

Index

9/11 attacks Kuwait (1990) 212 legal norm, effect on 270-2 Lee Teng-hiu visa crisis (1995-6) SC resolution 1368 (2001) 271 243-5, 262-3 Nicaragua, alleged sale of MiG-21s to UNGA resolution 56/1 157 US foreign policy, effect on 157-9, 308 (1984) 200-1, 213 Rabta controversy (1986) 262 Able Archer (NATO nuclear exercise) Rabta controversy (1989) 205-6 (1983), misunderstanding 174, 301 San Andrés Islands (1979-80) 192, 213 accountability of states: see state Seventh Fleet manoeuvres (1950) responsibility 224-5, 262-3 acquiescence/absence of protest against Sinai, Israel incursion (1948) 131, 169 use or threat of force (qui tacet consentire Spratly Islands dispute (Chinavidetur principle) 4, 100-2 Vietnam) (1988) 239-40 diplomatic protest, role 4, 100 submarine incident (North/South Korea) (1996) 248-9 motivation/explanation 102, 122, 123, Turkish Straits crisis (1946) 177-8, 170, 257-8 crisis-management as preferred 213, 261 solution: see crisis management and Uganda-Kenya dispute (1976) 145-6 'protest' 110 Aegean Sea Continental Shelf Case the acceptability of a 'threat' deterrence strategy/spiral theories 265-8: see also deterrence strategy; dismissal of UNC 2(4) claim on escalation/spiral theory procedural grounds 66 effectiveness test 47 n. 29, 171, 211, provisional measures (ICJ Statue, 41), 250-1, 259-60 rejection of request for 234-5 game theory 46, 278-90 Aegean Sea dispute (Greece-Turkey) (1976) 232-5 reluctance to condemn 100-2, 257-8 motivation/explanation, examples 1987 incidents 303 Aegean Sea dispute (Greece-Turkey) 1996 incidents 306 Aegean Sea Continental Shelf Case, UNC 2(4) (1976) 235 Arab League summit crisis (Syriaand (33) obligations, reminder to Jordan) (1980) 237-8, 262 Turkey 235 face-saving considerations 284 China-India border dispute (1965) 136 - 7peaceful settlement of disputes, obligation (UNC 2(3)/UNC 33) 235 Czechoslovakia (1968) 189 Goa (1961) 213 SC discussion 233-4 Gulf of Sidra (1981) 195-6, 213 'condemnation' of both parties' Kashmir dispute (1951) 227, 262-3 conduct 235 Korean War 133-5 SC resolution 395 (1976) 234 Kosovo (NATO intervention) (1999) threats/counter-threats 232-3 156-7 UN/third states reactions



INDEX 333

conciliation as objective 234	Angola
motivation/explanation 235	Goa crisis (1961) and 178
Afghanistan	Iraq (regime change, 2002-3), attitude
US air strikes (1998) 308	towards 167
US/UK invasion (2001) 157, 308	Operation Protea (1981) 301
aggression: see also League of Nations	protracted conflict 311
Covenant by article, 10 (defence against	SC resolution 581 (1986) (South Africa) 276
external aggression); non-aggression	South African troop build-up (1978) 298
pacts; threat, breach of peace or act of	Antarctic Treaty (1959), exclusion areas
aggression (UNC 39)	(military activities) 214
definition	anticipatory use of force in self-defence:
ICC Preparatory Commission mandate	see also countervailing threats/threats in
33 n. 149	self-defence (UNC 51/UNC 2(4)); Cuban
ILC attempts (1950–96) 28–38, 253–4	missile crisis (1962–3); Israel-Iraq (nuclear
enumerative approach (1994 draft)	reactor) (1981)
31-2	Caroline 56
Nuremberg Charter, decision to omit	customary international law 56
27 n. 117	requirements
UNGA Resolution 3314 (XXIX) (1974)	imminence of threat/urgency 55-7
(Definition of Aggression) 29, 98 n.	proportionality 56
22, 113 n. 90	threat as 55-6
erga omnes obligation, refraint from as 98	UNC 51 and 49-50, 55-6, 254
n. 2	appeasement: see deterrence strategy;
General Assembly voting practice 98-9	Munich (1938)
German threats of force against Austria	Arab League
and Czechoslovakia as 26-7, 253-4	activities 104
Japanese ultimatum to and occupation	Gulf of Sidra (1981) and 194
of French Indo-China and Dutch East	Rabta controversy (1989) and 204–5
Indies 27–8, 253–4	Arab League summit crisis (Syria–Jordan)
propaganda as: see also propaganda for	(1980) 235-8
war or other inflammatory purposes,	attempted mediation 237
prohibition	demonstrations of force on the Syrian-
UNGA resolution 380 (V) (1950) (Peace	Jordan border 236-7
through Deeds) 54	countervailing threat/self-defence
self-restraint alternative 281–3	(UNC 51), legitimacy as 267
as term of art 28	deterrence strategy and 249
threat of/preparations for aggression as	Israel involvement 236, 237-8
crime 29-34, 98 n. 22	third state reactions, motivation/
treaty obligations	explanation 237-8, 262
breach, relevance 26	Armed Activities on the Territory of the Congo
validity (VCLT 75) 287	(Congo v. Uganda), armed attack, need for
UN Charter use of term 28	(UNC 51) 266 n. 30
Munich, lessons from 50, 128, 252	armed attack: see countervailing threats/
victim/aggressor distinction: see victim/	threats in self-defence (UNC 51/UNC 2(4)),
aggressor distinction	armed attack, need for
Al-Biqa missiles crisis (1981) 300	Armenia, Nagornyy-Karabakh crisis
Al-Quaeda: see Iraq (regime change,	(1991–2) 305
2002-3)	arms control: see disarmament;
Algeria: see Western Sahara (Morocco	Non-Proliferation Treaty (NPT) (1968)
(Mauritania)-Spain) (1975)	arms embargo as breach of right to
ambiguity: see certainty of the law,	self-defence 49 n. 38
compliance/implementation	arms race, examples 6, 46: see also
considerations and; strategic ambiguity	deterrence strategy
American Civil War (1861-5), weapons of	ASEAN, Spratly Islands dispute
mass destruction (WMD) and 6	(China-Vietnam) (1988) and 230
Amin, Idi: see Uganda-Kenya dispute	Atlantic Charter (1941) 19–20
(1976)	Austinian positivism: see legal positivism



334 INDEX

Austria, German *Reich* 's threats against/ Anschluss as acts of aggression 26, 253–4 League's failure to challenge 26 Austrian separatist crisis (1921), Yugoslav threat of force 129 n.5 'axis of evil' 158

balance of power: see also balance of power; proportionality, self-defence/ countermeasures Concert of Europe 9 as means of regulating force 8-9 Baruch Plan (1946) 79 Baxter paradox 106 Berlin Blockade, Soviet demonstration of force (1948-9) 24, 106, 291 Cuban missile crisis (1962) and 58 Berlin, Soviet threats (1958-9) 293 bin Laden, Osama, UK/US demands for (2001) 308 Blair, Tony, support for US in Iraq (1002-3) 158, 159-61 Blix, Hans (Disarming Iraq) 162-3 blockades Berlin 24, 58, 106, 291 Cuban missile crisis (1962-3) 41 as demonstration of force 59 as measure short of war 14, 19 Taiwan, simulation (1995) 241 Uganda-Kenya dispute (1976) 143-5 as ultimatum 18 n. 81 Bosnia and Herzegovina 305 Dayton Agreement (1995), validity (VCLT 52) 288

52) 288
Genocide 67-8
US threats relating to (1992-5) 169
boundaries, intangibility 145-6
boundary disputes: see also territory,
acquisition by force
China-India border (McMahon line)
(1965) 135-7
China-USSR border (Ussuri incident
(1969)) 168
Colombi-Nicaragua (San Andrés Islands)
189-92: see also San Andrés Islands
(Columbia-Nicaragua dispute,

1979–80) de facto possession and 124 Shatt-al-Arab dispute (1969–75) 227–32 Spratly Islands dispute (China-

Spratly Islands dispute (China-Vietnam) (1988) 238-40: see also Spratly Islands dispute (China-Vietnam) (1988) Uganda-Kenya dispute (1976) 142-6 Venezuela-Guyana (Essequibo river) (1981-3) 300 boundary disputes, jurisprudence: see also Aegean Sea Continental Shelf Case; North Sea Continental Shelf Cases Land and Maritime Boundary (Cameroon v. Nigeria) 124 n. 120

Territorial and Maritime Dispute (Nicaragua v. Columbia) 192

Brecher, M and Wilkenfeld, J. see International Crisis Behaviour (ICB) database

Brezhnev doctrine 187-9 Briand-Kellog Pact: see Kellog-Briand Pact (General Treaty) for the Renunciation of War (1928)

Brownlie formula (threat/use of force as unified concept) 38–43, 48, 83, 89 buffer zones, role 209–10, 214: *see also* exclusion areas (military activities) burden of proof, threat of aggression (UNC 39) 53

Bush, George, US foreign policy under 157–68: see also Iraq (regime change, 2002–3) address to the General Assembly (2002) 158–9

Address to the Nation on Iraq (17 March 2003) 163-4 Congressional approval (2002) 159 pre-emptive war 158-9, 271 State of the Union messages 2002 158 2003 162

Capitulations: see trade concessions/
Capitulations
Caroline, use of force in self-defence,
requirements 56, 259
customary law, whether 56
casualty rates, First Gulf War 6-7
CENTO, role in Shatt-al-Arab dispute
(1969-75) 229-30
certainty of the law, compliance/
implementation considerations and 3-5,

63-4, 281, 289-90 Chad-Libya dispute (1981), French response 300

chemical weapons Libya production of (Rabta controversy) 201-6

proliferation fears 157 China (PRC), interventions: *see also* Korean War; Spratly Islands dispute (China-Vietnam)

Kosovo (NATO intervention) (1999) and 151–2

China (PRC)-India border dispute (McMahon line) (1965), Chinese ultimatum 135–7, 169



INDEX 335

credibility 171	occupations 128
SC silence, motivation/explanation	inter-war years 128-9
136-7	line in the sand (Epiphanes-Popilius,
China (PRC)-Taiwan dispute: see Lee Teng-	168 BC) 127-8
hiu visa crisis (1995-6); Seventh Fleet	of open threats 127-71
manoeuvres (1950); Taiwan-China	US 'threats' since 1989 112 n. 88
dispute	force, use of and 59-60, 114 n. 92
China (PRC)-USSR boundary dispute	foreign policy objectives, whether
(Ussuri incident (1969)) 168	indication required 114
civil war: see also humanitarian	globalisation, effect on practice 8-9
intervention; non-intervention principle	intention to extract concessions, need
(UNC 2(7))	for 57-9, 73-4, 114, 259-60
American 6	international dispute, need for 114
Congo 52	self-defence distinguished 255
Georgia 168, 305, 309	strategic ambiguity 40-1
Greece 68, 174	'coercive measures short of war' (mesures
Iraq 164: see also Iraq (regime change,	coercitives)
2002-3)	as alternative to use of force 56-7, 61
Lebanon 297, 298, 300	as breach of Covenant 14, 17-18
Nicaragua 74: see also Nicaragua	conventional and nuclear weapons
peace treaties terminating 287 n. 51	distinguished 89
prevalence post WWII 256	examples 18-19
Spain 12	non-intervention principle and 60, 72–4,
Clausewitz, Karl von (Vom Kriege) 1, 256	78
Clinton, Bill, Iraqi sanctions defiance	peaceful settlement of disputes
(1994) 207 'Cod Wor' 66 7, 206	obligation, compatibility with 18–19
'Cod War' 66-7, 296	as 'threat or use of force' (UNC 2(4))
coercion	34-5, 56
Corfu Channel 60, 255 definition 60	Cold War, effect on UNC 2(4) obligations 5,
Fisheries Jurisdiction (UK v. Iceland) 66–7	24–5, 81, 88–9, 177, 253–4 changes in composition of General
freedom of choice, as breach of right to	Assembly and 257 n. 10
60-1	coercive diplomacy and 57
ILC Articles on State Responsibility 60	deterrence strategy and 116
Nicaragua 60	collective security/collective use of force
as required element in UNC 2(4) 57–61,	(UNC 42)
254-5	absence of SC action 276
treaties, effect on validity (VCLT 51 and	ad hoc measures 52
52): see validity of treaties, effect of	commitment of forces to service of
coercion by threat or use of force (VCLT	Security Council (UNC 43) 252
51 and 52)	as preferred option at Dumbarton
coercive diplomacy 6-7, 57-61: see also	Oaks 20-1
coercion; countervailing threats/threats	commitment of forces to service of
in self-defence (UNC 51/UNC 2(4));	Security Council (UNC 43) and 252
credibility of threat, need for;	Cordell Hunt memorandum (1943)
demonstration of force; open threats to	(commitment of forces) 21 n. 90
secure concessions; ultimatum	deterrence strategy/spiral theory and 50,
'beneficial' effects 130, 141, 168-71,	252-3
184, 206: see also effectiveness test	as major achievement 21
case definitions for purpose of	right of individual self-defence and
establishing state practice 109–15	252
use in combination 121	Seventh Fleet manoeuvres (1950) as 224
compellence/deterrence distinguished	Colombia: see San Andrés Islands
58-9	(Columbia-Nicaragua dispute,
definition 57–8	1979–80)
examples	compellence
German and Japanese pre-WWII	coercive diplomacy distinguished 58-9



336 INDEX

compellence (cont.) innocent passage, right of 69, 70-3, 255 countervailing threats/self-defence (UNC non-intervention principle (UNC 2(7)) 51) and 267 72 - 4Cuban missile crisis 58-9 Operation Retail 72-3 definition 58 proportionality, self-defence/ deterrence distinguished 58, 82-3 countermeasures 73-4 as evidence of unlawfulness 61 signalled intention 72, 73-4 Nuclear Weapons 82-3 state responsibility for failure to prevent open threats/demonstrations of force mine-laying in territorial waters 70 and 114 threat of force, prohibition (UNC 2(4)) self-defence threats and 267 absence of explicit consideration 65 definition 59, 71-4 ultimatum as 58 Concert of Europe 9 disruption of international peace, concessions, threats to extract: see coercive whether 90-1 Correlates of War Project (COW) 116, 117 diplomacy confidence-building measures (including n. 102 Helsinki Final Act) 241, 261-2 counterfactual causation theories 95 countervailing threats/threats in self-Congo, Security Council role 52 consultation, ineffectiveness 11 defence (UNC 51/UNC 2(4)) 45 n. 22, 47, Continental Shelf Convention (1958) 218-51, 265-8: see also collective security/ customary international law, whether collective use of force (UNC 42); individual 102 - 3situations erga omnes obligations 103 as anticipatory self-defence 55-6, 254: continental shelf disputes, jurisprudence: see also anticipatory use of force in selfsee Aegean Sea dispute (Greece-Turkey) (1976); boundary disputes, jurisprudence; armed attack, need for 265-7, 273-4 North Sea Continental Shelf Cases Armed Activities on the Territory of the Contract Debts, Convention for the Congo (Congo v. Uganda) 266 n. 30 Limitation of the Employment of Force Corfu Channel 72-3, 267 for Recovery of (1907) 11 Nicaragua, Schwebel dissenting contras/Sandinista operations in Honduras opinion 76-7 1986 303 'Nicaragua gap' 76-7, 266, 274 1988 303 Oil Platforms 266 n. 30 cooperation as preferred strategy Caroline requirements 56, 259 fostering of 280-9 crisis management and: see crisis game theory and 279-80, 281 n. 22, management and the acceptability of a 'threat law, effect on role 280 Cuban missile crisis and Shasta County study 278-90 41-2, 48-9, 168, 270 UN Charter 5, 24 difficulty of WWI examples 283 determining victim/aggressor 266 cooperation and regime theory/third states establishing legality/facts 41-2, 251 as arbiters of legality 95-6, 98-100, 289-90 'threat' for purposes of UNC 2(4) 85, Corfu Channel 68-72 coercive diplomacy face-saving alternatives 284 'coercion' 60 inherent right 113 n. 91 intention to extract concessions, need authorisation, relevance 268-70 for 73-4, 90, 255 victim/aggressor distinguished: see self-defence/coercive diplomacy victim/aggressor distinction distinguished 255, 267 iustification countervailing threats/threats in selfhumanitarian intervention: see defence (UNC 51/UNC 2(4)) 72-3 humanitarian intervention innocent passage in international national security 266, 272 state survival 87-9, 255-6 waterways, right of Kenyan economic measures against coastal state's right to issue regulations 71 n. 35 Uganda, silent approval 143, 145-6, 169 'innocent' 71-2 last resort nature of right 47



INDEX 337

motivation/explanation 249-51 deterrence strategy 249-50 escalation/spiral theory 249, 265-8 likelihood of success 250-1 Munich, lessons learnt 265-6 WWI, lessons learnt 265-6 necessity, need for 267, 274 obligation to report to Security Council (UNC 51) 42 proportionality, need for: see proportionality, self-defence/ countermeasures protracted disputes and 249, 250-1, 273-4 reciprocity principle and 49, 227, 284-5 reprisals as 57 right to maintain military capabilities as evidence of right 34, 58, 78 San Francisco provision for 51 SC, obligation to report to 42 SC resolution 678 (Operation Desert Storm) and 162, 168 Soviet threat to use nuclear weapons during Suez Canal crisis 42, 48 Turkish-Cyprus missile crisis (1997-8) 148-9 unlawfulness of threat ipso facto and 48 victim/aggressor distinction, relevance 266, 267 weapons development and 270 credibility of threat, need for 46-7, 117-18, 121, 170-1, 213-14, 260, 273: see also effectiveness test Chinese border ultimatum (1965) 171 demonstration of force/verbal threats compared 173-4, 209, 213, 260-2 Iraq (regime change, 2002-3) 6-7, 161, 164-5, 166 Kosovo (NATO intervention) (1999) 152-3, 155, 171, 260 Nuclear Weapons 84 Turkish intervention in Cyprus (missile crisis (1997-8)) 260 Uganda-Kenya dispute (1976) 171, 260 criminal responsibility: see individual responsibility crisis, definition/determination as 117-18 International Crisis Behaviour (ICB) database 117-18 crisis management and the acceptability of a 'threat' 227, 244, 267-9, 273-4 Iraq-Kuwait 159, 171, 213, 269-70 Israel incursion into Sinai (1948) 171, 269 - 70Kosovo (NATO intervention) (1999) 157, 171, 269-70 Lee Teng-hiu visa crisis (1995-6) 244-5, 269-70

Croatia, Yugoslav intervention in (1991-2) 304 Cuban missile crisis (1962-3) blockades 41 countervailing threats/threats in selfdefence and 41-2, 48-9, 168, 270 non-aggression pledge, Soviet request for 50 n. 41 non-proliferation of nuclear weapons and 79 proportionality 44 US demand for removal of missiles, as 'compellence'/deterrent 58-9 customary international law: see also acquiescence/absence of protest against use or threat of force (qui tacet consentire videtur principle); jus cogens; Lotus principle ('what is not prohibited is allowed'); opinio juris; state practice, as required element in the formation of customary international law anticipatory use of force in self-defence Baxter paradox 106 cooperation and regime theory, applicability 95-6, 289 evidence of ILC drafts 33-4 state practice 97-8, 102-4 treaty regime of general application 81, 102-3 UNGA resolutions 86-7, 98-9 as general practice accepted as law (ICJ Statute 38(1)(b)) 93, 94 nuclear weapons, possession as deterrent 85-8 persistent objector rule 86, 100 retrospective nature 123 threat of force (UNC 2(4)), military manoeuvres as 76, 78 treaties, relationship effect of subsequent developments in customary law 106-9 parallel provision, possibility of 106 uncertain nature of 93-4 validity of treaties procured by coercion (VCLT 52), applicability to non-treaty situations 288-9 Cyprus: see Turkish intervention in Cyprus (missile crisis (1997-8)) Czechoslovakia, German Reich's threats against/invasion: see also Munich (1938); territory, acquisition by force as acts of aggression 26-7 as coercive diplomacy 128 League's failure 12



338 INDEX

Czechoslovakia, Soviet threat (Marshall Plan (1947)) 128 Czechoslovakia, Warsaw Pact's action against (1968) (Prague Spring) 184-9 Czechoslovakia-USSR Stationing of Forces Agreement (1968) 189 validity (VCLT 52) 189 General Assembly role 187-9 justification (Brezhnev doctrine) 187-9 Munich compared 187 political impediments to condemnation 189 self-determination, right to 189 silence/acquiescence, motivation/ explanation 189, 213 threats/invasion, distinction 189 veto, use of 188

Dayton Agreement (1995), validity (VCLT 52) 288 de facto states/de facto possession Goa (India-Portugal) (1961) 124 Taiwan 244-5 'territorial integrity' rights (UNC 2(4)) and 124-5, 244-5 democratic accountability, effect 10, 159 demonstration of force as UNC 2(4) threat 172-217: see also open threats to secure concessions; and individual examples as bullying tactic 172 credibility and 173-4, 209, 213-14, 260-2 definition 113, 172, 261 determination as, need for legal basis 215-17 examples 172-3, 261 foreign policy purpose as common objective 173, 216 'signalled intention' ambiguity and 128-9, 174, 254 Corfu Channel 72, 73-4 as essence of deterrence strategy 84, 114 Nuclear Weapons 39-40, 89 peaceful settlement of disputes obligation (UNC 2(3)/UNC 33) and 52-3, 59, 253 reciprocal signals 129 risk of misunderstanding 174, 214, 301 spiral model and 48, 50 Uganda-Kenya dispute (1976) 144 Western Sahara 138, 141 as testable proposition 113

unilateral nature 173

'unopen' nature 121

victim/aggressor distinction and 261

desuetude (treaties) 106-7 deterrence strategy: see also collective security/collective use of force (UNC 42); credibility of threat, need for; escalation/ spiral theory; threat of force, prohibition (ŪNC 2(4)) China (PRC)-Taiwan dispute and 58 Cold War and 116 'compellence' distinguished 58, 82-3 conventional arms 6 counterthreats and 249-50, 265-8 customary international law 85-8 definition 46 as political concept 85 n. 96 imminence of threat, relevance 84-5 as justification for threat of force 45-7, 58-9, 82-3, 84 as necessary evil 284-5 nuclear: see nuclear deterrent open threats/demonstrations of force and 114 SC role 47 secret military alliances and 50 state practice 47 Taiwan-China (1950/1995-6) 249 Dien Bien Phu, French threat of force against Vietminh (1954) 292 diplomatic protest, role 4, 100 disarmament breach of obligations as breach of UN Charter 54 prohibition on use of force, linkage 19-25, 263-5 UNC 26 23 'dispute' 53-4: see also peaceful settlement of disputes, obligation; peaceful settlement of disputes, obligation (UNC 2 (3)/UNC 33); peaceful settlement of disputes, treaties and other international instruments relating to; threat, breach of peace or act of aggression (UNC 39) domestic jurisdiction, non-intervention in (UNC 2(7)): see non-intervention principle (UNC 2(7)) Drago-Porter Convention (1907) 11 duress: see coercion; validity of treaties, effect of coercion by threat or use of force (VCLT 51 and 52) Dutch East Indies, Japanese threats to 28 economic measures/sanctions as 'threat or use of force' 23: see also blockades Iraq (SC resolutions 687 and 661) 157, 206-12, 304, 306

Kenyan measures against Uganda 143,

145-6, 169

OPEC call for 194



INDEX

339

Ecuador-Peru border incidents (1981) 303 EEZ innocent passage, right of 214-15 military activities in 215 effectiveness test 43-5, 47 n. 29, 171, 211, 250-1, 259-60: see also credibility of threat, need for 'beneficial' effects 130, 141, 168-71, 184, 206 Egypt: see also Sinai, Israel incursion (1948); Suez Canal crisis (1956-7) Rottem incident (1960) 293 Ellickson, R (Shasta County study) 278-90 'enemy states clause' (UNC 107) 34-5 abolition 265 'rogue' states compared 253 n. 1 universality principle and 253-4 Entebbe incident (Israel-Uganda) (1976) equality/inequality of states universality principle/enemy states clause (UNC 107) 254-5 weapons developments and 6-7 erga omnes obligations 98 n. 2, 103, 257 escalation/spiral theory 45-7: see also deterrence strategy collective security and 50 counterthreats and 249, 265-8 game of chicken 46 Korean War and 45 peaceful settlement of disputes, obligation and 50 protracted conflicts and 49 reciprocity principle and 282, 284 self-restraint and 281-5 state practice 50-1, 114-15 unlawfulness of threat ipso facto/ comprehensive ban and 48-51 WWI and 218-19, 249, 265 estoppel: see acquiescence/absence of protest against use or threat of force (qui tacet consentire videtur principle); persistent objector rule Ethiopia, Italian occupation (1936) 12 Ethiopia, occupation by Italy (1936) 12 EU, attitude towards Iraq (regime change, 2002-3), attitude towards 166, 167 Kosovo (NATO intervention) (1999), attitudes towards 155 Lee Teng-hiu visa crisis (1995-6) 243 Turkish-Cypriot missiles dispute (1997-8) (threat to suspend accession negotiations) 148-9 ex injuria non jus oritur 289 exclusion areas (military activities) Antarctic Treaty (1959) 214

buffer zones, role 209-10, 214 EEZ 214-15 Outer Space Treaties (1967 and 1979) 214 face-saving 58 n. 71, 260, 283-4 Fisheries Jurisdiction (Spain v. Canada), dismissal of UNC 2(4) claim on procedural grounds 66 Fisheries Jurisdiction (UK v. Iceland) threat of force against British vessels, withdrawal of claim 67 UK-Iceland Exchange of Notes (1961), conclusion under coercion claim 66-7, 286 foreign policy, threat of force as tool: see coercive diplomacy; demonstration of force as UNC 2(4) threat; diplomatic protest, role France, attitude towards Chad-Libya dispute (1981) 300 Iraq, no-fly zones (1992) 305 Iraq (regime change, 2002-3) 163, 166-7 Vietminh (1954) 292 Franck, Thomas ad hoc adaptation of Charter 52 certainty and clarity of law, need for 281 double standards/bias 98-9 imminence requirement 55 San Francisco Conference, assessment 51 self-defence as last resort 47 'Who killed Article 2(4)' 40 French Indo-China, Japanese ultimatum and occupation, as 'aggression' 27–8, 253 - 4fundamental/peremptory norm of international law: see jus cogens Galtat Zemmour crisis (Morocco-Mauretania) (1989) 304

game of chicken 46 game theory 46, 278-90 General Assembly resolutions 376 (V) (1950) (Korea) 132 380 (V) (1950) (Peace through Deeds) 3, 54 1653 (XVI) (prohibition of the use of nuclear and thermo-nuclear weapons) 2131 (XX) (1966) (Inadmissibility of Intervention in the Domestic Affairs of States) 3 2625 (XXV) (1970) (Friendly Relations) 3, 18 n. 82, 33 3314 (XXIX) (1974) (Definition of Aggression) 98 n. 22, 113 n. 90 3458A (XXX) (Western Sahara) 141-2



340 INDEX

General Assembly resolutions (cont.) 3458B (XXX) (Western Sahara) 141-2 42/22 (Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations) 3 53/1964 (human rights in Kosovo) 156 56/1 (condemnation of 9/11 terrorist attacks) 157 customary international law, as evidence of 86-7, 98-9 General Assembly role: see also Uniting for Peace Resolution (GA Resolution 377 (V)) aggression, voting record on 98-9 alternative forums for international debate 104 Czechoslovakia (1968) 187-9 Goa crisis (1961) 182-4 SC, divergence of views 102 Genocide, threat, Bosnia and Herzegovina's withdrawal of illegality claim 67-8 Georgia, Soviet threats against (1992 and 2002) 168, 305, 309 German Reich, threats to invade Austria, Czechoslovakia and Lithuania 12 as acts of aggression 26-7, 253-4 as coercive diplomacy 128 German reparations crisis (1921), French and UK threats to occupy Ruhr 129 n. 5 Germany, Federal Republic (FRG), renunciation of war/threat or use of force (GG, Art. 26) 35 globalisation, threat as foreign policy tool and 8-9 Goa (India-Portugal) (1961) 178-84 de facto possession and 124 failure of UN system to redress wrong Indian blockade 180 Indian threats of seizure 179 invasion 180-1 military build-up 179-80 Rights of Passage over Indian Territory and SC/UN involvement 180-4 General Assembly role 182-4 self-determination, right to 178, 183 third state reactions NAM 182-4 silence/acquiescence, motivation/ explanation 184, 213, 262-3 good faith, interpretation of UN Charter and 63-4 Gray, Christine counter-threats, reporting requirement double standards 98-9 NATO intervention in Kosovo, legal basis 155

peace treaties (civil wars) 287 n. 51 self-defence, right (UNC 51) 218 Greece, Italian ultimatum against/ occupation of Corfu (1923) 15 Greece-Turkey relations: see Aegean Sea dispute (Greece-Turkey) (1976); Turkey-Greece relations **Gulf Cooperation Council** Gulf of Sidra (1981) and 194 Kuwait (1994) and 207 Gulf of Sidra, US demonstrations of force (1981) 174, 192-6, 300, 302 Iranian hostage crisis and 193 opposition to US 194-6 reciprocal threats/demonstration of force 193-4 silence/acquiescence 1986 crisis distinguished 196 n. 132, motivation/explanation 195-6 territorial waters, Libyan claim to 193 Gulf War (1990-1) 304 SC approval 304 gun-boat diplomacy 8, 127

Habsburg restoration, Yugoslav and Hungarian threats of force (1921) 129 n. 5 Hague Convention for the Pacific Settlement of Disputes (Hague I) (1907) 11 Hague Convention relating to the opening of hostilities (1907) (Hague III), declaration of war/ultimatum 13 Haifa suicide bombing (2003), Israeli air strikes against Syria 310 Haiti, US threats against (1994) 168-9, 305 SC approval 305 Helsinki Final Act (1975) 214 Higgins, Rosalyn jus cogens 62 'territorial integrity'/de facto status 124, third state views, legal relevance 98 'very widespread and representative' practice 111n. 85 high seas, freedom for 'military uses' (UNCLOS 87) 215 Hiroshima/Nagasaki bombing effect of course of war 59 proportionality 88 historical development: see threat of force, attempts to regulate prior to UN Charter Hobbes (The Leviathan) 8, 279-80 Honduras, contras/ Sandinista operations in: see contras/Sandinista operations in Honduras humanitarian intervention



INDEX 341

justice/peace equation 7 Kosovo (NATO intervention) (1999) 155–7 reciprocity principle and 49

IAEA (Iraq inspections) 162 ICJ jurisprudence by case: see Aegean Sea Continental Shelf Case; boundary disputes, jurisprudence; Corfu Channel; Fisheries Jurisdiction (Spain v. Canada); Fisheries Jurisdiction (UK v. Iceland); Genocide; Lockerbie/lockerbie incident; Namibia; NATO cases; Nicaragua; North Sea Continental Shelf Cases; Nuclear Tests; Nuclear Weapons; Oil Platforms; Territorial and Maritime Dispute (Nicaragua v. Columbia) ICI jurisprudence relating to UNC 2(4) illegal threat claims absence or withdrawal 65-8, 255, 276 Nuclear Weapons (WHO request for Advisory Opinion on) 79 n. 73 ambiguity of advice 65, 88-9 dismissal on procedural grounds 66 inconsistencies 90-1, 256 jurisdictional limitations 82-6 as marginal legal issue 65, 75-6 paucity 2-5, 34, 36, 65-8 reasons for decision, omission 78-9, 256 sources of international law, limited reliance on 90-1 threat or use of force (UNC 2(4)) as

unified concept 90, 255

drafts, legal effect 33–4 Vienna Convention on the Law of Treaties (1969), drafting proposals (VCLT 52) 286

ILC Articles on State Responsibility coercion 60

erga omnes interests 257 necessity 269

ILC Draft Code on Offences against the Peace and Security of Mankind 28–32 aggression, attempts to define 28–32, 253–4

traditional sources of international law, failure to reflect 34

imminence of threat/urgency anticipatory use of force in self-defence 55-7, 254

Caroline 56, 259 customary international law 56 deterrence strategy and 84-5

proof, difficulty of 56-7 threat of force (UNC 2(4)) and 55-7, 254 indeterminancy: see certainty of the law, compliance/implementation considerations and India-Pakistan relations: see China (PRC)-India border dispute (McMahon line) (1965); Goa (India-Portugal) (1961); Kashmir dispute (1947-); Pakistan-India relations

individual responsibility

crimes against peace (Nuremberg and Tokyo Tribunal Statutes) 26–8, 32 n. 147 ILC draft international criminal code (1996) 32

innocent passage in international waterways, right of 69, 70–3: see also Corfu Channel

'innocent'

Corfu Channel 71–2 UNCLOS 19/39 71 n. 36, 215 territorial integrity or political independence (UNC 2(4)) and 70 n. 34

intelligence, potential for error 162-3, 196-201, 203

internal armed conflict: see civil war International Covenant on Civil and Political Rights (1966), propaganda for war, prohibition (ICCPR 20(1)) 54 international criminal code, ILC attempts

to draft: see ILC Draft Code on Offences against the Peace and Security of Mankind

International Criminal Court (ICC): see Rome Statute (ICC)

International Crisis Behaviour (ICB) database 117-19

threats of force (1945-), table of 291-310 international law: *see also* legal positivism; natural law (*jus naturale*)

breach, political penalty/cost 95-6, 100 n. 30

compliance/implementation, requirements

certainty and clarity 3-7, 63-4, 281, 289-90

self-interest 281-3

development by (de lege ferenda), Security Council 54-5

ICJ jurisprudence relating to UNC 2(4) illegal threat claims and 90–1, 256 legal positivism: see legal positivism non liquet 109

'Shasta County' analysis of relationship between law and social norms 278–90

sources: *see also* customary international law; state practice, as required element in the formation of customary international law

judicial decisions (ICJ Statute, Art. 38 (1)(d)) 4–5



342 INDEX

international law (cont.) nuclear programme, US-Iran exchanges teachings of publicists (ICJ Statute, of threats (2002-6) 169, 309 Art. 38(1)(d)) 4-5 Iraq: see also Israel-Iraq (nuclear reactor) International Law Association (ILA), (1981); Kuwait; Kuwait, Iraq threats Budapest resolutions (1934) 17 against/sanctions defiance (1994); Shattinternational waterways: see Corfu Channel; al-Arab dispute (1969-75) 'axis of evil' and 158 innocent passage in international waterways, right of; Shatt-al-Arab dispute no-fly zones (1992) 305 SC resolution 687, non-compliance 157, (1969-75); Turkish Straits, Soviet demonstration of force (1946) 159-60, 162, 168, 263 interpretation (UN Charter): see also state UNSCOM, expulsion of inspectors (1997) practice, as required element in the 308 formation of customary international Iraq (regime change, 2002-3) 157-68: see law; UN Charter, adaptation also Bush, George, US foreign policy aids 3-4 under circumstances of conclusion (VCLT 32) Al-Quaeda and 157, 158 and 34-6, 253-4 credibility of threat 6-7, 161, 164-5, 166, dynamic/living tree principle 54-5, 102 - 4justice/peace equation 164-5, 271-2 Namibia 105 military build-up in Persian Gulf 160-1 effectiveness/effet utile principle 51 irreversibility 161-3 gaps, completion 51 regime change as objective 163, 166-7, good faith and 54-5, 63-4 168, 271-2 in dubio pro mitius/protection of SC, compromise approach 169 sovereignty principle 109 SC mandate, differences of view 165-8, object and purpose/context (VCLT 31(1)) 2.71 - 2EU attitude 166, 167 parties' intention and (VCLT 31(1) and French attitude 163, 166-7 motivation for decision to object or 32) 34-6, 47, 253 points to be taken into account together not 164-8 NAM attitude 165-6, 167 with context (VCLT 31(3)) 'any relevant rules of international law SC resolutions applicable in the relations between 1441 (2002) (Iraq-Kuwait) 160, 162, the parties (VCLT 31(3)(c)) 61-2 163, 165-8, 271, 309-10 state practice 92-126: see also state draft UK-US resolution (March 2003) practice, as required element in the 163 formation of customary 'shock and awe' tactics 161 international law UN endorsement, UK demand for 158 subsequent practice in application of UNMOVIC/IAEA inspections and 157-8, treaty establishing agreement between the parties regarding its US threat to use force (2002–3), means of interpretation (VCLT 31(3)(b)), state communication 121 weapons, validity of intelligence practice for purposes of customary international law distinguished relating to 162-3 Israel: see also Entebbe incident (Israel-104-9 reductio ad absurdum considerations 40 Uganda) (1976) responsibility for, State practice: see Arab League summit crisis (Syria-Jordan) (1980) and 236, 237-8 state practice, as required element in Lebanese civil war (Al-Biqa missiles) the formation of customary international law (1981) 300Operation Grapes of Wrath (1996) 306 text-based approach, limitations 3-4 travaux préparatoires as aid: see UN Israel-Iraq (nuclear reactor) (1981), 'threat', Charter, travaux préparatoires/drafting whether 55 Israel-Iraq/Jordan (Qalqilya incident) Iran: see also Shatt-al-Arab dispute (1956) 293 (1969-75)as 'axis of evil' state 158 Ethiopia, occupation of (1936) 12



INDEX 343

Greece, ultimatum against/occupation Kellog-Briand Pact (General Treaty) for the of Corfu (1923) 15 Renunciation of War (1928) 16-18 Art. 1 (renunciation of war as Japan: see also Dutch East Indies, Japanese instrument of policy) 17 Art. 2 (peaceful settlement of disputes, threats to; French Indo-China, Japanese ultimatum and occupation; Manchuria, obligation) 17 ILA Budapest Resolution on (1934) 17 Japanese invasion (1931); Tokyo War Crimes Tribunal League of Nations Covenant, coercive measures short of war and 17-18 justice/peace equation (Constitution, Art. 9) 35 'state of war', relevance 18 renunciation of war/threat or use of Stimson Doctrine (1972) and 18 territory, acquisition by force of threat force (Constitution, Art. 9) 35 Jennings, Robert, 'What is international law ...' 94 of and 18 Kennedy, J. F., nuclear weapons, jus ad bellum/jus in bello possession as threat to the peace 264 ius cogens Kennedy, Robert (Thirteen Days) 168, 282 good neighbourliness principle (Shasta KFOR, establishment 153-4 Korea, North/South: see also Lee Teng-hiu County) and 281-2 visa crisis (1995-6); North Korea; Nicaragua 62 ordre public requirement 62 submarine incident (North/South Korea) threats to safeguard peremptory rights 60 - 1relations between treaties arms race 6 validity and (VCLT 53) 62-3, 107 Lee Teng-hiu visa crisis (1995-6) and withdrawal, as breach 263 jus naturale: see natural law (jus naturale) request for non-aggression pledge just war, natural law and 8 50 n. 41 justice/peace equation submarine incident (1996) 245-9 finding the balance 35-6 states, whether/right to UNC 2(4) humanitarian intervention 7, 290 protection 133-4 Iraq (regime change, 2002-3) 160, 164-5, Korean War 271-2 38th parallel, US decision to proceed beyond 131-5, 292 Japanese Constitution 35 NATO intervention in Kosovo (1999) 272 Chinese (PRC) counter-threats 133, Nuremberg and Tokyo trials 25 peaceful settlement of disputes US ultimatum 132-3, 169 obligation (UNC 2(3)) 52-4: see also China's right of self-defence (UNC 51) peaceful settlement of disputes, 134-5 obligation (UNC 2(3)/UNC 33) deterrence/escalation theories and 45 SC mandate, ambiguity 134 Kaluchak (Kashmir dispute) (2002) SC powers, as extension of 52 Seventh Fleet manoeuvres (1950) and Kanagawa, Treaty of (1854) 8 220, 222-3, 224-5, 292 Kant, I, on standing armies 8 silence/acquiescence, motivation/ Kashmir dispute (1947-) 115: see also China explanation 133-5 (PRC)-India border dispute (McMahon as unique example of authorisation of line) (1965), Chinese ultimatum military force 24 1951 clashes 225-7 US threat to use tactical nuclear SC discussions 226-7 weapons (1953) 292 silence/acquiescence, motivation/ Kosovo explanation 227, 262-3 interim international administration UN as mediator 226-7 (1999) (UNGA resolution 53/164) 156 Kaluchak (2002) 308-9 self-determination, right to 155 nuclear weapons, risk of use 304 Kosovo (NATO intervention) (1999) 150-7 Punjab border, military manoeuvres on Chinese attitude towards 151-2 1951 225-6, 292 credibility of threat 152-3, 155, 171,

260

1987 303



344 INDEX

Kosovo (NATO intervention) (1999) (cont.)	territory, acquisition by force or threat
EU attitudes towards 155	of, prohibition 10-11
Holbrooke-Milosevic agreement 151	Law of the Sea Convention (1982)
illegal threats of force towards, Yugoslav	EEZ 214
claims of 65-6	freedom of the high seas/'military uses'
justice/peace equation 272	(UNCLOS 87) 215
justification	innocent passage 71 n. 36
humanitarian considerations 155-7	League of Arab States: see Arab League
necessary crisis management 157,	League of Nations
171, 269–70	failure, examples/reasons 12, 23, 277
SC endorsement, need for 156-7	as political institution 15
KFOR, establishment 153-4	League of Nations Covenant
KLA (Kosovo Liberation Army), role 150	ambiguity, failure to resolve 14-15
Racak raid, effect 151	coercive measures short of war and 14
Rambouillet agreement	Interpretation of Certain Articles of the
SC reactions to 154-5	Covenant : Report of Special
terms 153	Commission (Corfu Affair) (1924) 15
Rambouillet (Contact Group)	limitations on right to make war
negotiations	cooling off period 11–12, 14–15
NATO threat of force to secure	'resort to war' 12-13
agreement 151–3, 308	League of Nations Covenant by article
SC endorsement 151	10 (defence against external aggression)
US military activities 153-4	12
SC resolutions	11 (war or threat of war as matter of
1160 150	concern to whole League) 11-13
1199 150	15(6), (agreement not to go to war with
1203 151	party accepting recommendations)
1244 153-4, 288	11-12
compromise approach 169 Soviet attitude towards 150-2, 153, 154-5	15(7), (right to take action necessary for maintenance of right and justice)
UN reactions to 154–7	11-12
decision to object or not, motivation/	16(1) (act of war as act against all League
explanation 156-7	members) 12
Kurds, Turkish ultimatum to Syria (1998)	Lebanon
305	civil war in 297, 298, 300
Kuwait, self-defence, right to threaten	Israel/Syria/USSR threats/use of force
force 114	(Al-Biqa missiles) (1981) 300
Kuwait, Iraq threats against/sanctions	Operation Grapes of Wrath (1996) 306
defiance (1994) 206-12, 306	Lee Teng-hiu visa crisis (1995–6) 240–5, 306
1990 situation compared 207	crisis management as preferred solution
crisis management considerations 159,	244-5, 269-70
171, 213, 269-70	deterrence strategy and 249
military build-up 206, 261	escalation 242
Operation Vigilant Warrior 207	non-intervention principle 240-5
protracted dispute/effect of threats 250-1	protracted nature 249
sanctions (SC 661 (1009)) 206	reciprocal demonstrations of force 241–2
SC resolution 949 (1994) 208-11, 253 n.	third state reactions
1, 276	EU 243
deterrence objective 210-11	Latin American countries 243
sovereignty of Kuwait, Iraqi	legal relevance of views 243-4
acknowledgment of 207, 210	motivation/explanation 243-5, 262-3
third state reactions 207-10, 261, 269	US 242
USSR 209	USSR 243
	legal positivism
Latin America	Austin (The Province of Jurisprudence
Lee Teng-hiu visa crisis (1995–6),	Determined) 277
attitude towards 243	Hobbes (The Leviathan) 8, 279-80



INDEX 345

legality of war 9-10 Oppenheim (International Law) 9-10 Vattel (Law of Nations) 9-10 Libya expulsion of Tunisians, Tunisian demonstration of force (1985) 302 Lockerbie incident 65, 202, 304 support for Amin post-Entebbe (1976) 146 US demonstrations of force against: see Gulf of Sidra, US demonstrations of force (1981); Rabta controversy (USA-Libya) (1989) Lockerbie/Lockerbie incident Rabta controversy (1989) and 202, 304 'threat', Libya's withdrawal of illegality claim 65 Lotus principle ('what is not prohibited is allowed') 4, 87, 255 inconsistent responses to lawfulness, effect 108-9 opinio juris, evidence of 95 n. 9

MacArthur, General Douglas, Korean War/ Taiwan-China crisis and 131-5, 221, 292 Maginot Line 250, 267 Manchuria, Japanese invasion (1931), Stimson Doctrine (1932) and 18 Marshall Plan, Soviet ultimatum to Czechoslovakia (1947) 128 as open threat 291 résumé 291 measures short of war: see 'coercive measures short of war' (mesures coercitives) military activities, exclusion areas: see exclusion areas (military activities) military alliance, whether 'threat' for purposes of UC 2(4) 264 n. 25 military capabilities, right to maintain 21, 34, 58, 252, 261-5 Nicaragua 78, 85, 90, 255 Nuclear Weapons 85, 90 as sovereign matter 78, 82-3 standing armies, as threat 8 military threat: see threat of force, prohibition (UNC 2(4)) misunderstandings measures to avoid 213-14, 282-3 WWI examples 283 risk of 174, 214, 302 mitigating circumstances continuing validity of legal norms 282 n. 2.7 Corfu Channel 74 crisis management as: see crisis management and the acceptability of a 'threat'

Nicaragua 282 n. 27 Monroe doctrine 8 Montreux Convention (1936), Soviet demands for renegotiation 175-7 Morocco, threat of military intervention in Mauretania (Galtat Zemmour) (1989) 308: see also Western Sahara (Morocco (Mauritania)-Spain) (1975) Moscow Declaration (1943) 20 Munich (1938) invalidity (VCLT 52) 288 lessons from 5, 50, 128, 187, 252, 265, mutually assured destruction (MAD) 88-9 Myamar-Thailand Sleeping Dog Hill incident (1992) 305 threats/demonstrations of force (2002) Nagasaki bombing: see Hiroshima/ Nagasaki bombing Nagornyy-Karabakh crisis (1991-2) 305 Namibia interpretation (UN Charter), dynamic/ living tree principle 105 state practice, role 105 veto, use of (UNC 27(3)) 105 national security, countervailing threats/ threats in self-defence (UNC 51/UNC 2(4)) and 266, 272 NATO: see also Kosovo (NATO intervention) (1999)Bosnia and Herzegovina, threats of retaliation 305 NATO cases, 'threats', absence from submissions 65-6 natural law (jus naturale) just war and 8 legality of war 8 necessity as requirement/justification countervailing threat/self-defence (UNC 51) 267, 274 ILC Articles on State Responsibility 269 threat of force (UNC 2(4)) 84 Nicaragua 74-9 appeal to exceptions to law as justification/mitigating circumstance 282 n. 27 collective self-defence, right of (UNC 51) 77 - 8countervailing threats/threats in self-defence (UNC 51/UNC 2(4)) 'Nicaragua gap' 77-8, 266, 274 Schwebel dissenting opinion 76-7 customary international law

state practice, standard of compliance

107 n. 65



346 INDEX

Nicaragua (cont.) treaties, possibility of parallel	balance between freedom of choice under UNC 2(7) and prevention of war
provision 106 military capabilities, right to maintain	(UNC 1) 60-1 coercion, as international manifestation
78, 85, 90, 255	of municipal law concept 60
non-intervention principle (UNC 2(7))	Corfu Channel 72–4
60, 78	humanitarian intervention: see
reasons for decision, omission 78–9	humanitarian intervention
threat of force, illegality claim	Monroe doctrine 8
evidence to support 74-7	Nicaragua 60, 78
as marginal legal issue 65	Seventh Fleet manoeuvres (1950),
use of force, finding of breach of obligation to refrain from 78	whether 221–2
Nicaragua	non-proliferation of nuclear weapons Baruch Plan (1946) 79
contras/Sandinista operations in	Cuban missile crisis and 79
Honduras: see contras/Sandinista	establishment of nuclear free zones
operations in Honduras	79–80
Cuban protest against US naval presence	seabed, moon and outer space 80
(1960) 294	General Assembly vote on request for
Nicaraguan government's purchase of	advisory opinion 81-2
Soviet combat jets, as threat to military	treaties relating to other than the Non-
balance in region 264	Proliferation Treaty (NPT) 80 nn. 77 and
San Andrés Islands (Colombia-	78
Nicaragua dispute, 1979-80): see San	unofficial possession 80
Andrés Islands (Columbia-Nicaragua	Non-Proliferation Treaty (NPT) (1968): see
dispute, 1979-80)	also nuclear deterrent; Nuclear Weapons
Security Council, attitude towards 200	customary international law, whether 81
US demonstration of force against	extension under NPT X(2) (1995) 81–2
suspected delivery of Soviet MiG-21s	North Korean withdrawal from 263 n. 24
(1984) 196–201, 302	obligation of nuclear powers to pursue
escalation 197-8	good faith nuclear disarmament
SC discussions 199	negotiations (NPT VI) 81
intelligence, accuracy 196-7, 199-201	parties to 80
NAM attitude towards 201	provisions 80–1
Nicaragua judgment and 201	security assurances of nuclear powers 81
silence/acquiescence, motivation/	North Korea
explanation 200–1, 213	as 'axis of evil' state 158
Nicholas II, disarmament proposals 11	Non-Proliferation Treaty (NPT) (1968),
non-aggression pacts	withdrawal from 263 n. 24
Locarno Treaties (1925) 16 North Korean and Soviet requests for 50	nuclear programme, US/North Korean threats/use of force (2002–) 310
role 50 n. 41	state, whether 133-4
Non-aligned movement (NAM)	North Sea Continental Shelf Cases
activities 104	peaceful settlement of disputes,
attitude towards	obligation (UNC 2(3)/UNC 33)) 52-3
Goa (1961) 182-4	state practice
Gulf of Sidra (1981) 194-5	classification as for purposes of the
Iraq (regime change, 2002-3) 165-6,	Continental Shelf Convention (1958)
167	102-3
Nicaragua, alleged sale of MiG-21s to 201	consistent/settled practice, need for 110-11
Rabta controversy (1989) 203, 204-5	nuclear deterrent: see also disarmament;
non-intervention principle (UNC 2(7)):	non-proliferation of nuclear weapons;
see also Lee Teng-hiu visa crisis (1995–6)	Nuclear Weapons
19th century practice 10	basis for 5-6
at request of state concerned (Seventh	conventional weapons distinguished 89
Fleet manoeuvres (1950)) 224-5	deterrence/escalation theories and 46



INDEX 347

lawfulness 263 breach of treaty, relevance 26-7 customary international law 85-8 individual responsibility for crimes General Assembly resolutions 86 under 26-8, 32 n. 147 ICI competence 82-6 justice/peace equation 25 preparation for war as crime 26 mutually assured destruction (MAD) and retroactivity 26-7 proliferation of nuclear weapons 5-6 nuclear tests, India/Pakistan 251 n. 181, OAU Gulf of Sidra (1981) and 194 263 n. 23, 307 Nuclear Tests, unilateral declaration Uganda-Kenya dispute (1976) undertaking, legal effect 260 n. 19 acquiescence in Kenyan economic Nuclear Weapons 79-89 measures 145-6, 169 ambiguity of advice 65, 88-99 mediation efforts 145 compellence 82-3 silence in response to Uganda threats countervailing threats/threats in self-defence (UNC 51/UNC 2(4)) state survival as justification 87-9, 145-6, 169 Oil Platforms armed attack, need for (UNC 51) 266 n. 30 threat of aggression (UNC 39), threat of force (UNC 2(4)) as 85 determination of existence 53 credibility of threat, need for 84 threat of force against Iran, withdrawal deterrence strategy considerations 46, of claim 67 47 n. 29, 82-3, 84 OPEC, Iraq threats against Kuwait (1990) customary international law 85-8 and 212 lawfulness, ICJ competence 82-6 open threats to secure concessions 127-71: omission from dispositif 85 see also coercive diplomacy; General Assembly and WHO requests for countervailing threats/threats in selfadvisory opinions distinguished 79 n. 73 defence; credibility of threat, need for; demonstration of force as UNC 2(4) imminence of threat, relevance 84-5 military capabilities, right to maintain 85 threat; ultimatum; and individual examples necessity as requirement/justification, countervailing threats/self-defence threat of force (UNC 2(4)) 84 distinguished 267 proportionality 48 n. 33, 84 explicit demand/deadlines and 57-9, 73threat of force, prohibition (UNC 2(4)) 4, 114, 259-60 Charter Purpose, need for compliance general conclusions, difficulty of drawing 169-71 possession of nuclear weapons as 84-5 differentiated legal appraisal, need for state survival/self-preservation and 87-8, 255-6 ultimatum, decline in use and 18, 114, threat or use of force, prohibition (UNC 129 Operation Desert Fox (1998) 157-8, 308 'signalled intention' 39-40, 89 Operation Enduring Freedom (2002-3) territorial integrity or political Operation Grapes of Wrath (1996) 306 independence as target 84 as unified concept (Brownlie formula) Operation Horev (1948) 129-31 39-40, 42-3, 255 Operation Protea (1981) 301 nuclear weapons, threat to use Operation Retail (1946) 70, 72-4 Kashmir (1990) 304 Operation Vigilant Warrior (1994) 207 possession as threat 84-5, 264 opinio juris Soviet threat to use against France and evidence of 43, 95 UK during Suez Crisis (1956) 42, 48, Lotus 95 n. 9 nuclear weapons, lawfulness 81, 82, 85-8 US threat against China (1953) 292 state practice and Nuclear Weapons (WHO request for Advisory distinction, need for 97-8 Opinion on) 79 n. 73 significance for determination of Nuremberg Charter (1945) relevant practice 94-5 aggression, omission of definition threat or use of force, prohibition (UNC 27 n. 117 2(4)) and 105-6



348 INDEX

Opium War (1840–2) 8 Oppenheim, L. legality of war 9–10 sovereignty of states 9–10 ultimatum, definition 13–14 Organization of the Islamic Conference (OIC), activities 104 Outer Space Treaties (1967 and 1979), exclusion areas (military activities) 214

Qaddafi{,} Muammar: see Gulf of Sidra{,} US demonstrations of force (1981); Rabta controversy (USA-Libya) (1989) Qui tacet consentire videtur principle: see acquiescence/absence of protest against use or threat of force (qui tacet consentire videtur principle)

pacta sunt servanda principle 107, 288 Pakistan-India relations: see also China (PRC)-India border dispute (McMahon line) (1965); Goa (India-Portugal) (1961); Kashmir dispute (1947-); Pakistan-India relations

arms race 6

Indian Parliament, terrorist attack on, military activities following (2001–2) 308 nuclear tests (1998) 307

SC resolution 1172 (1998) 251 n. 181, 263 n. 23

SC resolutions relating to 136–7, 251 n. 181, 263 n. 23

Pathet Lao offensive (1961) 294 peace dividend 281-3

peace and justice: see justice/peace equation

peace and security, Security Council responsibility for (UNC 24(1)) 102–4 peace treaties, validity under 'coercion' rule (VCLT 52) 287–8

SC resolutions 687 (Iraq) and 1244 (Kosovo) as imposed peace treaties 288

peaceful coexistence systems, as means for regulating threats of force 8 peaceful settlement of disputes, obligation (UNC 2(3)/UNC 33)

as active obligation 52-4
Aegean Sea Continental Shelf Case 235
Charter obligation: see peaceful
settlement of disputes, obligation (UNC
2(3)/UNC 33)

Contract Debts, Convention for the Limitation of the Employment of Force for Recovery of (1907) 11 escalation/spiral theory and 50 Hague Convention (1907) 11 North Sea Continental Shelf Cases 52–3 threat of force, prohibition (UNC 2(4)) and 51–5, 90, 253, 254–5

peaceful settlement of disputes, treaties and other international instruments relating to

Anti-war Treaty of Non-aggression and Conciliation (1933) (Saavedra-Lamas Treaty) 17

Central America Inquiry Convention (1925) 16

Geneva Protocol (1924) 15-16

Kellog-Briand Pact (General Treaty) for the Renunciation of War (1928): see Kellog-Briand Pact (General Treaty) for the Renunciation of War (1928)

Locarno Treaties (1925) 16

Montevideo Convention on Rights and Duties of States (1933) 16

Treaty of Mutual Assistance (LON draft) (1923) 16

peremptory norm of international law: see jus cogens

persistent objector rule 86, 100 Poland, Soviet threats against (1956) 293 Portugal: see Goa (India-Portugal) (1961) positivism: see legal positivism

Prague Spring (1968): see Czechoslovakia, Warsaw Pact's action against (1968) (Prague Spring)

pre-emptive war

legality 8

National Security Strategy of the USA ('Bush doctrine') 158-9

precedent: see ICJ jurisprudence relating to UNC 2(4) illegal threat claims; state practice, as required element in the formation of customary international law propaganda for war or other inflammatory purposes, prohibition

ICCPR 54

UNGA resolution 380 (V) (1950) (Peace through Deeds) 54

proportionality, self-defence/ countermeasures

19th century practice 10

as balancing of outcomes/risks 48, 267 Caroline 56

Corfu Channel 73-4

Cuban missile crisis (1962-3) 44 as ethical concept 48

Hiroshima/Nagasaki bombing 88

Nuclear Weapons 48 n. 33

threat of force and 43-4

reciprocal threats and 274 n. 48 protest: see customary international law,

persistent objector rule



INDEX

349

protracted conflicts aggressor/victim distinction, difficulty of applying 115, 251, 266	as 'self-defence' 57 Rhodesia, Security Council role 52 'rogue' states, readiness to condemn 253 n.
countervailing threat, lawfulness 113, 273-4	1, 271 Page Statute (ICC) aggression
crises within, difficulty of identifying 118, 251 definition 115	Rome Statute (ICC), aggression, postponement of jurisdiction in absence of definition (ICC Statute, Art. 5(2)) 32–3
examples 311-12	Rottem incident (1960) 293
Lee Teng-hiu visa crisis (1995–6) 249	Ruhr, French and German threats to
Pufendorf, S, just war 8	occupy (1921) 129 n. 5
Punjab border, military manoeuvres on 1951 225–6, 292 1987 303	Rwanda, interventions in Zaire (1996–7) 307
	San Andrés Islands (Columbia-Nicaragua
Rabta controversy (USA-Libya) (1989)	dispute, 1979-80) 189-92
201-6, 304	OAS/UN, non-consultation 191–2
'beneficial' effects 206	regional security issues 191
disapproval of US action, motivation/	silence/acquiescence, motivation/
explanation 205–6, 262	explanation 192, 213
intelligence, potential for error 203–4 Lockerbie incident and 202, 304	Territorial and Maritime Dispute (Nicaragua v. Columbia) 192
NAM attitude towards 203, 204–5	treaties
SC emergency session 204–5	Colombia–Nicaragua (1928) (Bárcenas
US policy, attitudes towards 204–5	Menese-Esguerra Treaty) 190
veto, use of 205	Colombia-USA (Vásquez Saccio
Rambouillet: see Kosovo (NATO	Treaty) (1972)
intervention) (1999)	ratification 191
Reagan, Ronald	validity 190, 285
Libya, relations with Gulf of Sirte (1981) 192, 193–5	Schelling, T. C. ambiguity of demands 58
Rabta controversy (1989) 201-4	coercion/freedom of choice 61, 63–4
Nicaragua, policy towards 74–5, 90,	compellence/deterrence 58-9
191	credibility of threat 173
MiG-21s, alleged sale (1984)	demonstrations of force 173
196-201	escalation/spiral theory 6, 46-7, 49
reciprocity principle	face-saving 283
cooperation alternatives to force and	Security Council: see also threat, breach of
281-2, 283, 284-5, 289	peace or act of aggression (UNC 39); veto,
countervailing threats/threats in self-	use of (UNC 27(3))
defence (UNC 51/UNC 2(4)) 49, 227, 274,	abstention from vote, examples: see also
284-5	veto, use of (UNC 27(3))
regulation of threats prior to UN Charter:	Korean War 134
see peaceful settlement of disputes,	Chapter VII responsibilities 28, 85
treaties and other international	authorisation requirement 268-70
instruments relating to; threat of force,	extension of powers 52
attempts to regulate prior to UN Charter	development of international law (de lege
remedies, role 7	ferenda) 54-5
renunciation of war: see also Kellog-Briand	endorsement of threat or use of force,
Pact (General Treaty) for the Renunciation of War (1928); threat or use of force,	importance attached to Iraq(regime change) 158
	Kosovo 156-7
prohibition (UNC 2(4)), absolute prohibition	legitimising role 270
by Germany and Japan 35	General Assembly and: see General
reprisals	Assembly role
prior injury, need for 10	international peace and security,
proportionality, need for 10	responsibility for (UNC 24(1)) 102-4



350 INDEX

Security Council (cont.) 1441 (2002) (Iraq-Kuwait) 160, 162, 163, mandate, ambiguity 134 165-8, 271, 309-10 as political organ 104 self-determination, right to 123 Czechoslovakia, Warsaw Pact's action state practice, classification of views as 102 - 3against (1968) 189 Security Council resolutions Goa 178, 183 66 (1948) (Egypt-Israel ceasefire) 131 Kosovo 155 83 (1950) (Korea) 52, 132-3 Western Sahara 137, 138, 141-2 209 (1965) (Pakistan-India question) self-help: see countervailing threats/threats 137 n. 50 in self-defence (UNC 51/UNC 2(4)) 210 (1965) (Pakistan-India question) self-interest, compliance with the law and 137 n. 50 281 - 3211 (1965) (India-Pakistan question) self-preservation: see state survival/self-136-7 preservation 215 (1965) (Pakistan-India question) self-restraint, motivation for/role 281-5, 137 n. 50 289-90 326 (1973) (provocation by Southern September 11 attacks: see 9/11 attacks Rhodesia) 276 Seventh Fleet manoeuvres (1950) 220-5, 292 348 (1974) (Shatt-al-Arab) 231 deterrence strategy and 249 377 (1975) (Western Sahara) 138 General Assembly discussion 223-4 379 (1975) (Western Sahara) 139 justification 380 (1975) (Western Sahara) 139 as collective self-defence 224 request of "Chinese" government 224 Korean War and 220, 222-3, 224-5 395 (1976) (Greece-Turkey) 234 581 (1986) (South Africa) 276 586 (1985) (South Africa) 276 non-intervention principle (UNC 2(7)) 661 (1990) (Iraq-Kuwait) 206 and 221-2 678 (1990) (Operation Desert Storm) 162, SC discussion 223-4 third state reactions 223-5 687 (1991) (termination of presence in acquiescence, motivation/explanation Iraq) 157, 159-60, 162, 168, 263, 288 262 - 3713 (1991) (Yugoslavia) 49 n. 38 as unilateral US Chapter VII undertaking 949 (1994) (Iraq: call for withdrawal of 220-1 troops from Kuwait border) 208-11, Seventh Fleet manoeuvres II (1958) 293 253 n. 1, 276 'Shasta County' analysis of relationship 984 (1995) (nuclear powers security between law and social norms 278-90 Shatt-al-Arab dispute (1969-75) 227-32 assurances) 81 1117 (1997) (Turkish-Cypriot missile Algiers Agreement (1975) 231-2 crisis) 148 boundary, attempts to determine 227-8 1146 (1997) (Turkish-Cypriot missile 1937 Boundary Treaty, alleged crisis) 148 invalidity 228-9, 285 CENTO mediation 229-30 1160 (1998) (Kosovo) 150 1172 (1998) (Pakistan-India nuclear escalation 230-1 Iranian threats/demonstrations of force tests) 251 n. 181, 263 n. 23 1178 (1998) (Turkish-Cypriot missile 228-9 crisis) 148 SC disapproval of both parties' actions 1179 (1998) (Turkish-Cypriot missile 232 crisis) 148 SC discussion 230-2 SC mediation role 231-2 1199 (1998) (Kosovo) 160 1203 (1998) (Kosovo) 151 SC resolution 348 (1974) 231 Special Representative 231-2 1217 (1998) (Turkish-Cypriot missile crisis) 148 threat/use of force, difficulty of distinguishing 262 1218 (1998) (Turkish-Cypriot missile si vis pacem para bellum principle 6, 46 crisis) 148 1244 (1999) (Kosovo: KFOR) 153-4, 288 Sinai, Israel incursion (1948) 1368 (2001) (9/11 attacks) 157, 271 UK threats/coercive diplomacy 129-31, 291 1397 (2002) (Middle East situation crisis management considerations including Palestine) 251 n. 181 171, 269-70



INDEX 351

SC silence on, motivation/explanation absence of practice/abstention as 94-7 'any act or statement ... from which 131, 169 as ultimatum 131 views can be inferred about Sleeping Dog Hill incident (Myamarinternational law' (Akehurst) 97 Thailand) (1992) 305 ICJ jurisprudence 97 Slovenia, Yugoslav intervention in newspaper articles/foreign ministry (1991-2)304documents 122 n. 116 Somalia, Security Council role 52 SC views 102-3 South Africa, Security Council role 52 verbal acts 96-7 South Africa-Angola, Operation Protea very widespread and (1981) 301representative ... inclusive of states South Eastern Europe Cooperation Process whose interests are specially (SEECP) 155 affected' (North Sea Continental Shelf Cases) 102-3 Southern Rhodesia Declaration of Independence 1965 (UDI), views of third states 95-102 Zambia's ultimatum 168 consistent/settled practice, need for behaviour out of line with, relevance SC resolution 326 (1973) 276 sovereignty: see also coercive diplomacy; innocent passage in international difficulty of generalizing from waterways, right of; non-intervention examples, differentiated legal principle (UNC 2(7)) appraisal, need for 169-70, 272 in dubio pro mitius principle 109 timeframe for UNC 2(4) purposes Kuwait, Iraqi acknowledgment of 207, 110-11 double standards 98-100 210 military capability, right to maintain interpretative models: see deterrence and 82-3, 255-6 strategy; escalation/spiral theory refusal to surrender 9 as interpretative tool right to wage war and 9-10 Covenant 18-19 Soviet Union: see USSR, attitude towards dynamic interpretation principles and Spanish Civil War (1936-9) 12 Spanish Sahara: see Western Sahara UN Charter 92-126 (Morocco (Mauritania)-Spain) (1975) legal norm, effect on 256-7, 289-90 spiral model: see escalation/spiral theory actions determined by political Spratly Islands dispute (China-Vietnam) considerations 243-4 (1988) 238-40, 304 exceptions to law as justification/ Chinese naval manoeuvres 238-9 mitigating circumstance 282 n. 27 neighbouring states 239-40 non-compliance 63 n. 92, 107 n. 61 third state reactions Nicaragua 107 n. 65 ASEAN 230 post-9/11 270-2 methodology for testing 109-15, 258 motivation/explanation 239-40, 250 case definitions/propositions 112-15 USA 239 UN/SC and 239 consistency, need for 271-2 definition of 'threat' for purpose of standing armies, as threat 8 state practice, as required element in the 112 formation of customary international law parameters 115 'a general practice accepted as law' (ICJ sampling techniques 119-21 Statute 38(1)(b)) 85-6, 93, 94, 217 selective bias 112 abstention from threat, difficulty of transparent and consistent approach, establishing 94-5 need for 126 counterfactual causation theories 95 non-compliant state practice, effect 63 acquiescence/absence of protest against n. 92, 107 n. 61 use or threat of force (qui tacet consentire persistent objector rule: see also videtur principle): see acquiescence/ acquiescence/absence of protest against absence of protest against use or threat use or threat of force (qui tacet consentire of force (qui tacet consentire videtur videtur principle) definition 100 classification as state practice 94-104 nuclear powers and 86



352 INDEX

state practice (cont.) Taiwan-China dispute: see also Lee Tengas prima facie evidence of custom hiu visa crisis (1995-6); Seventh Fleet 97-8 manoeuvres (1950) sources of analysis 116-19, 122 arms race 6 Chinese threat of force (2005) 169 contemporaneity, need for 122 Correlates of War Project (COW) 116, invasion/acquisition by force (1950) 117 n. 102 220 - 5inconsistency of terminology 116-17 US threat against Chinese invasion as International Crisis Behaviour (ICB) deterrent 58 database 117-19 territorial disputes: see boundary disputes treaties as evidence of practice 2-3 'territorial integrity or political independence' (UNC 2(4)): see also state responsibility certainty and clarity of law, need for 281 sovereignty Corfu Channel 70 de facto possession, sufficiency 124-5 failure to prevent mine-laying in drafting history 23 territorial waters 70 innocent passage and (UNCLOS 19) 71 threats: see also individual responsibility n. 36 League of Nations and 12-13 Nuclear Weapons 84 state survival/self-preservation Territorial and Maritime Dispute (Nicaragua v. as justification for threat of force (UNC Columbia) 192 territorial waters: see also innocent passage 2(4)) or self-defence (UNC 51) 87-9, 255 - 6in international waterways, right of Gulf of Sidra, Libyan claim to 193 natural law and 88 n. 107 states, limitation of UNC 2(4) rights to San Andrés Archipelago, Nicaraguan claim to 189-92 124 - 5de facto states and 124-5 territory, acquisition by force: see also Goa North/South Korea 132-4 (India-Portugal) (1961); Kuwait, Iraq status quo, preservation as policy threats against/sanctions defiance (1994); objective 9 San Andrés Islands (Columbia-Nicaragua dispute, 1979-80); Seventh Fleet Stimson Doctrine (1932) 18, 19 manoeuvres (1950); Shatt-al-Arab dispute strategic ambiguity 40-1 submarine incident (North/South Korea) (1969-75); Spratly Islands dispute (China-(1996) 245-9, 306-7 Vietnam) (1988); Taiwan–China dispute penalties imposed on North Korea 247-8 German Reich 5, 26-7, 50, 128, 187 Corfu (1923) 15 attitude towards, motivation/ explanation 248-9 Ethiopia (1936) 12 disapproval of both parties' actions Japan, pre-WWII 12, 18, 27-8, 128 248 - 9Kellog-Briand Pact (1928) and 18 reference to by North and South Korea Nagornyy-Karabakh crisis (1991-2) 246 - 7305 prohibition 10-11 third states, factors influencing approach to 248-9 'scramble for Africa' 10 US mediation 247-8 UNGA resolution 2625 (XXV) (Friendly SC acquiescence 247 Relations) 19 n. 82, 33 Sudan, US intervention 307 terrorism: see 9/11 attacks; Pakistan-India relations, Indian Parliament, terrorist Suez Canal crisis (1956-7), Soviet threat to use nuclear weapons 48, 293 attack on, military activities following Syria, Turkish ultimatum to extradite (2001-2)threat, breach of peace or act of aggression (UNC 39): see also threat of force, Kurdish leader (1998) 308 Taiwan, status/right to UNC 2(4) protection prohibition (UNC 2(4)); threat or use of force, prohibition (UNC 2(4)) 124, 244-5, 249 One-China principle, departure from determination of existence (1999) 244 n. 161 burden of proof 52 recognition, 1995 attempt to secure 244 'dispute' 52-3

Korean War 24

risk of war over 243-4



INDEX 353

margin of appreciation 54-5 Oil Platforms 53 expansion of concept 52-5 as justification for UNC 2(4) threat 85, 268 - 70'threat' breach of UN Charter, whether 51-2 UNC 2(4) 'threat' distinguished 51-3 threat of force, attempts to regulate prior to UN Charter: see also League of Nations Covenant balance of power concept and 8-9 consultation 11 effective remedies, role 7 historical development democratic accountability, effect 10 League of Nations/interwar system Nuremberg and Tokyo trials 25-8 pre-1919 7-11 WWII, development of ideas during and Charter negotiations 19-25 intervention in affairs of another state in times of peace 10: see also nonintervention principle (UNC 2(7)) peaceful settlement of disputes treaties, limited reference to 15-18: see also peaceful settlement of disputes, treaties and other international instruments relating to threat of force, prohibition (UNC 2(4)): see also arms race, examples; coercive diplomacy; credibility of threat, need for; deterrence strategy; escalation/spiral theory; nuclear deterrent; threat or use of force, prohibition (UNC 2(4)) absence of discussion at San Francisco 23 absence of practice/jurisprudence relating to 2-5, 34, 36, 65-8, 92, 255, 275–8: see also ICJ jurisprudence relating to UNC 2(4) illegal threat claims; state practice, as required element in the formation of customary international law relevance 289-90 aggression, acts amounting to distinguished 32-3, 36: see also aggression 'attempted threats', UNGA resolution 2625 (XXV) (Friendly Relations) 33 n. 150 certainty of law, desirability 3-5, 63-4, 281, 289-90 clarification of provision need for 3-5, 63-4, 281 scope for 276-8 classification as threat: see also countervailing threats/threats in

self-defence (UNC 51/UNC 2(4)); demonstration of force as UNC 2(4) threat; military capabilities, right to maintain; open threats to secure concessions Corfu Channel 59, 71-4, 90 disarmament obligations, breach 20-1, 54, 263-5 disruption of international peace 90-1 drafters' intentions 253 'maintenance of use [of] armed force' military activity 59, 74-6, 90, 91, 262-5 customary international law 76, 78 naval presence 71-4 military alliance 264 n. 25 military balance, threat to 264-5 military preparations/precautionary measures 114 mobilization 59 nuclear weapons, possession 84-5 customary international law 85-8 Osirak (Tamuz-1) nuclear reactor 55 propaganda 54 refugees, deportation 54 standing army 8 stirring up/inciting war 54 ultimatum/coercive measures short of war 34-5, 56, 114, 253, 258-60 verbal threat 59 evidence of (Nicaragua) 74-6 as foreign policy tool: see coercive diplomacy lawful threats/justification for: see proportionality, self-defence/ countermeasures lawful threats/justification for: see also proportionality, self-defence/ countermeasures armed attack: see countervailing threats/threats in self-defence (UNC 51/UNC 2(4)), armed attack, need for Brezhnev doctrine 187-9 Charter Purpose, compliance with 84 coercion, relevance 57-61, 254-5 deterrent effect 45-7, 58-9, 82-3 Goa (1961) 184 governing considerations (Vervorständnis) 62-3 imminence, relevance 55-7 ipso facto unlawfulness/comprehensive ban 43, 48-51 militarized act 53-4 right to self-defence and 49 jus cogens considerations 62-3 lesser gravity of threat as against use 43, 44-5



354 INDEX

threat of force (cont.)	Brownlie formula 38-43, 48, 83, 89
management of existing crisis: see	difficulty of distinguishing between
crisis management and the	threat and use 262–3
acceptability of a 'threat'	General Assembly resolutions, usage
non-compliant state practice, effect 63	2-3
n. 92	ICJ jurisprudence, Nuclear Weapons
peaceful settlement of disputes	39–40, 255
obligation (UNC 2(3)/UNC 33) and	multilateral treaties, usage 2–3
51-5, 90, 253, 254-5	Nicaragua 255
security of international community,	use of force by US (Nicaragua) 78
threat to 44–5, 47	validity of treaties and (VCLT 52) 3, 19,
security of state, threat to 44	264 n. 25, 285-9
self-defence (UNC 51) 85	threats of force (1945–2003) including
state survival/self-preservation 87–8 military threat, limitation to 2 n. 3	classification by type 291–310 Tokyo War Crimes Tribunal
relevant factors	individual responsibility for crimes
circumstances pertaining at time of	against peace 26–8
conclusion 34-6	Japanese threats to French Indo-China
Cold War 5, 24-5, 81, 88-9	and Dutch East Indies as acts of
si vis pacem para bellum principle 6, 46	aggression 27-8
weapons developments 5-7, 128, 270	justice/peace equation 25
threat of force (UNC 2(4)) as 85	tolerance/intolerance of use of "illegal"
threat or use of force, prohibition (UNC 2	use of force: see acquiescence/absence of
(4)): see also threat, breach of peace or act	protest against use or threat of force (qui
of aggression (UNC 39)	tacet consentire videtur principle)
absolute prohibition 1–2	trade concessions/Capitulations, forceful
customary international law/opinio	imposition 8-9
juris 105–6	travaux préparatoires: see UN Charter,
as Principle 36	travaux préparatoires/drafting history
reasons for 43-4	treaties
of threat: see threat of force,	conflict with jus cogens (VCLT 53) 62-3,
prohibition (UNC 2(4)), lawful	107
threats/justification for, ipso facto	interpretation: see interpretation of UN
unlawfulness/comprehensive ban	Charter
collective resistance against: see	pacta sunt servanda principle 107, 288
collective security/collective use of	supervening customary international
force (UNC 42) continuing validity	law, effect 106-9
106-8	validity: see validity of treaties, effect of
Dumbarton Oaks negotiations 2, 20–3	coercion by threat or use of force (VCLT
as erga omnes obligation 98, 257	51 and 52)
League of Nations Covenant language	withdrawal from, whether breach of jus
distinguished 2	cogens 263
San Francisco changes/proposed	Trieste, Yugoslav demonstration of force
changes	(1953) 292
economic measures, extension to 23	Truman, Harry S.
self-defence clause 51	Taiwan–China crisis and 131–5, 220–3 Turkish Straits crisis (1946) and 176
'territorial integrity or political independence' 23	Turkey-Greece relations: see also Aegean
'state of war' doctrine, as rejection of	Sea dispute (Greece-Turkey) (1976);
24-5, 34-5	Turkey-Greece relations
threat against territorial integrity or	arms race 6
political independence, limitation to	protracted dispute/effect of threats
70 n. 34, 84, 114	250-1
as unified concept 2, 255	Turkey-Syria, ultimatum to extradite
alternative analysis 43–51: see also	Kurdish leader (1998) 308
threat of force, prohibition (UNC	Turkish intervention in Cyprus (missile
2(4))	crisis (1997-8)) 146-50, 307



INDEX 355

construction of military airbase 147 Uniting for Peace Resolution (GA Resolution 377 (V)) credibility of threat 260 ad hoc measures 52 Cypriot right to self-defence and 148-9 by practice of UN principal organs EU threat to suspend accession negotiations 148-9 103 - 4Greek counter-threat 121, 147-8 effect in case of approval or passive acquiescence 100-2 Greek-Cypriot government's purchase of Russian missiles 146 rebus sic stantibus considerations as threat to military balance in region distinguished 105-6 264 threat of force, prohibition (UNC 2(4)) mutual responsibility for 149-50 276-8 SC resolutions 148, 169 breach Turkish threats of force 146-7 breach of disarmament obligations as US mediation 148 20-1, 54 Turkish Straits, Soviet demonstration of 'threat' under UNC 39, whether force (1946) 174-8, 291 Montreux Convention (1936), Soviet cooperation as preferred strategy 5, 24 demands for renegotiation 175-7 customary international law effect of developments in 107-8 résumé 291 third state/UN, non-involvement 177-8 whether 106 n. 58 motivation/explanation for decision disarmament (UNC 26) 23 to object or not 177-8, 213, 261 'enemy states clause' (UNC 107) 34-5, US/UK reactions 176-7 253 - 4USSR-Turkey Friendship Treaty, interpretation: see interpretation (UN revocation 175 Charter) veto, role 176-7, 178 military contributions of members, dependence on 21, 252 Uganda-Kenya dispute (1976) 142-6, 169 non-parties, right to invoke 70-1, ceasefire agreement 145 133-5 credibility of threat 171, 260 Principles/legal obligations economic blockade 143-5 distinguished 36 Entebbe incident (1976), role 143-4 travaux préparatoires/drafting history: see historical and economic background also threat or use of force, prohibition 142 - 3(UNC 2(4)), Dumbarton Oaks OAU attitude towards 145-6, 169 negotiations; threat or use of force, silence/acquiescence, motivation/ prohibition (UNC 2(4)), San Francisco explanation 145-6 changes/proposed changes US support for Kenya 144 see also interpretation, responsibility UK interventions: see also Blair, Tony, for, travaux préparatoires as aid below support for US in Iraq (1002–3); Iraq (regime change, 2002–3); Korean War; and under subject headings Munich, lessons from 5, 50, 128, 187, Suez Canal crisis (1956-7) 252, 265, 268 Afghanistan, invasion of (2001) 157, 308 pre-WWII German and Japanese Iraq, no-fly zones (1992) 305 aggression, influence 5, 50, 128, 171, Israel incursion into Sinai (1948) 129-31, 253-4 169 role of Big Powers 19-23 ultimatum US role 2, 24 ambiguity in 40-1 as treaty 4 decline in use 18, 114, 129, 259 UN as 'centre for harmonizing the definition/scope 13-14, 18 actions of nations' (UNC 1(4)) 281 blockade as 18 n. 81 unequal treaties: see validity of treaties, objective standards 258-9 effect of coercion by threat or use of force as 'threat or use of force' (UNC 2(4)) (VCLT 51 and 52) 34-5, 258-9 unilateral declaration/undertaking, legal UN Charter see also individual subject headings effect adaptation: see also interpretation (UN Ihlen declaration (Legal Status of Eastern

Greenland) 260 n. 19

Charter); mitigating circumstances;



356 INDEX

unilateral declaration (cont.) Nuclear Tests 260 n. 19 validity when procured by coercion (VCLŤ) 288 Uniting for Peace Resolution (GA Resolution 377 (V)) absence of authorisations under 268-9 Korean War as unique example 24 transfer of responsibilities to General Assembly 104 universality principle/equality of treatment 253-4, 290 UNMOVIC/IAEA weapons inspections in Iraq 157-8, 308 UNPROFOR 310 UNSCOM, US response to expulsion of inspectors (1997-8) 307 US embassy bombings (1998) 307 US interventions: see also contras/ Sandinista operations in Honduras; Cuban missile crisis (1962-3); Korean War; Kuwait, Iraq threats against/ sanctions defiance (1994); Nicaragua; Nicaragua, US demonstration of force against suspected delivery of Soviet MiG-21s (1984) Afghanistan, invasion of (2001) 157, 308 Afghanistan and Sudan (1998) 307-8 Bosnia, threats relating to 169 China, threat to use tactical nuclear weapons against (1953) 292 Gulf of Sidra, US demonstrations of force (1981): see Gulf of Sidra, US demonstrations of force (1981) Gulf War (1990-1) 304 Haiti, threats against (1994) 168-9, 305-6 Iranian nuclear programme (2002-6) 169, 309 Iraq, no-fly zones (1992) 305 Kosovo, role in Holbrooke-Milosevic agreement (1999) 151 military force 152-3 Nicaragua, exile invasion of (1960) 294 North Korean nuclear programme (2002 -) 310Pathet Lao offensive (1961) 294 Spratly Islands dispute (China-Vietnam) (1988) 239submarine incident (North/South Korea) (1996) 247Turkish-Cypriot missiles dispute (1997-8), mediation 148 Uganda-Kenya dispute (1976) 144 UNSCOM, response to expulsion of inspectors (1997-8) 307 Operation Desert Fox (1998) 308

US support for 302-3 USA: see also Bush, George, US foreign policy under; Clinton, Bill; Iraq (regime change, 2002-3); Kennedy, J. F.; Kennedy, Robert (Thirteen Days); Korean War; Reagan, Ronald; US interventions; Wilson, Woodrow coercive diplomacy, practice since 1989 112 n. 88 foreign policy changes post 9/11 157-9, Monroe doctrine 8 UN Charter and Cold War, effect 5, 89 drafting, role 2, 19-23, 24 USSR, attitude towards: see also Nicaragua, US demonstration of force against suspected delivery of Soviet MiG-21s (1984)Berlin Blockade (1948-9) 291 Berlin, threats (1958-9) 293 China-USSR boundary dispute (Ussuri incident (1969)) 168 Czechoslovakia, Warsaw Pact's action against (1968) (Prague Spring) 184-9 Georgia, threats against (1992 and 2002) 168, 305, 309 Gulf of Sidra (1981) and 195, 300 Iraq (regime change, 2002-3), attitude towards 163 Kosovo (NATO intervention) (1999) 150-2, 153, 154-5 Lebanese civil war (Al-Biqa missiles) (1981) 300Lee Teng-hiu visa crisis (1995-6) 243 Marshall Plan (1947), demonstration of force against Czech participation 128 Nagornyy-Karabakh crisis (1991-2) 305 nuclear weapons, threat to use during Suez Canal crisis 48 Pathet Lao offensive (1961) 294 Poland, demonstration of force against (1956) 293-4SC resolution 949 (1994) (Iraq: call for withdrawal of troops from Kuwait border) 209 Taiwan-China dispute and 223-4, 242, 244 - 5Turkish Straits, Soviet demonstration of force (1946) 174-8, 291 Yugoslavia's independent policy (1949-51) 291-2validity of treaties, effect of coercion by

threat or use of force (VCLT 51 and 52) 3,

60, 285-9



INDEX 357

Colombia-USA, Treaty relating to the San Andrés Islands (1972) 190, 285 Czechoslovakia-USSR Stationing of Forces Agreement (1968) 189, 285 Dayton Agreement (1995) 288 ex post facto approval, possibility of 288 Fisheries Jurisdiction (UK v. Iceland) 66–7, 286 Montreux Convention (1936), Soviet demands for renegotiation 175-7 non-military pressure, whether 'coercion' for purposes of 286 non-treaty concessions secured by force, applicability to 288-9 pacta sunt servanda principle and 288 peace treaties 287-8 Rambouillet agreement (1999) 151-3, 285, 306 Shatt-al-Boundary Treaty (1937) 228-9, threat against representative of state (VCLT 51) 282 n. 44 treaties: see validity of treaties, effect of coercion by threat or use of force (VCLT 51 and 52) validity of aggressor state obligations under UNC-compliant measures (VCLT 75) 287 Vienna Conference Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties 286 n. 45 Western Sahara, Tripartite Agreement (1975) 141-2, 285 Vattel (Law of Nations) 9-10 Venezuela-Guyana, boundary dispute (Essequibo river) (1981-3) 300 veto, use of (UNC 27(3)): see also Uniting for Peace Resolution (GA Resolution 377 (V)) abstention as non-exercise of, Namibia Czechoslovakia (1968) 188 as obstacle to implementation of collective security arrangements 24 Rabta controversy (1989) 205 Turkish Straits crisis (1946), possibility of 176-7, 178 US-Nicaragua (1980-86) 200 victim/aggressor distinction 50, 219, 249-51, 253-4 countervailing threat/self-defence (UNC 51) and 266, 267 demonstration of force and 261 difficulty of applying 49, 115, 251 enemy states clause (UNC 107) and 253-4

protracted conflicts and 49, 115, 251, 266 Vienna Convention on the Law of Treaties (1969): see interpretation (UN Charter); treaties; validity of treaties, effect of coercion by threat or use of force (VCLT 51 and 52) Vietnam, US response to Pathet Lao offensive 294: see also Spratly Islands dispute (China-Vietnam) (1988) war: see also League of Nations Covenant, limitations on right to make war; peaceful settlement of disputes, obligation (UNC 2(3)/UNC 33); preemptive war Correlates of War Project (COW) 116, 117 n. 102 declaration, relevance 13-14, 128 incitement to as threat or use of force 54 as instrument of state policy, prohibition: see Kellog-Briand Pact (General Treaty) for the Renunciation of War (1928); threat or use of force, prohibition (UNC 2(4)), absolute prohibition legality: see also just war pre-emptive war 8, 271 state sovereignty and 9-10 'measures short of' (mesures coercitives): see 'coercive measures short of war' (mesures coercitives) 'state of war', relevance 14, 18-19, 24-5, 34-5, 259 ultimatum: see ultimatum weapons developments impact on self-defence 270 threat of force 5-7 weapons of mass destruction (WMD), American Civil War (1861-5) and 6 Western Sahara (Morocco (Mauritania)-Spain) (1975) Algerian support for Polisario/threat of force 137-42 Morocco's "peaceful"/"green" march (1975) 137-42 Moroccan ultimatum 140 Spanish counter-threats 138, 139–41 SC resolutions 377 138 379 139 380 139 self-determination, Spanish Sahara's right to 137, 138, 141-2 tripartite agreement (14 November 1975) 140-2

parties' attempts to classify their role

(WWI) 283



358 INDEX

Western Sahara (cont.)
coercion (VCLT 52) and 141-2, 285
UN handling, confusion/ambiguity 140-2
UN referendum (1974) 137
UNGA resolutions
3458A (XXX) 141-2
3458B (XXX) 141-2
Western Sahara 137
Wilson, Woodrow, influence on UN Charter 19, 219
World Trade Centre attacks: see 9/11
attacks

World War I, failure to prevent 11

Yugoslav intervention in, Croatia and Slovenia (1991–2) 304–5

Zaire, Rwandan interventions in (1996–7) 307 Zambia, ultimatum against Southern Rhodesia's declaration of independence 168