

INDEX

- ACHPR. *See* African Commission on Human and Peoples' Rights
- ACHR. *See* American Convention on Human Rights
- Ad Hoc Working Group of Experts and special procedures of United Nations Human Rights Council, 246–52
- Additional Protocols to the Geneva Conventions of 1977
- African Commission on Human and Peoples' Rights and, 313–15
- armed conflicts and, 55–56, 61–64
- Chechnya internal violence and, 303–05
- derogation “gap” in, 172–75
- detention and internment protections in, 109–12
- economic, social and cultural rights protections in, 112–15
- European Court of Human Rights rulings and, 300n. 42, 307–11
- fundamental standards of humanity and, 64–68
- governance of internal conflicts and, 206–09
- graduated vs. maximum approach to protection and, 117–21
- human rights language in humanitarian provisions of, 68–71
- humanity as grace and right and, 77–80
- ICRC “fundamental guarantees” and, 71–76
- individual complaints and, 183–85, 333–34
- International Humanitarian Fact-Finding Commission under, 259–61, 317–18
- Jose Alexis Fuentes Guerrero and others v. Colombia* and, 283
- Kurdish internal conflicts cases and, 298–302, 300n. 42
- Louzidou v. Turkey* case and, 296–97
- monitoring and observance of armed conflict and, 318–20
- non-state actors' legal obligations in, 210–13
- occupation law and, 222–24
- proportionality principle and, 137–39
- reframing of rights and obligations in, 176–83
- remedy and compensation in human rights/ humanitarian law and, 334–36
- Serrano-Cruz Sisters v. El Salvador* and, 291–93
- Turkish failure to ratify, 298–302
- UN Human Rights Council and, 241–43, 244–46
- use of force provisions in, 131–36
- Advisory Opinion on Nuclear Weapons (ICJ)
- complementarity principle and, 106–08
- derogation “gap” and, 170n. 9, 172–75
- Inter-American Court of Human Rights and, 288–90
- Inter-American Human Rights Commission and, 272–73
- lex specialis* principle and, 89–93
- Martens Clause and, 32n. 53, 32, 33–35
- right to life in, 131–36
- “special” vs. “general” distinctions concerning, 95–99
- Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (ICJ)
- complementarity advocacy in, 105–08
- extra-territoriality of human rights and, 146–52
- “gap” in derogation and, 170n. 9
- lex specialis* principle and, 89–93, 101–03
- remedy and compensation issues in, 334–36
- Afghanistan
- drone attacks in, 250–52
- extra-territoriality of human rights and, 146–52
- law enforcement vs. military operations in, 199–201
- special procedures of United Nations Human Rights Council in, 247
- transnational conflicts and military action in, 197–99
- Africa
- colonial uprisings in, 29
- early laws of war in, 11–14
- transnational conflicts in, 199–201
- African Charter on Human and Peoples' Rights, 312–15
- African Charter on the Rights and Welfare of the Child, 68–71
- African Commission on Human and Peoples' Rights (ACHPR), 7, 89, 117–21
- absence of derogation law in, 172–75
- enforcement of human rights and, 239–40

- African Commission (cont.)
 future issues in human rights/humanitarian law
 dichotomy and, 347–48
 humanitarian/human rights law dichotomy and,
 312–15, 330–33
 right to life principles and, 131–36, 132n. 9
Ahmet Özkan and others v. Turkey, 301–02
Akdivar and others v. Turkey, 301–02
Akhmadov and others v. Russia, 307
Akpar and Altun v. Turkey, 325–26
Al-Qaida, 197–99
Aldrich, George, 61
Alston, Philip, 250–52
American Civil War, 26–27
American Convention on Human Rights (ACHR),
 117–21
 Arturo Ribón Avilán v. Colombia and, 273–75
 Bámaca Velásquez v. Guatemala and, 290–94
 Coard and others v. United States and, 284–88
 derogation provisions in, 169–70
 Ecuador v. Colombia and, 285–86
 Ellacuría and others v. El Salvador and, 283–84
 executions, extra-judicial, summary or arbitrary,
 283–84
 Hugo Bustios Saavedra v. Peru and, 276–78
 human rights law interpretations and, 282–88
 humanitarian law violations in armed conflicts and,
 272, 278–80
 humanitarian norms before human rights bodies
 and, 330–33
 Inter-American Commission on Human Rights and,
 271n. 1
 Inter-American Court of Human Rights and, 288–90
 Juan Carlos Abella v. Argentina and, 272–73, 276–78
 jurisdiction provisions and, 152–56
 non-derogable rights under, 172–75
 Other Treaties case and, 273, 280–82
 Prada Gonzalez and others v. Colombia, 284
 right to life principles and, 131–36, 132n. 9
 Riofrio Massacre case and, 284
 Serrano-Cruz Sisters v. El Salvador and, 291–93
American Declaration of the Rights and Duties of Man,
 272
 Guantánamo Bay detainees and, 286–88
 Inter-American Commission on Human Rights and,
 271n. 1
American Society of International Law, Geneva
 Conventions of 1949 and, 47–48
Amnesty International, activism for political prisoners
 by, 52–58
antipersonnel mines
 human security concept and, 235–37
 Martens Clause and, 33–35
 UN Special Rapporteur in Afghanistan and, 247
anti-slavery movement, human rights law and, 35–37
Anti-Slavery Society, 35–37
arbitrary executions. *See* executions, extra-judicial,
 summary or arbitrary
Argentina, *Juan Carlos Abella v. Argentina* and,
 272–73, 276–78
Aristotle, 15
Armando Alejandra, Jr. and others v. Cuba, 157–58
armed conflict. (*See also* internal conflict; law of armed
 conflict)
African Commission on Human and Peoples’ Rights
 and, 312–15
challenges and potential of human rights bodies in,
 336–39
complementarity of protection in, 105–08
consensus on characteristics of, 56–58
derogation law and, 169–70
duty to investigate and “right to truth” concerning,
 325–26
economic, social and cultural rights protections in,
 112–15
enforcement of human rights during, 239–40
European Court of Human Rights and, 295–311
extra-state armed conflict, 141–43, 144–45
extra-territoriality and, 144–45, 156–65
fundamental standards of humanity and civilian
 protections during, 64–68
future issues in human rights/humanitarian law
 dichotomy and, 340–50
“gap” in derogation and, 172–75
graduated vs. maximum approach to protection and,
 117–21
“Hague” vs. “Geneva” law and, 5, 52–58
historical context of human rights and, 9–10
human rights and, 1–6, 7, 52–80, 83–104
human security and, 235–37
humanitarian law and, 44–46, 85–87
humanity in international law and human rights in,
 232–35
ICJ rulings concerning, 89–93
ICRC “fundamental guarantees” and, 71–76
importance of legal proceedings and, 327–30
individual in humanitarian law and, 183–85
indivisibility of human rights during, 115–17
Inter-American Commission on Human Rights and,
 271–82, 284–88
international vs. non-international dichotomy in,
 191–92
jus in bello and human rights during, 124–27
lack of humanitarian law enforcement during,
 316–20
law enforcement vs. military operations in,
 199–201
lex specialis applicability in, 103–04
monitoring of human rights bodies in, 320–22
operationalization of human rights in, 186–90
proportionality and threshold of, 136–39
ratione temporis and, 129–30

- reframing of rights and obligations in, 176–83
- remedy and compensation issues in, 334–36
- restrictions on children’s participation in, 68–71
- right to life in, 131n. 4–132n. 4, 131–36
- as risk management, 193–95
- risks vs. rights burden in, 189–90
- special procedures of United Nations Human Rights Council and, 246–52
- “special” vs. “general” distinctions concerning *lex specialis* in context of, 95–99
- as state of emergency, 171–72
- UN Committee on the Rights of the Child monitoring in, 265–68
- UN human rights treaty bodies and, 262–70
- United Nations Charter omission of law concerning, 40–41
- United Nations High Commissioner for Human Rights monitoring of, 259–61
- United Nations Human Rights Council monitoring of, 241–58
- United States exclusivist position concerning human rights in, 93–95
- war as trauma and crime and, 38–40
- World Conference on Human Rights (1968) and, 52–58
- Articles of War (1688), 16–17
- Arturo Ribón Avilán v. Colombia*, 272–75, 278–80, 327–30
- Asia, early laws of war in, 11–14
- Atlantic Charter (1941), 42–43
- Augustine of Hippo, 15
- Australia, and extra-territoriality of human rights, 146–52
- Austria, and ICCPR extra-territoriality of human rights, 146–52
- Avenir* Statement (ICRC), 72
- balloon warfare, codification of laws concerning, 29
- Bámaca Velásquez v. Guatemala*, 290–94
- Banković and others v. Belgium and 16 Other Contracting States*
 - European Court of Human Rights and, 297n. 15, 297
 - extra-territorial jurisdiction and, 158–60, 162–65, 166–67
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 70–71, 334–36
- Behrami* case, 161, 168, 297–98
- Belgium, and extra-territoriality of human rights, 146–52, 158–60
- Belli, Pierino, 17
- belligerency principle
 - governance of internal conflicts and, 206–09
 - non-state actors’ legal obligations, 210–13
- Benvenisti, Eyal, 222–24
- Best, Geoffrey, 84
- bi-directionality, in *lex specialis*, 101–03
- Bitiyeva and X v. Russia*, 306–07
- Bluntschli, Johann Caspar, 26–27, 27n. 23
- Bonello, Justice, 164–65
- Bosnia-Herzegovina, extra-territoriality of human rights and violence in, 146–52
- Bowring, Bill, 84
- Brazil, *favela* clearing in, 199–201
- Britain. *See* United Kingdom
- Brussels Project, 28–31
- Buddhism, rules of warfare in, 11–14
- Burundi
 - African Commission on Human and Peoples’ Rights and, 313–15
 - special procedures of United Nations Human Rights Council and, 247, 252
- Bush, George W., 197–99
- Cançado Trindade, Judge, 291–93, 330–33
- capability principle
 - duties of Occupying Powers in occupied territories and, 226
 - extra-territoriality and, 165–68
- Capstone Doctrine, UN Peacekeeping Operations, 201–05
- “capture/kill debate,” humanitarian/human rights law dichotomy and, 139–41
- Cassin, René, 43
- casualties, civilian, 53 (*See also* collateral damage)
- casualties, military. *See* military casualties
- CAT. *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
- CED. *See* Convention for the Protection of All Persons from Enforced Disappearance
- CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), 262–65
- Central African Republic, UN Human Rights Committee and, 262–65, 265n. 22
- CERD. *See* Convention on the Elimination of All Forms of Racial Discrimination
- Chad
 - African Commission on Human and Peoples’ Rights and war in, 312–15
 - UN High Commissioner for Human Rights emergency mission in, 259–61
- charity
 - humanity as grace and right and, 77–80
 - inter arma caritas* principle and, 35–37
 - proportionality principle and, 137–39
- Chechnya
 - European Court of Human Rights proceedings in, 84, 136–39, 309n. 131, 327–30
 - internal violence in, 302–07, 303n. 61

- children's rights. (*See also* Convention on the Rights of the Child; United Nations Committee on the Rights of the Child)
- human rights/humanitarian law dichotomy, 68–71
- individual in humanitarian law and, 183–85
- indivisibility with human rights, 115–17
- monitoring of humanitarian law violations and, 318–20
- non-state actors' obligations concerning, 213–19
- Chile, Inter-American Commission on Human Rights and, 271–72
- China, People's Republic of (PRC), and Korean War prisoners, 40–41
- chivalry
- humanity as grace and right and, 77–80
- jus militare* and, 16–18
- medieval sources of humanitarian law and, 13
- self-interest in practices of, 14–16
- Christianity
- “double effect” doctrine and, 131–36
- humanitarian law and, 176–83
- humanity as grace and right and, 77–80
- laws of war and, 20–21
- medieval sources of humanitarian law and, 11–14
- citizenship, human rights law and concepts of, 21–23
- civil rights
- complementarity and, 109–12
- derogation law and, 169–70
- duties of Occupying Powers in occupied territories and, 227
- civil society
- armed conflict and role of, 76–77
- Kurdish internal conflicts cases and, 299–301
- civil warfare. *See* internal conflicts
- civilian populations
- Additional Protocols of 1977 and protection for, 61–64, 63n. 84
- casualties in war for, 53
- Chechnya internal violence and, 303–05
- early laws concerning protection of, 11–14
- economic, social and cultural rights protections in, 112–15
- fundamental standards of humanity and protection of, 64–68
- Geneva Convention IV for protection of, 49–50
- graduated vs. maximum approach to protection of, 117–21
- Hague Conference provisions concerning, 28–31
- human security concept and, 235–37
- ICRC “fundamental guarantees” principle and, 71–76
- individual in humanitarian law and protection of, 183–85
- inter arma caritas* principle and, 35–37
- Martens Clause concerning, 31–35
- military codes concerning protection of, 17
- non-state actors' legal obligations towards protection of, 213–19
- participation in war by, 195–97, 346
- peace-keeping military operations and, 201–05
- pragmatic ideology and protection of, 14–16
- proportionality principle and, 137–39
- right to protection for, Geneva Conventions of 1949 and language of, 48
- Second World War and targeting of, 39–40
- UN Human Rights Council monitoring of armed conflict and protection of, 241–43
- UN Resolutions concerning protection of, 57–58
- use of force and protection of, 131–36
- civilization, laws of war and concept of, 30–31
- class structure
- humanitarian law and, 176–83
- medieval sources of humanitarian law and, 13
- self-interest in human rights law and, 14–16
- Clausewitz, Carl von, 22–23
- Cluster Munitions Convention, 70
- CMW (Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), 152–56, 262–65
- Coalition Provisional Authority (CPA), 228–31
- Coard and others v. United States*, 157, 284–88
- Codes of Articles and Military Laws (Sweden), 16–17
- Coker, Christopher, 194
- Cold War era
- humanitarian law and, 64n. 97
- ICRC activities during, 53n. 7
- war as risk management during, 193–95, 194n. 11
- collateral damage
- human security concept and, 235–37
- individual in humanitarian law and, 183–85
- law of nations and concept of, 19
- proportionality and, 131–36, 137
- Colombia
- Arturo Ribón Avilán v. Colombia*, 272–75
- Ecuador v. Colombia* and, 285–86
- Inter-American Commission on Human Rights proceedings in, 286–88, 327–30
- Jose Alexis Fuentes Guerrero and others v. Colombia*, 283
- Las Palmeras v. Colombia* and, 288–90
- Mapiripán Massacre* case in, 292–93
- Matter of the Indigenous Community of Kankuamo* case and, 293–94
- Office of the High Commissioner for Human Rights and, 259–61
- Prada Gonzalez and others v. Colombia*, 284
- Pueblo Bello Massacre* case in, 293
- Riofrio Massacre* case and, 284
- UN Human Rights Committee and, 262–65
- UN Human Rights Special Rapporteurs on executions and torture in, 252

- United Nations Human Rights Committee case involving, 325–26
- Colombian Revolutionary Armed Forces in Ecuador (FARC), 285–86
- colonialism
 - Additional Protocols of 1977 and, 61–64
 - African independence uprisings and, 29
 - preservation vs. transformation of occupied territories and, 228–31
- combatant status
 - “capture/kill debate” and, 139–41
 - unified use-of-force regime and, 141–43
- Commentaries to the Geneva Conventions (1952), 181–82
- Committee of Independent Experts in International Humanitarian and Human Rights Law, creation of, 253–55
- Committee on Economic, Social and Cultural Rights, 112–15, 152–56
- common interest principle
 - humanity in international law and, 232–35
 - medieval human rights law and, 14–16
 - reframing of rights and obligations and, 181–82
- Communist Party of Nepal (Maoists; CPN(M)), 213–19
- compensation, in human rights/humanitarian law, 334–36
- complementarity of human rights/humanitarian law
 - authorized use of force and, 131–36
 - civil and political rights and, 109–12
 - in economic, social and cultural rights protection, 112–15
 - future issues in human rights/humanitarian law dichotomy and, 341
 - graduated vs. maximum approach and, 117–21
 - ICJ rulings and, 89–91
 - indivisibility of human rights and, 115–17
 - interpretation and cumulative application, 108–17
 - jus in bello* doctrine and, 124–27
 - in *lex specialis* applicability, 103–04
 - maximization of protection and, 105–21
 - norm conflict vs. norm interpretation and, 100–01
 - operationalization of human rights law and, 186–90
 - overview of, 81–82, 84
 - proportionality and, 136–39
 - reframing of rights and obligations and, 176–83
 - systematic coherence and, 108–09
 - UN Human Rights Council monitoring of armed conflict and, 241–43
 - unified use-of-force regime and, 141–43
 - war as risk management and, 193–95
- “conduct of hostilities” model, duties of Occupying Powers in occupied territories and, 224–28
- Conference of Government Experts on the Reaffirmation and Development of Humanitarian Law Applicable to Armed Conflicts, 59–61
- Congo. *See* Democratic Republic of Congo
- Congress of Vienna (1815), 24–26
- conscience, freedom, as non-derogable right, 172–75
- “conscience of nations” principle, Martens Clause and, 33–35
- Conseil de guerre de Bruxelles, Martens Clause and, 33–35
- constitutionalization in international law, 232–35
- contracts
 - laws of war and role of, 14–16
 - non-derogable rights and, 172–75
- contractualist theory, law of nations and, 19n. 57, 19
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), 109–12
- extra-territorial jurisdiction in, 152–56
- ICCPR extra-territoriality of human rights and, 146–52
- non-derogable nature of prohibitions under, 172–75
- UN Committee Against Torture and, 262–65
- Convention for the Protection of All Persons from Enforced Disappearance (CED), 70–71
- extra-territorial jurisdiction in, 152–56
- United Nations Committee on Enforced Disappearances and, 262–65
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 262–65
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
 - extra-territorial jurisdiction in, 152–56
 - monitoring activities of, 262–65, 268–70
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 152–56, 262–65
- Convention on the Rights of Persons with Disabilities (CRPD), 70, 152–56, 262–65
- Convention on the Rights of the Child (CRC)
 - extra-territoriality in provisions of, 146–52
 - human rights language in humanitarian provisions of, 68–71
 - jurisdiction provisions in, 152–56
 - legal obligations of non-state actors and, 213–19
 - UN Committee on the Rights of the Child and, 262–68
 - Villagrán-Morales v. Guatemala* and, 290
- convergence
 - complementarity and, 106–08
 - future issues in human rights/humanitarian law dichotomy and, 340–41
 - jus in bello* and human rights and, 124–27
- Copenhagen Principles on the Handling of Detainees in International Military Operations, 109–12
- cordon sanitaire* ideology
 - future issues in human rights/humanitarian law dichotomy and, 342–43

- cordon sanitaire* ideology (cont.)
 graduated vs. maximum approach to protection and, 117–21
 operationalization of human rights and, 186–89
 “core” human rights
 complementarity and, 115–17
 Office of the High Commissioner for Human Rights and, 259–61
Corfu Channel case, Martens Clause and, 32–33
 Côte d’Ivoire, UN High Commissioner for Human Rights emergency mission in, 259–61
 Council of Europe, jurisdiction issues and, 152–56
 Council of Narbonne, medieval sources of humanitarian law and, 12–13
 counter-Enlightenment era, laws of war and, 22–23
 counter-insurgency movements
 law enforcement vs. military operations and, 199–201
 non-state actors’ legal obligations and, 210–13
 CPA (Coalition Provisional Authority), 228–31
 CPN(M) (Communist Party of Nepal; Maoists), 213–19
 CPRD (Convention on the Rights of Persons with Disabilities), 70, 152–56, 262–65
 CRC. *See* Convention on the Rights of the Child
 crimes, war. *See* war crimes
 crimes against humanity ideology
 non-derogation and, 172–75
 war crimes and, 39–40
 criminal law
 duty to investigate and “right to truth” and, 325–26
 governance of internal conflicts and, 206–09
 humanitarian considerations in international law and, 232–35, 336–39
 individual complaints procedures and, 327–30
 lack of enforcement of humanitarian law and, 317–18
 law enforcement vs. military operations and, 199–201
 non-derogable rights and, 172–75
 risks vs. rights burden during armed conflict and, 189–90
 war crimes and, 39–40
 Croatia, United Nations Human Rights Committee case involving, 325–26
 Cuba
 Inter-American Commission on Human Rights and, 271–72
 territorial and personal jurisdiction case law and, 157–58
 US detention facilities in, 146–52
 cultural influences, medieval sources of humanitarian law and, 11–14
 cultural rights
 complementarity of protection for, 112–15
 duties of Occupying Powers in occupied territories and, 227
 law enforcement vs. military operations and, 199–201
 laws of war and protection of, 15–16
 UNESCO initiatives for protection of, 52–58
 customary humanitarian law
 exclusivist position of United States and, 94–95
 governance of internal conflicts and, 206–09
 ICRC “fundamental guarantees” principle and, 71–76, 73n. 167
 systematic coherence and complementarity of, 108–09
 cyber-space, warfare in, 195–97
 Cyprus. *See* Northern Cyprus
Cyprus v. Turkey, 158–65, 296–97
 Darfur
 UN fact-finding mission in, 253–55
 UN High Commissioner for Human Rights emergency mission in, 259–61
De Jure Belli ac Pacis Libri Tres (Grotius), 20–21, 55
De Jure Belli Libri Tres, 17
de lege ferenda
 future issues in human rights/humanitarian law dichotomy and, 345–46
 reframing of rights and obligations and, 180–81
 remedy and compensation issues and, 334–36
de lege lata
 future issues in human rights/humanitarian law dichotomy and, 345–46
 reframing of rights and obligations and, 180–81
De Re Militari et Bello Tractatus (*A Treatise on Military Matters and Warfare*), 17
 death penalty
 Geneva Conventions of 1949 prohibition on, for juvenile offenders, 48
 right to life principles and, 131–36
 Déclaration des droits internationaux de l’homme, 39
 Declaration of St. Petersburg (1868), 24–26, 30–31, 38–40, 134n. 19
 Declaration of the Rights of Man and the Citizen (France, 1789), 21–23
 Declaration on Asphyxiating Gases (1899), 38–40
 defeat, concepts of, war as risk management and, 193–95
 Democratic Republic of Congo
 African Commission on Human and Peoples’ Rights and, 313–15, 314n. 16–315n. 17
 legal obligations of non-state actors in, 213–19
 peace-keeping military operations in, 201–05
 special procedures of United Nations Human Rights Council and, 247
 UN fact-finding mission in, 253–55
 United Nations Human Rights Committee case involving, 325–26
Democratic Republic of Congo v. Republics of Burundi, Rwanda and Uganda, 313–15

- Democratic Republic of Congo v. Uganda*
 extra-territoriality of human rights and, 146–52
lex specialis principle in, 89, 92–93
 occupation law and, 222–24
 territorial and personal jurisdiction issues and, 156–65
 deportation and non-derogation, 172–75
 derogation
 absence in ICESCR of, 152–56
 ECHR provision on, 131–36
 European Convention on Human Rights language concerning war and, 295n. 4–295n. 1
 future issues in human rights/humanitarian law dichotomy and, 345
 “gap” in, 49–50, 67–68, 172–75
 in Geneva Conventions, 49–50
 idea and law of, 169–70
 limits of, 172–75
 US view of, 146–52
 war as emergency and, 169–75
 detention of civilians. (*See also* prisoners of war)
 in Chechnya internal violence cases, 306–07
 complementarity of protection and, 109–12
 European Court of Human Rights rulings involving, 297–98
 extra-territoriality of human rights and, 146–52
 human rights and humanitarian conventions on, 70–71
 ICRC visits to, 52–58
 non-derogation and, 172–75
 reframing of rights and obligations concerning, 176–83
 special procedures of United Nations Human Rights Council concerning, 247–48
 dewesternization of legal regime, Additional Protocols of 1977 and, 61–64
 dignity. *See* human dignity
 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable to Armed Conflicts of 1974–1977, 61–64
Disabled Peoples’ International v. United States, 272
 disappeared persons
 in Chechnya internal violence cases, 306–07
 European Court of Human Rights rulings involving, 306–09
 human rights and humanitarian conventions on, 70–71
 special procedures of United Nations Human Rights Council concerning, 248
 disarmament, early legal frameworks for, 28–31
 discrimination, incitement to, 172–75 (*See also* non-discrimination principle)
 displaced persons
 asylum supervision, United Nations proposals, 318–20
 ICRC provisions concerning, 75n. 181–175n. 182
 UN Human Rights Council special procedures and, 248
 Doctrine DOCT/63-2006/I (ICRC), 72–73
 domestic law. (*See also* internal conflicts)
 derogation clauses and, 169–70
 extra-territoriality of human rights and, 144–45
 governance of internal conflicts and, 206–09
 legal proceedings in, 327–30
 lex specialis and, 88
 remedy and compensation in human rights/humanitarian law and, 334–36
 Dominican Republic, and Inter-American Commission on Human Rights, 271–72
 “double effect” doctrine, proportionality and, 131–36
 Draft Declaration of Minimum Humanitarian Standards, 65–67
 drone strikes, UN Human Rights Council Special Rapporteurs’ critique of, 250–52
Du contrat social ou principes du droit politique (Rousseau), 21–22
 due process, legal obligations of non-state actors and, 217
 Dugard, John, 253–55
 “dum-dum” bullets, codification of laws concerning, 29
 Dunant, Henri, 35–37, 60n. 59, 112–15
 Dutch Revolt (1568–1648), 14–16
 duty to capture, lawful killing vs., 139–41
 duty to investigate, in human rights/humanitarian law monitoring, 325–26
 duty to protect
 reframing of rights and obligations concerning, 181–82
 risks vs. rights burden during armed conflict and, 189–90
Dzhabrailova v. Russia, 307
 East Timor, and law of occupation, 220–22, 230n. 70
 ECHR. *See* European Convention on Human Rights and Fundamental Freedoms
 economic rights
 complementarity of protection for, 112–15
 duties of Occupying Powers in occupied territories and, 227, 230n. 70
 ECOSOC. *See* United Nations Economic and Social Council (ECOSOC)
 Ecuador
 Ecuador v. Colombia and, 285–86
 Inter-American Commission on Human Rights proceedings in, 327–30
 education, duties of Occupying Powers in occupied territories and role of, 227
 effective warning Protocol, proportionality principle and, 137–39
 Eighty Years’ War (1568–1648), 14–16
 Eisenhower, Dwight D., 194n. 11
 El Salvador
 Inter-American Commission on Human Rights in, 283–84, 286–88

- El Salvador (cont.)
 - non-state actors in, 213, 216
 - Serrano-Cruz Sisters v. El Salvador* and, 291–93
 - special procedures of United Nations Human Rights Council and, 247
- Ellacuria and others v. El Salvador*, 283–84
- emergency situations
 - Chechnya internal violence and claim of, 303–05
 - internal conflicts and, Kurdish cases involving, 298–302
 - United Nations emergency missions and, 259–61
 - war during, 171–72
- “*en bloc*” applications of humanitarian law, “special” vs. “general” distinctions concerning, 95–99
- enforcement issues in human rights/humanitarian law
 - lack of humanitarian law enforcement, 316–20
 - overview of, 239–40
- Engel and others v. The Netherlands*, 307–09
- England. *See* United Kingdom
- Enlightenment
 - humanity as grace and right during, 77–80
 - law of war during, 21–23
- environmental protection
 - Additional Protocols of 1977 provisions concerning, 61–64
 - ICRC provisions concerning, 75n. 181–175n. 182
- equality, humanitarian law and principles, 20–21
- erga omnes* norms, reframing of rights and obligations and, 176–83
- Ergi v. Turkey*, 299–301, 303–05
- Ermacora, Felix, 247
- espace juridique* concept, extra-territorial jurisdiction and, 160, 162–65
- Estamirov and others v. Russia*, 306
- ethics, medieval laws of war and, 13
- Eurocentrism, human rights law and, 6–7
- Europe
 - constant warfare in, 18n. 53
 - early laws of war in, 11–14
 - early modern era, war as public activity in, 16–18
 - human rights law of armed conflict in, 309–11
 - military codes in, 16–18
 - nineteenth century restructuring of, 24–26
 - Revolutionary Wars (1792–1802) in, 22
 - Thirty Years’ War in, 17
- European Commission on Human Rights, 295
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 152–56
- European Court of Human Rights and, 295–96
- European Convention on Human Rights and Fundamental Freedoms (ECHR)
 - capability in extra-territorial jurisdiction and, 166–67
 - Chechnya internal violence cases and, 84, 136n. 41, 136–39, 299–301, 302–07
 - derogation provisions and, 169–70
 - exceptional references to humanitarian law and, 307–09
 - extra-territoriality of human rights and, 145
 - graduate vs. maximum protection approaches and, 117–21
 - human rights law of armed conflict and, 309–11
 - jurisdiction issues and, 152–56
 - jurisprudence on armed conflicts, 74–75
 - jus in bello* doctrine and, 7
 - Kurdish cases and, 298–302
 - lex specialis* principle and, 89
 - non-derogable rights and, 172–75
 - Optional Protocol on property rights, 301–02
 - protection of displaced or imprisoned persons under, 109–12
 - right to life principles and, 131–36
 - territorial and personal jurisdiction case law and, 158–65
 - war in language of, 295n. 4–295n. 1, 295–96
- European Court of Human Rights
 - benchmarks for law enforcement and military operations and, 186–89
 - Chechnya internal violence and, 302–07, 309n. 131
 - duty to investigate and “right to truth” in rulings of, 325–26
 - enforcement of human rights and, 239–40
 - exceptional references to humanitarian law and, 307–09, 309n. 131
 - expertise of members on, 336–39
 - future issues in human rights/humanitarian law dichotomy and, 347–48
 - human rights/humanitarian law dichotomy and, 295–311
 - human rights law of armed conflict and, 309–11
 - humanitarian norms before human rights bodies and, 330–33
 - individual complaints procedures and, 327–30
 - Kurdish internal conflicts and, 298–302
 - Louzidou v. Turkey* and, 296–97
 - McCann and others v. United Kingdom* and, 298–302
 - monitoring of armed conflict and, 322
 - remedy and compensation issues and, 334–36
 - risks vs. rights burden during armed conflict and, 189–90
 - war as public emergency in rulings by, 171–72
- European Social Charter, 152–56
- European Union, Guidelines on Promoting Compliance with International Humanitarian Law, 106–08
- exclusivity
 - human rights/humanitarian law dichotomy and, 81–82
- ICCPR extra-territoriality provisions and principle of, 146–52
- lex specialis* doctrine and, 83–104
- operationalization of human rights and, 186–89

- right to life in humanitarian law and, 131–36
 - United States invocation of *lex specialis* and, 93–95
- executions, extra-judicial, summary or arbitrary
 - Ellacuria and others v. El Salvador*, 283–84
 - UN High Commissioner for Human Rights
 - emergency missions involving, 259–61
 - UN Human Rights Council Special Rapporteurs and, 250–52
- expertise in human rights, assessment criteria for, 323n. 41, 336–39
- extradition, extra-territorial jurisdiction and, 152–56
- extra-judicial executions. *See* executions, extra-judicial, summary or arbitrary
- extra-territoriality
 - capability approach to, 165–68
 - duties of Occupying Powers in occupied territories and, 224–28
 - extra-state armed conflict, 141–43
 - governance of internal conflicts and, 206–09
 - human rights applications, 144–68
 - jurisdiction in human rights treaties and, 152–56
 - legal application in human rights law of, 146–65
 - limits of human rights law and, 7
 - operationalization of human rights law and, 186–90
 - territorial and personal jurisdiction case law and, 156–65
 - transnational conflicts and, 198
 - United States exclusivist position concerning human rights and, 93–95
- fact-finding missions, UN Human Rights Council
 - establishment of, 253–55
 - future issues in human rights/humanitarian law
 - dichotomy and, 347–48
 - monitoring of armed conflict using, 320–22
 - monitoring of human rights/humanitarian law and, 322–25
 - non-state actors and, 336–39
- fair trial guarantees, reframing of rights and obligations concerning, 176–83
- fairness principles
 - complementarity and, 109–12
 - medieval laws of war and, 13
- Falklands Conflict, 171–72
- family, rights of, as non-derogable right, 172–75
- FARC (Colombian Revolutionary Armed Forces in Ecuador), 285–86
- Ferdinand of Hungary, 16–17
- feudal social order, medieval sources of humanitarian law and, 13
- First World War (1914–1918), war as trauma and crime in, 38–40
- FMLN (Frente Farabundo Martí para la Liberación Nacional), 213
- food, right to, 112–15
- force, use of
 - in Chechnya internal violence cases, 307
 - duties of Occupying Powers in occupied territories and, 224–28
 - future issues in human rights/humanitarian law
 - dichotomy and, 344
 - governance of internal conflicts and, 206–09
 - human security concept and, 235–37
 - humanity as grace and right and, 77–80
 - ICRC restraints on, 75
 - law of occupation and, 220–22
 - lawful killing vs. duty to capture, 139–41
 - military necessity and authorization of, 131–36
 - peace-keeping military operations and, 201–05
 - ratione materiae* and, 129–30
 - UN Human Rights Council Special Rapporteurs on
 - excessive force, 250–52
 - unified regime for, 141–43
- forum shopping, regionalization of humanitarian norms and, 336–39
- fragmentation of international law
 - graduated vs. maximum approach to protection and, 117–21
 - lex specialis* doctrine and, 87–89
 - norm conflict vs. norm interpretation and, 99–101
 - research concerning, 81–82
 - special regimes and, 85–87
- France
 - Declaration of the Rights of Man and the Citizen (1789), 21–23
 - human rights vs. humanitarian law debate and, 57–58
 - ICCPR extra-territoriality of human rights and, 146–52
 - military operations in Mali by, 198–99
- French Revolution, 22
- Frente Farabundo Martí para la Liberación Nacional (FMLN), 213, 216
- fulfil, obligation to, human rights/humanitarian law
 - dichotomy and, 181–82
- functional universality, extra-territoriality and, 165–68
- “fundamental guarantees” principle
 - derogation law and, 169–70
 - ICRC and, 71–76
 - systematic coherence and complementarity and, 108–09
- gas warfare
 - codification of laws concerning, 29
 - in First World War, 38–40
- Gaza Conflict
 - UN fact-finding mission on, 253–55, 322–25
 - UN Human Rights Committee monitoring of, 262–65
- Geneva Call initiative, 216–17
- Geneva Convention IV
 - Article 9 provisions, 56–58

- Geneva Convention IV (cont.)
 Article 11 provisions, 56–58
 civilian protection provisions of, 49–50
Coard and others v. United States and, 284–88
 human rights language in humanitarian provisions of, 68–71
 individual complaints procedures and, 327–30
 law of occupation and, 220–22
 preservation vs. transformation of occupied territories and, 228–31, 230n. 70
 reframing of rights and obligations in, 176–83
 UN Committee on the Rights of the Child and, 265–68
- Geneva Convention of 1864, 35–37
- Geneva Convention of 1906, 35–37, 112–15
- Geneva Convention of 1929, 35–37, 38–40, 112–15
- Geneva Conventions, Commentaries to (1952), 181–82
- Geneva Conventions of 1949. (*See also* Additional Protocols to the Geneva Conventions of 1977)
- African Commission on Human and Peoples' Rights and, 313–15
- Article 3 provisions, 49, 298–302, 330–33
- Article 8 provisions, 56–58
- Article 10 provisions, 56–58
- Article 88 provisions (Geneva Convention III), 307–09
- Arturo Ribón Avilán v. Colombia* and, 273–75
- Bámaca Velásquez v. Guatemala* and, 290–94
- Chechnya internal violence and, 303–05
- civil and political rights and, 109–12
- Coard and others v. United States* and, 284–88
- Cyprus v. Turkey* and, 296–97
- detention and internment protections in, 109–12
- Ellacuría and others v. El Salvador* and, 283–84
- European human rights law of armed conflict and, 309–11
- fundamental standards of humanity and, 64–68
- governance of internal conflicts and, 206–09
- Guantánamo Bay detainees and, 286–88
- High International Committee for monitoring of, 318–20
- Hugo Bustios Saavedra v. Peru* and, 276–78
- human rights law and, 6–7, 46–51
- humanity as grace and right and, 77–80
- individual complaints procedures and, 183–85, 327–30
- indivisibility of human rights and, 115–17
- Inter-American Commission on Human Rights and, 271–72
- international expansion of humanitarian law and, 44–46
- international vs. non-international dichotomy in armed conflicts and, 191n. 1, 191–92
- Jose Alexis Fuentes Guerrero and others v. Colombia* and, 283
- Juan Carlos Abella v. Argentina* and, 276–78
- Kurdish internal conflicts cases and, 298–302
- lack of humanitarian law enforcement and, 316–20
- law of armed conflict and, 44–46
- legal proceedings in, 327–30
- Martens Clause and, 33–35
- medical experiment prohibitions in, 109–12
- non-state actors' legal obligations and, 210–13
- occupation law and, 222–24
- Other Treaties* case and, 280–82
- Prada Gonzalez and others v. Colombia*, 284
- procedural reform of individual complaints procedures and, 333–34
- reframing of rights and obligations in, 176–83
- “special” and “general” bi-directionality in, 101–03
- UN Committee on the Rights of the Child and, 265–68
- UN Human Rights Council monitoring of armed conflict and, 241–43, 244
- War on Terror and, 262–65
- “Geneva” law concept
- Additional Protocols of 1977 and, 61–64
- armed conflict and, 5, 52–58
- human rights/humanitarian law dichotomy and, 340
- jus in bello* in human rights and, 124–27
- “Geneva” mandate, lack of humanitarian law enforcement and, 316–20
- Geneva Protocol on Gas and Bacteriological Warfare (1925), Martens Clause and, 33–35
- genocide
- extra-territorial jurisdiction and, 146–52
- Inter-American Court of Human Rights rulings on, 288–94
- Gentili, Alberico, 17
- genus/species* integrated model of human rights/humanitarian law, 122–24
- Germany, ICCPR extra-territoriality provisions and, 146–52
- Gibraltar, *McCann and others v. United Kingdom* and, 298–302
- graduated protection of human rights
- future issues in human rights/humanitarian law dichotomy and, 342–43
- proportionality principle and, 136–39
- Great Britain. *See* United Kingdom
- Great War (1914–1918), war as trauma and crime in, 38–40
- Greek history, early laws of war in, 11–14
- Grenada, US occupation of, 157, 272, 284–88
- Gross, Oren, 171–72
- Grotius, Hugo, 20–21, 44, 55, 88
- Guantánamo Bay detainees
- ICCPR extra-territoriality of human rights and, 146–52
- Inter-American Commission on Human Rights and, 286–88

- special procedures of United Nations Human Rights Council concerning, 247–48
- United States exclusivist position concerning, 93–95
- Guatemala
 - Bámaca Velásquez v. Guatemala* and, 290–94
 - Plan de Sánchez* case in, 293
 - Villagrán-Morales v. Guatemala* and, 290
- Guiding Principles on Internal Displacement, 71
- Güleç v. Turkey*, 300–01, 302–03
- Gulf War of 1990–1991, 171–72, 176–83
- Gustave Adolphus of Sweden, 16–17
- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), 52–58, 112–15, 322–25
- Hague Court of Appeals, remedy and compensation issues and, 334–36
- “Hague” law concept, 28–31
 - Additional Protocols of 1977 and, 61–64
 - armed conflict and, 5, 52–58
 - human rights/humanitarian law dichotomy and, 340
 - jus in bello* in human rights and, 124–27
- Hague Peace Convention II of 1899, 28–31, 39
 - indivisibility of human rights and, 115–17
 - law of occupation and, 220–22
 - Martens Clause and, 31–35
 - terminology of war in, 44
- Hague Peace Convention IV of 1907, 28–31, 39
 - European Court of Human Rights rulings and, 297–98, 307–09
 - indivisibility of human rights and, 115–17
 - law of occupation and, 220–22
 - Martens Clause and, 31–35
 - preservation vs. transformation in occupied territories and, 228–31
 - terminology of war in, 44
- Hague Rules on Air Warfare (1924), 38–40, 131–36
- Hamdan v. Rumsfeld*, 262–65
- Hanseatic League, medieval sources of humanitarian law and, 13
- Hezbollah, legal obligations of non-state actors and operations of, 213–19
- High-Level Fact-Finding Mission to Beit Hanoun, 253–55
- HIV infection, and African Commission on Human and Peoples’ Rights, 313–15
- Hobbes, Thomas, 19
- Holocaust, international humanitarian law and impact of, 39–40
- Holy See, and Geneva Conventions of 1949 49–50
- honour
 - inter arma caritas* principle and, 35–37
 - proportionality principle and, 137–39
- hors de combat* principle
 - Hague Conference provisions concerning, 29–30
 - ICRC “fundamental guarantees” and, 71–76
- individual in humanitarian law and, 183–85
- Inter-American Commission on Human Rights and, 278–80
 - inter arma caritas* principle and, 35–37
 - law of armed conflict and, 44–46
 - unified use-of-force regime and, 141–43
- Universal Declaration of Human Rights and, 43
 - use of force and, 131–36
- “hot conflict” terminology, unified use of force regime and, 141–43
- housing rights, UN Human Rights Council Special Rapporteurs and, 248
- Hugo Bustios Saavedra v. Peru*, 272–73, 276–78, 327–30
- Human Development Programme (UN Development Programme), 235–37
- human dignity
 - absence of in Hague Peace Conference principles, 28–31
 - as founding international law principle, 19–20
 - humanitarian considerations in international law and, 232–35
 - humanitarian law and, 20–21
 - humanity as grace and right and, 77–80
 - ICRC promotion of value of, 59–61
 - medieval sources of law of war and, 14
 - self-interest and justice in laws of war and, 14–16
 - in Universal Declaration of Human Rights, 42–43
- Human Rights Committee. *See* United Nations Human Rights Committee
- Human Rights in Armed Conflict (Resolution No. XXIII), 52–58
- human rights law
 - absence of derogation in, 174n. 32
 - Additional Protocols of 1977 impact on, 61–64
 - African Commission on Human and Peoples’ Rights and, 312–15
 - armed conflict and, 1–6, 7, 52–80
 - bi-directionality with humanitarian law and, 101–03
 - “capture/kill debate” and, 139–41
 - challenges to commonalities with humanitarian law, 129–30
 - Chechnya internal violence and, 302–07
 - civil and political rights and, 109–12
 - complementarity with humanitarian law, 105–21
 - derogation conditions in, 169–70
 - duties of Occupying Powers in, 224–28
 - duty to investigation and “right to truth” in, 325–26
 - dynamics of war and, 191–92
 - early origins of, 11–14
 - economic, social and cultural rights protection in, 112–15
 - enforcement issues in, 239–40
 - in Enlightenment era, 21–23
 - European Court of Human Rights and, 295–311
 - European human rights law of armed conflict, 309–11

- human rights law (cont.)
 - exclusivity, complementarity and integration and, 7, 81–82
 - extra-territorial application of, 144–68
 - fundamental standards of humanity and, 64–68
 - future issues and research on, 340–50
 - Geneva Conventions of 1949 and, 46–51
 - graduated vs. maximum approach and, 117–21
 - Hague Conferences and evolution of, 28–31
 - historical context in armed conflict of, 9–10
 - human rights bodies in armed conflict and, 336–39
 - humanitarian law in documents relating to, 68–71
 - humanitarian norms before human rights bodies, 330–33
 - humanity as grace and right and, 77–80
 - humanization in, 232–35
 - ICRC “fundamental guarantees” principle and, 71–76
 - ICRC role in development of, 59–61
 - ICRC scepticism concerning, 52–58
 - importance of legal proceedings in, 327–30
 - individual complaints and litigation in, 183–85, 327–34
 - integration with humanitarian law, 122–27
 - Inter-American Commission on Human Rights
 - interpretations of, 282–88
 - internal conflicts and, 206–09
 - jus in bello* and, 124–27
 - lack of enforcement in, 349
 - lack of humanitarian law enforcement and, 316–20
 - law enforcement vs. military operations in, 199–201
 - law of war and, 40–41
 - Lieber Code and, 26–27
 - limitations of *lex specialis* concerning, 95–104
 - Martens Clause and, 31–35
 - medical experiment prohibitions and, 109–12
 - medieval codification of, 14–16
 - monitoring in armed conflict of, 320–22
 - monitoring of, 322–25
 - non-state actors’ legal obligations in, 210–13
 - non-governmental organizations and, 76–77
 - occupation law and, 222–24
 - in occupied territories, 220–31
 - operationalization in armed conflict of, 186–90
 - peace-keeping military operations and, 201–05
 - policy choices and, 1–6
 - political and legal framework for, 6–7
 - preservation vs. transformation of occupied territories and, 228–31
 - procedural reform of individual complaints
 - procedures in, 333–34
 - proportionality and, 136–39
 - reframing of rights and obligations in, 176–83
 - refugee protection and, 52–58
 - remedy and compensation in, 334–36
 - semantics of, 44–46
 - as separate from humanitarian law, 46–51, 52–58, 83–104
 - separate legal regimes concerning, 52–58
 - special procedures of United Nations Human Rights Council and, 246–52
 - as special regime, 85–87
 - torture prohibitions and, 109–12
 - UN Committee on the Rights of the Child and, 265–68
 - UN High Commissioner for Human Rights and, 259–61
 - UN Human Rights Committee and, 262–65
 - UN Human Rights Council monitoring of armed conflict and, 241–43, 244–46
 - UN human rights treaty bodies and, 262–70
 - United States exclusivist position concerning, 93–95
 - Universal Declaration of Human Rights and, 42–43
 - Universal Periodic Review and, 255–58
 - use of force in, 131–36
 - war as risk management and, 193–95
 - war as state of emergency and, 171–72
 - war as trauma and crime and, 38–40
 - World Conference on Human Rights (1968) and, 52–58
- human rights theory
 - individual in humanitarian law and dichotomy with, 183–85
 - indivisibility of, 115–17
 - transformative influence of, 122–27
 - unified use of force regime and, 141–43
 - warrior image and ideology of, 186–89
- Human Rights Watch, 76, 303–05
- human security
 - armed conflict and, 235–37
 - European Court of Human Rights rulings involving, 297–98
- humane treatment, right to
 - Additional Protocols of 1977 provisions for, 61–64
 - in Chechnya internal violence cases, 306
 - as non-derogable right, 172–75
- humanist ideology
 - international humanitarian law and semantics of, 44–46
 - medieval human rights law and, 14–16
- Humanitarian Fact-Finding Commission, 61–64, 322–25
 - future issues in human rights/humanitarian law dichotomy and, 347–48
- “humanitarian intervention” operations, human security and, 235–37
- humanitarian law
 - Additional Protocols of 1977 and, 61–64
 - African Commission on Human and Peoples’ Rights and, 312–15
 - armed conflict and, 1–6, 7
 - bi-directionality with human rights law and, 101–03

- “capture/kill debate” and, 139–41
- challenges to commonalities with human rights law, 129–30
- Chechnya internal violence cases, omission of, 302–07
- civil and political rights and, 109–12
- civil society’s role in drafting of, 76–77
- complementarity with human rights law, 105–21
- counter-Enlightenment rejection of, 22–23
- domestic reach of international covenants and, 49
- duties of Occupying Powers in, 224–28
- duty to investigation and “right to truth” in, 325–26
- economic, social and cultural rights protection in, 112–15
- enforcement issues in, 239–40
- European Court of Human Rights and, 295–311
- European human rights law of armed conflict and, 309–11
- European medieval sources of, 11–14
- exceptional references in European Court of Human Rights to, 307–09
- extra-territoriality of human rights and, 144–68
- future issues and research on, 340–50
- “gap” in derogation and, 172–75
- Geneva Conventions of 1949 and ideology of, 46–51
- governance of internal conflicts and, 206–09
- graduated vs. maximum approach and, 117–21
- Grotius’ founding principles and, 20–21
- historical codification of, 9–10
- human rights bodies in armed conflict and, 336–39
- human security concept and, 235–37
- humanitarian norms before human rights bodies, 330–33
- “humanitarian rights” principle and, 68–71
- humanity as grace and right and, 77–80
- ICRC “fundamental guarantees” concerning, 71–76
- importance of legal proceedings in, 327–30
- individual complaints and litigation in, 183–85, 327–34
- integration with human rights law, 122–27
- Inter-American Commission on Human Rights applications of, 271–82, 286–88
- Inter-American Court of Human Rights and, 288–90
- inter arma caritas* and, 35–37
- international expansion of, 44–46
- Kriegsräson* principle and, 25–26
- Kurdish internal conflicts cases and, 298–302
- lack of enforcement in, 316–20, 349
- limitations of *lex specialis* concerning, 95–104
- litigation and, 316–39
- Martens Clause and, 31–35
- medical experiment prohibitions and, 109–12
- monitoring of, 316–39
- non-state actors’ legal obligations in, 195–97, 210–13
- non-governmental organizations and, 76–77
- norms of human rights and enforcement of, 7
- occupation law and, 222–24
- peace-keeping military operations and, 201–05
- preservation vs. transformation of occupied territories and, 228–31
- procedural reform of individual complaints procedures in, 333–34
- proportionality and, 136–39
- public emergency requirement in derogation and, 171–72
- reframing of rights and obligations in, 176–83
- refugee protection and, 52–58
- remedy and compensation in, 334–36
- science of war and evolution of, 24–26
- special procedures of United Nations Human Rights Council and, 246–52
- as special regime, 85–87
- torture prohibitions and, 109–12
- transnational conflicts and, 197–99
- UN Charter and development of, 40–41
- UN Committee on the Rights of the Child and, 265–68
- UN High Commissioner for Human Rights and, 259–61
- UN Human Rights Committee and, 262–65
- UN Human Rights Council practices and, 241–46
- UN human rights treaty bodies and, 262–70
- unified use of force regime and, 141–43
- United States exclusivist position concerning, 93–95
- Universal Periodic Review and, 255–58, 257n. 106
- use of force in, 131–36
- war as risk management and, 193–95
- war as trauma and crime and, 38–40
- World Conference on Human Rights (1968) and, 52–58
- Humanitarian Law Committee, proposal for, 327–30
- humanity
 - fundamental standards of, 64–68
 - future issues in human rights/humanitarian law dichotomy and, 349–50
 - as grace and as right, 77–80
 - in international law, 232–35, 233n. 11
- humanization in international law, 232–35
- hybrid wars and future issues in human rights/humanitarian law dichotomy, 346 (*See also* transnational terrorism)
- ICC. *See* International Criminal Court
- ICCPR. *See* International Covenant on Civil and Political Rights
- ICESCR. *See* International Covenant on Economic, Social and Cultural Rights
- ICJ. *See* International Court of Justice
- ICRC. *See* International Committee of the Red Cross
- ICTY. *See* International Criminal Tribunal for the Former Yugoslavia

- IGOs (intergovernmental organizations), and
humanitarian law compliance, 56–58
- Ilaşcu and others v. Moldova and Russia*, 160–61,
161n. 111
- ILC. *See* International Law Commission
- Imakayeva v. Russia*, 306–07
- imperialism, preservation vs. transformation of
occupied territories and, 228–31
- inalienable rights, laws of war and principle of, 19–20
- India, early laws of war in, 11–14
- individual rights
in Enlightenment era, 21–23
future issues in human rights/humanitarian law
dichotomy and, 345–46
government responsibility vs., 39
human security and, 235–37
in humanitarian law, 183–85
humanity as grace and right and, 77–80
importance of legal proceedings in, 327–30
in international law, 1–6
procedural reform of individual complaints and,
333–34
ratione personae and, 129–30
reframing of rights and obligations and role of, 176–83
individualization in international law, 183–85, 232–35,
327–34
- Indonesia, armed conflict monitoring in, 269–70
- Institute of International Law, 28–31, 39
- insurgencies
belligerency doctrine and, 210–13
duties of Occupying Powers in occupied territories
and, 224–28
espace juridique principle and, 162–65
Güleç v. Turkey and role of, 300–01
individual rights and, 183–85
law enforcement and, 199–201
risk management in war and role of, 193–95
transnational conflict and, 195–97
Universal Declaration of Human Rights and, 43
- integrated legal regime, of human rights/humanitarian
law, 122–27
- integration, of human rights/humanitarian law,
81–82
- Inter-American Commission on Human Rights, 7
Arturo Ribón Avilán v. Colombia and, 273–75
case law considered by, 272–73
creation of, 271n. 1
enforcement of human rights and, 239–40
expertise of members on, 336–39
extra-territorial jurisdiction and, 156–65
future issues in human rights/humanitarian law
dichotomy and, 347–48
Guantánomo Bay detainees case and, 286–88
Hugo Bustios Saavedra v. Peru and, 276–78
human rights law interpretations by, 282–88, 309–11
humanitarian law applications by, 271–82
humanitarian norms before human rights bodies
and, 330–33
individual complaints procedures and, 327–30
Juan Carlos Abella v. Argentina and, 272–73, 276–78
jurisdiction language in, 152–56
legal proceedings of, 327–30
lex specialis principle and, 89
monitoring of human rights/humanitarian law
violations and, 322–25
United States exclusivist position concerning, 93–95
- Inter-American Convention on Forced Disappearance
of Persons, 152–56
- Inter-American Convention to Prevent and Punish
Torture, 290
Bámaca Velásquez v. Guatemala and, 290–94
- Inter-American Court of Human Rights, 7, 89
cases before, 288–94, 290n. 153
enforcement of human rights and, 239–40
exclusivity argument before, 93–95
future issues in human rights/humanitarian law
dichotomy and, 347–48
individual complaints procedures in, 327–30
monitoring of armed conflict and, 322
Other Treaties case and, 273, 280–82
inter arma caritas principle, International Red Cross
and, 35–37
- inter-state arbitration, Hague Peace Conference
introduction of, 29
- intergovernmental organizations (IGOs), and
humanitarian law compliance, 56–58
- internal conflicts. (*See also* armed conflict)
Additional Protocols of 1977 and, 61–64
African Commission on Human and Peoples' Rights
and, 312–15
changing nature of, 195–97
Chechnya cases involving, 302–07
complementarity of protection and, 109–12
European Court of Human Rights rulings on,
298–302
extra-territoriality of human rights and, 144–45
fundamental standards of humanity and civilian
protections during, 64–68
governance of, 206–19
human rights and, 52–58
ICRC “fundamental guarantees” principle and, 71–76
Inter-American Commission on Human Rights and,
282–88
international vs. non-international dichotomy in,
191–92
Kurdish cases involving, 298–302
non-state actors role in, 210–19
proportionality and threshold of, 136–39
as risk management, 193–95
as state of emergency, 171–72
- International Commission of Jurists, 53–54, 64–65,
317–18

- International Committee of the Red Cross (ICRC)
 Additional Protocols of 1977 and, 61–64, 318–20
 in Cold War period, 53n. 7
 complementarity in human rights/humanitarian law and, 105–08, 341
 Convention on the Rights of the Child and, 68–71
 customary humanitarian law and, 4
Cyprus v. Turkey and, 296–97
 detention and internment protections and, 109–12
 doctrines adopted by, 72–73
 Draft Code of Conduct in the Event of Internal Disturbances and Tensions, 64–65
 duties of Occupying Powers in occupied territories and, 224–28
 duty to investigate and, 325–26
 First World War and, 38–40
 “fundamental guarantees” and, 71–76, 73n. 167
 fundamental standards of humanity and, 64–68
 Geneva Conventions of 1949 and, 49–50
 governance of internal conflicts and, 206–09
 human rights law and role of, 59–61
 humanitarian laws as focus of, 57–58
inter arma caritas principle and, 35–37
 intermediary role of, 84
 Interpretative Guidance on Direct Participation in Hostilities, 75
 law of armed conflict and, 44–46
 law of occupation and, 222–24
 legal proceedings in, 327–30
lex specialis principle and, 89
 limits on right to life and, 131–36
 monitoring of humanitarian law violations and, 318–20
 Protecting Power functions of, 317–18
 remedy and compensation issues and, 334–36
 scepticism concerning human rights of, 52–58, 336–39
Strengthening Legal Protection of Victims of Armed Conflict report, 75
 Tansley Report of 1975 criticism of, 59–61
 transnational conflicts and policies of, 197–99
 UN Human Rights Council support for, 243–46, 247–48
 United Nations collaboration on human rights with, 56–58
 World Conference on Human Rights (1968) and, 52–58
 International Court of Justice (ICJ). (*See also* Advisory Opinion)
 Article 38 of ICC Statute, 330–33
 complementarity of human rights/humanitarian law and, 341
 derogation law and rulings by, 169–70
 extra-territoriality of human rights and, 146–52
 “gap” in derogation and rulings by, 172–75
 “Hague” vs. “Geneva” law and, 5
 Inter-American Human Rights Commission and, 272–73
 law of armed conflict and, 44–46
lex specialis and, 89–93
 Martens Clause and, 32
 occupation law and rulings of, 222–24
 remedy and compensation in human rights/humanitarian law and, 334–36
 right to life principles and, 131–36
 territorial and personal jurisdiction issues and, 156–65
 International Covenant on Civil and Political Rights (ICCPR), 57
 Additional Protocols of 1977 and, 61–64
 Article 6 on nuclear weapons, 89–91
 derogation provisions in, 169–70
 extra-territoriality in provisions of, 146–52, 198
 graduated vs. maximum approach to protection in, 117–21
 judicial guarantees in, 109–12
 limits of derogation in, 172–75
 medical experiment prohibitions in, 109–12
 non-derogable rights and, 172–75
 omission of war and armed conflict in, 171–72
 Optional Protocols to, 152–56, 262–65
 ratification of, 67–68
 right to life language in, 131–36, 132n. 9
 “special” vs. “general” distinctions concerning, 95–99
 United Nations Human Rights Committee and, 250–52, 262–65
 International Covenant on Economic, Social and Cultural Rights (ICESCR), 112–15
 extra-territoriality in provisions of, 146–52
 graduated vs. maximum approach to protection in, 117–21
 jurisdiction in, 152–56
 Optional Protocols to, 262–65
 United Nations Committee on Social, Economic and Cultural Rights and, 262–65
 International Criminal Court (ICC). (*See also* Rome Statute)
 governance of internal conflicts and, 206–09
 lack of enforcement of humanitarian law and, 317–18
 remedy and compensation in, 334–36
 international criminal responsibility, and law enforcement vs. military operations, 199–201 (*See also* criminal law; war crimes)
 International Criminal Tribunal for the Former Yugoslavia (ICTY), 199–201
 governance of internal conflicts and, 207
 internal conflict jurisprudence and, 303n. 61
jus in bello in human rights and, 124–27
 lack of enforcement of humanitarian law and, 317–18

- International Criminal (cont.)
 - legal obligations of non-state actors and, 217
 - Martens Clause and, 32–33
 - UN Human Rights Committee monitoring and, 262–65
- International Declaration concerning the Laws and Customs of War, 28–31
- international human rights institutions. (*See also* treaty bodies)
 - complementarity of humanitarian and human rights law supported by, 105–08
 - lex specialis* principle and, 89
 - monitoring in armed conflict and, 320–22
- International Humanitarian Fact-Finding Commission, 259–61, 317–18
- international humanitarian law. *See* humanitarian law
- International Labour Organisation, 39
- international law. (*See also* fragmentation of international law)
 - armed conflict and, 1–6
 - derogation clauses in, 169–70
 - early laws of war as, 16–18
 - emerging law of nations and, 19–21
 - governance of internal conflicts and, 206–09
 - human rights/humanitarian law dichotomy and, 122–24, 344
 - humanitarian norms before human rights bodies and, 330–33
 - humanity in, 232–35, 233n. 11
 - jurisdiction in, 144–45
 - lex specialis* in, 87–89
 - Martens Clause and, 31–35
 - science of warfare and evolution of, 24–26
 - self-contained regimes in, 83n. 1, 83–85
 - separation of human rights and humanitarianism in, 46–51, 52–58, 81–82
 - special regimes in, 85–87
 - Universal Declaration of Human Rights and role of, 42–43
- International Law Association, 64–65
- International Law Commission (ILC)
 - armed conflict effect on treaties and, 94–95
 - on fragmentation in international law, 81–82, 85–87, 99–101, 282–83
 - human rights law and, 46–47
 - Martens Clause and, 32–33
 - omission of law of war in, 40–41
- International Law Organisation, 228–31
- International Legal Protection of Human Rights in Armed Conflict*, 58
- International Military Tribunal for the Far East (1946–1948)
 - individual criminal responsibility principle and, 39–40
 - Martens Clause and, 32–33
- interned persons, human rights and humanitarian conventions on, 70–71
- internment
 - Coard and others v. United States* and, 284–88
 - complementarity of protection and, 109–12
- Intervention Brigade (UN), 201–05
- IRA (Irish Republican Army), European Court of Human Rights rulings on, 298–302
- Iraq war
 - extra-territoriality of human rights and, 146–52, 162–65
 - Fallujah occupation of 2004 and, 131–36
 - law of occupation and, 220–22
 - organized crime and, 199–201
 - preservation vs. transformation debate concerning, 228–31
 - private military and security contractors in, 217–19
 - state of emergency characterization of, 171–72
 - UN Human Rights Council Special Rapporteurs on excessive use of force in, 250–52
 - United Kingdom occupation during, 297–98
 - war as risk management and, 194
- Irish Republican Army (IRA), European Court of Human Rights rulings on, 298–302
- Isayeva, Yusupova and Bazayeva v. Russia*, 307
- Isayeva v. Russia*, 136n. 41, 136–39, 303–05
- Islam, rules of warfare in, 11–14
- Israel
 - exclusivist position of, 94–95
 - ICCPR extra-territoriality of human rights rejected by, 146–52
 - military operations in Lebanon by, 194n. 12–195n. 12, 213–19
 - objections to occupation law by, 222–24
 - UN Commission on Human Rights monitoring of, 243–46
 - UN Committee on Economic, Social and Cultural Rights observations on, 268–70
 - UN Committee on the Rights of the Child observations in, 265–68
 - UN fact-finding mission on attacks on humanitarian flotilla, 253–55
 - UN Human Rights Committee monitoring of, 262–65
 - UN Human Rights Council Special Rapporteurs and conflict with Lebanon, 249
 - Universal Periodic Review rejected by, 322–25
 - Wall with Occupied Palestinian Territories*, ICJ ruling concerning, 89–93
- Issa v. Turkey* case, 160–61, 297
- Italy, and ICCPR extra-territoriality of human rights, 146–52
- Jahangir, Asma, 250–52
- James II (King of England), 16–17

- Japan, ICCPR extra-territoriality provisions and, 146–52
- Al-Jedda* case, 297–98
- John of Gaunt, 13
- Jose Alexis Fuentes Guerrero and others v. Colombia*, 283
- journalists, protection in armed conflict for, 57–58
- Juan Carlos Abella v. Argentina*, 272–73, 276–78, 278–80, 327–30
- judicial assessment, in legal proceedings on armed conflict, 327–30
- “jump theory,” duties of Occupying Powers in occupied territories and, 226
- juridical personality, right to, 172–75
- jurisdiction. (*See also* personal jurisdiction; territorial jurisdiction)
- case law involving personal and territorial jurisdiction, 156–65
- duties of Occupying Powers in occupied territories and issues of, 224–28
- extra-territoriality of human rights and, 144–45
- future issues in human rights/humanitarian law dichotomy and, 345
- in human rights treaties, 152–56
- in ICCPR provisions, 146–52
- jus ad bellum*
- international humanitarian law and, 44–46
- terminology of, 16n. 36
- jus cogens* principle
- human rights and, 172–75
- humanitarian norms before human rights bodies and, 330–33
- indivisibility of human rights and, 115–17
- Pueblo Bello Massacre* case and, 293
- Serrano-Cruz Sisters v. El Salvador* and, 291–93
- special regimes of human rights and humanitarian law and, 85–87
- jus gentium* concept, 20–21
- jus in bello*
- future issues in human rights/humanitarian law dichotomy and, 343
- human rights-based ideology and, 124–27
- humanity as grace and right and, 79–80
- humanity in international law and, 232–35
- international humanitarian law and, 44–46
- jus ad bellum* and, 16n. 36
- present and future challenges in, 7
- separation of human rights and humanitarian law and, 1–6
- jus militare*, in early modern Europe, 16–18
- jus post bellum*
- future issues in human rights/humanitarian law dichotomy and, 347
- law of occupation and, 220–22
- preservation vs. transformation of occupied territories and, 228–31
- just war theory
- early modern laws of war and, 17–18
- emerging law of nations and, 19–21
- international humanitarian law and, 44
- secularization of, 20–21
- justice
- ICRC avoidance of involvement in, 59–61
- medieval human rights law and, 14–16
- natural law theory and, 16
- juvenile offenders, Geneva Conventions of 1949
- prohibition on death penalty for, 48
- Kant, Immanuel, 44
- Kaya v. Turkey*, 325–26
- Khashiyev and Akayeva v. Russia*, 306
- Khatsiyeva and others v. Russia*, 307
- “kill-when-necessary” policy, debate over, 139–41 (*See also* necessity defence)
- Koh, Harold Hongju, 198
- Kononov v. Latvia*, 307–09
- Korean War (1950–1953)
- civilian casualties in, 53
- UN reaction to, 40–41
- Kosovo, law of occupation and, 220–22, 230n. 70
- Kriegsråson* principle, science of war and evolution of, 25–26
- Kriegsrecht* (laws of war), 44
- Krupp company, 32–33
- Kunz, Josef, 44
- Kurdish internal conflicts, European Court of Human Rights and, 298–302
- Kurdistan Workers Party/Partiya Karkerên Kurdistan (PKK), 160–61, 298–302
- Kuwait occupation, complementarity of protection following, 105–08
- La Tablada* case. *See* *Juan Carlos Abella v. Argentina*
- labour rights
- “gap” in derogation and, 172–75
- indivisibility of human rights and, 115–17
- in interwar period, 39
- land rights
- codification of laws concerning, 28–31
- UN Human Rights Council Special Rapporteurs and, 249
- Las Palmeras v. Colombia*, 288–90
- Latin America, early laws of war in, 11–14
- Latvia, European Court of Human Rights ruling on war crimes in, 307–09
- Lauterpacht, Hersch, 207, 349–50
- law enforcement
- authorized use of force and, 131–36
- Chechnya internal violence and role of, 302–07
- duties of Occupying Powers in occupied territories and, 224–28

- law enforcement (cont.)
 - European Court of Human Rights rulings and, 300–01
 - extra-territoriality of human rights and, 144–45
 - military operations and, 199–201
 - operationalization of human rights and, 186–89
 - peace-keeping military operations and, 201–05
 - proportionality principle and, 136–39
 - war and, 7
- law of armed conflict, 44–46
 - civil society and, 76–77
 - future issues in human rights/humanitarian law dichotomy and, 340–50
 - human rights law and, 81–82
 - human security and, 235–37
 - law of occupation and, 220–22
 - non-state actors' legal obligations in, 210–13
 - non-state warfare and, 195–97
 - operationalization of human rights in, 186–90
- law of occupation
 - duties of Occupying Powers in, 224–28
 - governing fragility and, 220–22
 - preservation vs. transformation in, 228–31
- law of war
 - codification of war crimes, 38–40
 - declining state role in, 195–97
 - early laws concerning, 11–14
 - emerging law of nations and, 19–21
 - Enlightenment philosophy, 21–23
 - fragmentation of international law and, 85–87
 - Grotius on, 20–21
 - historical tradition of, 9–10
 - humanity as grace and right and, 77–80
 - international humanitarian law and, 44–46
 - legal framework for, 191–92
 - Martens Clause and, 31–35
 - military codes and, 16–18
 - mission civilisatrice* and, 30–31
 - omission in UN Charter of, 40–41
 - remedy and compensation in human rights/humanitarian law and, 334–36
 - right to life and, 131–36
 - self-interest and justice principles in, 14–16
 - UN Charter avoidance of, 40–41
 - Universal Declaration of Human Rights critique of, 42–43
 - war as trauma and, 38–40
- lawful targeting principles
 - Additional Protocols of 1977 provisions concerning, 61–64
 - lawful killing vs. duty to capture, 139–41
 - proportionality and, 137–39
- Laws and Ordinances of Warre* (1639), 17
- League of Arab States, and ICCPR extra-territoriality of human rights, 146–52
- League of Nations
 - international humanitarian law and, 44–46
 - Nansen Refugee Office of, 52–58
 - protection of minorities in, 39
- League of Red Cross Societies, 59–61
- least harmful means test, “capture/kill debate” and, 139–41
- Lebanon
 - Israeli military operations in, 194n. 12–195n. 12, 213–19
 - UN Commission on Human Rights monitoring of, 243–46
 - UN Human Rights Council Special Rapporteurs and Israeli conflict with, 249
- legal discourse
 - human rights law in, 1–6
 - unified regime for use of force in, 141–43
- legal framework in humanitarian/human rights law. (See also paradigmatic approach to human rights/humanitarian law dichotomy; separatist framework for human rights/humanitarian law)
 - for derogation, 169–70
 - dynamics of law and war and, 191–92
 - extra-territorial application of human rights, 146–65
 - future issues in human rights/humanitarian law dichotomy and, 340–50
 - importance of legal proceedings, 327–30
 - individual complaints and litigation in, 183–85, 327–34
 - integrative approach to, 122–24
 - inter arma caritas* and, 35–37
 - for laws of war, 28–31
 - for non-state actors' legal obligations, 213–19
 - obligations and duties, 176–83
 - operationalization of human rights and, 186–89
 - for peace-keeping military operations, 201–05
 - transnational conflict and, 197–99
 - war as trauma and crime in, 38–40
- legal theory, human rights law and, 1–6
- lex favorabilis* principle, complementarity and, 117–21
- lex posterior derogat legi priori* principle, 88, 152–56
- lex specialis complementa*, 100–01
- lex specialis derogat legi generali* principle
 - Arturo Ribón Avilán v. Colombia* and, 273–75
 - bi-directionality in, 101–03
 - complementarity principle and, 106–08
 - derogation law and, 169–70
 - dogmatic vs. pragmatic approaches to, 103–04
 - European Court of Human Rights rulings and, 297–98
 - exclusivity and, 83–104
 - extra-territoriality of human rights and, 144–45
 - future issues in human rights/humanitarian law dichotomy and, 341–42

- “general” vs. “special” distinctions in, 95–99
- governance of internal conflicts and, 206–09
- graduated vs. maximum approach to protection and, 117–21
- Guantánamo Bay detainees and, 286–88
- human rights law, 7
- ICRC “fundamental guarantees” principle and, 71–76
- indivisibility of human rights and, 115–17
- Inter-American Human Rights Commission cases and, 272–73
- International Court of Justice and, 89–93
- in international law, 87–89
- Juan Carlos Abella v. Argentina* and, 276–78
- limitations of, 95–104
- norm conflict or norm interpretation and, 99–101
- right to life and, 131–36
- separate regimes of human rights/humanitarian law and, 81–82
- systematic coherence and, 108–09
- UN Human Rights Council monitoring of armed conflict and, 241–43, 244–46
- UN treaty bodies and, 270
- unified use of force regime and, 141–43
- United States exclusivity and, 93–95
- US rejection of extra-territoriality based on, 146–52, 198
- war as risk management and, 193–95
- Liberation Tigers of Tamil Eelam (LTTE), 213–19
- Libya, UN fact-finding mission in, 253–55
- Lieber, Francis, 26–27
- Lieber Code, 26–27, 217
- Lincoln, Abraham, 26–27
- Locke, John, 19–20
- looting, medieval warfare and, 14–16
- Lopez, Marino, murder of, 284
- Louzidou v. Turkey*, 156–65, 296–97, 327–30
- LTTE (Liberation Tigers of Tamil Eelam), 213–19
- MacBride, Sean, 53–54
- Mali, French military operations in, 198–99
- mandate for armed conflicts, UN Human Rights Council and absence of, 241–43
- Maoists (Communist Party of Nepal or CPN(M)), 213–19
- Mapiripán Massacre* case, 292–93
- Martens, Fedor Fedorovich (Frédéric), 31–35
- Martens Clause, 31–35
 - Additional Protocols of 1977 and, 61–64
 - future issues in human rights/humanitarian law dichotomy and, 340–41
 - graduated vs. maximum approach to protection and, 117–21
 - Guantánamo Bay detainees and, 286–88
 - Human Rights in Armed Conflict (Resolution No. XXIII) and, 54
 - humanity in international law and, 235
 - Matter of the Indigenous Community of Kankuamo* case, 293–94
 - Maximilian II, 16–17
 - maximized protection of human rights
 - future issues in human rights/humanitarian law dichotomy and, 342
 - McCann and others v. United Kingdom*, 299, 303
 - medical experiments
 - complementarity of protections against, 109–12
 - reframing of rights and obligations concerning, 176–83
 - medical personnel, Additional Protocols of 1977 and protection for, 61–64
 - medieval sources of humanitarian law, 11–14, 77–80
 - mercy
 - humanity as grace and right and, 77–80
 - medieval sources of law of war and concept of, 11–14
 - Meron, Theodor, 64–65, 129–30
 - Mexico
 - drug wars in, 199–201
 - Office of the High Commissioner for Human Rights and, 239–40, 259–61
 - Middle Ages, humanitarian law in, 11–14
 - military casualties
 - historical trends in rates of, 39–40, 60n. 59
 - individual in humanitarian law and, 183–85
 - right to life and, 131–36
 - military laws
 - human rights bodies and, 336–39
 - jus militare* and, 16–18
 - Lieber Code and, 26–27
 - military necessity principle
 - authorized use of force and, 131–36
 - graduated vs. maximum approach to protection and, 117–21
 - humanitarian law and, 20–21
 - lawful killing vs. duty to capture, 139–41
 - proportionality and, 137–39
 - science of war and evolution of, 24–26
 - military operations
 - “capture/kill debate” and, 139–41
 - changing role in war of, 195–97
 - Chechnya internal violence and role of, 302–07
 - child soldiers in, 68–71, 265–68, 318–20
 - duties of Occupying Powers in occupied territories and, 224–28
 - extra-territoriality of human rights and, 144–45
 - future issues in human rights/humanitarian law dichotomy and, 342–43
 - human security and, 235–37
 - law enforcement and, 199–201
 - law of nations and regulation of, 19
 - Mapiripán Massacre* case and, 292–93

- military operations (cont.)
 - non-governmental organizations and, 76–77
 - as peace support operations, 201–05
 - post-Enlightenment emergence of, 22
 - proportionality principle and changes to, 136–39
 - risks vs. rights burden during, 189–90
 - Serrano-Cruz Sisters v. El Salvador* and, 291–93
 - transnational conflicts and, 197–99
 - unequal treatment of military ranks and, 307–09
 - unified use of force regime and, 141–43
 - war as risk management and, 193–95
 - warrior image and human rights ideology and, 186–89
- minorities, protection of, 39, 172–75
- mission civilisatrice*, human rights law and, 6–7, 30–31
- “Mogadishu line,” peace-keeping military operations and, 204
- Molina, Franklin Guillermo Aisalle, 285–86
- Montreal Statement, 53–54
- Montreux Document on private military companies, 67–68, 217–19, 218n. 95
- most favourable clause, *Arturo Ribón Avilán v. Colombia* and, 273–75
- Movimiento Todos por la Patria*, 276–78
- multiculturalism, Additional Protocols of 1977 and emergence of, 61–64
- multi-national forces
 - duties of Occupying Powers in occupied territories and, 224–28
 - peace-keeping military operations and, 201–05
- Namibia, special procedures of United Nations Human Rights Council in, 246–47
- Nansen Refugee Office (League of Nations), 52–58
- Napoleonic wars (1804–1815), 21–23
- Narbonne, Council of, and medieval sources of humanitarian law, 12–13
- nation states. (See also state practices)
 - changing role in war of, 195–97
 - derogation law and, 169–70
 - emerging law of nations and, 19–21
 - Enlightenment era human rights concepts and, 21–23
 - extra-territoriality of human rights and, 144–45
 - functional universality of extra-territorial jurisdiction and, 165–68
 - governance of internal conflicts in, 206–19
 - human rights law and, 85–87
 - humanity in international law and role of, 232–35
 - ICCPR provisions on extra-territoriality and, 146–52
 - ICRC and role of, 35–37
 - internal conflicts as state of emergency in, 171–72
 - jurisdiction in human rights treaties and, 152–56
 - law of occupation and, 220–22
 - laws of war and emergence of, 16–18
 - preservation vs. transformation in occupied territories of, 228–31
 - science of war and laws of, 24–26
 - Universal Periodic Review and, 255–58
- national liberation, wars of, human rights and dynamics of, 191–92
- nationality, right to
 - as non-derogable right, 172–75
 - non-state warfare and, 196
- NATO. See North Atlantic Treaty Organization
- natural law theory
 - emerging law of nations and, 19–21
 - inalienable rights and, 19–20
 - justice and, 16
 - laws of war and, 15
- Ndiaye, Bacre Waly, 252
- necessity, military. See military necessity principle
- necessity defence
 - derogation law and, 169–70
 - future issues in human rights/humanitarian law dichotomy and, 344–45
 - use of force and, 131–36
- Nepal
 - legal obligations of non-state actors in, 213–19
 - Office of the High Commissioner for Human Rights and, 259–61
- Netherlands
 - Dutch Revolt (1568–1648), 14–16
 - extra-territoriality of human rights and, 146–52
 - Srebrenica massacre and, 334–36
- NGOs. See non-governmental organizations
- Ní Aoláin, Fionnuala, 171–72
- Nicaragua, and Inter-American Commission on Human Rights, 271n. 4, 271–72
- Nicaragua* case, and Martens Clause, 32–33
- 9/11 attacks, and transnational conflicts, 197–99
- “no power” doctrine, and UN Human Rights Council practices, 243–46
- nobility
 - medieval sources of humanitarian law and, 13
 - self-interest and pragmatism in warfare by, 14–16
- non-derogable human rights, 115–17
 - Arturo Ribón Avilán v. Colombia* and, 273–75
 - Chechnya internal violence and, 303–05
 - derogation “gap” and, 172–75
 - right to life as, 131–36
- non-discrimination principle
 - complementarity and, 109–12
 - Geneva Conventions of 1949 and language concerning, 48
 - non-derogation and, 172–75
- non-state actors
 - challenges for human rights bodies of, 336–39
 - changing role in war of, 195–97
 - extra-territoriality of human rights and, 144–45
 - future issues in human rights/humanitarian law dichotomy and, 347

- governance of internal conflicts and, 206–09
- Inter-American Commission on Human Rights and, 286–88
- internal conflicts and role of, 210–19
- international vs. non-international dichotomy in
 - armed conflicts and, 191–92
- legal obligations in armed conflicts of, 210–13
- restrictions on children as, 68–71
- non-governmental organizations (NGOs)
 - human rights law and, 67–68, 76–77
 - Inter-American Commission on Human Rights and, 272
 - monitoring of human rights/humanitarian law and, 322–25
 - procedural reform of individual complaints
 - procedures and, 333–34
 - UN observer status for, 71–76
- norm conflict and coordination
 - bi-directionality in, 101–03
 - complementarity and, 105–08
 - dynamics of law and war and, 191–92
 - European human rights law of armed conflict and, 309–11
 - governance of internal conflicts and, 206–09
 - graduated vs. maximum approach to protection and, 117–21
 - human rights bodies in armed conflict and, 336–39
 - humanitarian norms before human rights bodies, 330–33
 - humanity in international law and, 232–35
 - individual in humanitarian law and, 183–85
 - indivisibility of human rights and, 115–17
 - integration of human rights/humanitarian law and, 122–27
 - Inter-American Court of Human Rights and, 290–94
 - lack of humanitarian law enforcement and, 316–20
 - law of occupation and, 220–22
 - lex specialis* doctrine and, 87–89, 99–101
 - non-derogation and, 172–75
 - non-state actors' legal obligations and, 210–13
 - peace-keeping military operations and, 201–05
 - reframing of rights and obligations and, 176–83
 - “special” vs. “general” distinctions concerning, 95–99
 - systematic coherence and, 108–09
- Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, 217–19
- North Atlantic Treaty Organization (NATO)
 - remedy and compensation in *Vavarin* case and, 334–36
- North Korea, Korean War prisoners in, 40–41
- Northern Cyprus, 222–24
 - European Court of Human Rights rulings involving, 296–97, 307–09
 - extra-territoriality issues involving, 158–65
 - Louzidou v. Turkey* and, 296–97
- nuclear weapons. (*See also* Advisory Opinion on Nuclear Weapons)
 - ICCPR, Article 6 on, 89–91
 - lex specialis* principle and legality of, 89–93
 - UN General Assembly on legality of, 89
 - WHO and legality of, 89
- Nuremberg Principles, Geneva Conventions of 1949 and, 49–50
- Nuremberg war crimes trials
 - individual criminal responsibility principle and, 39–40
 - Martens Clause and, 32–33
- OAS (Organization of American States), and Inter-American Commission on Human Rights, 271–72, 286–88
- obligations, terminology of, 176–83
 - duties of Occupying Powers in occupied territories and role of, 227–28
 - non-state actors' legal obligations and, 210–13
- Öcalan* case, 160–61
- occupied territories. (*See also* law of occupation)
 - duties of Occupying Powers in, 224–28
 - economic, social and cultural rights protections in, 112–15
 - European Court of Human Rights rulings involving, 297–98
 - future issues in human rights/humanitarian law dichotomy and, 347
 - Geneva Conventions of 1949 and law of, 47–48
 - governing fragility and law of, 220–22
 - graduated vs. maximum approach to protection in, 117–21
 - human rights law and, 220–31
 - ICCPR extra-territoriality provisions concerning, 146–52
 - law enforcement vs. military operations in, 199–201
 - lex specialis* principle and cases involving, 89–93
 - Louzidou v. Turkey* and, 296–97
 - preservation vs. transformation in, 228–31
 - reframing of rights and obligations concerning, 181–82
 - systematic coherence and complementarity and, 108–09
 - UN fact-finding missions in, 253–55
- Office of the High Commissioner for Human Rights (OHCHR), 58 (*See also* United Nations High Commissioner for Human Rights)
 - Capstone Doctrine, UN Peacekeeping Operations and, 201–05
 - enforcement of human rights and, 239–40, 259–61
 - jus in bello* in human rights and, 124–27
- Old Testament, rules of warfare in, 11–14
- Operation Phoenix, *Ecuador v. Colombia* and, 285–86

- “operational opponents,” unified use of force regime and, 141–43
- operationalization of human rights law
- risks in armed conflict and, 189–90
 - warrior image and, 186–89
- opinio juris*
- extra-territoriality of human rights and, 146–52
 - law enforcement vs. military operations and, 199–201
 - lawful killing vs. duty to capture and, 139–41
 - United States exclusivist position concerning human rights in, 93–95
- Oppenheim, Lassa, 136–39, 194
- Organization of American States (OAS), and Inter-American Commission on Human Rights, 271–72, 286–88
- Other Treaties* case, and Inter-American Court of Human Rights, 273, 280–82
- Ottawa Convention on antipersonnel mines
- human security concept and, 235–37
 - Martens Clause and, 33–35
- Oxford Manual on the Laws of War on Land*, 28–31
- Pad and others v. Turkey*, 160–61
- Palestinian Territories
- law of occupation and, 220–24
 - Office of the High Commissioner for Human Rights and, 239–40, 259–61
 - UN Committee on Racial Discrimination and, 268–70
 - UN fact-finding missions for, 253–55
 - Wall with Israel*, ICJ ruling concerning, 89–93
- Panama, US invasion of, 157
- Papacy, and Geneva Conventions of 1949, 49–50
- paradigmatic approach to human rights/humanitarian law dichotomy, 7
- future issues and research on, 340–50
 - governance of internal conflicts and, 206–09
 - humanitarian norms before human rights bodies, 330–33
 - humanity in international law and, 232–35
 - law enforcement vs. military operations and, 199–201, 200n. 47
 - maximum protection vs. graduated approaches, 117–21
 - obstacles to commonalities, 129–30
 - proportionality and, 137
 - risks vs. rights burden during armed conflict and, 189–90
 - war as risk management and, 193–95
 - war-fighting vs. law enforcement, 131–36
 - warrior image and human rights ideology, 186–89
- Partiya Karkerên Kurdistan/Kurdistan Workers Party (PKK), 160–61, 298–302
- Pasto Ridruejo, Jose Antonio, 247
- peace, right to
- African Commission on Human and Peoples’ Rights and, 312n. 1
 - duties of Occupying Powers in occupied territories and, 224–28
 - emerging law of nations and, 19–21
 - future issues in human rights/humanitarian law dichotomy and, 346–47
 - indivisibility of human rights and, 115–17
 - international vs. non-international dichotomy in armed conflicts and, 191–92
 - laws of, 85–87
 - nineteenth century movement for, 28–31
 - proportionality principle and, 136–39
 - science of warfare and concepts of, 24–26
 - unified use of force regime and, 141–43
 - Universal Declaration of Human Rights and movement for, 42–43
- peace-keeping forces
- extra-territoriality of human rights and, 146–52, 161
 - ICRC avoidance of, 59–61
 - international vs. non-international dichotomy in armed conflicts and, 191–92
 - law of war and, 41n. 25
 - as military operations, 201–05
 - operationalization of human rights and, 186–89
 - United Nations High Commissioner for Human Rights emergency missions and, 259–61
- People’s Democratic Party of Afghanistan, 247
- People’s Republic of China (PRC), and Korean War prisoners, 40–41
- Peoples’ Revolutionary Army, 272
- Permanent International Court of Justice, 84–85
- personal jurisdiction
- extra-territoriality and case law involving, 156–65
 - functional universality and, 165–68
- Peru
- Hugo Bustios Saavedra v. Peru* in, 276–78
 - Other Treaties* case and, 273
- Petitpierre, Max, 46
- physical control, capability argument in extra-territorial jurisdiction and, 166–67
- Pictet, Jean, 44–46, 105–06, 123
- PKK (Kurdistan Workers Party/Partiya Karkerên Kurdistan), 160–61, 298–302
- Plan de Sánchez* case, 293
- Poland, and ICCPR extra-territoriality of human rights, 146–52
- political prisoners, Amnesty International activism concerning, 52–58
- political rights
- complementarity and, 109–12
 - duties of Occupying Powers in occupied territories and, 227
 - as non-derogable right, 172–75
 - UN Human Rights Council focus on, 243–46

- politics
 - human rights bodies in armed conflict and, 336–39
 - monitoring of human rights/humanitarian law and, 322–25
 - non-state warfare and, 196
 - war as means of, 44
- popular sovereignty principle, in Enlightenment era, 21–23
- positivist ideology
 - science of war and, 24–26
 - Second World War and, 39–40
- Prada Gonzalez and others v. Colombia*, 284
- pragmatism
 - civilian protection and, 35–37
 - in human rights initiatives, 52–58
 - in laws of war, 14–16
 - legal obligations of non-state actors and, 217
 - lex specialis* principle and, 103–04
- PRC (People's Republic of China), and Korean War prisoners, 40–41
- prescriptive conduct, extra-territoriality of human rights and, 144–45
- preservative occupation, human rights obligations and, 228–31
- prisoners of war
 - contractual arrangements involving, 14–16
 - Cyprus v. Turkey* and, 296–97
 - early laws concerning, 11–14
 - Geneva Convention III language concerning, 47–48
 - ICRC concern over, 52–58
 - military codes concerning, 17
 - reframing of rights and obligations concerning, 176–83
 - religious freedom for, 112–15
 - right to protection for, Geneva Conventions of 1949 and language of, 48
 - rights of correspondence for, 61–64
 - “special” and “general” bi-directionality in laws concerning, 101–03
 - UN Charter and, 40–41
 - UN resolutions concerning, 57–58
- private military and security contractors
 - future issues in human rights/humanitarian law dichotomy and, 346
 - legal obligations of, 217–19
 - war and changing role of, 195–97
- professionalization of war, early modern laws of war and, 17–18
- Prologemina* (Grotius), 20–21
- property rights, in Kurdish cases before European Court of Human Rights, 301–02
- proportionality, principle of
 - European Court of Human Rights rulings and, 300–01
 - future issues in human rights/humanitarian law dichotomy and, 344–45
 - graduated vs. maximum approach to protection and, 117–21
 - human rights/humanitarian law dichotomy and, 136–39
 - use of force and, 131–36
- protect, obligation to
 - human rights/humanitarian law dichotomy and, 181–82
 - humanitarian norms before human rights bodies and, 330–33
 - monitoring of humanitarian law violations and, 318–20
- protected persons, status and treatment of, 48, 176–85
- Protecting Powers institutions
 - human rights and humanitarian law and, 56–58
 - lack of humanitarian law enforcement and, 316–20
- legal proceedings and, 327–30
- protection of human rights
 - complementarity and maximization of, 105–21
 - graduated vs. maximum approach to, 117–21
- Protocol of San Salvador, 152–56
- Provost, René, 176–77
- public activity, war as, 17
- “public emergency” concept, derogation and, 171–72
- Pueblo Bello Massacre* case, 293
- Pufendorf, Samuel von, 19n. 57, 19–20
- Al-Qaida, 197–99
- Quakers, 29
- Quentin-Baxter, Richard, 49
- Quran, rules of warfare in, 11–14
- Ramcharan, Bertrand, 259–61
- rape. (See also sexual violence, protection against)
 - in Additional Protocols of 1977, 61–64
 - African Commission on Human and Peoples' Rights and, 313–15
 - early laws of war concerning, 17
 - human rights/humanitarian law dichotomy and, 176–83
 - in ICRC “fundamental guarantees,” 71–76
 - Plan de Sánchez* case and, 293
- rationality
 - future issues in human rights/humanitarian law dichotomy and, 349–50
 - laws of war and principle of, 18n. 53, 21–22
- ratione loci*, 129–30, 262–70
- ratione materiae*, 129–30
- ratione personae*, 129–30, 262–70
- ratione temporis*, 129–30, 262–70
- ‘Recht zum Kriege’ (law for war), 44
- reciprocity
 - laws of war and, 17–18
 - medieval human rights law and principle of, 14–16

- reciprocity (cont.)
 - reframing of rights and obligations and, 181–82
 - warrior image and human rights ideology, 186–89
- ‘Rect im Kriege’ (law in war), 44
- Red Cross. *See* International Committee of the Red Cross
- The Red Cross and Human Rights* (ICRC), 59–61
- refugee protection, ICRC involvement in, 52–58
- regime change ideology, human rights obligations and, 228–31
- regionalization of humanitarian norms, consequences of, 336–39, 348–49
- religion
 - complementarity in protections for, 112–15
 - freedom of, as non-derogable right, 172–75
 - human rights law and issues of, 283–84
 - rules of warfare and role of, 11–14
- remedy, in human rights/humanitarian law, 334–36
- renvoi* principle
 - complementarity and, 106–08
 - humanitarian norms before human rights bodies and, 330–33
- reparations, remedy and compensation in human rights/humanitarian law and, 334–36
- repatriation, right of, 176–83
- Report on Terrorism and Human Rights* (IACHR), 286–88
- reporting obligations of human rights bodies, and monitoring of human rights/humanitarian law violations, 322–25
- reprisals, prohibition of
 - in Additional Protocols of 1977, 61–64
 - reframing of rights and obligations and, 181–82
- respect, obligation to, human rights/humanitarian law dichotomy and, 181–82
- Respect for Human Rights in Armed Conflict (Resolution 2444 (XXIII)) (1968), 56–58
- Revolutionary Wars in Europe (1792–1802), 22
- right to life
 - armed conflict and, 131–43
 - as non-derogable right, 172–75
 - UN Human Rights Special Rapporteurs’ discussion of, 252
- right to protection, Geneva Conventions of 1949 and language of, 48
- “right to truth,” in human rights/humanitarian law monitoring, 325–26
- rights, terminology of, 176–83, 349–50
- Riofrio Massacre* case, 284
- risk management, war as, 193–95
- RoE. *See* Rules of Engagement
- Rome Statute (ICC)
 - lack of enforcement of humanitarian law and, 317–18
 - Martens Clause and, 33–35
- Romero y Galdámez v. El Salvador*, 283–84
- Rosas, Allan, 65–67, 125
- Rousseau, Jean-Jacques, 21–22
- Rules of Engagement (RoE)
 - operationalization of human rights and, 186–89
 - proportionality principle and, 137–39
 - risks vs. rights burden and, 189–90
- Russia, and internal violence in Chechnya, 302–07
- Rwanda
 - African Commission on Human and Peoples’ Rights and, 313–15
 - special procedures of United Nations Human Rights Council and, 247
 - UN Commission on Human Rights monitoring of, 243–46
- Sandinista Front for National Liberation, 271–72
- Saramati* case, 161, 168, 297–98
- savings clause
 - Arturo Ribón Avilán v. Colombia* and, 273–75
 - humanitarian norms before human rights bodies and, 330–33
 - Other Treaties* case and, 280–82
- science of warfare, nineteenth-century emergence of, 24–37
- Second World War (1939–1945)
 - civilian casualties in, 53
 - international humanitarian law and, 44–46
 - war as trauma and crime in, 38–40
- secular social order, medieval sources of humanitarian law and, 13
- security-oriented paradigm
 - Chechnya internal violence and, 302–07
 - duty to investigate and “right to truth” and, 325–26
 - European Court of Human Rights rulings and, 297–98
 - human security and, 235–37
 - law enforcement vs. military operations and, 199–201
- Sedley, Justice, 163
- Selçuk and Asker v. Turkey*, 301–02
- self-contained regimes
 - European human rights law of armed conflict and, 309–11
 - human rights and humanitarian law, 83–85
- self-defence
 - ICCPR extra-territoriality provisions and principle of, 146–52
 - peace-keeping military operations and, 201–05
 - reframing of rights and obligations concerning, 176–83
 - transnational conflicts and principles of, 197–99
 - use of force and, 131–36
- self-interest, human rights law and, 14–16
- separatist framework on human rights/humanitarian law. (*See also* paradigmatic approach to human rights/humanitarian law dichotomy)

- African Commission on Human and Peoples' Rights
 - and, 312–15
 - armed conflict and, 46–51, 52–58, 83–104
 - authorized use of force and, 131–36
 - complementarity and, 105–21
 - enforcement issues and, 239–40
 - European Court of Human Rights and, 295–311
 - European human rights law of armed conflict and, 309–11
 - future issues and research on, 340–50
 - governance of internal conflicts and, 206–09
 - humanitarian considerations and, 232–35
 - humanitarian norms before human rights bodies, 330–33
 - Inter-American Commission on Human Rights
 - human rights law applications and, 282–88
 - Inter-American Court of Human Rights and, 290–94
 - law of occupation and, 220–22
 - legal framework for human rights vs. humanitarian
 - ideology and, 46–51, 52–58, 83–85
 - monitoring of armed conflict and, 320–22
 - occupied territories and, 220–31
 - peace-keeping military operations and, 201–05
 - preservation vs. transformation of occupied
 - territories and, 228–31
 - proportionality and, 136–39
 - reframing of rights and obligations and, 176–83
 - “special” vs. “general” distinctions concerning *lex specialis* and, 95–99
 - UN Committee on the Rights of the Child and, 265–68
 - UN High Commissioner for Human Rights role and, 259–61
 - UN Human Rights Committee and, 262–65
 - UN Human Rights Council monitoring of armed
 - conflict and, 241–43, 244–46
 - UN human rights treaty bodies and, 262–70
 - war as risk management and, 193–95
 - warrior image and human rights ideology and, 186–89
- September 11, 2001 attacks, and transnational conflicts, 197–99
- Serbia, UN Human Rights Committee monitoring of, 262–65
- Sergio Ruben Lopez Burgos v. Uruguay*, 146–52
- Serrano-Cruz Sisters v. El Salvador*, 291–93
- sexual violence, protection against. (*See also* rape)
 - African Commission on Human and Peoples' Rights
 - and, 313–15
 - reframing of rights and obligations concerning, 181–82
 - UN Committee on the Elimination of
 - Discrimination Against Women and, 269–70
 - “shoot on sight” policy, UN Human Rights Council
 - Special Rapporteurs' critique of, 250–52
 - Sierra Leone, legal obligations of non-state actors in, 217
 - Al Skeini v. United Kingdom*, 144–45, 162–65, 166–67
 - duties of Occupying Powers in occupied territories
 - and, 224–28
 - European Court of Human Rights rulings and, 297–98
 - operationalization of human rights and, 186–89
 - slavery, prohibition of, as non-derogable right, 172–75
 - Smith, Rupert, 194
 - social class. *See* class structure
 - The Social Contract (Du contrat social ou principes du droit politique)* (Rousseau), 21–22
 - social rights
 - complementarity of protection for, 112–15
 - duties of Occupying Powers in occupied territories
 - and, 227, 230n. 70
 - medieval sources of humanitarian law and, 11–14
 - “special” and “general” bi-directionality in, 101–03
 - Somalia
 - UN Human Rights Council special procedures and
 - conflict, 248
 - Universal Periodic Review in, 255–58
 - Sommaruga, Cornelio, 72
 - South Africa, special procedures of United Nations
 - Human Rights Council in, 246–47
 - sovereignty
 - derogation clauses and, 169–70
 - extra-territoriality of human rights and, 144–45
 - governance of internal conflicts and, 206–09
 - humanity in international law and diminishment of, 232–35
 - law of occupation and, 220–22
 - preservation vs. transformation in occupied
 - territories of, 228–31
 - Spanish Civil War, 196
 - Special Rapporteur of the Human Rights Council
 - in Afghanistan, 247
 - fact-finding missions and, 253–55
 - non-state actors and, 213–19
 - Special Rapporteur of the International Law
 - Commission, 94–95
 - special regimes
 - fragmentation of international law and, 85–87
 - “special” vs. “general” distinctions concerning *lex specialis* and, 95–99
 - systematic coherence and complementarity and, 108–09
 - Sperduti, G., 296
 - Srebrenica massacre, 146–52, 334–36
 - Sri Lanka
 - non-state actors in, 213–19
 - UN Committee on Racial Discrimination and, 268–70
 - UN Human Rights Council monitoring of, 243–46
 - S.S. Wimbeldon* case (1923), 84–85

- starvation, Additional Protocols of 1977 prohibition of, 61–64
- state of emergency, war as, 171–72
- state practices. (*See also* nation states)
 - capability argument in extra-territorial jurisdiction and, 166–67
 - derogation law and, 169–70
 - duties of Occupying Powers in occupied territories and, 224–28
 - extra-territoriality of human rights and, 144–45
 - future issues in human rights/humanitarian law dichotomy and, 345–46
 - “gap” in derogation and, 172–75
 - governance of internal conflicts and, 206–19
 - human rights monitoring in armed conflict of, 320–22
 - ICCPR provisions on extra-territoriality and, 146–52
 - internal conflicts as state emergency and, 171–72
 - law enforcement vs. military operations of, 199–201
 - law of occupation and, 220–24
 - law of war and changes in, 195–97
 - lawful killing vs. duty to capture and, 139–41
 - monitoring of humanitarian law violations and, 318–20
 - non-state actors’ legal obligations and, 210–13
 - preservation vs. transformation in occupied territories of, 228–31
 - reframing of rights and obligations and, 176–83
 - special procedures of United Nations Human Rights Council and, 246–52
 - UN Committee on the Rights of the Child and monitoring of, 265–68
 - UN Human Rights Council monitoring of armed conflict and, 244–46
 - United States exclusivist position concerning human rights and, 93–95
 - Universal Periodic Review and, 255–58
- status, in humanitarian law, 183–85
- status quo ante*, use of force and, 131–36
- Sub-Commission for the Promotion and Protection of Human Rights, 64–65
- sub silentio* humanitarian principles, European human rights law interpretations and, 309–11
- Sudan
 - African Commission on Human and Peoples’ Rights and, 312n. 3, 313–15
 - Office of the High Commissioner for Human Rights and, 239–40, 259–61
- summary executions. *See* executions, extra-judicial, summary or arbitrary
- Suriname, United Nations Human Rights Committee case involving, 325–26
- Sweden
 - ICCPR extra-territoriality of human rights and, 146–52
 - military code in, 16–17
- Swiss Confederation, 36, 61–64, 146–52
- Syria, UN fact-finding mission in, 253–55
- systematic coherence
 - complementarity and, 108–09
 - jus in bello* and human rights and, 124–27
- Tansley Report of 1975, criticism of ICRC and, 59–61
- technology of warfare. (*See also* gas warfare; weapons technology)
 - changing role in war of, 195–97
 - First World War and role of, 38–40
- Tehran International Conference on Human Rights, 50
- territorial jurisdiction, 166n. 149
 - extra-territoriality and case law concerning, 156–65
 - functional universality and, 165–68
 - governance of internal conflicts and, 206–09
 - law of occupation and, 220–22
 - non-state warfare and, 196
- terrorism. (*See also* transnational terrorism; War on Terror ideology)
 - Kurdish internal violence and, 298–302
 - UN Human Rights Council Special Rapporteurs and, 249
 - war and changing role of, 195–97
- Thirty Years’ War, 17
- Thomas Aquinas, 15
- “threshold” approach, governance of internal conflicts and, 206–09
- Timor-Leste, UN fact-finding mission for, 253–55
- TMC Asser Institute, 75
- Tokyo war crimes trials
 - individual criminal responsibility principle and, 39–40
 - Martens Clause and, 32–33
- Torah, rules of warfare in, 11–14
- torture
 - in Chechnya internal violence cases, 306
 - complementarity of protections against, 109–12
 - prohibition of, as non-derogable right, 172–75
- trade unions, rights concerning, 115–17
- transformative occupation, human rights obligations and, 228–31
- transnational terrorism
 - dynamics of, 197–99
 - human rights monitoring of, 320–22
 - unified use of force regime and, 141–43
- Trapeznikova v. Russia*, 306
- trauma, war as, 38–40
- treaty bodies
 - early modern laws of war and emergence of, 17–18
 - enforcement of human rights and, 239–40
 - extra-territoriality of human rights and, 144–45, 146–52
 - future issues in human rights/humanitarian law dichotomy and, 347–48
 - “gap” in derogation in, 172–75

- Geneva Conventions of 1949 human rights
 covenants and law of, 49
 human rights law and, 7
 humanitarian norms before human rights bodies
 and, 330–33
 ICCPR extra-territoriality provisions and,
 146–52
 impact of First World War on, 38–40
Juan Carlos Abella v. Argentina and, 276–78
 jurisdiction over human rights in, 152–56
lex specialis and, 88, 98n. 94
 limitations in armed conflict of, 336–39
 monitoring of armed conflict and, 320–22
 monitoring of human rights/humanitarian law and,
 322–25
 non-state actors and, 336–39
Other Treaties case and, 280–82
 procedural reform of individual complaints
 procedures and, 333–34
ratione loci and, 129–30
 reframing of rights and obligations and, 176–83
 right to life in, 131–36
 science of war and evolution of, 24–26
 UN human rights treaty bodies and, 262–70
 United Nations Human Rights Council monitoring
 of armed conflict and, 241–42
 United States exclusivist position concerning,
 94–95
 war as state of emergency in, 171–72
- Turkey
Cyprus v. Turkey, 158–65, 296–97
Ergi v. Turkey and, 299–301
 European Court of Human Rights proceedings in,
 296–97, 307–09, 327–30
 extra-territoriality issues involving, 158–65
Güleç v. Turkey and, 300–01
Issa v. Turkey and, 297
 Kurdish internal violence and, 298–302
Louzidou v. Turkey and, 296–97
- Turku Declaration on Minimum Humanitarian
 Standards, 209
- “two curtains” metaphor, separation of human rights
 and humanitarianism and, 83–85
- UDHR. *See* Universal Declaration of Human Rights of
 1948
- Uganda
 African Commission on Human and Peoples’ Rights
 and, 313–15
 armed conflict monitoring in, 268–69
 UN Committee on the Rights of the Child
 observations in, 265–68
- Umayeva v. Russia*, 306
- UN. *See* United Nations
- UNCHR. *See* United Nations Commission on Human
 Rights
- UNESCO (United Nations Educational, Scientific and
 Cultural Organisation), protection of cultural
 values and, 52–58
- UNHCR (United Nations High Commissioner for
 Refugees), 52–58, 71–76
- UNICEF (United Nations Children’s Fund), ICRC
 collaboration with, 71–76
- “unified” approach, governance of internal conflicts
 and, 206–09
- United Kingdom
 early military codes and laws of war in, 17
 extra-territoriality of human rights and laws of, 145,
 162–65
 Iraq war occupation and, 297–98
 Law Lords, 144–45
Manual of the Law of Armed Conflict, 152–56, 180–81
McCann and others v. United Kingdom and, 299
 self-determination for colonies of, 42n. 30
 on war as state of emergency, 171–72
- United Nations
 Additional Protocols of 1977 and, 61–64
 complementarity of human rights/humanitarian law
 and human rights bodies of, 341
 human rights treaty bodies of, 262–70
 ICRC collaboration on human rights with, 59–61,
 71–76
 jurisdiction in human rights treaties and, 152–56
 merger of human rights and humanitarian law
 regimes and, 56–58
 Peacekeeping Operations of, 201–05
 prohibition of war and international human rights
 principles and, 40–41
- United Nations Charter
 human rights law and, 9–10, 40n. 18
 prohibition of war in, 40–41, 199–201
 Universal Declaration of Human Rights and, 42–43
- United Nations Children’s Fund (UNICEF), ICRC
 collaboration with, 71–76
- United Nations Commission on Human Rights
 (UNCHR), 57–58, 65–67, 74–75
 conflict in former Yugoslavia and, 243–46
 enforcement of human rights and, 239–40
 expertise of members on, 336–39
 fact-finding, special sessions, and inquiry
 commissions of, 253–55
 human rights resolutions of, 241–43, 243n. 17
 Lebanon and Israel and, 213–19
 monitoring of human rights/humanitarian law and,
 325–26
 non-state actors’ legal obligations and resolutions of,
 213–19
- United Nations Committee Against Torture, 262–65
- United Nations Committee on Economic, Social and
 Cultural Rights, 52–58, 262–65, 268–70
- United Nations Committee on Enforced
 Disappearances, 262–65

- United Nations Committee on Migrant Workers, 262–65
- United Nations Committee on the Elimination of Discrimination Against Women, 262–65, 269–70
- United Nations Committee on the Elimination of Racial Discrimination, monitoring activities of, 262–65, 268–69
- United Nations Committee on the Rights of Persons with Disabilities, 262–65
- United Nations Committee on the Rights of the Child, 115–17, 262–65
 - extra-territorial jurisdiction and, 152–56
 - “gap” in derogation during armed conflict and, 172–75
 - legal obligations of non-state actors and, 213–19
 - monitoring activities of, 265–68
- United Nations Convention on Certain Conventional Weapons (1976), Martens Clause and, 33–35
- United Nations Covenant on Civil and Political Rights, 52–58
- United Nations Development Programme (Human Development Programme), 235–37
- United Nations Economic and Social Council (ECOSOC), 152–56, 262–65
 - protection of cultural property and, 322–25
 - UN Commission on Human Rights and, 241–42
 - United Nations Human Rights Council practices and resolutions of, 243–46
- United Nations Educational, Scientific and Cultural Organisation (UNESCO), protection of cultural values and, 52–58
- United Nations General Assembly
 - human rights vs. humanitarian law debate in, 57–58
 - monitoring of human rights/humanitarian law and, 325–26
 - nuclear weapons legality and, 89
 - Resolution 59/197 (2004), 250–52
 - Resolution 2625, 74–75
 - Resolution 60/251 (establishment of UN Human Rights Council), 241–42
 - Resolution 2597 (XXIV) (1969), 56–58
- United Nations High Commissioner for Human Rights. (*See also* Office of the High Commissioner for Human Rights)
 - armed conflict monitoring and, 259–61
 - future issues in human rights/humanitarian law dichotomy and, 347–48
 - human rights law and, 7
 - on treaty law reform, 270
- United Nations High Commissioner for Refugees (UNHCR), 52–58, 71–76
- United Nations Human Rights Committee
 - categories of rights under, 172–75
 - complementarity of humanitarian and human rights law and, 105–08
 - derogation during war and, 171–72
 - duty to investigate and “right to truth” in cases before, 325–26
 - “gap” in derogation and, 172–75
 - ICCPR provisions on extra-territoriality and, 146–52
 - monitoring obligations of, 262–65
 - state practices and human rights violations reviewed by, 250–52
- United Nations Human Rights Council, 64–65, 74–75
 - Advisory Committee of, 241–42
 - enforcement of human rights and, 239–40
 - fact-finding, special sessions, and inquiry commissions of, 253–55
 - future issues in human rights/humanitarian law dichotomy and, 347–48
 - human rights law and, 7
 - monitoring of armed conflicts by, 241–58, 320–22
 - monitoring of human rights/humanitarian law and, 322–25
 - non-state actors’ legal obligations and, 213
 - practices of, 243–46
 - special procedures for armed conflict of, 246–52
 - UPR (Universal Periodic Review) and, 94–95, 255–58
- United Nations Independent Commission of Inquiry on Libya, 253–55
- United Nations Millennium Summit, 318–20
- United Nations Security Council
 - governance of internal conflicts and, 206–09
 - monitoring of humanitarian law violations and, 318–20
 - non-state actors’ legal obligations and resolutions of, 213–19
 - Office of the High Commissioner for Human Rights and, 259–61
 - peace-keeping military operations and, 201–05
 - Resolution 1546, 297–98
- United Nations Special Representative for Children in Armed Conflict, 216–17
- United Nations Training School Ireland, 188n. 13
- United States
 - Convention Against Torture rejected by, 152–56
 - exclusivist position of, 93–95
 - Guantánamo Bay detainees and, 286–88
 - ICCPR extra-territoriality of human rights rejected by, 146–52, 148n. 28
 - Inter-American Commission on Human Rights cases and, 284–88
 - invasion of Grenada by, 157, 272
 - Lieber Code and, 26–27
 - non-state actors and conflicts with, 211n. 36
 - objections to occupation law by, 222–24
 - occupation of Iraq and, 228–31
 - racism in, 42n. 30
 - territorial and personal jurisdiction case law and, 157

- UN Human Rights Council Special Rapporteurs and drone attacks in Yemen and, 250–52
- Universal Periodic Review in, 255–58
- war on terror ideology in, 141–43, 197n. 31, 197–99
- United States Agency for International Development (USAID), and Inter-American Commission on Human Rights, 272n. 9
- United States Supreme Court, *Hamdan v. Rumsfeld* and, 262–65
- Universal Declaration of Human Rights of 1948 (UDHR)
- absence of derogation in, 174n. 32
 - future issues in human rights/humanitarian law dichotomy and, 340–41
 - Geneva Conventions of 1949 and, 46–51
 - Human Rights in Armed Conflict (Resolution No. XXIII) and, 54
 - human rights law and, 1–6, 9–10, 42–43
 - Martens Clause and, 33–35
- Universal Periodic Review (UPR)
- future issues in human rights/humanitarian law dichotomy and, 348
 - Israeli rejection of, 322–25
 - United Nations Human Rights Council and, 94–95, 255–58
- Uruguay, and UN Human Rights Committee, 262–65
- USAID (United States Agency for International Development), and Inter-American Commission on Human Rights, 272n. 9
- utilitarianism
- in Lieber Code, 26–27
 - medieval human rights law and, 14–16
 - science of war and, 24–26
- Varnava and others v. Turkey*, 307–09
- Vavarin* case, 334–36
- VCLT. *See* Vienna Convention on the Law of Treaties
- Verdross, Alfred, 44
- victory, ideology of, and war as risk management, 193–95
- Vienna, Congress of (1815), 24–26
- Vienna Convention on the Law of Treaties (VCLT), 88, 98n. 94
- complementarity principle and, 106–08
 - extra-territorial jurisdiction and, 152–56
 - fragmentation in international law and, 282–83
- Vienna Declaration and Programme of Action of 1993, 71, 223n. 21
- “Vienna mandate,” lack of humanitarian law enforcement and, 316–20
- Vienna School of international law, 44
- Vietnam War (1964–1973)
- Additional Protocols of 1977 and, 61–64
 - human rights law and, 52–58
 - UN Human Rights Council procedure for, 246n. 35
- Villagrán-Morales v. Guatemala*, 290
- Von Hagenbach, Peter, 13
- voting rights, as non-derogable right, 172–75
- Wako, S. Amos, 251–52
- war
- authorized use of force in, 131–36
 - changing definitions of, 5n. 11, 7, 193–205
 - early laws concerning, 11–14
 - as emergency, 169–75
 - emerging law of nations and, 19–21
 - Enlightenment philosophy and laws of, 21–23
 - European Convention on Human Rights language concerning, 295n. 4–295n. 1
 - Grotius on laws of, 20–21
 - jus in bello* in human rights and, 124–27
 - law and dynamics of, 191–92
 - law enforcement and, 199–201
 - military codes and, 16–18
 - prohibitions against, 40–41
 - proportionality principle and scope of, 136–39
 - as public activity, 16–18
 - as risk management, 193–95
 - science of warfare, emergence of, 24–37
 - self-interest and justice in laws of, 14–16
 - “special” vs. “general” distinctions concerning *lex specialis* in context of, 95–99
 - as trauma and crime, 38–40
- war crimes. (*See also* Nuremberg war crimes trials; Tokyo war crimes trials)
- codification of law concerning, 38–40
 - European Court of Human Rights rulings on, 307–09
 - law enforcement vs. military operations and, 199–201
 - Martens Clause and, 32–33
 - post-Second World War concepts of, 39–40
 - remedy and compensation in proceedings of, 334–36
 - trial in middle ages concerning, 13
- War on Terror ideology
- ICCPR extra-territoriality of human rights and, 146–52
 - international vs. non-international dichotomy in armed conflicts and, 191–92
 - transnational conflicts and, 197–99
 - UN Human Rights Committee and, 262–65
 - UN Human Rights Council Special Rapporteurs and, 250–52
 - unified use of force regime and, 141–43
- warrior image, human rights ideology and, 186–89
- water, right to, protections for, 112–15
- weapons technology. (*See also* gas warfare; technology of warfare)
- Additional Protocols of 1977 restrictions on, 61–64
 - codification of laws concerning, 29
 - explosive rifle projectiles, 24–26
 - First World War and role of, 38–40
 - laws of war and, 17–18

- weapons technology (cont.)
 - in Napoleonic wars (1804-1815), 22
 - non-state actors and, 195–97
 - proportionality principle and, 137–39
 - science of warfare and evolution of, 24–26
- West Bank, UN Human Rights Committee monitoring of, 262–65
- Westphalia, Treaty of (1648), 17, 233n. 11
- WHO (World Health Organization), and nuclear weapons legality, 89
- women, rights of. (*See also* rape; sexual violence, protection against)
 - civil and political rights, 109–12
 - displaced persons protections and, 71
 - human security concept and, 235–37
 - jurisdictional issues and, 152–56
 - medieval concepts of mercy and chivalry and, 11–14
 - non-state actors’ obligations concerning, 213–19
 - obligation to protect principles and, 181–82
 - Plan de Sánchez* case and, 293
 - UN Committee on the Elimination of Discrimination Against Women and, 269–70
 - Universal Declaration of Human Rights and, 42–43
 - violence against, 17
 - war as public activity and, 16–18
- Working Group on Arbitrary Detention (UN Human Rights Council), 247–48
- Working Group on Enforced or Involuntary Disappearances (UN Human Rights Council), 248
- World Conference on Human Rights (Tehran, 1968), 52–58, 124–27
- World Conference on Human Rights (Vienna) (1993), 71, 222–24
- World Health Organization (WHO), and nuclear weapons legality, 89
- World War I (1914–1918), war as trauma and crime in, 38–40
- World War II. *See* Second World War
- Yemen, US drone attacks in, 250–52
- al-Yemeni, Haitham, 250–52
- Yugoslavia, former state of. (*See also* International Criminal Tribunal for the Former Yugoslavia)
 - conflict in, 171–72
 - UN Human Rights Council monitoring of, 243–46