

## INDEX

- Addington, David, 135, 154–55  
 Additional Protocol I (1977), xiii, 14, 16, 59, 79, 81, 89, 90–92  
 Additional Protocol II (1977), xiii, 14, 17, 80–81, 86  
 Additional Protocols (1977), 1, 7, 8, 11, 17, 24, 57–58, 70, 74, 81, 92–94, 131, 169  
 Afghanistan, 129, 145, 147–50, 152, 188  
 al-Qaeda, 2, 140, 141, 144, 147–48, 149–50, 151, 153–54, 155–56, 168, 175, 178  
     detainees, 7, 126, 148, 169, 174  
 Aldrich, George H., 130–31  
 Algerian War, 79  
 ARVN (Army of the Republic of Vietnam), xiii, 103–4, 106–8, 110–13, 114, 123–24  
 Ashcroft, John, 188  
 Austin, J. L., 42  
 Axelrod, Robert, 23  
  
 Barcelona Traction Case (1970), xii, 30, 145  
 Bassiouni, Cherif, 29  
 belligerent qualification, 82–83  
 belligerent reprisals, 1, 32–36, 38–40, 41, 43, 57, 64, 66, 67, 93, 172  
     banned, 34  
     use of, 33, 45, 93  
 belligerent, act, 108, 113  
 belligerents, 17–19, 27, 32–33, 43, 61, 63–65, 67–68, 82, 100–1, 140, 177  
     lawful, 65, 79, 140  
     moral equality of, 27, 78  
     status as, 28, 54, 65  
     unlawful, 98–99, 140–41, 143  
 Boumediene v. Bush, xii, 143, 163  
 Bull, Hedley, 12  
  
 Bundy, McGeorge, 107, 119  
 Bush, George W., xii, 131–32, 134, 144, 146–47, 149, 163, 188–89  
     administration, 2, 6, 7, 109, 129, 133, 134–36, 140, 143, 146, 149, 150, 152–53, 156, 164–65, 175–76, 178  
 Bybee, Jay, 156–58, 188–89  
 Byers, Michael, x, 21  
  
 Carr, E. H., 5  
 Cassese, Antonio, 37, 132  
 Cheney, Dick, 135  
 CIA (Central Intelligence Agency), xiii, 158, 176, 189  
 combatant status, 63, 64, 87–88. *See* belligerent status.  
 combatants, 4, 15–17, 19, 28, 63, 87–88, 89, 96, 114, 151–52  
 compliance pull, 48, 52–54  
 compliance, theory of, 49, 95  
 constructivism, 48, 54, 171  
 Cooper, Chester, 109, 111, 116  
 customary international law, 14–15, 18, 35, 76, 80, 91, 95, 98, 132, 145  
  
*de facto* compliance, 41, 70, 86, 141, 170  
 Diplomatic Conference of 1949, 11, 70, 76, 81, 84  
 Diplomatic Conference of 1974–7, 11, 70, 85, 130, 173  
 distinction, principle of, 15–17, 19, 84, 151  
 DRV (Democratic Republic of Vietnam), xiii, 100–1, 103, 104, 106, 109, 110–12, 116, 117–26  
 Dulles, John Foster, 97  
 Dunant, Henri, 66

- EITs (enhanced interrogation techniques), xiii, 133, 156, 158–63, 164–67, 175–77
- enemy combatants, unlawful. *See* belligerents, unlawful.
- erga omnes* obligations, 30–31
- Feith, Douglas, 131, 150–51, 152, 185, 189
- Franck, Thomas M., 52–53
- GC III, 2, 8, 82, 95–96, 97–100, 108–11, 112–13, 114–15, 123–27, 133–35, 140–41, 145, 147–48, 162–65, 174–76
- obligations, 36, 57, 93, 98, 107, 128, 154, 162, 165–67, 169, 172
- reservations to Article 85, 88, 97–98, 117
- Geneva Convention Relative to the Treatment of Prisoners of War (1929), 8, 34, 100, 169
- Geneva Conventions (1949), 1, 7, 15, 57, 96, 169
- application clauses, 43, 81
- Common Article 1, 30–31, 71–73, 75
- Common Article 2, 70–71, 77, 112, 172
- Common Article 3, 75–77, 79–80, 102, 107, 116, 137, 140–41, 142, 148, 153, 156, 163–64, 178–79
- grave breaches, 32, 37–38, 99, 116, 156
- Geneva Convention (III) Relative to the Treatment of Prisoners of War (1949). *See* GC III.
- genocide, 29, 30, 36, 101, 133
- Goldsmith, Jack, 24, 183
- Gonzalez, Alberto R., 154, 188
- Greenwood, L. C., 59, 89
- Grotius, Hugo, 17, 18
- GWOT, 1–3, 5–9, 47, 56, 126–27, 133–35, 137, 139–44, 146–48, 150–51, 153–56, 164–68, 169, 174–75, 177–78
- detainee interrogations, 163, 177
- detainees violations of IHL, 134–35, 137, 139, 143
- military commissions, 140
- Hague Convention IV (1907), 17–18, 32, 43, 65, 66, 82, 100, 140
- Annex, 14, 65, 82, 108
- Hague Conventions (1907), 14, 34, 65–66, 67–68, 70, 83, 106
- Hamdan v. Rumsfeld, xii, 76, 137–38, 162, 177
- Harriman, Averell, 121–23
- Hart, H. L. A., 3, 12, 39, 42, 57, 171
- primary rules, 3, 42–43
- secondary rules, 3, 12, 42
- Hobbes, Thomas, 42
- honour
- martial, 56, 162, 175
- national, 146, 162, 164, 175
- ICC (International Criminal Court), xii, 36, 38
- ICJ (International Court of Justice), xiii, 29–30, 31, 40, 76, 93
- ICRC (International Committee of the Red Cross), xiii, 5, 59, 66, 70, 80, 83–84, 85–87, 91–92, 100, 102, 104–5, 111–12, 123, 124–25
- ICTR (International Criminal Tribunal for Rwanda), xiii, 37, 135
- ICTY (International Criminal Tribunal for the former Yugoslavia), xiii, 31, 35, 37, 76, 132, 178–79
- IHL (international humanitarian law), 2–11, 22–25, 28–30, 31–34, 37–40, 46–48, 54–57, 62–64, 129–31, 137–40, 167–68, 170–74, 175–76, 177–79
- compliance, 9, 12, 19, 25, 28, 41, 45, 46, 53, 55, 114, 174–75
- non-compliance, 13, 47
- obligations, 2, 10–11, 38–40, 45–48, 49–52, 56–58, 62–65, 82–85, 87–89, 93–94, 98–100, 126–27, 139–41, 168
- requirements, 28, 82, 85–87, 93, 136
- rules, 27, 30, 31, 32, 54, 80, 175

- IHL (cont.)  
   treaties, 3, 9, 32, 42, 45, 49–51, 66, 73, 89, 159, 170  
   violations, 37, 38, 47, 49, 55, 56, 64, 66, 88, 90, 112, 114, 116, 119, 159–60  
 institutions, 52, 133, 181, 183  
   domestic legal, 51  
   international, 51, 179, 181–82, 183  
   rule making, 52  
 International Criminal Tribunal at Nuremberg, Hostage Case, 17  
 international human rights law, 10, 13, 132, 178–79  
 International Military Tribunal at Nuremberg, 29, 32, 35, 37, 89, 100, 117  
 International Military Tribunal for the Far East, 37
- JAGs (Judge Advocate Generals), xiii, 46–47, 112–13, 114, 117, 130, 134–37, 138–39, 155–56, 159–61, 164–67  
 JCPOA (Joint Comprehensive Plan of Action), xiii, 180–81, 183  
 Johnson, Lyndon B., 107, 119–20, 121, 130, 175  
   administration, 95, 103–4, 109, 115, 119
- Kalshoven, Frits, 36, 66, 68, 72  
 Keohane, Robert, 3, 20–21, 40, 47, 170  
 Koh, Harold, 50, 181–83
- Lauterpacht, Hersch, 12  
 law, customary, 16, 151  
 legal obligation, 3, 4, 9, 43, 44, 72–73, 75, 82, 86, 102–3, 145, 146, 149, 151  
 legal process theory, 49, 51–52, 171, 174–75, 181  
   managerialism, 50  
   transnational, 49, 50–52, 181  
 legitimacy, 10, 48, 52–54, 63, 103, 111, 149, 171, 175  
   international, 111  
   of IHL rules, 54, 175  
   perceived, 52  
   procedural, 53  
 legitimate targets, 15  
 Lieber Code, 62–63, 64  
 logic of appropriateness, 10, 13, 40, 48, 49, 52, 57–58, 134–36, 143–46, 159, 162, 165, 167, 174–75  
 logic of consequences, 48, 134, 171, 173
- MACV (Military Assistance Command, Vietnam), xiii, 106–8, 113–14, 117–18, 125  
 managerialism, 49–50, 51  
 Martens Clause, 67–68, 70  
 martial, martial, 165, 175  
 McCain, John, 55, 56, 162–64  
 McNamara, Robert, 104, 109  
 Meron, Theodor, 1, 13, 29, 31, 35, 37–38, 72, 169  
 military commissions, use of, 95, 134–37, 139–40, 143–44, 153, 162, 167, 188  
 military necessity, principle of, 17–18, 132, 147, 161  
 Myers, Richard B., 146, 152, 155
- National Liberation Front of Algeria (FLN), xiii, 78–79, 173  
 national liberation, 70, 77, 79, 84, 87  
 National Liberation Front of Algeria (FLN), xiii, 78–79  
 national liberation movements, 86  
   application of Additional Protocol I (1977), 80, 87  
   application of GC III, 78  
 NATO (North Atlantic Treaty Organization), xiii, 92, 133, 181  
 natural law, 60  
 neoliberal institutionalism, 9, 22–23, 28, 39, 143, 156, 167–68, 184  
   explanation of compliance, 4, 57, 171  
   unitary actors, 4, 45  
 new Sovereignists, 132–33  
 Nicaragua v. US, xii, 31, 76  
 non-international armed conflicts, 17, 35, 38, 70, 75, 77, 80–81, 103, 177

## INDEX

211

- non-state actors, 20, 44, 70, 75, 80, 82, 94, 140, 173, 174, 182
- norms, 3, 8, 29, 30–31, 48, 51, 54–56, 151, 174–75, 182
  - change, 51
  - diffusion of, 49
  - emergence of, 55
  - internalization, 50, 54–56, 175
  - norm cascade, 55
  - norm entrepreneurs, 55
  - of international law, 54, 120
- North Atlantic Treaty Organization (NATO), xiii, 92, 133
- nuclear weapons, xii, 29, 54, 91–93
- OLC (Office of Legal Counsel), xiii, 138, 139, 144, 145–46, 148–50, 154, 160, 165, 167, 183
  - clause, 1, 32, 68, 70–71, 93, 172, 174
- organized resistance movements, 82, 84, 85–86, 102, 186
- Original Position, 26, 27
- Osiel, Mark, 27, 138
- Philbin, Patrick, 139–41
- Pictet, Jean, 5, 75
- Posen, Barry, 184
- Posner, Eric, 24, 153, 174
- postponement, 123
- POW Convention, 32, 69, 78, 81–82, 84, 100
- POW status, 4–7, 9, 45, 51–52, 63, 64, 82–89, 98–100, 102, 109–10, 113, 144–48, 149–56, 173–75
  - applying, 2, 145, 146, 153, 155, 175
  - denying, 2, 7, 47, 100, 109, 144, 153, 155
  - surrounding detainee, 152
- POW status for GWOT detainees, 147, 155
- Powell, Colin, 130, 135, 153–54, 188
- Price, Richard, x, 54
- primary rules, 3–4, 42–44, 57, 70–72, 82, 171, 172
- primary rules of IHL, 3, 44, 171, 172
- proportionality, principle of, 18–19
- Rawls, John, 25–26, 170, 172–73
  - original position, 25
  - veil of ignorance, 26–27, 173
- Reagan, Ronald, 80, 131
- realism, 23–25
  - cheap talk model, 24, 183
  - hegemonic actor theory, 24–25
- reciprocal application, 4, 63, 71, 75, 80, 89
- reciprocity, 1–4, 6–11, 20–21, 25–26, 39–42, 44–48, 57–58, 64–66, 71–76, 84–88, 126–27, 150–54, 167, 170–75
  - defined, 20
  - diffuse, 3, 21, 47, 139, 141–43, 153–56, 165–67
  - legal, 3, 40–41, 43, 45, 71, 75–76, 82, 140, 147–48, 150, 165, 170, 183
  - negative, 45, 47, 88, 93, 96–97, 119–20, 121–22, 126–27, 134, 139, 141, 144, 147, 168, 170
  - positive, 41, 44, 65, 71, 96, 103–5, 111, 113, 116, 117–19, 123, 125, 126–27, 141, 148
  - specific, 20–21, 39, 96, 127
  - strategic, 3, 6, 40–41, 45, 52, 71, 76, 88, 141–42, 148, 150, 151, 153, 156, 169–70
  - Vienna Convention restriction on, 74
- regime, 21, 24, 36, 44, 59, 71, 87, 133, 170–71
- reprisals, prohibition on, 68, 89, 91, 131
- resistance movements, 82–84, 86, 99, 173
- Rice, Condoleezza, 135
- Rives, Jack, 162, 166, 189–90
- Rousseau J. J., 15
- Rumsfeld, Donald, xii, 76, 137–38, 152, 159, 161, 189
- Rusk, Dean, 102, 104–6, 109, 115, 121, 123
- RVN (Republic of Vietnam), xiii, 100–1, 103–4, 108, 110–11, 112, 114, 116, 120, 123–25

- Sands, Philippe, 5, 155
- Second World War, 1, 11, 34–35, 37, 57, 59–60, 70, 81, 83, 130, 136, 139, 173, 175
- secondary rules, 3–4, 12–13, 28, 39, 42, 43, 44, 45, 51, 57–58, 70, 82, 88, 93, 171, 172
- self-determination, 28, 77–78, 87
- Spiro, Peter, 132
- St. Petersburg Declaration, 16, 67–68
- Taft, William H., 145, 185
- Taliban, 2, 7, 126, 141, 144, 145, 150, 152, 154, 155–56, 168, 169, 174, 175, 178
- terrorism, 108, 113, 137, 189–90
- terrorists, 85, 106, 108, 131, 139–40, 151
- TFT (TIT-FOR-TAT), xiii, 19, 23, 39–41, 57, 62, 170, 176
- torture, 13, 56, 75, 114, 116, 153, 156–58, 163, 164–65, 176
- use of, 56, 176–77
- TPP (Trans-Pacific Partnership), xiv, 180, 183
- transnational, 49, 50–52, 181, 183
- Trump, Donald, 176, 179–81, 182–84
- UCMJ (Uniform Code of Military Justice), xiv, 99, 134, 136–37, 138, 157, 158, 160–61
- United Kingdom (UK), 24, 45, 90
- United Nations, 77, 87, 180
- Charter of, 77, 87
- Security Council (UNSC), xiv, 38
- United States (US), xiv, 24, 66, 92, 97–99, 126, 132, 134, 137, 142, 153, 180
- universal jurisdiction, 36–38
- US POW policy, 51, 54, 146
- Viet Cong, 2, 6–7, 9, 95–96, 100, 102–6, 108–15, 118–19, 120–21, 124, 126–27, 130, 164, 169, 175
- Vietnam War, 6, 7–9, 11, 93–94, 99–100, 103, 107, 109–10, 114–16, 128–30, 168, 169, 175
- policy of Americanization, 103, 116, 175
- voluntarism, 40, 43
- Walker, Mary, 160–62, 166, 189–90
- wars of national liberation, 70, 77, 79, 84, 87
- waterboarding, 158, 163–64, 176
- Watts, Sean, 92
- Wedgwood, Ruth, 153
- WTO (World Trade Organization), xiv, 21, 180
- Yoo, John, 151, 165, 188
- Zubaydah, Abu, 158