

INDEX

- abuse of process, 36, 261–263, 264–266, 270, 273
 abuse of rights, 36, 244, 261–264, 265, 273
acquis judiciaire, 5, 30, 37, 132–134, 137–140, 143–145, 148–150, 152–153, 157, 161
 activism (judicial), 25, 32, 171, 176–178, 216
 administrative tribunals, 74, 85, 126, 188
 admissibility, 58, 119, 149, 234, 263, 264
 African Court of Human and People's Rights (ACtHPR), 187, 204
 American Arbitration Association, 95, 104
 Andenas, Mads, 10, 148
 arbitration. *See* commercial arbitration, interstate arbitration, investment arbitration
- Baetens, Freya, 35–36, 210, 242
 Bahrain Chamber for Dispute Resolution, 107
 Battle of the Sexes (game), 185, 207, 210–211, 214
 Berman, Franklin, 231
 Bjorge, Eirik, 11
 Boisson de Chazournes, Laurence, 19–23, 37, 199, 243, 244
 borrowing (judicial), 24, 32, 49–50, 71, 85–86, 216
 Bourdieu, Pierre, 167
 Breyer, Stephen, 215
 Brown, Chester, 12, 22, 36–37, 41, 87, 120–121
 Busch, Marc, 252
- Cafisch, Lucius, 231
 Cairo International Commercial Arbitration Centre, 95
- Charney, Jonathan, 11–12
 civil law, 49, 89, 93, 98, 119, 253, 267
 code of conduct, 198
 Cogan, Jacob Katz, 14–16
 comity, 209, 267
 commercial arbitration, 27, 53, 61–62, 63–64, 78, 88–89, 95–98, 108–109, 251
 common law, 12, 32, 36–37, 41, 49, 89, 93, 98, 118, 134, 191, 253, 267
 competition, 2, 3, 7–11, 13–16, 20, 23, 28, 60–61, 64, 103–104, 107–108, 129–131, 150, 163, 168, 191, 203, 271, 274
 compliance, 16, 68, 163, 166, 167, 180, 240
 Comprehensive Economic and Trade Agreement (CETA), 110, 197, 266, 268
 confidentiality, 81, 97, 108–109, 226, 233
 conflicts of interest, 28, 53, 78–79, 99–100, 198, 238
connexité, 21, 36, 210, 243, 261, 267, 273
 convergence, 2–6, 12–15, 24, 27–28, 31, 35–38, 41, 71, 75, 87–90, 97, 100, 108, 111–112, 130–131, 140, 143, 157, 160, 169, 197
 cooperation, 14, 17, 19, 20, 36, 163, 208–209, 210–214
 Council of Europe, 68, 164, 165, 170, 173–175
 counsel, 3, 6, 22–23, 27, 34–36, 38, 41–43, 63–65, 77, 80, 89, 94, 117, 182–184, 186, 189–191, 193–194, 202–207, 217, 219–220, 238, 241, 244–247, 249–254, 271, 273–274
 Court of Justice of the European Union (CJEU), 49, 126, 169–170, 172, 175, 253, 258, 268

- Crawford, James, 10, 190, 238
 Crook, John, 27–28, 36–37, 43, 61, 63, 210
 cross-citation, 5, 18, 19, 21, 24–25, 30, 38, 42, 54, 73, 85, 209–210, 217
 customary international law, 17, 163, 165, 181, 223, 228, 229, 232, 261, 262, 273
 dissent, 17, 25, 31, 44, 164, 172–173, 176, 178, 188, 215, 216
 Donoghue, Joan, 149
 due process, 27, 37, 44–46, 66, 70–73, 75–76, 81, 84–85
electa una via, 21
 emergency arbitration, 28, 61, 104–106
 Energy Charter Treaty, 193, 228, 242
 enforcement, 36, 124, 208, 236–237, 248, 257, 259, 260, 267, 273
 environment, 1, 109, 154, 160, 200, 210, 222, 240, 255
 Eritrea-Ethiopia Claims Commission, 95, 223
 European Court of Human Rights (ECtHR), 24–25, 31–32, 51–52, 54, 68, 74, 76, 78, 117, 121, 126, 163–164, 167–171, 173–181, 187, 188, 190, 192–193, 204, 213, 215, 216, 251
 European Court of Justice, 25, 51, 76, 213, 224, 267
 European Free Trade Agreement Court, 126
 European Union (EU), 110, 132, 167, 196, 213, 215
 evidence, new media, 28–29, 113–118, 120, 121–123, 124–125, 126–127
 evidence, rules of, 37, 88, 119
 expedited procedures, 106–107
 Extraordinary Chambers in the Courts of Cambodia, 125, 127
 fair and equitable treatment (FET), 32–33, 228–229
 Fearon, James, 214
 finance, 1, 95, 117, 158, 192, 194, 218, 251
 force, use of, 1, 12
 Forteau, Mathias, 249
 Fortier, Yves, 238
 forum choice, 35–36, 244–247, 249, 254, 256–257, 264, 270–274
forum non conveniens, 36, 259, 261, 266–268, 273
 forum shopping, 7, 35, 129, 191, 244–247, 250, 252, 256, 261–262, 270, 272–274
 fragmentation, 1–2, 4–7, 8, 10–13, 17–18, 20, 22–24, 26, 30, 36, 38, 41, 64, 86, 113–114, 117, 121, 124, 128–130, 162, 183, 196, 201, 206, 211, 217, 243
 Fukunaga, Yuka, 263–265
 game theory, 184, 206–207
 Battle of the Sexes, 210–214
 Prisoner's Dilemma, 208–210
 Gates, Douglas, 253
 Gautier, Philippe, 194
 General Agreement on Tariffs and Trade (GATT), 6, 255
 general principles of law, 2, 17, 42, 47, 78–79, 229, 262
 reliance on, 55–56
 genocide, 12, 98, 186
 Gill, Judith, 91
 Giorgetti, Chiara, 17, 22, 34, 182
 Greenwood, Christopher, 18, 132
 Guillaume, Gilbert, 7, 13, 137, 142, 238, 247
 Hague Convention for the Pacific Settlement of International Disputes, 91
 Hague Convention on Pacific Settlement of International Disputes, 28, 91
 Hamilton, Rebecca, 28–29, 37, 113
 harmonization, 28–29, 37, 87–88, 92–93, 96, 97, 103, 111, 122, 128, 130, 131–132, 133, 165, 197–198, 259

- hearings (oral), 27, 50, 95
 Higgins, Rosalyn, 13
 Hong Kong International Arbitration Centre (HKIAC), 95, 103, 105–106, 108
- ICC Court of Arbitration, 94, 103, 105
 immunities, 12, 188, 262
 impartiality (judicial), 27, 46, 66, 73, 75, 85
 convergence of expectations, 75–80
 independence (judicial), 27, 37, 46, 66, 68, 73, 75, 85
 convergence of expectations, 75–80
 inherent powers, 47, 56–57
 Inter-American Arbitration Commission, 95
 Inter-American Court of Human Rights (IACtHR), 25, 31, 123, 126, 171, 173, 180–181, 187, 188, 193, 204, 213
 International Bar Association (IBA), 3, 28, 37, 42, 53, 62, 78–79, 86, 111, 197, 198
 evidence rules, 97–99
 work on professional conduct, 99–100
 International Center for the Settlement of Investment Disputes (ICSID), 3, 32, 35, 37, 47, 54, 61, 63, 73, 83, 192, 193–194, 198, 205, 224, 228, 235, 239, 247, 248
 International Centre for Dispute Resolution (ICDR), 95, 104
 international claims commissions, 28
 International Council for Commercial Arbitration (ICCA), 97
 International Court of Justice (ICJ). *passim*
 International Criminal Court (ICC), 6, 12, 49, 52, 89, 115, 116–117, 122–123, 125, 172, 187, 212
 international criminal law, 115
 International Criminal Tribunal for Rwanda (ICTR), 12
 International Criminal Tribunal for the former Yugoslavia (ICTY), 8, 9, 12, 13, 25, 49, 78, 116, 130, 271
 international economic law, 21, 32, 33, 243
 international environmental law. *See* environment
 international human rights law. *See* human rights
 international investment law. *See* investment arbitration
 International Labor Organization (ILO), 126, 175
 International Law Commission (ILC), 65, 117, 173, 186, 189, 205
 international legal order, 1–2, 3, 5, 7, 10, 13, 17, 18, 21, 22–24, 26, 36, 183, 201, 204, 209, 217
 International Organization for Migration (IOM), 103, 175
 international organizations, 67, 93, 95–96, 165, 167, 197–198, 202, 205–206, 217
 International Tribunal for the Law of the Sea (ITLOS), 30, 37, 45, 47, 49–50, 51, 61, 63, 68, 79, 89, 125, 128, 131, 132, 137, 140, 144–145, 147–149, 152, 157, 159, 190, 192, 194–195, 198, 253
 interstate arbitration, 45, 63, 65, 80, 84, 91
 investment arbitration, 27, 33, 53, 63–64, 84, 88–89, 94, 98, 103, 108–110, 187, 190, 194, 196, 227–228, 263, 264
 investor-state dispute settlement (ISDS), 196–198
 Iran–United States Claims Tribunal (IUSCT), 94, 101–102, 103, 221, 228
 Islamic law, 233, 253
- Jackson, Robert H., 119
 judicial dialogue, 6, 17, 18–19, 21–22, 36, 44, 134, 157, 193
 judicial independence, 68
 judicialization, 1, 6, 131, 160
- Kennedy, Anthony, 215
 Kingsbury, Benedict, 6, 9
 Koskenniemi, Martti, 7, 13, 200, 206, 212
 Kuala Lumpur Regional Centre for Arbitration, 95

- law of the sea, 5, 29–30, 32, 37, 128–130, 132, 133, 136–137, 139, 141
 legal realism, 23
 legal traditions, 37, 89, 93, 98, 219
 legalization, 1, 6
 legitimacy, 25, 27, 35, 66, 72, 93, 100, 124, 164–167, 168, 170, 197, 199–200, 203, 205, 213, 216, 270–271, 274
 Leino, Jo, 7, 13, 200, 206, 212
lis pendens, 21, 36, 210, 243, 257, 261, 266, 267–269, 273–274
 litigants, 2–3, 6, 8, 14–15, 23, 27, 34, 35–38, 183, 184, 186, 189–190, 195, 202–207, 217, 244, 248–249
 London Court of International Arbitration (LCIA), 103–104, 106
 management, 5, 14, 17, 19, 22–24, 26, 30, 34, 36, 37–38, 107, 183–184, 192, 199, 201, 207, 209, 212, 217, 244
 margin of appreciation, 180–181, 201
 maritime delimitation, 30, 33, 132, 142, 143, 145, 150, 152, 157
 Miron, Alina, 29, 30, 37, 190
 Mitchell, Sara McLaughlin, 253
 new media evidence, 28–29, 113–117, 118, 120, 121–123, 124–125, 126–127
 nongovernmental organizations (NGOs), 3, 23, 28, 34, 37, 42, 81–82, 97, 164, 166–167
 North American Free Trade Agreement (NAFTA), 33, 109, 195, 234, 236, 255
 Nuremberg Tribunal, 113, 119
 Owada, Hisashi, 149
 Paine, Joshua, 5, 27, 36–37, 210
 Paulsson, Jan, 221, 231, 238
 Permanent Court of Arbitration (PCA), 3, 34–35, 61, 63, 64, 84, 91, 95–96, 103–104, 116–117, 118, 126, 190, 193–194, 205, 218–223, 226–228, 233–235, 237, 240–241
 Permanent Court of International Justice (PCIJ), 28, 75, 89, 91–92, 225, 227, 261, 262
 Peters, Anne, 22
 Pollack, Mark, 34
 Powell, Emilia Justyna, 244
 precedent, 23, 25, 28, 30, 32–33, 43, 60, 65, 82, 96, 131, 133, 134–135, 137–139, 140, 143, 147, 150, 151, 152–153, 156–157, 161, 175, 202, 211, 221, 239, 244, 249, 252, 273–274
 precedent setting, 254
 Prisoner's Dilemma (game), 207–211, 214
 procedural law, 2, 12, 19, 35, 37, 39, 43, 55, 68, 87, 194, 197
 proliferation, 1–2, 4–5, 6–11, 13, 16–17, 20, 22, 41, 162, 165
 provisional measures, 51, 55
 quasi-judicial bodies, 85
 registries, 6, 34, 38, 64, 192, 194, 204
 Reichler, Paul, 182
 remedies, 12, 88, 120, 250
res judicata, 21, 143, 149, 210, 269, 270, 273
 Rosenne, Shabtai, 91
 Ruiz-Fabri, Hélène, 5, 37
 rules of procedure, 27, 35, 37, 47, 49, 51, 92, 120–121, 123, 193–194
 Sandifer, Durward, 119
 Scalia, Antonin, 26, 215–216
 Schachter, Oscar, 185–186
 Schill, Stephan, 32
 Schwebel, Stephen, 231
 secretariats, 3, 6, 34, 63–65, 192–194, 204–205
 Shahabuddeen, Mohamed, 135
 Shany, Yuval, 10, 200, 271
 Simma, Bruno, 231
 Singapore International Arbitration Centre (SIAC), 107–108
 Slaughter, Anne-Marie, 18–19, 22
 Smith, Fedelma, 34–35, 60, 82, 193
 soft law, 47, 52–53, 78, 97, 165

- Special Court for Sierra Leone, 78, 116
 State responsibility, 9, 189, 212, 271
 Steininger, Silvia, 33
 Stone Sweet, Alec, 167
 Streinz, Thomas, 23, 199, 201, 244
- Thirlway, Hugh, 87, 90
 Thomas, Clarence, 216
 Tomka, Peter, 231
 trade, 1, 93, 183, 210–212
 transparency, 27–28, 35, 37, 46, 66, 73, 75, 77, 80–85, 108–111, 131, 142, 233–236, 238–239
 Treves, Tullio, 128, 148
 Trindade, Antônio Cançado, 188
- United Nations Commission on International Trade Law (UNCITRAL), 28, 92–97, 109–111, 193–194, 197–198, 205, 210, 220–221, 234–235, 237, 239–241, 248
 United Nations Compensation Commission (UNCC), 101–103
 United Nations Convention on the Law of the Sea (UNCLOS), 30, 37, 51, 63, 78–79, 84, 128–133, 140, 141–142, 146–148, 150–152, 157–160, 161, 190, 193, 197–198, 226, 232, 253, 256, 264, 266
 United Nations Convention on Transparency in Treaty-based Investor State Arbitration, 83, 110, 196, 235
- Venzke, Ingo, 147
 Vienna Convention on the Law of Treaties, 269
 Villalpando, Santiago, 186, 189
 Voeten, Erik, 5, 24, 31, 38, 210, 213, 216
 von Bogdandy, Armin, 147
- Webb, Philippa, 12, 124, 134
 Wheeler, Howard, 231
 Wiegand, Krista, 244
 Wildhaber, Luzius, 188
 Wolfrum, Rüdiger, 132, 139, 161
 World Health Organization (WHO), 173
 World Trade Organization (WTO), 6, 33, 44, 50, 63, 67–70, 81–82, 126, 180, 213, 254, 263, 269
 Appellate Body, 6, 50–51, 67, 69–70, 82, 263, 269
 Dispute Settlement Understanding, 50, 69, 70, 82, 254
 Wühler, Norbert, 103