Index

abduction 124–5, 166–7
Abu Ghraib 289
accomplice liability 220–4
active participation in hostilities 61–2, 127–30

*actus reus*
attacks on civilians 65
attacks on peacekeepers 164–7
complicity in arms transfer 237–9, 240
enlistment, conscription and use of child soldiers 126–31
terror and terrorism 261–4
use of human shields 107 violations of IHL 29, 33

Ad Hoc Committee regarding the draft comprehensive convention on terrorism 244, 251, 253, 256
Additional Protocol I 38, 316
attacks on peacekeepers 155, 164–5
cultural property 79–80, 95
defining war crimes 8, 11, 12
grave breaches 9, 11, 12
new weapons 201
applicability of the review system 197–9
protection of children 122
protection of civilians 59–61, 100–2
rape and sexual violence 138, 140
terrorism 245–6, 258–9, 268–9
use of human shields 100–2, 103 violations of the law on conduct of hostilities 24–5, 27, 33

Additional Protocol II 38, 315, 316
attacks on peacekeepers 164–5
cultural property 79–80
defining war crimes 8, 11, 12
protection of children 122
protection of civilians 59–60, 62
rape and sexual violence 138, 140
terrorism 245–6, 258–9, 268–9

use of human shields 105
advanced interrogation techniques 289
adverse inferences 359–61, 368
Afghanistan 72, 289, 290–1
detainees and their treatment 304–9
African Charter on the Rights and Welfare of the Child 121
African Union Mission in Sudan (AMIS) camp 153, 163
agent orange 191–2, 215
aggression 5, 8
aiding and abetting 131
genocide 229, 230–1
Ain El Hilweh Refugee Camp 324
air attacks 353–4
NATO bombing campaign against former Yugoslavia 28, 153, 183–4, 207–8
Al Qaeda 287, 304
Ali Hassan Al-Majid (Chemical Ali) 191, 222, 223, 230
American Convention on Human Rights (ACHR) 351
ammunitions, supply of 239
Anfal military operation 36, 37, 221–3
anti-personnel landmines 25, 177–8, 188
Anti-Personnel Mines Convention (APLC) 178, 189
anti-vehicle landmines 188
Arab League 297
arbitration commissions 183–9
Argentina 356
armed conflicts
characterization and ICTY
definition of war crimes 12–14
classification 315
general challenges of fact-finding 314–15
nature of 328
and the ICC Statute 14–17
subjective assessments of the attacking party 328
terror as evidence of the existence of an armed conflict in OPT 281, 284–5
and terrorism 300–3
armed forces
definition 60
draft comprehensive convention on terrorism 253–4
national 130–1
structure of 328
Armed Forces Revolutionary Council (AFRC) 147, 149, 231
armed opposition groups, membership of 70–3
Arms Trade Treaty (ATT) 226–7
arms transfer 225–40
complicity and 228–40
cases entailing assistance 229–31
characteristics of the arms supplied 239–40
evaluation of the actus reus 237–9
evaluation of the mens rea 231–7
substantial effect 238–9, 240
international legal framework 225–7
Arrillaga, former general 363
art, works of 83, 84
asphyxiating, poisonous or other gases 212–13, 218–20
assessment of damage qualitative 319–24
quantitative 318–19
assistance liability 229–31
asymmetrical conflicts 196, 243, 277
attack, interpretation of 164–7
attacking party, subjective assessment of 324–8
attacks on civilians 32–5, 35–6, 59–77
challenges of investigation and adjudication 68–70
ICTY jurisprudence and definition of the crime of 63–8
legal provisions regulating 59–62
related issues not clarified by ICTY jurisprudence 70–6
attacks on peacekeepers see peacekeepers
Authorization for Use of Military Force (AUMF) 304
automated weapons systems 194–7, 202–3
awareness
complicity in arms transfer 233–7
protected status of peacekeepers 168–9
Bagosora, T. 159
Bajrami, S. 71
Bassiouni Commission 334–5
Basson, W. 221
belligerent nexus requirement 128, 159
Benvenisti, E. 296
Berla, G. 80
beyond any reasonable doubt 362–3
biological weapons 176, 196, 211–24
ICC Statute and problems of interpretation 218–20
individual criminal responsibility for use of 212–17
jurisprudence on individual criminal responsibility and accomplice liability 220–4
Biological Weapons Convention (BWC) 176, 205–6, 212, 213
Blaškić, General 111
blinding laser weapons 179
booby-traps 177–8
Bosnia and Herzegovina see former Yugoslavia
Bothe, M. 17, 62
burial sites 323
Burundi 336
carpet bombings 21
Cassese, A. xi, 77, 252–3, 297
Castro-Castro Prison 364
Čelebići test 272
Čerkez, M. 82, 111
Chechen conflict 23, 46–7, 52, 353–4, 358
chemical weapons 36–7, 176, 182, 191, 211–24
ICC Statute and problems of interpretation 218–20
individual criminal responsibility for use of 212–17
jurisprudence on individual criminal responsibility and accomplice liability 220–4
Chemical Weapons Convention (CWC) 176, 177–9, 189, 205, 212, 213, 215, 225
child soldiers 53, 119–35
actus reus of the crime 126–31
individual criminal responsibility for enlisting, conscripting and using 123–5
modes of responsibility 131–3
legal framework of protection 120–2
mens rea of the crime 131–3
children
child labour 121
as human shields 109–10
cholera bacteria 221
civil suits 22–3
civilian advantage 327
civilian objects see civilian property
civilian property 78–9, 157–8
cultural property as a distinct category of 81–9
civilian status 27–8, 32, 60
civilians
attacks on see attacks on civilians defining 60
prohibition on use as human shields 100–2
protection granted to and protection of peacekeepers 156
role of HR fact-finding in exposing attacks on 353–7
use of new weapons 208
Clausewitz, C. von 20
cluster bombs and munitions 179–80, 183–4, 185, 187, 188, 189, 190–1, 207
Cluster Munitions Convention 179–80, 206, 225
collateral damage 29, 32
minimization of 75–6
Colombia 71–2
Combatant Status Review Tribunals (CSRTs) 305, 306
combatants
children as see child soldiers defining 60
qualitative assessment of damage 319–20
unlawful 278–9
command responsibility 131
Commander’s Handbook on the Law of Naval Operations 103
Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties 24
Commissions of Inquiry established by the HRC 340–7, 347
Lebanon Report 184–5
Libya Report 187–8
Libyan Arab Report 187–8
triggering the creation of International Criminal Tribunals 334–6
community 140
complementarity of IHL and HRL 43–8
complicity
arms transfer and 228–40
as enabling 238–9
as exacerbating 238–9
as facilitating 238–9
awareness 233–7
in genocide 229, 231
and new weapons 220–4
with terrorist purposes 300
computer viruses 196, 203–4
conduct of hostilities 38–9
role of HR fact-finding in exposing violations 353–7
role of HRL in regulating 51–3
terror, terrorism and in IHL 244, 245–9
violations of the law on 20–37
confinement, unlawful 5
confirmation of charges 364–5
conscription
of child soldiers 119–35
difference from enlistment 126
consent
child soldiers’ consent to recruitment 126
lack of in rape and sexual violence 150–2
peacekeeping operations 160–1
conspiracy 306, 307
continuous combat function 60, 71, 72
Convention on Cluster Munitions (CCM) 179–80, 206, 225
Convention on Prohibitions or Restrictions on the Use of
War crimes and the conduct of hostilities

Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) 176
Protocol II 177–8, 189
Protocol III 178–9
Protocol IV 179
Convention on the Elimination of All Forms of Racial Discrimination 46
Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) And Toxin Weapons and on Their Destruction (BWC) 176, 205–6, 212, 213
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC) 176, 177–9, 189, 205, 212, 213, 215, 225
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti–Personnel Mines and on Their Destruction (APLC) 25, 178, 189
Convention for the Protection of Cultural Property in the Event of Armed Conflict see Hague Convention
Optional Protocol (OP) (2000) 121
Convention for the Suppression of the Financing of Terrorism (Terrorism Convention) 297–8, 300–1, 302–3
Convention on the Worst Forms of Child Labour 121
conventional international law 10
convergence between HRL and IHL 48–51, 54–5
cooperation agreements (ICC) 366, 368
co-perpetration 131, 132–3
Council of Europe 366, 368
counterterrorism 276–92
Croatian Defence Council (HVO) 110
cruel treatment 114–15
cultural heritage of every people 93, 94, 95
cultural identity 93, 94
cultural property 78–97 and the crime of persecution 91–5 as a distinct category of civilian property 81–9
enhanced protection 88
general protection 83–4
protection in non-international armed conflicts 89–91
cultural or spiritual heritage of peoples 85–6
cumulative convictions 271–3
customary international law 10, 18–19
enlisting, conscripting and using child soldiers 123–5
prohibited weapons 173–80
status of the crime of using human shields 113–15
cyber attacks 194–7, 203–4, 208
Cyprus 51
damage
assessment of 318–24
collateral 29, 32, 75–6
Darfur Commission 337–40
defensive human shields 99, 101–2, 108
dehumanization of the terrorist enemy 292
Del Ponte, C. 28
Democratic Republic of Congo 45–6
dense inert metal explosives (DIMEs) 184, 202
depleted uranium weapons 183, 184, 207
deporation, unlawful 5
derogations to human rights 48
destruction or wilful damage of cultural property 85
detainees
Guantanamo Bay 50–1, 290–1, 304–9
IHL, US and the ‘war on terror’ 303–9
use as human shields 110–12, 114
see also prisoners of war
detention 50–1, 166–7
insurgents and terrorists in occupied Iraq 288–91
dignity
outrages upon 15, 16
respect for 48–9
Dinstein, Y. 327
direct participation in hostilities
and active participation 127–30
and subjective assessment 324–8
assessment of damage 322–4
by civilians 71–3
peacekeepers 159–64
voluntary human shields and 103–4
disappearances 51
discrete crime of terrorism 244, 246–9, 255–6
disproportionate attacks 60, 66–7, 73–6, 262, 281
distinction, principle of 59–62, 174, 200–5
District Court of The Hague 36–7
Dobrinja football match attack 67
Doenitz, K. 21
dolus directus 33, 168
domestic criminal prosecution,
relevance of HR fact–finding for 361–4
Draft Code of Crimes against the Peace and Security of Mankind 8–9, 14–16, 181, 231–2
Draft Code of Offences against the Peace and Security of Mankind 7–8
Draft Comprehensive Convention on Terrorism 243–5, 249–56, 297
applicability 254–5
drones 194–7, 202–3, 204, 208, 209–10
dual-use items 236, 240
Dubrovnik, Old Town of 84–5
East Timor Special Panels 106, 108
educational institutions 82–3
effective control v. overall control test
13
enemy 40, 317
dehumanization of the terrorist enemy 292
enhanced protection (cultural property) 88
enlistment
of child soldiers 119–35
difference from conscription 126
enslavement 135
sexual slavery 135, 147–9, 150
environment, damage to 15, 16
Eritrea-Ethiopia Boundary Commission 188
Eritrea-Ethiopia Claims Commission 23, 188–9
Estonia 196, 203
Ethiopia Award 188–9
European Commission of Human Rights (ECommHR) 350
European Convention on Human Rights (ECHR) 41, 351
European Court of Human Rights (ECtHR) 23, 36, 46–7, 51–2, 223–4, 350–2
European Framework Decision on Terrorism 297, 302–3
European HR institutions 350–64
evidentiary problems 28–30
proving terror 267–9
Extraordinary Chambers in the Courts of Cambodia (ECCC) 80–1, 87–8, 95
extraterritorial jurisdiction 217
fact–finding
challenges of establishing facts
in relation to IHL violations 313–30
deriving facts relevant to assess substantive IHL provisions 317–28
nature and framework concerning the conduct of hostilities 315–17
defining 331–2
general challenges of during armed conflict 314–15
by international human rights (HR) institutions 349–68
fact–finding commissions 331–48
Bassiouni Commission 334–335
Darfur Commission 337–40
Tagliavini Commission 187, 332–333
employment of weapons 183–9
established by the HRC 340–7, 347
War crimes and the conduct of hostilities

international criminal tribunals triggered by 334–6
fear, extreme 265–6, 270
flechettes 185, 186, 192, 202
force, use of in peacekeeping operations 160, 162–3
forced marriage 147–9
forced pregnancy 147
forced prostitution 149
forced recruitment of child soldiers 124–5
forced sterilization 149
former Yugoslavia 153
ICTY see International Criminal Tribunal for the former Yugoslavia
NATO bombing campaign 28, 153, 183–4, 207–8
use of human shields 110–13, 114
use of rape 143–6
freedom fighters 299–303

Galić, S. 258
Gaza 109–10, 278, 329
Geneva Conventions (GCs) 10, 12, 38, 41, 61, 297
Additional Protocols see Additional Protocol I; Additional Protocol II
applicability to the ‘war on terror’ 303–9
defining war crimes under 4–7
grave breaches see grave breaches protection of children 122
rape and sexual violence 138, 139–40
terrorism 245
use of human shields 99–100
Geneva law 20, 38–9
Geneva Protocol (1925) 176, 212
genocide 229, 246
complicity in 229, 231
Georgia 46, 203
girl soldiers 129
‘global war on terror’ see ‘war on terror’
grave breaches 4–6, 9, 10, 11, 12, 14, 33
attacks on civilians 61

rape 140–1
terrorism 246–7, 259–60
grave consequences 262–3, 267, 269–70, 274
Grozny 353–4
Guantanamo Bay detainees 50–1, 290–1, 304–9
guerrilla warfare 277, 291–2, 300

Hague Convention IV (1907) 10, 138
Second Protocol to 81, 88–9
Hague law 38–9
challenges of establishing the facts in relation to 313–30
violations of as a neglected class of war crimes 20–37

Hamdan, S.A. 306, 307
Hamdi, Y. 305
heavy metal weapons 186
Henry V 137
herbicides 191–2, 215
Heyns, C. 204
High Commissioner on Human Rights 367

Hiroshima 191, 194
historic monuments 83, 84
hospitals 86–7
hostage taking 5, 112–13, 113–14
Hotel Vitez 111
Hoth, H. 109
human dignity see dignity
Human Rights Council (HRC) 209
fact-finding commissions 340–7, 347
human rights evidence, probative value of 361–6
human rights (HR) institutions 349–68
fact-finding functions 349–53
relevance of fact-finding for ICC prosecution and adjudication 364–6
relevance of findings for domestic criminal prosecution 361–4
role of HR fact-finding in exposing violations of the rules on conduct of hostilities 353–7
States’ failure to cooperate 358–61
human rights law (HRL) 38–55
  applicability in armed conflicts 41
  convergence with IHL 48–51, 54–5
  interplay with IHL 48–9
  protection of children 120–2
  relationship to IHL 42–8
  renvoi technique 42
  role in regulating the conduct of hostilities 51–3
  traditional distinction from IHL 38–40
Human Rights Watch 323
human shields 98–116
  case law 109–13
  categories of 98–9
  importance of status of 102–5
  rules criminalizing the use of 106–8
  rules prohibiting their use in international armed conflicts 99–102
  status of the crime of using 113–15
  use in non-international armed conflicts 105
humanity
  persecution as crime against 91–5, 95–6
  principle of 48–9, 54, 200–5
  terrorism as a crime against 244, 246–9, 255–6
Hussein, S. 36, 223, 230
hypothetical knowledge standard 131–2
ICC Statute (Rome Statute of the ICC) 53
  attacks on civilians 63–4
  attacks on peacekeepers 158, 165–6
  biological and chemical weapons 212–13
  problems of interpretation 218–20
  child soldiers 123–5, 131–2
  complicity in arms transfer 232
  cultural property 80, 81, 86–7, 90–1, 94–5, 95, 96–7
  disproportionate attacks 74
  human shields 106–8, 116
  Kampala Review Conference 31, 218–19
  nature of the armed conflict and classifying war crimes 14–19
  new weapons 207
  prohibited weapons 181–2, 183
  rape and sexual violence 141
  complete list of sexual war crimes 149–50
  terrorism 248–9
  violations of IHL on the conduct of hostilities 30–5
Illicit Arms Protocol 226
incendiary weapons 178–9
independence struggles 13
indiscriminate attacks 35, 59–60, 66, 201, 262
indiscriminate weapons 174–5, 190
individual criminal responsibility
  biological and chemical weapons 212–17
  jurisprudence on and accomplice liability 220–4
  for enlisting, conscripting and using child soldiers 123–5
  serious violations of IHL 26–8
  use of new weapons 205–10
  use of prohibited weapons 180–3
infiltrators 287
inhuman treatment 5, 114–15, 140
insurgents 277
occupied Iraq 286–91
intent
  of the attacking party 324–8
  attacks on civilians 33–4, 65
  complicity in arms transfer 232–3
  general intent 264
  and knowledge in enlistment, conscription and use of child soldiers 131–3
  new weapons 208
  special intent 107–8
  specific intent 264–5, 268–9
  terror and terrorism 264–5, 267–9
  use of human shields 107–8
Inter-American Commission on Human Rights (IACommHR) 49, 71, 350–2
Inter-American Court of Human Rights (IACtHR) 48, 350–2
Inter-American HR institutions 350–64
intergovernmental organizations (IGOs) 366
internal armed conflicts 15–16, 32, 40
with intervention by foreign states/
island organizations 13
international armed conflicts 12–14,
320
attacks on civilians 59–61
and definition of war crimes 12–14
human shields 99–105, 115
ICC Statute 14–15, 16
International Commission of Inquiry
on Libya 209–10
International Commission of Jurists
238–9
International Committee of the Red
Cross (ICRC) 33, 246, 293
and arms transfer 227
Guide to the Legal Review of New
Weapons, Means and Methods
of Warfare 198
Interpretive Guidance on Direct
Participation in Hostilities 72,
103–4, 159
prohibited weapons 173–4, 175, 176,
177, 178
rape and sexual violence 136, 139,
140
use of human shields 98
International Convention for the
Suppression of the Financing
of Terrorism (1999 Terrorism
Convention) 297–8, 300–1, 302–3
International Court of Justice 13, 295
Advisory Opinion on Nuclear
Weapons 23–4, 42, 174–5,
176–7, 182–3, 200–1, 205, 220
Advisory Opinion on the Wall 44–5,
45–6
relationship between IHL and HRL
44–6
International Covenant on Civil and
Political Rights (ICCPR) 39, 41,
44–5
International Covenant on Economic,
Social and Cultural Rights
(ICESCR) 39
International Criminal Court (ICC)
18–19
child soldiers 126, 127–8
cooperation agreements 366, 368
Elements of Crimes (ICC EoC)
106–8, 131–2, 135, 141, 151–2,
181
fact-finding commissions and
referral to 341–2
first UNSC referral to 337, 339
ICC Statute see ICC Statute
peacekeepers 163, 164, 167–9, 170
relevance of HR fact-finding
for ICC prosecution and
adjudication 364–6
International Criminal Tribunal for
the former Yugoslavia (ICTY) 46,
334–5
attacks on civilians
contribution to defining the crime
63–8
issues not clarified by ICTY
jurisprudence 70–6
biological and chemical weapons
212
case law and violations of the law
on the conduct of hostilities 33,
35–6
cultural property 80, 81, 81–6,
89–90, 91–4, 95–6
decisions on the employment of
weapons 189–91
definition of war crimes 9–14
effect of characterization of the
armed conflict 12–14
Final Report to the ICTY
Prosecutor by the Review
Committee 28, 74–5
human shields 110–16
new weapons 206–7
peacekeepers 158–9
rape and sexual violence 136, 143–7,
150
terrorism 257, 264, 265–6, 294, 295
IHL 246–8
multiple offences 271–4
proving terror 267–8
terror and acts of terror as specific
war crimes 258–63
uncertainty over the minimum
gravity threshold 269–70
International Criminal Tribunal for
Rwanda (ICTR) 335–6
complicity in arms transfer 230–1
peacekeepers 159
rape and sexual violence 136, 143–7, 150–1
terrorism 248, 294
international criminal tribunals
triggered by fact-finding commissions 334–6
see also International Criminal Tribunal for the former Yugoslavia (ICTY);
International Criminal Tribunal for Rwanda (ICTR)
international human rights institutions
see human rights (HR) institutions
International Humanitarian Fact-finding Commission 332
international humanitarian law (IHL)
applicability 306–7, 315–16
challenges of establishing facts in relation to violations 313–30
criminalization of violations 3–19
and human rights law 38–55
convergence 48–51, 54–5
interplay 48–9
relationship between IHL and HRL 42–8
criminalization of violations 3–19
and human rights law 38–55
convergence 48–51, 54–5
interplay 48–9
relationship between IHL and HRL 42–8
traditional distinctions 38–40
as lex specialis 42–3, 44, 45
principles of and new weapons
194–5, 199–205
prohibition of rape 137–41
protection of children 120–2
protection of peacekeepers under
154–8
content of the protection 156–8
relationship to draft comprehensive convention on terrorism
253–5
relevance in national case law on terrorism 293–310
terror, terrorism and the conduct of hostilities 244, 245–9
recent developments 30–7
International Law Commission (ILC)
231
contributions to defining war crimes
7–9
International Military Tribunals (IMTs)
Nuremberg see Nuremberg International Military Tribunal
rape 142
Tokyo 3, 142
International Military Tribunal for the Far East 3, 142
international peace and security 152
interrogation techniques (Iraq) 289–91
inter-state armed conflicts 13
intervention by a foreign State/ international organization 13
resistance to 17
investigation 363, 364
attacks on civilians 68–70
see also Commissions of Inquiry;
fact-finding; fact-finding commissions
involuntary human shields 98–9
Iran 196
Iraq 36–7, 99, 230, 235–6
terror in occupied Iraq 286–91
Iraqi Central Criminal Court 289
Iraqi High Tribunal (IHT) 37, 191, 221–2
Israel
Gaza see Gaza
Goldstone Commission Report
72–3, 76, 185–6, 202, 343–5
Occupied Palestinian Territories
44–5, 278–86
use of human shields 99, 109–10
Israeli Defence Forces (IDF) 184–5, 192, 202
Italy 300–3
joint criminal enterprise 229
judicial cooperation 255
Kampala Review Conference 31, 218–19
Kaonik prison 110
Karadžić, R. 112–13, 158–9
Katyr-Yurt 354
knowledge
complicity in arms transfer 233–7
and intent in enlistment, conscription and use of child soldiers 131–3
of protected status of peacekeepers
168–9
Koh, H.H. 202
Kordić, D. 82, 111
Labita law 360
landmines 25, 177–8, 188
laser weapons, blinding 179
Lauterpacht, H. 26, 55
law enforcement operations 47
Lebanon Report 184–5
legality principle 18, 30, 310
Leipzig war crimes trials 20–1
Liberia 230
Libya 99, 209, 341
Libya Report 187–8
Libyan Arab Jamahiriya 187–8
Libyan Arab Report 187–8
Lieber Code 138, 199
life, right to 40, 42
Lomé Agreement 161
London Charter of the Nuremberg International Military Tribunal 5–6
Lubanga, T. 132
M–87 Orkan rocket 67
male rape 137, 138
Manchuria 220–1
Mapiripán village 364
marriage, forced 147–9
Martens Clause 75, 175, 201
Martić, M. 190, 206
Martinović, V. 112
means used in attacks 326
medical aircraft 100
medical units 100
membership
of armed forces and determination of who can lawfully be attacked 60–1, 69–70
of armed opposition groups 70–3
mens rea
attacking civilians 65–6
attacking peacekeepers 167–9, 170
complicity in arms transfers 231–7, 240
conscripting, enlisting and using child soldiers 131–3
new weapons 209
prohibited weapons 182
terror and terrorism 264–5
use of human shields 107–8
violations of IHL 29–30, 33–4
Middle Ages 137
military advantage 327
military objectives 29, 32, 320–1
proximity of 326–7
sexual violence and 143
military observers 112
military occupation see occupation
military targets, terrorism and 301–2
Milošević, S. 258
Mladić, R. 112–13
mortars 185, 186, 188
Movimiento Todos por la Patria 71
multiple offences 271–4
mustard gas 230, 235–6
Nagasaki 191, 194
Naletilić, M. 112
Namibian refugee camps 221
Nangar Khel incident 22
national armed forces 130–1
national case law on terrorism 293–310
distinction between freedom fighters and terrorists 299–303
prisoners of war and their treatment 303–9
problem of defining terrorism 296–9
relevance of national jurisprudence 295–6
national liberation, wars of 13
National Liberation Army (NLA) 71
NATO 114
bombing campaign against former Yugoslavia 28, 153, 183–4, 207–8
drones used in Libya 209
Strategic Concept for the Defence and Security of the Members of NATO 196
NATO Bombing Report 183–4, 207–8
Nazis 230, 235
necessity 200–5
new weapons 194–210
applicability of the review system of AP I 197–9
individual criminal responsibility for use of 205–10
principles of IHL and 194–5, 199–205
types of 194–7
non-governmental organizations (NGOs) 366
Index

non-international armed conflicts 14, 15, 16–17, 32, 61–2, 320
human shields 105, 115
protection of cultural property 89–91
Nuremberg International Military Tribunal (IMT) 3, 21–2, 109, 173, 231
London Charter of 5–6
rape 142
Obama, B. 308–9
observers, military 112
occupation 276–92
terror in occupied Iraq 286–91
Occupied Palestinian Territories (OPT) 44–5
terrorism 278–86
Odio Benito, E. 128–9, 131
offensive human shields 99, 101–2, 108
Old Town of Dubrovnik 84–5
one-sided fact-finding missions 343–5
Operation Cast Lead 109–10, 343–5
Ordinances of War 137
Organization of African Union
Conference of Islamic States 297
Organization of American States (OAS) 366, 368
Orkan rockets 67, 184, 190, 206–7
Ottawa Convention see Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (APLC) 25, 178, 189
overall control test 13
Palestinian Territories, occupied 44–5, 278–86
participation in hostilities
active 61–2, 127–30
direct see direct participation in hostilities
particular projectiles 175–6, 181–2
peace-enforcement 160, 162
peacekeepers 112, 153–70
attacks on as international crimes 158–70
actus reus 164–7
conditions constituting 159–64
mens rea 167–9, 170
content of protection 156–8
protection under IHL 154–5
awareness of protected status 168–9
peacekeeping mission objects 157–8
peacekeeping operations, impartiality in 160, 161
perfidy 155
persecution 91–5, 95–6
Peru 364
phosphorous weapons 184, 185–6, 202
physical integrity, right to one’s 139
PKK 355
poison/poisoned weapons 173, 174, 180–1, 212–13, 218–20
Poje, J. 67
precaution principle 101, 204
precautionary rules 66, 75–6
precursors for chemical weapons 223–4
Predator MX–1 204
pregnancy, forced 147
prisoners of war
as human shields 100, 109
IHL, US Supreme Court and the ‘war on terror’ 303–9
see also detainees; detention
procedural violations 360–1, 368
procuring means 231
prohibited weapons 31, 36–7, 173–93
customary and conventional international law 173–80
employment of weapons in fact-finding commissions and arbitral commissions 183–9
individual criminal responsibility 180–3
international and national decisions on the employment of weapons 189–92
proportionality 34, 47, 60, 74, 75, 200–5
disproportionate attacks 60, 66–7, 73–6, 262, 281
security measures in the OPT 279–81, 282–4, 286
subjective assessment and intentions of the attacking party 327–8
prosecution
rape and sex crimes as methods of war 141–9
relevance of HR fact-finding for 361–6
domestic prosecution 361–4
ICC prosecution 364–6
UN fact-finding commissions and 331–48
prostitution, forced 149
protection of victims 38–9
see also Additional Protocol I;
Additional Protocol II; Geneva Conventions (GCs)
proximity of military objectives 326–7
public order 288
qualitative assessment of damage 319–24
quantitative assessment of damage 318–19
Raeder, E. 21
rape 129, 136–52, 335
definition and its specific features during armed conflicts 150–2
ICC Statute 149–50
prohibition under IHL 137–41
prosecution as a method of war 141–9
threat to international peace and security 152
reasonable person standard 66
recklessness 33–4, 65
recruitment 126
of child soldiers 119–35
regime change 277
religious institutions 82, 83, 84, 91–3, 94
remote controlled weapons 194–7, 202–3, 204, 208, 209–10
Review Conference on the ICC Statute (Kampala Review Conference) 31, 218–19
Revolutionary United Front (RUF) 231
attacks on peacekeepers 153, 159, 161, 162, 164, 167, 169
rape and sexual violence 148, 149
‘revolving door’ phenomenon 71
Richard II 137
right to life 40, 42
right to self-defence 163–4
right to truth 367–8
robots 194–7, 202–3
rockets 67, 184, 185, 186, 187, 190, 206–7
Rome Statute of the ICC see ICC Statute
Russia
Chechen conflict 23, 46–7, 52, 353–4, 358
cyber-attack on Estonia 196, 203
Georgia conflict 46, 187, 203, 332–3
Rwanda 230–1
ICTR see International Criminal Tribunal for Rwanda
Rwandan Commission 335–6
Safety Convention 155, 164, 165, 166, 167
Sarajevo 68–70, 258, 266
scheduled incidents 68–9
Schmitt, C. 277
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property 25, 81, 88–9, 91
Secretary-General’s Bulletin on the Observance of IHL by Peacekeepers (SG Bulletin) 155
self-defence, right to 163–4
settlers 282–4
sexual slavery 135, 147–9, 150
sexual violence 129, 136–52, 335
ICC Statute 149–50
prosecution as a method of war 141–9
Sierra Leone 129–30, 153
see also Special Court for Sierra Leone (SCSL)
Small Sefadu 167
South Africa 221
Special Court for Sierra Leone (SCSL) 231, 294
attacks on peacekeepers 158, 159, 161, 162–3, 164, 170
actus reus 166–7
mens rea 168, 169
case law 127–8
rape and sexual violence 147–9
Statute 123–5, 158
terrorism 248, 257, 263–4, 269, 273–4
special protection for cultural property 83–4, 85–6
Special Representative on Sexual Violence in Conflict 152
Special Tribunal for Lebanon (STL) 295–6, 298–9
St Petersburg Declaration 174, 175, 199
States
fact-finding commissions and assessing responsibility of 339–40, 361–2
failure to cooperate with HR institution fact-finding 358–61
statistics 318–19
status
civilian 27–8, 32, 60
of peacekeepers under IHL 154–5
sterilization, forced 149
structure of armed forces 328
Strugar, Admiral 85
Student, K. 109
Stuxnet computer worm 196
subjective assessments 329
of the attacking party 324–8
Sudan 153
superfluous injuries, weapons calculated to cause 174–5, 185
Syria 99
Syrian Commission 345–7
Tablada, La 356, 364
Tadić, D. 144
Tadić conditions 63, 64, 247–8
Tadic Jurisdiction Decision 13–14, 16, 189–90
Tagliavini Commission Report (Georgia Report) 187, 332–3
Taliban 304
targeting
objects that may be targeted 321–2
OPT 280–1
risk of child soldiers being targeted 128
terrorism and 301–2
Taylor, C. 230, 231
Tehran Conference (1968) 43
telluric fighters 277
territory, need for access to by fact-finding commissions 345–7
terror 257–75
acts or threats of violence 260, 261–2, 263, 268–9, 270–1, 273–4
actual terrorization 261, 264, 267
crime of and other crimes 271–4
definition 265–6
extreme fear 265–6, 270
intent to spread 273–4
potential capability test 273–4
proving 267–9
as rhetorical discourse 281–2
as specific war crime 258–66
terror and the conduct of hostilities in IHL 244, 245–9
‘war on terror’ see ‘war on terror’
terrorism 50–1, 257–75
acts of terrorism as peacetime equivalents of war crimes 298–9
acts of terrorism as specific war crimes 258–66
distinction of terrorists from freedom fighters 299–303
and military occupations 276–92
national case law on 293–310
problem of defining terrorism 296–9
relevance of national jurisprudence 295–6
negotiation of a UN comprehensive convention 243–5, 249–56
rape and sexual violence as acts of 148–9
terrorism and the conduct of hostilities in IHL 244, 245–9
uncertainty over the minimum gravity threshold 269–70
‘war on terror’ see ‘war on terror’
Tesch, B. 230, 235
thiodiglycol (TDG) 223, 230, 235–6
threats or acts of violence 260, 261–2, 263, 268–9, 270–1, 273–4
threshold of gravity for proving the crime of terror 260, 262–3, 269–70, 274
Tokyo International Military Tribunal 3, 142

Fausto Pocar, Marco Pedrazzi and Micaela Frulli - 9781781955925
Downloaded from Elgar Online at 09/14/2019 12:45:32AM
via free access
Tombodu 167

Torture 5, 289, 350

Convergence of IHL and HRL 49–50

Rape, sexual violence and 144–6

Transfer, unlawful 5

Trench-diggers 110–11

Truth, right to 367–8

Tu quoque argument 21

Turkey 51–2, 354–6, 357, 358

Uganda 45–6

UNAMIR 159

UNAMSIL 161, 162–3, 164, 167, 169

UNESCO World Heritage List 84

Union Patriotique Congolèse (UPC/FPLC) 130–1

Unit 731 220–1

United Nations (UN)

Child soldiers 120

Department of Peacekeeping Operations (DPKO) 160, 164

Fact-finding commissions see fact-finding commissions

Negotiation of a draft comprehensive convention on terrorism 243–5, 249–56

Peacekeepers see peacekeepers

Report on Guantanamo Detainees 50–1

United Nations General Assembly (UNGA) 4, 7, 7–8, 198–9

United Nations Security Council (UNSC) 49, 152, 226, 341

Biological and chemical weapons 213–14

First referral to the ICC 337, 339

United Nations War Crimes Commission 21

United States (US)

Authorization for Use of Military Force (AUMF) 304

Military Commissions Act (2006) (MCA) 308

Occupied Iraq 286–91

Patriot Act 217

Supreme Court, IHL and the ‘war on terror’ 303–9

Universal Declaration of Human Rights 4, 39

Universal jurisdiction, principle of 217

Unlawful combatants 278–9

Unmanned vehicles (drones) 194–7, 202–3, 204, 208, 209–10

Unnecessary suffering 194–5

Principle of 200–5

Weapons calculated to cause 174–5, 181

Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity 367

Uscatégui, J.H. 363–4

Van Anraat, F. 36, 222–4, 230, 235–6

Van Kouwenhoven, G. 37, 228, 230

Victims, caused by terror 264, 267

Vietnam War 191–2

Voluntary human shields 98–9, 102–5, 107, 108

Voluntary recruitment of child soldiers 124–5

Wanton destruction of property/towns and villages 29

War crimes

category of terrorism as 244, 246–9, 255–6

Contribution of the ICTY to defining 9–14

Contribution of the ILC to defining 7–9

Defining under the Geneva Conventions 4–7

‘War on terror’ 50–1

Occupation of Iraq 288–91

Prisoners of war and their treatment 303–9

Warring parties

Need for pressure to review and report their behavior 330

Subjective assessment and intentions of the attacking party 324–8

Weapons

Assessment of the means used in direct attacks 326

Biological see biological weapons

Chemical see chemical weapons
employment of in fact-finding commissions and arbitral commissions 183–9
international and national decisions on the employment of 189–92
new see new weapons nuclear 22–3, 23–4, 176–7, 182–3, 191, 194, 205
prohibited see prohibited weapons weapons review mechanism 197–9
white phosphorous weapons 184, 185–6, 202
wilfulness 33, 209
see also intent
world revolutionaries 277, 287, 290
World War I 20–1

World War II 21–2, 109
nuclear weapons 191, 194
Nuremberg International Military Tribunal 3, 5–6, 21–2, 109, 142, 173, 231
Tokyo International Military Tribunal 3, 142
written witness statements 365–6

Yengema 167
Yishai, E. 281
Yugoslavia, former see former Yugoslavia

Zagreb 184, 190
Zyklon B 230, 235