

Index

- accountability, investigation and, 95–9
- ACHPR. *See* African Commission on Human and Peoples' Rights
- acquisition of territory. *See* occupation of territory
- Additional Protocols to Geneva Conventions (1977)
- combatant/non-combatant distinction, 120
 - human rights and, 5
 - IACs and, 2
 - NIACs and, 3
- African Commission on Human and Peoples' Rights (ACHPR)
- co-applicability of IHL and IHRL, 64–5
 - geographical applicability (*ratione loci*) of IHRL, 50, 52
- Akande, Dapo, 240
- Aldrich, George, 114, 155
- Al-Qaeda. *See* terrorism
- applicable law. *See* co-applicability of IHL and IHRL; human rights; international humanitarian law (IHL); peacetime violence; transnational conflicts
- Aristotle, 115
- armed conflict. *See also* classification of conflicts; international armed conflicts; non-international armed conflicts; transnational conflicts; use of force
- applicability of law of, 1
 - armed attacks, definition of, 254
 - battle as legal concept, 127
 - boundaries of, 4
 - causes of indeterminacies in law of, 196
 - civilian participation, 120, 129
 - classification of conflicts. *See* classification of conflicts
 - combatant/non-combatant distinction, 119–27
 - complexity of, 17–18
 - crisis narratives, 118
 - determination of existence of, 235
 - distinctiveness of current conflicts, 135
 - existence of, 22–4
 - historical development of law of war, 127
 - irregular fighting, rise of, 120, 127–33
 - legal controversies, 10
 - moral approach to. *See* morality
 - normative approach to, 11
 - 'overlapping consensus' on law of, 278
 - protracted armed confrontations as, 201
 - reduction in casualties, 134
 - technological developments, 133–9
 - total warfare, 128
 - traditional warfare, reduction of, 127–33
 - Dialogue approach to, 10–14, 266
- battle as legal concept, 127
- Baxter, Richard, 15
- bearers
- duty-bearers, 22–39
 - rights-bearers, 43–4
- Ben-Naftali, Orna, 173
- Berman, Paul, 136
- Brussels Declaration (1874), combatant/non-combatant distinction, 120
- Bush, George W., 137
- Charter of the UN. *See* United Nations
- chivalry as obligation, 125
- Churchill, Winston, 120, 133
- civil disturbances. *See* peacetime violence

- civil wars. *See* non-international armed conflicts
- civilians
- civilian/combatant distinction, 119–27, 191
 - obligation to investigate deaths of, 96
 - participation in wars, 120, 129
 - review of detention of, 87
 - right to life under IHL, 206–13
- clarity of legal concepts and definitions, 115
- classification of conflicts
- Aristotle and, 115
 - armed confrontations other than IAC or NIAC, 239
 - clarity of legal concepts and definitions, 115
 - conclusions of Trialogue as to, 266–8, 278
 - core jurisdictional struggle, 108
 - critical legal studies approach, 122
 - disputes over ('classification crisis'), 107
 - formalist approaches, 107
 - generally, 4, 16, 106
 - IACs, 24–32, 239–41
 - importance of, 106
 - intensity as measure of conflict, 236
 - internal confrontations encroaching on
 - neighbouring State, 240
 - internal confrontations with international support for non-State party, 240
 - internal confrontations with international support for State party, 240
 - level of use of force, 25–6
 - NIACs, 32, 237, 239–41
 - novel wars, 108, 109, 173
 - Plato and, 115
 - pluralist approaches, 108
 - social discourse approaches, 107
 - transnational confrontations between State and non-State parties entirely within
 - non-consenting third State, 240
 - types of armed conflict, 235–41
 - violent confrontations as armed conflict, 235–9
 - wartime/peacetime divide, 112–19
- Clausewitz, Carl von, 120, 127, 170
- CLS. *See* critical legal studies
- co-applicability of IHL and IHRL
- acceptance of complexity of, 100, 103
 - adjudication, role of, 104
 - adjudicatory approaches to, 59–64
 - challenges of, 101, 104
 - concept of, 12, 15
 - conclusions of Trialogue on, 278
 - confirmation of shift towards, 19–20
 - conflict between IHL and IHRL, 202
 - contextual approach, 71, 79–83, 103
 - continued relevance of non-prioritised body of norms, 82–3
 - denial of applicability, 99
 - factors for development of, 100
 - general recognition of, 99
 - harmonious interpretation and, 71, 72–4, 103
 - human rights approach, 101
 - identification of particular context within conflict, 81
 - identification of specific norms, 82, 102
 - importance, 100
 - increase in adjudication, 54–8
 - increase in level of engagement, 101
 - international adjudication and, 54–71
 - interplay of primary and secondary norms, 71, 77–8
 - interpretive approach, 71, 78–9
 - legal mechanisms of coordination, 270–3
 - lex specialis* approach, 71, 74–7
 - normative perspectives on, 273–7
 - norm-by-norm analysis, 80
 - practical issues, 83
 - prioritisation of norms, 71
 - proportionality, 191
 - rights of disempowered individuals, 187
 - States and, 102
 - type of conflict as factor, 81–2
- combatant/civilian distinction, 119–27, 191
- Communism and terrorism, 137
- core jurisdictional struggle
- arising of, 108, 164, 167, 168, 171, 173, 181
 - causes of, 175
 - core jurisdictional narratives, 167
 - effects of, 169
 - IHL, 108, 196
 - IHRL, 171–95
 - rejection of pluralism, 108
- Corn, Geoffrey S., 6, 151
- counter-terrorism. *See* terrorism
- courts and tribunals
- 'age of adjudication' and, 20
 - classification of conflicts, 26
 - co-applicability of IHL and IHRL, 54–71, 101, 104
 - extraterritoriality of IHRL, 179
 - geographical applicability (*ratione loci*) of IHL, 46
 - intensity of NIACs, 32

- courts and tribunals (cont.)
 lawfulness of detention in NIACs, 68–71, 84, 187
 obligation to investigate and prosecute war crimes, 97
 parties to NIACs, 34
 targeted killings, 91
- Cover, Robert, 176, 177, 186
- Creasy, Edward, 120
- crime. *See* war crimes
- critical legal studies (CLS)
 classification of conflicts, 122
 role of legal norms, 164
- customary international law
 IACs and, 2
 prohibition on use of force, 252
- cyberspace, co-applicability of IHL and IHRL, 93–5
- deadly force, targeted killings, 90–2
- death. *See* permissible killing
- declarations of war
 non-issuing of, 112
 recognition of, 235
- detention, lawfulness in NIACs, 68–71, 84–90, 187
- Dunant, Henri, 130
- duties. *See* obligations
- ECtHR. *See* European Court of Human Rights
- enforcement of obligations and rights, 192–4
- European Court of Human Rights (ECtHR)
 civilians' right to life, 212
 co-applicability of IHL and IHRL, 65–71
 first moral task of law in war, 244
 geographical applicability (*ratione loci*) of IHRL, 51, 52
 lawfulness of detention in NIACs, 68–71, 86, 187
 obligation to investigate and prosecute war crimes, 97
 rights of disempowered individuals, 187
- extraterritoriality
 IHL, 179, 182
 IHRL, 6, 179
- formalism
 classification of conflicts, 107
 role of legal norms, 164
- Garner, James, 151
- Geneva Conventions I–IV (1949)
 Additional Protocols. *See* Additional Protocols to Geneva Conventions (1977)
 applicability to all armed conflicts, 235
 belligerent occupation of territory, 38
 classification of IACs, 24
 classification of NIACs, 32, 237
 combatant/non-combatant distinction, 120
 geographical applicability (*ratione loci*) of IHL, 45
 human rights and, 5
 IACs and, 2
 individual rights under IHL, 205
 intensity of hostilities, 248
 lawfulness of detention in NIACs, 87
 NIACs and, 3, 152
 positive causal interventions under, 216
 right to POW status, 120
 wartime/peacetime divide, 113
 geographical applicability (*ratione loci*)
 beyond territory, 46–8
 generally, 44
 throughout territory, 45–6
- Germany, Nazism and terrorism, 136
- Hague Conventions I–XIV (1907)
 declarations of war, 112
 IACs and, 2
- Hague Regulations (1899)
 combatant/non-combatant distinction, 120
 Martens Clause. *See* Martens Clause
- Haque, Adil, 205, 217
- historical development of law of war, 127
- Hohfeld, Wesley N., 175
- holders. *See* bearers
- HRC. *See* Human Rights Committee
- Huber, Max, 163
- human rights
 'age of adjudication' and, 20–2
 applicability, 7, 10, 195, 197
 armed conflict and, 6
 co-applicability with IHL. *See* co-applicability of IHL and IHRL
 controversies, 10
 convergence with IHL, 19
 core jurisdictional struggle, 108, 171–95
 disempowered individuals, 186–8
 disputes over applicability, 107
 duty-bearers, 22–39
 effects outside armed conflict, 10

- emergence and expansion of, 5–7
 enforcement, 192–4
 extraterritoriality, 6, 179–82
 geographical applicability (*ratione loci*), 44–53
 IHL and, 5–10, 11, 55, 160, 172, 175–8, 191
 IHL authorisation of conduct that amounts to human rights violation, 216–20
 individualised approach by, 8
lex specialis, 19, 82, 102, 172, 191
Lotus ruling and, 160
 Martens Clause. *See* Martens Clause
 material applicability (*ratione materiae*), 39–40
 moral dimension. *See* morality
 nature-of-things jurisprudence and, 188
 necessity, 209
 non-universality (social contract conception), 177
 obligations and rights in relation to, 175–8, 182–6
 paradigm, 7
 personal applicability (*ratione personae*), 40–4
 regulatory approach, 8
 right to life. *See* right to life
 rights-bearers, 43–4
 soldiers, 190
 State practice on applicability, 39
 strengths, 8
 symmetrical application, 201, 256, 258
 temporal applicability (*ratione temporis*) of IHL and IHRL, 53–4
 Trialogue approach to, 9, 266
 universal scope, 40
 universality ('state of nature' conception), 177
 wartime applicability, opposition to, 195
 weaknesses, 8
- Human Rights Committee (HRC)
 civilians' right to life, 208
 co-applicability of IHL and IHRL, 56
 first moral task of law in war, 244
 geographical applicability (*ratione loci*) of IHRL, 52
 soldiers' right to life, 214
 humanity as obligation, 125
- IACs. *See* international armed conflicts
 IACtHR. *See* Inter-American Court of Human Rights (IACtHR)
- ICC. *See* International Criminal Court (ICC)
 ICJ. *See* International Court of Justice
 ICTY. *See* International Criminal Tribunal for the former Yugoslavia
 IHL. *See* international humanitarian law
 IHRL. *See* human rights
 intensity as measure of conflict, 32–4, 236, 243–6, 257–63
 Inter-American Commission on Human Rights, co-applicability of IHL and IHRL, 59–61
 Inter-American Court of Human Rights (IACtHR)
 co-applicability of IHL and IHRL, 61–4
 obligation to investigate and prosecute war crimes, 97
 international armed conflicts (IACs)
 applicability of IHL, 2, 201
 beginning and end of, uncertainties over, 112
 classification of, 24–32
 definition of, 201
 disputes over classification of, 107, 114
 IAC/NIAC ratio, 134
 IHL authorisation of conduct that amounts to human rights violation, 217
 internal confrontations as, 239–41
 inter-State wars, 106
 level of use of force, 25–6
 material applicability (*ratione materiae*) of IHL and IHRL, 24–32
 non-protracted, 201
 non-State armed groups and, 2
 protracted, 201
 reduction in casualties, 134
 reduction in numbers, 134
 State intervention against non-State armed groups without territorial State consent, 27
 'symmetrical IHRL' applied to, 201
 Syrian conflict classified as, 28–32
 transnational conflicts as, 110, 141
 transnational confrontations as, 240
 transnational use of force by States, 26–8
 undeclared wars, 112
- International Court of Justice (ICJ)
 applicability of IHRL, 39
 co-applicability of IHL and IHRL, 74, 202
 definition of armed attacks, 254
 general applicability of human rights, 7
 geographical applicability (*ratione loci*) of IHRL, 50

- International Criminal Court (ICC)
 classification of conflicts, 26
 geographical applicability (*ratione loci*) of IHL, 48
 intensity of NIACs, 32
- International Criminal Tribunal for Rwanda (ICTR), geographical applicability (*ratione loci*) of IHL, 46
- International Criminal Tribunal for the former Yugoslavia (ICTY)
 'age of adjudication' and, 20
 classification of conflicts, 26
 classification of NIACs, 237
 geographical applicability (*ratione loci*) of IHL, 46
 human rights and, 5
 intensity of NIACs, 32
 parties to NIACs, 34
- international human rights law (IHRL). *See* human rights
- international humanitarian law (IHL)
 'adaptation' approaches, 12, 118, 121, 152, 194–5
 'age of adjudication' and, 20–2
 applicability, 2–5, 11, 109, 197
 applicability beyond territory, 46–8
 applicability throughout territory, 45–6
 authorisation of conduct that amounts to human rights violation, 216–20
 balance of humanitarian and military considerations, 5
 beginning of, 130, 162, 178
 chivalry as obligation, 125
 civilian/combatant distinction, 191
 civilians' right to life, 206–13
 clarity of concepts and definitions, 116
 co-applicability with IHRL. *See* co-applicability of IHL and IHRL
 controversies, 10
 convergence with human rights, 19
 core jurisdictional struggle, 108, 164, 165, 196
 crisis narratives, 118
 declarations of war as trigger, 235
 disputes over applicability, 107
 duty-bearers, 22–39, 185
 enforcement, 192–4
 extraterritoriality, 179, 182
 function of, 2
 geographical applicability (*ratione loci*), 45–8
 historical development of law of war, 127
 human rights and, 5–10, 11, 160, 172, 175–8, 191
 human rights treaties and, 55
 humanity as obligation, 125
 IAC/NIAC distinction, 106
 imperfect obligations, 124, 125
 individual rights under, 204
 institutional framework of, 4
 intensity of conflict as applicability factor, 236, 239
lex specialis, 17, 19, 60, 70, 81, 82, 141, 172
 material applicability (*ratione materiae*), 22–39
 military commanders' duty to enforce, 185
 military professional ('warrior') approaches, 131, 189
 moral dimension. *See* morality
 nature-of-things jurisprudence approach, 122
 necessity, 209
 necessity as obligation, 125
 non-crisis 'adaptation' approaches, 118, 121
 normative challenge to, 4
 obligations and rights in relation, 175–8
 obligations-based System, as, 178
 pacifist approaches, 131
 paradigm, 7
 perfect obligations, 124
 personal applicability (*ratione personae*), 40–4
 premises of, 110
 principle of legality, 124
 proportionality, 124, 191
 regulatory approach, 8
 rights of disempowered individuals, 187
 rights-bearers, 43–4
 scepticism about, 170
 soldiers' protection, 190
 soldiers' right to life, 213–16
 Statist-positivist approaches, 131
 strengths, 8
 technological developments in warfare and, 133–9
 temporal applicability (*ratione temporis*) of IHL and IHRL, 53–4
 traditional warfare and, 127, 130
 transnational conflicts, 109
 Trialogue approach to, 1, 9, 266
 wartime/peacetime divide, 113
 weaknesses, 8

- international law. *See also* customary international law
 applicability to peacetime violence, 106
 authorisation of use of force, 252
 beginning of, 162
 causes of indeterminacies in, 196
 crisis narratives, 118
 Trialogue approach to, 1
 US core jurisdictional struggle over, 168–71
- International Law Commission (ILC),
 co-applicability of IHL and IHRL,
 72, 73
- interpretation. *See also* Vienna Convention on the Law of Treaties (VCLT)
 co-applicability of IHL and IHRL. *See* co-applicability of IHL and IHRL
- inter-State wars. *See* international armed conflicts
- investigation, accountability and, 95–9
- Iraq
 anti-ISIS operations as IAC, 30
 anti-Kurdish operations as IAC, 30
 irregular fighting. *See* armed conflict
- Islamic State (ISIS). *See* terrorism
- Israel
 adaptation approach to NIACs, 152
 applicability of IHRL, 39
 co-applicability of IHL and IHRL, 57
 enforcement of obligations and rights, 192
 extraterritoriality of IHL, 179
 geographical applicability (*ratione loci*) of IHRL, 52
 judicial review of extraterritorial air bombings, 179
 right to POW status, 152
 rights-based IHL approach to judicial review, 192
 targeted killings, 91
 transnational conflicts as IACs, 141
- ius in bello*. *See* armed conflict
- Jinks, Derek, 219
- judicial review
 detention in NIACs, 69, 83
 extraterritorial air bombings, 179
 IHL-based, 187
 rights-based IHL approach to, 192
 standards of, 103
- jurisdiction. *See* co-applicability of IHL and IHRL; core jurisdictional struggle
- Kaldor, Mary, 135
- Kant, Immanuel, 195
- killing. *See* permissible killing
- Krieger, Heike, 10
- Kurdish forces, operations against as IAC, 30
- law of armed conflict. *See* armed conflict
- lawfulness of detention in NIACs, 68–71, 83, 187
- legal concepts and definitions, clarity of, 115
- legality. *See* principle of legality
- lethal force. *See* deadly force
- lex specialis*
 co-applicability of IHL and IHRL, 71, 74–7
 continued relevance of non-prioritised body of norms, 82
 IHL as, 17, 19, 60, 70, 81, 82, 141, 172
 IHRL as, 19, 82, 102, 172, 191
 prioritisation of norms and, 77–8
 right to life and, 202
- life. *See* right to life
- Lotus* ruling, 160–64
- Luban, David, 173, 178
- Martens Clause, 122, 125, 162
- material applicability (*ratione materiae*)
 belligerent occupation of territory to, 38–9
 existence of armed conflict, 22–4
 IACs to, 24–32
 IHL of, 22–39
 IHRL of, 39–40
 NIACs to, 32–8
- Maurice, John F., 112
- Meron, Theodor, 5
- military commanders' duty to enforce IHL, 185
- military professional ('warrior') approaches to IHL, 131, 189
- military technological developments, 133–9
- Moltke, Helmuth Karl Bernhard Graf von, 170
- morality. *See also* permissible killing; right to life
 authorisation of use of force, 252
 choice of IHL or IHRL, 200
 conclusions of Trialogue on moral approach to IHL/IHRL, 278
 first moral task of law in war, 199, 243–6, 249–57
 IHRL and moral tasks of law, 242–63
 IHRL as morally better law during war, 199, 258
 intensity of hostilities and, 243–6, 257–63

- morality (cont.)
 - legal context for use of force and, 249–57
 - moral approach to armed conflict, 13
 - moral approach to IHL/IHRL applicability, 198, 263–5
 - moral division of labour between IHRL and IHL, 201, 235, 263, 270, 275
 - moral obligations and outcomes of warfare, 198
 - moral tasks of law during war, 199, 220–6, 242–63
 - reality of armed conflict and, 200
 - second moral task of law in war, 199, 257–63
 - symmetrical application of IHRL, 201, 256, 258
 - use of force across international borders and, 242–63
- Napoleon (Bonaparte), 136, 195
- nature-of-things jurisprudence
 - IHL and, 122
 - IHRL and, 188
- Nazism and terrorism, 136
- necessity
 - differences between IHL and IHRL, 209
 - obligation as, 125
 - permissible killing, 206–13
- NIACs. *See* non-international armed conflicts
- non-combatant/combatant distinction, 119–27, 191
- non-international armed conflicts (NIACs)
 - applicability of IHL, 3, 201
 - beginning and end of, uncertainties over, 112
 - civil wars, 106
 - classification, 16, 32–8
 - disputes over classification of, 107, 114
 - history of regulation of, 140, 149–59
 - IAC/NIAC ratio, 135
 - IHL authorisation of conduct that amounts to human rights violation, 218
 - intensity, 32–4
 - intensity threshold for, 237
 - internal confrontations as, 239–41
 - internationalisation, 26
 - lawfulness of detention, 68–71, 83, 187
 - material applicability (*ratione materiae*) of IHL and IHRL, 32–8
 - non-State armed groups and, 2
 - parties, 34–5
 - POW status in, 31
 - reduction in casualties, 134
 - reduction in numbers, 134
 - soldiers' right to life, 213
 - transnational conflicts as, 110, 140
 - transnational confrontations as, 240
 - transnational terrorism as, 35–8
 - transnational use of force by States, 26–8
- non-State armed groups
 - applicability of IHL, 3
 - State intervention against, without territorial State consent, 27
- norms
 - accountability norms, 95–9
 - co-applicability of IHL and IHRL. *See* co-applicability of IHL and IHRL
 - conflict between IHL and IHRL norms, 268–70
 - normative approach to armed conflict, 11
- novel wars. *See* classification of conflicts
- nullum crimen sine lege*. *See* principle of legality
- OAGs. *See* non-State armed groups
- Obama, Barack, 134, 137
- obligations
 - disempowered individuals, towards, 186–8
 - enforcement of, 192–4
 - IHL as obligations-based system, 178
 - investigate and prosecute war crimes, 97
 - military commanders' duty to enforce IHL, 185
 - moral obligations and outcomes of warfare, 198
 - perfect and imperfect. *See* international humanitarian law
 - rights and, 175–8
- occupation of territory, material applicability (*ratione materiae*) of IHL and IHRL, 38–9
- organised armed groups (OAGs). *See* non-State armed groups
- Osiel, Mark, 124
- Pal, Radhabinod, 136
- peace
 - restoration of, 113
 - wartime/peacetime divide, 112–19
- peacetime violence
 - civil disturbances, 106
 - international law applied to, 106
- permissible killing. *See also* right to life
 - civilians of, 206–13
 - moral tasks of law during war, 220–6

- necessity, 206–13
- soldiers of, 213–16
- personal applicability (*ratione personae*)
 - duty-bearers, 22–39
 - rights-bearers, 43–4
- Pictet, Jean, 173
- Plato, 115
- pluralist approaches to classification of
 - conflicts, 107, 108
- Powell, Colin, 156
- POWs. *See* prisoners of war
- principle of legality, 124
- prisoners of war (POWs)
 - obligation to investigate deaths
 - of, 96
 - review of detention of, 87
 - right to POW status, 31, 120, 127, 128, 147, 152, 155
- proportionality, 124, 191
- protected persons. *See* civilians; prisoners of war

- ratione loci*. *See* geographical applicability
- ratione materiae*. *See* material applicability
- ratione personae*. *See* personal applicability
- ratione temporis*. *See* temporal applicability
- Raz, Joseph, 220
- right to life. *See also* permissible killing
 - civilians' right under IHL, 206–13
 - co-applicability of IHL and IHRL, 202
 - IHL and, 230–5
 - IHL authorisation of conduct that amounts to violation of, 216–20
 - IHRL and, 226–30
 - IHRL exception to, 215
 - moral tasks of law during war, 199, 220–6
 - soldiers' right under IHL, 213–16
- right to POW status. *See* prisoners of war
- rights. *See* human rights
- Russian Federation
 - co-applicability of IHL and IHRL, 67
 - geographical applicability (*ratione loci*) of IHL, 47
 - geographical applicability (*ratione loci*) of IHRL, 52
- Seward, William H., 113
- social discourse approaches to law, 107
- soldiers
 - protection under IHL and IHRL, 190
 - right to life under IHL, 213–16
- Solferino, battle of (1859), 130
- spatial applicability. *See* geographical applicability
- State practice
 - adaptation approach to NIACs, 152
 - classification of IACs, 29
 - classification of NIACs, 34
 - co-applicability of IHL and IHRL, 57, 66
 - enforcement of obligations and rights, 192
 - extraterritoriality of IHL, 179
 - geographical applicability (*ratione loci*) of IHL, 46
 - geographical applicability (*ratione loci*) of IHRL, 52
 - IHL and transnational conflicts, 109, 141
 - lawfulness of detention in NIACs, 68–71, 84, 187
 - Lotus* ruling, 160–64
 - obligation to investigate and prosecute war crimes, 97
 - personal applicability (*ratione personae*) of IHL and IHRL, 43
 - restoration of peace, 113
 - right to POW status, 147, 152, 155
 - targeted killings, 91
 - temporal applicability (*ratione temporis*) of IHL and IHRL, 53
 - transnational conflicts as IACs, 141
 - transnational conflicts as NIACs, 140
 - transnational terrorism classified as NIAC, 35
- Statist (Westphalian) model of conflict regulation
 - Lotus* ruling and, 160–64
 - Westphalian model, 143–9
- Sweden, personal applicability (*ratione personae*) of IHL and IHRL, 43
- Syrian conflict as IAC, 28–32

- Taft, William H., 156
- targeted killings, co-applicability of IHL and IHRL, 90–2
- technological developments in warfare, 133–9
- temporal applicability (*ratione temporis*) of IHL and IHRL, 53–4
- territorial acquisition. *See* occupation of territory
- territorial applicability. *See* geographical applicability
- terrorism
 - anti-Al-Qaeda operations as NIAC, 35
 - anti-ISIS operations as IAC, 30

- terrorism (cont.)
 applicability of IHL and IHRL, 17
 Communism and, 137
 distinctiveness of current conflicts, 136
 Nazism and, 136
 right to POW status, 152
 Syrian conflict as IAC, 28–32
 temporal applicability (*ratione temporis*) of IHL and IHRL, 53
 ‘torture memos’ (US), 109, 120, 140, 151, 155, 160
 transnational terrorism as NIAC, 35–8
- torture, definition of, 5
- total warfare. *See* armed conflict
- transnational conflicts. *See also* armed conflict; international armed conflicts; non-international armed conflicts
 classification as NIACs, 140
 disputes over applicable law, 107, 110, 164
 disputes over classification of, 107
 history of regulation of, 137–64
 IAC/NIAC distinction, 110
 IHL applicability, 109
Lotus ruling and, 160–64
 Martens Clause and, 162
 novel wars as, 109
 Statist (Westphalian) model of regulation, 143–9
- Dialogue approach, 1, 10–14, 266
- tribunals. *See* courts and tribunals
- Turkey
 anti-Kurdish operations as IAC, 30
 co-applicability of IHL and IHRL, 66
 geographical applicability (*ratione loci*) of IHRL, 52
- undeclared wars, frequency of, 112
- United Kingdom
 classification of NIACs, 34
 co-applicability of IHL and IHRL, 68
 geographical applicability (*ratione loci*) of IHRL, 52
 human rights of disempowered individuals, 187
 IHL and transnational conflicts, 141
 lawfulness of detention in NIACs, 68–71, 86, 187
 obligation to investigate and prosecute war crimes, 97
- United Nations. *See also* Human Rights Committee
 applicability of IHRL, 39, 41
 authorisation of use of force, 252
 co-applicability of IHL and IHRL, 56, 92, 95, 98
 prohibition of use of force, 252
- United States
 adaptation approach to NIACs, 154
 applicability of IHRL, 39
 co-applicability of IHL and IHRL, 57
 core jurisdictional struggle over international law, 168–71, 173
 geographical applicability (*ratione loci*) of IHL, 46
 geographical applicability (*ratione loci*) of IHRL, 52
 IHL and transnational conflicts, 109, 142
 lawfulness of detention in NIACs, 84
 restoration of peace, 113
 right to POW status, 147, 155
 Syrian conflict and, 29
 temporal applicability (*ratione temporis*) of IHL and IHRL, 53
 ‘torture memos’, 109, 120, 140, 151, 155, 160
 transnational conflicts as NIACs, 140
 transnational terrorism classified as NIAC, 35
- use of force
 across international borders, 242–63
 authorisation of, 216–20, 252
 first moral task of law in war and, 243–6
 level of, 25–6
 morality and legal context for, 249–57
 prohibition of, 252
- Vienna Convention on the Law of Treaties (VCLT), co-applicability of IHL and IHRL, 78
- violence. *See* armed conflict; peacetime violence
- violent confrontations as armed conflict, 235–9
- war. *See* armed conflict
- war crimes, obligation to investigate and prosecute, 97
- Westphalian (Statist) model of conflict regulation, 143–9
- Wilson, George G., 114