

Index

NOTE: Page numbers with letter 'f' or 'n' or 't' indicate figures, endnotes, or tables respectively.

accountability norm, see also individual criminal accountability as political enterprise, 87 Sikkink and, 69 ad hoc tribunals for international prosecutions of war crimes, 19, 78, see also International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia Additional Protocol II (1977), Geneva Convention (1949), 30-31, 35-36, 156 Afghanistan, US justification for invasion of, 65 n181 Africa, see also Mozambique; Namibia; Nigeria; Rwanda; Sierra Leone; South Africa; Uganda; Western Sahara Bensouda on atrocity victims in, 85 government efforts to shield leaders from prosecution in, 91 n25 IACtHR's influence on human rights regimes of, 21-22 leaders versus activists and victims on criminal accountability in, 85, 93 n54 lessons for, end of apartheid and, 349-351 African Charter on Human and Peoples' Rights (1981), 304-305 African Commission on Human and Peoples' Rights, 35 African Communist, The, 337-338 African National Congress (ANC), see also South Africa as culpable for crimes committed under apartheid, 8 legitimized after apartheid, 336

as perpetrator organization, TRC on, 346

political violence of CODESA negotiations and, 337 sufficient consensus with National Party and, 339, 341-342 sunset clauses and, 337-338 African Rights, 40-41 Afrikaaner Volkstaat, 357 n20 aggressive war, as Nazi charge at Nuremberg, 332–333, 356 nm agricultural and land reform, Colombia AI report on, 239, 252 n129 draft agreement with FARC on, 239-240 guerrilla groups' calls for, 220 legislation and regulation on, 253 n133, 253 1136 negotiating with FARC on, 218, 232, 238-239, 251 1124 peasant land acquisition program, 240, 253 n139 statistics on, 238-239, 252 n126 Ainley, Kirsten, 122 n102 Akayesu, Jean Paul, 161-162 Akazu (Rwanda), 170 al-Assad, Bashar, 81-82, 92 n42 al-Bashir, Omar, 73, 80 Albright, Madeline, 110 Alien Tort Statute (ATS, United States), see also Filártiga v. Peña-Irala cases against corporations under, 46, 276-278 jurisdiction for, 263 Kiobel v. Royal Dutch Petroleum Co., 65 m184 mimicking aspects of retributive criminal framework, 4-5 overview of, 255-257, 278 n4 piracy analogy and, 285 n141 restricted applicability of, 282 n80



362 Index

al-Jaradat, Ahmad Mohamed, 323 n82 Alliance for National Renovation (ARENA, Brazil), 106 Allied Joint Declaration (1945), 118 n46 Almonacid-Arellano v. Chile, 29, 31-33, 34-35, 189 al-Obeidi, Abdul Wahab, 323 n82 alternative sentencing Colombia's draft law on paramilitaries and, 228-229, 247 n67 Colombia's Justice and Peace Law on, 230, 247 n77 opposition to Colombia's draft law on, 220-220 Special Jurisdiction for Peace (Colombia) and, 235, 236 UNHCR on Legal Framework for Peace and, 250 n103 Alviar García, Helena, 2, 4, 5, see also Colombia American conservatives, on liberal internationalism, 82 American Convention on Human Rights, see also Inter-American Commission on Human Rights; Inter-American Court of Human Rights; specific cases Brazilian amnesty (1979) and, 185-187 Chilean amnesty law violating articles of, 189, 208 n19 IACtHR's jurisprudence (2001–2012) on, 28-31 Méndez on amnesty laws as violation of, 24-25 Peruvian self-amnesty violating articles of, 188, 208 n14 state inaction and, 23 American exceptionalism, 106-107, 120 n70, 120 n71 amnesties AI as opponent of, 17 blanket, 99, 187 Brazilian draft, 196 Brazilian popular and legislative debates on, 195-196 Brazilian popular demonstrations favoring, 193–194, 210 n46 Brazil's legal regime for amnestied people

Brazil's political transition and, 197-198,

for Colombian guerrilla groups, 220-221

Colombian Supreme Court of Justice on pardons versus, 243 n25 Colombia's Constitution on, 226 Colombia's Law No. 733 on, 228 conditional, in South Africa, 138-141, 143 constitutional challenge in Brazil to, 200-202 criminal prosecutions and, 59 n119, 168 García-Ramirez on Inter-American view on, 208 n10 IACtHR on right to truth and, 32 IACtHR's jurisprudence (2001–2012) on, 6-7, 28-31, 37-38, 136 indemnity in South African law and, 338, 357 n23 instrumental and moral function of, 27 invalidation of, overview of, 24-26 Joinet Report on, 24 limited, 187, 221-224 Mallinder on, 37, 187, 192, 204-205, 208 n8 negative connotations of, 17, 49 n2 number of, criminal accountability and, 58 n114 opposition to, 15-18 in peace agreements, persistence of, 37-39 Promotion of National Unity and Reconciliation Act (South Africa, 1995) on, 26 for serious crimes, UN on, 37, 58 n115 South Africa's Constitution on, 125-126 twentieth-century discourse on, 217-218 Amnesty Act, South Africa, 53 n43, 125–126, 131, 142 Amnesty Caravans, Brazil's, 198–199 Amnesty Committee, of South Africa's TRC, 342 Amnesty International (AI) on amnesties and pardons after abuses brought to light, 50 n15 on Colombian land restitution, 239, 252 11129 on Colombia's Justice and Peace Law, 230 on Colombia's Special Jurisdiction for Peace, 236 Filártiga case and, 262–263 ICTY support by, 40, 62 n148 on Lubanga verdict as deterrent, 89 n17 opposition to amnesty by, 68-69 policy statement on impunity (1991), 20-21 on political repression in Paraguay, 265, 283 n85

203, 213 ng8

change in position over, 4



\_

Index

363

shift in focus of, 17 on Syrian war crimes, 64 n178 on Uruguay's Supreme Court ruling on amnesty, 39 on Velásquez-Rodríguez v. Honduras, 23 Amritsar massacre (India, 1919), 119 n60 Angola, South African Defence Force in, 140 anti anti-impunity, goal of, 12, 48-49 anti anti-relativism, Geertz on, 12 anti-impunity, see also genealogy of criminal turn; human rights history; rhetoric of anti-impunity; Rwanda as anti-politics, 159-162, 178 n61 blindspots to justice and peace and, 1-2 in Colombia, discussion around, 233-235 as criminalization, 3-5 discourse on law against politics, 5-6 global governance architecture and, 101 ICTY and, 109-110 impunity as false binary of, 171-172 impunity of, 165-168 legalizing and solidifying contested histories, 172-173 legitimating grounds for impunity with, people's judgment tribunals and, 302 people's law tribunals and, 307-308 as progress narrative, 99 in Rwanda, political and social transformation and, 173-174 Shklar on Nuremberg and Tokyo war crimes trials and, 72-73, 89 n13 Sikkink's empirical research on, 82-84 as transformation and legitimation, 162-164 within transitional justice, overview of critiques of, 164-165 apartheid, see also South Africa's postapartheid transition Malan's minority view of, 347 memory of, AZAPO decision and, 133-134 political violence in aftermath of, 331 structural dimensions, AZAPO decision and, 138–139 TRC on individual victims under, 8 TRC on leadership responsibility for, 330 TRC on perpetrators versus beneficiaries of, o Araguaia, Brazil, guerrilla of, 190-191, 200 1120, 200 1131 Arbour, Louise, 161-162 Arendt, Hannah

on accountability and justice with mass human rights abuse, 99-100 on bad actors, 44 on criminal trial and predetermined political project, 145 n30 on criminal trials to narrate history, 48 on Eichmann's trial, 258, 279 n17 on evil, 259, 279 n19, 280 n29 foreseeing and explaining international criminal justice rise, 71-72 on guilt versus political responsibility, 313-314 on narration of history, 10 on the pirate, 258, 270, 279 n17 on political violence and political order, 353 on retributive punishment, 70-71 Argentina amnesty law in Brazil versus, 210 n46 Full Stop law and Due Obedience law in, 39, 61 n140 IACHR on amnesty laws in, 29 Moreno Ocampo and transition in, 90 n20 transitional experience of, 137 Argentine Supreme Court, neopunitivism of, 61 n142 Arguibay, Carmen Mari, 322 n64 Armenian genocide, 102–103, 118 n46, 119 n60 Armistice of Mudros (1918), 104 Arusha Accords (1993), 154, 155 ASCENT (Asia Centre for Women's Human Rights), 299, 322 n56 Asia Minor Agreement, 104 Asian Women's Rights Association, 308 Asia-Pacific Regional Women's Hearing, 201-202 Atlantic Charter (1941), 108 AUC, See United Self-Defense Forces of Colombia Avbar, Mehmet Ali, 297 AZAPO decision (Azanian Peoples Organization v. President of South Africa), see also historic bridge in AZAPO decision; South Africa's Constitutional Court Additional Protocol II (1977) cited in, 30 Amnesty Act constitutionality challenged in, 53 n43 context of case, 128-129 cost and consequences of, 139-141 Geneva Conventions applicability to, 131-132 IACtHR on amnesty laws contrasted with, 20



364

Baldwin, James, 297

AZAPO decision (Azanian Peoples
Organization v. President of South
Africa) (cont.)
international law and, 129–131
memory, lasting harm from, 133–134
as messy compromise, 144
overview of, 29, 125–127
political context of democracy and, 136–138
on power of forgiveness, 34
production of history and construction of
democracy, 133–134
reconsidered, 141–144
transition to democracy and, 132–133
on truth, peace, and forgiveness, 26–28

Bangladesh, sexual violence in, 291–292, 312–313
Bangura, Zainab, 315
Bantu, apartheid violence and, 342–343
Barco, Virgilio, 222, 225
Barrios Altos v. Peru, 29, 31–32, 187–189
Bass, Gary
on Constantinople, 102–105
on The Hague, 108–112
on human rights history, 95–96, 114 n3, 115 n5
on Nuremberg, 105–108

116 n22 Bassiouni, Cherif, 19, 110 Basso, Lelio, 297, 304–305 Basson, Wouter, 139–140 Baylis, Elena A., 116 n32 Bedoya Pizarro, Harold, 226–228, 251 n124

Belgian colonial administration eventual Rwandan genocide and, 167–168

on war crimes tribunals history, 96-99,

in Rwanda, 152–153, 175 n10 Bello, Walden, 323 n82 Bemba, Jean-Pierre, 90 n18

Ben Gurion, David, 145 n30

Bensouda, Fatou

on alternative sentencing in Colombia, 233–234, 250 n103

on Bashir's case, 80

on perpetrators of war crimes and crimes against humanity, 250 n104

on victims' justice, 71, 85, 86

Bertrand Russell Peace Foundation, 296,

Networking Conference (2003), 300–302 Betancur, Belisario, 222, 224, 245 n42, 245 n47

Index

Bhagavan, Manu, 114 n3
Biko, Steve, 11, 53 n43, 126, 345
Bilsky, Leora, 67 n201
Bizimungu, Pasteur, 155
Black Consciousness Movement, South
Africa's, 26–27
Blair, Tony, 301–302
Blaser, Arthur W., 324 n100
Bogwardt, Elizabeth, 108
Bolsheviks, 104
Borkmann, Paul Christoph, 182 n120
Botero, Catalina, 220
Branch, Adam, 100
Brazil

razil
amnesty laws, 190, 197–198
concluding remarks on, 206–207
Constitutional Amendment No. 26, 197
constitutional challenge, 200–202
IACtHR on amnesty laws in, 6–7, 28–31, 37–38, 136
Law No. 9.140/95, 197–198
Law No. 10.559/02, 198
legal regime for amnestied people, 198
National Security Law, 196, 211 n71

NTC final report for, 199–200 overview of IACtHR view on amnesty in, 185–187 reparations and truth-seeking in, 198–199

Transitional Constitutional Act, 197 transitional experience, 192–196 victims' families and amnesty law in, 198 virtues of amnesty in, 202–206 Brazil: Never Again, 201–202, 211 174

Brazil: Never Agam, 201–202, 211 n74 Brazilian Bar Association (OAB), 200–201, 212 n92

Brazilian Committee for Amnesty, 194 Brazilian Communist Party, 190–191, 209 n20 Brazilian Democratic Movement (MDB), 196 Brazilian Federal Supreme Court (STF), 37–38, 200–201, 212 n92

Brazilian National Truth Commission (NTC), 193, 198–200, 203–204 Brazilian Superior Military Court, 211 n

Brazilian Superior Military Court, 211 n71, 211 n74 Bretton Woods, America's global governance

and, 108 Breyer, Stephen, 276–278, 278 n8, 286 n150

Britain, See United Kingdom Broederbond, South Africa's, 336 Brussels Women's Tribunal (1976)

as counter-action to International Women's Year, 305–306



Index 365

innovations at, 306-307 new legal norms created by, 304 people's law for, 306 people's law tribunals and, 307-308 Bundy, Colin, 135 Bush, George W., 110-111, 301-302 Calderón, Jean-Paul S., 47 Cambodia, see also Phnom Penh Hearing Bass on courts in, 110 sexual violence (1976-79) in, 291-292 Cambodian Defenders Project, 291-292 Cançado Trindade, Judge, 34-35, 188, 208 n16 Cardoso, Fernando Henrique, 197-198, 202, 203-204, 211 1172 Carter, Jimmy, 268, 284 n108 Center for Constitutional Rights (CCR), 262-263, 264, 272 Center for Justice and International Law, 39 CER (Ernesto Rojas Armed Command), 222 Charro (Maríadel Rosario Villalba de Duarte), 261-262 Charter of the Tokyo Women's Tribunal, 302-303 Chaskalson, Justice, 130-131 children recruited for LRA, 147 n60 as victims, 86, 94 n57 Almonacid-Arellano v. Chile, 189 IACHR on amnesty laws in, 29 IACtHR on amnesty laws in, 28-31, 136, 186 Chimni, B.S., 310-311, 327 n161 Chinkin, Christine, 298-299, 322 n64, 323 n82 Christian Agrarian Leagues, Paraguay, 261 Christianity, assumptions on service to humanity by, 86 Church, Frank, 265 Churchill, Winston, 105, 118 n49, 121 n85, 332, 333 citizen's tribunals, 292, see also people's tribunals Ciudad Juárez, Mexico, women murdered in, 47 civil and political rights Brazilian dictatorship and, 193

human rights NGOs on protection of, 18

in Mozambique, political settlement after,

Rwanda (1990-94), 153, 154-155, 176 n19

Mamdani on responsibility in, 117 n33

in Uganda, political settlement after, 350 Clark, Phil, 180 no8 Coates, Ken, 323 n82 CODESA (Convention for a Democratic South Africa) as alternative to Nuremberg, 331, 335-336 on cycle of violence, 353 Declaration of Intent for, 336-337 failure of, 353-354 grounds for, 335 on legality of apartheid, 346 political negotiations for post-apartheid transition and, 352 political violence and, 337 post-apartheid transition and, 329, 334–335 social justice and negotiations on, 340-341 Cold War end of, Latin America prosecutions and, 84 end of, UN's international criminal tribunals and, 19 Latin America and, 93 n50 Nuremberg trials and, 333-334 Stroessner's regime in Paraguay and, 260-261, 281 n43 Colina Group (Peru), 187 Collor de Mello, Fernando Afonso, 211 n72 Colombia, see also Colombian Congress; Justice and Peace Law, Colombia's; paramilitary forces, Colombian; pardons, in Colombia amnesties and pardons for guerrilla groups, 222 anti-impunity legal background, 226-228 brief history of conflict, 218-220 conclusion, 240-241 criminal prosecutions in, 5 FARC criminal accountability versus land reform in, 9 IACtHR on peace agreement for, 37 ICC and peace negotiations with FARC by, 6-7 land trust in, 239-240 Law 37 (Colombia, 1981) on amnesty for, 221 Law No. 35, 224, 244 n35 Law No. 37 (1981), 221, 244 n29 Law No. 85, 228-229, 246 n66 Law No. 733, 228, 246 n63 Law No. 975, 247 n77, see also Justice and Peace Law negotiating with FARC, 231-237 negotiating with paramilitaries, 228-231



More Information

366 Index

Colombia (cont.)

overview of anti-impunity rise in, 226 overview of language of justice and impunity in, 216–218

Penal Code, 220, 226–228, 243 n24, 244 n28 right to peace and peace process in, 34 Special Jurisdiction for Peace, 235

Colombian Agriculture Ministry, 238–239, 253 n135

Colombian Commission of Jurists (CCJ), 229, 230–231, 233, 248 n83

Colombian Congress

amnesties and pardons for guerrilla groups and, 220–221

framework for peace talks, 228, 246 n63 granting amnesties for political crimes, 244 n26

land restitution law, 239

resistance to Betancur's reform proposals by, 224, 245 n47

Colombian Ministry of Environment and Sustainable Development, 253 n135

Colombian Palace of Justice, 225

Colombian Penal Code, 220, 226–228,

243 n24, 244 n28

Colombian Security Statute, 221

Colombian Supreme Court of Justice, 225, 243 n25

Colombia's Constitution (1991), 226

Colombia's Constitutional Assembly, 219,

Colombia's Constitutional Court

Bedoya's challenge to Article 127 of Penal Code and, 226–228

on Colombia's Justice and Peace Law,

establishment of, 226

ICC intervention in, 6–7

on prosecutions and Legal Framework for

Peace, 234-235

on right to peace, 249 n89

Comaroff, Jean and John L., 142–143

comfort women, Japan's, 299, 321 n53, 327 n144, *see also* Tokyo Women's Tribunal

Commission of Experts, see United Nations Commission of Experts

Commission of Family Members of Political Prisoners, Killed and Disappeared (Brazil), 198

Commission of Responsibilities, 102–103, 117 n45

communism

assumptions on service to humanity by, 86 Paraguayan legislation prohibiting, 281 n44 Communist Party, South Africa, 336, 337–338 conflict resolution

gacaca courts and, 171–172

troops safeguarding by US, UK, and France and, 121 ng6

Congress (Second, for Amnesty in El Salvador), 210 n46

Congress of South African Trade Unions (COSATU), 337

Conservative Party, South Africa's, 337, 340 conspiracy to wage aggressive war, as Nazi charge at Nuremberg, 332–333

Constantinople

Bass on international criminal accountability in, 97, 115 119 war crimes by Allies and, 103–104

Constitutional Court, see Colombia's
Constitutional Court; South Africa's

Constitutional Court

Convention for a Democratic South Africa

Convention for a Democratic South Africa, see CODESA

Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968), 136–137

Coomaraswamy, Radhika, 90 n17

corporations

human rights cases against, 46, 65 m84 multinational, Permanent People's Tribunals on, 307–308

counterfactual reasoning, Sikkink on criminal prosecutions and, 83

Court of Appeals for the Second Circuit, United States, see United States Court of Appeals for the Second Circuit

Court of Women on Crimes against Dalit Women, 309

crime of silence, 292–293, 312–313 crimes against humanity

Arendt on Eichmann's trials and, 258

Bass on Treaty of Sèvres and, 102–103 Bensouda on prison for perpetrators of, 250 n104

Colombian amnesty for paramilitaries and, 228–229

Colombia's alternative sentencing draft law and, 229–230

development of concept, 118 n46 first formulation as charge, 333–334, 356 n17 Malan on slavery as, 347



Index 367

as Nazi charge at Nuremberg, 332-333, Tokyo Women's Tribunal on, 299 UNHCR on amnesties for, 233, 250 n103 by World War II victors, 333 crimes against peace, as charge against accused at Nuremberg, 332-333 criminal justice, see also justice CODESA on other forms of justice and, 336 IACtHR on peace and, 32-34 IACtHR on right to truth and, 31-32 South Africa perpetrators and, 340-341 survivors' justice as alternative to, 351 criminal law, see international criminal law criminal prosecutions. see also genealogy of criminal turn; individual criminal accountability; International Criminal Court; penal systems; specific tribunals anti anti-impunity instead of, 12 AZAPO decision and, 131–132, 139–140 CODESA-type inclusive political process versus, 349–351 Colombia's Legal Framework for Peace and, 234-235 context of Brazilian amnesty and, 204 at cost of other concerns, 3-4 deflection strategy around victims and, 86 as deterrent to systematic violations of human rights, 137-138 of heads of state, 99 historical account of events and, 259, 270 H21 human rights aspirations and, 44 IACtHR on Brazilian victim's rights and, 203-204 IACtHR on human rights protection versus, 23 inter-state war versus civil war and, 352 legalizing and solidifying contested histories and, 172-173 narrating history through, 9-10, 48, 67 n200, 67 n201 one-sided, impunity of, 165 for ongoing crimes, amnesty laws and, 59 11119 purpose and aims of, 70-71 in Rwanda, 149-150 Rwanda's violence and debates over, 164-165 Sikkink on, 82-83, 84

South Africa's Amnesty Act and, 125-126 structural violence, inequality and, 169 transitional justice and, 99-100 tribunalization and, 109 truth versus justice debates and, 25, 28 tying truth to, 53 n53 criminal punishment, see also individual criminal accountability; states AI on culture of impunity and, 20-21 Baylis on international criminal justice versus, 116 n32 Colombia's negotiations with FARC and, 217 for human rights violations, 1-2 as international human rights remedy, 21-39 overview of, 21-22 criminal responsibility, see also individual criminal accountability as Nuremberg innovation, 331-332 criminal violence, see also individual criminal accountability political violence versus, 330-331 CSR (Socialist Renovation Stream), 222 cultural traditions of a community, victims' perspective and, 204-205 culture of impunity criminal prosecutions and, 16 direction of human rights advocacy and, 43-44 ICC references (1970-2008) and, 20f. rise in use of term (1990s), 20-21, 50 n14 in Rwanda, 150 D'Amato, Anthony, 298 Darfur killings, 81-82, 100 Davidson, Natalie, 2, 4-5, 7, 9-10, see also Filártiga v. Peña-Irala Davis, D.M, see also AZAPO decision case study by, 2 on Constitutional Court upholding TRC's amnesty-granting capacity, 9 on current international law and South Africa's amnesty, 6-7 on South Africa's transitional amnesties, 4, 7 on victims' preferences for modes of justice or reconciliation, 11 de Beauvoir, Simone, 297, 305-306 de Gaulle, Charles, 294-295 de Klerk, F.W., 330



**More Information** 

Cambridge University Press 978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda Edited by Karen Engle , Zinaida Miller , D. M. Davis Index

368 Index

Declaration of Conscience, World Tribunal on Iraq, 301-302 Decree 1923 of 1978 (Colombia), 221 Dedijer, Vladimir, 297 Defence Act, South Africa (1957), 338 deflective discourse appeal to victims and, 86 justice interfering with peace and, 81-82 Dehm, Sara, 310, 311-312 del Ponte, Carla, 166 democracy Gelman v. Uruguay on human rights and, 101-102 Stroessner's regime in Paraguay and, 260-261, 281 n43 Democratic Republic of Congo Association of Defense of Human Rights, 63 n159 democratization, as broader outcome, Sikkink on, 82–83 demonization amicus briefs in Filártiga case and, 284 n99 cycle of violence and, 352-353 damages for Filártiga and, 273-274 of Eichmann by Arendt, 71–72, 279 n19 Filártiga case and, 266, 270, 275, 276–278, 286 n149 in individual criminal prosecutions, 259 Des Forges, Alison, 153, 166 detentions in Paraguay, 281 n45 pretrial rates of, 67 n194 deterrence in Central African Republic, 90 n18 ICC's achievements in, 73-74 international criminal trials and, 73, 89 n17 diplomacy, international, Nuremberg trials and, 119 n65 disappearances, enforced Brazilian responsibility for, 203–204 Brazilian victims' families' activism and, 198 jus cogens and, 190, 209 n26 disillusionment with formal institutions, people's tribunals and, 294 dispossession, turn to criminal punishment displacing attention to, 9 distensão (distention, Brazil), 193 distributive justice, 116 n31, see also retributive instice

District Court, see United States District Court for the Eastern District of New York

doctrine or doctrinalism, professionalizing discourse and, 75–76, 77–79

Dolgopol, Ustinia, 322 n60 domestic punishment, see criminal punishment Dorado v. Spain, 57 n102, 57 n104 double jeopardy, 36, 61 n142 double standard, 100, 109-111 Douglas, Lawrence, 257-258, 259, 280 n24 drugs, illegal, 50 ng, 232 du Bois-Pedain, Antje, 138-139 Duarte, Hugo, 261-262, 266-267, 268-269 Duarte, Maríadel Rosario Villalba de, 261-262 Due Obedience law, Argentina, 39, 61 n140 Dugard, John, 130-131 Dujardin v. France, 57 n102, 57 n104 duty to prosecute, transitional justice and, 74-75, 90 n20 economic harms in Colombia, 238-239 Colombian, Betancur on, 224 Filártiga case and, 265–266 production and displacement of, 7-9 risk of, victims' perspective and, 204-205 in Rwanda, 168-171 in South Africa, political repression and, 343 economic redistribution, Colombian guerrilla groups' calls for, 220-221 economic rights, see also social rights

and, 343
economic redistribution, Colombian guerri groups' calls for, 220–221
economic rights, see also social rights human rights law and advocacy and, 46
Shell Oil's exploitation of oil reserves in Ogoniland and, 66 n185
structural causes of conflict and, 169
Eichmann, Adolf
Arendt's demonizing of, 71–72, 279 n19
Israeli court's assertion of jurisdiction in trial of, 279 n17
legal and political constraints on trial of, 256–257
trial, 93 n51, 99–100, 145 n30
Eichmann in Jerusalem (Arendt), 71–72
El Mozote, see Massacres of El Mozote & Nearby Places v. El Salvador

El Saadawi, Nawal, 310–311 El Salvador, amnesty laws in, 28–31, 186, 207 n7 El Taller International, 308 elites in Brazil, 1979 amnesty law and, 202, 213 n97 ELN (National Liberation Army, Colombia), 218–219, 220, 225–226, 242 n13 Eltringham, Nigel, 173 empire, in Britain versus US, 106–107, 120 n71



**More Information** 

Cambridge University Press 978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda Edited by Karen Engle , Zinaida Miller , D. M. Davis Index

Index 369

ending impunity, see anti-impunity enemies of mankind, see hostis humani generis, doctrine of Engle, Karen, see also Colombia; genealogy of criminal turn on anti anti-impunity, 12, 48-49 on anti impunity discourse rise, 2 on Arendt on narration of history, 10 case study by, 2 on criminal prosecutions in Colombia, 5 on human rights movement and criminal law, 3-4 on IACtHR on amnesty laws, 136 on litigation masking political choices of courts, 7 on opposition to amnesties and pardons, 4 on peace agreements and anti-impunity, 236-237 on politics of ICC, 6 Escobar, Pablo, 233 individual responsibility of violence and, 330 people's judgment tribunals and, 302-303 ethnic cleansing, see also forced removals, in South Africa by Allied Powers after World War II, 334, 357 n19 in South Africa, 343 Europe, see also France; Germany; Greece; Northern Ireland; United Kingdom; Yugoslavia Tribunal 12 on border controls of, 310-311 European Commission of Human Rights, 57 n102, 57 n103, 130–131 European Convention on Human Rights, 35-36, 57 n104 European Court of Human Rights (ECtHR), 35, 57 n102, 130-131, see also Dorado v. Spain; Marguš v. Croatia; Ould Dah v. France; Tarbuk v. Croatia European human rights regimes, IACtHR's influence on, 21-22 evidence, admissibility of, production of history and, 48, 67 n198 ex post facto legislation, 333 exile, forced, see also disappearances, enforced; forced removals, in South Africa in Paraguay under Stroessner dictatorship, 260-261 exploitation global governance based on inequality

rights to fair pay and decent conditions and, Extraordinary Chambers in the Courts of Cambodia (ECCC), 312-313 failed states, 109-110, 117 n37 Falk, Richard, 100, 298–299, 301, 323 n82 FARC (Revolutionary Armed Forces of Colombia) amnesties and pardons for, 222 Colombia's Law No. 35 and, 224 conflict in Colombia and, 218-219 Constitutional Assembly and, 225-226 Constitutional Court's decision and government negotiations with, 234-235 draft agreement on economic distribution with, 239-240 on economic distribution, 238-239 focus of talks with, 218 ICC and Colombian government's peace negotiations with, 6-7 land reform versus criminal accountability of, 9 negotiating with, 231-237 origins of, 242 n13 paramilitary forces and, 219-220 peace negotiations with, 220 on political, economic, and social reforms, 224-225, 245 n46 presidential decrees and law (1990s) and, 225 on prison time, 233 return to armed resistance, 225 Santos administration negotiations with, 217 Special Jurisdiction for Peace and, 235 farm prisoners, in South Africa, 344-345 Fedegán (Colombian Federation of Cattle Ranchers), 238 feminists, see also Women's Court - Feminist Approach to Justice; women's tribunals Brussels Women's Tribunal and, 306-307 carceral, 20–21, 51 n16 ICC establishment and, 299 people's tribunals and, 305–307 Permanent Peoples' Tribunal sessions and, Phnom Penh Hearing and, 313-314 World Courts of Women and, 308-310, 326 n131 Figueiredo, João, 195-196, 197, 211 n71, 211 n72 Filártiga, Analy, 280 n31 Filártiga, Dolly, 261–263, 270–271, 282 n58 Filártiga, Joel, 260–263, 270–271

and, 96



370 Index

Filártiga, Joelito, 260–262, 271–272, 280 n31	legislation establishing, 163
Filártiga, Nidia, 282 n58	prosecutions and, 171–172
Filártiga v. Peña-Irala	retributive justice and, 4–5
Alien Tort Statute (US) and, 7	war crimes and, 166
as American lawsuit, 262–265	Gacaca Law, 157–158
amicus briefs for, 275–276, 284 n99, 286 n146	Gaddafi, Moammar, 81–82
campaign against torture in Paraguay and,	Gaddafi, Saif al-Islam, 78
260–266	Galtung, Johan, 323 n82
conclusion, 276–278	García-Ramirez, Sergio, 186, 208 n10
damage award and political narrative, 270–274	García-Sayán, Diego, 33, 236–237, 251 1120
from filing to default judgment, 266–270	Gargarella, Roberto, 214 n108
forum non conveniens doctrine and,	Gaviria, César, 219, 222, 225
267–268, 276–277, 282 n82	Gaviria Díaz, Carlos, 228
individualization by the courts, 274–276	Gbagbo, Simone, 76
memoirs about, 280 n31	Geertz, Clifford, 12, 48–49
narrowing of, 266–276	Geisel, Ernesto, 193
overview of, 255–257, 260	Gelman v. Uruguay, 30, 32, 33, 191–192,
political conditions and, 10	214 11108
Post-Trial Memorandum of Fact and Law,	genealogy of criminal turn
271–272	concerns about, 43–48
Fletcher, George, 277–278	conclusion, 48–49
Fondo de Terras (Colombia), 239–240	domestic punishment as international
forced removals, in South Africa, 342–343,	human rights remedy, 21–39
345-346	international criminal law and human
Foreign Sovereign Immunities Act (FSIA,	rights agenda, 39–43
1976), 286 n142	introduction, 15–18
Forest Reserve, Colombia, 253 n135	overview of anti-impunity trend, 18–21
forgiveness	Geneva Conventions
debates over justice versus, 28	Additional Protocol II, Article 6(5) (1977),
IACtHR on criminal justice and, 34-35	IAHCR on, 30–31, 35–36, 156
international criminal institutions'	El Mozote case and, 207 n7
discourse and debates on, 41	Russell Tribunal references to, 297–298
South Africa's TRC and Constitutional	South Africa's AZAPO decision and,
Court on, 27	129–130, 131–132, 136–137
France	genocide, 258, 334, 357 n19, see also crimes
conflict resolution and troop safeguarding	against humanity
by, 121 n96	Genocide Law, Rwanda's (1996), 157–158
on Nazis' charges at Nuremberg, 333	Germany, 104, 119 n64, 355 n7, see also Nazis
post-World War I territorial control and, 104	and Nazism; Nuremberg trials
Francisco Garnica Front, 222	GINI index, 238–239, 252 n126
Franco, Itamar Augusto Cautiero, 211 n72	global civil society, 110
Freeman, Mark, 52 n38	Global Diligence, 65 n184
French Revolution, 330	global governance
Fujimori, Alberto, 187	anti-impunity in architecture of, 101
Full Stop law, Argentina, 39, 61 n140	exploitation and inequality as basis for, 96
Fundamental Law, Rwanda's, 155	hierarchy between international law and
	national politics and, 6–7
gacaca courts	imagination and regulation of violence
anti-impunity in, 159	and, 111–112
characteristics and definition of, 150, 177 n49	justice cascade, systemic impunity and,
international and national courts in	100-101
Rwanda and, 158–159	Nuremberg trials and, 107–108



Index 371

post-Cold War failed states and, 117 n37 systemic abuses, ordinary or slow violence and, 97-98, 116 n20 global justice, as near synonym for ending impunity, 74–75 global South, see North-South lines Goetz, Anne-Marie, 315-316 Gomes Lund v. Brazil AZAPO decision compared to, 144 Brazilian amnesty (1979) and, 185-187 Brazilian National Truth Commission and, Brazil's refusal to comply with, 37-38 context of, IACtHR decisions and, 206-207 IACtHR on amnesty laws in, 29-30 IACtHR on peace and reconciliation versus justice in, 33 IACtHR on right to truth and, 32 Inter-American view on amnesty in, 190-191 OAB seeking STF's opinion on, 212 ng2 transformations in Brazil and, 197-198 Gordon, Robert W., 278 n10 Gorostiaga, Emilio, 261–262, 283 n90 Great Britain, see United Kingdom Greece, transitional experience of, 137 guerrilla groups Colombian, conflict and, 218-219 Colombian, origins of, 242 n13 constitutional challenge in Colombia to pardons of, 226-228 displacements and, 243 n23 Gomes Lund v. Brazil on, 29-30 peace negotiations with, 220, 225 surge in organized crime and violence by, 219 Habré, Hissène, 99 Habyarimana, Juvénal, 153-155, 170

Habré, Hissène, 99
Habyarimana, Juvénal, 153–155, 170
Hague, The
Bass on international criminal
accountability in, 97, 108–112, 115 n19
framing of impunity in, 101
Hague Conventions (1907), 297–298
Hani, Chris, 339
Hart, Henry, 76–77
Haskell, Leslie, 166
Hausner, Gideon, 145 n30
Heller, Kevin, 81
Hernandez, Amado, 297
Hirohito, Emperor of Japan, 300
Hiroshima bombing, 106, 333
historic bridge in AZAPO decision

amnesty, production of history and, 44, 135 costs of destroying, 141-142 road to democracy and, 136 victims and, 129 Historical Memory Group, Colombia, 219-220, 243 1122 history, see also human rights history Arendt on law's representation of, 279 n19 atrocity crimes and, 259 contested, legalizing and solidifying, criminal trials and production of, 48, 67 n200, 67 n201, 134 narration of, 9-10 in "new" South Africa, TRC and, 342 people's tribunals and creation of archival sources of, 307-308 Phnom Penh Hearing and writing of, 312 of precolonial harmony in Rwanda, 163-164, 180 ngo, 180 ngi of South Africa reconciliation between survivors, 347, 359 n48 Hitler, Adolf, 333-334, 356 n11 Hobbes, Thomas, 353 Hochschild, Adam, 356 n17 Hochschild, Fabrizio, 233 Holocaust, 119 n65, 257-258, 331 Hong, Sang-Hyun, 74 hostis humani generis (enemies of mankind), doctrine of, 263-264, 266-270, 275, 276-278, 283 n93 human rights, see also human rights history disagreement over meaning, content, and scope of, 206-207, 214 n108 discourse, amnesty as opening for, 205, 214 n104 discourse, argumentative diversity in, 205-206 gacaca courts and, 171–172 international criminal law and agenda for, 39-43 law, as enforceable, 44, 191 violations, as Paraguayan government policy, 265, 283 n85 violations, Brazilian dictatorship and, 193, 194-195 violations, Brazilian NTC report on, 199-200 violations, Colombian Security Statute and. 221 violations, individual and decontextualized understanding of, 16



372 Index

human rights (cont.) violations, South Africa's TRC on, 340-341, 342-343, 344, 345-346 violations, UNHCR on Legal Framework for Peace and, 160 human rights advocates, groups, movement, see also human rights nongovernmental organizations American conservatives on, 82 amicus briefs in Filártiga case by, 284 n99 amnesty opposed by, 68-69 individualization of criminal law and, 45 on Legal Framework for Peace, 233 lessons of defeat as anchor for, 330 Nuremberg lessons for, 351-354 politics of a country and, 64 n178 on Special Jurisdiction for Peace, 236 Human Rights Committee, of South Africa's TRC, 342, 345 human rights history, see also Bass, Gary conclusion, 112-114 Constantinople, 102-105 The Hague, 108-112 Nuremberg, 105-108 overview of, 95-96, 114 n2, 114 n3 of struggle regarding impunity, 101 war crimes and, 96-101 human rights nongovernmental organizations (NGOs), see also specific organizations alignment with states when promoting prosecutions, 46 on Argentina's criminal prosecutions, 39 on businesses' accountability, 65 n184 on Colombia's Justice and Peace Law, 230, 248 n82 on Colombia's prison alternatives for paramilitaries draft law, 229-230, 247 n67 shift in focus of, 17 turn to criminal law by, 4 Human Rights Watch, 160-161, 236, 251 n113, 352-353 humanitarian law, see international humanitarian law Huneeus, Alexandra, 21-22, 23-24 Hunt, Lynn, 114 n2 Hutu Power, 154 Hutu (Rwanda), see also Tutsi (Rwanda) Belgian ethnic identity cards for, 152-153 civil war and, 154-155, 176 n19 legalizing and solidifying contested history

north-south tensions among, 176 n13 privileged small group of, 170 Revolution (1959-62), 153 uburetwa system and, 170 IACHR, see Inter-American Commission on Human Rights IACtHR, see Inter-American Court of Human Rights Ibreck, Rachel, 163 ICC, see International Criminal Court impunity, see also anti-impunity; culture of impunity AI's policy statement (1991) on, 20-21 of anti-impunity, 165-168 anti-impunity as false binary of, 171-172 as criminal justice, missing elements in, 238-240 definition of, 43-44 history and legacy of, anti-impunity and, 96 Joinet Report (1997) on, 24 London Charter, nuclear bombs and, 106 state actors credited with international justice efforts and, 97-98 twenty-first century discourse on, 217-218 various meanings for, 3 Vienna Declaration and Program of Action as, 24 incapacitation of criminals, 73 indemnity, in South African law, 338, 346, 357 n23 individual criminal accountability AI on culture of impunity and, 20-21 demonization in, 259 establishment of international criminal courts on, 18-19 Filártiga line of cases and, 256, 266, 274-278, 278 n7, 286 n149 Filártiga's murder and, 9-10 as necessary and preferred response, 3-4 as Nuremberg innovation, 331-332 Nuremberg trials, ICC and, 69 obscuring other harms, 7-9 people's responsibility tribunals and, 311-312, 317 political complexity lost in focus on, 276-278 responsibility for mass violence and, 329-331 structural and systemic aspects of human rights abuse and, 116 n31

structural anti-impunity efforts versus, 111

of, 172-173



Index 373

individualization	discourse on Brazilian amnesty and views
of criminal law, depoliticization and, 44–45	of, 205
human rights advocates and states and, 45	El Salvador's amnesty law struck down
of human rights violations, 16	by, 30–31
of war crimes in Syria, AI and, 64 n178	on forgiveness, 34–35
inequality	Gelman v. Uruguay, 191–192
in Colombia, 238–239	Gomes Lund v. Brazil, 190–191
global governance based on exploitation	on human rights protection versus criminal
and, 96	justice, 23
in Rwanda, 169–170, 183 n129	influence on other jurisdictions, 35-36
structural violence and, 169	jurisprudence (2001–2012), 28–31
turn to criminal punishment displacing	jurisprudence and human rights advocacy
attention to, 9	by, 21–22
Inkatha Freedom Party (IFP), 346	on justice versus truth and justice versus
Institutional Act No. 5, Brazil's, 193	peace, 7
instrumentalism	neopunitivism in jurisprudence of, 47,
applied to international criminal law	61 n142
generally, 73	on peace and criminal justice, 32–34, 42
in rhetoric of anti-impunity, 71–75	Peru's amnesty law struck down by, 29,
Shklar on international criminal law	54 n59, 54 n60
and, 72	on right to truth, 31–32
Shklar on Nuremberg and Tokyo war	South Africa's courts and, 130–131
crimes trials and, 72–73, 89 n13	Uruguay's amnesty law struck down by, 30
insurrection, see sedition	Veçoso on politics of, 6–7
Inter-American Commission on Human	Velásquez-Rodríguez v. Honduras, 22–23
Rights (IACHR), see also Méndez, Juan	Interim Constitution, South Africa's, 336–337,
on amnesties and American	339–340
Convention, 29	International Center for Transitional
Filártiga case and, 265, 267, 283 n88	Justice, 98–99
hearing on Brazil's truth commission	International Commission of Jurists, 230–231
recommendations, 37–38	International Committee for the Red Cross
IACtHR on burden of proof for, 23	(ICRC)
turn to criminal punishment from	customary international humanitarian law
amnesties by, 29	study by, 31
on Uruguay's Supreme Court's amnesty	International Convention on the Suppression
ruling, 39	and Punishment of the Crime of
Inter-American Court of Human Rights	Apartheid (1973), 136–137
(IACtHR), 188	International Criminal Court (ICC), see also
on access to justice, 204	Bensouda, Fatou; Ocampo, Luis
Almonacid-Arellano v. Chile, 189, 208 n19	Moreno; Rome Conference; Rome Statute
amnesty laws struck down by, 28, 136	
amnesty view in four cases by, 187–192	AI on establishment of, 40
Barrios Altos v. Peru, 187–189	AI on war crimes in Syria and, 64 n178
Brazilian NTC report and, 200	Bass on establishment of, 110
Brazil's amnesty law struck down by, 29–30	Bass on ICTY as gateway for, 109
Brazil's transitional experience and, 202	Bass's double standard on, 117 n39
Chile's amnesty law struck down by, 29	centrality of great power politics and, 75
Colombia's Justice and Peace law	Colombian government's negotiations with
and, 230	FARC and, 234–235
on Colombia's Special Jurisdiction for	on Colombia's Special Jurisdiction for

Peace, 236-237

convictions by, retributive justice and, 73

Peace, 236-237

concluding remarks on, 206-207



374 Index

International Criminal Court (ICC) (cont.) corporations as defendants before, 65 n184 culture of impunity references (1970-2008) deterrence in Central African Republic and, 90 n18 economic reparations and, 46 great power politics and, 80 human rights history and, 95 individual criminal accountability and, internal or external criteria on success of, 73-74 jurisdiction of, 41 justifying, 42, 64 n166 Kampala Declaration (2010) by, 33 Kenyatta and Ruto indictments by, 65 n179 mandate narrowing for, 121 no4 Moyn on politics of, 5-6 newly enacted amnesties after start of, 37 Nuremberg as model for, 351-352, 360 n50 people's tribunals and, 294 political resolutions to African conflicts prior to existence of, 350-351 preservation discourse and, 75-76, 79, 80-81, 92 n34 President Hong on purpose of, 74 prosecutorial discretion critiques of, 41-42, 63 n159 Rome Statute establishing, 19, 40-41 scholarly critiques of, 42, 63 n162 serving purposes other than criminal prosecutions, 70-71 sheltering from most politicized conflicts, 81 shift from drug trafficking to war crimes by, 50 ng Sikkink's national tribunals study and, 83-84 South Africa's conditional amnesty and, 138-139 Syrian crimes against humanity and, 42-43 Uribe on Santos negotiations with FARC and, 217, 232 warrants against LRA leadership by, 351 international criminal law, see also specific courts or tribunals achievements of external purposes for, 74 anti-impunity in, impunity and, 111-112 ATS litigation and, 256 Brazilian NTC report and, 200

centrality of great power politics and, 75 conditional amnesties and, 139-141 decontextualization and individualization of, 44-46 depoliticization and individualization of, 44-45 discourse of, 70 human rights agenda and, 39-43 ICTR, ICTY and development of, 160 individualizing Filártiga and, 274-275, 285 n140 international tribunals and, 178 n65 legal professionalism role in, 77-78 multiple levels of Rwandan justice and, 150-151 norms representing violence and, 259 people's tribunals and, 317-318 political trials and, Shklar on, 72 rehabilitation and, 73 Rwandan genocide and, 161-162 Sikkink and empirical turn in, 92 n45 South African death penalty case and, South Africa's Amnesty Act and, 142 South Africa's AZAPO case and, 137–138 torture in Paraguay as violation of, 267 international criminal lawyers promotional account by, 91 n25 International Criminal Tribunal for Rwanda (ICTR), see also gacaca 20 Years Challenging Impunity (film), 163-164 African Rights support for, 40-41 AI support for, 40 anti-impunity in, 159 Bass on ICTY as gateway for, 109, 110 call for prosecutions by, 149-150 establishment of, 155-156 jurisdiction of, 41, 156 legalizing and solidifying contested histories and, 172-173 narration of history and, 10 as reconstructive force for divided Rwanda, 162–164, 179 n81 resistance to RPF indictments by, 166 Rwandan government votes against, 156 Rwandan government's fight against impunity and, 6-7 Rwandan justice institutions and, 150 Rwandan structural harms displaced by, 9 treaty establishing, 50 ng

casebooks on, 78



Index 375

International Criminal Tribunal for the Jackson, Robert Former Yugoslavia (ICTY) on fair trials at Nuremberg, 332 on judicial trials, 332 AI support for, 40, 62 n148 Bass on international criminal opening statement at Nuremberg trials, accountability and, 108-112 76-77, 120 n66 Douglas on judges and prosecutors of, on reason over power, 106, 120 n69 summation of Nuremberg by, 107 280 n24 establishment of, 19, 39-40, 61 n144 Japan, see also Tokyo jurisdiction of, 41, 62 n157, 62 n158 Tokyo Women's Tribunal aim for apology liberal/illiberal states and, 109-110, 117 n37 from, 200 social context and politics in actions by, Jewish diaspora, American, Nuremberg trials 113-114 and, 119 n65 Ioinet, Louis, 24 International Feminist Conference (Frankfurt, Jolie, Angelina, 94 n57 1974), 305-306 International Feminist Strategy workshop jurisdiction, see also universal jurisdiction (Denmark, 1974), 305-306 dealing responsibly with history and, international financial institutions, see also 259, 280 n24 International Monetary Fund; Filártiga case on torture and, 264-265 World Bank jus ad bellum Rwandan genocide and, 171 as focus for people's tribunals, 292-293 structuring conflict and crisis and, 169 jus in bello versus, 45-46, 65 n181 international humanitarian law Russell Tribunal on criminal actions of US as enforceable, 44 ICRC study on, 31 Tokyo Women's Tribunal and, 322 n56 scholars on amnesty laws and, 25, 52 n38 World Tribunal on Iraq Declaration on, International Law Commission, 40 301-302 International Military Tribunal at jus cogens Nuremberg, see Nuremberg trials Brazilian regime change and IACtHR on International Military Tribunal for the Far vocabulary of, 187-192 East (IMTFE, 1946-48), 299, 300 enforced disappearances and, 190 International Monetary Fund (IMF) IACtHR articulating vocabulary of, economic conditions in Rwanda and, 205-206, 209 n26 IACtHR on crimes against humanity as establishment of, 107-108, 121 n86 infringements of, 189 Permanent Peoples' Tribunal sessions on laws of self-amnesty and, 208 n16 responsibilities of, 305 jus in bello International Tribunal on Crimes against jus ad bellum versus, 65 n181 Women (1976), 304, see also Brussels as people's tribunals' focus, 292-293 Permanent Peoples' Tribunal sessions Women's Tribunal International War Crimes Tribunal (1967), on, 305 Russell Tribunal on criminal actions of US 292, 318 n6 International Women's Year (1975), 305-306 and, 297 Invisible Children, 87-88, 94 n60 World Tribunal on Iraq Declaration on, Iran hostage crisis, 275 301-302 justice, see also peace; retributive justice post-World War I territorial control of, 104 access in Brazil to, 204 US justification for invasion of, 65 n181 anti-impunity efforts and, 3 World Tribunal on, 298–299, 300–302 CODESA on different forms of, 335-336 Israel, establishment of, 334 Colombian Commission of Jurists on peace Israeli court, on Eichmann case versus, 220 jurisdiction, 279 n17 Colombia's Constitutional Court on. ITT v. Vencap, 263-264, 267 230-231, 249 n89



376

Index

justice (cont.) debates over truth versus, 9-10, 16, 25 global, as near synonym for ending impunity, 74-75 ICC's political role and, 81-82 individual criminal accountability as one definition of, 70 international criminal institutions' discourse and debates on, 41 in Rwanda, 149-150, 160-161 scope of definitions for, 99-100 Shklar on definition of, 72 Sikkink on definitions for, 82-83 tribunalization of, 100 Justice, South African Department of, 344-345 Justice, US Department of, 264 Justice and Peace Law, Colombia's on alternative sentencing, 247 n77 Constitutional Court on, 230-231 criticism of, 216, 230, 248 n82 passage of, 230 US Senators and UNHCHR on, 248 n81 iustice cascade Bass on, 97 global governance and, 100-101 in Latin America, 84 promotional discourse on, 76 Sikkink and Lutz on, 96 Sikkink on, 15, 70 victims' justice and, 71 Justice Cascade, The (Sikkink), 82-83

Kagame, Paul, 155 Kambanda, Jean, 161-162 Kampala Declaration (2010), 33, 42 Kasuri, Mahmud Ali, 297 Kaufman, Irving R., 264, 275, 286 n144 Kellogg-Briand Pact (1928), 297-298 Kennan, George, 355 n7 Kennedy, David, 214 n104 Kennedy, Duncan, 5, 12 n1 Kenya, 65 n179, 79-80, 91 n25, 92 n34 Kenyatta, Uhuru, 45, 65 n179, 73, 92 n34 Kerry, John, 19, 111 Kersten, Mark, 90 n18 Keynes, John Maynard, 121 n86 Keys, Barbara, 275-276 Khmer Rouge, 291-292, 312-313, see also Phnom Penh Hearing Kim, Hunjoon, 83

Kiobel v. Royal Dutch Petroleum Co., 65 n184, 255-257, 276-278, 278 n8, see also Alien Tort Statute Kirchheimer, Otto, 72 Kissinger, Henry, 111 Kontorovich, Eugene, 279 n19, 285 n141 Kony, Joseph, 45, 65 n180 Korean Council for Women drafted into Military Sexual Slavery, 299, 322 n56 Koskenniemi, Martti on absoluteness of human rights discourse, 214 N104 on contrary views or exceptions to rules or principles, 205 on history produced by truth commissions, 134-135 on individual criminal prosecutions, 44-45, 64 n174, 134 Krause, Bruce R., 275 Krupp, Alfried, 333-334 Kumar, Corrine, 323 n82, 326 n131 labor, coerced, in South Africa, political repression and, 343 land expropriation after World War I, 104, 118 n54 in Colombia, 239–240, 253 n138 land reform, see also agricultural and land reform, Colombia in South Africa, 339, 357 n28

Chile; Colombia; El Salvador; Inter-American Court of Human Rights; Paraguay; Peru; Uruguay blanket pre-conviction amnesties in, 99 Cold War history of, 93 n50 Sikkink on prosecutorial turn in, 84 Latin American Working Group Education Fund (LAWGEF), 47 law, politics and, 5-7 law of nations, 263, 264-265 law of peoples, 304-305, 306, 307-308, see also people's tribunals League of Nations, 104 Lebanon, post-World War I territorial control of, 104 Leebaw, Bronwyn, 151

land restitution, Colombian legislation and

Latin America, see also Argentina; Brazil;

regulation on, 239, 253 n134

Lansing, Robert, 118 n53



Index 377

legal academy, professionalizing discourse and, 78 Legal Framework for Peace, Colombia's alternative sentencing included in, 217, 232 constitutional challenge to, 233, 249 ngg, criticism of, 233 Leipzig war crimes trials, 102-103, 115 n19, 117 n45 Lelio Basso Foundation, 304-305 Lenin, Vladimir, 104, 118 n54 Leopold, King in Congo, 333-334, 356 n17 Letter of Salvador, on Brazilian amnesty, 194-195 Lewis, Mark, 88 n4 liberal states, see also United States atrocities in Yugoslavia and, 110 Bass example of, 115 n10 Bass on anti-impunity commitment of, 115 ng Bass on double standard for, 110-111 Bass on human rights history and, 115 n5 ICC, interests of humanity and, 114 illiberal states versus, 109-110, 115 n10 international justice commitment by, 97, 115 1113 Nuremberg trials as symbol of progress by, 106 listening, see politics of listening Lleras Restrepo, Carlos, 221-224 Local Government Transition Act, South Africa (1993), 339-340 Lomé Agreement, Sierra Leone (1999) and, 37, 58 n115 London Charter, 106, 107, 119 n65, 355 n10 Longman, Timothy, 149 Lord, Audre, 309 Lord's Resistance Army (LRA), 87, 147 n60, 351 Lubanga Dyilo, Thomas, 63 n159, 73, 79-80, 94 n57 Lula da Silva, Luiz Inácio, 198-199, 202, 203-204 Lutz, Ellen, 96, 98-99, 116 n21

M-19 (Movement of April 19th, Colombia) Colombia's Law No. 35 and, 224 conflict in Colombia and, 218–219 Constitutional Assembly and, 225–226 demobilization of, 225 limited amnesty granted for, 221–224

limited amnesty rejected by, 221-224 origins of, 242 n13 peace treaty with government and, 219 on political, economic, and social reforms, 224-225 return to armed resistance, 225 Turbay administration's talks with, 221 MacArthur Foundation, 110 Madra, Ömer, 323 n82 Maeda, Akira, 323 n82 Mahomed, Justice, 128-129, 131-132, 133-134, 137-138 Makwanyane (State v. Makwanyane & Another, South Africa), 130-131, 137-138 Malan, Wynand, 347, 359 n48 Mallinder, Louise, 37, 187, 192, 204-205, 208 n8 Malta, Turkish prisoners in, 118 n49 Malta International Court, 102-103 Mamdani, Mahmood, see also South Africa's post-apartheid transition alternative to criminal justice model by, 2-3 on human rights in terms of victims and beneficiaries, 116 n31 on ICC in Darfur and Uganda, 100 on Nuremberg trials and South Africa's TRC, 4 on responsibility in civil wars, 117 n33 on South Africa's conditional amnesty, 138-130 on survivors' versus victims' justice, 11-12 on TRC's excessive legalism, 142-143 on TRC's focus, 141 on TRC's focus on individual victims, 8 on victims and post-conflict governments, 10-11 Mandate system, post-World War I, 102–105 Mandela, Nelson, 49 n4, 353 Mankell, Henning, 310-311 Marguš, Fred, 36 Marguš v. Croatia, 36, 57 n104 Marks, Susan, 183 n128 Márquez, Iván, 233, 245 n46 Martínez Caballero, Alejandro, 228 Marx, Karl, 343, 353-354 Massacres of El Mozote & Nearby Places v. El Salvador, 30–31, 33, 36, 207 n7, 236–237 McDonald, Gabrielle Kirk, 298-299, 322 n64 McLeod, Allegra, 19 McNamara, Robert, 111 MDB (Brazilian Democratic Movement), 196



378

Index

Mégret, Frédéric, 47, 64 n166 Meister, Robert, 45, 354 n4 Méndez, Juan, 24–25, 141–142 Meron, Theodor, 22 Mexico, women murdered in Ciudad Juárez, 47 Migiro, Ashe-Rose, 76 Miller, Zinaida, see also Rwanda on anti-impunity efforts and Rwanda's ruling party, 5 case study by, 2 on international law and Rwanda's transformative agenda, 6-7 on judicial accounts of history, 10 on Rwandan structural harms displaced by ICTR, 9 on transitional justice mechanisms and retributive criminal framework, 4-5 Milošević, Slobodan, 44-45, 97, 108-109, 110-111, 134 Miranda, Anibal, 261, 280 n31 Moreno Ocampo, Luis, 79, 90 n20 Morgenthau, Hans, 119 n64 Morgenthau, Henry, Jr., 332, 355 n7 Morikawa, Kinju, 297 Mouvement Démocratique Républicain (MDR, Rwanda), 155 Moyn, Samuel, see also rhetoric of anti-impunity on anti-impunity agenda avoidance of justification, 5 on anti-impunity discourse rise, 2 on human rights as moral criticism of politics, 329-330 on human rights history, 114 n2, 114 n3 on individual criminal accountability, 3-4 on politics of ICC, 5-6 on promotional, professional, or preservation discourses, 75-81 on rhetoric of victim representation, 11 on Russell Tribunal, 297 on Vietnam anti-war movement, 299 Mozambique, political settlement after civil war in, 350-351 Mujica, José "Pepe," 39, 60 n135, 60 n136 Multi-Party Negotiating Process, South Africa, 339 murder rates, in South Africa, 143, 147 n64 Mutunga, Willy, 322 n64

Nagasaki bombing, 106, 333 Namibia, South African Defence Force in, 140

naming and shaming in human rights, 16, 18, 80, 352–353 narratives, see history National Party, South Africa's, 336, 337, 339, 341-342 National Reconciliation Commission, Colombia, 243 n22 National Resistance Army, Uganda, 350 National Unity and Reconciliation Act, South National Unity and Reconciliation Commission, Rwanda, 175 n4 Native Affairs, South African Department of, 344-345 Native Authorities in Bantustans, 339-340 Navarro, Antonio, 225–226 Nayar, Jayan, 304-305 Nazis and Nazism, 257-258, 274-275, 332, see also Nuremberg trials neoliberalism, 8, 19, 46, 110, 168 neopunitivism, in IACtHR jurisprudence, 47, 61 n142 neosultanism, in Paraguay under Stroessner dictatorship, 280 n<sub>37</sub> Nepal, 291-292, 312-313 Nesiah, Vasuki, 2, 3, 5, 8, 10, see also human rights history neutrality, claims of, war crimes reporting and, 45, 64 n178 New African, 85 New York Times, 216, 267, 275 Newbury, Catherine, 170 Ngudjolo, Mathieu, 79-80 Ní Aoláin, Fionnuala, 58 n113 Nickerson, Eugene H., 263, 264-265 Nigeria, Shell Oil's exploitation of oil reserves in Ogoniland of, 66 n<sub>1</sub>85 Nino, Carlos, 19, 41 Nixon, Rob, 116 n20 Northern Ireland, 34, 37, 236-237 North-South lines, 100-101, 276-278 Nouwen, Sarah, 42, 43, 94 n59, 160 Ntaryamira, Cyprien, 154–155 Nuremberg Statutes (Charter), 285 n140, 297-298 Nuremberg trials as alternative to violence, Jackson on, 76-77 Bass on international criminal accountability in, 97, 105-108, 115 n19

charges against accused at, 332-333



> Index 379

CODESA as alternative to, 331, 335-336 on conspiracy to wage aggressive war, 356 nm contemporary human rights movement compared to, 351-354 demonization in, 274-275 failure to provide right to appeal convictions by, 355 n10 framing of impunity in, 101 historical representation of Nazism at, 258 individual criminal accountability and, 69 legal and political constraints on, 256-257 live witnesses and atrocity victims at, 93 n51 Mamdani on South Africa's TRC and, 4 as Nazi punishment, 332 political context of, 334 political violence after Holocaust and, 331 principles established at, 331-332 as reeducation of German officialdom, Shklar on, 72-73 as symbolic and performative, 332 as template in defining responsibility for mass violence, 329 victors' and losers' explanations for, 100-101 victors' transgressions and, 333

Obama, Barack, 120 n70 Ocampo, Luis Moreno, 79, 90 n20 Office of the Prosecutor, ICC's, see also Bensouda, Fatou centrality of great power politics and, 80 Olsen, Tricia D., 213 n100 Operation Condor, 191, 209 n35 Orentlicher, Dianne, 137-138 Orford, Anne, 169 Organización Político Militar (OPM), Paraguay, 261, 271–272, 281 n48, 281 n50 Organization of American States (OAS), 265, see also Inter-American Commission on Human Rights Orwell, 1984, 134 Osiel, Mark, 72-73 Otto, Dianne, 2-3, 5-6, 10, 11, see also people's tribunals

Owen, Roberts, 283 ng8 Pace, William, 91 n25 Paiva, Rubens, 212 ng2 Pal, Radhabinod, 333

Ottomans, 102-105, 118 n46

Ould Dah v. France, 57 n104

Palestine, 78, 104 Palmer, Nicola, 166 Pan Africanist Congress (PAC), 336 Panel Statement, Phnom Penh Hearing, 314, 315-316 Paraguay, see also Filártiga v. Peña-Irala

campaign against torture in, 260-266 detentions in, 281 n45 Filártiga as case against, 283 n90 foreign aid effects in, 281 n41 immune from lawsuit, 275, 286 n142 international campaign against, 265-266 justice system in, Filártiga case and, 268 Law of Mbarete, 260-261, 271-272 narrowing of Filártiga case and, 266 political conditions in, Filártiga's murder and, 9-10, 268-269 torture prohibition in, 269-270, 285 n115 torture under Stroessner dictatorship

in, 7 paramilitary forces, Colombian,

see also United Self-Defense Forces of Colombia displacements and, 243 n23 negotiating with, 220, 228-231

violence by, 219–220, 242 n20 pardons, in Colombia

Constitution on, 226 constitutional challenge in Colombia to, 226-228

for guerrilla groups, 220-221 Law No. 733 on, 228 Supreme Court of Justice on amnesties versus, 243 n25

Paris Peace Conference, 102-103 pass laws, South Africa's, 342-343, 344-345, see also apartheid

Pastrana, Andrés, 225-226 Paul (Saint), on slavery, 347 Payne, Leigh A., 213 n100 peace, see also AZAPO decision Colombian Commission of Jurists on

justice versus, 229 debates over justice versus, 16, 25, 28 IACtHR on criminal justice and, 32-34 international criminal institutions' discourse and debates on, 41 political role of ICC and, 81-82 right to, Colombia's Constitutional Court

on, 249 n89 right to, García-Sayán in El Mozote on, 33-34

in Rwanda, 160-161 South Africa's Constitutional Court on, 27



**More Information** 

Cambridge University Press 978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda Edited by Karen Engle , Zinaida Miller , D. M. Davis Index

380 Index

peace agreements, persistence of amnesties in, 37–39 peasant reserve zones, Colombia's, 240, 254 N142 pedagogy ICC's achievements in, 73-74 international criminal law and, 73 Peña, Americo, 261-265, 268-269, 270 Penal Reform International, 171-172 penal systems, see also criminal prosecutions export of US criminal justice model and, 19, 47-48 forgotten critiques of, 16 human rights NGOs on abuses of, 18 Rwandan, genocide-related crimes and, 156-157 people's tribunals conclusion, 316-318 as judgment tribunals, 296-303 as law tribunals, 304-308, 324 n100 overview of, 291-294 overview of legal rules and practices and, 294-296 people's law concepts, 304-305, 306, 307-308 Phnom Penh Hearing and goals of, politics of listening and collective responsibility, 312-316 as responsibility tribunals, 308-312 victims voices in, 11 Permanent Peoples' Tribunal, 304-305, 307-308 perpetrators of apartheid, beneficiaries and, 9 of apartheid, living with victims, 335-336 individual, trials concentrating on, 7-9 Mamdani on victims versus, 354 n4 states as, human rights NGOs on, 18 trading places with victims, 352-353 Peru, 28–31, 54 n59, 54 n60, 186, 187–189 Peruvian Army, 187 Phnom Penh Hearing, 291–292, 293–294, 312-313, 328 m183 Pinochet, Augusto, 99 piracy Arendt on Eichmann's trials and, 258, Breyer dissent in Kiobel on, 276-277 Filártiga case on, 266, 269-270

Platform Text, for World Tribunal on Iraq, 300-302 poison gas, in World War I, 103–104 Pol Pot, 99, 291-292 political crimes, Colombia Congress granting amnesties for, 244 n26 Law No. 35 on, 224, 244 n35 Law No. 733 on, 228 membership in Colombian paramilitary groups as, 230-231 Penal Code's exemptions for, 244 n28 political justice CODESA on other forms of justice and, 336 Mamdani on South African transition and, 354 n4 political motive distinguishing non-political motives from, 344 economic harms in South Africa and, 343 South Africa's TRC on, 342-343 political prisoners AI support for, 17, 18, 49 n4 amnesties for, 187 Brazilian NTC report on, 199-200 Brazil's releases and pardons of, 203, 211 n71 in Paraguay under Stroessner dictatorship, 260-261 political trials Filártiga case as, 266-267 ICC's logic of hostility in international system and, 94 n59 Shklar on, 72, 87 politics community, victims' perspective and, 204-205 great power, centrality of, 75 great power, ICC and, 80 ICC as move away from, 114, 122 n102 ICTR's legitimacy and, 159-162 law and, 5-7 Makwanyane and AZAPO decisions and, 138 professionalizing discourse and boundary between law and, 78-79 of states, human rights advocates and, 45, 64 n178 politics of listening, see also reconciliation collective responsibility and, 312-316, 318 relaxation exercises and, 316 victims' voices in people's tribunals and, 11, 293-294

individualizing Filártiga and, 275



Index 381

Popular Liberation Army (EPL, Colombia),	public opinion, 119 n63, 202, 355 n7
222, 226–228	
population transfer, see also exile, forced;	Quintin Lame Armed Movement (MAQL,
forced removals, in South Africa	Colombia), 222
Allied Powers after World War II on,	
334, 357 mg	rape
post-conflict governments, as prior victims'	Bensouda on justice for victims of, 85
representatives, 10–12	Brussels Women's Tribunal on, 306
poverty, turn to criminal punishment	Extraordinary Chambers in the Courts of
displacing attention to, 9	Cambodia excluding charges of, 312–313,
Poverty Reduction Strategy Paper (Rwanda,	327 n168
2002), 183 n129	South African post-transition rates of, 143
Power, Samantha, 87–88, 94 n60	Tokyo Women's Tribunal on, 300
power-sharing, in Uganda, 350	TRC on victims of, 138–139
preservation discourse, in ICC, see also	by victors in World War II, 107
professionalizing discourse; promotional	Vienna Declaration on, 62 n146
discourse	ratio legis
characteristics, 75-76	Gelman v. Uruguay and, 191
duration of, 79–80	ICC's universalist approach and, 192
ICC fragility and, 79, 92 n34	rebellion
promotional or professional strategies	Colombian Penal Code on, 220,
and, 79	243 n24
sheltering ICC and, 80–81	Law 37 (Colombia, 1981) on amnesty
prisoners detained without trial, in South	for, 221
Africa, 345	reconciliation, see also truth and
prisoners of conscience, see also political	reconciliation commissions
prisoners	AZAPO decision and, 133–134
AI letter-writing campaigns for, 17	gacaca courts and, 157–158
professionalizing discourse, in ICC, see also	in Rwanda, 149–150, 175 n4
preservation discourse; promotional	in South Africa between survivors, 347,
discourse	359 n48
boundary between law and politics	TRC versus CODESA model for, 349
and, 78–79	Record of Understanding, between National
characteristics, 75-76	Party and ANC, 337
ICC as vocational experience and, 77-78	re-education, in Rwanda, 175 n4
as improvisational, 78	referenda, popular, on Uruguayan amnesty
legal academy and, 78	laws, 30, 54 n66, 191–192
progress narrative, anti-impunity as, 99	Reiter, Andrew G., 213 n100
Promotion of Bantu Self-Government Act	Renamo (Mozambican National Resistance),
(1959), 343	350-351
Promotion of National Unity and Reconciliation	reparations
Act (South Africa), 26, 125–126	AZAPO decision and, 133-134
promotional discourse, in ICC, see also	criminal justice context and, 46
preservation discourse; professionalizing	extensive, in Brazil, 203–204
discourse	right to, Colombia's Constitutional Court
accountability protocols and, 76	on, 249 n89
appeal to victims and, 85	Rwanda's criminal prosecutions and,
characteristics, 75–76	168–169
criteria of success or options other	Rwanda's national level chambers and,
than, 76–77	182 1120
Sikkink as instrumentalist and, 84	South Africa's fund for, 140
Sikkink on skepticism and, 83–84	South Africa's TRC on, 346
r · · · · · · · · · · · · · · · · ·	* 21



382 Index

Reparations Committee, of South Africa's TRC, 342 retributive justice, see also criminal justice Arendt on international criminal law and, 71-72, 73 gacaca courts and, 171-172 ICC's convictions and, 73 political economy or structural causes of conflict and, 169 structural violence, inequality and, 169 Revealed Memories project, Brazil's, 198-199 Revolutionary Armed Forces of Colombia, see FARC Revolutionary Independent Armed Command Movement, 222 Reyntjens, Filip, 157 rhetoric of anti-impunity, see also Moyn, Samuel concluding reflections, 87-88 deflective forms of, 81-84 instrumentalism in, 71-75 introduction to, 68-71 victims' interests and, 85-87 Right to Memory and Truth project, Brazil's, 198-199 Ríos Montt, José Efraín, 99 Riquelme, Marcial Antonio, 280 n37 Rodrigues, Randolfe, 213 n94 Rodrigues de Moura, Sebastião Curio, 59 n119 Roht-Arriaza, Naomi, 95, 98-99, 100, 116 n21 Rome Conference (1998), 19, see also International Criminal Court Rome Statute, 46, 66 n186, 74, 78, see also International Criminal Court Romero, Mauricio, 242 n20 Roosevelt, Franklin D., 105, 119 n64, 332 Roth, Kenneth, 93 n54 Rousseff, Dilma, 38, 39, 60 n135, 185–187, 202 Roy, Arundhati, 301 Russell, Bertrand, 292–293, 296, 312–313 Russell Tribunal (1967), 292, 294–295, 296-298, 304, 318 n6 Russia, czarist, post-World War I territorial control and, 104 Ruto, William, 45, 65 n179, 73 Rwabugiri, King of Rwanda, 170 Rwanda, see also gacaca courts; International Criminal Tribunal for Rwanda anti-discrimination and anti-sectarianism law in, 164, 180 n95 anti-impunity as anti-politics in, 159-162

anti-impunity as transformation and legitimation in, 150-151, 162-164 anti-impunity justice institutions in, 150, anti-impunity meanings in, overview, 159 Belgian colonial administration in, 152-153, 167-168, 175 n10 confessions and plea bargains in national courts of, 157, 177 n42 criminal prosecutions in, 5 economic injustice in, 168-171 ethnicity and violence in, 152-155 genocide-related crimes in national courts of, 156-157 inequality and scarcity, genocide and, 169-170, 183 n129 overview of, 149-152 post-civil war government in, 155 state governance in name of victims in, 334 Rwandan Patriotic Front (RPF) Arusha Accords (1993) and, 154 civil war end and, 154-155 electoral victory, peace negotiations end and, 160-161 formation of, 153 immunized from prosecution for violence by, 166, 181 n101 post-civil war government and, 155 on precolonial harmony, 163-164 as ruling party, 149-150 SáCouto, Susana, 315 Safferling, Christoph, 116 n30 Samper, Ernesto, 222, 225-226 Sanchez, Nelia, 326 n131 Santa Fe de Ralito Agreement, Colombia, 228-229 Santos, Francisco, 233 Santos, Jose Manuel, 217, 232 Sarney, José, 211 n72 Sartre, Jean-Paul, 292, 294-295, 297 Schabas, William, 52 n38, 100 Second Circuit, see United States Court of Appeals for the Second Circuit Second Congress for Amnesty, El Salvador, 210 n46 sedition, in Colombia, 220, 221, 230-231,

243 n24

self-amnesties, 29, 54 n59, 187, 188

Sellers, Patricia Viseur, 322 n60



Index 383

Senate Commission on Human Rights (Brazil), 213 n94 severe ill-treatment, South Africa's TRC on, 342-343 sexual offenses, see also Phnom Penh Hearing; Tokyo Women's Tribunal Brazilian NTC report on, 199–200 in South Africa, 143, 147 n64 sexual slavery, see also rape Korean Council for Women drafted into Military Sexual Slavery, 299, 322 n56 Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery (2000), 298-300 Shaharazad, 310–311 Sharpeville Massacre, South Africa (1960), 338Shell Oil, 66 n185 Shelton, Dinah, 23 Shklar, Judith, 70-71, 72-73, 87-88, 89 n13 Sierra Leone, 37, 58 n115, 110 Sierra Leone Truth and Reconciliation Commission, 58 n115 Sikkink, Kathryn assumptions that victims want criminal accountability by, 87 on capitalist system and accountability, 88 empirical research by, 82-84, 92 n45 on fighting impunity for human rights abuses, 100 on individual criminal accountability on instrumentalism and justice, 71, 74 on justice cascade, 15, 70, 96 on promotional discourse and skepticism, 83-84 on prosecutions of heads of state, 99 Sitze, Adam, 338, 357 n23 Slaughter, Anne-Marie, 117 n37 slavery, see also sexual slavery as crime against humanity, 347 Slovo, Joe, 337-339 slow violence, 97-98, 116 n20 social engineering, in Rwanda, 164, 180 n98 social justice ANC and National Party's sufficient consensus and, 341–342 CODESA on other forms of justice

Meister on South African transition and, 354 n4 post-apartheid transition and, 340-341, 353-354 social rights, see also economic rights human rights law and advocacy and, 46 Shell Oil's exploitation of oil reserves in Ogoniland and, 66 n<sub>1</sub>8<sub>5</sub> Socialism and Liberty Party, Brazil, 212 ng2 Sontag, Susan, 317-318 Soros Foundation, 110 Sosa v. Álvarez-Machaín, 282 n80, 286 n150 South Africa, see also African National Congress; AZAPO decision; South Africa's post-apartheid transition conditional amnesty, 138-141, 143 consensus-based decision making in local governments of, 340, 359 n29 Constitutional Principles, 336-337, 339-340, 357 n27 crime rates in, 143, 147 n64 limited amnesties in, 187 Makwanyane case, 130-131, 137-138 political context of democracy in, 136-138 South African Defence Force (SADF), 140, 338, 346 South African Institute of Race Relations, 344 South African Police, 338, 344-345, 346 South Africa's Amnesty Committee, 125-126, South Africa's Constitution, 125-126, 132-133, see also South Africa's Interim Constitution Bill of Rights in, 339, 340-341 South Africa's Constitutional Court, see also AZAPO decision Additional Protocol II (1977) cited in AZAPO by, 30 AZAPO decision concerns for, 127 on Biko's family's opposition to amnesty context of AZAPO case, 128-129 on forgiveness, 27-28 IACtHR influenced by, 29 international law and, 129-130 post-apartheid transition and, 339 on transitional amnesties, 4, 7 truth versus justice debates in, 9-10 South Africa's Interim Constitution, 125, 130-131, 144 N2

and, 336

Colombian guerrilla groups' calls for,



384 Index

South Africa's post-apartheid transition CODESA and, 336-340 lessons for Africa from, 349-351 Nuremberg history and, 331-334 overview of, 329-331 process and characteristics of, 334-336 the TRC and, 340-349 South Africa's Truth and Reconciliation Commission (TRC), see also AZAPO decision on apartheid perpetrators versus beneficiaries, 9 on background and context of violations, 345-346 basis of conclusions by, 346 on bodily integrity rights versus subsistence rights, 345-346 conditional amnesty implications, 138-139 conditional impunity cost and consequences, 139-141 Defence Act (1957) indemnity provisions and, 338 design and conduct of, 143-144 establishment of, 26, 125-127 failure of, 134-135, 347-348, 349, 353-354 on farm prisoners, 344-345 final report, 27 on gross violation of human rights, 343, 348-349 Malan's minority view of, 347, 359 n48 mimicking court of law, 142-143 "new" South Africa narrative and, 342 Nuremberg's orientation of individual guilt and, 349 on pass law offenders, 344 political context of questioning by, 330 political violence after apartheid and, 331 post-apartheid transition and, 329, 334-335 on prisoners detained without trial, 345 production of history and, 135 prosecution recommendations, 127 prosecutions and, 171-172, 183 n141 on reparations and perpetrator organizations, 346 researchers versus interpreters of, 345 sunset clauses and, 338-339 as surrogate for Nuremberg model, 4 sovereignty, see also states international law and, 355 n5 Soweto Uprising (1976), 338 Special Commission for Political Deaths and Disappearances (Brazil), 198

Special Court for Sierra Leone, 58 n115 Special Jurisdiction for Peace, Colombia, 235–237, 251 11113 St. Helena, Bass on international criminal accountability in, 115 n19 Stalin, Joseph, 356 n11 states, see also liberal states; self-amnesties; sovereignty human rights advocates and politics of, 45 human rights institutions on records of, 18 human rights NGOs alignment with, 46 as perpetrators, human rights NGOs on, 18 prosecutorial, influence on neighboring states by, 83 role of, individualization and, 45 strong punitive, neoliberal calls for, 19 Western, anti-impunity institutions in the Hague and, 110 state-sponsored legality, people's tribunals as criticism of, 294-295 Statute of the International Court of Justice, Article 38(1), 130-131 Stay the Hand of Vengeance: The Politics of War Crimes Tribunals (Bass), 96-99 STF, see Brazilian Federal Supreme Court Stimson, Henry, 105, 119 n64, 332, 355 n7 Straus, Scott, 164 Stroessner Matiauda, Alfredo Filártiga case narrowing and, 266 Second Circuit on torture under, 269-270 systemic torture under, 7 US military training and regime of, 260-261, 268 US senators on human rights under, 265 Studinsky, Silke, 315 sunset clauses, South Africa's TRC and, 337-339 Surplus People Project, The, 343 survivors' justice CODESA as basis for, 331 Mamdani on victims' justice versus, 11-12, 351 Mamdani on victims versus perpetrators and, 354 n4 victims versus perpetrators and, 347, 359 n48 Svria AI individualization of war crimes in, crimes against humanity in, Sweden crimes against humanity in, Switzerland and, 42-43



**More Information** 

Cambridge University Press 978-1-107-07987-8 — Anti-Impunity and the Human Rights Agenda Edited by Karen Engle , Zinaida Miller , D. M. Davis Index

Index 385

ICC referral of Bashar al-Assad for war crimes and, 92 n42 post-World War I territorial control of, 104 systemic abuses justice cascade, global governance and, 100-101 structural harms or violence, 7-9, 169, 265-266, 317 torture under Stroessner dictatorship as, 267 war crimes or extraordinary violence versus, 97-98 Tadić, Boris, 108–109 Tarbuk v. Croatia, 57 n104, see also European Court of Human Rights taxation, post-apartheid transition and, 340 Taylor, Telford, 333 terror, war on, US atrocities during Vietnam War versus, 65 n181 terrorism, as political act in Brazil, 201-202 testimonies of protest and survival, 309-310 Testimony through Art, 327 n144 third globalization, Kennedy on, 5, 12 n1 Third National Program on Human Rights (Brazil, 2009), 198-199 Thomas, Norman, 356 n11, 356 n16 Timmerman, Jacob, 270 Timor Leste, 291-292, 312-313 Tokyo firebombing, as crime against humanity, 333 human rights histories and, 119 n61 post-World War II war crimes trials, Shklar on, 72-73, 89 n13 Tokyo Women's Tribunal (2000), 298-300, 302-303 Torelly, Marcelo D., 202 Torres Romero, Eusebio, 283 ngo AI on penal systems and, 18, 49 n6

AI on penal systems and, 18, 49 n6
Brazilian NTC report on, 199–200
damages hearing for Filártiga, 270–274
Filártiga as landmark case about, 255–257
Filártiga case and, 260–266
individualization of Filártiga case and, 266
as international law violation, 269–270, 285 n115
in Paraguay under Stroessner dictatorship, 7, 260–261, 267
under Pol Pot, 291–292
Torture: Never Again (Brazilian victims' group), 198

Transcultural Psychosocial Organization Cambodia (TPO), 328 n183 transformative justice, people's responsibility tribunals and, 308-312, 317 transitional justice, see also truth and reconciliation commissions; truth commissions argumentative diversity in course of, 205-206 criminal prosecutions versus, 99-100, critiques of anti-impunity within, 151-152 culture of impunity in Rwanda and, 167 legal duty to prosecute and, 74-75, 90 n20 operating space for, 174 overview of anti-impunity critiques within, 164-165 reconsidering process of, 174-175 Rwanda's justice scheme and, 151 Transitional National Assembly (Rwanda), 155 Transvaal Municipal Association, 340 Treaty of Sèvres, 102-103, 104, 118 n46 Treaty of Versailles, 102-103, 104 trials, see also criminal prosecutions concentration on individual perpetrators as political trials, Shklar on, 72 Tribunal 12, 308, 310-311 tribunalization of justice, 109, 113-114, Truman, Harry, 333 debates over justice versus, 9-10, 16, 25 gacaca courts and, 157–158 right to, Colombia's Constitutional Court on, 249 n89 right to, IACtHR on criminal justice and, 31-32 search for, individualization of criminal law and, 44-45 South Africa's Constitutional Court on, 26-27 tying prosecutions to, 41, 53 n53 truth and reconciliation commissions, see also South Africa's Truth and Reconciliation Commission economic reparations as domain of, 46 Sierra Leone, 58 n115 truth commissions, see also Brazilian National

Truth Commission

in Brazil, 37-38, 59 n123, 198-199



386 Index

truth commissions (cont.) IACtHR on right to truth, criminal prosecutions and, 32 production of history and, 134-135 transition to liberal democracy and, 74-75 in Uruguay, 38-39, 60 n134 Tuol Sleng torture centre (S21), 291 Turbay Ayala, Julio César, 221–224, 244 n28 Turkey, see Constantinople Tutsi (Rwanda), see also Hutu (Rwanda) Belgian ethnic identity cards for, 152-153 civil war and, 154-155, 176 n19 killings and purging of, 175 n10 legalizing and solidifying contested history of, 172-173 powerful and wealthy versus commoner, 170 uburetwa system and, 170 unpunished violence against, 150 Tutu, Desmond, 27 Twa Rwandans, Belgian ethnic identity cards for, 152-153 Twagiramungu, Faustin, 155 20 Years Challenging Impunity (ICTR film), uhuntu AZAPO decision and, 133-134 definition of, 145 n27 uburetwa (Rwanda's unequal forced labor system), 170, 183 n131 Uganda critics of ICC's prosecutions in, 100 Kony indictment by, 45, 65 n180 LRA victims' justice priorities in, 87 peace versus justice and negotiations in, 81–82 political settlement after 1980-86 civil war in. 350 response to post-1986 insurgency by, 351 Uganda Amnesty Act, 147 n60 Ugrešić, Dubravka, 174 Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, Colombia, 253 n134 Unidad Agrícola Familiar, Colombia, 240, 254 n141 United Democratic Front (UDF, South Africa), 341-342 United Kingdom

Amritsar massacre (India, 1919) and, 119 n60

anti-impunity in Turkey and, 118 n49 Atlantic Charter (1941) and, 108

conflict resolution and troop safeguarding by, 121 ng6 pressuring Turks on Armenian genocide, 117 n42 Treaty of Sèvres and, 102-103 war crimes, colonial violence and, 103-104, 118 n51 United Nations America's global governance and, 107-108 on amnesties for serious crimes, 58 n115 Charter of, 297-298, 355 n5 Committee on Human Rights, 130-131 General Assembly Declaration on Granting Independence to Colonial Countries and Peoples (1960), 297-298 General Assembly resolution on apartheid, 136-137 IACtHR's influence on, 21-22 ICTY support by, 110 Lomé Agreement (Sierra Leone, 1999) and, 37 shift away from amnesty by, 28 Sub-Commission on Prevention of Discrimination and Protection of Minorities, 24 World Conference on Human Rights (1993), 24 United Nations Commission of Experts (Rwanda), 159, 166, 181 n102 United Nations High Commissioner for Human Rights on amnesties and right to truth, 32 on amnesties exempt from criminal sanction, 33 on Colombia's Justice and Peace Law, 248 n81 on Colombia's peace process, 233 RPF violence reported by, 166, 181 n101 Rwandan peace negotiations and, 160–161 on Uruguay's Supreme Court ruling on amnesty, 39 United Nations Secretary-General, 32-33 United Nations Security Council ad hoc tribunals for international prosecutions of war crimes and, 19 AI on war crimes in Syria to, 64 n178 centrality of great power politics and, 75, 80 establishment of, 107-108 failure to intervene in Rwandan genocide, 167 ICTR established by, 155-156 ICTY established by, 39-40



justifying ICTR establishment, 161

Index 387

peace versus justice debates and, 81-82 Syrian crimes against humanity and, 42-43 United Self-Defense Forces of Colombia (AUC), see also paramilitary forces, Colombian demobilization of, 220, 230-231 opposition to alternative sentencing draft law for, 229-230, 247 n67 Santa Fe de Ralito Agreement, 228-229 as umbrella organization for paramilitary forces, 219-220 United States, see also Alien Tort Statute; Filártiga v. Peña-Irala Bass on ICC and, 110-111 conflict resolution and troop safeguarding by, 121 n96 export of criminal justice model by, 19, 47-48 Filártiga jurisdiction and, 275 Filártiga on human rights policy in, 278 n7 foreign aid to Paraguay by, 268, 281 n41 foreign arms sales by, 45-46, 65 n182 instrumental evaluation of ICC by, 80-81 London Charter, nuclear bombs and 106 Paraguayan democracy during Cold War and, 260-261, 281 n43 political conditions in, Filártiga's murder post-World War II global governance and, 107-108 Russell Tribunal and, 296-303 Senators on Colombia's Justice and Peace Law, 248 n81 Vietnam War and human rights dominance in foreign policy of, 275-276 Vietnam War atrocities versus war on terror by, 65 n181 United States Court of Appeals for the Second Circuit, see also Filártiga v. Peña-Irala; Kaufman, Irving R Alien Tort Statute and, 255-257 amicus briefs in Filártiga case for, 267 damages for Filártiga, 273, 274 Filártiga case and, 255, 257, 275-276 individualizing Filártiga and, 266, 275

on political context of Filártiga, 268-269,

on torture in Filártiga, 269-270

United States District Court for the Eastern District of New York, see also Nickerson, Eugene H. damages for Filártiga, 272-274 dismisses Filártiga case, 263, 268-269, individualizing Filártiga, 275, 286 n144 Universal Declaration of Human Rights (1948), 297-298 Universal Declaration of the Rights of Peoples (1976), 304 universal jurisdiction, see also Sosa v. Álvarez-Machaín ATS litigation and, 276–278 Bass on violations against Armenians and, 103 Bass on war crimes tribunals as antidote to, 117 n38 defeat of, US and Israeli officials' impunity and, 117 n40 Eichmann case and, 279 n17 Filártiga on limitations of, 255–257 individualizing Filártiga and, 275, 285 n141 international criminal law institutions and, 100-101 universalism, as Nuremberg innovation, 331-332 Uprimny, Rodrigo, 237 Urban Militias of Medellin, 222 Uribe, Álvaro Congress on framework for peace talks by, 228, 246 n63 on Justice and Peace Law, 216-217 on Legal Framework for Peace, 233 on negotiating with FARC, 231 negotiating with paramilitaries, 228-231 on Santos negotiations with FARC, 217, 232, 241 n5 Uruguay Amnesty Law, 38-39, 191-192 ex-guerrilla member president in, 39 IACHR on amnesty laws in, 29 IACtHR on amnesty laws in, 28-31, 136, 186 US Department of State, 264, 267, 283 n98, 286 n146 US Institute of Peace Report, 162-163, 179 n84 Uvin, Peter, 154

van der Merwe, Johan, 140

Vásquez, Tabaré, 38-39, 54 n66

VAWW-Net Japan (Violence against Women

in War Network, Japan), 299, 322 n56

284 n111



388

Index

Veçoso, Fabia F. Carvalho, 2, 4, 6-7, see also Brazil; Inter-American Court of Human Rights Velásquez-Rodríguez v. Honduras AI on, 23 IACtHR decision, 22-23 as IACtHR precedent on amnesties, 28-29, 54 n56 women's human rights movement Vencap, ITT v., 263-264, 267 victims anti-impunity imagination and, 10-12 of apartheid, living with perpetrators, 225–226 changing perspectives of, 204-205 criminal prosecutions and, 93 n51 definition by South Africa's TRC of, 342-343 economic reparations and, 46 historic bridge in AZAPO decision and, 129 IACtHR on access to justice for, 204 ICC's appeal to interests of, 85-87 negotiating with FARC on rights of, 232 suits in ECtHR by, 57 n102 testimonies of, people's law tribunals and, trading places with perpetrators, 352-353 Victims' and Land Restitution Law, Colombia, 243 n22 victims' iustice as justification for criminal prosecutions, 71 Mamdani on survivors' justice versus, 11-12, 351 Nuremberg as basis for, 331 Nuremberg trials and, 332, 333-334 victor's justice ICTR, gacaca courts, and accusations of, 166 international criminal tribunals and, 150-160 Nuremberg trials as model for, 332 Rwanda's gacaca courts and, 158-159 victims' justice and, 351 Vidal, Claudine, 183 n131 Vienna Declaration and Program of Action, 24, 25, 28, 40, 54 n55, 62 n146 Vienna World Conference on Human

Russell Tribunal on US criminal actions in, 292, 294–295, 296–303, 318 n6 US atrocities during, 111 US atrocities during war on terror versus, 65 n181 Vilela, Teotônio, 196 violence British colonial, war crimes and, 103-104, 118 n51 Colombian guerrilla groups and, 219 Colombian paramilitary forces and, 219-220, 242 n20, 243 n21 Colombia's Constitutional Court on Article 127 and, 227–228 cycle of, naming and shaming and, 352-353 displacements in Colombia and, 243 n23 global governance and imagination and regulation of, 111-112 international norms representing, 259 Nuremberg trials as alternative to, 76-77 ordinary or slow, systemic abuses, global governance and, 97-98, 116 n20 political versus criminal, 330-331, 354 n3 risk of, victims' perspective and, 204-205 against women, World Courts of Women on, 308-309 Vivanco, José Miguel, 236, 251 n113 Vlok, Adriaan, 140 Vyshinski, Andrei, 87 Waldorf, Lars, 157, 164, 166 Waller, Margot, 309–310 war crimes, see also crimes against humanity; genocide Allied, during World War II, 107 Bensouda on prison for perpetrators of, 250 n104 gacaca courts and, 166 human rights history and, 96-101 as Nazi charge at Nuremberg, 332-333 post-World War I trials in Constantinople for, 102-105 trials, as political trials, Shklar on, 72 US, Bass on, 111 ward limitation system, South Africa's, 18-21, 339-340 Washington Consensus, 109-110 Weingold, Auriol, 121 n85 Weiss, Peter, 262-263, 264 Werner, Wouter G., 94 n59, 160 Western Sahara, Permanent People's Tribunal

session on peoples of, 305

Rights, 40

275-276

human rights in US foreign policy and,

Vietnam War



Index 389

White, Richard, 262-263, 264, 265-266, 280 n31 White, Robert, 271 white settlers in South Africa, 339-340 Wilhelm II, Kaiser, 102-103 Williams, George Washington, 333-334, 356 n17 Wilson, Richard, 134-135, 173 Wilson, Woodrow, 118 n53 Wolpe, Harold, 142, 143 Women's Court - Feminist Approach to Justice (Sarajevo), 294 women's human rights movement, 23, 51 n16 Women's International War Crimes Tribunal for the Trial of Japan's Military Sexual Slavery (2000), 298-300 women's tribunals Brussels, 304, 305-308 precursor conferences, 305-306 Tokyo, 298–300, 302–303 Workers Revolutionary Party (PRT), 222 World Bank, 170-171, 238-239, 252 n126, 305 World Conference on Human Rights (UN, 1993), 24 World Court of Women on Poverty in the US, 309

World Courts of Women, 308–310
World Tribunal on Iraq, 298–299, 300–302
World War I, see also Constantinople
land grab after, 104, 118 n54
World War II, see also Nuremberg trials
as aggressive war, 356 n11
crimes against humanity by victors in,333
World Wars, see also Constantinople;
Leipzig war crimes trials;
Nuremberg trials
double standard for military victors and
losers after, 100

Yalta Conference, 355 n7
Young, Iris Marion, 313–314, 316
Young Turks, Armenian genocide and, 102–103
Yugoslavia, former, see also International
Criminal Tribunal for the Former
Yugoslavia
Ugrešić on conflict in, 174
Women's Court, 294

Zeid Ra'ad Al Hussein, 98–99 Zhou en-Lai, 76, 91 n27 Zulu monarchy, 339–340