Abacha, Sami, 497-9 Abass, Ademola, 15, 38, 46, 81, 635 abetting. See aiding and abetting abuse of functions, in corruption, 485-6 quality control provisions, 485 ACC. See African Criminal Court accession system jurisdictions, 611 accessory mode, of liability, 747-60, 772-81 accomplice corporate criminal liability, 787-91 accountability of African Court, 19 attribution of, 287-8 of ICC, 206-7, 215, 678, 699, 743, 841 justice-peace sequencing and, 141-6 on non-corporate associations, 287-8 under Rome Statute, 24 in Transitional Justice Policy Framework, 153-4 as normative issue, 155 traditional justice and reconciliation mechanisms, 159 accused, right to legal/factual nature of accusations, 694-6 Achille Lauro incident, 396 ACHPR. See African Court on Human and Peoples' Rights ACHR. See African Court of Human Rights ACJ. See African Court of Justice ACJHPR. See African Court for Justice and Human and People's Rights Action Plan on Drug Control, 363 active bribery, 482-3 acts of aggression, 324-34 annexation as, 327-8

attack against state's armed forces, 329-30 blockades, 329 bombardment, 328-9 under Constitutive Act of the African Union, 327 declaration of war, 324 definition of, 322 dispersion of armed bands, groups, irregulars or mercenaries, 332-4 intentionally wrongful use of state's armed forces, 330-1 under international law, 324-5 invasion or attack, 327-8 military occupation, 327-8 Montreaux process, 333 under Non-Aggression and Common Defence Pact, 330-1 use of armed forces, 326-7 use of state territory for aggressive acts against another state, 331-2 use of weapons, 328-9 actus reus, 265, 375 criminal liability requirements, 762, 776 ad hoc courts and tribunals, 71, 83, 104. See also International Criminal Tribunal for Rwanda: International Criminal Tribunal for the Former Yugoslavia; Special Court for Sierra Leone aiding and abetting in, 767-8 right to fair trials in, 686-7, 691-2 Additional Protocol I, 442, 455-60, 465. See also mercenarism Additional Protocol II, 442 Adigun, Jacob, 493-4 adjudicated facts, 692-3

administrative law, 1035-53 historical context for, 1036-40 legal framework for, 1036-40 OAU and, 1035-6 Administrative Tribunal of the Organization of American States (OASAT), 1048 AfDBAT. See African Development Bank Administrative Tribunal Afghanistan, terrorism in, 430 AFISMA. See African-led International Support Mission to Mali Africa. See also African States; colonialism; Sub-Saharan Africa; toxic colonialism; specific courts atrocity crimes in, 93-4 democratic governance deficit in, 147 Heads of State in, 136-7 immunity for, 283-4 ICC relationship with, 62, 88-95 ACC influenced by, 203-8 innovations in criminal jurisdiction, 91-5 national endorsement of, 91 OTP activities, 88, 113, 130 support for, 178-9 undermining of, 13-14, 104-5 ICL in, 177-8 international crimes in, 74-82, 92-3 legal context for, 62-3 mercenarism in, resurgence of, 450-5 Model Anti-Terrorism Law, 417-18, 420, 431-2, 447 regional human rights in, 66 regional human rights law in, 66 self-determination in, as historical legacy, 214, 217 terrorist massacres in, 311-12 See also specific countries transnational crimes in, 92-3 African Charter on Democracy, Elections and Governance, 41, 81, 251, 338, 620. See also unconstitutional change of government Preamble of, 620 African Charter on Human and Peoples' Rights, 2–4, 77, 424–5 liberation and self-determination struggles and, 440 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11, 25, 162 terrorism under, 424-5

liberation and self-determination struggles and, 440 African Commission on Human and People's Rights, 3-5, 100 ACHPR and, 984-5 criminal law section and, 1006-7 as agent of ICL, 1006-7 as enforcement agent, 1005-6 human rights and, 998-1005 as investigators, 1005 victim's justice through, 1006-7 reparation through, 172 terrorism and, 428 truth seeking and, 171 violence management and, 122 African Convention on Human Rights, 66 African Convention on the Conservation of Nature and Natural Resources, 427-8 African Court for Justice and Human and People's Rights (ACJHPR). See also African Criminal Court; aggression; civil society organizations; complementarity; criminal law section; human rights; money laundering; "one court" concept accountability of, 19 adjudicative resources, 1089-91 adoption of Malabo Protocol, cost implications of, 1061-4 African Charter on Human and Peoples' Rights, 2-4 African Criminal Chamber in, 75 for transnational crimes, 340-61 amnesties and, 115 appellate jurisdiction, 12-13 applicable lessons from, 1070-2 atrocity crimes and, 93-4 AU assessment of, 1096-100 budget for, 42-3 complementarity in, 46-8 positive, 98-100, 344 primacy compared to, 665 Defence Office, 680-1, 685, 710, 1068-70 establishment of, 6-11, 83-4, 1057-8 financing of, 42-3, 1072-3 function and purpose of, 1 future challenges of, 42-51, 100-5 access to court, 50-1 civil society organizational involvement, 49-50 commitment of African States, 44-5

of criminal chambers, practicality of, 100-2 drafting issues, 49-50 human resources issues, 43-4 inadequate funding issues, 42-3, 103-4 infrastructure limitations, 43-4 lack of infrastructure, 43-4 political will to prosecute, lack of, 102-3 prosecutorial independence as, 45-6 general affairs section, 1, 11, 24-5 human and people's rights section, 11-12, 25-6, 682, 959-60 criminal law section and, 1008-12 ratione personae, 1011-12 ICC and, 2, 62, 95-100 legal relationship with, 7–9, 88–95 ICJ compared to, 1024-8 innovations in criminal jurisdiction of, 91-5 international crimes in, expansion of, 91-2, 1085-6, 1088-9 international criminal law section, 1, 11-12, 1081-2 Detention Management Unit, 1066-7 jurisdiction of, 12 prosecutorial independence, 45-6 Victims and Witness Unit, 1066-7 investigative resources for, 1087-8 judges in, 16 jurisdiction, 18, 1023-8 for crimes against humanity, 87 for genocide, 87 of international criminal law section, 12 over range of crimes, 37-9 ratione loci, 972-3 ratione temporis, 972-3 for transnational crimes, 92-3, 106, 356-8 for war crimes, 87 legal relationship with ICC, 7-9 mercenarism in, 454-5 Merger Project, 1061-4 OTP, 88, 113, 130, 1067-8 PALU and, 90, 1104-5 PCIJ compared to, 93-4, 1024-8 President/Presidency of, 976, 1060-1, 1064-6 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 260, 1028-30 See also Malabo Protocol Protocol on the Statute of the African Court of Justice and Human Rights, 1030-4 public defender model for, 94-5 purpose and function of, 1

RECS and, 1104 Registry in, 708, 1066-7 resource needs for, 1070-2 retributive justice through, 171-2 SCSL compared to, 1096-7 staff and staffing for, 1059, 1091-6, 1098 interpreters, 1005 Statute of, 177-8, 190-5, 743-7 See also corporate criminal liability; liability; specific modes of liability modes of liability under, 743-7 multiple modes of liability under, 759-60 Statute of e, Article 28N, 757-9, 766-81 structure of, 11-13, 1064-70 Vice President/Vice Presidency, 976, 1060-1 African Court of Human Rights (ACHR), 5 ACJ merger with, 6 African Court of Justice (ACJ), 6 ACHPR merger with, 6 Protocol on the Statute of the African Court of Justice, 260 African Court on Human and Peoples' Rights (ACHPR) consolidation of, 983-6 execution of judgments, 980-2 expansion of, 986-8 human rights machinery in, strengthening of, 986-7 judges on, 976-7, 987 jurisdiction of, 967-9, 971-3 limitations of, 967-9, 971-3 treaties within, 977 legal aid in, 982-3 limitations of, 967-9, 971-3 monitoring of judgments, 980-2 ratione personae, 971 remedies for, 980 reparations through, 172, 980 standing issues for, 969-71 submission of cases, limitations on, 978-9 strengthening of, 982-6 structure of, 976-7 African Court on Human and People's Rights (ACHPR) African Commission on Human and People's Rights, 984-5 Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, development of, 965-6

African Criminal Chamber, of ACJHPR, 75. See also drug trafficking for transnational crimes, 340-61 African Criminal Court (ACC). See also African Court for Justice and Human and People's Rights; Article 46C; international crimes; Malabo Protocol; transnational crimes; unconstitutional change of government African Peace and Security Architecture and, 208-12 classification of crimes in, 236-54 legal context for, 236-8 concurrent jurisdiction of, with ICC complementarity and, 190-5 conflicting obligations for, 186-90 scope of, 181-6, 196-7 state cooperation with, 186-90 statutes as influence, 187 development of, 82 emancipatory potential of, 198-9 expanded jurisdiction of, 216 ICC as influence on, 203-8 corporate criminal liability and, 796-805 ICL and, 218 international law through, 842 See also automatic deferral for corruption, 840-1 for ICC crimes, 841-2 jurisdiction over Rome Statute, 841 for non-ICC crimes, 839-41 jurisdiction of, 227, 794 legalism and, 199-203, 208 politics of, 198-9, 208-19 democratic, 214-17 instrumentalization of, 212-14 re-envisioning of, 217-19 statutes of, 187 African Development Bank, 1037 African Development Bank Administrative Tribunal (AfDBAT), 1048 African Ecologies of Justice, 22 African ecosystems, 22 African Governance Architecture (AGA), 19-20, 124-5, 173-4 African Human Rights Charter, 25 African Mission in Burundi (AMIB), 124 African Mission in Sudan (AMIS), 124

African Model Anti-Terrorism Law (2011) (AU), 417-18, 420, 431-2, 447 African Nuclear Weapon Free Zone Treaty (Treaty of Pelindaba), 272 African States ACHPR in, limited establishment of, 5 commitment of regional courts, 44-5 cooperation among, 730-1 crimes against humanity in, 77-8 drug trafficking in, 375-8 See also specific countries enhancement of human security in, 75-82 human rights in, 3 OAU, 4-5 regional, 66 regional laws for, 66 UN Seminar on the Creation of Regional Commissions on Human Rights, 3 underfunding of institutions for, 103-4 ICC and, 62, 88-95 undermining of, 13-14, 104-5 international crimes in, 75-82, 92-3 legal duty of, 75-82 non-cooperation in, 730-1 PMSCs in, 476 rule of law in, 40-1 terrorism in, scope of, 411 UCG in, 40-1, 338 African Transitional Justice Policy Framework (ATJF), 112-13, 117-18 Malabo Protocol and, 119 African Union (AU). See also African Court for Justice and Human and People's Rights; Constitutive Act; Transitional Justice Policy Framework ACJ and, 6 ACJHPR assessment by, 1096-100 Action Plan on Drug Control, 363 AFISMA, 124 African Charter on Democracy, Elections, and Governance and, 41, 81 AGA and, 19-20, 124-5, 173-4 constitutionalism, 174 AMISEC, 124 ASP, 107 ATJF and, 112-13, 117-18 Malabo Protocol and, 119 AUFD, 125-6, 139-40 AUPOW, 21 budget of, 42-3

Convention on Cross-Border Co-operation, 547 Convention on Preventing and Combating Corruption, 508-9 corruption and, official response to, 478 counter-terrorism developments, 417-19 African Model Anti-Terrorism Law, 417-18, 420, 431-2, 447 Plan of Action on the Prevention and Combating of Terrorism in Africa, 418-19 Decision on the Abuse of the Principle of Universal Jurisdiction, 623 General Affairs Section, 959-60 ICC and, 62-3 tension with, 851-3 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 455-60 judicial bodies in, development of, 1078-80 MAES, 124 Malabo Protocol and, 1-2 MINUSCA, 124 MIOC, 124 MISCA, 124 Non-Aggression and Common Defence Pact, 330-1 OAU replaced by, 79 Panel of the Wise, 117 PCRD, 174-6 peacekeeping missions through, 123-4 Protocol of the Court of Justice of the African Union, 259-60, 449-50 See also mercenarism limitations of, 468-9 loopholes in, 469-73 positive aspects of, 469-73 PSC of, 80, 121 institutional reform, 172 management of violence through, 122-6 referral authority of, 133-4 reorganization of, 1076 restorative justice through, 172 retributive justice through, 171-2 staff members, 1035-9, 1043-6, 1053 STC and, 10 transitional justice architecture, 171-6 constitutionalism, 174 institutional reform, 172 judicial reforms, 174 Malabo Protocol as influence on, 176

reconciliation processes, 174-6 security sector reform, 174 UCG and, 39-41, 622 under Constitutive Act, 40-1 UNAMID Hybrid Force, 124 universal jurisdiction and, 86-8 war crimes and, 7-9 African Union Administrative Tribunal (AUAT), 1036. See also administrative law appellate jurisdiction for, 1040-53 applicable law for, 1047-50 scope of, 1043-7 non-suspensive effect of decisions, 1051-3 procedural matters, 1050-3 binding force, 1050–1 enforcement measures, 1050-1 for remedies and compensation, 1051 provisional measures, availability of, 1051-3 unequal access to court issues, 1040-3 ICJ response to, 1040-3 African Union High-Level Panel on Darfur (AUPD), 125-6, 139-40 African Union Mission in Somalia (AMISOM), 124 African Union Peace and Security Architecture (APSA), 124 African-led International Support Mission to Mali (AFISMA), 124 AGA. See African Governance Architecture aggression, as crime. See also acts of aggression under Charter of the United Nations, 322-4 under Constitutive Act of the African Union, 279-80, 319-20, 322-4 definition of, 315-16, 320-4 acts of aggression, 322 planning, preparation, initiation or execution in, 321 for purpose of statute, 321 for human security, as protected value, 320 in ICC, 315 under international criminal jurisdiction, 87 international criminal liability for, 318 jurisdiction over, 315-19 under Malabo Protocol, 169-78, 239-46, 258, 279-82, 314-35 in Nuremberg trials, 314-16 by organizations, 316-19 under Rome Statute, 279-80, 315, 322-4, 909 by state military action, 316-10 under Tokyo Charter, 316 in Tokyo Tribunal, 314-15

#### 1130

Agreement for the Establishment of the African Risk Capacity Agency, 1077 aiding and abetting, 766-70 Akande, Dapo, 34-5 Algeria civil war in, 411 drug trafficking laws in, 380 Islamic Salvation Front in, 411-12 terrorism in, 411 alibi, 919-20 American Convention on Human Rights, 134, 534 American Declaration on the Rights and Duties of Man, 65 AMIB. See African Mission in Burundi AMIS. See African Mission in Sudan AMISEC. See AU Mission for Support to the Elections in the Comoros AMISOM. See African Union Mission in Somalia amnesties, 136, 142-3 African Court and, 115 invalidation of, 136, 143, 159, 205-6 in Uganda law, 932 for war crimes, 134, 683 Amnesty International, 562-3, 1117 Amosu, Adesola, 493-4 Anghie, Antony, 217 Angola, 294 FNLA, 453, 473 human trafficking in, 538 illicit exploitation of natural resources in, 592, 595, 600 Luanda Trial, 453 mercenarism in, 453, 460, 462-3 MPLA, 453, 473 UNITA, 467, 603-4 Annan, Kofi, 121, 125 annexation, as act of aggression, 327-8 anti-crime prevention, 842-3 apartheid criminalization of, 77-9 as human rights issue, 66 appeals, right to, 13, 726-7 APSA. See African Union Peace and Security Architecture Arab League, 138, 413-16 Convention on the Suppression of Terrorism 1998, 410 Arab Spring, 306 as UCG, 641

Argentina Falklands War and, 142 "Full Stop Law" in, 134, 142 transition from dictatorship in, 116 transitional justice in, 141-3 armed forces attacks on, 329-30 use of, 326-7 Armenian Genocide, 292 Arrest Warrant case, 31-2, 58-9, 855, 862 Article 28H, 468-74. See also mercenarism Article 28H (Protocol of the Court of Justice of the African Union), 468-74 Article 46 A bis (Malabo Protocol), 29-36, 102, 211, 283–4, 317, 842–4, 850–65. See also aggression; automatic deferrals anti-crime prevention, 842-3 AU-ICC tension, 851-3 doctrinal question over, 850-1 duties of state under, 849 flawed premise of, 843-4 ICJ and, 852 immunity provisions under, 851-64 doctrinal arguments on, 856-64 ratione materiae, 854-6, 860 ratione personae, 854-6, 860 scope of, 853-6 impunity under, 863-4 Article 46C, at ACC, 793-6, 834-5 asset recovery under, 825-6 attribution principles, 812-23 models of attribution, 812-15 command responsibility, 820 compensation under, 824 complementarity and, 827-31 complicity and, 820 corporate sanctions under, 824-7 crimes contemplated under, 806-12 derivative liability, 812-15 due diligence in, 813 identification model, 813-15 vicarious, 812-13, 821 enforcement challenges under, 831-4 entities contemplated under, 806-12 jurisdiction of, 806-12 non-compliance requirements under, removal of, 820 organizational model, 815-23 aggregation of knowledge in, 818-10 corporate knowledge in, 818-19 corporate personnel in, 821-3

international versions of, 821 nullum crimen sine lege principle in, 816 progressive, 823 rehabilitation under, 824 reparations under, 824 restitution under, 824 scope of, 806 Articles. See International Criminal Court; Malabo Protocol: Rome Statute: Versailles Treaty of 1919 Assembly of State Parties (ASP), 107, 139 cooperation and, 732 asset recovery under Article 46C, 825-6 after corruption, 489-92, 502-3 conviction-based, 491-2 reparations and, in money laundering, 525-6 atrocity crimes ACJHPR and, 93-4 in Africa, 93-4 corporate criminal liability for, 93-4 definition of, 795 by political groups, 286 in Sierra Leone, 60 under-enforcement of, 800 attack against state's armed forces, as act of aggression, 329-30 attribution, of criminal legal responsibility, 748-9 under Article 46C, 812-23 models of attribution, 812-15 for corporations, 811 AU. See African Union AU Electoral And Security Assistance Mission to the Comoros (MAES), 124 AU Military Observer Mission in the Comoros (MIOC), 124 AU Mission for Support to the Elections in the Comoros (AMISEC), 124 AU Panel of the Wise (AUPOW), 21 AUAT. See African Union Administrative Tribunal AUPD. See African Union High-Level Panel on Darfur AUPOW. See AU Panel of the Wise Australia corporate criminal liability in, 785-7 universal jurisdiction in, 58 aut dedere. See prosecute or extradite aut judicare. See prosecute or extradite

authority. See persuasive authority automatic deferrals, 842-9 immunity and, 842 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, 49, 428-9, 568-74, 576 Banda, Rupiah, 499 Banjul Charter, 5, 87, 100-1 banking systems. See international banking systems Barriga, Stephan, 323 Barrow, Adama, 252 Basel Convention (1989), 564-74 al-Bashir, Omar Hassan Ahmed, 1-2, 60, 113, 200, 299, 859 crimes against humanity by, 948 genocide crimes by, 948 war crimes indictments against, 7-9, 88, 137-8,966 Bassiouni, M. Cherif, 58 Baxi, Upendra, 218 Bedjaoui, Mohammed, 86-7 Belay, Netsanet, 858 Belgium DRC proceedings against, 86 universal jurisdiction in, 58-9 Benin, 558-9 Bensouda, Fatou, 630 Beyani, Chaloka, 86-7 Bhojwani, Raj, 498 Bigombe, Betty, 115 binding force, of AUAT, 1050-1 Bishop, Joel Prentiss, 405 blockades, as act of aggression, 329 Boelaert, Sonja, 86-7 Boko Haram, 296 corruption by, 493-4 recruitment of child soldiers, 302 terrorism by, 305, 307 bombardment, as act of aggression, 328-9 Boraine, Alex, 167-9 Botswana, 377 corporate criminal liability in, 783 human trafficking in, 543 bribery, 481-5 active, 482-3 OECD Anti-Bribery Convention, 483, 829 passive, 481-2

bribery (cont.) in private sector, 483-5 in public sector, 481-3 bricolage, 931 Broache, Michael, 114 burden sharing complementarity and, 664-73, 679 global community interests in, 668 with ICC, 672-3 national community interests for, 668 positive, 676-9 prosecutorial discretion, 676-9 with RECs, 671-2 with national courts, 669-73 Burkina Faso, 541 Burundi civil war in, 640-1 withdrawal from ICJ, 501 business organizations, other than corporations, corporate criminal liability for, 288-01 Bustamante, Rafael De, 86-7 Butare Four case, 287-8 CAL. See Coalition of African Lesbians Camara, Fafré, 86-7 Cambodia Tribunal, 102 Canada corporate criminal liability in, 291 crimes against humanity in, 291 universal jurisdiction in, 58 war crimes in, 201 Caribbean Court of Justice, 70, 839 Cassese, Antonio, 86-7 CEDAW. See Convention on the Elimination of All Forms of Discrimination against Women Central African Republic, 541 illicit exploitation of natural resources in, 592, 595 Chad. See also Habré, Hissène Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and, 83 Charter of the International Military Tribunal, 908 Charter of the Military Tribunal for the Far East, 908. See also Tokyo Charter Charter on the Rights and Welfare of the Child. 11 child soldiers, 295, 297

criminal defence for recruitment of, 918-20 through human trafficking, 551 in ISIS, 302 recruitment of, 302 children, under Transitional Justice Policy Framework, 161-2 Chile, transitional justice in, 143-4 Chiluba, Frederick, 499-500 civil society organizations (CSOs). See also non-governmental organizations; regional economic communities ACIHPR and, 1102-22 competing obligations in, 1119 domestic legal standards under, 1119 financial burdens under, 1122 harmonization of laws, 1119 opposition to immunity clause, 1112-14 restricted access to, 1108-9 ECOSOCC, 1106-10 ICC established by, 1101-3 involvement in regional courts, 49-50 Malabo Protocol and, 1102-22 human rights mandate of, implications for, 1109-11, 1115-19 legal standards setting, 1111-22 opposition to immunity clause in, 1112-14 ratification of, campaigns for, 1110-11 vaguely defined crimes under, 1115-19 Rome Statute and, conflicts with, 1120 competing obligations, 1120-1 domestic implementing legislation and, 1121 financial burdens under, 1122 overlapping jurisdictions, 1120-1 civil wars in Algeria, 411 in Burundi, 640-1 mercenarism during, 453 in Nigeria, 453 in Rwanda, 640-1 Clarke, Kamari, 22, 469 Coalition of African Lesbians (CAL), 1107 coherence initiatives, 154 Cole, Rowland J. V., 211 colonialism, in Africa. See also toxic colonialism mercenarism influenced by, 450-5 self-determination struggles against, 66 command responsibility, 820 Commonwealth Secretariat Arbitral Tribunal (CSAT), 1048

communication of information, right to, 704-7 in ICC cases, 706-7 in ICTR, 706-7 in ICTY, 705-6 communication with counsel of choice, right to, 707-11 commutation of sentences, 942-3 Comoros, 538 human trafficking in, 538 compensation under Article 46C, 824 through AUAT, 1051 competence, of ICC, 796-805 complementarity. See also positive complementarity in abstracto, 659-60 in African Court, 46-8, 646-52 analysis of, 664-79 burden sharing with national courts, 669-73 ICC jurisprudence and, 663-4 legitimacy of, 672-3 primacy compared to, 665 under Article 46C, 827-31 burden sharing and, 664-73, 679 global community interests, 668 with ICC, 672-3 national community interests, 668 positive complementarity and, 676-9 prosecutorial discretion, 676-9 with RECs, 671-2 in concreto, 659-60 criminal law section and, human rights influenced by, 996-1005 under customary international law, 664-5 in DRC, 654-5 Extraordinary African Chambers in Senegal and, 670-1 gravity threshold for, 659-62, 675-6 hierarchical approach, 665 at ICC, 48, 73, 652-9 burden sharing and, 664-73 intent to shield, 675 jurisprudence of, 663-4 positive complementarity, 98-100 test for relevant activity, 673-4 unjustified delays, 675 jurisdiction and, as regulating principle, 96 - 8last resort approach to, 665-6 legal analysis of, 645-64

in Libya, 657-9 in Lubanga case, 654-5, 662 in national courts, 664-5 ne bis in idem principle and, 190, 195, 650-2, 659-62 non bis in idem principle and, 650-2 in Ntaganda case, 662 proprio motu referrals, 676-7 under R2P doctrine, 664-5 RECs and, 647-8 burden sharing with, 671-2 in regional courts, 46-8 Rome Statute and, 47, 649-52, 664-5 in Al-Senussi case, 657-9 tests for, development of, 673-9 relevant activity as threshold inquiry, 673-4 unwillingness of courts to act, 674-5 in Transitional Justice Policy Framework, 159 UCG and, 670 complicity, 750-5 under Article 46C, 820 Comprehensive Peace Agreement (CPA), 115 concession system jurisdictions, 611 concurrent jurisdiction with ACC complementarity and, 190-5 conflicting obligations for, 186-90 scope of, 181-6, 196-7 state cooperation with, 186-90 statutes as influence, 187 defined, 186 with ICC complementarity and, 190-5 conflicting obligations for, 186-90 scope of, 181-6, 196-7 state cooperation with, 186-90 statutes as influence, 187 confidentiality, 711, 724, 1001-2 conflict diamonds, 595-6 Congo. See Democratic Republic of Congo consent, 918-20 rape and, 919 constitutional immunity, 495 constitutionalism, 174 Constitutive Act (African Union), 24-5, 30, 148 acts of aggression under, 327 aggression as crime under, 270-80 human security under, 75-7 sanctity for human life under, 148-63

Constitutive Act (African Union) (cont.) scope of, 171 steps against impunity under, 79-80 UCG under, 40-1 violence management under, 122 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 508 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention), 82-3, 111, 277-8 Convention for the Elimination of Mercenarism, 248, 350 Convention for the Suppression of the Financing of Terrorism, 765, 814 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949), 532-3 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention), 396 Convention on Combating International Terrorism, 410, 413-16 Convention on Cross-Border Co-operation, 547 Convention on Preventing and Combating Corruption, 508-9 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 533-4 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), 111, 261-4 grave breaches of, 111 Convention on the Rights of the Child (CRC), 533-4 Convention Relative to the Treatment of Prisoners of War, 914 conviction-based asset recovery, 491-2 cooperation. See also non-cooperation between ACC and ICC, through concurrent jurisdiction, 186-90 among African States, 730-1 under Amended (Malabo) Protocol, 512-20 between states and private actors, 521-5, 734-8 ASP and, 732 competing obligations as factor in, 731, 738-40 ICC and, 729-32, 738-40

importance of, 731-4 international, for prevention of human trafficking, 546-7 under Rome Statute, 731-2, 740 in SCSL, with national systems, 282-3 with state and private actors, in money laundering cases, 521-5 Transitional Justice Policy Framework initiatives, 154 coordination initiatives, 154 core crimes, 239-46 under Malabo Protocol, 261-82 penalties for, 930-1 sentencing for, 930-1 UCG, 626-30 corporate criminal liability, 26-9, 285, 313, 782-91. See also Article 46C; principal corporate criminal liability accomplice, 787-91 for atrocity crimes, 93-4 in Australia, 785-7 in Botswana, 783 for business organizations other than corporations, 288-91 in Canada, 291 for clandestine military organizations, 292-304 corporate culture model, 785 corporate sanctions, 28 for La Cosa Nostra, 203-4 definition and scope of, 288-90, 782 for displacement of civilians, 298 under domestic legislation, 783-5 in Ethiopia, 783 extension of, 301-4 for genocide, 294-5 for human rights violations, 294-5 for human trafficking, 547-50 under ICC statutes, 27-8, 364-5 in ICTY, 298-9 ILC and, 804-5 for illicit exploitation of natural resources, 598 in ISIS, 301 in Kenya, 783 loopholes for, 288-91 in Malawi, 783 in Namibia, 783 at Nuremberg trials, 27, 285 organizational, 784-5 for political groups, 292-304

domestic criminal tribunals for, 298-301 international criminal tribunals for, 298-301 in Nazi Germany, 292-3 principal, 786-7 for religious groups, 292-302, 304-12 terrorism by, 304-11 respondeat superior and, 783 Rules of Procedure and Evidence and, 833-4 in Rwanda, 783 in SCSL, 299 for social and religious groups, 202-302 in South Africa, 783 in statelets, 300-1 Islamic State, 301 Palestinian Authority, 301 subsidiary, 754, 831-2 for torture, 294-5 transnational agreements over, 802-3, 807 in Zimbabwe, 783 corporate personnel, 821-3 corporate sanctions, 28, 824-7 under Article 46C, 824-7 corruption, 92-3, 177, 246-9 abuse of functions, 485-6 quality control provisions, 485 ACC and, 840-1 asset recovery and, 489-92, 502-3 conviction-based, 491-2 under AU Convention on Preventing and Combating Corruption, 508-9 AU response to, 478 by Boko Haram, 493-4 bribery, 481-5 active, 482-3 OECD Anti-Bribery Convention, 483 passive, 481-2 in private sector, 483-5 in public sector, 481-3 case studies, 496-500 Abacha case, 497-9 Chiluba case, 499-500 Obiang case, 496-7 definition of, 609 diversion of state assets, 487-8 in Equatorial Guinea, 496-7 FATF, 478, 481-2, 488-9, 500-1 future legal challenges, 503-4 global scope of, 477-80 grand, 492-3

illicit enrichment, 487 in ECtHR, 487 illicit exploitation of natural resources through, 608-9 immunity provisions, 501-2 constitutional, 495 jurisdiction limitations for, 494-5 investigations into, 489-92 evidence gathering in, 489-91 from whistle-blowers, 489-90 jurisdiction limitations for, 492-5 immunity provisions, 494-5 for international organizations, 494 by region, 493 for serious nature of acts, 492-4 money laundering as, 488-9 in Nigeria, 493-4, 497-9 offences, 480-9 See also specific offences SDAC response to, 478, 480 secrecy and, 490 sentencing for, 489-92, 501-2 penalties in, 491-2 trading in influence, 486 influence peddlers, 486 under UNCAC, 349-50, 478, 484, 491, 493 UNGA response to, 478 in Zambia, 499-500 La Cosa Nostra (Mafia), 303-4 under Racketeer Influenced and Corrupt Organizations Act, 202-4 cost of trials. See trials Côte d'Ivoire, 561-2, 592 hazardous waste trafficking in, 561-2 illicit exploitation of natural resources, 592 UCG in, 628-30 Cotonou Agreement, 567–8 Council of Europe, 824-5 counseling, 765-6 instigation and, 766 Covenant of the League of Nations, 1029 CPA. See Comprehensive Peace Agreement CRC. See Convention on the Rights of the Child crime of aggression. See aggression crimes against humanity African Court of Justice and Human Rights international criminal jurisdiction, 87 Malabo Protocol, 239-46, 275-9 in African States, 77-8 by al-Bashir, 948 in Canada, 291

crimes against humanity (cont.) Extraordinary African Chambers in Senegal, 84-5, 645, 670-1 in Guatemala, 117 under Rome Statute, 276-7 torture in, 243-4 Crimes Against Humanity Initiative, 804 criminal law section, of ACJHPR, 682, 959-60, 1007-12 African Commission on Human and People's Rights and, 1006-7 as agent of ICL, 1006-7 as enforcement agent, 1005-6 human rights and, 998-1005 as investigators, 1005 victim's justice through, 1006-7 human and people's rights section and, 1008-12 human rights and, 996-1007 African Commission on Human and People's Rights, 998-1005 complementarity as influence on, 996-1005 criminalization of violations, 997-8 judicial dialogue between, 1012-19 non-state actors and, 996-7 plural entities and, 1012-13 legal fragmentation in, 1012-13 systemic harmony within, 1007-12 criminal liability. See liability CSAT. See Commonwealth Secretariat Arbitral Tribunal CSOs. See civil society organizations culpability, 750, 752 cultural heritage, terrorist acts as damaging to, 415-16 customary international law complementarity under, 664-5 immunity under, 33–4, 862–3 cyber attacks, 427

Dakar, Senegal International Commission of Jurists in, 4 rule of law in, 4 Dar es Salaam, 4 Darfur, Sudan AUPD, 125–6 DDPD, 141 UNAMID Hybrid Force, 124, 138 DDPD. See Doha Document of Peace for Darfur de facto, 297, 668, 762, 817 de jure, 762 De Klerk, F. W., 113, 149-50 Decision on the Abuse of the Principle of Universal Jurisdiction (AU), 623 Declaration against Corruption and Bribery in International Commercial Transactions (UNGA), 478 declaration of war, as act of aggression, 324 Declaration on a Code of Conduct for Inter-African Relations (OAU), 412 Declaration on Measures to Eliminate International Terrorism (UNGA) (1994), 414-15 decolonization, mercenarism and, 451 defence of person, 882-5 defence of property, 885-6 Defence Office, establishment of, 680-1, 685, 710, 1068-70 defence exclusions, from terrorism, 445-7 defensive operations, 882, 916-17 deferrals. See automatic deferrals delayed disclosure, 688-9 democratic governance deficits, 147 Democratic Republic of Congo (DRC) atrocity crimes in, 60 complementarity in, 654-5 human trafficking in, 538 illicit exploitation of natural resources in, 592, 595, 597 pillaging in, 825 proceedings against Belgium, 86 universal jurisdiction in, 86 Denard, Bob, 463, 466-7 depredation, piracy and, 393-4 deprivation of liberty, 348 through terrorism, 425-6 derivative liability, 812-15 due diligence in, 813 identification model, 813-15 vicarious, 812-13, 821 detention international, 944-5 piracy and, 303-4 presumption of innocence and, 693 Detention Management Unit, 1066-7 deterrence. See also penalties; sentences general, 586, 940 of hazardous waste trafficking, 585-9 specific, 586 deterrence theory, 587-8

Deya, Donald, 22, 200 Dicker, Richard, 201 differential participation model, 746, 748-55 diminished mental capacity, 876-8 al-Dine, Ansar, 311-12 direct enforcement systems, 58 ICL and, 61 disclosure of evidence, right to, 696-704 in ICC cases, 696-704 in ICTR, 696-704 in ICTY, 696-704 iura novit curia principle, 698 dispersion of armed bands, groups, irregulars or mercenaries, 332-4 displacement of civilians, 298. See also refugees corporate criminal liability for, 298 disruption of public services, through terrorism, 432-4 Dlamini, C. R. M., 3 Doe, Samuel, 641 dogs of war, 451 Doha Document of Peace for Darfur (DDPD), 141 domestic criminal tribunals, for corporate criminal liability, 298-301 domestic laws. See national laws double jeopardy, prohibition against, 920 Draft Code of Crimes against the Peace and Security of Mankind, 868-9, 882 Draft Comprehensive Terrorism Convention (UN), 410 DRC. See Democratic Republic of Congo drug cultivation offences, 373-4 drug supply offences, 371-3 drug trafficking, 92-3, 177, 246-9 in African States, 375-8 See also specific countries in Algeria, 380 in Botswana, 377 criminalization of, 378-9 definition of, 366 in domestic courts, 381-2, 385-6 global drug control and, changes in, 386 gravity threshold for, 364-5 international scope of, 362-3 jurisdiction over, 363-5, 386-7 in Action Plan on Drug Control, 363, 366 ECOWAS, 262 through ILCs, 364 in Sierra Leone, 363-4

in Kenya laws against, 369 punishment for, 380–1 lawful actions, 369-70 in Liberia, 377 in Mauritius, laws against, 370 modes of responsibility for, 378-9 in Namibia, 373 in Nigeria, 341 controlled substances, 368 offences for, 370-4 actus reus, 375 drug cultivation, 272–4 drug supply, 371–3 inchoate, 378–9 mens rea, 373, 375 operationalization of, 384-6 possession, 375-8 precursor, 378 punishment for, 341-2, 379-83 purchase, 375-8 supply, 370-3 party liability for, 378-9 prosecution of, challenges in, 341, 383-6 positive complementarity, 383-4 rehabilitation and treatment for users, 383 through social re-integration, 383 under Rome Statute, 364 in Seychelles, 375 NDEA in, 384 in Sierra Leone, 375 jurisdiction over, 363–4 sources of law for, 69-70, 366-7 substances under control, 367-9 international classification systems for, 368 scheduling systems for, 367–8 in Swaziland, 382 in Trinidad and Tobago, 362 under UN Convention against Transnational Organized Crime, 386 under UN Drug Trafficking Convention, 367-8, 370, 379-83 unlawful actions, 369-70 Du Plessis, Max, 44, 201 du Toit, Nick, 468 due diligence, 813 due process, 300, 727, 779-80, 786, 816 under international law, recognition of, 647, nulla poena sine lege principle and, 773-4 nullum crimen sine lege principle and, 773-4

Dunér, Bertil, 633 duress, 887-98 duties of state, under Article 46 A bis, 849 early release, 944 East African Court of Justice, 839 ECCC. See Extraordinary Chambers in the Courts of Cambodia Economic, Social and Cultural Council (ECOSOCC), 1106-10 Economic Community of West African States (ECOWAS), 47, 97-8, 363 Court of Justice, 839 ECOSOCC. See Economic, Social and Cultural Council ECOWAS. See Economic Community of West African States ECtHR. See European Court of Human Rights EEZ. See Exclusive Economic Zone Egypt, terrorism in, 413 EITI. See Extractive Industries Transparency Initiative emergency. See public emergency enforcement systems. See also direct enforcement systems; indirect enforcement systems in AUAT, 1050-1 for hazardous waste trafficking, 572-3 regional, 232, 572-8 for sentencing, 941-5 environmental heritage, terrorist damages to, 428-9 environmental protections, illicit exploitation of natural resources and, 612-15 EO. See Executive Outcomes Equatorial Guinea, 468, 478 corruption in, 496-7 human trafficking in, 541 Erdemović, Dražen, 890-1 Etete, Dan, 607 Ethiopia, corporate criminal liability in, 783 EU. See European Union European Convention on Human Rights, 534 European Court of Human Rights (ECtHR) fundamental rights protections in, 681-2 human rights cases in, 681-2, 1011 illicit enrichment as corruption, 487 Lagos Conference on Primacy of Law influenced by, 3 persuasiveness in case law in, 1015

public hearings in, 685 European Court of Justice, 839 European Union (EU) human rights norms in, 66 regional human rights in, 66-7 regional human rights law in, 66-7 evidence gathering, in corruption cases, 480-01 evidentiary challenges, in money laundering cases, 520-5, 527 complex financial investigations, 520-1 Exclusive Economic Zone (EEZ), 397-8 Executive Outcomes (EO), 467 Expiry Law (Uruguay), 144 exploitation of natural resources. See natural resources expressive condemnation, of hazardous waste trafficking, 583-5 expressivism, 940 Extractive Industries Transparency Initiative (EITI), 596 extradition, under Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 111 Extraordinary African Chambers (Senegal), 84-5, 645, 670-1 Habré and, 171-2, 670-1 Extraordinary Chambers in the Courts of Cambodia (ECCC), 702, 908 facilitation, 763 fact-finding missions, 998-9 factual awareness elements, 905-6 fair labeling, 750, 752-3 fair trials, right to, 685-9, 727-8 ad hoc tribunals and, 686-7, 691-2 adjudicated facts, 692-3 balancing tests for, 687 Defence Office, establishment of, 680-1, 685, 710 delayed disclosure in, 688-9 habeas corpus, 694-6 in ICC cases right to communication of information in, 706–7 right to disclosure of evidence in, 696-704 Rules of Procedure and Evidence, 681, 728

ICTR and presumption of innocence in, 690-1 right to communication of information in, 706-7 right to disclosure of evidence in, 696-704 ICTY and presumption of innocence in, 690-1 right to communication of information in, 705-6 right to disclosure of evidence in, 696-704 minimum guarantees for, 694-727 non-derogable rights in, 694-5 presumption of innocence and, 689-94 detention and, 693 in ICTR, 690-1 in ICTY, 690-1 proof beyond reasonable doubt, 690 redactions and, 688-9 right to appeals, 13, 726-7 right to be informed of content of charges, 694 right to be tried in own presence, 712-13 right to communication of information, 704-7 in ICC cases, 706-7 in ICTR, 706-7 in ICTY, 705-6 right to communication with counsel of choice, 707-11 right to disclosure of evidence, 696-704 in ICC cases, 696-704 in ICTR, 696-704 in ICTY, 696-704 iura novit curia principle, 698 right to examination of witnesses, 723-5 right to freedom from self-incrimination, 725-6 right to interpreters, through free assistance, 725 right to legal representation, 714 in international criminal cases, 720-1 through legal aid provisions, 722-3 with legal assistance in cases of insufficient means, 719-23 right to legal/factual nature of accusations, 694-6 right to preparation of defence, 707-11 registries and, 708 right to public pronouncement of judgments, 726

right to self-representation, 714-17 right to silence, 725-6 right to speedy trial, 711-12 Rules of Procedure and Evidence for, in ICC. 681 witness anonymity and, 687-8 Falklands War, 142 FATF. See Financial Action Task Force Federal Republic of Yugoslavia (FRY), 35. See also Yugoslavia Fenwick, Charles, 1032 Financial Action Task Force (FATF), 478, 481-2, 488-9, 500-1 money laundering and, 516, 524 financial investigations, of money laundering, 507 complex, 520-1 under International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 455-60 financing of ACJHPR, 42-3, 1072-3 criminal liability for, 764-5 of terrorism, 764-5 under UN Convention for the Suppression of the Financing of Terrorism, 765, 814 fines, as penalties, 931 fitness to stand trial, 873, 875 FNLA. See National Liberation Front of Angola Fofana, Moinina, 942-3 force majeure, 887 forced labor, human trafficking for, 534, 536-7 Ford, Stuart, 44 foreign fighters, 454, 461, 464–5, 471 foreign immunity, in national courts, 845-6 fragmentation, of ICL, 61, 105 France, universal jurisdiction in, 58 freedom. See liberty FRY. See Federal Republic of Yugoslavia "Full Stop Law" (Argentina), 134, 142 functional immunities. See ratione materiae funding, of regional courts, 42-3, 103-4 G20, 494, 500 Gabon, 541

Gabon, 541 Gaddafi, Saif, 627–8, 656–7 Gambia, withdrawal from ICJ, 501 Gbadebo, Olugbenga, 493–4 Gbagbo, Laurent, 628–30

gender, in Transitional Justice Policy Framework, 161-2 general affairs section, of ACJHR, 1, 11, 24-5 general deterrence, 586, 940 general principles of law, 445-6, 571, 867, 869-70, 923 Geneva Conventions of (1948/1949), 23 Additional Protocol I, 442, 455-60, 465 See also mercenarism Additional Protocol II, 442 criminal defences under, 903-4 genocide. See also Convention on the Prevention and Punishment of the Crime of Genocide ACJHPR and, international criminal jurisdiction over, 87 actus reus, 265 Armenian Genocide, 292 by al-Bashir, 948 conventions, 65 corporate criminal liability for, 294-5 ICC statute against, 65 ICTR and, 242-3, 262-4 under Malabo Protocol, 239-46, 258, 261-7 rape as part of, 23, 265 in Rwanda, 184 sexual assault and violence as aspect of, 23, 265 Genocide Convention. See Convention on the Prevention and Punishment of the Crime of Genocide geographies of justice, 59, 71, 199, 390-1, 402, 409, 493, 671, 768, 1086, 1102 Ghana, 543 Ghankay, Charles, 299 al-Ghannouchi, Rashid, 306 global drug control, 386 Global North, hazardous waste trafficking by, 569, 572 Global South hazardous waste trafficking in, 555, 569, 572 international law in, 218 globalization, toxic colonialism influenced by, 557-8 MNCs and, 558 TNCs and, 558 Goudé, Charles Blé, 630 grand corruption, 492-3 grave crimes, 254

gravity threshold for complementarity, 659-62, 675-6 for drug trafficking, 364-5 for transnational crimes, 345-9 criminal criteria in, 346-9 Greenpeace, 562-3 Guatemala crimes against humanity in, 117 Historical Classification Commission in, 116-17 national reconciliation law in, 116-17 Guinea, Republic of, 4 Guinea-Bissau, 558-9 habeas corpus, 694-6, 1017 Habré, Hissène, 9, 14, 966 criminal prosecution of, 82-5 Extraordinary African Chambers and, 171-2, 670-1 torture under, 419, 949 Hague Convention for the Pacific Settlement of International Disputes, 1029 Hamas, 306 Harding, Christopher, 287 harmonization of judgments, 692 hazardous wastes, trafficking in, 49, 177, 246-9. See also toxic colonialism Amnesty International response to, 562-3 in Benin, 558-9 causes of, 556-8 in Côte d'Ivoire, 561-2 global increase in, 556-8 by Global North, 569, 572 global scope of, 553-6 in Global South, 555, 569, 572 Greenpeace response to, 562-3 in Guinea-Bissau, 558-9 in Nigeria, 560-1 OAU resolution on, 563-4, 568 prosecution of, 578-89 regional criminalization of, 578-89 through deterrence, 585-9 through enforcement, 572-3 expressive condemnation, 582-5 for Heads of States, 580 in IACtHR, 582, 585 as restorative justice, 581-3 as retributive justice, 579-81 regional enforcement against, 574-8 through criminalization, 572-3 interpretative challenges, 574-6

practical challenges, 577-8 regulation of, international legal framework for, 564-78 under Bamako Convention, 49, 428-9, 568-74, 576 under Basel Convention, 564-74 under Cotonou Agreement, 567-8 inadequacy of, 564-74 under Lomé Convention, 567 UNEP and, 558 through waste disposal contracts, 558-9 in Zimbabwe, 584 Heads of State, in Africa, 136-7 immunity for, 283-4, 843-4 from hazardous waste trafficking, 580 under Rome Statute, 1113 high seas piracy, 396-8 Historical Classification Commission, 116-17 Hoare, Mike, 466 Holá, Barbora, 937 Holmes, John, 664 Homicide Act (1957) (UK), 876-7 Honoré, Tony, 630 human and people's rights section, of ACJHPR, 11-12, 25-6, 682, 959-60 criminal law section and, 1008-12 ratione personae, 1011-12 human rights ACHR, 5 African Charter on Human and Peoples' Rights, 2–4, 77, 424–5 liberation and self-determination struggles and, 440 African Commission on Human and Peoples' Rights, 3-5, 100 in African states, 3 OAU, 4-5 UN Seminar on the Creation of Regional Commissions on Human Rights, 3 underfunding of institutions for, 103-4 American Convention on Human Rights, 134, 534 under apartheid, 66 Banjul Charter, 5, 87, 100-1 corporate criminal liability for violations of, 294-5 criminal law section and, 996-1007 African Commission on Human and People's Rights, 998-1005 complementarity as influence on, 996-1005

criminalization of violations, 997-8 judicial dialogue between, 1012-19 through non-state actors, 996-7 plural entities and, 1012-13 in ECtHR cases, 681-2, 1011 under ICCPR, 13 human rights law. See also international human rights law development of, 64 domestic laws as influence on, 991-3 international, 63-8 International Bill of Rights, 67-9 international criminal tribunals created for, 64-5 NGOs for, 992 quasi-criminal jurisdiction of, 67 regional, 63-8 in Africa, 66 in the Americas, 65-6 enforcement of, 63-75 in EU, 66–7 UNGA establishment of courts systems for. 68 universal enforcement of, 63-75 Human Rights Strategy for Africa, 1019 Human Rights Watch, 135-6, 201 human security in illicit exploitation of natural resources, 612-15 as protected value, 320 human trafficking, 92–3, 177, 246–9, 354, 551–2 in Angola, 538 under AU Convention on Cross-Border Co-operation, 547 in Botswana, 543 in Burkina Faso, 541 in Central African Republic, 541 in Comoros, 538 confiscation of criminal proceeds, 549 conscription of child soldiers through, 551 under Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, 532-3 definition of, 535-9 demographics for, 529-30 in DRC, 538 elements of, 535-9 in Equatorial Guinea, 541 in Gabon, 541 in Ghana, 543

human trafficking (cont.) global scope of, 529-31 historical development of, 531-4 under ICCPR, 534 ICESCR and, 545 individual responsibility over, 547-51 corporate criminal liability, 547-50 resource issues, 548-9 under International Agreement for the Suppression of the White Slave Traffic, 531 under International Convention for the Suppression of the Traffic in Women and Children, 532 under International Convention for the Suppression of the Traffic in Women of Full Age, 532 under International Convention for the Suppression of the White Slave Traffic, 531-2 under international human rights law, 533-4, 542-3 under treaties and conventions, 533-4 in Kenya, 535-6, 541-2 in Lesotho, 543-4 in Liberia, 541-2 in Malawi, 541-2 in Mauritius, 543-4 modus operandi in, 541-2 in Mozambique, 543-4 by organized criminal groups, 541-2 under Protocol against the Smuggling of Migrants by Land, Sea and Air, 538-9 in Seychelles, 541–2, 544 in slavery and forced labor context, 534, 536-7 smuggling compared to, 538-9 in South Africa, 541, 543-4 state responsibility over, 539-47 through international cooperation, 546-7 observance of non-refoulement, 543-4 for prohibition and prosecution, 540 for protection of victims, 542-3 in Sub-Saharan Africa, 529 in Tanzania, 543 under Trafficking Protocol, 530 in Uganda, 543 under UNTOC, 530 in Zambia, 541-2, 544

IAC. See international armed conflict IACtHR. See Inter-American Court of Human Rights ICC. See International Criminal Court ICCPR. See International Covenant on Civil and Political Rights ICD. See International Crimes Division ICESCR. See International Covenant on Economic, Social and Cultural Rights ICGLR. See International Conference on the Great Lakes Region ICJ. See International Court of Justice ICL. See international criminal law ICRC. See International Committee of the Red Cross ICTI. See International Centre for Transitional Instice ICTR. See International Criminal Tribunal for Rwanda ICTY. See International Criminal Tribunal for the Former Yugoslavia identification model, in Article 46C, 813-15 identification of victims, 953 IFAD. See International Fund for Agricultural Development IHL. See international humanitarian law IHRL. See international human rights law ILC. See International Law Commission illicit enrichment, 487 in ECtHR, 487 illicit exploitation, of natural resources, 177, 246-9, 617-18 in accession system jurisdictions, 611 in Angola, 592, 595, 600 in Central African Republic, 592, 595 in concession system jurisdictions, 611 conflict diamonds, 595-6 corporate criminal liability for, 598 through corruption, 608-9 in Côte d'Ivoire, 592 criminalization of, 591-7 definition of, 590 in DRC, 592, 595, 597 EITI and, 596 environmental protection compliance and, 612-15 human security issues, 612-15 ICC and, 598 ICGLR response to, 594, 615-17 in kleptocracies, 592

KPCS, 595-6, 615-16

in Liberia, 595, 607-8 in Libva, 612 natural resource certification mechanisms and, violations of, 615-17 ICGLR, 615-17 KPCS, 615-16 in Nigeria, 607 nullum crimen sine lege principle and, 596-7 without official state agreements, 610-12 through one-sided agreements, 609-10 pillage and, 591, 593-4 scope of, 590-5, 597-617 sub-offences in, 603-4 travaux préparatoires, 597 seriousness requirements for, 598-601 in Sierra Leone, 592, 595 in South Africa, 614 by state authorities, 606-8 in Tanzania, 614 in Uganda, 591 as violation of people's sovereignty, 601-6 for indigenous peoples, 605-6 ILOAT. See Statute of the Administrative Tribunal of the International Labour Organization immunity under Article 46 A bis, 851-64 doctrinal arguments on, 856-64 ratione materiae, 854-6, 860 ratione personae, 854-6, 860 scope of, 853-6 from corruption, 501-2 constitutional, 495 jurisdiction limitations for, 494-5 under customary international law, 33-4, 862-3 foreign, in national courts, 845-6 for Heads of State, 282-4, 842-4 from hazardous waste trafficking, 580 in ICJ, 31, 33-4 under Malabo Protocol, 2 Article 46Abis, 29-36 ratione materiae, 30-4 ratione personae, 30-4 temporary, 14, 253 in Nuremberg trials, 861 as procedural rule, 33 under Rome Statute, 738-9 for Heads of State, 1113 for senior state officials, 2, 30, 33 in Tokyo Tribunals, 861

from transnational crimes, 356-8 ratione materiae, 358 ratione personae, 358 impunity, 59 African Court attitude towards, 95-6 under Article 46 A bis, 863-4 under Constitutive Act, 79-80 ICC attitude towards, 95-6 IHL prohibitions on, 444-5 under Malabo Protocol, 95-6 prevention of, 60 under Rome Statute, 95-6 from terrorism, 444-5 in absentia trials, 712, 834, 928 in abstracto, 659–60 in concreto, 659–60 inchoate offences, for drug trafficking, 378-9 incitement, instigation and, 759-60 indictments against al-Bashir, for war crimes, 7-9, 966 of Heads of State See specific leaders indigence, 825 indigenous peoples, illicit exploitation of natural resources as violation of, 605-6 indirect enforcement systems, 58 ICL and, 61 indirect liability system, 230 influence peddlers, 486 innocence. See presumption of innocence innovations in jurisdiction of range of crimes, 37-9, 91-5 in regional courts, 23-6 instigation, incitement and, 350, 378, 759, 770-2 counseling and, 766 intent to shield, 675 intentionally wrongful use of state's armed forces, as act of aggression, 330-1 Inter-American Commission on Human Rights, 134 Inter-American Court of Human Rights (IACtHR), 70, 134-5 hazardous waste trafficking in, 582 jurisprudence in, 142-3 Lagos Conference on Primacy of Law influenced by, 3 intergovernmental organizations, 5, 259, 970 International Agreement for the Suppression of the White Slave Traffic (1904), 531 international armed conflict (IAC), 244-5 war crimes and, 267

international banking systems, money laundering in, 523 International Bill of Rights, 67-9 International Centre for Transitional Justice (ICTJ), 152 International Commission of Jurists, 4, 1103-4 International Committee of the Red Cross (ICRC), 112, 244, 270, 442 International Conference on the Great Lakes Region (ICGLR), 594, 615-17 International Conference on the Great Lakes Region (ICGLR) illicit exploitation, of natural resources, ICGLR response to, 594 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 455-60 International Convention for the Suppression of the Traffic in Women and Children (1921), 532 International Convention for the Suppression of the Traffic in Women of Full Age (1933), 532 International Convention for the Suppression of the White Slave Traffic (1910), 531-2 international cooperation, in ICL, 729-31 International Court of Justice (ICJ) ACJHPR compared to, 1024-8 Arrest Warrant case, 31-2, 58-9 Article 46 A bis and, 852 AUAT and, 1040-3 Burundi withdrawal from, 501 Gambian withdrawal from, 501 immunity in, 31, 33-4 legal interest in political stability, 132-3 South African withdrawal from, 501 Statute of, 131 international courts. See also European Court of Human Rights; Inter-American Court of Human Rights; International Criminal Court international crimes in, prosecution of, 57 International Covenant on Civil and Political Rights (ICCPR), 13, 25 human trafficking under, 534 terrorism under, 424 UCG and, 633 International Covenant on Economic, Social and Cultural Rights (ICESCR), 545 international crimes, 227-36. See also transnational crimes

in ACJHPR, expansion of, 91-2, 1085-6, 1088-9 in Africa, 74-82, 92-3 in African States, 75-82 analytical framework for, 232-6 characteristics of, 227-8, 234 core crimes, 230-46 definition of, 795 delimitation of, 233 under ICL, 220 in international courts, prosecution of, 57 jurisdiction of, 37 under Malabo Protocol, 37-8, 238-46 partly international crimes, 249-52 in national courts, prosecution of, 57 nature of, 228-32 right to legal representation for, 720-1 under Rome Statute, 112 in Rwanda, 184 transnational crimes compared to, 229-30, 255-6 International Crimes Division (ICD), 932 International Criminal Court (ICC). See also Malabo Protocol; Rome Statute accountability of, 206-7, 215, 678, 699, 743, 841 ACJHPR and, 2, 62, 95-100 legal relationship with, 7-9, 88-95 in Africa, 62, 88-95 ACC influenced by, 203-8 innovations in criminal jurisdiction, 91-5 national endorsement of, 91 OTP activities, 88, 113, 130 support for, 178-9 undermining of, 13-14, 104-5 African Court and, 2, 62, 95-100 shared goals towards impunity, 95-6 African States and, 62, 88-95 undermining of ICC by, 13-14, 104-5 aiding and abetting in, 767 Article 17 and, 97, 190, 192-5, 364-5 ASP, 107, 139 AU and, 62-3 tension with, 851-3 burden sharing with AC, 672-3 complementarity at, 48, 73, 652-9 burden sharing and, 664-73 intent to shield, 675 jurisprudence of, 663-4 positive, 98-100 test for relevant activity, 673-4

unjustified delays, 675 composition of, 57 concurrent jurisdiction of, with ACC complementarity and, 190-5 conflicting obligations for, 186-90 scope of, 181-6, 196-7 state cooperation with, 186-90 statutes as influence, 187 cooperation within, 729-32, 738-40 corporate criminal liability under, 27-8 competence for, 796-805 as court of last resort, 682-3 crime of aggression in, 315 CSO establishment of, 1101-3 future challenges for, 106-7 genocide statute of, 65 illicit exploitation of natural resources and, 598 international scope of, 59-63 interventions by denunciations of, 207 negative repercussions of, 205-6 political selectivity of, 205 JCE in, 775-80 in Kenya, 90, 192, 205-6 in Libya, 189 Malabo Protocol and, 1-2, 23-4 undermining of ICC by, 13-14, 104-5 money laundering and, 505-7 investigations into, 524, 526 jurisdiction for, 514 national cooperation with, 186-90 non-cooperation in, among African States, 730-4 non-member states, 188 OTP, 88, 113, 130 piracy and, 401 racism of, 284 registry, 708 right to communication of information in, 706-7 right to disclosure of evidence in, 696-704 Rome Statute and, 14-15 scope of jurisdiction under, 182 Rules of Procedure and Evidence in, 681, 728 corporate criminal liability and, 833-4 reparations in, 951 sentencing by, 927-9 in Sudan, 88-90, 114, 116, 189 terrorism and, 410

TFV, 952, 955-6, 960-1 TFV and, 052 UCG and, 622, 626-7 in Uganda, 205-6 universality of, 215 UNSC and, 182 international criminal jurisdiction for crimes against humanity, 87 for crimes of aggression, 87 for genocide, 87 for war crimes, 87 international criminal law (ICL). See also human rights law ACC and, 218 See also automatic deferrals in Africa, 177-8 African Commission on Human and People's Rights as agent of, 1006-7 cooperation factors in, 729-31 criminal liability under, 747-57, 766-81 aiding and abetting, 766-70 developmental frameworks for, 69-73 direct enforcement systems and, 61 expansion of, 71-3 fragmentation of, 61, 105 indirect enforcement systems and, 61 international crimes under, 229 in Malabo Protocol, 1077 mercenarism under, 449-50 in "one court" concept, 12-15 regionalism and, 105 sexual violence under, 23 Transitional Justice Policy Framework and, 170 transnational crimes under, 229 transnational criminal law compared to, 229-30 UCG under, 634-5 international criminal law section, of ACJHPR, 1, 11-12, 1081-2 Detention Management Unit, 1066-7 jurisdiction of, 12 prosecutorial independence, 45-6 Victims and Witness Unit, 1066-7 international criminal liability, for crimes of aggression, 318 International Criminal Tribunal for Rwanda (ICTR) aiding and abetting in, 768-70 budget of, 43 creation of, 35, 57, 184 genocide and, 242-3, 262-4

International Criminal Tribunal for Rwanda (ICTR) (cont.) jurisprudence in, 262-4 money laundering in, 521 presumption of innocence in, 690-1 right to communication of information in, 706-7 right to disclosure of evidence in, 696-704 sentencing at, 932-4, 942 witness anonymity in, 687-8 International Criminal Tribunal for the Former Yugoslavia (ICTY) aiding and abetting in, 768-70 creation of, 35, 57 criminal defences in, 874-8, 913-16 money laundering in, 521 presumption of innocence in, 690-1 right to communication of information in, 705-6 right to disclosure of evidence in, 696-704 state sovereignty approach in, 231 terrorism and, 409 war crimes and, 274 witness anonymity in, 687-8 International Criminal Tribunal for the Former Yugoslavia, sentencing at, 932, 942 international criminal tribunals. See also ad hoc courts and tribunals; specific tribunals advantages of, 109 corporate criminal liability in, 298-301 criticism of, 109-10 genocide conventions and, 65 legal paradox of, 110-11 location of, 71 tribunal fatigue, 72 international detention, 944-5 International Fund for Agricultural Development (IFAD), 1042 international human rights, 63-8 International Bill of Rights and, 67-9 international criminal law and, 69-73 regionalization lessons from, 69-73 under Universal Declaration of Human Rights, 65-6 international human rights law (IHRL), 63-8. See also African Court on Human and Peoples' Rights; European Court of Human Rights; Inter-American Court of Human Rights

human trafficking under, 533-4, 542-3 under treaties and conventions, 533-4 ICL and, 990-5 beneficial relationship between, 990-4 historical development of, 991-3 negative relationship between, 994-5 Inter-American Commission on Human Rights, 134 international, 63-8 International Bill of Rights, 67-9 international criminal law and, 69-73 regionalization lessons from, 69-73 under Universal Declaration of Human Rights, 65-6 Lagos Conference on Primacy of Law and, 3 under Malabo Protocol, 17, 973-5 jurisdiction for, 974-5 regional, 63-8 in Africa, 66 African Convention on Human Rights, 66 American Declaration on the Rights and Duties of Man, 65 in the Americas, 65-6 in EU, 66-7 OAU and, 4-5, 66 international humanitarian law (IHL) criminal liability under, 743 lex specialis of, 442 mercenarism under, 449-50, 456-7, 461, 470 terrorism under, 410-11, 421 acts excluded from definition of, 441-5 impunity prohibitions, 444-5 liberation and self-determination and, 441 International Labour Organization, 1037 international law through ACC, 842 See also automatic deferral for corruption, 840-1 for ICC crimes, 841-2 jurisdiction over Rome Statute, 841 for non-ICC crimes, 839-41 customary, 33-4 complementarity under, 664-5 immunity under, 33-4, 862-3 Eurocentric origins of, 170 in Global South, 218 Nuremberg Tribunal judgments, 14-15 piracy in, 389-92 regional arrangements under, 838-9 terrorism under, 423-4 TWAIL, 801

International Law Commission (ILC), 28, 77-8 corporate criminal liability and, 804-5 criminal defences, consideration of, 868-70 on drug trafficking jurisdiction, 364 mercenarism and, 469 piracy and, 402 UNGA and, 232 International Maritime Organization, 397 International Military Tribunal for the Far East. 868 International Support Mission to the Central African Republic (MISCA), 124 interpreters in ACJHPR, 1095 right to free assistance by, 725 interventions, by ICC denunciations of, 207 negative repercussions of, 205-6 political selectivity of, 205 intimidation, through terrorism, 431-2 intoxication, as criminal defence, 878-81 involuntary, 880 limitations of, 880 voluntary, 879 investigative teams for ACJHPR, 1087-8 for corruption, 489-92 evidence gathering in, 489-91 whistle-blowers and, 489-90 modus operand for, 1003 for money laundering as evidentiary challenge, 520-1 financial investigations, 507 by ICC, 524, 526 in U. S., 524 for transnational crimes, 359-60 Iran, politico-military organizations in, 293 Iraq, terrorism in, 308-9, 430 ISIS. See Islamic State of Iraq Islamic Salvation Front, 411-12 Islamic State of Iraq (ISIS), 308-9 corporate criminal liability in, 301 mercenarism and, 471 recruitment of child soldiers in, 302 terrorism by, 305 iura novit curia principle, 698

Jackson, Robert, 285, 846–7 Jacobs, Dov, 35, 287 Jalloh, Charles, 23, 210 Jammeh, Yahya, 251, 637 joint criminal enterprise (JCE), 775-80 joint criminal liability, 772–81 conspiracy as, 774-5 in Nuremberg Charter, 774-5 in Tokyo Charter, 774-5 judges in ACHPR, 976-7, 987 in ACJHPR, 16 judgments. See also public pronouncement of judgments in ACHPR, execution of, 980-2 judicial reform, 174 juridical persons, 807, 836–7. See also legal persons jurisdiction. See also African Court for Justice and Human and People's Rights; concurrent jurisdiction; universal jurisdiction of ACC, 227, 794 in accession systems, 611 of ACHPR, 967-9, 971-3 limitations of, 967-9, 971-3 treaties within, 977 of African Court, for range of crimes, 37-9 African Court on Human and Peoples' Rights, 967-9, 971-3 of appellate courts, 12-13 under Article 46C, 806-12 for AUAT, for appellate decisions, 1040-53 applicable law for, 1047-50 scope of, 1043-7 complementarity as regulating principle, 96-8 in concession systems, 611 for corruption, limitations for, 492-5 immunity provisions, 494-5 for international organizations, 494 by region, 493 for serious nature of acts, 492-4 over crimes of aggression, 315-19 for drug trafficking, 363-5, 386-7 in Action Plan on Drug Control, 363, 366 ECOWAS, 363 through ILCs, 364 in Sierra Leone, 363-4 of Malabo Protocol, for human rights, 974-5 for money laundering, 512-20 application of preconditions, 518-20 for ICC, 514

jurisdiction. (cont.) inclusion in, 505-7 opinion juris, 513-14 scope of, 515-18 in "one court" concept, 18 over piracy, 391-2 limitations of, 206-8 universal, 403-4 ratione loci, 972-3, 1039 ratione personae, 30-4 ratione temporis, 972-3, 1039 of regional courts, 106 of Rome Statute, CSOs in conflict with, 1120-1 over transnational crimes, 92-3, 106, 356-8 for ICC, 337 jurisprudence, 97, 155, 645, 659, 663-4. See also international criminal law; international law: national laws codification of, 265 in IACtHR, 142-3 in ICTR, 262-4 rape acts and, 243 in regional courts, 67 jus ad bellum, 456-7, 461, 475 jus in bello, 456-7, 461, 465, 640 justice. See also geographies of justice; restorative justice; retributive justice; transitional justice peace and, as secondary to, 112 peace sequencing and, 128-34 accountability and, 141-6 in Argentina, 141-3 in Chile, 143-4 in Mozambique, 144-5 in Namibia, 145 in Uruguay, 144 peace taking precedence over, 112

Kabuye, Madame Rose, 87 Kagame, Paul, 87 Karadzic, Radovan, 135, 716 Kariri, Jemima Njeri, 856 *Katanga* case, 700–1 Kenya corporate criminal liability in, 783 drug trafficking in laws against, 369 punishment for, 380–1 human trafficking in, 535–6, 541–2 ICC in, 90, 192, 205–6

money laundering in, 353 politico-military organizations in, 293 post-election violence in, 90 UCG in, 627 Kenyatta, Uhuru, 10-11, 90, 200, 627, 966 Kimberley Process (KPCS), 595-6, 615-16 Kioko, Ben, 86-7 Klein, Pierre, 86-7 kleptocracies, 592 Kony, Joseph, 115, 136-7. See also Lord's Resistance Army KPCS. See Kimberley Process Kushayb, Ali, 137-8 Kyriakakis, Joanna, 27, 288 labor. See forced labor Lagos Conference on Primacy of Law, 3 Lamony, Steven, 858 land mercenarism, 451 Latin America, UCG in, 40 Lauterpacht, Hersch, 1032 law. See administrative law; international human rights law; international humanitarian law; international law; national laws "The Law of Lagos," 66 lawyers. See legal representation League of Nations Covenant of the League of Nations, 1029 on piracy, definitions of, 405-6 terrorism and, 410 Lebanon. See Special Tribunal for Lebanon legal aid in ACHPR, 982-3 provisions for, right to, 722-3 legal assistance, right to, 719-23 legal counsel. See legal representation legal duty, of African states, 75-82 legal infrastructure, 43-4 legal persons. See also Article 46C attribution of criminal legal responsibility, 956 derivative, 822 organizational, 822 definition of, 807 in STL, 798-9 legal representation, right to, 714 communication with counsel of choice in, 707-11 in international criminal cases, 720-1 through legal aid provisions, 722-3

with legal assistance in cases of insufficient means, 719-23 right to preparation of defence in, 707-11 registries and, 708 through self-representation, 714-17 legalism, 199-203, 208 ACC and, 100-203 LEITI. See Liberian Extractive Industries Transparency Initiative Lesotho, human trafficking in, 543-4 Lesotho High Court, 483 lex specialis, 351-2, 442 liability, criminal. See also corporate criminal liability; international criminal liability actus reus requirements, 762, 776 under AU Statute, 743-7 See also corporate criminal liability; specific modes Article 28N, 757-9, 766-81 multiple modes of liability under, 759-60 complicity, 750-5 counseling, 765-6 instigation and incitement and, 766 culpability and, 750, 752 defences to, 922-4 alibi as, 919-20 codification of, 870 consent as, 918-20 defence of person, 882-5 defence of property, 885-6 defensive operations, 882, 916-17 diminished mental capacity, 876-8 duress, 887-98 exclusion of, grounds for, 894 excuses in, 870 force majeure, 887 under Geneva Conventions, 903-4 in ICTY, 874-8, 913-16 ILC consideration, 868-70 intoxication as, 878-81 legal scope of, 866-70 under Malabo Protocol, 867 mental disease or defect, 872-8 military necessity, 911-12 mistakes of fact, 902-7 mistakes of law, 902-7 necessity, 898-902 non bis in idem principle, 650-1, 920-1 for recruitment of child soldiers, 918-20 reprisals and, 011, 012–16 in SCSL, 901, 918-20 self-defence as, 882, 916-17

sources of law for, 870-2 statute of limitations for, 922 superior orders, 907-10 tu quoque, 911-13 UNWCC, 868, 887-90, 911-12 in war crimes, 903, 905, 910-17 youth as, 921-2 expansion of, 743-4 facilitation, 763 fair labeling in, 750, 752-3 financing of, 764-5 of terrorism, 764-5 under UN Convention for the Suppression of the Financing of Terrorism, 765 ICL approach, 747-57, 766-81 aiding and abetting, 766-70 under IHL, 743 instigation and incitement, 350, 378, 759, 770-2 counseling and, 766 joint, 772-81 conspiracy as, 774-5 JCE, 775-80 in Nuremberg Charter, 774-5 in Tokyo Charter, 774–5 mens rea requirements, 762, 776-7 modes of, 744 accessory, 747-60, 772-81 under AU Statute, 759-60 differential participation model, 746, 748-55 new, 760-6 principle, 747-60 unitary perpetrator model, 746-8, 750-5 modifications to, 743-4 nulla poena sine lege principle, 745, 773-4 nullum crimen sine lege principle, 745, 773-4 organizing and directing, 761-3 under Rome Statute, 755-7, 775 liberation and self-determination, as exclusive of terrorism, 439-41 under African Charter on Human and Peoples' Rights, 440 under IHL, 441 Liberia, 377. See also Taylor, Charles human trafficking in, 541-2 illicit exploitation of natural resources in, 595, 607-8 money laundering in, 510-12

Liberia (cont.) pillage in, 594 RUF in, 510-11 Liberian Extractive Industries Transparency Initiative (LEITI), 607-8 liberty. See also liberation and selfdetermination deprivation of, 348 Libya complementarity in, 657-9 ICC in, 189 illicit exploitation of natural resources in, 612 politico-military organizations in, 293 UCG in, 627-8 Lieber Code of 1863, 911 life endangerment, from terrorism, 425-6 likelihood of criminal activity. See reasonable likelihood Locke, John, 632 Lomé Convention, 567 Lomé Peace Agreement, 135 Lord's Resistance Army (LRA), 114-16, 136-7 terrorism by, 305 Luanda Trial, 453, 473 Lubanga, Thomas, 60, 102 Lubanga case, 102, 654-5, 662, 697, 700, 956-7 MAES. See AU Electoral and Security Assistance Mission to the Comoros Mafia. See La Cosa Nostra Malabo Protocol. See also civil society organizations: Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights Amended Protocol, 512-20 cooperation between states and private actors, 521-5, 734-8 Article 1, 277-8 See also torture Article 2, 121 Article 3, 250, 360 Article 4, 646 Article 5, 333-4, 540 Article 6, 17-18 Article 8 bis, 279-81 See also aggression Article 16, 15 Article 17, 660, 976-7 Article 18, 49 Article 19A, 955

Article 22, 45-6, 360, 710 Section B, 957, 1066 Article 27, 980, 985, 1113 Article 28, 455-60, 469-73, 480-9, 512-20, 601-17, 780, 919, 921-2, 977, 1030-1, 1115-16 Section A, 23, 39, 169-78, 314, 388-9, 480, 488-9, 590-1, 623 See also acts of aggression; aggression; corruption; illicit exploitation; piracy; transnational crimes Section B, 23, 241-2, 258, 262 See also genocide Section C, 49, 241-2, 275-9, 550-1 See also crimes against humanity; human trafficking Section D, 241-2, 258, 267-74 See also war crimes Section E, 24, 250-2, 283, 619-21, 625-6 See also unconstitutional change of government Section G, 250, 409, 421-47 See also Organization of African Unity; terrorism Section I, 480-8, 498, 515-18 See also corruption; money laundering Section J, 537, 550 See also human trafficking Section L, 49, 428-9, 574-8, 589, 601-17 See also hazardous wastes Section M, 169-78, 258, 279-82, 314-35 See also acts of aggression; aggression Section N, 266, 436-7 See also terrorism Article 29, 119-20, 128-9 Article 30, 401 Article 33, 130-4 Article 34, Section A, 119-20, 128-34 Article 43, 491, 525-6 See also sentences Section A, 927-9 Article 44, 130-4 Article 45, 491, 525, 951-2 See also victims' rights Article 46, 356-8 See also Article 46 A bis; corporate criminal liability; transnational crimes extension of, 301-4 rationae materiae, 30-4 ratione personae, 30-4 Section A, 494-5, 680-9, 694-727 See also fair trials; rights of accused

Article 20, 950-1

Section B, 37

Section C, 18-29, 210, 285-6, 288-91, 301-2, 483, 485, 494-5 See also corruption Section D, 929 Section E, 49, 210, 495, 518-20 See also money laundering Section F, 200, 212 Section H, 47, 97, 209, 646-52 See also complementarity Section L, 212, 489-91, 734-8 See also cooperation Section M, 548-9, 722, 824, 941, 955 Article 49, 130-2 Article 53, 112-13, 181, 185-6, 979, 1109 ATJF and, 119 AU and, 1-2 AU transitional justice architecture and, 176 core crimes under, 261-82 See also aggression; crimes against humanity; genocide; war crimes cost implications of, 1061-4 crime definitions under, 37, 238-54 content of, 238-9 crimes against humanity under, 239-46, 275-9 crimes of aggression under, 239-46, 279-82 criminal defences under, 867 establishment of, 1-2, 258 genocide under, 239-46, 258, 261-7 human rights under, 17, 973-5 jurisdiction for, 974–5 IAC under, 244-5 ICC and, 1-2, 23-4 undermining of, 13–14, 104–5 ICL component of, 1077 immunity under, 2 Article 46Abis, 29-36 for high-level officials under, 2, 30 temporary, 14, 253 impunity under, 95-6 international crimes under, 37-8, 238-46 See also aggression; crimes against humanity; genocide; war crimes partly, 249-52 language of provisions, 17-18 legislative process of, 10-11 megacourt developed by, 989 mixed reception for, 1082-5 NIAC under, 244-5 peace and justice sequencing through, 100-21

piracy definition under, 248 positive complementarity under, 98-100 public response to, 13-20 regional criminal courts and, 989-90 restorative justice and, 109 retributive justice and, 109 Rome Statute and, 23-4, 95-6 sexual assault and violence, 23 as transitional justice, 110-11 Transitional Justice Policy Framework for, 112-13 transnational crimes under, 92-3, 238-9, 246-9, 338 partly, 252-4 treaty architecture of, 258-61 Protocol of the Court of Justice of the African Union, 259-60 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 260 Protocol on the Statute of the African Court of Justice, 260 Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, 258-9 UCG and, 41, 250-2 victims' rights under, 948-50 war crimes under, 239-46, 267-74 Malawi, 541–2 corporate criminal liability in, 783 Mali, terrorism in, 430 Mamdani, Mahmood, 127 Mandela, Nelson, 149–50 Mann, Simon, 468 Maputo Protocol. See Protocol on the Rights of Women in Africa Marikana Massacre, 614 Mauritius, 370 human trafficking in, 543-4 May, Larry, 639-40 Mayardit, Salva Kiir, 113 Mbaye, Kèba, 4 Mbeki, Thabo, 127, 139 Mbozo'o, Efoua, 1038, 1040 memorialization standards, 160-1 mens rea, 351-2, 373, 375 for criminal liability, 762, 776-7 money laundering and, 515 STL definition of, 625

mental capacity. See diminished mental capacity mental disease or defect, as defence, 872-8 mercenaries definition, 449-50, 454-74 concerted acts of violence by, 466 direct participation by, 465 material compensation for, 464-5 membership in armed forces, 465 prerequisites for, 461-2 territorial residency requirements for, 464 EO, 467 foreign fighters as, 454, 461, 464-5, 471 under International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 455-60 as prisoners of war, 457 mercenarism, 80, 92-3, 177, 246-9, 338 in ACJHPR, 454-5 in acts of aggression, 332-4 in Angola, 453, 460, 462-3 colonialism as influence on, 450-5 under Convention for the Elimination of Mercenarism, 248, 350 during decolonization period, 451 definition of, 449-50, 454-74 concerted acts of violence in, 466 direct participation in, 465 material compensation in, 464-5 membership in armed forces, 465 prerequisites for, 461-2 territorial residency requirements in, 464 dogs of war and, 451 under domestic law, 462 in Equatorial Guinea, 468 by foreign military actors, 454 under ICL, 449-50 under IHL, 449-50, 456-7, 461, 470 ILC and, 469 under International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 455-60 international regulatory framework for, 472 ISIS and, 471 jus ad bellum, 456-7, 461, 475 jus in bello, 456-7, 461, 465 land, 451 Luanda Trial, 453, 473 in Nigeria, 454 during Nigerian Civil War, 453

under OAU Convention for the Elimination of Mercenarism, 350, 453 limitations with regards to definition of, 468-9 OAU on, 449 PMSC and, 451-2, 464-7, 471-2, 474-5 limitations and loopholes for, 469-73 recruitment for, 462-3 resurgence of, in Africa, 450-5 See also specific countries under Rome Statute, 469 sea, 451 in Sierra Leone, 460, 467 soldiers of fortune and, 451 in South Africa, 467 under Regulation of Foreign Military Assistance Act, 462, 467 through UCG, 460 UN on, 449, 451-2 in Zaire, 460 military necessity, as criminal defence, 911-12 military occupation, as act of aggression, 327-8 military organizations clandestine, 292-304 corporate criminal liability for, 292-304 Mills, Kurt, 201 Milosevic, Slobodan, 714-15 MINUSCA. See UN Multidimensional Integrated Stabilization Mission to Central African Republic MIOC. See AU Military Observer Mission in the Comoros MISCA. See International Support Mission to the Central African Republic mistakes of fact, as defencee, 902-7 mistakes of law, as criminal defence, 902-7 mitigating factors, 878 in sentencing, 877-8, 880, 893, 935-6, 941 MNCs. See multinational corporations Mobutu, Sese Seko, 604 modus operandi in human trafficking, 541-2 for investigators, 1003 Mohamed, Saira, 940 monarchies, UCG and, 632 money laundering, 92-3, 177, 246-9, 526-8. See also Taylor, Charles asset recovery and reparations, 525-6 under AU Convention on Preventing and Combating Corruption, 508-9 corruption and, 488-9

criminalization of, 489 domestic, 508 as state practice, 513-14 definition of, 343 evidentiary challenges in, 520-5, 527 complex financial investigations, 520-1 cooperation with state and private actors, 521-5, 734-8 FATF response to, 516, 524 ICC and, 505-7 investigations by, 524, 526 jurisdiction of, 514 in ICTR, 521 in ICTY, 521 integration stage, 488 international banking system structure and, 523 investigations into as evidentiary challenge, 520-1 financial, 507, 520-1 by ICC, 524, 526 in U. S., 524 jurisdiction over, 512-20 application of preconditions, 518-20 for ICC, 514 inclusion in, 505-7 opinion juris, 513-14 scope of, 515-18 in Kenya, 353 layering stage, 488 in Liberia, 510-12 mens rea requirements, 515 nullum crimen sine lege principle and, 506, 512-15, 519, 526-7 placement stage, 488 prosecution of, 507-12 under Rome Statute, 509-10, 513 in SCSL, 507, 510-12 Taylor case and, 526 under UNCAC, 508-9, 516 under UNTOC, 508-9, 516 under Vienna Convention, 508 Montreaux process, 333 Moynier, Gustav, 74-5 Mozambique human trafficking in, 543-4 transitional justice in, 144-5 MPLA. See Popular Movement for the Liberation of Angola Mtambo, Timothy, 1112-13 Mulgrew, Roísín, 944

multinational corporations (MNCs), 558 Mumba, Florence, 685 Murungu, Chaha Bhoke, 856–8 Museveni, Yoweri, 114-15 Musila, Godfrey, 20-1 Muslim Brotherhood, 305–6 Mwanawasa, Levy, 499 Naidoo, Kumi, 562-3 Namibia corporate criminal liability in, 783 drug trafficking in, 373 transitional justice in, 145 national courts burden sharing with African Court, 669-73 complementarity in, 664-5 drug trafficking offences in, 381-2, 385-6 foreign immunity in, 845-6 international crimes in, prosecution of, 57 piracy in, 408 positive complementarity for, 98-100, 344 prosecution of third states in, 58 sovereignty of, 106 National Drugs Enforcement Agency (NDEA), 384 National Islamic Front, 305-6 national laws corporate criminal liability under, 783-5 human rights law influenced by, 991-3 mercenarism under, 462 money laundering under, 508 transnational crimes under, 344-5 National Liberation Front of Angola (FNLA), 453, 473 national reconciliation laws, in Guatemala, 116-17 National Union for the Total Independence of Angola (UNITA), 467, 603-4 natural persons, under Article 46C, 793-6 natural resource certification mechanisms, 615-17 ICGLR, 615-17 KPCS, 615-16 natural resources. See also illicit exploitation terrorism as damaging to, 427-8 Nazi Germany, 270 criminal actors in, 290-1 NDEA. See National Drugs Enforcement Agency Ndombasi, Abdulayae Yerodia, 86

ne bis in idem principle, 190, 195 complementarity and, 650-2, 659-62 sentencing and, 944-5 necessity. See also military necessity as criminal defence, 898-902 NGOs. See non-governmental organizations NIAC. See non-international armed conflict Nigeria Boko Haram in, 296 Civil War in, 453 corruption in, 493-4, 497-9 drug trafficking in, 341 controlled substances, 368 of controlled substances, 368 hazardous waste trafficking in, 560-1 illicit exploitation of natural resources in, 607 mercenarism in, 454 terrorist organizations in, 310-11 Nmehielle, Vincent, 94, 202 non bis in idem principle, 650-1, 920-1 complementarity and, 650-2 in criminal defences, 920-1 Non-Aggression and Common Defence Pact (AU), 330-1 non-compliance, under Article 46C, 820 non-cooperation, among African States, 730-4 non-derogable rights, 694-5 non-governmental organizations (NGOs), 992 access to courts for, 50-1 non-interference, 122 non-international armed conflict (NIAC), 244-5, 443-4 non-intervention principles, 634-41 non-refoulement, in human trafficking, 543-4 non-state actors, 996-7 Ntaganda case, 662, 701 nulla poena sine lege principle, 745, 773-4, 931 due process and, 773-4 nullum crimen sine lege principle, 300, 745 in Article 46C, of ACC, 816 due process and, 773-4 illicit exploitation of natural resources, 596-7 money laundering and, 506, 512-15, 519, 526-7 Nuremberg Principles, Third Principle, 845-9 Nuremberg trials, 875-6. See also Charter of the International Military Tribunal Charter of Article 6, 908

Article 7, 846-7, 908 Article 8, 908 Article 29, 908 conspiracy in, 774-5 corporate criminal liability at, 27, 285 crime of aggression in, 314-16 immunity in, 861 international law at, 14-15 war as evil in, 642 OASAT. See Administrative Tribunal of the Organization of American States OAU. See Organization of African Unity Obiang, Teodoro, 478, 496-7, 503 OECD Anti-Bribery Convention, 483, 829 Office of the Prosecutor (OTP), 88, 113, 130, 1067-8 O'Keefe, Roger, 86-7 Omotola, Shola, 625 "one court" concept, 15-23 ICL and, 12-15 individual criminal responsibility, 16, 18-19 jurisdiction of, 18 merging of legal divisions in, 15 state responsibilities in, 16, 18-19 as transitional justice mechanism, 20-3 Ongwen, Dominic, 204 opinion juris, 513-14 Optional Protocol to the Convention on the Rights of the Child on the Involvement in Armed Conflict, 271-2 Organization of the Islamic Conference (OIC), 138 Convention on Combating International Terrorism, 410, 413-16 Organization of African Unity (OAU) African Charter on Human and Peoples' Rights, 2-4 AU as replacement of, 79 Convention for the Elimination of Mercenarism, 248, 350, 453 limitations with regards to definition of, 468-9 Convention on the Prevention and Combating of Terrorism, 410-19, 447-8 criminalization of terrorist acts, 415-16 definition of terrorist acts, 414-15 development of, 411-12 drafting of, 412-14 preamble, 414

Declaration on a Code of Conduct for Inter-African Relations, 412 hazardous waste trafficking resolution, 563-4, 568 human security motivations, 75-7 on mercenarism, 449 regional human rights and, 4-5, 66 response to violence, 122 state sovereignty and, 147-8 Statute of the Administrative Tribunal of the Organization of African Unity, 1045 UCG and, 40-1 organizational model international versions of, 821 progressive, 823 organizational model, in Article 46C, 815-23 aggregation of knowledge in, 818-19 corporate knowledge in, 818-19 corporate personnel in, 821-3 international versions of, 821 nullum crimen sine lege principle in, 816 OTP. See Office of the Prosecutor Ouguergouz, Fatsah, 985 Palestinian Authority, 301 Pan African Lawyers Union (PALU), 9, 128 ACJHPR and, 90, 1104-5 terrorism recommendations for, 419-20 pan-African Doctrine, 211 Pan-African Parliament (PAP), 122 Panama Papers, 490, 504 Panel of the Wise, 117 PAP. See Pan-African Parliament par in parem non habet imperium, 845-6 pardons, 942-3 partly international crimes, 249-52 partly transnational crimes, 252-4 passive bribery, 481-2 Patterson, David S., 1033 PCIJ. See Permanent Court of Justice PCRD. See Post-Conflict Reconstruction and Development Policy Framework peace. See also violence justice as secondary to, 112 justice sequencing and, 128-34 accountability and, 141-6 in Argentina, 141-3 in Chile, 143-4 in Mozambique, 144-5 in Namibia, 145 in Uruguay, 144

legal interests in, 128-34 under Malabo Protocol Article 29, 128-9 Article 33, 130-4 Article 34A, 128-34 Article 44, 130-4 Article 49, 130-2 prioritizing of, 134-46 in Sierra Leone, 135–6 in Sudan, 137–41 in Uganda, 136-7 Peace and Security Council (PSC), of AU, 80, 121 institutional reform, 172 management of violence through, 122-6 peace processes, in Transitional Justice Policy Framework, 157-8 peaceful protest, 1115-16, 1118-19 peaceful settlement of disputes, 172, 1026 peacekeeping missions, through AU, 123-4 penalties, 491-2. See also sentences for core crimes, 930-1 fines as, 931 per argumentum a contrario, 637-8 Permanent Court of International Justice, 235 Permanent Court of Justice (PCIJ), 1032 ACJHPR compared to, 93-4, 1024-8 personal immunity. See ratione personae persons. See juridical persons; legal persons persuasive authority, 373, 1014, 1018 in ECtHR, 1015 Peru, 134-5, 397-8 Peter, Chris Maina, 86-7 pillage, 593-4 in DRC, 825 in Liberia, 594 in Sierra Leone, 594 in Uganda, 591 Pinochet, Augusto, 143-4 piracy, 92-3, 177, 246-9 Achille Lauro incident, 396 definition of, 388-9, 391 by ILC, 407 for League of Nations, 405-6 EEZ and, 397-8 facilitating acts of, 402-3 high seas, 396-8 ICC and, 401 ILC and, 402, 407 inciting of, 402-3

piracy (cont.) International Maritime Organization and, 397 interpretation of, 403-8 jurisdiction over, 391-2 limitations of, 396-8 universal, 403-4 legal history of, under international law, 389-92 in national courts, 408 primary offences, 392-8 depredation, 393-4 detention, 303-4 illegal acts of violence, 393-4 private ends, 394-5, 404-8 "two ship rule," 395-6 scope of, 388-9 Somalia and, 392, 399 under SUA Convention, 396 under UNCLOS, codification of, 391 voluntary participation in, 398-403 Plan of Action on the Prevention and Combating of Terrorism in Africa (AU), 418-19 PMSC. See private military and security companies political groups, corporate criminal liability for, 292-304 domestic criminal tribunals for, 298-301 international criminal tribunals for, 298-301 in Nazi Germany, 292-3 Popular Movement for the Liberation of Angola (MPLA), 453, 473 positive complementarity, 62 burden sharing through, 676-9 in ICC, 98-100 legal scope of, 62 under Malabo Protocol, 98-100 for national courts, 98-100, 344 in prosecution of drug trafficking, 383-4 for regional courts, 98-100 under Rome Statute, 98-100 possession offences, for drug trafficking, 375-8 Post-Conflict Reconstruction and Development Policy Framework (PCRD), 174-6 precursor offences, for drug trafficking, 378 preparation of defence, right to, 707-11 registries and, 708 President/Presidency, of ACJHPR, 976, 1060-1, 1064-6

presumption of innocence, 689-94 detention and, 693 in ICTR, 600-1 in ICTY, 690-1 principal corporate criminal liability, 786-7 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance, 687-9, 691, 710-11 prisoners of war, 457 under Convention Relative to the Treatment of Prisoners of War, 914 mercenaries as, 457 private ends, piracy and, 394-5, 404-8 private military and security companies (PMSC), 451-2, 464-7, 471-2 in African States, 476 limitations and loopholes for, 469-73 in U. S., 475 private sector, bribery in, 483-5 progressive organizational model, 823 Promotion of National Unity and Reconciliation Act (1995) (South Africa), 149-50 proof beyond reasonable doubt, 690 property damage, terrorism and, 426-7 proportionality, requirements of, 896 proprio motu, 45, 676-7 prosecute or extradite (aut dedere or aut *judicare*) under Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 111 UCG and, 635 protest. See peaceful protest Protocol against the Smuggling of Migrants by Land, Sea and Air, 538-9 Protocol of the Court of Justice of the African Union, 259-60, 449-50. See also mercenarism Article 28H, 468-74 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 260 Protocol on the African Investment Bank, 1077 Protocol on the Establishment of the African Monetary Fund, 1077 Protocol on the Rights of Women in Africa (Maputo Protocol), 1104 Protocol on the Statute of the African Court of Justice, 260

Protocol on the Statute of the African Court of Justice and Human Rights (Sharm el Sheikh Protocol), 1030–4 Protocol to Prevent, Suppress and Punish Trafficking in Persons 2000 (Trafficking Protocol), 530 Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, 258-9 development of, 965-6 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11, 25, 162 PSC. See Peace and Security Council public defender model, ACJHPR and, 94-5 public emergency, 414-16, 421-2, 633 through terrorism, 432, 434 public hearings, right to, 685-9 ECtHR on, 685 public perception influenced by, 686 public pronouncement of judgments, 726 public sector, bribery in, 481-3 purchase offences, for drug trafficking, 375-8 Al Qaeda, 297-8, 305-9 September 11th attacks and, 307, 434 quality control provisions, in bribery, 485 quasi-criminal jurisdiction, of human rights mechanism, 67 R2P doctrine. See responsibility to protect doctrine racism, of ICC, 284 Racketeer Influenced and Corrupt Organizations Act (US), 303-4 rape, 23, 265 consent and, 919 ratione loci, 972-3, 1039 ratione materiae (functional immunities), 30-4 Article 46 A bis, 854-6, 860 from prosecution of transnational crimes, 358 ratione personae compared to, 32 UCG and, 638 ratione personae (personal immunity), 30-4 ACHPR and, 971 African Court on Human and Peoples' Rights, 971 Article 46 A bis, 854-6, 860 human and people's rights section, 1011-12

rationae materiae compared to, 32 for transnational crimes, 358 UCG and, 638 ratione temporis, 972–3, 1039 reasonable likelihood, 426 rebellion. See right to rebel reconciliation processes AU and, 174-6 transitional justice and, 169 RECs. See regional economic communities Red Cross. See International Committee of the Red Cross redactions, in fair trials, 688-9 refugees, as result of terrorism, 311-12 regional courts. See also European Court of Human Rights; Inter-American Court of Human Rights; Malabo Protocol; specific courts in Africa See also specific courts legal context of, 62-3 legal duty of African states, 75-82 complementarity in, 46-8 Habré, Hissène and, 9, 14 ICC and, legal relationship with, 357 innovation in, 23-6 iurisdiction of, 106 key challenges for, 42-51 access to court, 50-1 civil society organizational involvement, 49-50 commitment of African States, 44-5 drafting issues, 49-50 human resources issues, 43-4 inadequate funding issues, 42-3, 103-4 lack of infrastructure, 43-4 prosecutorial independence as, 45-6 Malabo Protocol and, 989-90 positive complementarity for, 98-100, 344 recommendations for, 107 terrorism as crime in, 423-4 transnational crimes in, 258-61, 337-40 universal jurisdiction of, 86-8 regional economic communities (RECs), 9, 46, 174 ACJHPR and, 1104 complementarity and, 647-8 burden sharing with, 671-2 management of violence in, 124-5 Transitional Justice Policy Framework and, 154

regional human rights, 63-8 in Africa, 66 African Convention on Human Rights, 66 American Declaration on the Rights and Duties of Man, 65 in the Americas, 65-6 in EU, 66-7 regional human rights law, 63-8 in Africa, 66 in the Americas, 65-6 enforcement of, 63-75 in EU, 66-7 UNGA establishment of courts systems for, 68 regionalism, ICL and, 105 registries for defence, 708 for reparations, 957-61 Registry, for ACJHPR, 708, 1066-7 Regulation of Foreign Military Assistance Act (1998) (South Africa), 462, 467 rehabilitation of drug users, 383 through social re-integration, 383 as reparations, under Article 46C, 824 religious groups. See also specific religious groups and organizations corporate criminal liability for, 304-12 terrorism by, 304-11 remedies through ACHPR, 980 through AUAT, 1051 reparations, 172. See also fines through ACHPR, 172, 980 under Article 46C, 824 asset recovery and, after money laundering, 525-6 implementation of, 958-61 institutional framework supportive of, 955-8 registry for, 957-61 rehabilitation as, under Article 46C, 824 in Rules of Procedure and Evidence, 951 standard-setting for, 160-1 through TFV, 952, 955-6, 960-1 reprisals, as defence, 911, 913-16 Republic of Guinea. See Guinea resource conflicts, 93 respondeat superior, 783, 908 responsibility to protect (R2P) doctrine, 664-5 restitution, under Article 46C, 824 restorative justice, 109

through AU, 172 for hazardous waste trafficking, 581-3 retributive justice, 109 through ACJHPR, 171-2 through AU, 171-2 for hazardous waste trafficking, 579-81 Revolutionary United Front (RUF), 510-11 Reydams, Luc, 287 right to appeals. See appeals right to be informed of content of charges, 694 right to be tried in own presence, 712-13 right to communication of information. See communication of information, right to right to communication with counsel of choice. See communication with counsel of choice right to disclosure of evidence. See disclosure of evidence right to legal representation. See legal representation right to preparation of defence. See preparation of defence right to rebel, UCG and, 630-4, 637 right to silence. See silence rights of accused, 680-3. See also fair trials equality before courts, 682-5 Robinson, Darryl, 753 Rome Conference, 94, 509-10, 794, 799, 804, 885 Rome Statute. See also liability ACC jurisdiction over, 841 accountability under, 24 aiding and abetting under, 767 Article 5, 346-7 Article 6, 23, 513 Article 7, 513 Article 8 bis, 268-9, 315-19, 322-4, 513 See also aggression Article 15, 281-2 Article 16, 89, 138-9, 622 Article 17, 47, 60, 96-7, 647-8 Article 18, 97 Article 19, 97 Article 27, 36, 843-5, 847, 856-9 See also immunity Third Nuremberg Principle, 845-9 Article 28, 210 Article 31, 872-922 See also liability Article 32, 902, 904-5 Article 33, 909-10 Article 53, 112-13

Article 67, 680-3 See also fair trials Article 72, 736-7 Article 91, 736 Article 93, 736-7 Article 96, 736 Article 97, 737 Article 08, 726, 730 complementarity and, 47, 649-52, 664-5 crime of aggression under, 279-80, 315, 322-4, 909 crimes against humanity under, 276-7 criminal liability under, 755-7, 775 CSOs and, conflicts with, 1120 competing obligations, 1120-1 domestic implementing legislation and, 1121 financial burdens under, 1122 overlapping jurisdictions, 1120-1 drug trafficking under, 364 ICC and, 14-15 jurisdiction under, 182 immunity under, 738-9 for Heads of State, 1113 impunity under, 95-6 international cooperation under, 731-2, 740 international crimes under, 112 Malabo Protocol and, 23-4, 95-6 mercenarism under, 469 money laundering under, 509-10, 513 positive complementarity under, 98-100 sentencing under, 936, 938-42 UCG under, 624, 638-9 victims' rights under, 953-5 Rouget, François Richard, 466-7 RUF. See Revolutionary United Front rule of law in African States, 40-1 in Dakar, 4 transitional justice and, 169 Rules of Procedure and Evidence, in ICC, 681, 728 corporate criminal liability and, 833-4 reparations in, 951 Ruto, William, 10-11 Rwanda. See also International Criminal Tribunal for Rwanda atrocity crimes in, 60 civil war in, 640-1 corporate criminal liability in, 783 genocide in, 184 international crimes in, 184

politico-military organizations in, 293 sentencing in, 932-3 universal jurisdiction in, 86-8 SADC. See Southern African Development Community Saland, Per, 880 sanctions corporate, 28, 824-7 state non-compliance, 739, 981 Sankoh, Foday, 293-4, 299 Saudi Arabia, terrorism in, 205 Savimbi, Jonas, 294 Schabas, William, 207 Schramme, Jacques, 466 SCSL. See Special Court for Sierra Leone sea mercenarism, 451 Security Council Resolution 1566 (2004), 424-5, 431 security sector reform, 174 self-defence, as legal defence, 882, 916-17 self-determination, 211, 410-11, 440, 451, 1119. See also liberation and selfdetermination as African legacy, 214, 217 against colonialism, 66 exclusion of, under Malabo Protocol, 439-41 self-incrimination, right to freedom from, 725-6 self-representation, right to, 714-17 Senegal. See also Dakar; Habré, Hissène Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and, 82 Extraordinary African Chamber, 84-5, 645 International Commission of Jurists in, 4 universal jurisdiction in, 58 senior state officials, immunity for, 2, 30, 33 sentences, sentencing and through bricolage, 931 commutation of, 942-3 for core crimes, 930-1 for corruption, 489-92, 501-2 penalties in, 491-2 early release and, 944 enforcement of, 941-5 guidance for, 930-8 by ICC, 927-9 by ICTR, 932-4, 942 by ICTY, 932, 942

#### 1160

#### Index

sentences, sentencing and (cont.) international detention and, 944-5 mitigating factors in, 877-8, 880, 893, 935-6, 941 ne bis in idem principle and, 944-5 nulla poena sine lege principle and, 931 pardoning of, 942-3 penalogical aspirations in, 941-5 penalties and, 930-8 reduction of, 942 under Rome Statute, 936, 938-42 in Rwanda, 932-3 scope of, 927-9 by SCSL, 927-9, 934, 942-3 in Uganda, 932 Al-Senussi, 627-8, 657-9 September 11th attacks, 307, 434 Sesay, Issa, 510-11 sexual assault, violence and, 878-9 genocidal context for, 23, 265 under ICL, 23 rape, 23 Seychelles, 375 human trafficking in, 541-2, 544 NDEA in, 384 al-Shabaab, 307 Sharm el Sheikh Protocol. See Protocol on the Statute of the African Court of Justice and Human Rights Shaw, Malcolm, 637-8 Shelton, Dinah, 64 Sherman Anti-Trust Act, 290-1 Sierra Leone. See also Special Court for Sierra Leone; Taylor, Charles atrocity crimes in, 60 drug trafficking in, 375 jurisdiction over, 363-4 illicit exploitation of natural resources in, 592, 595 Lomé Peace Agreement, 135 mercenarism in, 460, 467 pillage in, 594 prioritizing of peace in, 135-6 TRCs in, 149-50 silence, right to, 725-6 silent accomplice, 787-8 sine qua non, 38, 642 Sirleaf, Matiangai, 36 Situation in Kenva case, 627 slavery, human trafficking for, 534, 536-7 Smith, Peter, 499

smuggling, human trafficking compared to, 538-9 socioeconomic justice, in transitional justice, 164 soldiers, children as, 295, 297 soldiers of fortune, 451 Somalia, piracy and, 392, 399 South Africa apartheid in, 66, 149-50 criminalization of, 77-9 corporate criminal liability in, 783 human trafficking in, 541, 543-4 illicit exploitation of natural resources in, 614 Marikana Massacre in, 614 mercenarism in, 467 under Regulation of Foreign Military Assistance Act, 462, 467 Promotion of National Unity and Reconciliation Act, 149-50 terrorism laws in, 433-4 Truth and Reconciliation Commission, 149-50 withdrawal from ICJ, 501 Southern African Development Community (SADC), 478, 480 sovereignty illicit exploitation of natural resources as violation of, 601-6 for indigenous peoples, 605-6 of national courts, 106 non-interference and, 122 of OAU, 147-8 state, 231 Special Court for Sierra Leone (SCSL) ACJHPR compared to, 1096-7 cooperation with national systems, 282-3 corporate criminal liability in, 299 creation of, 57, 184 criminal defence in, 901, 918-20 funding of, 1070-1 location of, 72 money laundering in, 507, 510-12 politico-military organizations and, 293-4 sentencing at, 927-9, 934, 942-3 terrorism and, 409, 422-3 witness anonymity in, 687-8 Special Tribunal for Lebanon (STL), 409 legal persons in, 798-9 mens rea definition in, 625 UCG and, 625 witness anonymity in, 687-8

Specialized Technical Committee (STC), of AU, 10 speedy trials, right to, 711-12 staff members for ACJHPR, 1059, 1091-6, 1098 interpreters, 1095 of AU, 1035–9, 1043–6, 1053 state insurrections, from terrorism, 414-35 state non-compliance, for sanctions, 739, 981 state responsibility, for human trafficking, 539-47 through international cooperation, 546-7 non-refoulement and, 543-4 prohibition and prosecution of, 540 for protection of victims, 542-3 state sovereignty, 231 OAU and, 147-8 statelets, corporate criminal liability in, 300-1 Islamic State, 301 Palestinian Authority, 301 statute of limitations, for criminal defence, 922 Statute of the ACJHPR, 177-8, 190-5 Statute of the Administrative Tribunal of the International Labour Organization (ILOAT), 1040-1 Statute of the Administrative Tribunal of the Organization of African Unity, 1045 STC. See Specialized Technical Committee STL. See Special Tribunal for Lebanon SUA Convention. See Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation Sub-Saharan Africa. See also specific countries human trafficking in, 529 subsidiaries, corporate criminal liability for, 754, 831-2 Sudan. See also al-Bashir, Omar Hassan Ahmed: Darfur, Sudan CPA in, 115 ICC in, 88-90, 114, 116, 189 National Islamic Front in, 305-6 politico-military organizations in, 203 White Army, 312 superior orders, as defence, 907-10 supply offences, for drug trafficking, 370-3 Swaziland, 382 Svria politico-military organizations in, 293 terrorist organizations in, 309-10

Tanzania. See also Dar es Salaam human trafficking in, 543 illicit exploitation of natural resources in, 614 Taylor, Charles, 135, 299, 594, 604, 641, 1113 cost of trial of, 43 incarceration of, 942-3 lack of counsel for, 716-17 money laundering case against, 526 temporary immunity, 14, 253 terrorism, as crime, 92-3, 177, 250 Additional Protocol I and, 442 Additional Protocol II and, 442 in Africa, 311-12 See also specific countries under African Charter on Human and Peoples' Rights, 424-5 liberation and self-determination struggles and, 440 African Commission on Human and Peoples' Rights and, 428 in Algeria, 411 Arab League on, 413, 415-16 Convention on the Suppression of Terrorism 1998, 410 AU counter-terrorism developments, 417-19 African Model Anti-Terrorism Law, 417-18, 420, 431-2, 447 Plan of Action on the Prevention and Combating of Terrorism in Africa, 418-19 by Boko Haram, 305, 307 conventions and treaties on, 422-3 criminal liability for, 435-8 under Security Council Resolution 1566, 424-5, 431 cultural heritage and, 415-16 through cyber-attacks, 427 defence exclusions, 445-7 definition of, 304-5, 419-47 cultural heritage damages in, 429-30 damage to natural resources, 427-8 deprivation of liberty in, 425-6 environmental heritage damages in, 428-9 general damages in, 426-30 life endangerment in, 425-6 property damage in, 426-7 drafting history for, 419-21 in Egypt, 413 elements of, 419-47 financing of, 764-5

terrorism, as crime (cont.) under UN Convention for the Suppression of the Financing of Terrorism, 765, 814 under ICCPR, 424 ICTY and, 409 under IHL, 410-11, 421 acts excluded from definition of, 441-5 impunity prohibitions, 444-5 liberation and self-determination and, 441 intention as factor for, 430-5 through disruption of public services, 432-4 through intimidation, 431-2 state insurrections as result of, 414-35 under international law, 423-4 interpretation of, 421-3 in Iraq, 308-9, 430 by ISIS, 305 League of Nations and, 410 liberation and self-determination as exclusion from, 439-41 under African Charter on Human and Peoples' Rights, 440 under IHL, 441 in Mali, 430 motive requirements for, 430-5 national criminalization of, 410 in Nigeria, 310-11 OAU Convention on the Prevention and Combating of Terrorism, 410-19, 447-8 criminalization of terrorist acts, 415-16 definition of terrorist acts, 414-15 development of, 411-12 drafting of, 412-14 preamble, 414 under OAU Declaration on a Code for Conduct for Inter-African Relations, 412 OIC Convention on Combating International Terrorism, 410, 413-16 PALU recommendations for, 419-20 public emergency as result of, 432, 434 purposes of, 430-5 by Al Qaeda, 305-9 September 11th attacks, 307, 434 refugee flows as result of, 311-12 under regional laws, 423-4 in Saudi Arabia, 305 scope of, 423-47 in African States, 411

SCSL and, 409, 422-3 September 11th attacks on U. S., 307, 434 in South Africa, laws for, 433-4 STL, 409 in Syria, 309-10 as transnational crime, 422-3 in Uganda, 305 under UN Convention for the Suppression of the Financing of Terrorism, 765 UN Draft Comprehensive Terrorism Convention, 410 Terrorist Bombings Convention (1997), 438 Terrorist Financing Convention (1999), 431 TFV. See Trust Fund for Victims Thiam, Doudou, 869, 888 Third World Approaches to International Law (TWAIL), 801 Tladi, Dire, 33 TNCs. See transnational corporations Tojo, Hideki, 846 Tokyo Charter conspiracy in, 774-5 crime of aggression under, 316 See also Charter of the Military Tribunal for the Far East Tokvo Tribunal Charter of, 846 crime of aggression in, 314-15 immunity in, 861 torture, 243-4 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 82-3, 111, 277-8 under Habré, 419, 949 Torture Convention. See Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment toxic colonialism, in Africa, 555-64 economic globalization as influence on, 557-8 MNCs and, 558 TNCs and, 558 historical development of, 558-64 in Somalia, 559-60 trading in influence, as corruption, 486 influence peddlers, 486 traditional justice and reconciliation mechanisms, 158-61 accountability in, 159

legal reforms, 161

trafficking

Persons 2000

in Chile, 143-4

evolution of, 169

goals of, 155-6

in Namibia, 145

purposes of, 168

sequencing in, 156

in Uruguay, 144

126-8

ICTJ, 152

institutional reforms through, 161 peace-making processes, 157-8 cooperation initiatives, 154 coordination initiatives, 154 memorialization standards for, 160-1 development of, 147-9 reparation standards for, 160-1 truth commissions, 158-61 focus of, 151-63 trafficking. See drug trafficking; human ICL and, 170 long-term promise and prospects of, 163-5 Trafficking Protocol. See Protocol to Prevent, normative issues in, 154-6 Suppress and Punish Trafficking in accountability, 155 objectives of, 149-50 transitional justice. See also African Union principles and values of, 151-6 in Argentina, 141-3 entrenchment of, 152-6 ATJF, 112-13, 117-18 promotional aspects of, 152-4 for inclusive participation in transitional components of, 168 justice processes, 152-3 definition of, 22, 167-9 for local and national ownership, 152-3 of reconciliation, 153-4 RECs and, 154 competition between, 156 responsibility in, 153-4 traditional justice and reconciliation mechanisms, 158-61 Malabo Protocol as, 110-11 in Mozambique, 144-5 accountability in, 159 institutional reforms, 161 "one court" system and, 20-3 legal reforms, 161 promotional aspects of, 152-4 memorialization standards, 160-1 for inclusive participation, 152-3 reparation standards, 160-1 for local and national ownership, 152-3 truth commissions, 158-61 reconciliation in, 153-4 transnational corporations (TNCs), 558 transnational crime agreements, 802-3, 807 reconciliation and, 169 transnational crimes, 227-36, 361. See also drug promotion of, 153-4 trafficking; mercenarism; terrorism; rule of law and, 169 unconstitutional change of government in Africa, 92-3 socioeconomic justice as part of, 164 in African Criminal Chamber, 340-61 analytical framework for, 232-6 in violence management context, 167 characteristics of, 227-8 Transitional Justice Policy Framework (of AU), corruption, 92-3, 177, 246-9 criminalization of, 344-5 accountability in, 153-4 defined, 225 as normative issue, 155 under existing treaty regimes, 342-3 in traditional justice and reconciliation gravity threshold problem for, 345-9 mechanisms, 159 criminal criteria in, 346-9 human trafficking, 92-3, 177, 246-9, 354 coherence initiatives, 154 complementarity principle and, 159 under ICL, 229 content of, 151-63 See also traditional justice illicit exploitation of natural resources, 177, and reconciliation mechanisms 246-9 actors' mechanisms, 162-3 immunity from prosecution, 356-8 children as factor in, 161-2 ratione materiae, 358 constitutive elements, 156-7 ratione personae, 258 gender issues as factor in, 161-2 international crimes compared to, 229-30, governance mechanisms, 162-3 255-6

1163

transnational crimes (cont.) jurisdiction for, 92-3, 106, 356-8 ICC, 337 under Malabo Protocol, 92-3, 238-9, 246-9, 338 partly transnational crimes, 252-4 modes of responsibility, 349-52 lex specialis rule, 351-2 money laundering, 92-3, 177, 246-9 definition of, 343 in Kenya, 353 national laws and, 344-5 nature of, 228-32 piracy, 92-3, 177, 246-9 primary rules for, source of, 343-4 procedural issues, 358-61 investigations, 359-60 punishment of, 352-6 state practices for, 352-5 regional criminal courts for, 258-61, 337-40 under Rome Statute, 346-7 scope of, 336-7 suppression of, 342-3 terrorism as, 422-3 trafficking in hazardous wastes, 49, 177, 246-9 UCG as, 623 UN Convention against Transnational Organized Crime, 386 transnational criminal law, 228-9 ICL compared to, 229-30 indirect liability system in, 230 Transparency International, 480 travaux préparatoires, 262, 323-4, 597 TRCs. See truth and reconciliation commissions Treaty of Pelindaba. See African Nuclear Weapon Free Zone Treaty trials. See also Nuremberg trials; Tokyo Tribunal costs of, 43, 103-4 tribunal fatigue, 72 Trinidad and Tobago, 69-70 drug trafficking in, 362 Trust Fund for Victims (TFV), 952, 955-6, 960-1 truth and reconciliation commissions (TRCs), 149-50 Transitional Justice Policy Framework and, 158-61 tu quoque defence, 911-13

Turkey, politico-military organizations in, 293 Tutu, Desmond, 284 TWAIL. See Third World Approaches to International Law "two ship rule," in piracy, 395-6 US. See United States (US) UCG. See unconstitutional change of government Uganda amnesty laws in, 932 High Court in, 114-16 human trafficking in, 543 ICC in, 205-6 ICD in, 932 illicit exploitation of natural resources in, 591 LRA, 114-16, 136-7 terrorism by, 305 pillage in, 591 sentencing in, 932 UPDA in, 114-15 Ugandan People's Democratic Army (UPDA), 114-15 UK. See United Kingdom ultimum remedium, 633-4 UN Convention against Transnational Organized Crime, 386 UN Dispute Tribunal (UNDT). See United Nations UN Draft Comprehensive Terrorism Convention, 410 UN Drug Trafficking Convention, 367-8, 370 UN Multidimensional Integrated Stabilization Mission to Central African Republic (MINUSCA), 124 UN Seminar on the Creation of Regional Commissions on Human Rights, 3 UNAMID Hybrid Force. See United Nations African Union Mission in Darfur UNAT. See United Nations UNCAC. See United Nations UNCLOS. See United Nations Convention on the Law of the Sea unconstitutional change of government (UCG), 39-41, 619-21 in African States, 40-1, 338 "Arab Spring" as, 641 AU and, 29-41, 622 Constitutive Act, 40-1 through civil strife, 640-1

Article 24(2), 180

complementarity and, 670 constituent elements of, 624-6 core crimes and, 626-30 in Côte d'Ivoire, 628-30 criminalization of, 621, 630-41 definition of, 625 establishment of special criminal chamber, 621-6 ICC response to, 622, 626-7 ICCPR and, 633 under ICL, 634-5 jus in bello, 640 in Kenya, 627 in Latin America, 40 in Libya, 627-8 Malabo Protocol and, 41, 250-2 through mercenarism, 460 in monarchies, 632 non-intervention principles and, 634-41 OAU and, 40-1 per argumentum a contrario, 637-8 prosecute or extradite for, 635 ratione materiae and, 638 ratione personae, 638 right to rebel and, 630-4, 637 under Rome Statute, 624, 638-9 static forms of, 625 STL and, 625 as transnational crime, 623 ultimum remedium, 633-4 universal jurisdiction for, 622-3 UNDT. See United Nations UNEP. See United Nations unequal access to court, AUAT and, 1040-3 ICJ response to, 1040-3 UNGA. See United Nations General Assembly UNHCR. See United Nations UNITA. See National Union for the Total Independence of Angola unitary perpetrator model, 746-8, 750-5 United Kingdom (UK) Falklands War, 142 Homicide Act, 876-7 United National Appeal Tribunal (UNAT). See United Nations United Nations (UN). See also Special Court for Sierra Leone; United Nations Convention on the Law of the Sea: United Nations General Assembly Charter of, 64 Article 2(1), 345, 536-7, 846

Article 25, 180 Article 53, 181 Article 103, 180-1 crime of aggression under, 322-4 Convention for the Suppression of the Financing of Terrorism, 765, 814 Draft Comprehensive Terrorism Convention, 410 on mercenarism, 449, 451-2 MINUSCA, 124 Security Council Resolution 1566, 424-5, 431 UNAT, 1043 UNCAC, 349-50, 478, 484, 491, 493 money laundering, 508-9, 516 UNDT, 1043 UNEP, 558 UNHCR, 447 Universal Declaration of Human Rights, 65-6 UNSC, 139-40, 180. See also concurrent jurisdiction ICC and, 182 UNTOC, 508 human trafficking under, 530 money laundering, 508-9, 516 UNWCC, 868, 887-90, 911-12 United Nations African Union Mission in Darfur (UNAMID Hybrid Force), 124, 138 United Nations Convention against Corruption (UNCAC). See United Nations United Nations Convention against Transnational Organized Crime, 236 United Nations Convention against Transnational Organized Crime (UNTOC). See United Nations United Nations Convention on the Law of the Sea (UNCLOS), 248, 343, 388-91 Articles, 389–90, 393 28, 388-9, 398-403 101, 388-9, 398-403 103, 398-400 105, 391, 404 codification of piracy under, 391 Peruvian response to, 397-8 primary offences, 392-8 United Nations Environment Program (UNEP). See United Nations

United Nations General Assembly (UNGA) on corruption, official response to, 478 Declaration against Corruption and Bribery in International Commercial Transactions, 478 Declaration on Measures to Eliminate International Terrorism, 414-15 ILC and, 232 regional human rights court systems, 68 United Nations High Commissioner for Refugees (UNHCR). See United Nations United Nations Security Council (UNSC). See United Nations United Nations War Crimes Commission (UNWCC). See United Nations United States (US) money laundering in, 524 PMSCs in, 475 Racketeer Influenced and Corrupt Organizations Act, 303-4 September 11th attacks, 307, 434 War Crimes Act, 303 Universal Declaration of Human Rights, 65-6 Preamble of, 631 universal jurisdiction, 58-9 abuse and misuse of, 85-8 AU and, 86-8 Decision on the Abuse of the Principle of Universal Jurisdiction, 623 in DRC, 86 expansion of, 85-6 over piracy, 403-4 in Rwanda, 86-8 for UCG, 622-3 UNSC. See United Nations UNTOC. See United Nations UNWCC. See United Nations UPDA. See Ugandan People's Democratic Army Uruguay Expiry Law in, 144 transitional justice in, 144 use of state territory for aggressive acts against another state, as act of aggression, 331-2 use of weapons, as act of aggression, 328-9 van den Herik, Larissa, 829

vicarious liability, 812-13, 821 Vice President/Vice Presidency, of ACJHPR, 976, 1060 Victims and Witness Unit, 1066-7 victims' rights. See also reparations future prospects for, 961-2 historical reference to, 948-50 identification of victims, 953 international courts and tribunals and. 950 legal framework on, 950-5 under Malabo Protocol, 948-50 participation of victims and, 953-5 under Rome Statute, 953-5 TFV, 952, 955-6, 960-1 Victores, Óscar Humberto Mejía, 116 Vienna Convention on the Law of Treaties, 1008 violence. See also sexual assault management of, 121-8 African Commission of Human and Peoples Right, 122 by AU, 122-8 under Constitutive Act, 122 through peacekeeping missions, 123-4 through PSC, 122-6 RECs and, 124-5 transitional justice and, 167 OAU response to, 122 sexual assault and, 878-9 transitional justice and, 125-8 war crimes ACJHPR, international criminal jurisdiction of, 87 amnesties for, 134, 683 AU and, 7-9 by al-Bashir, indictments against, 7-9, 88, 137-8 in Canada, 291 criminal defences for, 903, 905, 910-17 IAC and, 267 ICTY and, 274 under Malabo Protocol, 239-46, 267-74 pillage as, 591, 593-4 War Crimes Act (US), 303 wars. See civil wars waste disposal contracts, 558-9 WBAT. See World Bank Administrative Tribunal weapons of mass destruction, 244-5, 272, 417

Versailles Treaty of 1919, Article 227, 848

Wet, Erika de, 1033 whistle-blowers, 489–90 White Army, 312 witnesses anonymity of, 687–8 right to examination of, 723–5 World Bank, 1037 World Bank Administrative Tribunal (WBAT), 1044–6 Wright, Quincy, 1032–3

Yeo, Stanley, 874, 883, 898 youth, as defence, 921–2 Yugoslavia, the former, Human Rights Watch in, 135. See also International Criminal Tribunal for the Former Yugoslavia
Zaire, mercenarism in, 460
Zambia corruption in, 499–500 human trafficking in, 541–2, 544
Zerrougui, Leila, 297
Zimbabwe corporate criminal liability in, 783 hazardous waste trafficking in, 584 politico-military organizations in, 293

https://doi.org/10.1017/9781108525343.046 Published online by Cambridge University Press