Index

access 463–4, 470–71
  legitimacy, and 481–3
non-party 476
  third-party intervention 476–8
  see also amici/amicus curiae
non-state actors 471–5
  impact on functions 475–6
ACtHPR see African Court of Human and Peoples’ Rights
adjudication 2, 3, 49, 128, 135, 233, 250
adjudicative bodies 12, 344
  adjudicatory jurisdiction see jurisdiction
  see also under names of treaties and cases individually
administrative tribunals see tribunals
admissibility 31
  jurisdiction and 259–62
/jurisdiction distinction 259–60
  art 47 54
  art 49 54
  art 60 60
  art 61 60
  autonomous meaning of ‘peoples’ within 64
  jurisdiction 54
  Protocol on women 54
reparations 72
  underfunding of 75–6
African Committee of Experts on the Rights and Welfare of the Child 54
African Court of Human and Peoples’ Rights 20, 54
  jurisdiction 54
  subject matter 54
Protocol on Establishment of art 7 60
remedial powers 72
  see also human rights; regional human rights courts/tribunals
African Court of Justice and Human Rights 20
  Malabo Protocol 20
Protocol on Statute of 278
African Union 20, 53, 54
  Assembly of Heads of State and Government 278
  Malabo Protocol 20
Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 385, 399, 403–4
  standard-setting 54–5
aggressive warfare 85, 101
  preparation for 103
Akuffo, Judge Sophia 179
Albania-Greece Bilateral Investment Treaty, art 10(2) 268
Aluoch, Judge Joyce
  Vice President of International Criminal Court 178
  Bemba case 163–4
Álvarez, Judge Alejandro 189–92
  Asylum case 192
challenging old international law 189–90

513
Competence of the General Assembly for the Admission of a State to the United Nations dissenting opinion 190–91

Conditions of Admission of a State to Membership of the United Nations (Article 4 of the Charter) advisory opinion 190

Corfu Channel individual opinion 191

International status of South-West Africa advisory opinion 191

American Convention on Human Rights 52, 67

art 1 67
art 4 170
art 5 170
art 29 60
art 62 467
art 63 72, 467
art 64 62, 321
non-universal 75
States Parties to 53
obligations 67

American Declaration on the Rights and Duties of Man 52, 53

amicus curiae 244, 426, 440–41, 444, 478–83

Anzilotti, Judge Dionisio 25, 186

Apartheid Convention see International Convention on the Suppression and Punishment of the Crime of Apartheid

arbitration 3
arbitral tribunals 4–5, 122–42, 143–4, 172–6, 255, 258–9
beginnings 4
see also tribunals and under names of tribunals individually

Arbitration Court of Upper Silesia 22

armed attack see use of force
armed conflict
/attack on civilian population distinction 108
characterizing 97, 98
/crimes against humanity nexus 105–8

internal (or non-international) 88–91, 93–8, 105–7, 120
application of Additional Protocol II, Geneva Conventions (1949) 87, 89–91, 93–5, 98, 120
application of common art 3, Geneva Conventions (1949) 93
becoming international 97
international
application of Additional Protocol I, Geneva Conventions (1949) 87, 90

Association des Avocats de la Défense
(INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA) 442–4
unrecognised by Registry 443, 444
see also defence counsel

Association of Defence Counsel
Practising Before the International Criminal Tribunal for the former Yugoslavia 436
Committees 440–41
ad hoc 441–2
Disciplinary Council 440
establishment 438–9
mandatory membership 437, 439
need for 437–8, 442
see also defence counsel

AU see African Union

Bangalore Principles of Judicial Conduct 385, 403, 404
bar associations 415–18
American Bar Association 215, 410
Bar Association of the Kingdom of Cambodia 425, 427
guaranteeing professional independence 416
International Bar Association 384–5, 399
International Criminal Bar 409, 414
national 408–9
requirements for 448
see also international bar, regulating
Barbosa de Oliveira, Judge Ruy (Rui) 184, 188–9
‘Eagle of the Hague’ 188
Basic Principles on the Independence of the Judiciary 385
Bastid, Judge Suzanne 24
Bedjaoui, Judge Mohammed 27

Lockeberie case dissenting opinion 195–6
New International Economic Order 195
Western Sahara advisory opinion 195
Beijing Principles of the Independence of the Judiciary 385
Benito, Judge Odio
Čelebići case 162, 163
rule 96 163
binding/non-binding dichotomy 15–17
see also enforcement
Bindschedler-Robert, Judge Denise 24, 166
Ireland v United Kingdom 167
Sunday Times v United Kingdom 167
Brighton Conference 74

Declaration 74
Protocol 15 74
Burgh House Principles 386–7, 388, judicial independence, on 393, 394
silence on nationality 391, 393
unenforceability 405
see also International Law Association
Cambridge University Committee on Crimes against International Public Order 209
Cameroon-Nigeria Mixed Commission 283–4
de Cançado Trinidade, Judge Antônio Augusto 27

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo separate opinion 199
Ahmadou Sadio Diallo separate opinion 199
Jurisdictional Immunities of the State dissenting opinion 199–200
Caribbean Court of Justice
Agreement establishing, art 26 290–91
appointment of judges 405
Code of Judicial Conduct 386, 388–9
jurisdiction of 13
Carneiro, Judge Levi 194–5
Anglo-Iranian Oil Company dissenting opinion 194
Cassese, Judge Antonio 24
Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging case 219–20
clarifying idea of ‘international crime’ 218–19
humanization of international law 213, 218, 220
‘The Human Dimension of International Law’ 213
individual criminal responsibility, on 213, 215–16
Kupreškić case 215, 217–18, 219
President of the International Criminal Tribunal for the former Yugoslavia 213
President of Special Tribunal for Lebanon 213
principles of humanity 212, 216
Tadić case 213–14, 216–17, 218–19
Cassin, Judge René 24, 220

Founding judge of the European Court of Human Rights 221–2

Lawless v Ireland 222–4
President of Chamber of the European Court of Human Rights 208

regional protection of human rights 220–22
universalism of human rights 220–21
Universal Declaration of Human Rights 221

CCJ see Caribbean Court of Justice
Central American Court of Justice establishment 184
inter-state judicial body, as 19
contradictory findings on 103–4
crimes against peace nexus 102, 103
dismissing 106
extending definition of 102
genocide, and 100, 104, 108, 109
murder-type offences 100
peace-time, in 108, 109
persecution 100, 101–2, 103, 109, 112
policy element requirement 109–10, 112–13
post-Second World War jurisprudence 100–104, 120
sexual slavery 164–5
substantive elements of 108, 109
war crimes nexus 102, 103, 107
dismissing 106, 107
-crimes against peace 85, 102
-crimes against humanity nexus 102, 103
dismissing 106
-criminalization violations of Additional Protocol II to the Geneva Conventions (1949) 120
violations of common art 3 of Geneva Conventions (1949) 91
-criminal judgments see international criminal courts/tribunals
criminal justice three pillars of 415
criminal law 120
criminal responsibility 92
individual 204, 206, 208–9, 213, 215
international principle of 225
violation of law and customs of war, for 81–3
customary international law 93, 109, 121
development of 2, 5, 201, 205
history 3–12
see also Court of Arbitral Justice; Permanent Court of Arbitration
legal personality of the individual in 201–4
no homogeneous system 2
-making 302
non-centralized 264, 301
permanent court, proposals for 5, 6
responsibility of states under 43
revolution in 225
role, importance of 3
rules of 91
decisions binding 15–16
casting vote 25–6
collective 145
see also judiciary; opinions
defence counsel 407, 446–9
codes of conduct 410–12, 413
national/international clash 413–14
conflict of interest 412
defendant conflation 446–7
disadvantages to 408–9, 415
sanctions against 414
support services for 418–19
Extraordinary Chambers in the Courts of Cambodia 424–7
International Criminal Court 430–36
International Criminal Tribunal for Rwanda 419–22
International Criminal Tribunal for the former Yugoslavia 419–22, 437–8
lack of 409–10, 416–17
Special Court for Sierra Leone 422–4
Special Tribunal for Lebanon 427–30
vetting 420–21
see also Association des Avocats de la Défense (International Criminal Tribunal for Rwanda); Association of Defence Counsel Practising Before the International Criminal Tribunal for the former Yugoslavia

Doherty, Judge Teresa
Brima et al. dissenting opinion 164
Donli, Judge Hansine 170
inaugural President of the Economic
Community of West African
States Court 179
Donoghue, Judge Joan E 152
Croatia v Serbia declaration 152–3
Georgia v Russia dissenting opinion 153
double jeopardy see ne bis in idem
Draft Code of Offences against the
Peace and Security of Mankind 107
Economic Community of West African
States Court 166, 171–2, 179
Protocol 290
economic law
basic framework of 124
conflict of systems and interests in 124–5
investment arbitration 129–33
jurisprudence 122, 142
compensation 128
expropriation 132–3
fair and equitable treatment (non-discrimination) 133, 136
freedom of trade and navigation 122–3
general duty of cooperation 127–8
human rights 125–6
International Court of Justice 124–8, 142
International Tribunal for the Law of the Sea 139–41, 142
most favoured nation 130–32, 136
national treatment 136–7
Permanent Court of Arbitration 128–9, 142
Permanent Court of International Justice 123
prevention and mitigation of harm 129
principle of good faith 138–9
prohibition on discrimination 135–8
standard of equality 122
sustainable development 126–7, 128–9, 134–5
treatment of aliens 122
World Trade Organization see World Trade Organization
ECOWAS Court see Economic Community of West African States Court
ECHR see European Court of Human Rights
enforcement 16–17, 273, 297–8
binding/non-binding dichotomy 15–17
/compliance distinction 273
International Criminal Court judgments, of 295–7, 298
mechanisms 274, 276
diplomacy and negotiation 283–6, 298
national courts 286–95, 298
self-help 280–83, 297–8
use of non-judicial institutions 276–80, 297
unilateral use of force, by 281–2
see also national courts; non-judicial institutions; self-help
equality of arms 408, 423, 428, 436
EU-Chile Free Trade Agreement art 189(4)(c) 265
Euratom Treaty 32
European Commission on Human Rights 16, 222, 223, 226
abolition 473
European Convention on Human Rights 13, 21
art 25 222
art 35(20)(b) 268
art 41 72
art 44 222
art 46 15, 222
art 60 60
art 266–7
Protocols 51
14 77, 474, 475
European Court of Human Rights 13, 16,
caseload 76–7
challenges to 77
Contracting Parties 51
fact finding 77
Index

fragmentation 1, 31–4, 337
conflicting results 32–3
judicial see judicial fragmentation
/proliferation differentiation 2
value neutral 2
see also proliferation
functions 463, 465–6
amicus/amicus curiae impact on
478–81
control of public authority 469–70
development of law 467–9
dispute resolution 466–7
non-state actors’ impact on 475–6
problem solving 466–7, 481–2
third-party intervention impact on
476–8

Geneva Conventions 33
(1929) 86
(1949) 87
Additional Protocols
I 87–8
II 89–91, 93, 94
commom article 3 88–9, 91–5, 98,
120, 214, 220
genocide 104
armed conflict nexus requirement
100, 104
dismissing 109
jurisdictional element of crimes
against humanity, as 108
Genocide Convention see Convention
on the Prevention and Punishment
of the Crime of Genocide
global public goods
characteristics 355, 357
climate change mitigation 356–7
definition 355
international justice and 355–8
international policy-making and 358
origins of 357
growth 1–2
Guerrero, Judge José Gustavo 192–4
Asylum case 194
defending Permanent Court of
International Justice 193
equality of nations, on 193–4

Grand Chamber 21
drjcules ad hoc 390
judicial activism 74
jurisdiction 20–21, 51, 69
individual complaints, over 207–8
jurisprudence 61, 66–7
positive obligations 66–7
treaty interpretation 60–61, 73–4
pilot judgments 76, 77
proposed reform 74
purpose 51
reparations 72
Resolution on Judicial Ethics 386
women judges in 24
see also regional human rights courts/
tribunals
European Union
Court of Justice of the 386, 405
Treaty on the Functioning of see
Treaty on the Functioning of the
European Union
European Society of International Law
461
Extraordinary Chambers in the Courts
of Cambodia
defence counsel support in 424–7
victims’ right to participate in 242–3

Fernández de Gurmendi, Judge Silvia
Alejandra
President of the International
Criminal Court 178
forum shopping 246–7, 271–2
adjudicatory jurisdiction 252–3,
261–2
incidental 258–9
asymmetrical judicialization and
247–8, 252
human rights cases 248
issue framing 249, 250–51, 257
jurisdiction/admissibility distinction
259–60
jurisdiction and 248
principal jurisdiction 256–8
claim-based 257–8
dispute based 258
trade disputes 248
see also jurisdiction
last President of Permanent Court of
International Justice 192
President of International Court of
Justice 193
‘Rapporteur Guerrero’ 192
Hague Peace Conference (1899) 5
signatories 182–3
Hague Conference (1907) 6
signatories 183
Hague Convention for the Pacific
Settlement of Disputes (1899) 5, 211
Martens clause 215–16, 225
Permanent Court of Arbitration, and
see Permanent Court of
Arbitration
renegotiation 6
Hague Convention Respecting the Laws
and Customs of War on Land
(1907) 86, 88, 211
Hague Eagle, the see Barbosa, Ruy
Hague Principles on Ethical Standards
for Counsel Appearing before the
International Court and Tribunals
411
hierarchy of norms and courts 322,
327–31, 335
Higgins, Judge Rosalyn 146–7
Arrest Warrant case 150–52
Nuclear Weapons advisory opinion
147–9
President of the International Court
of Justice 176–7
Wall advisory opinion 149–50
Hrdličková, Judge Ivana 160
Huber, Judge Max 25
humanitarian law, international
thresholds of application 94
transformation of 216–17
weaknesses in 88
human rights
extra-territorial application of
318–19
fair trial 55, 168–9, 235, 237, 238,
413, 417, 425, 442
instruments
clawback clauses 64–5
interpreting 59–66
limitations clauses 64
law, development of 50
life and humane treatment 66–7, 170
norms of jus cogens, as 71
positive duty of state, as 205
protecting 207
regional courts/tribunals see regional
human rights courts/tribunals
universalism of 226
see also under names of human rights
courts individually
hybrid tribunals see tribunals, hybrid
IACtHR see Inter-American Court of
Human Rights
ICC see International Criminal Court
ICJ see International Court of Justice
ICSID see International Centre for the
Settlement of Investment Disputes
ICTR see International Criminal
Tribunal for Rwanda
ICTY see International Criminal
Tribunal for the former Yugoslavia
individuals
criminal responsibility of 204, 206,
208–9
duties of 225
locus standi capacity 206–7, 274
obligations of 204
protecting the rights of 205
rights of 206, 225
Institut de Droit International
Resolution on the Position of the
International Judge 386
intent 108–9
Inter-American Commission of Human
Rights 52
jurisdiction 69–70
Inter-American Court of Human Rights
20
establishment 52
judges ad hoc 390
jurisdiction 52–3
landmark cases 69
treaty interpretation 61–2
pro homine approach 62
see also human rights
international armed conflict see armed conflict
international bar, regulating 407–49
international bill of rights 22
International Centre for the Settlement of Investment Disputes 330
Arbitral Tribunal 130, 172–3
international criminal courts/tribunals 18
ad hoc 20, 79
defence counsel in see defence counsel
judgments 81–6
jurisprudenceconflicting 337
crimes against humanity 98–100, 109–10, 111
post-Second World War 100–104, 120
effective control test 33, 69, 156, 315, 316, 318–19
obligations erga omnes 124
overall control test 33, 97–8, 315, 316
sexual violence 161–4
war crimes 86–8
see also crimes against humanity; war crimes
Registries 415–8
contempt of court doctrine 42–3
global, as 34
guardian of judicial process, as 43
human rights, and 21
inter-state judicial body, as 18
judges 19
ad hoc 390
juristic organ of the United Nations, as 41–2, 45–6, 49
jurisdiction 43, 124
challenging 44, 45
limitations on 44
recognition of 18–19
reservation on 40
jurisprudence on international economic law 124–8
legitimacy 34
non-justiciable political questions, on 250
precedence, asserting 42
reparations 72
selection of judiciary 186–7
scope of aggression, determining 46
Statute of
arts 2–15, 16, 17 186–7
art 34 18
art 35(2) 18
art 36 18, 44, 243
art 36(2) 46
art 38(1)(c) 307
art 41 319
art 59 14
art 63 15
United Nations Security Council complementarity 44, 45–6
use of force threshold 40, 48–9
women judges in 24
World Court, as 143
international courts/tribunals see courts; tribunals
see also under names of courts/tribunals individually
International Convention on the Elimination of All Forms of Racial Discrimination art 22 153
International Convention on the Suppression and Punishment of the Crime of Apartheid 106
international court of human rights, need for 21–3
International Court of Justice 1, 6
Research handbook on international courts and tribunals

binding 15
international crimes
individual criminal responsibility 204, 206, 225
judging 6–7
see also criminal responsibility
International Criminal Court 10, 21
Code of Judicial Ethics 386, 397, 410
defence counsel support in 430–36
enforcement of judgments 295–7
national laws, applying 13
headquarters 20
judicial diversity provisions 389
jurisdiction 266
proposals for 11
victims’ right to participate in 242–3
women judges in 24
all-women leadership 178
International Criminal Tribunal for Rwanda 88
Association des Avocats de la Défense 442–4
crimes against humanity, on 106
defence counsel support in 419–22
Defence Counsel and Detention Management Section 420–21
Statute of 91
International Criminal Tribunal for the former Yugoslavia 88
Appeals Chamber 32–3, 89
Association of Defence Counsel Practising Before see Association of Defence Counsel Practising Before the International Criminal Tribunal for the former Yugoslavia 436
jurisdiction over crimes against humanity 110
Office of Legal Aid and Detention Matters 419–20, 425, 437, 439
Statute of 88–9
United Nations Security Council establishing 13
violations of Geneva Conventions (1949) common art 3 214–15
war crimes, on 88–90
international economic law see economic law
international human rights law see humanitarian law
international judgments see judgments
international justice
cosmopolitanism and 362–6
subaltern 365–6, 367
distribution of 337–42, 352–5, 362, 375–6
international relations connection
international law
asymmetrical power relations within 339
courts and tribunals as guardians of unity of 331–4
customary see customary international law
fragmentation 302–3
t us cogens rules 302
justice connection 352
making 301–3
national law difference 302–3
particularities of 301–6
International Law Association Burgh House Principles 386–7,
388
judicial independence, on 393, 394
silence on nationality 391, 393
unenforceable 405
uneven 247–8, 252, 451–2, 453–4, 456–7
judiciary 23
appointment processes 394, 396
casting vote 25–6
dissenting opinions see opinions
election of court presidents 25
female see women judges
gender equality 180
International Court of Justice 25–6
international judicial ethics see judicial ethics
maverick 27–9
perceived biases 181
problematic assumptions 368
international rule of law 372–5
unity of courts and tribunals 369–72
regulating 376–8
court-specific codes 386, 396, 405
global codes 384, 396, 405
judges ad hoc 390
nationality limits 389–90, 391–3
recusing from cases involving their states 390
selection/appointment 181–2
balance of power in 185, 394, 395–6
International Court of Justice 186–7
Permanent Court of Arbitration 182–4
Permanent Court of International Justice 185–6
separate opinions see opinions
Third World see third world judges
see also under names of judges individually; names of codes and principles individually
jurisdiction 246
acts committed before war, over 101, 102, 103–4
ad hoc tribunals, of 20
adjudicatory 252–3, 261–2
incidental 258–9
limitations 256
principal 256–8
admissibility, and 259–62
appellate mechanisms 310–11
competence 256
compulsory 248–9, 274–5
non-compulsory 305
concurrent 260
decisions 91
espace juridique 69
forum shopping 247–52
International Criminal Court 266
International Court of Justice 43, 124
inherent 253–6
competence-competence 254–5
necessary 254
international 303–6
non-compulsory 305
issue-framing, and 248–50
jurisdictional coordination 260–61, 272
identity of claims/disputes 262–3
jurisdictional organization
aggregation 268–70
bifurcation 267–8
comity 270–71, 324–5
complementarity/subsidiarity 265–7
direct 263–4
exclusiveness 265
indirect 264
preference 265
redundancy 270
moral authority to take 243
overlaps in 30, 32, 250–52, 255–6
anxiety over 337
remedies against 306–11
subsidiarity and 308–9
polysemy of 252
special regimes, of 305–6
subject matter 13, 19, 54, 161, 302, 325
substantive 249
temporal 70, 170, 256
territorial 69–70
see also forum shopping
jus cogens 71, 126, 157, 219, 327
justice
international see international justice
Rawlsian theory of 359–62
Katyn massacre 29
Kaufmann-Kohler, Judge Gabrielle
*Burlington Resources v Ecuador* 173–4
Kelly, Judge Elsa 173
*Arctic Sunrise* case 174–6
Khan, Judge Rashid
*Muhimana* case 162–3
Kirk McDonald, Judge Gabrielle
*Erdenović* case 157–8
President of the International Criminal Tribunal for the former Yugoslavia 177–8
rule 96 163
*Tadić* case 156
Kirsch, Judge Philippe 25
Koroma, Judge Abdul
*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* separate opinion 197–8
Kosovo Relocated Specialist Judicial Institution 18
Labour Organization Administrative Tribunal 21
Latimer House Guidelines 385
Lauterpacht, Judge Hersch 24, 204
British War Crimes Executive member 210
*Ex Parte Quirin* case 212
individual criminal responsibility, on 209–10, 211–12
individual duties, on 208
influence on international judiciary 209–11, 212
principles of humanity 212, 216
state sovereignty, on 211
‘The Law of Nations and the Punishment of War Crimes’ 209–10
law of nations 201
applicability to individuals 211
law of peoples 359–60, 361
laws and customs of war
criminal responsibility for violation of 81–3
*see also* criminal responsibility
League of Nations
advisory committee 185
Council 10
Covenant of 10
tribunal 10
legality 164, 219, 220, 311
cosmopolitan 363, 364
subaltern 365–6, 367
legal transplants 350
legitimacy
access, and 481–3
compliance 239–42
constitutive 229–34, 245
acceptance 233
consent 243
effectiveness 232–4
input 229–32, 243
/procedural overlap 232
Franck’s theory of 236, 239–40
gaps 237–8
goal ambiguity and 233–4
International Court of Justice 34
impact of 238–9
Luhmann’s theory of 235
ownership 242–5
cohesion 244–5
input 243–4
voluntariness 243
perceived 229
/procedural 235–8, 245
constitutive overlap 232
facets of 236–7
fairness and 235, 236
Rawls’s theory of 235–6
sociological perspective 240–42
state consent 230, 231–2
lex specialis 306–7
*lis pendens* 32, 268, 307
litigation
parallel 249, 267
serial 249, 267
*res judicata* preventing 266–7
London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis 85
*see also* war crimes
Lussick, Judge Richard
*Brima et al.* case 164
margin of appreciation 57–8, 74, 167
see also subsidiarity
Martens clause 215–16, 225
Mechanism for International Criminal
Tribunals 18, 445–6
mechanisms
appellate 310–11
enforcement 274, 276
diplomacy and negotiation 283–6, 298
national courts 286–95, 298
self-help 280–83, 297–8
use of non-judicial institutions 276–80, 297
see also Mechanism for International
Criminal Tribunals
Medina Quiroga, Judge Cecilia 169–71
Cotton Field case 169–70
developing Inter-American Court of
Human Rights jurisdiction 170
Moiwana case 170
President of the Inter-American
Court of Human Rights 178–9
MICT see Mechanism for International
Criminal Tribunals
military tribunals 11, 82, 85
Allied 86
International Military Tribunal for the
Far East see International
Military Tribunal for the Far East
Nuremberg see Nuremberg Tribunal
Tokyo see International Military
Tribunal for the Far East
Minimum Standards of Judicial
Independence 384
Montréal Convention 46, 196
multiple applications 31–2
Mumba, Judge Florence
Furundžija case 157
Tadić case 156
NAFTA see North American Free Trade
Agreement
national courts
enforcement mechanism, as 286–8, 291–2, 294–5
competence 288–9
limitations 286, 288, 290–92
third state 292–4
national legislation
implementing international treaties 289–90
see also enforcement
ne bis in idem 27, 31
Netherlands-Czech Bilateral
Investment Treaty 330
Nikitchenko, Judge Iona 29, 30
no-harm principle 127
non-judicial institutions 276–80
discretionary nature of enforcement powers 279–80
executive institutions 276–8
limitations to effectiveness 279, 280
North American Free Trade Agreement
art 2005(1) 267, 329
arts 2005(3), (4) 265
art 2005(6) 267
Nosworthy, Judge Janet 160–61
no unifying body 1
Nuremberg Tribunal 20, 85
Charter of 107
crimes against humanity, on 100–101
judgment 214
jurisdiction 85
lacking 103–4
landmark judgment 1946 85, 206, 208
powers 85
Principles 107
trials 29–30
see also crimes against humanity; crimes against peace; war crimes
OAS see Organization of American
States
OAU see Organization for African
Unity
opinions
dissenting 25, 26, 29
separate 25
see also decisions
Organization for African Unity see
African Union
Organization for Security and Cooperation in Europe 308
Convention on Conciliation and Arbitration
art 19(1)(a) 308–9
art 19(4) 309
Organization of American States Charter 52
General Assembly Special Working Group 74–5
OSPAR Convention see Convention for the Protection of the Marine Environment of the North-East Atlantic
Ozaki, Judge Kuniko
Bemba case 163–4
Vice President of the International Criminal Court 178
Pal, Judge Radhabinod 27
Pan American Union 52
parallel litigation see litigation
Paris Peace Conference (1919) 81
Paris Peace Conference (1946) 22
party autonomy 264, 272
PCA see Permanent Court of Arbitration
PCIJ see Permanent Court of International Justice
Peace Treaty of Lausanne 84
Peace Treaty of Sèvres 83
Pedersen, Judge Helga 24, 166
Ireland v United Kingdom 167
Sunday Times v United Kingdom 167
Permanent Court of Arbitration
establishment 6
freedom of trade and navigation, on 122
reparation, on 123
selection of judiciary 185–6
Statute 10–11
art 4 186
see also economic law; International Court of Justice
persecution 100, 101–2, 103, 109
Pikis, Judge Giorgios 27
Pillay, Judge Navanethem (Navi) 155–6
Akayesa case 162
President of the International Criminal Tribunal for Rwanda 178
Pinto, Judge Paolo 27
Principles of International Law 107
Project on International Courts and Tribunals 342, 344
proliferation 20, 299–301, 311, 335–6, 342–4, 346
as progressive development 350–51
comity between judicial instruments and 312–13
/fragmentation distinction 2, 299
reasons given for 346
disenchantment with governments 349
end of Cold War 347–8
European influence 349–50
risk to unity of international law 311–12
special regimes 300–301
value neutral 2, 300
see also fragmentation; international law; jurisdiction
Protocol of Olivos, art 1(2) 264
quasi-judicial institutions 16
regional human rights courts/tribunals
18, 21–3
African system 53
challenges to 75–6
see also African Court of Human and Peoples’ Rights
challenges for 76
complementarity 55
European system 51
challenges to 73–4
subsidiarity in 56–7
see also European Court of Human Rights
individual participation 207–8
Inter-American system 52–3
challenges to 74–5
see also Inter-American Court of Human Rights
lex regionis 50
lex specialis 50
judicial nominations 73
jurisdiction 69–70
jurisprudence 50, 73
state obligations 66–9
treaty interpretation 59–66, 73–4
precautionary/interim measures 58–9
state obligations, on 66–9
subsidiarity see subsidiarity
supervision of 58
weakening of 76
see also treaty interpretation; state obligations
regulation of international bar see international bar, regulating
regulation of international bench see judiciary, regulating
reparations 72
res judicata 32, 308
preventing serial litigation 266–7
right of innocent passage 34–5
Rome Statute of the International Criminal Court 11–12, 13
adoption of 91
art 7 115, 119
art 17 266
art 20 26–7
art 109(1) 296
judiciary, on 24
rule 96 163
see also International Criminal Court;
judiciary; women judges
Root, Elihu 185
rule of law 148, 232, 351, 405
international 372–5, 338, 340, 349
Sánchez de Bustamente y Sirvan, Judge Antonio 189
SCSL see Special Court for Sierra Leone
Sebutinde, Judge Julia 152
Brima et al. case 164
Croatia v Serbia 153
self-defence (collective) 46–7
armed attack, on 46
customary requirements of 47–8
inherent right of 46
necessity 47–8
proportionality 47–8
see also use of force
self-help
effectiveness 282–3
enforcement mechanism, as 280–81
international trade adjudication 282
legally regulated 281
serial litigation see litigation
Shahabuddeen, Judge Mohammed 24
Southern African Development Community Tribunal 19, 278
Southern African Development Community Summit of Heads of State and Government 278, 294
Sow, Judge El Hadji Malick 28–9
Special Court for Sierra Leone 14, 20, 28, 93–8
crimes against humanity, on 116–19
defence counsel support in 422–4
defining ‘widespread or systematic’ attack 116
jurisdiction ratione materiae 98
subject matter 93–4
Special Tribunal for Lebanon 20, 160–61, 219, 237–8
defence counsel support in 427–30
sui generis procedural model 13
victims’ right to participate in 242–3
state obligations
negative 68
positive 66–8, 69
state sovereignty
departure from absolutist conceptions of 84–5
individual rights and duties, and 211
Index 529

respect for 41
violation of 34, 41–2, 43
Statute of Iberoamerican Judges 385
Steiner, Judge Sylvia
Bemba case 163–4
Stern, Judge Brigitte
Burlington Resources v Ecuador 173–4
Impregilo SpA v Argentina 174
STL, see Special Tribunal for Lebanon
subsidiarity 55–9, 74, 265–7, 308–9
African human rights courts, in 58
margin of appreciation 58
European human rights courts, in 56
Inter-American human rights courts, in 57–8
margin of appreciation 56–7
jurisdictional overlaps, and 308–9

Third World judges 181–2
jurisprudential contributions of 188, 200
see also under names of judges individually
Tokyo Tribunal, see International Military Tribunal for the Far East

treaties
of Westphalia 3
post-First World War 8–9
Neuilly-sur-Seine 9
Sèvres 10
Versailles 8
see also under names of treaties individually
Treaty Establishing the European Community
art 292 255, 265
treaty interpretation 4, 21, 59–66, 91, 119, 135, 138–9, 249, 468–9
autonomous terms 64
European Court of Human Rights 60–61
common ground 62, 63–4
ratification and 62–3
exclusive jurisdiction clauses 265
Inter-American Court of Human Rights 61–2
living instrument 62

see also European Court of Human Rights; Inter-American Court of Human Rights
Treaty on the Functioning of the European Union,
art 344 265
Trendafilova, Judge Ekaterina
Muthaura et al., case 165

tribunals
access to see access
ad hoc 20, 79, 120, 154, 161–2
jurisprudential contributions 163, 206
administrative 18, 21
advisory opinions 15, 22, 53, 139, 141
applying international law 13
arbitral 4–5
binding decisions 15–16
calls for new 454
/courts lacking distinction 17–18
categories of 18
creating 14
criminal see international criminal courts/tribunals
defining 12–13, 344–6
functions of see functions
hybrid 14, 424
inter-governmental organizations creating 13–14
investment arbitration see investment arbitration
legitimacy
constitutive 229–34
perceived 229
procedural 235–8
military see military tribunals
/national tribunals distinction 34
proliferation of see proliferation
proposals for 6–7, 8–10
temporary 5, 12–13, 20
terminating 14–15
see also under names of tribunals individually
Trinidade, Judge Antônio Augusto de Cançado 27
530  Research handbook on international courts and tribunals

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo separate opinion 199
Ahmadou Sadio Diallo separate opinion 199
Jurisdictional Immunities of the State dissenting opinion 199–200
Tulkens, Judge Françoise 167–9
Gäfgen v Germany 168–9
N v United Kingdom 169
Şahin v Turkey 168

UN see United Nations
UNAT see United Nations Administrative Tribunal
UNCLOS see United Nations Convention on the Law of the Sea
United Nations 11
Administrative Tribunal 13, 21
Charter see United Nations Charter
Commission on Human Rights 22
Commission on International Trade Law 197, 329, 330
Committee against Torture 207
Committee on Economic, Social and Cultural Rights 207
Committee on the Elimination of Discrimination Against Women 207
Committee on the Elimination of Racial Discrimination 207
Committee on the Rights of the Child 207
General Assembly 13
Resolution 377(V) 45
Resolution 498(V) 45
Resolution 2675 217
Resolution 3314 47
Human Rights Committee 16, 32, 207
Human Rights Council 16
hybrid tribunals, establishing 14
International Court of Justice see International Court of Justice
Security Council 13
International Court of Justice complementarity 44, 45–6
maintenance of international peace and security 39, 44–5
political nature of 45
treaty bodies 207
Universal Periodic Review 16
United Nations Administrative Tribunal 13, 21
United Nations Charter 13, 60
art 2(3) 44
art 2(4) 38, 44, 46, 281
art 25 45, 46
art 36 44
art 51 39, 48
art 94(2) 276–7
chapter VII 43
Annex VII, arts 280–82 266
Universal Charter of the Judge 385
Universal Declaration on Human Rights 23, 60, 221
art 7 34
not binding 15
Uşacka, Judge Anita
Bashir case 158–9
Lubanga case 159–60
use of force 39
armed attack 46
armed conflict see armed conflict
customary international corpus juris on 40–41
International Court of Justice threshold 48–9
interventions
judging 44–6
prohibited 48
self-defence, in 41, 46
unilateral, prohibition on 41–4, 46, 49
United Nations Security Council monopoly on authorized 44
see also International Court of Justice; self-defence
Van den Wyngaert, Judge Christine 23–4
Vaz, Judge Andresia
Gacumbitsi case 162–3
Index 531

Vienna Convention on Consular Relations 19
art 36(1)(b) 320–21
Vienna Convention on the Law of Treaties 61
art 31 60–61, 138, 468–9
(c) 334
(3)(c) 62, 333, 334
art 32 60–61

war crimes 60, 86
aiding and abetting 96–8
Control Council Law no 10 85, 86, 102, 106, 111–12, 120
/crimes against humanity nexus 102
discharging 106
International Criminal Tribunal for Rwanda judgments 90–91
International Criminal Tribunal for the former Yugoslavia judgments 88–90, 92
killing of hostages 86–7
post-Second World War jurisprudence 86–8, 120
Nuremberg Tribunal jurisdiction over 85
Weeramantry, Judge Christopher 196–7
East Timor dissenting opinion 196
Gabčíkovo-Nagymaros separate opinion 197
Legality of the Threat or Use of Nuclear Weapons dissenting opinion 196
Vice President of International Court of Justice 196
Wilhelm II
prosecution of 8
Wolfram, Judge Rüdiger 175

women judges 24, 143–5, 179–80
gender issues, on 164–5
International Court of Justice and
146–53
international courts/tribunals and 176–9
criminal 153–65
numbers of 143, 154
regional human rights courts and 166–72, 178–9
sexual violence jurisprudence 161–4
tribunals and 172–6
underrepresentation
human rights courts, in 166
tribunals, in 172–3
see also judiciary; under names of judges individually
World Trade Organization 134–9
Appellate Body 134–5
as inter-state judicial body 19
effectiveness 405
jurisprudence
non-discrimination obligations 135–8
principle of good faith 138–9
sustainable development 134–5
nature of case 134
Rules of Conduct for the
Understanding on Rules and Procedures Governing the Settlement of Disputes 385
see also economic law
WTO see World Trade Organization

Yusuf, Judge Abdulqawi Ahmed
Jurisdictional Immunities of the State
case 198