiveness, need for 325-6
international law
  dualist theory 69
  sources 236
     judicial and arbitral decisions 237
     teachings of publicists 237-8
judicial impartiality
  appearance of bias 120-4, 127-35
     Amnesty International Charity Limited, relationship with 113-35
  nemo judex in sua (propria) causa/ "no-one should be judge in his own cause" 120-4,
    125-35
  "real danger" 124
  "real suspicion" 130
judicial restraint, act of State and 74, 92
```



```
judicial review, standing, "sufficient interest" 279-80
jurisdiction
   extraterritorial
     lawful authority, justification or excuse under lex loci delicti commissi 71
     Torture Convention (1984) 70-1, 76, 85, 150
  nationals abroad, murder or manslaughter 55, 184
     territorial, State immunity and 236
     universal, international crimes 67, 229-33, 243
jus cogens
   Head of State immunity from jurisdiction and 155, 195, 197
   torture 85, 86, 200, 206, 214, 244, 310-11
justiciability
   Head of State, immunity from jurisdiction and 73-4, 90-3
  legislature's role 96
   State immunity and 78
   substantive issue 78
law of
   Criminal Justice Act 1988
     retroactive, whether 230
     s 134 2-3, 40, 46, 70-1, 76, 106, 139, 144, 151, 160, 182, 188, 192, 201, 214,
       220, 230-1, 246, 258, 327, 329, 330
     s 134(1) 76, 93, 183, 188
     s 134(3) 183-4, 188, 258
   Criminal Justice (International Cooperation) Act 1990 283-4
  Criminal Law Act 1977
     s 1 189
     s 1(4) 184-5, 189, 190
     s 5 184
  European Convention on Extradition Order 1990 31-2, 181, 254, 265, 324
     para. 3 249
     para. 12 33
     para. 12(2)(b) 40
     para. 13 33, 40
     para. 16 34
   Offences against the Person Act 1861 189
     s 4 184-5
     s 9 38, 55, 184
     s 18 189
   Restoration of Order in Ireland Act 1920 387-9
   Suppression of Terrorism Act 1978
     extraditable offences and 184, 250
     s 1 110, 250
     s 4 40, 184
     s 4(1) 186
     s 4(1)(a) 187
     s 4(1)(b) 187
   Taking of Hostages Act 1982
     Head of State and 46, 96, 147-8, 160
     incorporation of Hostages Convention (1979) 96
     s 1 40, 65, 72, 76, 96, 106, 148, 182-3
     s 1(1) 72
     Visiting Forces Act 1952, s 10(1) 377
legislation, interpretation
```



```
aids
     generally recognized principles of international law 62
     legislative history 154, 161
     preamble to treaty 59
     treaty 59-60
  presumption of conformity with international law 234
     customary international law 87
  legislation, retroactive
     Criminal Justice Act 1988 230
     State Immunity Act 1978 193
legitimate expectation, public interest and 278
letters rogatory, European Convention on Mutual Assistance in Criminal Matters
 (1959), obligation to execute "in manner provided for by its law" 283-4
political offence
  extradition 250
  Suppression of Terrorism Act (1978) provisions 110, 250
private life, respect for
  disclosure of medical reports in extradition proceedings 304-5, 316-17
  interference by public authority, proportionality 316-17
proportionality, private life, respect for, interference by public authority 316-17
public interest, disclosure of confidential information and 275-7, 299-306, 310, 312
public policy, act of State doctrine and 106
State Immunity Act 1978 193
  applicability
     criminal proceedings 58, 88-9, 96, 162, 208
     Head of State 58-60, 89, 94-5
     Head of State, former 58-61, 89-90, 223-4, 245-7
     States 58
     visiting armed forces 370-85
  as sole source of law 160
  classification of act 374-5
  common law, effect on 88-90, 371, 373, 374-5, 380, 381-2
  customary international law and 88-9, 193, 219, 222, 224
  Diplomatic Privileges Act 1964 and 89-90, 96-8, 102-3
  international law, conformity with 242
  Part I 78, 87-9, 154, 193, 205-6, 284, 369
     s 1 42, 47, 58, 94-5, 206
     s 1(1) 58, 85-6, 88, 168, 205, 239
     s 2(2) 168
     s 3 94, 370, 379-80
     s 3(1) 373-4
     s 3(1)(a) 383
     s 3(3)(c) 383
     s 14 58, 61, 193
     s 14(1) 41, 94-5
     s 14(1)(a) 100, 239
    s 14(4) 58
    s 16(1) 154
     s 16(2) 88, 370-2, 373-4, 379-81, 383
     s 16(3) 88
    s 16(4) 58, 88, 95, 102, 168, 205
     s 16(5) 88
  Part III 59-70, 78, 193
    s 20 4, 55-6, 59, 60, 89-90, 96-9, 168, 203
```



```
s 20(1) 3, 6, 42, 43, 45, 59, 102-3, 154, 160-1, 168-9, 193, 203-4, 222, 223-4,
    s 20(1)(a) 193, 219
    s 20(5) 193, 239
    s 21(a) 57
    s 23(3) 42, 193
  phrases
     "armed forces" 370-1
     "in his personal capacity" 94-5
  ratione personae nature of immunity 95
  retroactive, whether 193
  text (extracts) 20-2
  waiver of immunity
     implied 168-9
     submission to jurisdiction 168-9
State immunity from jurisdiction
  act of State and. See act of State, State immunity from jurisdiction and above
  applicable law
     customary international law 233-4, 384
     forum State 233-4
  as procedural bar 57-73
  basis
     equality of States 222
    non-interference in the affairs of another State 222
    par in parem non habet jurisdictionem 161, 172, 174, 222, 374
  civil and criminal jurisdiction distinguished 205, 208, 217-18, 222, 226, 234-6,
   239
  classification of act
     legislative attempts at 374-5
    military base training and education contract 370-6, 380-3
  common law, acts of armed forces 88-90, 371, 373, 374-5, 380, 381-2
    jus cogens violation 225
    violation of international law 224-9, 241-2
  individual, in respect of 221-2
  justiciability and 78
  ratione materiae 223-33
  ratione personae 153
  territorial jurisdiction/sovereignty and 236
  torture 45, 47-8, 85-7, 205-8
  waiver, treaty as, Torture Convention (1984) 166-75, 196-9, 201, 216-17,
   231-2, 245
torture
  act of State 96
  as function of Head of State 4, 45, 47-8, 61-70, 97-100, 104, 151-7, 169-70,
     as instrument of State policy 224
  as international crime 149-50, 155-6, 199-201
     scale, relevance 217, 250
     Torture Convention (1984), relevance 229-30
     universal jurisdiction, relevance 156
  classification as, disappearances 285-6, 328
  common law 189
  conspiracy 148, 183-4, 188-9, 190-2, 250
```



> 720 INDEX definition action "by a public official or other person acting in an official capacity" 2-3, 71-2, 92-3, 100, 152, 183-4, 188, 244-5 Criminal Justice Act 1988 2-3, 70-1, 93, 183-4, 188 critical date 328 intentional infliction of severe pain or suffering 328 Torture Convention (1984) 70, 150 extraditable offence 76, 93, 150-1, 190, 249 Head of State, former, immunity from jurisdiction 45, 47-8, 61-70, 97-100, 151-7, 219-21, 244-5, 250 jus cogens 85, 86, 200, 206, 214, 244, 310-11 State immunity from jurisdiction 45, 47-8, 85-7 Torture Convention (1984), incorporation into UK law 2-3, 70, 140 universal jurisdiction 2, 70-1, 76, 85, 150 Torture Convention (1984) Head of State, former, immunity from jurisdiction Convention as exclusion 219-21 Convention as waiver 216-17, 221, 231-2 "public official or other person acting in an official capacity", Head of State and 70-1, 92-3, 100, 151, 152, 156, 164, 196-8, 213-14, 220-1, 244-5 State immunity from jurisdiction ratione materiae and 85, 163-75 as waiver 166-9, 196-9, 201, 216-17, 231-2, 245 exclusion 165-6, 169-75, 245 universal jurisdiction 70-1, 76, 100, 139-40, 150, 164, 230-1 dependence on waiver of immunity 156, 214-15 implementing legislation, customary international law as aid to interpretation 161 unincorporated, obligation of compliance 407-8 treaty exception, Head of State, former, immunity from jurisdiction 68-70 treaty interpretation aids customary international law 196 other related treaties 411-12 by municipal courts, Channel Tunnel agreements 409-11 guidelines avoidance of implied term 170 treaty as a whole 411-12 uniformity 196 Vienna Convention on Diplomatic Relations (1961), implementation 3, 42, 59, 161, 196, 245-7 United Nations General Assembly (UNGA), Resolutions 95 (I) (Nuremberg Tribunal) 67, 99, 148, 211, 226 96 (I) (genocide) 338 3059 (torture) 149 3074 (XXVIII) (international cooperation in relation to war crimes/crimes against humanity) 99 obligation to seek out and prosecute 357, 366-7 3452 (XXX) (Declaration on the Protection of all Persons from being subjected to Torture Convention) 149 3453 (torture) 149 United Nations peacekeeping operations, Sierra Leone 389-98

act of State

custody or control of rebel leader 389-98 habeas corpus proceedings in UK and 386-98

United States of America (USA)



INDEX 721

classification as, drug-trafficking 65, 82-3 jurisprudence Kirkpatrick v. Environmental Tectonics 74, 91, 95-6 Oetjen v. Central Leather Co. 92 Sabbatino 73 State immunity from jurisdiction and 73 Foreign Sovereign Immunities Act 1976/82 28 USC 1602 58 28 USC 1604 (exceptions) 205 applicability, criminal proceedings 58, 73-4 Head of State, former, immunity from jurisdiction official acts, Hatch v. Baez 65, 81, 235 private acts 80 Restatement of Foreign Relations Law (Third) 80 Head of State, immunity from jurisdiction basis, comity 62, 97 State immunity and 57 Restatement of Foreign Relations Law (Third) 443 (act of State; admissibility issue) 107 464 (immunities: former Head of State) 80 State immunity from jurisdiction, determination, responsibility 74 torture, jus cogens 206-7

## Vienna Convention on Diplomatic Relations (1961)

applicability
acts committed abroad 60
acts committed in own country 60, 203
Head of State 42-8, 59-61, 89-90, 96-7, 102-3, 193
nationals of receiving State 61
immunity
arrest 61
privileges distinguished 61
implementation 42

#### war crimes

international law, existence in, UNGA Resolution 95(1) (Nuremberg Charter) 99 jurisdiction territorial 226 universal 227-8

### words and phrases

aut dedere aut judicare 151
nemo judex in sua (propria) causa/ "no-one should be judge in his own cause" 120-4,
125-35

#### Yemen, Arab Republic of

Joint Yemeni–Eritrean Committee for Bilateral Cooperation, Treaty of 16 October 1998 492-4

Memorandum of Understanding with Eritrea of 15 November 1994 488-91

# Yugoslavia, International Criminal Tribunal for the Former (ICTY), Statute

5 (crimes against humanity) 353
7(1) (individual responsibility: direct participation) 46, 66
7(2) (individual responsibility: action in official capacity) 87
Head of State 71, 87, 162-3, 212, 243
Head of State immunity 66, 71, 87, 155, 212