

Index

- abduction, without state consent, 242
- absence or insufficiency of law. *See non liquet*
- abuse of power, as crime against humanity, 54–57
- accountability
 - age of, 1–2
 - with amnesties, 260
 - for famine-related crimes, 111
 - ‘fight against impunity’ and, 1–2
 - global, expansion of, 5
 - of global justice institutions, 165, 183
 - in human rights movement, 5
 - IAC and, 78
 - international criminal law and, 3, 12
 - Joinet and Orentlicher principles, 1–2
 - in justice models, 213–221
 - Commissions of Inquiry, 213–216
 - through investigative bodies, 213–216
 - reconciliation commissions, 216–219
 - truth commissions, 216–219
 - narratives, 316
 - NIAC and, 78
 - of prosecutors, 280
 - scope of, 1–2
 - in system criminality, 131–132
- acquittals, 287–288
- activism, judicial, 299
- ad hoc* tribunals
 - cooperation through, 233–236
 - criminal justice procedures in, 273–274
 - for gender violence, 62
 - as global justice institution, 165
 - for inhumane acts, 72
 - international criminal jurisdiction through, 192–197
 - international criminal law and, 12
 - judges in, 297–299
 - as justice model, 192–194
 - MICT, 194
 - reparations through, 399
 - Security Council and, 194
 - for sexual violence, 62
 - for war crimes, 81–82
- administrative penalties, 213
- admissibility of evidence, 343–345
- advocacy, through criminal justice procedures, 272
- Africa, ICC bias against, 346–347
- African Court of Justice, 28
- African Court of Justice and Human and Peoples’ Rights, 210, 212, 224. *See also* Malabo Protocol
- African Union, 168
 - Senegal and, 205
- aggression, as crime, 95–105
 - during Cold War, 98
 - as collective action, 95–96
 - Commission on the Responsibility of the Authors of the War and Enforcement of Penalties, 97
- definitional dilemmas for, 100–102
 - for ICC, 103–105
 - for individual acts, 102
 - for state acts, 100–102
- difficulty in prosecution of, 96
- humanitarian interventions for, 103–104
- ICC and
 - definitional dilemmas for, 103–105
 - jurisdictional dilemmas for, 99–100
- ILC and, 99
- implications of, 102–105
- individual acts of, 102
- in international criminal tribunals, 102
- jurisdictional dilemmas over, 98–100
 - for ICC, 99–100
- jus ad bellum*, 95
- jus contra bellum*, 95
- jus in bello*, 95
- malum in se*, 19
- national security violations and, 98
- origins of, 96–98
 - as state act, 99–102
 - after World War I, 97
 - after World War II, 97–98
- Agreement on Accountability and Reconciliation, 220–221
- Ainley, Kirsten, 145

- Akayesu* trial, 37, 48, 63
 Akhavan, Payam, 227
 Albright, Madeleine, 165, 167
 Aloisi, Rosa, 296, 378
 Alter, Karen, 165
 Ambos, Kai, 44, 114, 261
 American Convention on Human Rights, 21
amicus curiae briefs
 for civil society actors, 324–326
 for state, 323–324
 amnesties, 247, 258–266
 accountability with, 260
 alternative approaches to, 264–265
 effect of, 263–264
 forms of, 259–260
 ICC Statutes, 261
 Legal Framework for Peace and, 264–265
 legal treatment of, 261–265
 limitations of, 260
 notions of, 259–260
 Amnesty Act (Uganda), 262
 apartheid, 68–70
 definition of, 69
 genocide and, 68
 historical context for, 69
 appeals, 376–377
 at Nuremberg trials, 273
 Arafat, Yasser, 186
 Arbour, Louise, 196, 230, 279, 329
 Arendt, Hannah, 4, 33, 117, 127, 381
 on trials, purposes of, 177–178
 armed conflict
 IAC, 76–77
 NIAC, 77–79
 terrorism during, 92, 106
 war crimes in nexus to, 81
 armed groups. *See specific groups*
 Armenian genocide, 19, 70
Arrest Warrant case, 252–256
 arrest warrants, 358–360
 artificial legal transplants, 298–299
 assets. *See* freezing and seizure of assets
 asylum, for witnesses, 244
 atrocity crimes. *See also* crimes against humanity;
 war crimes
 criminal justice procedures for, 276
 audio evidence, 338–339
 autonomous interpretation doctrine, 298–299
Axis Rule in Occupied Europe (Lemkin), 33–34

 Bagsora, Theoneste, 360
 Bala, Haradin, 352
 banality of evil, 4, 127. *See also* Arendt,
 Hannah
 Ban-Ki Moon, 1
 Barasa, Walter, 355
 Barayagwiza, Jean-Bosco, 48

 Barbie, Klaus, 188–189, 242
 Basel Convention on the Control of Transboundary
 Movements of Hazardous Wastes and their
 Disposal, 108
 Al Bashir, Omar, 257–258
 Bassiouni, Cherif, 162–163
 Bemba, Jean-Pierre, 64, 241–245, 402
 Benesch, Susan, 49–50
 Benito, Elizabeth Odio, 93, 379–380
 Bensouda, Fatou, 347
 bias. *See* judicial bias
 big fish/small fish dilemma, 348–350
 Bijleveld, Catrien, 391–392
 Bikindi, Simon, 49
 Bormann, Martin, 290
 Bozizé, François, 208
 Brandenburg test, 49
 Brichambaut, Marc Perrin de, 258
 Brownlie, Ian, 34
 Bruch, Elizabeth, 197
 Burundi, withdrawal from ICC, 3

 capacity building, 180–181, 424
 case building, through investigations,
 335–337
 through analysis of evidence, 336
 through fact-finding, 336
 through lines of inquiry, 336
 case selection, 347–353
 Cassese, Antonio, 124, 134, 147, 181, 200
 Castro, Fidel, 186
 Cattin, David Donat, 225
 CDF. *See* Civil Defence Force
 CEDAW. *See* Convention on the Elimination of all
 Forms of Discrimination against Women
 Čermak, Ivan, 352
 chain of custody, for evidence, 336
 charges, during pre-trial stage
 clarification of, 360–363
 in ICC, 362
 in ICTR, 361
 in ICTY, 362
 at Nuremberg trial, 361
 at Tokyo trial, 361
 judicial review of, 366–368
 confirmation procedures, 367
 in trial preparation, 367–368
 chemical weapons, restrictions on, 89–91
 child soldiers, 314–317
 recruitment of, 314–316
 victim narratives of, 314–316
 children, sexual violence against, 93
 Christie, Nils, 313–314
 Churchill, Winston, 33
 CIJA. *See* Commission for International Justice
 and Accountability
 circumstantial evidence, 336

- CISA. *See* Convention Implementing the Schengen Agreement
- Civil Defence Force (CDF), 92–93
- civil law systems, 292
- civil model, of reparations, 399
- civil society actors, 324–326
- civilians
- crimes against humanity against, 53
 - war crimes and, 83–84
- Coalition for Women's Human Rights in Conflict Situations, 325
- Cold War
- crimes of aggression during, 98
 - criminal justice procedures after, 273
- collective reparations, 403–404, 406–408
- collective responsibility, of perpetrators, 133–138
- JCE, 134–135
- Colombian Constitutional Court, 388
- Combs, Nancy, 200, 293
- comfort women, 62
- Commission for International Justice and Accountability (CIJA), 353
- Commission on the Responsibility of the Authors of the War and Enforcement of Penalties, 97
- Commissions of Inquiry, 213–216
- common law systems
- judges in, 292
 - principle of legality, 11
 - prosecution in, 278
- complementarity
- consent and, 226
 - cooperation and, 226
 - flexibility of, 224
 - functions of, 222–223
 - of global justice institutions, 165
 - horizontal, 224
 - ICC and, 225–229
 - assessment approaches to, 225–226
 - challenges for, 226–229
 - context-sensitivity for, 227
 - critiques of, 226–229
 - development of, 222–224
 - goals and effects of, 228
 - legitimate difference and, 230
 - limitations of, 229
 - Malabo Protocol and, 224
 - NGOs and, 224
 - origins of, 221–224
 - positive, 223
 - qualified deference compared to, 230
 - quasi-complementarity, 224
 - reverse, 224
 - Rome Statute and, 223–225
- confidentiality
- in outsourcing of investigations, 353–354
 - in pre-investigative phase, 331–332
- conflicts of interest, for witnesses, 320
- consent. *See also* state consent
- complementarity and, 226
- consent-based justifications, for international criminal law, 429
- constructivism
- international criminal law and, 17
 - legal, 297
- control theory, 135–138
- control over crime, 136
 - ICC Statutes and, 136–138
 - organizational control doctrine, 136–138
- Convention against Torture, 20–21
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 61
- Convention for the Protection of All Persons from Enforced Disappearance, 20–21, 67, 239
- Convention for the Punishment and Prevention of Terrorism, 29
- Convention for the Suppression of the Financing of Terrorism, 30
- Convention Implementing the Schengen Agreement (CISA), 249
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 106
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 108
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 72
- Convention on the Prevention and Punishment of the Crime of Genocide, 20, 46, 159, 238–239
- Convention to Suppress Slave Trade and Slavery, 25–26
- cooperation, 230–246
- through *ad hoc* tribunals, 233–236
 - complementarity and, 226
 - dilemmas with, 238–246
 - for human rights, 241–242
 - discretion and, 232
 - through enforcement of sentences, 242–246
 - through extradition, 233
 - failures of, 237–238
 - in financial investigations, 240
 - through freezing and seizure of assets, 239–240
 - gaps in, 238–246
 - in legal frameworks, 238–241
 - horizontal regimes, 232–233
 - in hybrid courts, 239
 - in internationalized courts, 239
 - in hybrid courts, 239
 - in ICTR, 242–243
 - in ICTY, 234–235, 241–242, 245–246
 - between intergovernmental organizations, 236
 - in inter-state relations, 230–231
 - judicial, 233

- in mixed ICC regimes, 235–238
- models of, 231–238
- between non-states, 236
- political offence exceptions, 232–233
- reciprocity and, 232
- reverse, 236
- in South African cases, 238
- state sovereignty and, 232–241
- vertical approach to, 233–235
 - in hybrid courts, 239
 - in internationalized courts, 239
- COPLA. *See* Criminal Court for Latin America and the Caribbean Against Transnational Organized Crime
- core crimes, 32. *See also* aggression; crimes against humanity; genocide; war crimes
- corruption, 105–107, 416–417
- crimes against environment, 20, 108–110
 - under Basel Convention, 108
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora, 108
 - under domestic jurisdictions, 108–109
 - as ecocide, 109
 - ILC definitions of, 108
- dynamic interpretation of, 115
- famine-related crimes, 110–113
 - accountability for, 111
 - by Khmer Rouge, 110–111
 - in Somalia, 110–111
- starvation, as war crime, 111–112
- organized economic crime, 105–107
 - Conventions against, 106
 - Malabo Protocol and, 107
 - under Rome Statute, 107
 - transnational treaty crime and, 106
- against vulnerable populations, 115–116
- corporate criminal responsibility, 120–123
 - complicity of, 121
 - historical development of, 123
 - in international criminal law, 418–419
 - limited recognition of, 122–123
- corruption, as core crime, 105–107, 416–417
- Côté, Luc, 280–282
- counter-terrorism laws, 30
- Court of Justice of the Economic Community of West African States (ECOWAS), 191
- courts. *See also* domestic courts; hybrid courts; international courts; regional courts
 - legal identity through procedural concepts, 270
- Crane, David, 315
- credibility, of witnesses, 272
- crime, conceptualization of, 416–417
 - construction of, 416
 - exceptionality thesis, 417
 - norm theories in, 416
- crime control model, 9
- crimes against environment, 20, 108–110
 - under Basel Convention, 108
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora, 108
 - under domestic jurisdictions, 108–109
 - as ecocide, 109
 - ILC definitions of, 108
- crimes against humanity, 52–73. *See also* enforced disappearances; genocide; torture
 - through abuse of power, 54–57
 - apartheid, 68–70
 - definition of, 69
 - genocide and, 68
 - historical context for, 69
 - against civilians, 53
 - context for, 57–58
- crime typologies and, 58–73
 - murder-type offences, 58
 - persecution-related offences, 58
- domestic, 58–59
- dynamic interpretation of, 58–73
- forced marriage, 72–73
- gender-based violence, 62–65
 - ad hoc* tribunals for, 62
 - reproductive violence as, 64
- genocide compared to, 52
- human trafficking as, 59–61
- under ICC Statutes, 55
- inhumane acts, 72–73
- malum in se*, 19
- Martens clause and, 52–53
- modern day slavery as, 59–61
- by non-state actors, 73
- normative theories for, 53–54
 - attacks on humanity and humaneness, 53–54
 - as threat to international peace, 54
 - through organizational policy, 54–57
- organized crime compared to, 56–57
- origins of, 52–53
- persecution, 70–72
 - of gender identity, 70–72
 - of LGBT persons, 70
- privatization of, 73
- sexual violence, 62–65
 - ad hoc* tribunals for, 62
 - Akayesu* trial, 63
- systemic attacks in, 58
- torture as, 61–62
- crimes against peace, 13
- crimes of obedience, 129–131
 - role orientation for, 130–131
 - rule orientation for, 130
 - value reorientation for, 131

- Criminal Court for Latin America and the Caribbean Against Transnational Organized Crime (COPLA), 107
- criminal law
 - authority of, 429
 - fairness-oriented foundations of, 10
 - legality of, 10
- criminal model, of reparations, 400–401
- criminal organizations. *See* organized crime
- criminal responsibility
 - academic critiques of, 158
 - by corporations, 120–123
 - complicity of, 121
 - historical development of, 123
 - limited recognition of, 122–123
 - exclusion from, grounds for, 146–157
 - contextual elements in, 147
 - for duress, 151–155
 - for intoxication, 149–150
 - legal approaches to, 147–148
 - for mental capacity, 149
 - pragmatic approaches to, 155
 - for self-defence, 150–151
 - superior orders and, 152–153, 155–156
 - legal merits of, 158
- crisis. *See* genocide; human rights
- Croatia. *See* International Criminal Tribunal for the Former Yugoslavia
- cultural genocide, 46–47
 - Russian response to, 46–47
- cultural relativism, 423–424
- Damaška, Mirjan, 271–272, 323
- Dayton Peace Talks, 176–177
- De Baer, Marcel, 161
- defence, 283–291
 - macro challenges for, 284–286
 - equality of arms, 284–285
 - guilt by association, 286
 - hearsay evidence, 285–286
 - prosecutorial disclosure strategies, 285
 - presence at trial, 290–291
 - presumption of innocence and, 283
 - purpose of, 283
 - representation of interests, 288–289
 - roles of, 283–284
 - self-representation, 288–289
 - limits of, 289
 - strategies of, 286–288
 - confrontation of evidence in, 287
 - victor's justice and, 286–324
- defendants' rights, 273
- Del Ponte, Carla, 233–235, 352
- Descamps, Edouard, 161
- destruction of cultural property, 84–85
- detention, pre-trial, 245, 288, 360
- deterrence, of crime
 - through global justice institutions, 175–176
 - through international criminal law, 2
 - as punishment rationale, 383–384
- digital evidence, 338–339
- direct criminalization thesis, 21
- direct evidence, 336
- disappearances. *See* enforced disappearances
- disciplinary penalties, 213
- disclosure, duty of, 281, 285
 - during pre-trial stage, 363–366
- discretion
 - cooperation and, 232
 - prosecutorial, 278–280, 359–360
- dispute and reconciliation mechanisms, 220–221
- distinction, principle of, 83–87
- distributive justice, 13, 409, 427
- Dixon, Peter, 409
- doctrine of universal jurisdiction. *See* universal jurisdiction
- documentary evidence, 337–338
- domestic courts, 184–191
 - as agent of international entities, 185
 - diversity of, 184
 - effects doctrine, 185
 - jurisdiction of, 190–191
 - national sovereignty of, 185
 - territoriality concept in, 185
 - universal jurisdiction in, 185–188
- domestic crimes against humanity, 58–59
- domestic law
 - human trafficking and, 28–29
 - international criminal law influenced by, 8
- domestic military courts (DRC), 181
- dossier-based approach, to criminal justice procedures, 274
- Douglas, Lawrence, 178
- downward effect, 249
- Draft Code of Crimes against the Peace and Security of Mankind, 163
- Draft Comprehensive Convention on International Terrorism, 31
- DRC. *See* domestic military courts
- drug cartels, 57
- Drumbl, Mark, 147, 230, 413
- Du Plessis, Max, 346
- due process model, 9
 - in criminal justice procedures, 275
- Duff, Antony, 385, 429
- Dugard, John, 70
- Dunant, Henri, 74
- duress, as grounds for exclusion from criminal responsibility, 151–155
 - case-by-case assessment of, 153
 - under common law, 152
 - superior orders and, 152–153

- Durkheim, Emile, 17. *See also* expressivism
 Dworkin, Ronald, 279
- EAC. *See* Extraordinary African Chambers
 early release, 394–396
 ECCC. *See* Extraordinary Chambers in the Courts
 of Cambodia
 ecocide, 109
 economic crimes. *See* organized economic crime
 economic damages, reparations through, 402
 ECOWAS. *See* Court of Justice of the Economic
 Community of West African States
 effects doctrine, 185
 Eichmann, Adolf, 3–4, 44, 242
Eichmann case, universal jurisdiction in, 185,
 242
Eichmann in Jerusalem (Arendt), 4, 127
 Elver, Hilal, 111
 Emmerson, Ben, 352–353
 enemy concept, in international criminal law,
 419–420
 enforced disappearances, 65–68
 Convention against Enforced Disappearance,
 20–21
 definition of, 67
 by drug cartels, 67
 through extraordinary renditions, 67–68
 ne bis in idem principle, fraudulent trial exception,
 248–249
 under ‘Night and Fog’ decree, 65–66
 as state crime, 67
 enforcement, impediments to, 247–266. *See also*
 amnesties; immunities
 ne bis in idem principle, 247
 downward effect, 249
 international protections, 248–249
 ordinary crime exception, 248
 transnational application, 249–250
 upward effect, 248
 pardons, 265–266
 humanitarian, 266
 equality, as legal principle, 282–283
 equality of arms principle, 273–276, 284–285
 European Arrest Warrant, 211
 European Convention on Human Rights, 299
 European Court of Human Rights, 91, 188, 210,
 243–244, 296–297
 European Evidence Warrant, 211
 evidence
 admissibility of, 343–345
 chain of custody for, 336
 circumstantial, 336
 defence strategies for, 287
 direct, 336
 duty to disclose, 281
 European Evidence Warrant, 211
 exclusion of, 343–345
 Framework Decision on the Freezing of Property
 and Evidence, 211
 fruit of the poisonous tree doctrine, 344
 gathering of, 276, 337–345
 hearsay, 285–286
 illegally obtained, 344–345
 linkage, 336–337
 new technologies for, legal issues with, 339–343
 open source material, 341–343
 types of, 337–339
 audio evidence, 338–339
 digital evidence, 338–339
 documentary, 337–338
 physical evidence, 338
 witness testimony, 338
 victims and, presentation by, 312–313
 exclusion of evidence, 343–345
 expeditiousness, 412–426
 expert witnesses, 318
 expressivism, 181–182
 in punishment rationales, 384–385
 expressivist justice, 13
 extradition, cooperation through, 233
 Extraordinary African Chambers (EAC), 204–206
 Extraordinary Chambers in the Courts of
 Cambodia (ECCC), 2, 202–204, 263–264
 establishment of, 275
 Khmer Rouge and, 202–203
 politicization of, 203
 victims’ role in, 305–306
- Fabre, Cécile, 20
 fact-finding
 case building through, 336
 by judges, 292–295
 fair trials, as right, 275
 through criminal justice procedures, 273
 fairness, 412–426
 of criminal justice procedures, 274–275
 in criminal law, 10
 famine-related crimes, 110–113
 accountability for, 111
 by Khmer Rouge, 110–111
 in Somalia, 110–111
 starvation, as war crime, 111–112
 Ferencz, Benjamin, 162–163
 ‘fight against impunity,’ 1–2, 424
 Global South and, 3
 to silence political opposition, 5
 financing of terrorism, 29–31, 240
 Fletcher, Georg, 118, 124–125
 forced marriage, 72–73
 forced pregnancy, 64
 forced sterilization, 64
 forgiveness, 179
 Framework Decision on the Freezing of Property
 and Evidence, 211

436

Frank, Hans, 193
 fraudulent trial exception, 248–249
 freedom fighters, 294
 terrorism and, 30
 freezing and seizure of assets, 239–240
 fruit of the poisonous tree doctrine, 344
 Fujimuro, Alberto, 189
 functional immunity, 250–253

gacaca trials, 219–220
 Garcia-Sayán, Diego, 265
 Garraway, Charles, 95
 gender-based violence, 62–65
 ad hoc tribunals for, 62
 reproductive violence as, 64

Geneva Conventions. *See specific conventions*

genocide, 32–51
 apartheid and, 68
 Armenian, 19, 70
 biological destruction in, 37, 44–47
 Convention on the Prevention and Punishment of
 the Crime of Genocide, 20, 159
 crimes against humanity compared to, 52
 cultural, 46–47
 defined, 32–33
 forced transfer and, 44–46
 as hate crime, 34–35
 ICJ on, 20–33
 ICTY and, development of laws against, 37
 ILC on, 43–45
 incitement to, 47–50
 Brandenburg test for, 49
 ICTR and, 47–50
 inferred intent and, 41–43
 intent and, 44–46
 inferred, 41–43
 specific, 37–39
 Jelisić case, 38–39
 Katyn massacre, 35–36
 by Khmer Rouge, 36
 knowledge-based approach to, 43–44
 Krstić case, 40
 Lemkin on, 33–34
 localized, 39–41
 malum in se, 19
 nature of, 34–35
 new law on, 50–51
 Nuremberg trials and, 33–34
 objective interpretation of
 of ethnicity, 36–37
 specific intent in, 38–39
 origins of, 33–34
 othering and, 35
 physical destruction in, 37, 44–47
 against protected groups, 35–37
 rape as, 37
 realistic intent test, 39

Index

in Rwanda, 36–37, 47–50
 Akayesu bench on, 37, 48
 biological and physical destruction through, 37
 sentencing for, 391–392
 specific intent for, 37–39
 objective interpretation of, 38–39
 subjective interpretation of, 38–39
 subjective interpretation of
 of ethnicity, 36–37
 specific intent in, 38–39
 system criminality and, 127
 UN Convention on the Prevention and
 Punishment of the Crime of Genocide, 34

Genocide case, 126

Gentili, Alberico, 24

German Code of International Crimes, 272

Glasius, Marlies, 183

global accountability, 5

global criminal law, 1

global justice institutions. *See also* International
 Court of Justice; International Criminal
 Court; justice models; Nuremberg trials;
 specific tribunals
 accountability of, 165, 183
 ad hoc tribunals and, 165
 ambiguity of goals for, 174–182
 capacity building through, 180–181, 424
 critiques of, 166–173, 266–268
 globalization as factor in, 171–172
 for imperial justice, 168–171
 socio-legal, 172–173
 for victors' justice, 166–168
 deterrence of crime through, 175–176
 diversification of, 159
 enforcement through, 159
 governance structures for, 183
 historical clarification for, 177–178
 historical development of, 160–165
 intellectual history, 160–163
 hybrid courts, 172
 incapacitation by, 176–177
 justifications for, 163–165
 League of Nations, 161, 164
 merits of, 266–268
 paradoxes of, 173–183
 multi-faceted identity of courts as, 182–183
 prevention of crime through, 175–176
 principle of complementarity and, 165
 prioritisation of goals for, 174
 reconciliation through, 178–180
 self-reflexivity of, 423–425
 as social actors, 182–183
 social elites and, 172
 sovereignty of, 166
 TWAIL and, 9, 169–170
 UNWCC, 161–162
 Global South, 'fight against impunity' and, 3

- Goldstone, Richard, 274–275, 349
 Göring, Hermann, 338
 Gosnell, Christopher, 359
 Gotovina, Ante, 352
 Greenawalt, Alexander, 43–44
 Greiff, Pablo de, 384
 Grotius, Hugo, 24
 grounds excluding responsibility
 duress, 151–155
 intoxication, 149–150
 mental capacity, 149
 self-defence, 150–151
 superior orders, 152–153, 155–156
 guilt
 by association, 286
 individualization of, 420–421
 presumption of, 283
 Habré, Hissène, 191
 Hadden, Tom, 263
 Hague Convention, 397
 Hague Law, 74
 Hariri, Rafiq, 200–201
 Harvard Draft Convention, 184
 hate crimes, 34–35
 hate speech, 49–50. *See also* incitement to genocide
 Hayner, Priscilla, 228–229
 Hazan, Pierre, 282
 hearsay evidence, 285–286
 Heller, Kevin, 21
 Hernandez, Concepcion Escobar, 252–253
 Hess, Rudolf, 149
 Hinga, Sam Norman, 92–93, 218, 288–289
 Holá, Barbora, 246, 391–392
 horizontal complementarity, 224
 horizontal regimes, for cooperation, 232–233
 in hybrid courts, 239
 in internationalized courts, 239
 Houge, Anette Bringedal, 425
 human rights. *See also* international human rights law
 accountability for, 5
 American Convention on Human Rights, 21
 cooperation dilemmas for, 241–242
 criminal justice procedures in conflict with, 275
 ICCPR and, 21
 ICESCR and, 21
 Inter-American Court on Human Rights, 66, 126
 international criminal law as response to, 9–10
 judicial scrutiny of, absence of, 299
 human rights law
 cultural relativism, 423–424
 international criminal law compared to, 113–114
 reparations under, 407
 universalism and, 423–424
 human shields in combat, 88–89
 human trafficking, 26–29
 domestic law approaches to, 28–29
 in ICC, 27–28
 for labour exploitation, 26
 Malabo Protocol, 25, 60–61
 of migrants, 27
 Palermo Protocol and, 26
 for sexual exploitation, 26
 humanitarian pardons, 266
 Hussein, Saddam, 3–4, 91
 hybrid courts, 198–202
 cooperation in horizontal regimes, 239
 as global justice institution, 172
 internationalization of, 198–199
 prosecutorial independence in, 280
 SCSL, 4, 63, 199–200, 245, 263–264
 Special Court in the Central African Republic, 197–198
 STL, 2, 30, 200–202
 hybrid justice, 197–209
 after Cold War, 197–198
 critiques of, 209–210
 institutional design of, 198
 internationalized domestic courts, 202–209
 EAC, 204–206
 ECCC, 2, 202–204, 263–264
 Kosovo Specialist Chambers, 204–207
 Prosecutor's Office, 206–207
 Special Criminal Court in the Central African Republic, 204–209
 merits of, 209–210
 origins of, 197
 hybridization, of criminal justice procedures, 270–272
 in adversarial systems, 271, 274
 in inquisitorial systems, 271
 IAC. *See* international armed conflict
 ICC. *See* International Criminal Court
 ICCPR, 21
 ICESCR. *See* International Covenant on Economic, Social, and Cultural Rights
 ICJ. *See* International Court of Justice
 ICRC. *See* International Committee of the Red Cross
 ICTR. *See* International Criminal Tribunal for Rwanda
 ICTY. *See* International Criminal Tribunal for the Former Yugoslavia
 ILC. *See* International Law Commission
 illegally obtained evidence, 344–345
 immunities, 247, 250–258
 functional, 250–253
 in international courts, 255–258. *See also specific courts*
 conflicting rulings on, 255–256
 ICC context, 256–258

- immunities (cont.)
 - for international crimes, exceptions to, 18, 251–255
 - under Malabo Protocol, 212–213
 - personal, 250, 253–255
 - tribunal exceptions, 255–258
- impartiality
 - of judges, 293
 - of prosecutors, 282
- imperial justice, 168–171
- imperialism. *See* inherent imperialism
- incapacitation, 176–177
- incarceration, punishment through, 381–382
 - for life, 389
- incitement to genocide, 47–50
 - Brandenburg test for, 49
 - ICTR and, 47–50
 - Russian response to, 46–47
- independence, of prosecutors, 278–280
 - in hybrid courts, 280
- individual criminal responsibility, 117–126
 - contextual elements of, 125
 - for corporations, 120–123
 - complicity of, 121
 - historical development of, 123
 - limited recognition of, 122–123
 - fairness and, 124–125
 - ICTY definitions for, 120
 - justifications of, 123–124
 - limitations of, 124–126
 - under Malabo Protocol, 122
 - methodological approaches to, 118
 - modes of liability, 133–138
 - challenges with, 145–146
 - at Nuremberg trials, 124
 - mantra at, 119–123
 - proportionality of, 124–125
 - of states, 120
 - STL and, 122
 - under Treaty of Versailles, 119
- inferred intent, 41–43
- inherent imperialism, 170
- insider witnesses, 317–318
- institutions. *See* global justice institutions
- intent
 - inferred, 41–43
 - realistic intent test, 39
 - specific, for genocide, 38–39
- Inter-American Court of Human Rights, 66, 126, 210–211, 259–260, 396–397
- intermediaries, outsourcing of investigations
 - through, 354–356
- international armed conflict (IAC), 76–77
 - accountability and, 78
- International Committee of the Red Cross (ICRC), 31
 - war crimes and, 79, 83–84
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 68
- International Court of Justice (ICJ), 20–33
 - Genocide* case, 126
 - war crimes and, 77
- international courts. *See also specific courts*
- immunity in, 251–255
- International Covenant on Economic, Social, and Cultural Rights (ICESCR), 21
- international crimes. *See also* global justice
 - institutions; human trafficking; terrorism
 - criminological research on, 16
 - definitions of, 16–18
 - community interest violations as factor in, 17
 - nature of criminality as factor in, 16–17
 - direct criminalization thesis, 21
 - first generation, 23–32
 - against future generations, 428
 - immunity exceptions for, 18, 251–255
 - mass atrocity crimes as, 16–17
 - piracy, 23–25
 - definitions of, 24
 - Malabo Protocol and, 25
 - malum in se* and, 19
 - modern laws on, 24–25
 - under UNCLOS, 24–25
 - under universal jurisdiction, 24
 - qualifications of conduct as, 17–18
 - slavery and slavery-like practices, 25–29
 - Convention to Suppress Slave Trade and Slavery, 25–26
 - Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 26
- structure of, 22–23
 - material element, 22
 - mental element, 22
- theories of, 18–22
 - malum in se*, 19–20
 - malum prohibitum*, 20–22
- universal jurisdiction of, 18
- International Criminal Court (ICC), 1–10. *See also*
 - cooperation
 - African states' response to, 169–170
 - amnesties and, 261
 - bias against Africa, 346–347
 - clarification of charges, 362
 - complementarity and, 222–229
 - assessment approaches to, 225–226
 - challenges for, 226–229
 - context-sensitivity for, 227
 - critiques of, 226–229
 - development of, 222–224
 - goals and effects of, 228
 - control theory and, 136–138

- on crimes of aggression
 - definitional dilemmas for, 103–105
 - jurisdictional dilemmas for, 99–100
- global narratives of conflict by, 169
- immunities and, 256–258
- as justice model, 194–197
- liability and, modes of, 138–140
- mixed regimes, 235–238
- pre-investigative phase in, 327–332
- regimes, 171
 - cooperation in. *See* cooperation
 - mixed, 235–238
- reparations policy for, 406–407, 410–411
- Special Criminal Court in the Central African Republic and, 209
- system criminality and, 129
- victims' role in, 307–314
- war crimes and, 82, 84, 86–87, 89–90, 93–95
- withdrawal from, 3
- international criminal jurisdiction, 191–197
 - through *ad hoc* tribunals, 192–197
 - Rome Statute system, 194–197
 - Security Council and, 194–197
- international criminal law. *See also* global justice
 - institutions; liability; procedures; punishment
 - accountability through, 3, 12
 - ad hoc* tribunals and, 12
 - consent-based justifications for, 429
 - constructivist approach to, 17
 - corporations and, 418–419
 - cosmopolitan visions of, 8–9
 - crime control model, 9
 - crises in, 412–413
 - criticism of, 3
 - critiques of, 113–116
 - definitions of, 12
 - dichotomies within, 12–13
 - domestic law and, 8
 - due process model under, 9
 - enemy concept in, 419–420
 - evolution of, 13–14
 - future applications of, 413–429
 - goals of, 2–3
 - historical foundations of, 7–15
 - human rights law compared to, 113–114
 - individual as focus of, 419–421
 - individual responsibility under, 418
 - international human rights law and, 10
 - international humanitarian law and, 10
 - jus puniendi* and, 8–9
 - modern theories of, 8
 - moral agency as foundation of, 412–413
 - nullum crimen* principle and, 15
 - othering in, 421–422
 - outcome-based justifications of, 429
 - overreach of, 1–10
 - Permanent Court of International Justice and, 10–11
 - pragmatism as influence on, 9–10
 - principle of legality and, 10–12
 - common law and, 11
 - process-based justifications of, 429
 - promotion of rule of law through, 2–3
 - public goods protection under, 16
 - public international law and, 8
 - realist visions of, 8–9
 - rejection of, 3
 - relational accounts of, 428–429
 - as response to human rights violations, 9–10
 - scope of, 10, 12
 - as social deterrent, 2
 - sovereignty paradox and, 414–416
 - state consent and, 8
 - state responsibility under, 418
 - subjects of, 418–419
 - trends in, 113–116
 - universality of, 423–424
- International Criminal Tribunal for Rwanda (ICTR), 2, 167. *See also* genocide
 - cooperation in, 242–243
 - on genocide of Tutsis, 36–37
 - incitement to genocide cases, 47–50
- International Criminal Tribunal for the Former Yugoslavia (ICTY), 2, 4, 22, 39–41, 167. *See also* genocide
 - case selection by, 349–353
 - clarification of charges, 361–362
 - cooperation in, 234–235, 241–242, 245–246
 - judges in, 292, 298
 - Kovačević* case, 147
 - modern genocide law, development of, 37
 - Tadić* decision, 76–78, 80, 129, 193, 349–350
- international criminal tribunals, 102
- international human rights law
 - humanist dimensions of, 10
 - international criminal law and, 10
- international humanitarian law, 10
 - war crimes under, 73–75, 87–89
- international law
 - public, 8
 - TWAIL, 9, 169–170
- International Law Association, 161
- International Law Commission (ILC), 43–45
 - aggression as crime under, 99
 - crimes against environment and, 108
- international tribunals, 2. *See also specific tribunals*
 - legitimacy of, 269
 - war crimes in, 94–95
- intoxication, as grounds for exclusion from criminal responsibility, 149–150

- investigations. *See also* evidence; pre-investigative phase
 as accountability mechanism, in justice models, 213–216
 new sequential model, 215
 case building through, 335–337
 through analysis of evidence, 336
 through fact-finding, 336
 through lines of inquiry, 336
 choices in, 345–353
 big fish/small fish dilemma, 348–350
 case selection, 347–353
 situational selection, 346–347
 comparative foundations for, 332–334
 for criminal inquiries, 332–333
 judge model, 333–334
 macro challenges for, 334–335
 networks for, 163
 outsourcing, 353–355
 confidentiality issues, 353–354
 by contracted intermediaries, 354–356
 timing of, 356–357
 prosecutors' role in, 356–357
 Israel, universal jurisdiction applications and, 185
iura novit curia principle, 372
- Jackson, Robert H., 97, 131, 166
 Jarvis, Michelle, 38–39
 Jaspers, Karl, 33, 117
 JCE. *See* joint criminal enterprises
 Jelisić, Goran, 38–39
 Joinet principles, 1–2
 joint criminal enterprises (JCE), 134–135
 journalists, as witnesses, 321–322
 judges, 291–301
 in *ad hoc* tribunals, 297–299
 artificial legal transplants and, 298–299
 autonomous interpretation doctrine and, 298–299
 in civil law systems, 292
 in common law jurisdictions, 292
 domestic influences on, 292
 fact-finding by, 292–295
 human rights scrutiny and, absence of, 299
 in ICTY, 292, 298
 impartiality of, 293
 investigation model for, 333–334
 judicial creativity, 296–298
 lawmaking by, 295–299
 lay, 292
 legal interpretation by, 295–299
 managerial functions of, 299–301
 non liquet, 297
 procedural activism by, 299
 sentencing by, 390
 social ideal types, 295
 judicial bias, against Africa, by ICC, 346–347
 judicial cooperation, 233
 judicial creativity, 296–298
 judicial networks, 163
 judicial orders, for reparations, 401
 judicial review, of charges, 366–368
 confirmation procedures, 367
 in trial preparation, 367–368
 juridification of victims, 308–309
 jurisdiction
 through *ad hoc* tribunals, 192–197
 of crimes against environment, 108–109
 for crimes of aggression, 98–100
 for ICC, 99–100
 of domestic courts, 190–191
 of international crimes, 18
 universal, 18
 in domestic courts, 185–188
 in *Eichmann* case, 185
 Israel and, 185
 piracy under, 24
jus ad bellum, 95
jus cogens, 253
jus contra bellum, 95
jus in bello (law of war), 73–74, 95
jus puniendi, 8–9, 191, 255
 justice. *See also* global justice institutions; systemic interaction
 alternative forms of, 219–221
 definitions of, 13
 dimensions of, 425–428
 distributive, 13, 427
 expressivist, 13
 historical foundations of, 7–14
 as human right, 2
 ideal types of, 13
 imperial, 168–171
 key goals of, 412–426
 as process, 326–380. *See also* investigations;
 pre-investigative phase; pre-trial stage;
 procedures
 restorative, 272, 275–276, 384,
 426–427
 retributive, 13, 165, 426–427
 punishment and, 382–383
 for victims, 270
 victor's, 166–168
 as defence challenge, 286–324
 justice actors, 277–326. *See also* defence; judges;
 prosecutors; victims; witnesses
 justice cascade, 2
 justice models, 184–221. *See also* domestic courts;
 hybrid justice; systemic interaction
 accountability mechanisms in, 213–221
 Commissions of Inquiry, 213–216
 through investigative bodies, 213–216
 reconciliation commissions, 216–219
 truth commissions, 216–219

- alternative forms of, 219–221
 - local dispute and reconciliation mechanisms, 220–221
- in international criminal jurisdiction, 191–197
 - through *ad hoc* tribunals, 192–197
 - ICC, 194–197
 - Rome Statute system, 194–197
 - Security Council and, 194–197
- regional courts, 210–213. *See also* Malabo Protocol
 - African Court of Justice on Human and Peoples' Rights, 210, 212
 - European Court of Human Rights, 91, 188, 210
 - Inter-American Court of Human Rights, 66, 126, 210–211
 - naissance of, 210–211
 - OAS and, 211
- Kant, Immanuel, 382
- Karadžić, Radovan, 4, 150, 176–177, 288–289
- Karemera, Edouard, 361
- Katureebe, Bart, 262
- Katyn massacre, 35–36
- Kellogg-Briand Pact, 97
- Kelsall, Tim, 294
- Kelsen, Hans, 269
- Kendall, Sara, 308–309
- Kenyatta, Uhuru, 177
- Khmer Rouge
 - ECCC and, 202–203
 - famine-related crimes for, 110–111
 - genocide by, 36
- knowledge-based approach, to genocide, 43–44
- Kondewa, Allieu, 142–143
- Kony, Joseph, 158, 175–176
- Kor, Eva Moses, 384
- Koskenniemi, Martti, 125–126, 171
- Kosovo Specialist Chambers, 206–207. *See also* International Criminal Tribunal for the Former Yugoslavia
 - jurisdiction of, 204–207
 - legal construction of, 206–207
- Kovačević* case, 147
- Kress, Claus, 39
- Krstić* case, 40
- Kunz, Josef, 34
- labour exploitation, human trafficking for, 26
- Labuda, Patrick, 228
- Langer, Maximo, 300
- Lauterpacht, Hersch, 34, 161, 166–168
- law. *See* domestic law; international criminal law; international law; public international law
- law of war. *See jus in bello*
- lawmaking, by judges, 295–299
- Laws and Customs of War, 82
- lay judges, 292
- leadership responsibility, 171, 412–426
- legal anthropology, 158
- legal constructivism, 297
- Legal Framework for Peace, 264–265
- legality, principle of (*nullum crime sine lege*), 10–12
 - in common law jurisdictions, 11
 - of criminal law, 10
 - for prosecutors, 279
 - punishment and, 386–387
- legitimacy, of international tribunals, 269
- legitimate difference principle, 230
- Lemkin, Raphael, 33–34, 161
- lesbian, gays, bisexuals, and transgender (LGBT) persons, 70
- liability, modes of, 132–146
 - alternative forms of, 138–144
 - collective responsibility, of perpetrators, 133–138
 - JCE, 134–135
 - construction of, 145
 - control theory and, 135–138
 - control over crime, 136
 - ICC Statutes and, 136–138
 - organizational control doctrine, 136–138
 - ICC Statutes, 138–140
 - control theory and, 136–138
 - individual responsibility, of perpetrators, 133–138
 - challenges with, 145–146
 - superior responsibility, 143–144
- liberalism, 276
- Lieber Code, 75–76
- Limaj, Fatmir, 352
- linkage evidence, 336–337
- localized genocide, 39–41
- Lohne, Kjersti, 425
- Lomé Peace Agreement, 262–264
- London Agreement, 192
- Lord's Resistance Army, 167
- Luban, David, 53–54, 269
- Lubanga* case, 93, 155, 299–300
- MacArthur, Douglas, 192
- MacKinnon, Catherine, 71
- Al Mahdi* judgment, 85
- Malabo Protocol, 25, 60–61
 - complementarity and, 224
 - immunity provisions under, 212–213
 - organized economic crime under, 107
 - pillaging under, 87
 - in regional courts, 210–213
- malum in se* (wrong or evil in itself), 19–20
 - aggression, 19
 - crimes against environment, 20
 - crimes against humanity, 19
 - crimes against United Nations, 19

- malum in se* (wrong or evil in itself) (cont.)
 genocide, 19
 piracy, 19
malum prohibitum (regulatory crime), 20–22
 Mamdani, Mahmoud, 169–170
 Marcus, David, 112
 Markač, Mladen, 352
 Martens clause, 52–53
 war crimes and, 75
 mass atrocity crimes, 16–17
 May, Larry, 54
 McMillan, Nesam, 417
 Mechanism for the International Criminal Tribunals (MICT), 194
 Meernik, James, 296, 378
 Mégret, Frédéric, 360, 416
 mental capacity, as grounds for exclusion from criminal responsibility, 149
 Meron, Theodor, 94
 MICT. *See* Mechanism for the International Criminal Tribunals
 migrants, human trafficking of, 27
 Milošević, Slobodan, 4, 169, 177, 286–324
 mixed ICC regimes, 235–238
 Mladić, Ratko, 4, 40–41
 Montt, Rios, 189
 Moynier, Gustave, 160–161
 Multilateral Treaty for Mutual Legal Assistance and Extradition in Domestic Prosecution of Atrocity Crimes, 239
 Musliu, Isak, 352

 Nadelmann, Ethan, 21–95
 Nahimana, Ferdinand, 48–49
 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, 398
 narratives
 for accountability, 316
 for child soldiers, as victims, 314–316
 national security, crimes of aggression as act of, 98
 Nazi war crimes. *See* Nuremberg trials
 Ndobasi, Yerodia, 186
ne bis in idem principle (right to not be tried twice), 247
 downward effect, 249
 fraudulent trial exception, 248–249
 international protections, 248–249
 ordinary crime exception, 248
 transnational application, 249–250
 upward effect, 248
 Nersessian, David, 35
 new law on genocide, 50–51
 new technologies, evidence through, 339–343
 Ngeze, Hassan, 48
 Ngirumpatse, Mathieu, 361
 NGOs. *See* non-governmental organizations

 NIAC. *See* non-international armed conflict
 'Night and Fog' decree, 65–66
 Nikolić, Dragan, 193–242, 349
 Nikolic, Tomislav, 352
non liquet (absence or insufficiency of law), 297
 non-combatants, protections of, 81–83
 non-governmental organizations (NGOs), 224
 non-international armed conflict (NIAC), 77–80
 accountability and, 78
 non-repetition guarantees, 2
 normative theories, for crimes against humanity, 53–54
 attacks on humanity and humaneness, 53–54
 as threat to international peace, 54
 traditional, 416
 Nouwen, Sarah, 172, 308–309
 nuclear weapons, restrictions of, 91–92
nullum crime sine lege. *See* legality
nullum crimen principle, 15
 Nuremberg trials, 3–4, 222
 clarification of charges at, 361
 genocide and, 33–34
 individual criminal responsibility at, 124
 judgment at, 11
 mantra of, 119–123
 right to appeal at, lack of, 273
 Nuremberg Tribunal, 162, 191–192
 conceptualization of, 192
 Nzirorera, Joseph, 361

 OAS. *See* Organization of American States
 obligation-related sovereignty, 10
 Ohlin, Jens David, 96, 145, 240, 276
 Ongwen, Dominic, 154–155
 Open Justice Initiative, 176, 426
 Open Society Justice Initiative, 49
 open source material, 341–343
 ordinary crime exception, 248
 Orentlicher principles, 1–2
 Organic Law, 209
 Organization of American States (OAS), 211
 organizational control doctrine, 136–138
 organized crime
 COPLA, 107
 crimes against humanity compared to, 56–57
 UNTOC, 28, 106–107
 organized economic crime, 105–107
 Conventions against, 106
 Malabo Protocol and, 107
 under Rome Statute, 107
 transnational treaty crime and, 106
 Orientalism, 173
 Osiel, Mark, 53, 129, 221, 385
 othering, 35, 421–422
 outcome-based justifications, of international criminal law, 429

- outsourcing, of investigations, 353–355
 - confidentiality issues, 353–354
 - by contracted intermediaries, 354–356
- Packer, Herbert, 9
- Pal, Radhabinod, 168–169
- Palermo Protocol, 26
- Palestinian Occupied Territories, systematic
 - discrimination in, 69–70
- pardons, 265–266
 - humanitarian, 266
- Pella, Vespasien, 119, 161
- penalties
 - administrative, 213
 - disciplinary, 213
 - as punishment, 388–389
- Perišić* case, 138–139
- Permanent Court of International Justice, 10–11
- perpetrator divide, with victims, 155, 171, 314–317
 - breaking of, strategies for, 316–317
 - for child soldiers, 314–317
 - recruitment of, 314–316
 - victim narratives of, 314–316
- persecution, 70–72
 - of gender identity, 70–72
 - of LGBT persons, 70
- personal immunity, 250, 253–255
- Peskin, Victor, 168
- physical evidence, 338
- pillaging, 85–87
 - Malabo Protocol, 87
- Pinochet, Augusto, 18
- piracy, 23–25
 - definitions of, 24
 - Malabo Protocol and, 25
 - malum in se* and, 19
 - modern laws on, 24–25
 - under UNCLOS, 24–25
 - under universal jurisdiction, 24
- Plavšić, Biljana, 150, 179
- plea bargaining, 274
- Pol Pot, 203
- political terrorism, 29
- positive complementarity, 223
- power, system criminality and, 129–131
- pragmatism, international criminal law influenced
 - by, 9–10
- Praljak, Slobodan, 352
- pre-investigative phase, 327–332
 - confidentiality and, 331–332
 - dilemmas in, 329–332
 - functions of, 327–329
 - under ICC Statutes, 327–332
 - qualitative elements in, 330–331
 - quantitative elements in, 330–331
 - transparency in, 331–332
- presumption of guilt, 283
- presumption of innocence, 275
 - defence and, 283
- pre-trial stage, 357–368. *See also* charges
 - arrest warrants, 358–360
 - competing philosophies in, 358
 - detention before, 245, 288, 360
 - disclosure process during, 363–366
 - summons to appear, 358–360
- principle of distinction. *See* distinction
- principle of legality. *See* legality
- principle of proportionality. *See* proportionality
- “The Problem of an International Criminal Law” (Schwarzenberger), 1
- procedures, international criminal justice. *See also*
 - investigations; pre-investigative phase;
 - pre-trial stage
- in *ad hoc* tribunals, 273–274
- advocacy through, 272
- amicus curiae* briefs
 - for civil society actors, 324–326
 - for state, 323–324
- for atrocity crimes, 276
- binary effects of, 270
- civil society interventions, 324–326
- critics of, 270
- defendants’ rights, 273
- development of, 272–276
 - after Cold War, 273
- diversity of, 272
- domestic culture as influence on, 271
- dossier-based approach, 274
- due process guarantees, 275
- equality of arms principle and, 273–276
- for fair trials, guarantees of, 273
- fairness of, 274–275
- flexibility of, 276
- functionality of, 269
- human rights in conflict with, 275
- hybridization of, 270–272
 - in adversarial systems, 271, 274
 - in inquisitorial systems, 271
- judicial activism and, 299
- judicial creativity and, 297–298
- justice actors and, 277–326. *See also* defence;
 - judges; prosecutors; victims; witnesses
- legal identity of courts and tribunals through, 270
- liberalism as influence on, 276
- management of, 274
- plea bargaining, 274
- purpose of, 269
- restorative elements in, 272, 275–276
- rule of law functions in, 276
- scope of, 377–380
- states’ role in, 322–324
 - amicus curiae* briefs, 323–324
- transparency of, 272

- procedures, international criminal justice. (cont.)
 trends in, 272–276
 value of, 269
 victims' participation in, 275–276, 301–304
 victims' rights and, 275–276
- process-based justifications, of international
 criminal law, 429
- proportionality, principle of, 87–89
 in punishment, 387–388
- prosecutors, prosecution and, 277–283
 accountability of, 280
 case selection by, 348
 in common law systems, 278
 compliance with principle of equality, 282–283
 discretion of, 278–280, 359–360
 duty to disclose by, 281
 hierarchical organization of, 277
 impartiality of, 282
 independence of, 278–280
 in hybrid courts, 280
 networks for, 163
 principle of legality and, 279
 roles and responsibilities of, 281–283
 timing of investigations by, 356–357
 at Tokyo trials, 278–279
 unique features of, 278–280
- Prosecutor's Office, 206–207
- public goods, protection of, 16
- public international law
 international criminal law influenced by, 8
 universalist aspirations of, 10
- public officials
 torture and. *See specific individuals*
 UN Special Rapporteur on Torture, 60–61
- punishment. *See also* sentencing
 early release and, 394–396
 foundations of, 382–396
 holistic approach to, 385–386
 through incarceration, 381–382
 for life, 389
 legal principles for, 386–388
 principle of legality, 386–387
 principle of proportionality, 387–388
 penalties as, 388–389
 plea bargains, 392–394
 rationales for, 382–386
 deterrence, 383–384
 expressivist theories, 384–385
 restorative justice, 384
 retribution, 382–383
- qualified deference, 230
- quasi-complementarity, 224
- Randal, Jonathan, 321
- rape, as act of genocide, 37
- realistic intent test, for genocide, 39
- reciprocity, cooperation and, 232
- recognition of harm, 398–399
- reconciliation
 definition of, 179
 forgiveness and, 179
 through global justice institutions, 178–180
 remorse and, 180
- reconciliation commissions, 216–219
 practice issues for, 218–219
 South African model, 217–218
- regional courts, 210–213. *See also* Malabo Protocol
 African Court of Justice on Human and Peoples' Rights, 210, 212
 European Court of Human Rights, 91, 188, 210
 Inter-American Court of Human Rights, 66, 126, 210–211
 naissance of, 210–211
 OAS and, 211
- regulatory crime. *See malum prohibitum*
- rehabilitation, reparations through, 402
- remedying wrong, 381–382
- remorse, 180, 391
- reparations, 396–411
 through *ad hoc* tribunals, 399
 adjudication of, 398–399
 approaches towards, 399–402
 categories of victims, 409–410
 civil model of, 399
 criminal model of, 400–401
 distributive justice and, 409
 through economic damages, 402
 forms of, 402–407
 collective, 403–404, 406–408
 foundations of, 396–399
 function and purpose of, 398–399
 in *Genocide* case, 126
 as human right, 2
 under human rights laws, 407
 ICC policy for, 406–407, 410–411
 to individual victims, 404–406
 judicial orders for, 401
 modalities for, 402–407
 under Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, 398
 recognition of harm in, 398–399
 through rehabilitation, 402
 tensions over, 407–411
 trust funds for, 401–402
 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, 397
- reproductive violence, 64
- responsibility. *See also* collective responsibility;
 criminal responsibility; individual criminal responsibility
 leadership, 171, 412–426
 superior, 143–144. *See also* superior orders

- Responsibility to Protect Doctrine, 223
 restorative justice, 272, 275–276, 384, 426–427
 retributive justice, 13, 165, 426–427
 punishment and, 382–383
 reverse complementarity, 224
 reverse cooperation, 236
 Reynold, John, 70
 right to fair and effective remedy, 2
 right to justice, 2
 right to not be tried twice. *See ne bis in idem* principle
 Roberts, Paul, 417
 Robertson, Geoffrey, 11
 Robinson, Darryl, 174, 276
 Rodman, Kenneth, 237
 Röling, Bert, 181
 Rome Statute
 assessment of crimes under, 3
 complementarity and, 223–225
 forced marriage under, 72–73
 international criminal jurisdiction and, 194–197
 organized economic crime under, 107
 on war crimes, 90
 war crimes under, 90
 Roxin, Claus, 137
 rule of law
 in criminal justice procedures, 276
 under international criminal law, 2–3
 Russia, 46–47
 Ruto, William, 177
 Rwamakuba, André, 361
 Rwanda
 gacaca trials in, 219–220
 genocide in, 36–37, 47–50
 Akayesu bench on, 37, 48
 biological and physical destruction through, 37
 legal anthropology in, 158
 SADC. *See* South African Development Community
 Said, Edward, 173
 Santos, Boaventura de Sousa, 417
 Saul, Ben, 30
 Schabas, William, 85, 295, 330
 Scharf, Michael, 192
 Scheffer, David, 16–17, 99
 Schmitt, Carl, 421
 Schwarzenberger, Georg, 1
 SCSL. *See* Special Court for Sierra Leone
 Security Council, UN
 ad hoc tribunals and, 194
 international criminal jurisdiction and, 194–197
 seizure of assets. *See* freezing and seizure of assets
 self-defence, as grounds for exclusion from criminal responsibility, 150–151
 self-representation, by defendants, 288–289
 self-representation, limits of, 289
 Sellars, Patricia, 65
 Senegal, African Union and, 205
 sentencing, 389–392
 case-specific criteria for, 390–392
 enforcement of, 242–246
 for genocide, 391–392
 judges' role in, 390
 leniency of, 392
 remorse as factor in, 391
 review of, 394–396
 Serbia. *See* International Criminal Tribunal for the Former Yugoslavia
 Šešelj, Vojislav, 177, 288–289
 sexual exploitation, human trafficking for, 26
 sexual violence, 62–65
 ad hoc tribunals for, 62
 Akayesu trial, 63
 against children, 93
 in Tokyo trials, 62
 Al-Shabaab, 110–111
 Sharon, Ariel, 186
 Shigemitsu, Mamoru, 141
 'show trials,' 4–5
 Sierra Leone, legal anthropology in, 158
 Sikkink, Katherine, 2
 Simpson, Gerry, 120, 267
 situational selection, investigations and, 346–347
 slavery and slavery-like practices, 25–29. *See also*
 human trafficking
 Convention to Suppress Slave Trade and Slavery, 25–26
 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 26
 Sluiter, Göran, 299
 Smeulers, Alette, 128, 391–392
 social elites, 172
 social ideal types, 295
 Somalia, famine-related crimes in, 110–111
 South Africa, cooperation in, 238
 South African Development Community (SADC), 68–69
 South African model, of truth and reconciliation commissions, 217–218
 sovereignty
 cooperation and, 232–241
 of domestic courts, 185
 of global justice institutions, 166
 international criminal law and, 103, 119, 166, 251
 obligation-related, 10
 sovereignty paradox, 414–416
 Special Court for Sierra Leone (SCSL), 4, 63, 199–200, 245, 263–264
 Special Court in the Central African Republic, 197–198
 Special Criminal Court in the Central African Republic, 204–209
 ICC and, 209

- Special Tribunal for Lebanon (STL), 2, 200–202
 terrorism for, 30
 victims' role in, 312–313
 specific intent, 37–39
 Srebrenica massacre, 336
 starvation, as war crime, 111–112
 state consent
 abduction without, 242
 international criminal law and, 8
 state crimes, of aggression, 99–102
 STL. *See* Special Tribunal for Lebanon
 Storey, Robert, 177–178
 Streicher, Julius, 47
 subsidiarity, 187
 summons to appear, 358–360
 superior orders
 duress and, 152–153
 exclusion from criminal responsibility, 155–156
 superior responsibility, 143–144
 Supplementary Convention on the Abolition of
 Slavery, the Slave Trade, and Institutions
 and Practices Similar to Slavery, 26
 system criminality, 127–131
 collective nature of, 128–129
 crimes of obedience and, 129–131
 role orientation for, 130–131
 rule orientation for, 130
 value reorientation for, 131
 genocide and, 127
 hierarchies in, 129
 ICC rulings on, 129
 leadership accountability for, 131–132,
 412–426
 for macro crimes, 127
 perpetrators of, archetypes for, 128
 power and, 129–131
 states and, 126
 systemic interaction, between justice mechanisms,
 221–246. *See also* cooperation
 through complementarity, 221–230. *See also*
 complementarity
 alternatives to, 229–230
 diverse meanings of, 221–224
 diversity of, 221–224
 flexibility of, 224–226
Tadić decision, 76–78, 80, 129, 193, 349–350
 Tallgren, Immi, 125
 tampering with witnesses, 301
 Taylor, Charles, 4, 283
 Taylor, Telford, 17, 278–279
 terrorism
 during armed conflict, 92, 106
 Convention for the Punishment and Prevention
 of Terrorism, 29
 counter-terrorism laws, 30
 definitions of, 29–31
 Draft Comprehensive Convention on
 International Terrorism, 31
 financing of, 29–31, 240
 freedom fighters and, as exception, 30
 historical roots of, 29–30
 political, 29
 STL and, 30
 testimony, by witnesses, 320–321
 as evidence, 338
 Thiam, Doudou, 114–115
 Third World Approaches to International Law
 (TWAIL), 9, 169–170
 Tieger, Alan, 38–39
 timing, of investigations, 356–357
 prosecutors' role in, 356–357
 Tokyo trials, 3–4, 19, 141, 162, 164, 166–171,
 222
 clarification of charges at, 361
 comfort women and, 62
 establishment of, 192
 prosecution at, 278–279
 Tomuschat, Christian, 216–217
 torture, 61–62
 Convention against Torture, 20–21
 Convention against Torture and Other Cruel,
 Inhuman or Degrading Treatment or
 Punishment, 61
 public officials and. *See specific individuals*
 UN Special Rapporteur on Torture, 60–61
 trafficking. *See* human trafficking
 transnational crimes. *See also* human trafficking;
 international crimes; terrorism
 UNTOC, 28
 transnational treaty crime, 106
 transnationalists, 12–13
 transparency, 412–426
 in criminal justice procedures, 272
 in pre-investigative phase, 331–332
 Treaty of Versailles, 97, 119, 164
 trial in absentia, 290–291
 trials, international criminal, 3–5, 368–376. *See also*
 fair trials; International Criminal Court;
 International Criminal Tribunal for
 Rwanda; International Criminal Tribunal
 for the Former Yugoslavia; Nuremberg
 trials; Tokyo trials; *specific trials*
 appeals process, 376–377
 criticism of, 4–5
 defence presence at, 290–291
 deliberations, 372–374
 dissent in, 373–374
 separate opinions and, 373–374
iura novit curia principle, 372
 judgments, 374–376
 acceptance of, 375–376
 selectivity of, 4
 as 'show trials,' 4–5

- stages of, 370–372
 - trial culture, 369–370
- tribunals. *See also ad hoc tribunals*
 - immunities at, exceptions to, 255–258
 - international, 2
 - international criminal, 102
 - legal identity through procedural concepts, 270
- trust funds, for reparations, 401–402
- Truth and Reconciliation Commission, 260
- truth commissions, 216–219
 - practice issues for, 218–219
 - South African model, 217–218
- TWAIL. *See* Third World Approaches to International Law
- Uganda, 181
 - Agreement on Accountability and Reconciliation, 220–221
 - Amnesty Act, 262
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, 397
- UN Convention against Transnational Organized Crime (UNTOC), 28, 106–107
- UN Convention on the Law of the Sea (UNCLOS), 24–25
- UN Convention on the Prevention and Punishment of the Crime of Genocide, 34
- UN Declaration on Principles of Justice for Victims of Crime and Abuse of Power, 308
- UN Office on Drugs and Crime (UNODC), 60
- UN Security Council. *See* Security Council
- UN Special Rapporteur on Torture, 60–61
- UN War Crimes Commission (UNWCC), 161–162
- UNCLOS. *See* UN Convention on the Law of the Sea
- United Nations, crimes against, 19
- universal jurisdiction, doctrine of, 18
 - in domestic courts, 185–188
 - in *Eichmann* case, 185, 242
 - Israel and, 185
 - piracy under, 24
- universalism, human rights law and, 423–424
- universality, of international criminal law, 423–424
- UNODC. *See* UN Office on Drugs and Crime
- UNTOC. *See* UN Convention against Transnational Organized Crime
- UNWCC. *See* UN War Crimes Commission
- upward effect, 248
- Vabres, Donnedieu de, 162
- van Anraat, Frans, 91
- van Wijk, Joris, 246
- Versailles Treaty. *See* Treaty of Versailles
- vertical approaches, to cooperation, 233–235
 - in hybrid courts, 239
 - in internationalized courts, 239
- victimhood, 313–314, 421–422
- victims, 301–314. *See also* reparations
 - juridification of, 308–309
 - justice for, 270
 - labeling of, 309
 - participation of, in criminal justice procedures, 275–276, 301–304, 306
 - visibility as result of, 313
- perpetrator divide with, 155, 171, 314–317
 - breaking of, strategies for, 316–317
 - for child soldiers, 314–317
- presentation of evidence by, 312–313
- reparations for, 404–406, 409–410
- rights of, 275–276
- role in criminal justice procedures, 304–314
 - domestic approaches to, 304–305
 - in ECCC, 305–306
 - ICC Statutes, 307–314
 - international approaches to, 305–314
 - in STL, 312–313
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, 397
- UN Declaration on Principles of Justice for Victims of Crime and Abuse of Power, 308
- as witnesses, 317
- victors' justice, 166–168
 - as defence challenge, 286–324
- violence
 - gender-based, 62–65
 - ad hoc* tribunals for, 62
 - reproductive violence as, 64
 - sexual, 62–65
 - ad hoc* tribunals for, 62
 - Akayesu* trial, 63
 - against children, 93
- von Suttner, Bertha, 74
- Wald, Patricia, 293
- war crimes, 73–95
 - actors in, 79–81
 - ad hoc* tribunals for, 81–82
 - civilians and, 83–84
 - definition of, 75–76
 - grave breaches concept in, 76
 - destruction of cultural property and, 84–85
 - under Hague Law, 74
 - human shields in combat, 88–89
 - IAC and, 76–77
 - accountability and, 78
 - ICC Statutes on, 82, 84, 86–87, 89–90, 93–95
 - ICJ rulings, 77
 - ICRC and, 79, 83–84
 - under international humanitarian law, 73–75, 87–89
 - in international tribunals, 94–95
 - jus in bello*, 73–74
 - Lieber Code and, 75–76

448

war crimes (cont.)
Al Mahdi judgment, 85
 Martens clause, 75
 mental elements of, 93–94
 in nexus to armed conflict, 81
 NIAC and, 77–80
 accountability and, 78
 origins of, 74–75
 pillaging, 85–87
 Malabo Protocol, 87
 principle of distinction and, 83–87
 principle of proportionality and, 87–89
 Rome Statute on, 90
 starvation as, 111–112
 Tadić decision, 76–78, 80
 thresholds for, 39, 79–81
 types of, 81–95
 protection of non-combatants, 81–83
 types of conflicts, 76–79
 weapons restrictions and, 89–93
 on biological weapons, 89–90
 on chemical weapons, 89–91
 of nuclear weapons, 91–92
 Ward, Ian, 381–382
 Al-Werfalli, Mahmoud, 340–341
 White, William Burke, 223
 Whiting, Alex, 102–103
 Wiley, William, 353
 William II (Kaiser), 97
 Wilson, Richard, 49–50
 Wise, Edward, 162–163

Index

witness proofing, 320
 witnesses, 317–322
 anonymity of, 321
 asylum for, 244
 conflicts of interest for, 320
 credibility of, 272
 expert, 318
 insider, 317–318
 journalists as, 321–322
 protection of, 244, 272, 322
 reliability of, 319
 relocation of, 244
 safety of, 275
 tampering with, 301
 testimony by
 as evidence, 338
 limitations for, 320–321
 treatment of, 318
 victims as, 317
 Women's Caucus for Gender Justice,
 27–66
 World Summit Outcome Document, 223
 World War I, crimes of aggression after, 97
 World War II
 crimes of aggression after, 97–98
 victor's justice after, 166–168
 wrong or evil in itself. *See malum in se*
 Yasuaki, Onuma, 423
 Zacklin, Ralph, 280