Index

9/11 World Trade Center attacks, influence on development of HRL 22

A. and Others v. UK, 2004 (UK) 127, 139
Abresch, W. 485, 498–9
access
to court, right of 136
to humanitarian assistance 301–2, 304
accountability
duty to account for forcibly disappeared individuals 173–4, 182–6
duty to account for use of force 174
for grave violations of HRL/IHL 351–4
and justice and peace, need for balance 351–4
accused, human rights of 577, 580–81
Additional Protocols see under Geneva Conventions
Afghanistan 153–4
African Charter on Democracy, Elections and Governance, 2007 (AU) 517
African Charter on Human and People’s Rights, 1981 (Banjul Charter) (AU) 19, 504
and promotion of IHL 508–9, 512–14
Protocol Establishing Peace and Security Council 512–14
Protocol on Rights of Women in Africa 504–5
on rights of individual to reparation 630
African Commission on Human and People’s Rights
establishment 19
impunity rules 511–12
inter-states IHL cases brought by 509–12
promotion of IHL by 508–9
African Court of Justice and Human Rights (ACtHR) 362–3, 520–22
African Union 19, 362
African Standby Force, obligations of 515–16
Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (Bamako Declaration), 2000 514
Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 (Kampala Convention) 148, 151–2, 505–6
Directive on the Protection of Civilians 513–14
establishment and purpose 503
Grand Bay Declaration and Plan of Action, 1999 506–8
human rights agencies, powers and duties 511
IHL, references to 503, 522–3
condemnation of violations 518–20
in declarations and decisions 506–8, 514–15
by Peace and Security Council 512–15
in regional agreements 516
in treaties 504–6
impunity rules 511–12, 517–18, 520–22
judicial enforcement role under IHL 520–22
Kigali Declaration, 2003 507–8, 514
Non-Aggression and Common Defence Pact 517
peacekeeping missions, protection of IHL during 512–14
Solemn Declaration on a Common African Defence and Security Policy, 2004 514–15
Agenda for Human Rights see Swiss Agenda for Human Rights
Al Jedda v. UK, 2011 (ECHR) 92–3, 103
Al Skeini v. Secretary of State for Defence, 2007 (UK) 81, 102, 108–9, 500, 642
Albekov v. Russia, 2008 (ECHR) 172
Aleksovski case, 2000 (ICTY) 584
Alston, P. 157–8, 167
American Convention on Human Rights, 1969 19
applicability in wartime 56
applicability to non-state armed groups 149
Article 29 471–2
extraterritorial application 400
judicial interpretation 471–2
and most favourable to the individual principle 254, 257–8

661
on right to humanity and humane treatment 189
saving/safeguard clauses 254
American Declaration on the Rights and Duties of Men, 1948 19
amnesty
termination, influence on 347
for serious violations of HRI/HL 346–7, 368
accountability, debates over 351–4
in internal armed conflict 422, 427–8, 430
of leaders 346–7, 351–5, 368, 422
limitations on 354–5, 427–8
unconditional amnesty 427
Amnesty International v. Sudan, 1993 (CommAfDHP) 511
Annan, K. 351
Argentina 111
armed conflict, generally
definition 38–9, 44
blurring of 81–3
see also internal armed conflict; non-state armed groups; occupation
armed conflict
amorphous entities, responsibilities of 203–5
internal displacement 172–3, 505–6
law of see HIL
proliferation of 81–2
World War I, importance of 36–7, 200
World War II, influence of 37–8, 200–201
armed groups see non-state armed groups
Association of Southeast Asian Nations (ASEAN) 20–21, 32
Atlantic Charter see under UN
Avena case (Mexico v. US), 2004 (ICJ) 71
Bámaca Velásquez v. Guatemala, 2000 (IACHR) 325–6, 470
Bamako Declaration on an African Union Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 2000 514
Bangkok Declaration on Human Rights, 1993 (ASEAN) 20–21
Banjul Charter, 1981 see African Charter
Bankovic v. Belgium, 1999 (ECtHR) 81, 108, 111, 400–401, 489–90
Barcelona Traction case (Belgium vs. Spain), 1970 (ICJ) 71
Barfod v. Denmark, 1989 (ECtHR) 132
Barrios Altos v. Peru, 1998 (IACtHR) 355
Bassiouni, M.C. 351
Behrami and Behrami v. France, 2007 (ECtHR) 401
Belgian Linguistic case, 1968 (ECtHR) 128, 135
Benvenisti, E. 273
Berkeley Project 2048 533
Bici v. Ministry of Defence, 2004 (UK) 642, 644
Bill of Rights, 1689 7
Blaškic case, 2004 (ICTY) 581
Bluntschi, J. 55
Bosnia and Herzegovina 80, 148
Mostar territorial administration 398, 402, 407
Bothe, M. 260–61, 269
Boumediene v. Bush, 2008 (US) 118
Brannigan v. UK, 1993 (ECtHR) 126–7, 139
Bridge of Varvarin case, 2006 (Germany) 214, 641, 643
Buddhism, influence of 5
Burke, E. 9
Burmundi 513
Caesar v. Trinidad and Tobago, 2005 (IACtHR) 252–3
Cançando Trindade, A.A. 252–3, 258, 466–7, 472
Case concerning the Application on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), 1993 (ICJ) 80
Celebici case, 1998 194
Central African Multinational Force (FOMAC) 516
Central Tracing Agency 322
Cerna, C.M. 56
Chechnya
bases before the ECtHR 89–93, 481–2, 484–5, 573
State obligations to protect civilians from non-state armed groups 176
Chicago Principles on Post-Conflict Justice, 2007 628
children
child labour, prohibition of 469–70
conflicting rights, and proportionality 130–31, 178, 180
non-state armed groups, application of HRL to 155
and principle of humanity 188–9
public education, right to 131
role in armed conflict 61–2, 83, 148, 151, 447, 469–70
State obligations to protect from landmines 172
UN human rights bodies’ interpretation of IHL and HRL 445–7
Chitat Ng v. Canada, 1993 (UN) 257
Christianity, influence of 6–7
civil rights 3, 17, 170, 280, 419–20
civil unrest, and use of force in occupied territory 284
civil war see internal armed conflict

civilians
identification as, importance of 495
immunity, interpretation 98
losses, as collateral damage 284–5
protection from effects of hostilities challenges 343–5
historical development 37, 40–41
internal displacement 172–3, 505–6
as key link between IHL and HRL 349–50
need for international policy on 345–6
and non-state groups 344–5
principle of distinction 350
protection activity, scope of 350–51
State obligation to plan operations involving use of force 171, 178–9
State obligations generally 344–6
from unexploded war remnants 172
see also right to liberty; right to life; victims
Clapham, A. 160, 169
Coard et al v. US, 1999 (IACommHR) 110, 115, 120, 400
Cold War, human rights developments during 17–20, 36
collateral damage 284–5
Colombia 110, 151, 176
colonialism, influence of 19
command responsibility 598–9
Common Article 3 see under Geneva Conventions
competition, relationship between IHL and HRL as 232–4
competing norms, principle of 232–3
role of lex specialis principle 232–42
complementarity theory 57–61, 86–7, 99, 365
conflicts vs. convergence 58–60, 79–81, 85–7, 348–50
and law of occupation 274–5, 285–9, 291
Condorelli, L. 261
Conference on Security and Co-operation in Europe, 1975 20
Constantinides, A. 157
conventions
on the Abolition of Slavery, 1926 10
American Convention on Human Rights, 1969 19, 56, 189
on Consular relations, 1963 70
on Conventional Weapons, 1980 172, 203
on the Elimination of Discrimination Against Women, 1979 18
on the Elimination of Racial Discrimination, 1965 18
on the Law of Treaties, 1969 87–8, 100–101, 235–7, 244, 546, 634
on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (UN) 355
for the Protection and Assistance of Internally Displaced Persons in Africa, 2009 148, 151–2, 505–6
on the Protection of All Persons from Enforced Disappearance, 2006 18, 320–21, 327–31
on the Protection of the Rights of Migrant Workers and their Families, 1990 18, 188–9
on the Rights of Persons with Disabilities, 2006 18, 446–7
on the Rights of the Child, 1989 18, 61–2, 83–4, 188–9, 254
against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 18
see also Geneva Conventions; ICCPR; ICESCR
Council of Europe extraterritorial application of HRL 108–9
self-binding agreements 403–4
crimes against humanity
amnesty and impunity, restrictions on 354–5, 368
background and development 14, 154
crime of persecution 584–5
definition and interpretation 327, 492
ECtHR rulings on 491–5
HRL role in 584–5
violence against women 470
enforced disappearances as 327, 339
international instruments on 355
universal jurisdiction 359–61, 365, 604–5
Croatia 391–2, 395–6
Cuba 111, 118
cultural property, protection of 146
cultural rights see social, economic and
cultural rights
Currat, P. 327
custody law
enforced disappearances 322–3
on IHL 83–5, 146–8, 158–60, 167–8, 203–4, 244
and UN Security Council powers 374–8, 381–2
discretionary powers 375–7
sanctions 384–5, 612–14
spirit and principles formula 378–9, 394–5
and territorial administration 394–6
Cyprus v. Turkey, 1975 (ECtHR) 107, 487–9
Darfur see Sudan
de las Casas, Bartolomé 6
de Vattel, E. 69, 644
de Vitoria, Francisco 6
dead, treaty provisions on treatment of 321
Declaration of Independence, 1776 (US) 8–9, 27
Declaration of the Council of the Institute of
Humanitarian Law, 1993 295, 310, 313, 316
Declaration of the International Rights of
Man, 1929 15
Declaration of the Principles of International
Law concerning Friendly Relations and
Cooperation among States, 1970 297
Declaration of the Rights of Man and of the
Citizens, 1789 (France) 9
Delalic case, 1998 (ICTY) 579–81, 583
Democratic Republic of Congo 154–5, 451–2, 509–12
Democratic Republic of Congo v. Uganda,
2005 (ICJ) 86, 94, 279–80
derogation of rights see under proportionality
detainees, treaty provisions on treatment of
321–2
dignity
equal dignity principle 4, 6, 192–5
diplomatic protection
principles of 69, 639–40, 644–5
development 70–72
and development of HRL 11
disappearances see enforced disappearances
discrimination 12–13, 18
and principle of humanity 190
Djibouti v. France, 2008 (ICJ) 237, 249
Dokmanovic, 1997 (ICTY) 578–9
domaine réservé 4
Draft Code of Crimes against the Peace and
Security of Mankind, 1996 327
Draper, G. 54–5
Droege, C. 274–5
Drozd and Janousek v. France and Spain,
1992 (ECtHR) 487
Dudgeon v. UK, 1981 (ECtHR) 129–30, 140
Dunant, H. 12
East Timor 392, 396, 402
Eastern Africa Standby Brigade (EASBRIG)
515
ECHR (European Convention on Human
Rights, 1950)
Article 2 114, 135, 482–4, 486, 496, 573
Article 3 136
Article 4 136–7
Article 5 252, 490
Article 6 136, 580–81
Article 7 491–3
Article 8 128–30
Article 9 130–32
Article 10 132–3
Article 11 132–3
Article 15 125–7, 138, 482–3
Article 41 630–31
Article 53 254, 256–7, 267, 269
background 18–19
derogation and proportionality 125–7, 482–3
and enforced disappearance 324
extraterritorial application of HRL 107–9,
112, 114, 489–90
force, use of 114–15, 171, 484–5, 496
freedom of expression 132–3, 141–2
freedom of religion 130–33
freedom of thought 130–33
IHL, relevance to 480
during extraterritorial military activity 487–91
during internal armed conflict 481–6
individual’s right to bring claims under 71, 74
internal armed conflict, interpretation of HRL and IHL during 481–6
feasible precautionary measures 485–6
lawful use of force 484–5
proportionality 125–7, 484–5
on judicial impartiality 579–80
judicial interpretation, difficulties with 93, 252
limitation clauses 128
monitoring mechanisms under 212–13
on most favourable to the individual principle 254, 256–8, 267, 269
peacetime applicability 56
purpose 24
reparation of victims under 215–16
right to liberty 116, 119
right to life 113–14, 324, 486
right to respect for private and family life 129–30
on rights of individual to reparation 630
Economic Community of West African States (ECOWAS) 515
economic rights see social, economic and cultural rights
ECtHR (European Court of Human Rights) Advisory Panel 403
freedom of expression 132–3, 141–2
freedom of religion 130–32
freedom of thought 130–33
judicial interpretation of IHL/HRL 89–93, 96–7, 126–7, 480
and Common Article 3 492–4
crimes committed during armed conflict 491–5
criticism 490–91, 495–6
derogation and proportionality 126–7
during extraterritorial military activity 487–91
feasible precautionary measures 485–6
influences on 480
during internal armed conflict 481–6
lawful use of force 484–5, 490, 496
occupation, relevance of 487–8
proportionality 125–7, 484–5
jurisdiction 480, 487–8, 495–6
and most favourable to the individual principle 254, 256–8, 267, 269
on principles of legality and equality 578
right to liberty and habeas corpus 119
right to respect for private and family life limitations on 129–30
on rights of individual to reparation 630–31
on role of lex specialis principle 245, 247
on State obligations
accountability for forcibly disappeared individuals 173–4, 182–5
accountability for use of force 174
to protect civilians from non-state armed groups 175–6, 187
Ecuador 110
EECC (Eritrea-Ethiopia Claims Commission) 208, 606–7, 609, 632, 647, 654–5
El-Bashir, O. 517–18, 520–22
Elmi v. Australia, 1998 (UN) 155
ELSI case (US v. Italy), 1989 (ICJ) 72
embargoes see sanctions
emergency situations
conflict of laws during 345–6
humanitarian assistance
inactivity, legality of 303–4
right to 296–8
international cooperation, existence of 296–7
judicial interpretation, by ECtHR 126–7
protection of civilians, challenges of 345–6
right to survival 295, 299–300, 310
State obligations
international cooperation 296–8, 300–301
non-participation principle 300–301
to protect citizens from humanitarian catastrophe 298–300
enforced disappearances
as crimes against humanity 327, 339
definition and scope 320–21, 325–9, 333–4, 340
history of 320, 331
judicial interpretation 325–6
protections and obligations
under HRL 322–6
under IHL 321–3, 325–6, 329–31
under international criminal law 326–7
under international instruments 325–6, 340
non-refoulement 330, 341
positive obligations 325–6

Robert Kolb and Gloria Gaggioli - 9781781006078
Downloaded from Elgar Online at 02/03/2019 12:20:56AM
via free access
prohibition of inhuman and degrading treatment 323
relating to detainees 321
relating to missing persons 321–2
relating to the dead 321
right to know the fate of relatives 321–2, 325, 333, 335, 337
right to liberty 323
right to life 324
right to recognition of person before the law 324–5
right to the truth 325, 329, 337–8
State obligations to account for 173–4, 182–6
without prejudice clause 330–31
relationship between IHL and HRL 321–3, 325–6, 328–31
enforcement
amnesty/impunity for serious violations of HRL/IHL 346–7, 368, 422, 427–8
accountability, debates over 351–4
African Union rules on 511–12, 517–18
in internal armed conflict 422, 427–8, 430
of leaders 346–7, 351–5, 368, 422
limitations on 354–5
unconditional amnesty 427
effectiveness 614–15
limitations 344–5
of HRL
challenges 344–7
monitoring mechanisms 212–13
remedies, availability of 214, 641, 643
of IHL 201
challenges 344–7
Claims Commissions 606–7, 609
command responsibility 598–9
custodial law role in 612–14
dissemination measures 596–8
domestic laws and standards 346, 592–3, 611
external mechanisms for 609–15
High Contracting Parties, meetings of 601–2
ICJ role 609
ICRC role 344, 363, 541, 547, 600
implementation limitations 593–5
individual responsibility for prosecution 604–5
in internal armed conflict 597–8, 610–12
international organisations’ role in 344, 363, 595–6, 609–15
monitoring mechanisms 201, 590, 594
need for balance 591–2
new mechanisms, need for 615–21
periodic reports 610
preventative measures 591–8
proposal for IHL Commission 615–20
rebels, implementation by 602–3
regional bodies, role of 364–5, 614, 630–31
sanctions 380–85, 603–8, 612–14
Third States role 202, 599–604
treaty obligations 213–14
international policy on, need for 345–6, 363–4, 615–21
public opinion, role of 591
reparation, of victims 212–17
causes of action and proceedings 645
challenges 645–8
under domestic law 645
under international law 644–5, 655
parallelism, conflicts 647
role of international courts 361–3
scrutiny, need for 344, 363–4, 594–5
universal jurisdiction 359–61, 365, 604–5
see also law enforcement
Enlightenment, influence of 6–8, 42
equal dignity principle 4, 6, 192–5
erga omnes principle 67, 80, 202, 303, 429, 590, 609, 614, 635
Ergi v. Turkey, 1998 (ECtHR) 484–5
Ethiopia
Eritrea-Ethiopia Claims Commission 208, 632, 647, 654–5
European Union
European Social Charter 19
HRL monitoring and enforcement role 212
humanitarian assistance, obligations to provide 306
on UN sanctions, validity of 381–2
extraterritorial application of HRL conflicts over 22, 80–83
during occupation 82–3, 114–15
under ECHR 107–9
under IACommHR 110–12
under ICCPR 106–7
ICJ opinions on 111–12
in international armed conflict 113–14
right to liberty 116–21
right to life 113–16, 486
targeted killings 81–2, 97, 109, 114

*Factory at Chorzów (Germany v. Poland),* 1928 (PCU) 636
Federal Tort Claims Act, 1948 (US) 214, 642
*Folgerø v. Norway,* 2007 (ECtHR) 131
force, use of
  accountability for 174, 176–7
  legality 90–91, 170
  in occupied territories 283–9
  and civil unrest 283–5
  conflict and convergence, in IHL and HRL 274–5, 285–9, 291
  law enforcement 283–5, 287–9, 293
  proportionality 287–9
reparations for 631–2
State obligation to plan operations involving 171, 178–9
France 9
freedom of expression 132–3, 141–2
freedom of thought, conscience and religion 130–33
*Furundžija* case, 1998 (ICTY) 355, 580
Gaggioli, G. 251–2, 255
Geneva Conventions, 1949
  Additional Protocols, 1977
    armed groups, applicability to 146–7, 158–9
  command responsibility 598–9
  and criminal responsibility 206–8
  and customary law 117
  on enforced disappearances 321–2, 329
  on International Humanitarian Fact-Finding Commission role and jurisdiction 570–71
  minimum standards 203, 259–60
  on obligation to make reparations 604–6
  and principle of reciprocity 536, 635
  and relationship between IHL and HRL 78–9, 146–7, 259–63
  on rights of individuals to reparation 632–3
  Article 75 of Additional Protocol I 259–63
  background 12, 28, 37
  basic rights under 56, 80, 299
  Common Article 3
    crimes committed during armed conflict 482–4
    judicial interpretation 88–9, 469, 481, 492–3
    relevance to internal armed conflict 481–2
    duty to bring perpetrators to justice 347, 359
    on enforced disappearances 326, 330
    provisions relating to detainees 321
    provisions relating to missing persons 321–2
    provisions relating to the dead 321
    Fact-Finding Commissions 344–5, 570–73, 601
  GC3 relative to the Treatment of Prisoners of War 40, 117–19
  GC4 relative to the Protection of Civilian Persons in Time of War 117
  influence on development of IHL 44 during occupation 119–20
  Universal Declaration of Human Rights, relevance to 40–41
  High Contracting Parties, meetings of 601–2
  humanitarian assistance
    access to victims 301–2, 304
    general principles 305
    rights and role of third parties in 302–3
    incompatibility with ECHR Article 5 252
  individual responsibility for prosecution of war crimes 604–5
  influence on development of IHL 37, 40, 44, 199
  on international cooperation 298
  limitations of protections 259–60
  Martens Clause 40, 46, 191, 194, 196
  on most favourable to the individual principle 259–63, 268
  non-international armed conflicts, relevance to 429–30
  peacekeepers, applicability to 379–80
  Preamble 40
  and principle of humanity 40, 46, 191
  principles behind 12, 40
  prisoners of war 40, 117–19, 262, 268
  regulatory mechanisms under 199
  on reparation claims 207–8
  right to liberty 117–19
  and rights of individuals to reparation 632–3
  and transformative occupation 277
  universal jurisdiction, principle of 359–61, 604–5
  on use of force in occupied territory 288–9
Bosnia and Herzegovina v. Yugoslavia case, 1993 (ICJ), 80
international criminal law on 154
and principle of humanity, judicial interpretation 194
Gillow v. UK, 1984 (ECtHR) 134
Giuliani and Gaggio v. Italy, 2011 (ECtHR) 171
Global Fund for National Human Rights Protection, proposal for 531
Goiburú et al. v. Paraguay, 2006 (IACtHR) 325, 338, 474
Golder v. UK, 1975 (ECtHR) 135–6, 144
Goodwin v. UK, 1996 (ECtHR) 132, 142
Grand Bay (Mauritius) Declaration and Plan of Action, 1999 (AU) 506–8
graves, registration of 321
Greece, Ancient, influences on HRL 6
Greenwood, C. 344–5
Grenada 110, 120
Grono, N. 352
Guantanamo Bay 111, 118
Guatemala 153, 168–9, 193–4, 216
Gülç v. Turkey, 1998 (ECtHR) 484
Habeas corpus 116–21
Hague Conventions, 1907 37
basic rights 299
limitations 260
and humanitarian assistance 306
non-international armed conflicts, relevance to 429–30
on occupied territory 291–2
prolonged occupation 278–80
transformative occupation 277–8
use of force in 283–4, 288–9
and rights of individuals to reparation 632–3
State responsibilities under 206
Hamdan v. Rumsfeld, 2006 (US) 639–44
Hampson, F. 109, 114
Handyside v. UK, 1976 (ECtHR) 128–9, 143–4
harmonization theory 87
Helsinki Final Act, 1975 20
Hessbruegge, J.A. 149, 164
Higgins, R. 94
Hirst v. UK, 2004 (ECtHR) 136, 144
Hissène Habré Case, 2006 (AU) 517–18
historicism 10
Honduras 216
hostilities, protection from effects of obligation to plan operations involving use of force 171, 178–9
protection from internal displacement 172–3, 505–6
protection from unexploded war remnants 172
HRL (human rights law)
applicability
in armed conflict 79–80, 347
in internal armed conflict 148–61
in territorial administration 395–7
concept of 3, 5–7, 57–8, 78
culture, influences on interpretation of 4–5
extraterritorial application 447–8
conflicts over 22, 80–83
under ACHR 110–12
under ECHR 107–9
under ICCPR 106–7
during occupation 82–3, 114–15
targeted killings 81–2, 97, 109, 114
first generation rights 3, 21, 33
historical influences on 3, 5, 23
ancient civilizations 5–6
Christianity 6
Cold War period 17–20, 36
collectivism 10
counter-revolutionaries 9–10
East-West differences 17–23, 31
Enlightenment 6–8, 42
Geneva Conventions 12, 44
historicism 10
Interwar period 15–17
Italian Renaissance 6
League of Nations 12–13
liberty and equality 9–10
limitations on 35–6
nationalism 10
natural law 11, 14, 35–6
natural rights theory 7–8
positivism 9
post Cold War period 20–22
revolution 8–9
socialism 10
utilitarianism 9
War on Terror 22
Western Imperialism 10
World War I 12–13, 16
World War II 14–16, 23
Index 669

international criminal law, relationship with
575–6
legal doctrine, writings on 40–41
most favourable to the individual principle
degree of protection criteria 251–2
incompatibility with IHL 251–3, 257–8, 260–63
judicial interpretation 256–8, 262
and lex posterior derogat priori principle 254
minimum standard, importance of 255
saving/safeguard clauses 254–5, 264–5
negative rights 3–4, 21, 170, 300–301
positive rights 3–4, 9, 21, 170, 175–6, 185
humanitarian assistance 295–6, 300–301, 310
and principle of humanity 193–4
principles
derogable and non-derogable rights 56, 80, 103, 116–19
equal dignity principle 4, 192–5
equal treatment 12–13
state intervention 12–13, 202, 300–301
reparation, of victims 631–4, 640–44
forms and standards 637–8
individual remedies 211–17
international responsibility for 634–7
monitoring mechanisms 212–13
from non-state actors 638–9
rights of individuals to 631–4
and State obligations during armed conflict 629–31
right to liberty 121
habeas corpus 116–21
during international armed conflict 116–19
during occupation 119–20
right to life 115–16, 482–3
enforced disappearance 324
during international armed conflict 113–14
during occupation 114–15
proportionality 486
second generation rights 3, 18–19, 21, 33, 295
as State-centred concept 149–51
third generation rights 3, 21, 296
Universal Declaration of Human Rights, coverage under 39–40, 95–6, 565
use of force
accountability for 174
for law enforcement 283–5, 287–9, 293
in occupied territories 283–9
reparations for 631–2
see also relationship between HRL and IHL; individual rights
Human Rights Committee
on enforced disappearances 173–4, 323–4
on extraterritorial application of HRL 82, 106–7
General Comment 26 148–9
General Comment 29 105–6, 112, 168, 267
General Comment 31 106, 112, 399–400, 444
interpretation of IHL 86, 96–7, 358–9
and most favourable to the individual principle 256–8
non-state armed groups, application of HRL and IHL to 148, 159–60
on relationship between IHL and HRL 443–5, 448, 455–6
on reparation of victims 216, 630
right to liberty 119–20
role
enforcement 613–14
monitoring IHL, increase in 455–6, 613–14
Human Rights Council
criticism 22, 84
establishment 21–2, 449
importance in monitoring IHL 455–6
powers and duties 358–9, 449–55, 613–14
enforcement 613–14
references to IHL and HRL by 452–4, 462–3
on relationship between IHL and HRL 359, 450–52
Special Rapporteurs, procedures for 452–4
on thematic topics 452
Universal Periodic Review 22, 359, 454–6, 613–14
humanitarian assistance
access of victims to 301–2, 304
adequacy of 307–8
aid workers, dangers to 343
armed protection, need for 305
basic rights under 299–300, 317
coercion in 295
conduct rules for 303–6
definition 294–5, 307
distribution, rules governing 301–2
and erga omnes principle 303
implied rights under 301–2, 317

Robert Kolb and Gloria Gaggioli 9781781006078
Downloaded from Elgar Online at 02/03/2019 12:20:56AM
via free access
670 Research handbook on human rights and humanitarian law

inactivity, legality for 303–4
military role in 294
as moral duty 303
negative and positive rights 295–6, 300–301, 310
obstacles to 309
as barriers to peace 294, 302, 304
identification difficulties 307
international reaction to 305
Occupier’s obligations 300–301
primacy in 296
public opinion, role of 294
purpose 306–7
relationship between IHL and HRL 306–8, 318
requests, criteria for 300–301
right to obtain
and right to survival 295, 299–300, 310
scope of 295–6, 319
San Remo Declaration on, 1993 295, 310, 313, 316
security zones 306
State obligations 318
free access to victims 301–2, 304
international cooperation 296–8, 300–301
and principle of non-intervention 12–13, 300–301
to protect from humanitarian catastrophe 298–300
whether duty to act 303
third parties, role and rights of 302–3
transparency, importance of 294
UN role in
conduct rules for 303–6
importance of 305–6
international cooperation 297–8, 300–301
peacekeeping mandate 304–5
humanity, general principle of
defencelessness, relevance of 188–9
and dignity 4, 192–5
public conscience, and 191
scope of protection 188–9, 194–5
international corpus juris, place in 189–90
Martens Clause, role in establishing 191, 194, 196
natural law, and 190
tribunal/judicial interpretation 193–4
UN influences on 191–3, 196
and universality 197
see also crimes against humanity

ICC (International Criminal Court)
duty to cooperate with 356–7
on enforced disappearance 322, 327
and HRL
obligations under 576
references to 579–82, 585
individuals, applicability to 79
influence of other courts on 473–4
on rights of accused to fair trial 581
and universal jurisdiction 361
whether African Court undermines work of 521, 530
ICCPR (International Covenant on Civil and
Political Rights, 1996) 17–18, 36
derogation of rights 56, 105–6, 117, 365, 444, 448
effort enforcement mechanism under 18, 212
exclusion from international agreements 21
extraterritorial application of HRL 106–7, 114, 444
IHL relevance to 45, 60, 178, 348–9
individuals, relevance to 535
and most favourable to the individual
principle 254, 256–8, 260–61
national security and need for balance 105
on reparation of victims 216, 630
on right to fair trial 581
right to liberty 116–17, 119, 121
right to life 114
on rights of accused 581
saving/safeguard clauses 254
ICESCR (International Covenant on
Economic, Social and Cultural Rights,
1966) 17–18, 36
inclusion in international agreements 21
and most favourable to the individual
principle 254
Optional Protocol to 21
and prolonged occupation, convergence of
IHL with HRL 280–83
and right to survival 295, 310
saving/safeguard clauses 254
ICJ (International Court of Justice)
on complementarity theory between HRL
and IHL 58–60
effort enforcement role 609
erga omnes principle 67, 80, 202, 303, 429
on individual’s right to reparation 629
on international responsibility for
reparations 636
on Legal Personality of Individuals, 1949
66–7, 69–72
lex specialis principle, interpretative role of 84–6, 88–9, 92–3, 112, 245, 330
systemic integration approach 236–42, 247–8
on prolonged occupation, convergence of IHL and HRL 280
on relationship between HRL and IHL 58–60, 111–12, 480
on relevance of HRL during armed conflict 580
on relevance of IHL in peacetime 59–60, 534
on reparation for injuries suffered in service of UN 374–5
on right to humanitarian assistance 295–6, 300, 303, 308, 314
on right to survival 300
on UN Security Council powers 372–3
on the Wall in Palestinian Territory, 2004 60, 80, 86, 106–7, 112, 208–9, 238–9, 445, 636
ICRC (International Committee of the Red Cross)
on complementarity theory between HRL and IHL 57–8
confidentiality, relevance of 543, 561
custodial criminal law study 558
on enforced disappearance 322, 329
on excessive use of force 557
history of early development 548–50
establishment 12, 540–41, 548–9
Post-War development 550–54
and HRL invocation mechanisms 554–8
relationship with 547–8, 569
on humanitarian assistance, right to 316
and international law influences on 549–50
relationship with 541–2, 544
legal status 541–2, 546, 559
on most favourable to the individual principle 261
neutrality, importance of 544
powers and duties 57, 202, 546–7
dissemination 557–8
regarding missing persons 556
training security forces 557
visits, to persons deprived of their freedom 555–6
principles and priorities 350, 542–4, 560
and proposal for World Court of Human Rights 536–7
on right to intervene 551–2
role
in armed conflicts 544, 548
in development of IHL 42–3, 45, 201, 549–54
in internal armed conflict 545, 548, 550–52, 555, 597–8
in monitoring compliance with IHL 344, 363, 541, 547, 600
on success of Geneva Conventions 537
UN, relationship with 42–3, 45, 378–9, 550–54
on use of force in occupied territory 289–91
ICTR (International Criminal Tribunal for Rwanda)
principle of humanity, judicial interpretation 194
references to HRL 581–2
on rights of accused to fair trial 581
on universal jurisdiction 604
ICTY (International Criminal Tribunal for Former Yugoslavia) 194, 355, 576–7
complementarity principle, use of 86–7
on enforced disappearance, as criminal offence 327
HRL, relevance to 583
on judicial impartiality 579–80
and principle of humanity 194
on right to liberty 120, 578–9
on rights of accused to fair trial 580–81
role in defining crimes against humanity 583–5
Tadić case, 1995 82–3, 375–7, 539, 578, 583
on universal jurisdiction 604
IHL (international humanitarian law)
background and development 78, 348
armed conflict proliferation, role in 81–3
compared with HRL development 11–12
diplomatic protection 11, 66, 69–72, 639–40, 644–5
historical development 11–12, 36–7, 78
ICCPR and ICESCR, relevance to 45, 60
ICRC, role of 42–3, 45, 201
influences on 11–12, 37, 40, 44, 55, 193–4
legal doctrine, writings on 40–41
need for codification 37–8
progress of 41–2
Research handbook on human rights and humanitarian law

treaties, importance of 93–4
World War I, influence of 36–7, 200
World War II, influence of 37–8, 200–201
criminal responsibility 205, 598–9
customary law, and 83–5, 146–8, 158–60, 167–8, 203–4, 213–14, 244
enforced disappearances 322–3
declaration of war 38–9
duty to account 173–4, 176–7
ECtHR interpretation of 487–95
erga omnes principle, 67, 80, 202, 303, 429, 590, 609, 614, 635
humanization of 240, 252–3, 429–30, 473
interpretation, differences between IHL and HRL 482–3
lex specialis principle, and 84–6, 92–3, 112, 285–6
most favourable to the individual principle humanization 252–3
incompatibility with HRL 251–3, 257–8, 260–63
judicial interpretation 262, 267
limitations on 259–60
minimum standards 259
non-state armed groups, application to 146–8, 152–4, 203–5, 351
peacetime relevance of 56, 59–62, 79–80, 534
principles of 55
principle of humanity 193–4
Red Cross, role in development of 42–3
reparation, claims for alternative mechanisms 607
civil claims 205–10
conflicts over 205, 217
enforcement mechanisms 644–5
general international law principles 206–8
individual rights 209–10, 628–48
and internal armed conflict 606–7
under ius in bello vs. ius ad/contra bellum 631–4
limitations 628
moral satisfaction 210
principles, development 12–13, 206–7
special mechanisms 208
State obligations to make 605–8
UN Basic Guidelines 83–4, 209, 532, 582, 628

see also crimes against humanity;
enforcement; genocide; relationship between HRL and IHL
subjective vs. objective triggers 38–9, 49
unexploded remnants of war, protection from 172
use of force
for law enforcement 283–5, 287–9, 293
obligation to plan operations 171, 178–9
obligation to protect from effects of hostilities 171–3
in occupied territories 283–9
reparations for 631–2
women, protection of 504–5
Illascu v. Moldova, 2004 (ECtHR) 115, 151
imperialism, influence of 10
impunity, for serious violations of HRL/IHL 346–7
accountability, debates over 351–4
African Union rules on 511–12, 517–18
limitations on 354–5
individuals
international criminal law, applicability to 79, 535
legal status of 65–6
capacity tests 67
definition 66–7
diplomatic protection 11, 66, 69–72, 639–40, 644–5
international law, protection under 67–8
restrictions on 67, 71
Vattelian fiction of 69, 644
see also reparation
Informationsverein Lentia v. Austria, 1993 (ECtHR) 132
inhuman or degrading treatment
Convention against, 1984 18
and enforced disappearance 323
and principle of humanity, judicial interpretation 194
Institut de Droit International
on non-state armed groups, application of HRL and IHL to 153, 160, 165
integration theory 61–2
Inter-American Commission and Court of Human Rights
application of HRL to non-state armed groups 148
compared with European equivalents 466–7, 472–3
on complementarity of IHL and HRL 468–9, 472–3

Robert Kolb and Gloria Gaggioli - 9781781006078
Downloaded from Elgar Online at 02/03/2019 12:20:56AM via free access
Index 673

Robert Kolb and Gloria Gaggioli - 9781781006078
Downloaded from Elgar Online at 02/03/2019 12:20:56AM via free access
and judicial impartiality 579–80
right to fair trial 580–81
on right to liberty 578–9
International Federation of the Red Cross and
Red Crescent Societies 84, 542, 544–7, 559
International Humanitarian Fact-Finding
Commission enforcement role 601
establishment 570
jurisdiction over human rights violations
570–71
during armed conflicts 572–3
‘International Humanitarian Law
Commission’ challenges of 617–19
proposal for 615–20
International Labour Organization (ILO) 13
minimum standards principle 255, 265–6
international law
on cooperation, and humanitarian assistance
298–9, 300–301
divergence between IHL and HRL 198–9
fragmentation and diversification 77
general principles 67–8
globalization, and 77
humanization of 240, 252–3, 429–30, 473
justice and peace, need for balance between
351–4
progressive development, principle of 297
public interest domain, role of 77
and responsibility to make reparations
634–7, 655
State role in 67–8
systemic integration, and judicial
interpretation 236–8, 247–8
ICJ approach 236–41
theory of exclusivity 640–41
treaties, interpretation and priority of 87–8,
100–101, 235–7, 244, 248
universal jurisdiction, and 359–61, 365,
604–5
see also customary law
International Law Association (ILA)
on non-state actors, application of HRL and
IHL to 159–60
Principles of Reparation for Victims of
Armed Conflict, 2010 628–9, 637, 645
International Law Commission on
Responsibility of States for
Internationally Wrongful Acts, 2001
198–9, 202–3, 212, 311
international organisations
enforcement role 595–6, 609–15
challenges and limitations 344–5, 609,
614–15
and customary law 612–14
humanitarian assistance
cooporation obligations 297–8, 302
rights and role in 302–3
international law development, influences
on 385
judicial/quasi-judicial functions 609–11
legal status of 546
powers 546
responsibilities 203, 399
role in convergence of IHL and HRL 84
and rule of law 385–6
interpretation of IHL/HRL see lex specialis
principle; relationship between HRL and
IHL
Interwar-period, IHL/HRL development
during 15–17
Iraq
HRL and IHL in
conflicts between 81, 102, 108–9, 500,
642
convergence of 58–9, 442
judicial interpretation of 81, 92–3, 102–3,
108–9, 500, 642
sanctions, impact of 385
transformative occupation, IHL implications
276–8
Ireland v. UK, 1978 (ECtHR) 126, 139
Isayeva v. Russia, 2005 (ECtHR) 481–2, 498
Israel 120, 156–7
Wall in Palestinian Territory Advisory
Opinion, 2004 (ICJ) 60, 80, 86, 106–7,
112, 208–9, 238–9, 445, 636
Issa v. Turkey, 1996 (ECtHR) 108, 489–90
Italian Renaissance, influence of 6
Italy 6, 645–7
Ituango Massacres v. Colombia, 2006
(IACtHR) 470
Ius cogens see customary law
ius gentium 6
ius in bello see armed conflict
Ivory Coast 519
Joinet Principles 347
jurisdiction
of African Court of Justice and Human
Rights 362–3
of ECtHR 480, 487–90, 495–6
leaders, as perpetrators of violations of
IHL/HRL
accountability, debates over 351–4
amnesty and impunity 346–7, 351–5, 368,
422
legal obligations to prosecute 347, 353–4,
359
limitations on 354–5
League of Nations
abolition of slavery, influence on 10
Covenant principles of 12–14
historical influence on HRL 12–13
territorial administration by 392–3
Lebanon 156, 450–52
legal personality see individuals, legal status
of
legal theories
complementarity theory 57–61, 86–7, 99,
274–5, 349–50
integration theory 61–2
natural rights 7–8
separation theory 54–7
legal vs. moral rights 3–4
lex posterior derogat priori principle 85, 254
lex specialis principle 12, 330
alternative conceptions of 234–5
and armed conflict, law of 84–6, 92–3, 112,
285–6
and competition between IHL and HRL
232–42
and conflict between IHL and HRL 224–7,
349–50
ECtHR interpretation using 245, 247
ICJ interpretation using 84–6, 88–9, 92–3,
112, 245
as judicial interpretation mechanism 234–8
and law of occupation 275, 285–6
and most favourable to the individual
principle 251–2
rules and prerequisites 227–32
and systemic integration of international
law 236–42, 247–8
Levya Şahin v. Turkey, 2005 (ECtHR) 130–31
liberty and equality, historical influences of
9–10
Libya 157, 519–20
Lindon, Ochakovskaya-Laurens and July v.
France, 2007 (ECtHR) 132
Locke, J. 7–8
Lockbie, Libya v. United States of America,
1998 (ICJ) 377
Lohmann, F. 26

Index 675
Research handbook on human rights and humanitarian law

Loizidou v. Turkey, 1989 (ECtHR) 107, 488, 499
Loizidou v. Turkey

Lubell, N. 283
Lubell, N.

McCann v. UK, 1995 (ECtHR) 483–4
Mapiripan Massacre v. Colombia, 2005

Marceau, G. 232
Marceau, G.

margin of discretion doctrine 133–5
Markovic v. Italy, 2003 (Italy) 645–6
Markovic v. Italy

Martens Clause, Geneva Conventions, 1949
Martens Clause

Marx, K. 10
Marx, K.

mass atrocity crimes see crimes against humanity; genocide
mass atrocity crimes

measure of last resort 92–3
measure of last resort

Melzer, N. 97
Melzer, N.

A Memory of Solferino 12
A Memory of Solferino

Meron, T. 59, 78, 94, 473, 652
Meron, T.

migrant workers, protection 18, 188–9
migrant workers

Miguel Castro Castro v. Peru, 2006 (IA CtHR)
Miguel Castro Castro v. Peru

minimum standards
minimum standards

labour standards 255, 265–6
labour standards

and most favourable to the individual principle 255, 259
and most favourable to the individual principle

under prolonged occupation 282–3
under prolonged occupation

social, economic and cultural rights 282–3
social, economic and cultural rights

missing persons
missing persons

ICRC investigations 556
ICRC investigations

treaty provisions on treatment of 321–2
treaty provisions on treatment of

Moïwana Community case, 2003 (AICtHR)
Moïwana Community case

Moldova 151
Moldova

monitoring see under enforcement
monitoring

moral autonomy 4
moral autonomy

moral satisfaction, and reparation 210
moral satisfaction, and reparation

moral vs. legal rights 3–4
moral vs. legal rights

morality, price of 353
morality, price of

most favourable to the individual principle degree of protection criteria 251–2
most favourable to the individual principle degree of protection criteria

in HRL
in HRL

incompatibility with IHL 251–3, 257–8, 260–63
incompatibility with IHL

judicial interpretation 256–8
judicial interpretation

and lex posterior derogat priori principle 254
and lex posterior derogat priori principle

and lex specialis 251–2
and lex specialis

minimum standards, importance of 255
minimum standards, importance of

saving/safeguard clauses 254–5, 264–5
saving/safeguard clauses

in IHL
in IHL

humanization 252–3
humanization

incompatibility with HRL 251–3, 257–8, 260–63
incompatibility with HRL

judicial interpretation 262, 267
judicial interpretation

limitations on 259–60
limitations on

purpose 259
purpose

Mucic case, 2001 (ICTY) 194
Mucic case

Nacht und Nebel decree 320, 327
Nacht und Nebel decree

nationalism 10
nationalism

natural law development 7
natural law development

influences on international HRL 11, 14, 35–6
influences on international HRL

and principle of humanity 190
and principle of humanity

natural rights, theory of 7–8
natural rights, theory of

necessity principle
necessity principle

and proportionality 128–9, 139
and proportionality

and use of force in occupied territory 288–9
and use of force in occupied territory

negative rights 3–4, 21, 170, 300–301
negative rights

Nemariam v. Federal Democratic Republic of Ethiopia, 2007 (US) 647
Nemariam v. Federal Democratic Republic of Ethiopia

non-intervention, principle of 12–13, 300–301
non-intervention, principle of

non-refoulement obligations 446
non-refoulement obligations

enforced disappearances 330, 341
enforced disappearances

non-state armed groups
non-state armed groups

application of HRL to 155–6, 175, 344–5
application of HRL to

advantages 152–61
advantages

defining scope of relevant rights 160–61
defining scope of relevant rights

disadvantages 148–52
disadvantages

in non-controlled territories 159–61
in non-controlled territories

in occupied and controlled territories 152–9
in occupied and controlled territories

and principle of equality 152
and principle of equality

application of IHL to 146–8, 203–5, 344–5, 351
application of IHL to

cultural property, protection of 146
(cultural property, protection of

enforcement mechanisms 602–4
enforcement mechanisms

Geneva Conventions, under 146–7
Geneva Conventions, under

limitations and exclusions 152–4, 204
limitations and exclusions

and obligation to make reparation 606–7
and obligation to make reparation

and obligation to prosecute for war crimes 605
and obligation to prosecute for war crimes

characteristics of 358
characteristics of

relevance of international law to 358
relevance of international law to

and State obligations
and State obligations

challenges 344–5
challenges

compared with 149–52
compared with

to protect civilians from 175–6
to protect civilians from

Northern Ireland 126–7, 481, 483–4
Northern Ireland
Nuremberg Tribunals 14, 327

Öcalan v. Turkey, 1999 (ECtHR) 108, 119, 489–90

occupation, law of
conservationist principle 276–8, 280–81, 291–2
civil unrest, difficulties over 284–5
collateral damage 284–5
convergence and complementarity with HRL 274–5, 279–80, 291
evolutive interpretation 280–81
and prolonged occupation 278–83
and transformative occupation 276–8
and use of force in occupied territory 283–9

and HRL
conflicts over rights vs. potential benefits 274
convergence and complementarity with IHL 274–5, 279–80, 291
ECtHR interpretation 487–8
extraterritorial application 82–3, 114–15
influences on 273–6
under prolonged occupation 278–83
under transformative occupation 276–7 as lex specialis 275, 285–6
and non-state armed groups 152–9
Occupying Powers, duties of 109, 114–15, 273, 277–9
and civil unrest 283–5
and humanitarian assistance 300–301
law enforcement 283–5, 287–9, 293
during prolonged occupation 278–9
during transformative occupation 277–8

Odièvre v. France, 2003 (ECtHR) 130
Oil for Food program 385

Oil Platforms case (Islamic Republic of Iran v. United States of America), 2003 (ICJ) 236–7

Okyay v. Turkey, 2005 (ECtHR) 257

Open Door and Dublin Well Woman v. Ireland, 1992 (ECtHR) 132–3

Organization of African Unity 19
Organization of American States (OAS) 19, 357

Palermo Protocol to Prevent or Suppress Trafficking in Persons especially Women, 2000 (UN) 535

Palestine 450–52

ICJ Advisory Opinion on Wall, 2004 60, 80, 86, 106–7, 112, 208–9, 238–9, 445, 636

Pan-African Parliament 520

parallelism 639–40
during armed conflict 640–44

paramilitary groups see non-state armed groups

Paris Peace Conference, 1919–1920 13, 206

Paşa and Erkan Erol, 2006 (ECtHR) 172

peace, times of
applicability of IHL in 347, 534
justice, need for balance in 351–4
law of armed conflict, relevance during 56, 59–62, 79–80, 347, 534
public policy goals 351–2

peacekeepers
conflicts and dangers 357–8
Geneva Convention, applicability to 379–80
immunity of 397–8
operations involving
lack of debate over 372
military superiority 358
purpose, need for clarity 357
UN peacekeeping mandate 304–5
weapons policies 358
see also territorial administration

Pejic, J. 119–20

perpetrators, of crimes under IHL
duty to bring to justice 347, 353–4, 359
persecution, crime of 584–5
persons deprived of their freedom

ICRC visits to 555–6

Index 677
release of 425–8
persons hors de combat see civilians
Pfanders case 24
Piermont v. France, 1995 (ECtHR) 132
Plan de Sanchez Massacre v. Guatemala, 2004 (IACtHR) 193–4, 468
political rights 3, 17, 170, 280, 419–20
positive rights 3–4, 9, 21, 170, 175–6, 185
and enforced disappearances 325–6
and humanitarian assistance 295–6, 300–301, 310
positivism 9
Princeton Principles of Universal Jurisdiction, 2001 361
principle of autonomy 8
principle of humanity see humanity, general
principle of non-intervention 12–13, 300–301
principle of reciprocity 535–6, 635
Principles of Reparation for Victims of Armed Conflict, 2010 (ILA) 628–9, 637, 645
prisoners of war, treatment of detainees, treaty provisions on 321–2
exclusions 259–60
Geneva Convention on 40, 117–19, 262, 268
and habeas corpus 118–19
historical development 37
and most favourable to the individual principle 252, 262–3
and right to liberty 117–19, 121
treaty inconsistencies over 252
see also enforced disappearances
Private Military and Security Companies 598
proportionality
conflicting rights, regarding children 130–31, 178, 180
definition 125
and derogation of rights
collective interests, protection of 134–5
conventional rights, role in regulating 135–6
conventional rights, situations outside scope of 136–7
in internal armed conflict 484–5
judicial interpretation in ECtHR 125–8, 485–6
development 137–8
limitations on 128
freedom of expression 132–3, 141–2
freedom of thought, conscience and religion 130–33
right to respect for private and family life 129–30
margin of discretion doctrine 133–5
necessity principle 128–9, 139
purpose 125, 133–5, 287
qualitative proportionality vs. quantitative proportionality 133–5
and right to life 486
social need, role of 137–8
test for 127–9
and use of force in occupied territory 287–9
Prosecutor v. Kallon and Kamara, 2004 (SCSL) 355
Provost, R. 94
public emergency see emergency situations
public interest, role in international law
development 77
qua legal vs. qua moral rights 3
racial discrimination
International Convention on the Elimination of Racial Discrimination, 1965 18
Rasul v. Bush, 2004 (US) 118
rebel groups see non-state armed groups
reciprocity, principle of 535–6, 635
recta ratio 190
Red Crescent 84, 542, 544–7, 559
Red Cross see ICRC
Reidy, A. 485
relationship between HRL and IHL
applicability
material scope of 43, 56, 79–80
in peacetime 56, 59–62, 79–80, 347, 534
in wartime 79–80
armed conflict, scope and proliferation of 81–3
challenges 54–5, 534–5
competing norms, whether 53–5, 232–42
conflicting norms, whether problem of 224–9
conflicts over 79–81, 84–6, 223–4, 231–2
convergence with 35, 44–7, 78–84, 274–5, 348–50, 442
customary law, role of 83–5, 158–60, 244
different legal regimes, whether 229–31, 347–50
extraterritorial application 22, 80–83, 106–7
harmonization theory 87
historical development, compared 11–12
and humanitarian assistance 306–8
institutional backgrounds 42–3
integration theory 61–2
international organizations, role of 84
interpretation difficulties 84–93
most favourable to the individual principle 251–3, 257–8, 260–63
and principle of reciprocity 535–6
separation of 35, 41–3, 54–7
soft law instruments 83–4
systemic integration approach 236–42, 247–8
theories on 53–62
see also lex specialis principle
religious minorities
international agreements for protection of 13–14
rights and freedoms of, and proportionality 130–32
religious tolerance, as basis for HRL 5, 25
reparation
under domestic laws 639
during armed conflict 640–44
and combat immunity 641–3, 657
and diplomatic protection 639–40, 644–5
parallelism 639–43
enforcement
causes of action and proceedings 645
challenges 645–8
under domestic law 645
under international law 644–5, 655
parallelism 647
under HRL 211–17
forms and standards 637–8
individual remedies 211–17
international responsibility for 634–7
monitoring mechanisms 212–13
from non-state actors 638–9
rights of individual to 631–4
and State obligations during armed conflict 629–31
under IHL
alternative mechanisms 607
civil claims 205–10
collective claims 209–10
conflicts over 205, 217
enforcement mechanisms 644–5
general international law principles 206–8
individual rights 209–10, 628–48
and internal armed conflict 606–7
and international armed conflict 631–4
limitations 628
moral satisfaction 210
principles, development 12–13, 206–7
special mechanisms 208
State obligations to make 605–8
UN Basic Guidelines 83–4, 209, 532, 582, 628
for use of force 631–2
for injuries suffered in service of UN 374–5
responsibility to protect (R2P) 345–6, 365, 384
right of access to court 136
right to compensation 347
right to education 135
right to fair trial 580–81
right to food 282–3
right to health 282–3
right to justice 347, 474
right to know fate of relatives 321–2, 325, 333, 335, 337, 347
right to liberty
and enforced disappearances 323
extraterritorial application of HRL 116–20, 121
habeas corpus 116–19
under international criminal law 578–9
right to life
convention protections, generally 113, 180
differences between HRL and IHL protections 113–14, 482–3
and enforced disappearance 324
extraterritorial application of HRL 104–11, 113–16, 486
and humanitarian assistance 299
judicial interpretation difficulties 90–91
negative position, relevance of 109
and right to survival 295, 299–300, 310
sanctions, as breach of 384–5
right to marry 136, 144
right to property 137
right to recognition of a person before the law 324–5
right to respect for private and family life 129–30
right to survival 295, 299–300, 310
right to the truth 325, 329, 337–8
right to vote 136
rights of accused 577, 580–81
rights of men vs. rights of all humans 9–10
Roberts, A. 273
Rome, Ancient, influences on HRL 6
Roucounas, E. 256, 266

Index 679
Research handbook on human rights and humanitarian law

Ruggie, J. 535
rule of law 3, 385–6
Russia 171–2, 176, 481–2, 498
Rwanda 150–51, 345
see also ICTR

safeguard clauses 254–5, 264–5, 330, 341
San Remo Declaration of the Council of the
Institute of Humanitarian Law, 1993 295, 310, 313, 316
sanctions
and enforcement of IHL 380–85, 603–8, 612
limitations 603–4
negative impacts of 384–5
validity of 380–85
Sassoli, M. 83–4, 252, 278–80, 344, 499
saving clauses 254–5, 264–5, 341
Scharf, M.O. 347
School of Salamanca 6
second generation rights 3, 18–19, 21, 33, 295
Security Council see under UN
self-determination, right to 3
separation theory 35, 41–3, 54–7
sex discrimination
International Convention on the Elimination
of Discrimination Against Women, 1979 18
Sierra Leone Special Court 147–8, 150–51
Sivakumaran, S. 160
slavery, influence on international HRL 6, 10, 534–5
Slavery Convention, 1926 10
social, economic and cultural rights 3, 170
and law of occupation 280–83
and most favourable to the individual
principle 254, 259
right to food 282–3
right to health 282–3
under UDHR 16–17, 30–31
UN Committee 445, 447
socialism, influence of 10
Solemn Declaration on a Common African
Defence and Security Policy, 2004 (AU) 514–15
solidarity rights 3, 5
Somalia 155–6, 513–14, 519
Southern African Development Community
Mutual Defence Pact 516
sovereignty, State powers of 68
Spanish Civil War, 1936–1939 38

Sporrong and Lönnroth v. Sweden, 1982
(ECtHR) 137, 145
Sri Lanka 153, 157–9
State powers and duties
accountability
for enforced disappearance 173–4, 182–6
for use of force 174
clarity, need for 56
criminal responsibility 205
derogable and non-derogable rights 56, 103, 105–6
collective interests, protection of 133–5
discretion, judicial interpretation 126–7
freedom of thought, conscience and
religion 130–33
habeas corpus 116–19
proportionality principle 126–9
right to respect for private and family life
129–30
differences between HRL and IHL 198–9
right to liberty 117–19
right to life 113–14
use of force in occupied territory 285–9
diplomatic protection 69–72, 639–40, 644–5
duty to cooperate with ICC 356–7
enforcement obligations 201, 213–14, 641, 643
law enforcement 283–5, 287–9, 293
in occupied territories 283–5
under HRL
breaches, consequences of 210–12
extraterritorial application of 80–83, 104–16, 210–11
individual remedies, availability 211–17
interpretation difficulties 198–9, 210–11
monitoring mechanisms 212–13
and humanitarian assistance
free access to victims 301–2, 304
international cooperation 296–8, 300–301
principle of non-intervention 12–13, 300–301
whether duty to act 303
under IHL
background 199–201
breaches, consequences of 199–201
domestic laws and standards, adequacy of 592–3
interpretation difficulties 198–201
monitoring mechanisms 201
and Private Military and Security Companies 598
Third States as guardians 202, 599–604
in international law 67–8, 198–9
and law of occupation
and civil unrest 283–5
conflict or convergence in IHL and HRL 274–5, 285–9, 291
law enforcement 283–5, 287–9, 293
prolonged occupation 278–83
proportionality 287–9
transformative occupation 277–8
use of force 283–9
non-refoulement obligations 330, 341, 446
operations involving use of force
duty to plan 171, 178–9
in occupied territory 283–9
prevention of war 85
and principle of reciprocity 535–6, 635
and proportionality 126–9, 287–9
to protect civilians
during armed conflict 345–6
challenges 344–5
from humanitarian catastrophe 298–300
from internal displacement 172–3, 505–6
from rebel/paramilitary groups 175–6
UN resolutions on 345–6, 365
from unexploded war remnants/landmines 172
reparation, of victims 605–8, 639–44
rights of intervention 12–13, 202, 300–301
state immunity 136, 611, 646
and War on Terror, UN rulings on 104–5
see also non-state armed groups; Occupying Powers; peacekeepers
States of Force Agreements (SOFAs) 395
Stoicism 6
Suárez, Francisco 6–7
Sudan 451, 511, 513–14, 517–18, 520–22
Sunday Times v. UK, 1979 (ECHR) 129, 140
Swiss Agenda for Human Rights 531–2, 535
see also World Court of Human Rights
Syria 157
systemic integration, as means of judicial interpretation 236–8, 247–8
Tablada case (Juan Carlos Abella v. Argentina) 1997 (IAComnHR) 88, 257, 260–61
Tadić case, 1995 (ICTY) 82–3, 375–7, 539, 578, 583
targeted killings, extraterritorial application of HRL 81–2, 97, 109, 114–15
Taxil, B. 325, 328
Teheran Conference on Human Rights in Armed Conflicts, 1968 45, 56, 441–2, 552–3
territorial administration
Bosnia 398, 402, 407
criticism of 396
Croatia 391–2, 395–6
and customary international law 394–6
East Timor 392, 396
effective control, judicial interpretation 399–401
HRL, applicability to 395–7
IHL, applicability to 393–5
Kosovo 391–2, 395–6, 401–4
by League of Nations 392–3
military element, relevance of 394–5
occupation, differences from 394
by UN
attribution of conduct mechanisms 397–9
Brahimi Report, 2000 348–9
criticism of 396
Croatia 391–2, 395–6
and customary law 394–6
democratic principles, concerns over 396
development of 391–3
East Timor 392, 396
effective control, judicial interpretation 399–401
HRL, applicability during 395–7
IHL, applicability during 393–5
immunities 397–8
judicial/quasi-judicial controls 397–401
Kosovo 391–2, 395–6, 401–4
and law of host country 397
military component, relevance of 394–5
non-judicial/ombudsperson control mechanisms 402–4
occupation, compared with 393–4
other administration agencies, relationships with 392–3
policy and practice 394–5
reparation for injuries suffered in service of UN 374–5
scope of powers 393
States of Force Agreements (SOFAs) 395, 397
unilateral commitments under 394
third generation rights 3, 21, 296
Tokyo Tribunals 14
torture, role of HRL in defining 583–4
interpretation and priority of 87–8,
100–101, 235–7, 244, 248
systemic integration, as means of judicial
interpretation 236–8, 247–8
Treaty of Versailles, 1919 12–13, 206–7, 255,
631
Truth and Reconciliation Commissions 421–3
Turkey
extraterritorial application of HRL 107
civil reparation claims, guidelines on 209
influence on monitoring compliance 201
powers and duties applicable under
378–80
role in 94, 348–9, 372, 441–2
international law, place in 385–6
Palermo Protocol to Prevent or Suppress
Trafficking in Persons especially
Women, 2000 (UN) 535
principle of humanity, influences on
190–93, 196
proposals for international human rights
court 532–3
Resolutions
on Iraq 58–9, 631–2
on reparation of individuals for HRL
breaches during armed conflict
631–2
on responsibility to protect (R2P) 345–6,
365, 384
on restriction on role of children in
armed conflict 61–2, 83, 148, 151
and rule of law 385–6
Security Council
customary law, influences of 374–9,
381–2, 394–6, 612–14
development 371–2
discretionary powers 375–6
on duty to cooperate with ICC 356–7
ICRC, relationship with 45, 378–9,
550–54
individuals, relevance to 371–2
influence of IHL on role 94, 372
judicial controls over 377–8
legality of actions, controls over 377–8
on non-state armed groups, application of
HRL to 150–56
powers 372–6, 386–7
privileges and immunities of 397–8
on responsibility of international
organizations for IHL 203, 399
role, limitations on 371–3
and self-concretization, doctrine of 377
spirit and principles formula 378–9, 394–5
on War on Terror 104–5
see also Human Rights Committee; Human Rights Council; territorial administration
Union des étudiants Juifs de France v. Yahoo!, 2000 (France) 227
United Kingdom 642
United States 214
influence on development of HRL 7–9, 13
reparation of individuals, domestic
mechanisms for 642–3, 645, 647
Universal Declaration of Human Rights, 1948
Article 1 3
Article 2 17, 30
civil and political rights 17, 30
covenants formed from 17–18, 36
equal dignity principle 4, 192–3
historical background 4
importance of 36, 39–40
law of armed conflict, relevance to 39–40, 95–6, 565
limitation clauses 16
Preamble 3, 15–16, 24, 39
and principle of humanity 190–93, 196–7
principles, generally 16, 550
right to survival 295, 299
rights balanced with public interest 16–17
social and economic rights 16–17, 30–31
universal jurisdiction 359–61, 365, 604–5
limitations 360–61
Universal Periodic Review (UPR) 22, 359, 454–6, 613–14
universal suffrage, struggle for 9–10
universalism, and principle of humanity 197
UNMIK (UN territorial administration of Kosovo) 391–2, 395–6, 401–2
UNTAES (UN territorial administration of Eastern Slavonia) 391, 395
UNTAET (UN territorial administration in East Timor) 392, 396, 402
Uruguay 106
utilitarianism 9
Vallícios, N. 255
Van der Mussele v. Belgium, 1983 (ECtHR) 136–7, 145
Vargas Areco v. Paraguay, 2006 (IACtHR) 469–70
Varnava v. Turkey, 2009 (ECtHR) 92, 103, 326, 338, 478
Varvarin case, 2006 (Germany) 214, 641, 643
Velásquez-Rodríguez v. Honduras, 1988 (IACtHR) 216, 338
victims
access, to humanitarian assistance 301–2, 304
protection from effects of hostilities
internal displacement 172–3, 505–6
State obligation to plan operations
involving use of force 171, 178–9
from unexploded war remnants 172
right to compensation 347
right to justice 347
right to know fate of relatives 321–2, 325, 333, 335, 337, 347
of violations associated with territorial administration 398–400
see also reparation
Vienna Conference on Human Rights, 1993 20–22, 422
Vienna Declaration on Human Rights, 1993 20–22, 442
von Heinegg, W.H. 55
Wall in Palestinian Territory Advisory Opinion, 2004 (ICJ) 60, 80, 86, 106–7, 112, 208–9, 238–9, 445, 636
Wallová and Walla v. Czech Republic, 2006 (ECtHR) 130, 140
war, law of see armed conflict, law of war crimes
ECtHR interpretation of 491–5
individual responsibility for prosecution 604–5
State jurisdiction over 359–61
war graves, registration of 321
War on Terror
influence on development of HRL and IHL 22, 82
State powers, UN rulings on 104–5
weapons
Bamako Declaration on Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 2000 514
Convention on Certain Conventional Weapons, 1980 172, 203
Research handbook on human rights and humanitarian law

landmines, State obligations to protect civilians from 172
peacekeepers policies regarding 358
State obligations regarding destruction 593
Weeramantry, C. 96
Wells, H.G. 15
women
African Charter Protocol on rights of 504–5
violence against, as crime against humanity 347, 470
Women On Waves v. Portugal, 2009 (ECtHR) 133, 142
World Conference on Human Rights, Vienna 1993 (2nd Conference) 20–22, 442
World Court of Human Rights, proposal for 531–2, 533–5
compared with international criminal law accountability 537–8
Geneva Conventions, inclusion of 533–4
jurisdiction 533
opting in clauses 533–4
Panel of Eminent Persons 531
place of IHL in 533–7
and role of ICRC 536–7
World Trade Center attacks (9/11), influence on development of HRL 22
World War I, influence on development of HRL 12–13, 16
of IHL 36–7, 200
World War II, influence on development of HRL 14–16, 23
of IHL 37–8, 200–201
Young, James and Webster v. UK, 1981 (ECtHR) 131, 134, 143
Yugoslavia, former Republic of 391–2
see also ICTY