

Contents

<i>Acknowledgments</i>	ix
Introduction	1
CHAPTER 1 Is Law Dead?	9
CHAPTER 2 Timeslip: Invasion of the Crimea, Collapse of the League of Nations	21
CHAPTER 3 The Nuremberg Avant-Garde Moment	45
CHAPTER 4 Cold War <i>Jus ad Bellum</i> : Law of Force vs. Rule of Law	53
CHAPTER 5 Nuremberg Renaissance: The 1990s	71
CHAPTER 6 The Crime of Aggression: From Rome to Kampala	89
CHAPTER 7 Judging Wars	113
CHAPTER 8 Sci-fi Warfare	133
CHAPTER 9 You're under Arrest, Mr. President	151
CHAPTER 10 Activation	169
<i>Notes</i>	179
<i>Index</i>	247

Introduction

To initiate a war of aggression . . . is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.

—Judgment of the Nuremberg tribunal, 1946¹

I first met former Nuremberg prosecutor Benjamin Ferencz in The Hague in 2004. International Criminal Court (ICC) prosecutor Luis Moreno Ocampo, whose law clerk I had just become, introduced us in the doorway to his office. Ferencz was livid and Moreno Ocampo found this amusing.

Five foot tall and eighty-four years old, Ferencz stood three inches from my face bellowing: “Why aren’t you screaming? Why aren’t you screaming? This is the job for the young people to do.” What made him especially angry was that the United States had lobbied forcefully to exclude the crime of aggression—individual criminal responsibility for aggressive war—from the ICC’s code of crimes, or—if aggression were included—that US leaders would not be prosecuted. Then the United States had illegally invaded Iraq without any leadership accountability and undermined his life’s work: criminal accountability for aggressive war.

“Conservatives intent on destroying the International Criminal Court have misstated the facts and have done a disservice to the United States and its military personnel,” Ferencz raged. “How much more suffering must the innocents of this planet endure before decision-makers recognize that law is better than war?”

After the Second World War, Ferencz had prosecuted the *Einsatzgruppen Case*, a trial of twenty-two Nazi death-squad leaders who had killed over a million victims and claimed self-defense. Ferencz spent the rest of his life campaigning to create a permanent ICC modeled on the Nuremberg precedent, capable of punishing leaders who committed any of the four core international crimes: genocide, war crimes, crimes against humanity, and aggression. For him, a proud American, the US invasion of Iraq, based on falsified information about a future attack, signaled a Bush administration campaign to undermine international law. “They are entitled to their opinion but they are not entitled to lie to the American public and get away with it,” he fumed. For Ferencz, lying to justify war and exempting American leaders from the Nuremberg precedent were shortsighted hypocrisy. If legal accountability was not equally applied to

2 • Introduction

all, Ferencz believed it would undermine the rule of law and destroy the world.

I had just been admitted to a doctoral program at Harvard Law and was trolling for a dissertation topic. Moreno Ocampo told Ferencz he was encouraging me to study the so-called peace-versus-justice dilemma. “You wanna talk about peace versus justice?” Ferencz nudged. “Imagine prosecuting the Germans while we needed them to fight the Cold War against the Russians!”

Moreno Ocampo was silent. He was sympathetic to the Nuremberg principle that aggressive war must not be tolerated, but he was overloaded and a new law meant more prosecutions.

The dilemma landed on me.

Would criminal accountability for aggression set back alternative avenues for peace? Or was there no lasting peace without justice? Was Ferencz overzealous, or was he right?

I decided to study the crime of aggression and find out.

Ferencz advocated for my inclusion as a nonstate delegate to the Special Working Group on the Crime of Aggression, charged with drafting the crime by the Assembly of States Parties to the ICC. I started as a note taker, beginning my journey to understanding the way modern war is conceptualized and judged. In time, I earned a place as an independent expert wrestling with the design of international law’s supreme crime, a crime one scholar pessimistically dubbed “a Gordian knot in search of a sword.”²

The crime of aggression would provide domestic and international courts with a powerful check on authoritarian power. After a decade of negotiations and against all expectations, in 2010, the signatory states of the ICC convened a multilateral conference in Kampala and added aggression to the list of crimes the court and its signatory states are empowered to prosecute. Comprising 123 states, the Assembly of States Parties scheduled the activation of the law for 2017, enough grace time for governments and militaries to revise their policies. Waging war, the traditional prerogative of presidents and princes, was about to become an international crime.

A prosecutable crime of aggression would strengthen the prohibition on war by making leaders—rather than their populations—personally responsible for the wars they start. The crime of aggression allows domestic and international courts to make principled, as opposed to political, determinations on whether a war is legal or illegal. It is based on the Nuremberg precedent, the UN Charter, and customary international law binding on all states. Aggressive acts enumerated in the definition of the offence include invasion, bombardment, blockade, and armed attacks on another state’s forces. If a state ratifies the crime of aggression—as fifteen

NATO states have already done—and incorporates it into domestic law, its courts have the authority to prosecute rogue leaders. If states falter, the ICC can step in and prosecute perpetrators, as it currently does in cases of genocide, crimes against humanity, and war crimes.

The basis of the crime of aggression is the conviction that leaders bring their populations to war, not the reverse, and it is with leaders that responsibility should lie. Languishing in his prison cell in Nuremberg, Hermann Goering, Hitler's second-in-command, explained the relationship to Gustave Gilbert, his prison psychologist:

Why, of course, the *people* don't want war. . . . Why would some poor slob on a farm want to risk his life in a war when the best that he can get out of it is to come back to his farm in one piece. . . . But, after all, it is the *leaders* of the country who determine the policy and it is always a simple matter to drag the people along, whether it is a democracy or a fascist dictatorship or a Parliament or a Communist dictatorship.³

When Gilbert argued that democracies are different because the people have a say, Goering had a ready reply:

Voice or no voice, the people can always be brought to the bidding of the leaders. That is easy. All you have to do is tell them they are being attacked and denounce the pacifists for lack of patriotism and exposing the country to danger. It works the same way in any country.⁴

Today, with unprecedented means to disseminate, measure, and control propaganda, the capacity of leaders to bring their populations to war has increased exponentially. The crime of aggression offers an opportunity to assign responsibility where it belongs.

State responsibility suffers from two frustrating deficiencies. It targets only states and fails to effectively leverage the potential of international law. The Nuremberg tribunal was prescient in its 1945 judgment: "Crimes against International Law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of International Law be enforced."⁵ Sidelined during the Cold War, individual responsibility has made a comeback.

It has become increasingly clear that twentieth century notions of state responsibility underlie contemporary international law and frustrate enforcement. The UN has no standing army and relies on cooperative states to pressure rogue states into compliance. Had the drafters of the UN Charter focused their energy on individuals instead, they may have leveraged their force and more effectively compelled compliance. At the turn of the millennium, dissatisfied states have resurrected the Nuremberg precedent, hoping to fix the defect. Beyond dispensing just deserts and vindicating the suffering of victims, retributive justice can have a deterrent effect on

4 • Introduction

political and military leaders and change the rules of international relations. Criminal accusations can seriously undermine the political ambitions of existing or aspiring leaders.⁶

Furthermore, al Qaeda's attacks all over the world, and now those of the Islamic State (IS, or ISIS), have demonstrated that states are no longer the only, or even the primary, threat to the peace. Technology is culminating in the ability of one person to wage war on the world and win.⁷ Corporations have adjusted to the emergence of the individual as a global threat and are fast-tracking the development of military technologies, including drones and cyberweapons, designed to target individuals from afar. International lawyers have taken the hint. By regulating the individual, they hope to better capture the sociological dimensions of modern war and, in this way, make international law more effective.

Criminal accountability will not end war, but has the potential to influence the practice of domestic and international politics so that aggressive war is no longer a tempting option. Even when countries do not sign on to the law or opt out, an activated crime of aggression will provide opponents of authoritarian leaders with the legal leverage to curtail impulsive wars. Had the crime of aggression been law in 1990, Iraqi president Saddam Hussein could have been punished for the invasion of Kuwait (as US President George H. W. Bush and UK Prime Minister Margaret Thatcher discussed), perhaps precluding the 2003 Iraq War and saving Hussein's civilian population from crippling sanctions. Arguably, had aggression been a prosecutable crime in 2003, UK Prime Minister Tony Blair—who relied heavily on the legal advice of his attorney general—would not have brought his country to war in Iraq. And without the Iraq War there would be no ISIS. The law can also be used to defend cases involving the legitimate use of force. A clear legal standard provides legitimacy for leaders unfairly maligned for using necessary and proportional self-defense in response to an armed attack on their territory.

The enforcement of international criminal law has been more successful than most people realize, although prosecution occurs more often domestically than in The Hague's courts. But even The Hague has had success. Once-powerful presidents, prime ministers, and vice-presidents have been brought before the ICC. Every one of the 161 Yugoslav war criminals indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) was captured or killed. The Rwanda Tribunal (ICTR) had similar success.

The crime of aggression holds the promise of buttressing the rule of law when it works, and revealing the futility of the rule of law when it fails. The ideal of law is that reason can constrain violence. Yet violations such those of the United States and Russia, unending warfare in Iraq and Syria, state-sponsored terrorism, and paralysis of the UN Security Council

challenge this conviction. The crime of aggression embodies a beleaguered hope that the rule of law can help create a more stable, peaceful world.

Although international law may sometimes seem meaningless as a means of opposing powerful leaders, it is the most reliable set of objective standards for checking unbridled greed and nationalism. By setting benchmarks for behavior, and rules of evidence and procedure, it allows government officials, lawmakers, courts, media, and civil society to evaluate the legality of their leaders' propaganda for waging war. The rule of law is the most effective resistance tool to sway institutions and to keep authoritarian leaders in check.

The revival of the crime of aggression is an overdue response to deepening dissatisfaction with the way wars are started and judged. Particularly frustrating was contemporary international law's emphasis on collective responsibility of states rather than individuals, its reliance on a biased political process to judge wars, and patchy enforcement. After a century of failed attempts and false starts, the impulse to hold individuals accountable for aggressive war resurfaced after the US-led invasion of Iraq, and, even more surprisingly, gained newfound traction. It emerged alongside pre-existing, competing practices for managing interstate conflict, such as negotiation, collective security, and balance of power.

Under the current UN regime, states are responsible for judging other states. Their decisions are influenced by politics as much as principles. The UN Security Council, a political body consisting of five permanent members—Britain, China, France, Russia, and the United States—and ten elected members sitting for two-year terms, has primary responsibility for determining whether aggression has occurred, and for mustering a collective response.⁸ Any one of these states, granted permanent seats on the council after World War II, can veto a decision of the other fourteen members of the council at will and without justification, leading to seventy years of chronic deadlock and biased decision making. Five powerful nations control determinations of aggressive war in a political process that favors the aggressors, leading victims of international aggression to conclude that the system is rigged.

The crime of aggression is a legal response to these frustrating deficiencies. Tools to identify breaches of widely accepted international standards give government officials, lawmakers, the courts, the media, and civil society the means to hold perpetrators to account. In regulating the individual, the new law has the potential to make international law fairer and more effective.

The new law responds to loss of faith in the Security Council's politicized decisions and to demands that justifications for armed force be tested against a universal standard by impartial judges. International, regional, and domestic courts are meant to serve as a check on the frivolous claims

6 • Introduction

of leaders who would frighten their populations with vague threats to their safety or the safety of others in order to justify aggressive war.

Whether or not criminal law deters aggressive war, the crime of aggression also has an important retributive function. When a criminal court punishes a perpetrator, it is inflicting a publicly visible defeat on behalf of the community meant to correct “the wrongdoer’s false message that the victim [is] less worthy.”⁹ Punishment serves to recognize wrongdoing even when it fails as a deterrent, and regardless of the effects of that punishment.¹⁰ The Nuremberg tribunal, for example, systematically debunked the alibis of the Nazi leaders and revealed to the world, beyond a reasonable doubt, the extent of their depravity. The crime of aggression provides the legal basis for judges hearing an aggression case to reveal the defendant’s true reasons for war and hold wrongdoers to account.

The new law responds to the perception that unbridled politics has failed to advance international peace. The drafters of the crime wager that the new law will infiltrate institutional practices and become a more compelling safeguard against reckless leaders intent on bringing their nations to war.

Critics worry that the crime of aggression will destabilize international relations by impeding negotiated solutions to international disputes. Andrew Natsios, President George W. Bush’s special envoy to Sudan, argues that the threat of arrest for international crimes increased Sudanese President Omar al-Bashir’s incentive to cling to power as the only means of avoiding punishment.¹¹ Natsios favored a political deal between the north and south “based on a realistic appraisal of what is achievable under the current unfavorable circumstances.”¹² But with ruthless leaders still in power in Sudan and South Sudan, the peace deal unraveled, resulting in mass atrocities and perpetual war.¹³ What Natsios overlooked is that justice can also contribute to sustainable peace by discrediting and marginalizing destabilizing political leaders. Serbian President Slobodan Milošević’s fall from power is a prime example.¹⁴ Following indictments issued by the ICTY, the Serbian people forced the authoritarian, internationally marginalized Milošević out of office, achieving peace without amnesty.¹⁵ It is leaders who invade other states who threaten international peace, not the laws enacted to check them.

Other critics worry that the crime of aggression will put a chill on humanitarian intervention.¹⁶ They warn that the prohibition will be *too* effective, stymying the use of force for humanitarian ends, preventing states from cooperating to stop mass atrocities where the legality of military action is contested.¹⁷ In fact, the new law finally makes it possible to transparently evaluate the veracity of a leader’s claim that an unauthorized war was undertaken for humanitarian ends, and distinguish genuine humanitarian

intervention from spurious self-interest under the guise of “Responsibility to Protect.”

Cynicism about legal rationality undermines the logic of institutional checks and balances on the arbitrary exercise of political and military power and concedes defeat to the forces critics claim to oppose. Empty calls for “ethical choice and responsibility” in politics are, unfortunately, vulnerable to the same critiques leveled at law, without law’s institutional leverage.¹⁸ Exaggeration of law’s indeterminacy results in the paralyzing conclusion that legal norms never trump self-interest.¹⁹ It is true that ambiguities in the law create opportunities for strategic lawyering, but this is an argument for skillful drafting and adjudication, not for jettisoning the law.

The League of Nations collapsed because nations failed to enforce its prohibition on aggressive war. International justice, however, is not the same as collective security. Key differences create new possibilities to advance the rule of law in matters of war and peace. Although states’ refusal to arrest powerful leaders could reveal the ICC’s impotence and snuff out the court’s authority, political and military leaders, even the leaders of great powers, are more vulnerable to enforcement than entire states. Perpetrators of international crimes face the possibility of arrest at home or abroad. Domestic political opponents, successor regimes, the legislature, or the judiciary may spearhead an arrest and trial for the crime of aggression. Foreign militaries, foreign police, UN peacekeepers, regional peacekeepers, and even private contractors have arrested fugitives for international crimes.

The peace versus justice dilemma raised by Ferencz led me to a decade of research and study. I came to believe that abstract forces and state competition are the tinder of war, but pyromaniacs are required to light the fire. Law provides institutional possibilities to resist the human decision to set the world ablaze. The cynical view that war is inevitable creates space in which leaders can harness dangerous forces and shirk responsibility for their aggression. It seemed to me that the Nuremberg judgment’s breakthrough conclusion that wars are caused by individuals and that those individuals are personally accountable embodied the future’s most hopeful approach to peace.

Index

- Abu Ghraib, 93
 Academie, 161
 Addington, David, 165
 African Court of Justice and Human Rights, 101, 117
 African Union, 117, 119, 152, 153, 155, 158
 aggression: act of (*see* crime of aggression); efforts to define by the United Nations, 56–58, 61–65, 80; examples of superpower, 63; Litvinov-Politis definition, 36–37, 44, 47, 56, 63; 1974 definition, 62–65; perspectives on the meaning of, 102; undefined by international agreements of the 1920s, 35; undefined by the League of Nations, 35
 Ahmadinejad, Mahmoud, 134–35
 Akande, Dapo, 243n3
 Akhavan, Payam, 78–80, 98, 115
 Aksyonov, Sergey, a.k.a. “Goblin,” 26, 29
 Albright, Madeleine, 78, 81
 Alexandrov, Alexander, 119
 America first movements: Buchanan’s isolationism, 75; isolationism between the world wars, 73, 75; Trump’s isolationism, 16, 75
 Amin, Idi, 29
 Amin, Ruhul, 148
 Amnesty International, 154
 Amos, Howard, 25–26
 Annan, Kofi, 84
 Anti-Ballistic Missile (ABM) Treaty of 1972, 17
 Applegate, Lynda M., 230n103
 Arab League, 119
 Arbour, Louise, 82–83
 Aristotle, 9
 Asimov, Isaac, 133
 al-Assad, Bashar, 15, 149
 Assembly of States Parties: activation role of, 108, 169; activation scheduled for 2017, 2; consensus as decision-making norm, 172; Moreno Ocampo selected as first ICC prosecutor, 98; Preparatory Commission, 10; shift from politics to law set in motion by, 131; Special Working Group, initiation of, 101; Special Working Group on the Crime of Aggression, 43, 101–5, 120, 130
 Avakov, Arsen, 24–25
 al-Awlaki, Anwar, 145
 al-Baghdadi, Abu Bakr, 11, 13–14, 145
 Baker, James, 74
 Balkans, the, 77–84
 Bandera, Stepan, 24
 Barre, Mohamed Siad, 76
 Barriga, Stefan, 211n111, 211n116, 212n119, 212–13n125
 al-Bashir, Omar, 6, 100–101, 152–54, 165–66
 Bass, Gary, 60, 123
 Baume, Maia de la, 200n35
 Beard, Charles, 46
 Beckstrom, Rod A., 230n116
 Bellinger, John, III, 18
 Bemba, Jean Pierre, 101, 154, 174
 Bensouda, Fatou, 22, 100–101, 154
 Berman, Nathaniel, 37, 42–43
 Bertram-Nothnagel, Jutta, 106
 Bangladesh, 68
 Bhutto, Zulfikar Ali, 68–69
 bin Laden, Osama, 104, 142, 145
 Bismarck, Otto von, 38
 Blackwater, 159–60
 Blair, Tony: as humanitarian interventionist, 73; ICTY fugitives, instructions to arrest, 82; investigation and judgment of, 119, 164; Iraq War, decision to participate in, 4, 93; rebuke of, 174
 Blum, Gabriella, 211n114
 Bobbitt, Philip, 37, 39–43, 140, 142, 148
 Bolton, John, 10, 105, 174
 Borger, Julian, 156
 Boucher, Catherine, 170–72
 Boutros-Ghali, Boutros, 76
 Boyle, Francis, 165
 Bradley, Curtis A., 181n4, 183n42

248 • Index

- Brafman, Ori, 230n116
 Brammertz, Serge, 83, 155
 Branigin, William, 234n9
 Brass, Daniel J., 230n107
 Brody, Reed, 155
 Brown, Gordon, 164, 241n96
 Brown, Martin, 27
 Buchanan, Pat, 75, 78
 Buchwald, Todd F., 211n113
 Burkhardt, Marlene E., 230n107
 Bush, George H. W., 4, 72–76
 Bush, George W.: assassination authority transferred to the CIA, 160, 162; attacking international law, 10–11, 17–18, 181n6; drone use under, 146; hunt for Kony, assistance provided for, 159; Iraq, on the threat posed by, 220n101; justification of the war against Saddam, 92–93, 127; 9/11, response to, 87; Special Working Group, refusal to send a delegation to, 104; trial and conviction of in Malaysian human-rights court, 165
 Bush doctrine, 127, 129
 Bybee, Jay, 165
- Caesar, Julius, 9
 Cameron, David, 118, 148
 Camus, Albert, 169
 Canada, 31, 169–72
 Cardi, Sebastiano, 172
 Carlyle, Thomas, 45
Caroline incident, the, 51, 127–28
Case Concerning Armed Activities in the Territory of the Congo (2005), 129
 Chaly, Aleksei, 25
 Chamberlain, Austen, 35
 Chamberlain, Neville, 27
 Cheney, Dick, 10, 165
 Chilcot, Sir John, 164, 174, 241n94
 Chipman, John, 228n74
 Churchill, Winston, 54–56, 74
 Churkin, Vitaly, 15
 Clark, Roger, 121–23, 218n75
 Clémenceau, Georges, 34
 Clinton, Bill, 76, 90
 Clinton, Hillary, 21, 27, 38, 138–39, 166–67
Clinton v. Jones, 167
 Cold War: beginning of, 56; defining aggression during, 56–58, 61–65; Ferencz, disregarding of, 59; Hammarskjöld’s diplomacy during, 65–67; Kissinger’s, 59–61; nuclear proliferation by an individual, 67–69; Nuremberg precedent shelved during, 90; Rule of Force *vs.* Rule of Law, 53
 Comey, James, 167
 Commission for International Justice and Accountability (CIJA), 159, 161
 Coracini, Astrid Reisinger, 216n49
 Corbyn, Jeremy, 164, 244n15
 Corell, Hans, 79
 Council on Foreign Relations, 104
 Crimea, Autonomous Republic of: vote favoring integration with Russia, 26
 Crimea, the: annexation of, Russian constitutional law and, 187n25; argumentative styles applying international law to the crisis in, 32–33; the circus surrounding the Russian invasion of, 22–28; Kissinger on the Russian annexation of, 38–39; Putin’s historical argument regarding Russia and, 28–32; timeslip opened by Russian invasion of, 21–22
 crime of aggression, 2–7; activation of, negotiation and adoption of resolution for, 169–73; amendments to the Rome Statute on the, 110–12; American exceptionalism in response to, 106–7; crimes against peace as forerunner to, 50 (*see also* crimes against peace); cyberattacks, determining the status of, 136–38; definition under the Kampala amendments, 113; early ICC cases with implications for, 99; elements of, 122; the future, “ifs” in, 177; the future and, dreamers and cynics on, 175–76; hidden strength of, 44; the ICC Review Conference at Kampala, compromise reached at, 105–10, 136–37; the ICTY and, 81–82 (*see also* International Criminal Tribunal for the former Yugoslavia); immunity and, 157; Intervention Seminar, as synthesis of views expressed at, 96; jurisdiction, issues of, 105; leadership clause, need for new interpretation of, 144–46; legal argumentation of “post-truth” politics, as a potential antidote to, 32; new technologies/perpetrators and, 139–43; PrepCom discussions of, 101; the Rome

- conference, action at, 90–92; Russian interference in the 2016 US presidential election and, 140; the Special Working Group on the Crime of Aggression/ Princeton group negotiations, 101–5; veto in the Security Council and, 55.
See also aggression
- crime of aggression, adjudicating the: applying the definition of the crime of aggression, 119–21; degrees of ambiguity in the law and, 130–31; goals of, 115–16; a hypothetical case of humanitarian intervention, 121–26; rules and exceptions, 116–19
- crime of aggression, enforcing the: acting with impunity, Trump as an example of, 166–67; arrest and prosecution by foreign states, 164–66; arresting a head of state, 154–56; arrest of Gbagbo, 151–52; committing the crime of aggression in the course of, potential for, 161–62; domestic action to investigate and arrest leaders, 162–64; failure to apprehend al-Bashir, 152–54; future arrest scenarios, 158–62; powerful leaders and immunity, the issue of, 156–57; by private contractors, 159–62
- crimes against humanity: arrest warrant issued for al-Bashir for, 153; bipartisan resolution condemning LRA for, 159; campaign for Habré's arrest for, 155; as core international crime, 1, 49, 81, 91, 104–5, 109, 116; ICC prosecution of, 3; ICTY prosecution of, 81–82
- crimes against peace: as forerunner to crime of aggression, 50; Nuremberg definition of, 47; the Nuremberg judges' acceptance of Jackson's position on, 50–51; Nuremberg verdict affirming, 52; as the unifying principle of the Nuremberg trials, 49
- cyberspace, 134, 174, 223n11
- Deeks, Ashley, 215–16n41
- Del Ponte, Carla, 83
- Dicker, Richard, 91
- Dinstein, Yoram, 221n111
- Draft Treaty of Mutual Assistance of 1923, 35
- Drljača, Simo, 156
- drones, 146–50
- Drumbl, Marc, 115
- Dugard, John, 100
- Dunlap, Charles, 11–12, 19
- Dunoff, Jeffrey L., 205n23
- Entebbe, Uganda: Israeli raid on the airport in, 29–30
- Escher, M. C., 57, 62, 65
- Euromaidan Revolution, 23–24
- Fabius, Laurent, 15, 24
- failed states, 76, 124
- Ferencz, Benjamin B.: the activation decision and, 169–70, 173; on the Bush administration, 10; the competing international orders during the Cold War, 53; compromise on the priority versus intent controversy, 62–63; concept of the crime of aggression, 113; continued concern with aggression, 58–59; detente and the definition of aggression in 1974, 61; distinguished from Hammar-skjöld and Kissinger, 66–67; on exclusion of powerful leaders from prosecution, 157; “idealistic” world view of, 91; ISIS, solution to the challenge posed by, 176–77; jurisdictional rules of the Kampala agreement, disappointment regarding, 117; at Kampala, 106, 109; Kissinger as counterpoint to, 59; law over war, the struggle to promote, 177; on the legality of the Second Gulf War, 93; the next generation, as inspiration for, 175; on the 1974 definition, 65; Nuremberg spirit, commitment to, 56; as prosecutor at Nuremberg, 1, 57–58; remarks to the Special Working Group, 102; on the results of the Rome conference, 92; at the Rome conference, 89–90; on the threat of armed conflict, 245n23; at United Nations' meetings trying to define aggression, 57; the United States, anger at the actions of, 1; war-making as biggest atrocity, 93; Weisbord and, 1–2, 7, 101
- Ferencz, Don, 106, 109, 170, 173
- Ferguson, Niall, 61
- Fernández de Gurmendi, Silvia, 101
- Foley, James, 14
- Fox, Hazel, 237n42

250 • Index

- Fox, Henry, 127–28
 Franck, Thomas M., 17, 218n84
 Franco, Francisco, 35
 Franz Ferdinand (archduke of Austria), 33
 Franz Joseph (emperor of Austria-Hungary), 33
 Freedman, Sir Lawrence, 241n94
 Freeland, Chrystia, 171
 Frel, Jan, 93
 Freud, Sigmund, 39, 53, 69
 Friedmann, Wolfgang, 37
 Fukuyama, Francis, 59, 71–72
 futurism, 133–34

 gacaca, 84–87, 98
 Garisons, Janis, 139
 Gbagbo, Laurent, 101, 151–53, 163
 General Treaty for the Renunciation of War (the Kellogg-Briand Pact) of 1928, 14, 35, 44, 46, 48
 Geneva Conventions: violations authorized by Bush, 17
 Geneva Protocol for the Pacific Settlement of International Disputes of 1924, 35
 Genocide Convention of 1948, 17, 58, 80
 Germany: attempt to prosecute Rumsfeld, 165; Nuremberg (*see* Nuremberg)
 Gettleman, Jeffrey, 158
 Gibson, William, 133–34, 174
 Gilbert, Gustave, 3
 Gilbert, Sir Martin, 241n94
 Giraldi, William, 89
 Glennon, Michael J., 104, 130, 222n124
 Goering, Hermann, 3, 51–52
 Goldsmith, Jack, 19, 94, 96
 Goldsmith, Peter, 93
 Goldstone, Richard, 81–83, 104
 Gonzales, Alberto, 165
 Gopal, Anand, 233n156
 Gramsci, Antonio, 169
 Grandin, Greg, 61
 Gray, Christine, 128
 Greenwood, Christopher, 221n115
 Gros, André, 47
 Grover, Leena, 211n111, 211n116, 212n119, 212–13n125
 Guengueng, Souleymane, 155

 Gulf War, First, 74–75
 Gulf War, Second, 4, 10, 92–97, 127

 Habré, Hissène, 119, 155, 174
 Habyarimana, Juvénal, 76, 200n35
 Hadi, Abdrabbuh Mansur, 121
 Hammarskjöld, Dag, 65–67
 Hammes, Thomas X., 143
 Harvard Intervention Seminar, 93–97
 Hayden, Michael, 135
 Haynes, William, 165
 Heckscher, Charles, 144, 230n103
 Hehir, Bryan, 94
 Heller, Kevin Jon, 15, 104, 130, 222n126, 231n117
 Henkin, Louis, 17, 183n40
 Higgins, Dame Rosalyn, 241n94
 Hirschman, Albert O., 245n25
 Hitler, Adolf, 21, 27, 35–37
 Hoagland, Jim, 76
 Hobbes, Thomas, 151
 Hoffmann, Stanley, 94
 Hofstadter, Douglas, 53
 Holbrooke, Richard, 78
 Holmes, Oliver Wendell, Jr., 146
 Holmes, Oliver Wendell, Sr., 113, 117
 Homer-Dixon, Thomas, 167
 humanitarian concerns as justification for use of force, 6–7, 12, 14, 29–30, 76, 84, 95–96, 123–24
 human rights: as component of crime of aggression, 102, 141, 175; as justification for use of force, 73, 95, 102
 Human Rights Watch, 19, 234n5
 Hussein, Saddam, 4, 11–12, 74–75, 92, 94–95, 120

 ICTR. *See* International Criminal Tribunal for Rwanda
 ICTY. *See* International Criminal Tribunal for the former Yugoslavia
 Ignatieff, Michael, 30, 71, 77–78, 94–95, 102
 immunity, 156–57
 impeachment, 16, 24–25, 163, 165–67
 India, 67–69
 individual, the: the crime of aggression and (*see* crime of aggression); criminal responsibility for international crimes,

- 71, 81–83; nuclear proliferation by, 69; reemergence of in conceptions of global politics, 41; shifting accountability from states to leaders, 3–5, 44, 73, 89
- individual responsibility for war: argument made at Nuremberg by Jackson, 48–49; crime of aggression as establishing (*see* crime of aggression); the development of Jackson’s argument for, 45–48; in the law of war, 73 (*see also* law of war); the verdict at Nuremberg affirming, 51–52
- International Court of Justice, 55
- International Criminal Court (ICC): adjudicating the crime of aggression (*see* crime of aggression, adjudicating the); amendments to the Rome Statute on the crime of aggression, 110–12, 145; arrest warrant for al-Bashir, 153–54; Assembly of States Parties (*see* Assembly of States Parties); defining “crime of aggression” as potential dilemma for, 37; early cases of, 97–101; ICC Review Conference at Kampala, 105–10, 136–37; peace-*versus* justice dilemma, 98–99; Preparatory Commission of the Assembly of States Parties, 10; the Rome conference and, 90–92; Russian annexation of the Crimea, dilemma posed by, 22; safety valves of, 43–44; South Africa requested to explain failure to fulfill legal obligations, 165–66; the US, history of relations with, 105
- international criminal law: adjudicating, 115–16; the crime of aggression as, potential of, 3–4 (*see also* crime of aggression); enforcement of, 4 (*see also* crime of aggression, enforcing the); individuals as the primary subject of, 71, 84; state responsibility, limitations of assuming, 3–5
- International Criminal Tribunal for Rwanda (ICTR), 4, 202n68
- International Criminal Tribunal for the Former Yugoslavia (ICTY), 4, 6, 80–83, 155–56, 161, 201n56
- international law: argumentative styles in the Crimean crisis and, 32–33; Cold War era (*see* Cold War); enforcement of (*see* crime of aggression, enforcing the); the future and, cynics/dreamers/people in between on, 174–76; Hammar-skjöld’s use of, 66; humanitarian intervention, 30; immunity and, 156–57; innovations in warfare and the need for evolution of, 150; the League of Nations (*see* League of Nations); legal frameworks developed in the 1990s, 71 (*see also* law of war); post-World War II legal order, evolution of, 54–57; Putin’s arguments for Crimean annexation based on, 29–32; right of peoples to self-determination, 30–31; right to intervene in another state to protect citizens, conditions for, 29; the Rome conference, 89–92; the Rwandan *gacaca* and, 84–87; violence, continued search for opportunities to forestall, 174; war and, seminal debate about, 17. *See also* law of war
- international law, leaders’ strategies for contending with, 9, 16–19; attacking the law, George W. Bush and, 10–11, 17–18; negating the law, Trump and, 15–16, 19; negotiating the law, Obama and, 11–15, 18–19
- International Law Commission (ILC), 80, 157
- International Military Tribunal for the Far East, 52
- Iran: Natanz cyberattack, 134–37, 146
- Iraq: the First Gulf War, 74–75; Nisour Square massacre, 159; Obama’s policy towards, 11–15; the Second Gulf War, 4, 10, 92–97, 127
- Islamic State (ISIS), 4, 11–15, 129, 149, 176–77
- Israel: Entebbe raid, 29–30
- Jackson, Robert: the case made at Nuremberg, 48–49; individual accountability for war, developing an argument for, 45–48; Litvinov’s principle of priority, acceptance of, 62; as proponent of holding authoritarian leaders responsible for war, 45; statement at the conclusion of the International Military Tribunal, 90
- Janik, Ralph, 19
- Japan, 35
- Johnson, Lyndon B., 60

252 • Index

- Johnson, Samuel, 214n20
- Judo: History, Theory, Practice* (Putin), 31
- justifications for use of force: exceptions to UN Charter's prohibition on the use of force, 12, 94; failed states, 76, 124; humanitarian intervention, 6–7, 12, 14, 29–30, 76, 84, 95–96, 123–24; human rights, defense of, 73, 95, 102; responsibility to protect and prevention/punishment of atrocities, 6–7, 82–84, 94–95, 122–26; self-defense, 14–15, 126–29, 182n26, 205n26
- Kagame, Paul, 77
- Kalb, Nadia, 169–70, 172
- Kaleck, Wolfgang, 165
- Kambanda, Jean, 164
- Kampala compromise: negotiations to reach, 105–10; statutory results of, 110–12
- Kanuck, Sean P., 227n74
- Karadžić, Radovan, 82, 155
- Kasparov, Garry, 27
- Kaul, Hans-Peter, 90
- Kellogg-Briand Pact of 1928, 14, 35, 44, 46, 48
- Kelsen, Hans, 191n4, 219n92
- Kennan, George, 56
- Kennedy, David, 66, 115
- Kennedy, Duncan, 114, 213n8
- Kennedy, John F., 60, 63, 67, 169
- Kerry, John, 244n16
- Kessel, Alex, 172
- Khan, Abdul Qadeer (AQ), 67–69, 134
- Khan, Agha Muhammad Yahya, 60
- Khan, Azmat, 233n156
- Khan, Reyaad, 148
- Khrushchev, Nikita, 28, 63
- Kilcullen, David, 148
- Ki-moon, Ban, 152
- Kinkel, Klaus, 80
- Kirsch, Philippe, 91
- Kissinger, Henry, 37–39, 42–43, 59–61, 66–67, 74
- Koh, Harold Hongju: crime of aggression, concerns regarding, 211n113, 222n128; on cyber activities as a use of force, 137; ICC judges as a check on government lawyers like, 118; at the ICC Review Conference (Kampala), 106, 130; jurisdictional limits as protection for the US regarding crime of aggression, 211n112; Kampala compromise, concerns regarding, 117; legal justification for the use of drones, drafting of, 147; the Obama-Clinton doctrine explained, 18; “opt in” interpretation of the Rome Statute’s amendment procedure, 214n32; right of self-defense criteria, US position on, 137–38; speech to the American Society for International Law, 104
- Kony, Joseph, 98–99, 158–59
- “Kony 2012,” 159
- Korea, People’s Democratic Republic of (North), 126
- Krane, David, 12
- Krauthammer, Charles, 77
- Kress, Claus, 208n78
- Kuwait, 4, 12, 74
- Langewiesche, William, 68
- Langner, Ralph, 224n17
- Lansing, Robert, 34
- Lauterpacht, Hersch, 191n4
- Lavrov, Sergei, 152
- law: criminal trials, 114–15; international (*see* international law); rule of buttressed by the crime of aggression, 4–5; as a weapon of war, 11–12
- lawfare, 11–12, 19, 116
- law of war: the Balkans and reevaluation of, 77–84; enforcement of, Somalia as a challenge for, 75–76; inaction as an issue, the Rwandan genocide and, 76–77, 84; the individual in, Noriega’s arrest and, 73–74 (*see also* individual, the); justifications for use of force (*see* justifications for use of force); liberalism in the post-Cold War moment and, 72–73; the Second Gulf War and, 92–93; the Second Gulf War and, Intervention Seminar on, 93–97; state-centric global order, the First Gulf War as, 74–75
- League of Nations: collapse of, 7, 37; creation of, 34; Hitler and, 21–22, 33, 36–37; institutional procedures and international agreements of, 35; international disputes and, 35–36; Roosevelt and, 54
- League of Nations, reasons for collapse of: international lawyers unleashed forces

- they could not control, Berman's theory of, 42–43; potential fate of the United Nations and, 37; premature establishment of, Bobbitt's theory of, 39–42; unsound structure, Kissinger's theory of, 38–39
- Leahy, Patrick, 163
- Lehrer, Tom, 61
- Levitsky, Steven, 19
- liberalism: the New World Order and, 75; the post-Cold War moment and, 72–73
- Lietzau, Bill, 106, 210n106
- Lind, William S., 143, 229n90
- Lindberg, Charles, 73, 75
- Litvinov, Maxim, 36, 62
- Livada, Phani, 208n78
- Lloyd George, David, 34
- Locarno Treaties of 1925, 35
- London Conference, 47
- Lord's Resistance Army (LRA), 97–99, 159
- Louis XIV (king of France), 113
- LRA. *See* Lord's Resistance Army
- Lubanga, Thomas, 99
- Lukin, Vladimir, 24
- Lynch, Colum, 234n9
- Lyne, Sir Roderic, 241n94
- Machiavelli, Niccolo, 41
- Malabo Protocol, 209n87
- Malaysia, 165
- male captus bene detentus* (wrongly captured, properly detained), principle of, 161
- Marshall, John, 113–14
- Marx, Karl, 21
- Mato Oput, 97–98
- May, Larry, 208n73
- Mayer, Jane, 184n45, 239n71
- McCain, John, 27, 38, 139, 159
- Mégret, Frédéric, 102, 140–41
- Méndez, Juan E., 179n11
- Merkel, Angela, 27
- Merry, Sally Engle, 151
- Miller, Darrell A. H., 214n21
- Milošević, Slobodan, 6, 78, 83, 89, 154, 163
- Minow, Martha, 71, 84–85, 94, 97, 115, 203n85
- mission creep, 76
- Mladić, Ratko, 78, 82
- Montevideo Convention, 228n85
- Moreno Ocampo, Luis, 1–2, 97–100, 105
- Moussa, Amr, 235n17
- Mubarakmand, Samar, 69
- Mueller, John, 72
- Mugabe, Robert, 100
- Museveni, Yoweri, 98
- Mushikiwabo, Louise, 166
- Mussolini, Benito, 35
- myth: definition of, 89
- Natsios, Andrew, 6
- Negroponte, John, 92–93, 205n25
- Nehm, Kay, 165
- Neier, Aryeh, 82
- Netanyahu, Benjamin, 135
- New World Order, 42, 72, 74–75
- Nicaragua, 240n84
- Nicaragua v. United States* (1986), 129, 162
- Nietzsche, Friedrich, 9, 162
- Nightengale, Keith, 229n90
- Nikitchenko, Iona, 47
- Nikolić, Dragan, 161
- Nixon, Richard, 60
- Non-Intervention Agreement of 1936, 36
- Noriega, Manuel, 73–74
- nuclear proliferation, 68–69
- Nuremberg: aggression, Jackson's stance on, 47–48; “crimes against peace,” as unifying principle of the trials, 49; “crimes against peace,” definition of, 47; irrelevance of official position of defendants, 157; Jackson's case at the trial, 48–49; judgment of the tribunal, 1; legacy of, 52; legal and institutional framework of the Nuremberg Charter, development of, 46–47; the Nazi defense, 50; renaissance of in the 1990s, 71, 79–81, 83–87; responsibility for war assigned to individuals at, 45; Rome conference, principles reaffirmed at, 91; Subsequent Nuremberg Trials, 193n42; the verdict, 50–52
- Nye, Joseph, Jr., 145, 229n88, 230n111
- Obama, Barack: accountability of Bush regime for war crimes, consideration of pursuing, 163; authorization for participation in hunt for Kony by, 159; drone policy reforms, 149–50; drone use under, 146–48; “moral revolution”

254 • Index

- Obama, Barack (*continued*)
called for at Hiroshima, 174; the Muslim world and Netanyahu, relations with, 134–35; negotiating international law, 11–15, 18–19; Nobel Peace Prize acceptance speech, 18–19; Olympic Games cyber operation and, 135–36; reengagement with the ICC, 104, 106; Russian annexation of the Crimea, legal arguments in response to, 21–22, 26–27, 32; Russian interference in the 2016 presidential election, response to, 140; self-defense doctrine of, 127
- Obama-Clinton Doctrine, 18
- O’Brien, William V., 221n110
- O’Connell, Mary Ellen, 127
- Olympic Games cyber operation, 135–37
- Omar, Mullah, 146
- Operation Deliberate Force, 82
- Operation Desert Storm*, 12
- Operation Gothic Serpent, 76
- Operation Just Cause, 73
- Orange Revolution, 23–25, 31
- Orwell, George, 133
- Ouattara, Alassane, 151–52
- Pakistan, 67–69
- Panama, 73
- Paris, Erna, 92
- peace-versus-justice dilemma, 2, 7, 98–99
- Pearson, Lester B., 66
- Pelosi, Nancy, 163
- Picasso, Pablo, 42
- Pierce, Charles, 165
- Pinochet, Augusto, 154
- Podesta, John, 225n44
- Politis, Nikolaos, 36
- Poroshenko, Petro, 139
- post-bureaucratic organization, 144–45
- Powell, Colin, 127, 220n103
- Power, Samantha, 14, 27, 77, 94–96, 199n20
- Prashar, Baroness Usha, 241n94
- preemptive strikes, 126–29
- Princip, Gavrilo, 33
- Prosecutor, The v. Duško Tadic*, 162
- Prunier, Gérard, 200n31
- Putin, Vladimir: American intervention in Syria, legal argument against, 13; arrest of, unlikelihood of, 163; the Crimea, invasion of, 21, 23, 26; Crimean invasion, jurisdictional hurdles precluding aggression case for, 117; Russian annexation of the Crimea, legal arguments supporting, 21–22, 26–32; Russian interference in the 2016 US presidential election, 142; Yanukovich, support of, 24
- Qaddafi, Muammar, 69, 100
- Raeder, Erich, 51
- Rapp, Stephen J., 106, 211n112
- Ratner, Steven R., 205n23
- Ražnatović, Željko (a.k.a. Arkan), 145
- responsibility to protect as justification for use of force, 6–7, 82–84, 94–95, 122–26
- Ribbentrop, Joachim von, 37
- Rice, Condoleezza, 127–28
- Robb, John, 41, 140, 143–44
- Rockefeller, Nelson, 60
- Röling, Bernard, 45
- Rome conference, 89–92
- Rome Statute: amendments on the crime of aggression, 110–12; Article 5(2), 170; Article 25(3), 162, 240n85; Bush’s “un-signing” of, 17; on immunity not barring exercise of jurisdiction, 157; international civil society coalition supporting, 92; proposed enforcement protocol, 158
- Rome Treaty, 90–91
- Roosevelt, Eleanor, 58
- Roosevelt, Franklin Delano, 45–46, 54–55, 191n3
- Roscini, Marco, 224n27
- Rosenberg, Alfred, 51
- Rose Revolution, 31
- Rubin, Alissa J., 200n35
- Rumsfeld, Donald, 165
- Russia: annexation of the Crimea, pressure on international organizations and law posed by, 21–22; annexation of the Crimea, Putin’s speech calling for, 28–32; annexation of the Crimea, Russian constitutional law and, 187n25; Constitution of the Russian Federation, adoption of, 188n40; crime of aggression in the Russian Criminal Code, 163; US presidential election of 2016 and, 138–40
- Ruys, Tom, 15
- Rwanda: *gacaca* and Nuremberg, 84–87, 98; the genocide, 76–77
- Rwandan Patriotic Front (RPF), 77

- Saakashvili, Mikheil, 139
 Sadoff, David A., 221n110
 Sands, Philippe, 148
 Sanger, David E., 135, 224n15
 Schabas, William, 106
 Schachter, Oscar, 66
 Scharf, Michael, 106
 Scheffer, David: arrest of Serb leaders, on
 timid enforcement delaying, 82; on
 the Corell group's contributions to the
 ICTY statute, 201n55; cyber action,
 proposed amendments including,
 228n84; at the ICC Review Conference,
 106; proposed enforcement protocol
 for the Rome Statute, 158; at the Rome
 conference, 90–91; Rome Treaty, sign-
 ing of, 105; Somalia, description of
 events in, 76
 Schelling, Thomas, 128
 Schiff, Adam, 226n51
 Schmitt, Carl, 46
 Schmitt, John F., 229n90
 Schmitt, Michael N., 138, 140
 self-defense as justification for use of force,
 14–15, 126–29
 Shawcross, Sir Hartley, 49
 Shawcross, William, 60
 Shoygu, Sergey, 23
 Sikorski, Radek, 23, 24–25
 Soesanto, Stefan, 25
 Somalia, 76
 South Africa, 165–66
 South African Litigation Center, 165
 Special Working Group on the Crime of Ag-
 gression: Clark as an influential force on,
 121; definition of crime of aggression,
 conclusion regarding, 130; Kuwait inva-
 sion a clear-cut act of aggression for, 120;
 method used by, 43; negotiations and
 conclusions of, 101–5; as a subsidiary
 body of the Assembly of States Parties,
 207n68; Weisbord's inclusion in, 2, 101
 Stalin, Joseph, 54–56
 state, the: evolution of, 39–40
 Steinmeier, Frank-Walter, 24
 Stewart, Rory, 94–96
 Stoltenberg, Jens, 223n11
 Stone, Julius, 62, 64
 Strategic Arms Limitation Agreement
 (SALT I), 61
 Straw, Jack, 154
 Streicher, Julius, 145
 Stuxnet, 136, 224n25
 Sudan, 6, 100, 105, 152–53, 179n11,
 216n48
 Sutton, Joseph W., 229n90
 Syria: collective self-defense of Iraq as justi-
 fication for use of force in, 129; drones
 and the fog or war in, 148–49; “failed-
 state” concept as justification for use of
 force in, 76; Obama's policy towards,
 11–15; opposing legal arguments over
 intervention in, 12–15; Trump's policy
 towards, 15–16
 systems disruption, 140
 Tadić, Duško, 81
Tallinn Manual, 137–38, 225n35, 225n37
 Taylor, Charles, 12, 155
 Taylor, Telford, 57–58
 Thatcher, Margaret, 4, 75
 Thune, Gro Hillestad, 79
 timeslip: definition of, 21; in the reaction
 to Russian annexation of the Crimea,
 27; threats to international organiza-
 tions and law posed by aggression,
 analogous cases of, 21–22
 Tolbert, David, 180n15
 Tolstoy, Leo, 45
 Trahan, Jennifer, 130, 219n86
 Trinidad and Tobago, 80
 Truman, Harry, 46, 67
 Trump, Donald J.: criminal liability, acting
 with impunity to avoid, 166–67; Kissinger's
 position on tactical nuclear weapons,
 resurrection of, 60; missile strike in Syria
 ordered by, 149; negating international
 law, 15–16, 19; the 2016 presidential
 campaign, 138–39, 142; rolling back of
 Obama's reforms on use of drones, 150;
 wrongdoing, denial of, 242n114
 Tshombé, Moïse, 66–67
 Turchynov, Oleksandr, 24
 Türk, Helmut, 79
 Tymoshenko, Yulia, 23, 25
 Ugalde, Sergio, 172
 Uganda, 97–99, 158–59
 Ukraine: Crimean crisis (*see* Crimea, the)
 Ulasen, Sergey, 135
 UN Charter: Article 2(4), 120; Article 51,
 15, 126, 219n93; effectiveness of,

UN Charter (*continued*)

disagreement over, 17; institutional effectiveness sacrificed for resilience, 43; Nuremberg principles and, lack of coordination between, 54, 56, 69; prohibition on use of force, 103; prohibition on use of force, exceptions to, 12, 94; Security Council given primary responsibility for determining if aggression has occurred, 80, 83, 214n27; state responsibility, focus on, 3

United Kingdom: the *Caroline* incident, 127–28; definition of aggression, opposition to, 36–37; drone use justified by self-defense, 148; Iraq War Inquiry, 164; participate in the Second Gulf War, decision to, 93

United Nations (UN): aggression, efforts to define, 56–57, 61–65, 80; aggression cases, the Security Council's role in pursuing, 5, 116–18; in the Balkans, 78–84; Bobbitt's view of, 40–42; charter of (*see* UN Charter); establishment of, 54–56; exceptions to the blanket prohibition against the use of armed force, 12–13, 54; General Assembly affirmation of Nuremberg principles, 52; Hammarskjöld as Secretary-General, 65–67; the ICC and the Security Council of, 91; International Criminal Tribunal for Rwanda (ICTR), 81–83, 202n68; International Criminal Tribunal for the former Yugoslavia (ICTY), 4, 6, 80–83, 155–56, 161, 201n56; Russian annexation of the Crimea, dilemma posed by, 21–22, 27; safety valves, limits and resilience supplied by, 43; Security Council, politicized decisions of, 5, 56; Security Council Resolution 1973, 121; Security Council resolution authorizing arrest of Gbagbo, 152; Security Council resolutions concerning the Second Gulf War, 92–93; Security Council's role in the responsibility to protect justification for military intervention, 124–25; in Somalia, 76; Syria, legal maneuvering over intervention in, 12–15

United States: accountability for acts carried out by Contra guerillas in Nicaragua, 240n84; accountability of Bush regime for war crimes, consideration

of pursuing, 163; assisting Uganda in attempted apprehension of Kony, 158–59; the *Caroline* incident, 127–28; Cold War (*see* Cold War); crime of aggression, positions regarding, 36–37, 62, 90–91, 106–7, 137–38; Cuban Missile Crisis, 63; drone use by, 146–50; Ferencz's anger at the actions of, 1; the First Gulf War, 74–75; the ICC and, 43, 105; Iran, cyber attack on, 135–36; isolationism in (*see* America First movements); Kissinger, foreign policy under, 59–61 (*see also* Kissinger, Henry); *male captus bene detentus* (wrongly captured, properly detained), principle of, 161; Noriega, arrest of, 73–74; North Korea and, 126; Nuremberg, Jackson at, 46–51; post-World War II security regime, construction of, 54–55; private military contractors employed by, 159–60; prosecution of an American leader, fear of/objection to, 34, 90; Russian annexation of the Crimea, response to, 27; Russian interference in the 2016 presidential campaign, 138–40; Rwanda and, 77; the Second Gulf War, 92–93, 95, 127 (*see also* Bush, George W.); Somalia and, 76; Sudan, actions regarding, 6; Syria and, 12–16, 129, 148–49; World War II, justifying interference in while remaining neutral, 45–46. *See also* Bush, George H. W.; Bush, George W.; Obama, Barack; Trump, Donald

Universal Declaration of Human Rights, 58

Urquhart, Brian, 66

van Creveld, Martin, 143

van Schaack, Beth, 157, 161, 240n78

Vienna Convention on the Law of Treaties, 118

Vladimir I/Vladimir the Great (Grand Prince of Kiev), 28

Walzer, Michael, 102

war: American presidents' approach to international law regarding (*see* international law, leaders' strategies for contending with); cyberspace as a zone for, 134–36, 223n11; drones as an in-

- strument of, 146–50; individual responsibility for (*see* individual responsibility for war); international law and, seminal debate about, 17; law as a weapon of, 11–12; opposing legal arguments over action in Syria, 12–15; Russian interference in the 2016 US presidential election as an act of, 139–43; the transformation of, 143–44
- War on Want, 159–60
- Waxman, Matthew C., 227–28n74
- Weber, Max, 151
- Webster, Daniel, 127–28
- Wenaweser, Christian, 101–4, 107–9, 141
- Wenthold, Paul, 53
- Wheeler, Nicholas, 219n87
- Wheeler, Sir Roger, 241n94
- Wierda, Marieke, 180n15
- Wiesenthal, Simon, 155
- Wiley, Bill, 159, 161
- Wilhelm II (Kaiser of Germany), 34, 49
- Wilmhurst, Elizabeth, 93
- Wilson, Gary I., 229n90
- Wilson, Woodrow, 30, 34, 36, 38, 40
- Wippman, David, 205n23
- Wittes, Benjamin, 211n114
- World War I: legal responsibility for, attempts to assign, 34; origin, fighting, and end of, 33–34
- World War II: beginning of, 37; post-war legal order debated at meetings of Allies' leadership, 54
- Wrange, Pål, 208n78
- Wright, Evan, 160
- Xe Services, 160
- Yanukovich, Viktor, 23–25, 29
- Yatsenyuk, Arseniy, 26
- Yeltsin, Boris, 163
- Yerofeyev, Yevgeny, 119
- Yoo, John, 10, 12, 118, 165, 215n36
- Yugoslavia, the former, 77–84
- Yushchenko, Viktor, 23
- Zeid al-Hussain, Zeid bin Ra'ad (prince of Jordan), 107–8
- Zhou Enlai, 60
- Ziblatt, Daniel, 19
- Zuma, Jacob, 166