CONTENTS

	List of figures and table page ix Acknowledgements x Table of cases and authorities xii Table of selected treaties and other international instruments xxiv List of abbreviations xxvii
1	Introduction 1
	1.1 The research problem and why it needs to be solved 5
	1.2 Conceptual underpinnings and organisation of the study 16
2	Rethinking hierarchies of human rights in international criminal law 22
	2.1 Presumed hierarchies of human rights in international criminal law 23
	2.2 The belief that international criminal law is restricted to civil and political rights abuses 24
	2.3 The shadow of the law and the risks of failing to reconsider the legal impossibility argument 33
	2.4 Conclusion 38
3	Relating international crimes to ESCR violations 41
	3.1 Methodology 41
	3.2 Key concepts 45

vi		CONTENTS
		3.3 The relationship between international criminal law, human rights law and international humanitarian law67
		3.4 Conclusion 73
	4	Crimes against humanity revisited: from Nuremberg to Zimbabwe 74
		4.1 Threshold requirements 76
		4.2 A methodological note: separating threshold elements from the elements of underlying offences 92
		4.3 Deportation or forcible transfer of population 94
		4.4 Enslavement 110
		4.5 Persecution 124
		4.6 Apartheid 139
		4.7 Murder 149
		4.8 Extermination 152
		4.9 Torture 156
		 4.10 Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health
		4.11 Conclusion 164
	5	Four groups of war crimes and the forgotten trial of Gauleiter Greiser 166
		5.1 Preliminary steps: human rights law on ESCR and war crimes 170
		5.2 Particular war crimes offences and ESCR violations 175
		5.3 Conclusion 205
	6	Genocide and the battles Raphael Lemkin did not lose 207
		6.1 The <i>mens rea</i> of genocide 212
		6.2 Actus reus 229

contents vii

	6.3 Conclusion 237
7	Torture, slavery and other crimes overlapping with ESCR violations 239
	7.1 Slavery-related practices 240
	7.2 Torture 246
	7.3 Apartheid 252
	7.4 Aggression 253
	7.5 Terrorist offences 256
	7.6 Unlawful use and emplacement of certain weapons 259
	7.7 Laundering proceeds of crime 260
	7.8 Corruption 262
	7.9 Destruction or theft of national treasures 265
	7.10 Unlawful movements of hazardous waste and the use, import and export of persistent organic pollutants266
	7.11 Unlawful acts against internationally protected elements of the environment 269
	7.12 Conclusion 270
8	Corollaries of qualifying ESCR violations as international crimes 272
	8.1 Jurisdiction and reparation before the International Criminal Court 272
	8.2 Jurisdiction in national courts and state obligations to take action against international crimes 276
	8.3 Legal corollaries for truth commissions, national human rights institutions and institutional vetting processes 304
	8.4 Liability of non-state actors 306
	8.5 Security Council action and the responsibility to protect 308

•••	
V111	CONTENTS

	8.6 Conclusion 309
9	Conclusions 311
	9.1 The research, its objectives and main findings 311
	9.2 Argued concerns and reflections on the contribution of the research findings 316
	9.3 The limits of the main finding 326
	9.4 Whether international criminal law should be revised 331
	9.5 Further research 331
	9.6 Final remarks 334
	Select bibliography 337 Index 352