

## INDEX

Abbas, Mahmoud, 241-2 African National Congress (ANC), Abkhazia, Republic of, ICJ extraterritoriality cases and, 56-8, 63-5 Aboriginal customary law, Crawford and, xvii-xviii accessibility, polar sovereignty and issues of, 111-14 accountability, of non-state actors, acquis communautaire, state recognition and, 205-6 Act of Free Choice analysis of, 221-7 historical background concerning, 209 - 10Indonesian incorporation of West Papua under, 219-20 New York Agreement and, 217–19 administrative law, investment treaty case law and, 105-8 admiralty jurisdiction, Crawford's work in, xvii ADM v. Mexico, 398n27, 399 aerial bombardment, collateral civilian damage and, 327-9 AETR doctrine, EU external relations and, 407-11, 413, 415-17 Afghanistan, European state actors in, 67 - 70Africa, uti possidetis principle and decolonisation in, 250-2, 255-6n32, 257n33, 258, 262-4 African Charter on Human and Peoples' Rights (ACHPR) extraterritoriality and, 54-8 jurisdictional issues and, 63-5

238n43 African Union, 169-70 responsibility to protect and, 29-30 Ago, Roberto, 292n21-22, 293n28, 297-301, 352-6 Agreement on Subsidies and Countervailing Measures (SCM Agreement), 363-4 International Law Commission relevance in, 375-83 'public body' concept interpreted by, 365 - 9World Trade Organisation (WTO) Appellate Body's interpretation of 'public body' concept, 369–73 Ahtisaari Plan, 161-6 Al-Adsani case, 187-8 Albania Corfu Channel case and, 47-8 Kosovo Albanians and, 161-6 Albright, Madeleine, 26–27n16 Alexandre (President), 166-70 Algeria, 157-61, 165n66 Allot, Philip, 288–9n9, 291, 292–6 Al-Skeini case, 'exceptional' nature of territoriality in, 65-7 Althusius, Johannes, 172 American Convention on Human Rights extraterritoriality and, 54-6 jurisdiction in, 60-5 American Law Institute (ALI) on disclaimers in recognition of states, 205-6 'Manifestation of Intention to Recognize', 202-4



> INDEX 443

Restatement (1965) on state recognition, 198-202 Amis, Martin, 3 Anastasiou case, 177-9 Anglo-German Agreements of 1913, Cameroon-Nigerian boundary dispute and, 262-4 Annan, Kofi, 26-7, 32-3, 157-61 Antarctica, polar sovereignty issues and, 110-11 Antarctic continental shelf, sovereignty issues concerning, 116–17 Antarctic sovereignty, 114–17 Antarctic Treaty (1959), 110-11, 114–17, 124–5 Antarctic Treaty System (ATS), 114-17 Anzilotti, Dionisio, 144-5, 151-2 Arab League Syrian and suspension from, 348-51 **UN Security Council Resolution** 1973 and, 37-8 Arangio-Ruiz, Gaetano, 356-60 Arctic Maritime Shipping Assessment (AMSA) Report, 118-21 Arctic sovereignty, 110-11, 118n45, Arctic Water Pollution Prevention Act, 118-21 Arendt, Hannah, 4-5 Argentina Antarctic sovereignty and, 121-4 ARA Libertad case and, 389-91 Beagle Channel arbitration and, 259 - 60Eichmann extradition and, 47–8 investment treaty claims in, 90–3 polar sovereignty and, 111–14 State responsibility principles in, 297-301 third party countermeasures and, 352 - 6Aristide, Jean-Bertrand, 166-70 Armed Activities on the Territory of Congo, ICJ opinion on, 204-5 arms shipments, PCASP guidelines and, 315-21 Articles on State Responsibility (ASR) countermeasures of investment treaty claims and, 395-6

Eurotunnel dispute and, 427-8, 429-32, 436 military necessity limits in, 334-7 mixed multi-party disputes and, 421 - 2normative principles in, 288-90n11, primary and secondary rules of military necessity and, 337-8 State complicity with corporate human rights breaches and, 321-4third party countermeasures and, 340-1, 347-51 U.S. - Antidumping and Countervailing Duties (China) and, 363-4 Articles on State Responsibility (ILC), 47-8, 173-82, 188-90 Asian sovereignty. See East Asia Assad, Bashar al-, 37-8, 44-6, 347 - 51assumption of risk, in Eurotunnel dispute, 432-4 attribution, test of collateral civilian casualties and, 327 - 9U.S.-Antidumping and Countervailing Duties (China) and, 363-4 Audencia de Guatemala, 267-70 Australia Antarctic sovereignty and, 114-17, 121 - 4investment treaty claims and, 90 - 3polar sovereignty issues and, 110 - 11Australian Antarctic Territory (AAT), 114 - 17Australian Courts of Law, xvi Australian Law Reform Commission, auto-interpretation, third party countermeasures and problem of, 356-60 Badan, Opertti, 350

Badinter Commission, 192-6 uti possidetis principle and, 248-52



444 INDEX

Bahrain, third party countermeasures and, 343-7 Baker, James, 157-61 Baker Plan (Framework Agreement) (2001), 157-61Baltic States, state continuity and succession in, 273-7 Banković case 'exceptional' nature of territoriality in, 65-7 'legal space' concept in, 67–70 Barbados, maritime boundary dispute in, 265 Barcelona Traction opinion, 297-301 Barcenas-Esguerra Treaty, 267-70 Barry, Elizabeth, 6-7 Basten, Henry, xiv Beagle Channel arbitration, 259-60 Beckett, Samuel, 14, 15-17, 21 Bedjaoui, Judge, 249-50, 270-2 Beer, Gillian, 5 Belgium, Palestine statehood supported by, 239-42 Bellinger, John B. III, 46 Best Management Practices, piracy defence in shipping industry, 307-8 Bianchi Andrea, 325-7 bilateral investment treaties (BITs) constitutional legitimacy of, 90-3 investment treaty case law and, lex specialis principle and, 391-3 bilateral recognition, objective statehood principle and, 231 - 4binary analytic mindset, collateral damage and, 331 Black, Eugene R., 20-1 Black Sea case, uti possidetis principle and, 270 Blair, Tony, 23, 30-1, 40 Bluntschli, 277-9, 342-3 Bolivia investment treaty claims by, 90-3 uti possidetis/uti possidetis juris principle and, 254n24 Bosnia-Herzegovina

humanitarian crisis in, 25-6, 43 international recognition of, 196-8, 202 - 4Bosnian Genocide case, 297-301 Botswana, third party countermeasures and, 343-7, 350-1 boundary disputes Barbado boundary dispute, 265 Cameroon-Nigerian boundary dispute, 262-4 Colombian-Nicaraguan boundary dispute, 267-70 during colonialisation, 252-8 Gulf of Fonseca maritime boundary dispute, 258-9, 260-2 Honduran-Nicaraguan boundary dispute, 265-7 maritime boundaries, uti possidetis principle in, 258-70 uti possidetis juris principle and, 248 - 52Brazil functional immunity in perimeter guard case in, 310-15 uti possidetis de facto formula in, 252-4n24, 258 Bricker Amendment, non-self-executing treaties and, 95-9 Brierly, James, 277-9 Briggs, Herbert, 233n16, 231-4, 234n22 Brown, Jethro, xv Brownlie, Ian, xv-xvi, 289n9, 293n28 Brownlie's Principles of International Law (Crawford), xxi Brownlie's Principles of Public International Law, 198-202 Brussels Convention, rules on criminal jurisdiction over collisions, 310-15 Bulgaria, neutrality concerning Palestinian statehood, 241-2 Bunker, Ellsworth, 217-19 Burkina Faso/Mali case, 249-50 state recognition in, 198-202 uti possidetis principle and, 255-8, 260-2, 265-7



INDEX 445

and, 350-1, 352-6 Cairo Declaration, Senkaku/Diaoyudao Islands dispute and, 128–30 California Alien Land Law, international law and, 95-9 California Supreme Court, UN Charter and rulings by, 95-9 Cambridge University, Crawford's presence at, xx-xxv Cameroon, Republic of boundary dispute with Nigeria, 262 - 4third party countermeasures and, 352 - 6Canada Arctic sovereignty issues and, 121-4 Arctic sovereignty issues in, 118–21 EU asbestos dispute and, 81 investment treaty claims and, 90-3 Palestinian statehood supported by, 239 - 42polar sovereignty issues and, 110 - 11Ouebec separatism in, 248 United Postal Service of America Inc (UPS) v. Canada and, 179-82 Canada-Dairy case, WTO Appellate Body's interpretation of 'public body' concept and, 369-73, 386n99 carbon markets Forest Carbon Partnership Facility (World Bank), 81, 81n56 normative conflicts over establishment of, 71–3 regime interaction and, 81 Cargill v. Mexico, 401-3 casus belli, primary and secondary rules of military necessity and, 337–8 Central American Court of Justice

Burundi, third party countermeasures

Central Europe, state continuity and succession in, 273-7 Centre for the Democratic Control of Armed Forces, 315-21 Channel Tunnel Group Ltd., 422–3 Sangatte migrants and, 425-6 Channel Tunnel (International Arrangement) Order, 425-6 *The Charkieh* ruling, 182–8 Charlesworth, Hilary, 15-17 Chatterjee, Partha, 18–20 Chesterman, Simon, 47-8 Chile Beagle Channel arbitration and, 259-60 polar sovereignty and, 111-14 China, People's Republic of critique of Senkaku/Diaoyudao Islands claims, 134-6 East Asian sovereignty and, 126-43 history of Senkaku/Diaoyudao Islands ownership and, 128-30 overview of Senkaku/Diaoyudao claims, 129-130n16, 131-3 polar sovereignty issues and, 110 - 11Senkaku/Diaoyudao Islands dispute with Japan and, 126-8 state-owned enterprises and state-owned commercial banks in, 365-9 Syria and, 44-6 U.S.-Antidumping and Countervailing Duties (China) and, 363-88 U.S. relations with, 126–8 Churkin, Vitaly, 36-7 Cicero, 250-2 civil law, restrictive immunity doctrine and, 187-8 civil rights litigation (U.S.) human rights treaties and, 90-3 international law and, 95-9 Civis Romanus sum, third party countermeasures and, 342-3 'clean slate' principle, state continuity and succession and, 279-83

Gulf of Fonseca boundary dispute

Land, Island and Maritime Frontier

immunity doctrine and, 186-7

Central Bank of Nigeria, restrictive

and, 258-9

Dispute, 260-2



446 INDEX

'clear excessiveness' standard, collateral colonialisation. See also decolonisation; civilian damage and, 327-9 independence Act of Free Choice in West Papua historical origins of, 6-7 and, 209-10 in international law, 7-14 Crawford's Admiralty work and, rousing of, 15-21 terminology of, 4-7 'legal space' concept and, 67-70 uti possidetis principle and, 252-8, climate change international regime for, 73-8 270-2polar sovereignty issues and, Western Sahara territorial 118n45, 121, 124-5 disposition and, 157-61 coastal State rights, Enrica Lexie West New Guinea under, 213–15 Commission on the Limits of the incident and, 310-15 Cobbett, Pitt, xviii Continental Shelf (CLCS) coexistence principle, third party Antarctic sovereignty issues and, countermeasures and, 352-6 116 - 17Cohen, Jean L., 283-4 Arctic sovereignty issues and, Cold War 118 - 21Indonesian independence and, contemporary challenges involving, 217-19 polar sovereignty issues and, polar sovereignty issues and, 110 - 11110 - 11Commission v. Greece, 414–15 regime change ideology in wake of, Common Commercial Policy, EU 166 - 70responsibility to protect and end of, competences concerning, 407-9 41 - 2communitarian law enforcement, third party measures and, 347-51 collateral damage binary analytic mindset concerning, comparative public law analysis, investment treaty case law, 105-8 international law concerning, Comprehensive Peace Agreement (CPA) between the Government 325 - 7military necessity concept and, of The Republic of Sudan and the Sudan People's Liberation qualifying words pertaining to Movement/ Sudan People's offence of, 327–9 Liberation Army 2005, 159n26 state vs. individual responsibility compulsory jurisdiction, legal thresholds for, 329-30 characteristics of states and, 145 - 7collective recognition, of Palestinian statehood, in UNGA Resolution conceptual clichés, 10 67/19, 234-42 Concession Agreement, in Eurotunnel dispute, 426-7, 429-32 Colombia investment treaty claims by, 90-3 conduct of states. See State Nicaraguan boundary dispute with, responsibility conduct of persons empowered by, uti possidetis/uti possidetis juris 364n5 principle and, 254n24 countermeasures in investment Colonial Declaration, uti possidetis treaty claims and, 395-6 principle and, 255–8 in Eurotunnel dispute, 432-4



INDEX 447

normative principles of State responsibility and, 288-91 third party countermeasures and, 356-60 WTO Appellate Body's interpretation of 'public body' concept and, 369-73, 377n67 Conferences of the Parties (CoPs), State responsibility law and, 304 - 5Confucianism, territorial sovereignty and principles of, 139-41 I Congreso case, 182-8 constitutionality issues European Community legal order and, 99-105 international law and, 95-9, 292 - 6investment treaty claims and, 90-3 state continuity and succession, 279-83 Constitution of the United States, international law and, 95-9 Constitutive Act of the African Union, 29 - 30constructive possession, uti possidetis principle and, 252-8 contiguity principle, polar sovereignty and, 111-14 continental shelf claims Antarctic sovereignty issues concerning, 116-17 Arctic sovereignty issues and, 118 - 21Colombian-Nicaraguan boundary dispute and, 267-70 polar sovereignty issues and, 110 - 11Senkaku/Diaoyudao Islands dispute and, 128-30

Convention for the Suppression of Unlawful Acts Against the Safetey of Maritime Navigation, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 54-6 Convention on the Elimination of All Forms of Racial Discrimination (CERD), 54-8 extraterritoriality and, 63-5 Convention on the International Trade of Endangered Species (CITES) accountability to sovereign states of, experts' role in, 82-3 regime interaction and, 80 Convention on the Prevention and Punishment of Genocide, Convention on the Rights of the Child (CRC) Democratic Republic of Congo v. Uganda and, 63-5 extraterritoriality and, 54-8 jurisdiction in, 60-3 Convention on the Settlement of Investment Disputes (ICSID) 'Exit' and 'Voice' dichotomy in, investment claim countermeasures and, 389-91 investment treaty compatibility with, 90-3 lex specialis principle and, 391–3 state recognition and, 203-4 coordination principle, third party countermeasures and, 352-6 Corfu Channel Case, 47-8, 302-3 corporate misconduct, State complicity with corporate human rights breaches and, 321-4 Costa Rica, Palestinian statehood supported by, 239-42 Côte d'Ivoire, regime change in, 169 - 70Council of the League of Nations, 147 - 9

Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

extraterritoriality and, 54-7

law of state responsibility and,

U.S. ratification of, 95-9

jurisdiction in, 60-3

179-82



> 448 INDEX

'counter-limits' (controlimiti), European Community legal order and, 99-105 countermeasures in investment treaty claims, 389-405 by third parties, 340–1, 362 counter-terrorist politics Kosovo and, 161-6 state immunity and, 182-8 Western Sahara territorial disposition and, 157-61 Court of Appeal of England and Wales, 177-9 Court of Justice of the European Union (CJEU), 407-11 EU Member States' international agreements and, 409-11 need for EU coordination and, 413 Opinion 1/94 of, 408-9 Opinion 2/91, 413 Covenant of the League of Nations, 147-9 CPI v. Mexico, 399-401n40 Craven, Matthew, 273–83 Crawford, James The Creation of States in International Law and, xv-xvi, xxi, 144-7, 273-7 'The Creation of the State of Palestine: Too Much Too Soon,' 229-31 'Democracy in International Law' lecture, 93-5 democratisation of international law, quest for, 93-5 early life and career, xi-xix Eurotunnel partial award and, 426, 436 on evolution of international law, 88 - 9human rights laws and, 51-4 investment claim countermeasures and, 389-91, 405 legacy of, xx-xxv, 51-4 on legal characteristics of states, 144-5, 151-2

mixed multi-party disputes and work of, 421-2 on Palestinian statehood, 229-31 on presumption of sovereignty, 80n51 on regime interaction, 83-4 on sector theory, 111–14 on state continuity and succession, 273-7, 283-4 on statehood, 155-6, 172 on state immunity, 173-7, 310-15 on State responsibility, 287-8, 291-292n21, 297-301 on third party countermeasures, 340-1, 343-7 third party countermeasures and, 352-60 U.S.-Antidumping and Countervailing Duties (China) and, 363-4 uti posssidetis principle and work of, 248 - 72Crawford, James Allen, xiii Crawford, Josephine Margaret, xiii Crimes at Sea Act, xvii Croatia, international recognition of, Cuba Palestinian statehood supported by, 242 - 3third party countermeasures and, 343 - 7customary international law. See international law Cyprus Anastasiou case and, 177–9 international recognition of, 205-6 Turkish occupation of, 67–70 Cyprus v. Turkey, 177-9 Declaration of Maroua, 262-4 self-determination and, 210-13,

Declaration of Yaoundé II, 262-4 decolonisation 221 - 7state continuity and succession and, 279-83



INDEX 449

statehood recognition and, 232n11 uti possidetis principle and, 250-2 Decolonising International Law (Pahuja), 20-1 deep sea technologies, uti possidetis principle, marine space territorialisation, 250-2 degeneration, cliché as expression of, 4 - 5de jure recognition of states, 198n30, 202, 204-5de lege ferenda, State complicity with corporate human rights breaches and, 321-4 Democratic Republic of Congo v. Uganda, 51-4, 56-8 extraterritorial applicability in, 63 - 5International Covenant on Civil and Political Rights applicability in, 'legal space' concept in, 67-70 Democratic Republic of Congo (DRC) 'legal space' concept and law of occupation and, 67-70 separation barrier with Uganda, 56 - 8Democratic Republic of Vietnam, 202 - 4democratisation in international law, 93-5 regime change and, 166-70 Demopoulos case, 177-9 Denmark, Arctic sovereignty issues and, 118-24 Denning (Lord), 177–9 developing countries, Kosovo air strikes opposed by, 26–7 'Diaoyu Dao, an Inherent Territory of China', 131-3 Dictionary of Received Ideas, 6-7 Diplock, Lord, 182-8 diplomatic protection investment treaty claims and, 391-3 State responsibility and, 295n39 direct effect doctrine, European Community legal order and,

disclaimers, in law of recognition, dispute settlement, PCIJ and ICI activities concerning, 304 domestic courts, extraterritoriality in rulings by, 56-7 domestic law autonomy of international responsibility from, 292-6 'Exit' and 'Voice' dichotomy and, 109 international law and rule of irrelevance of, 93-5 investment treaty case law and, 105 - 8sovereignty and regime interaction and, 80n50 State immunity cases and, 310-15 US civil rights litigation and international law and, 95-9 Dominican Republic, Haitian regime change and, 166-70 Don Pacifico affair, 341 Douglas, Zachary, 401-3 Drago-Porter Convention, 342-3 Droit de gens, 277-9 dualism, statehood dynamics and, 174-5 dubio mitius principle, 385n95 due diligence State complicity with corporate human rights breaches and, State responsibility and PCASP protection, 315-21 due process investment treaties and, 90-3 third party countermeasures and, 356-60 Dugard, John, 231-2n11, 234, 341 - 2Dumbarton Oaks Conference, law of recognition and, 192-6 Dutch East Indies, 213-15 decolonisation and, 221-2 duty of cooperation Member States' compliance with EU laws and, 414-15

99-105



450 INDEX

duty of cooperation (*cont.*) USU Target System of Terminal Dues and, 415–17

East Asia

Chinese Senkaku/Diaoyudao claims and traditional law in, 141–3 palimpestic aspects of sovereignty in, 138–41

palimpsestic reconstruction of sovereignty in, 139–41 Senkaku/Diaoyudao dispute and

sovereignty concepts in, 131–3 sovereignty issues in, 126–43

traditional regional order in, Chinese Senkaku/Diaoyudao claims and, 134–6

Eastern Carelia opinion, 147–9 Eastern Europe, state continuity and succession in, 273–7

Eastern Greenland case, 124–5 polar sovereignty and, 111–14 East Timor, Indonesian invasion of,

227–8 East Timor Case (Portugal v. Australia),

227–8 EC-Hormones case, 385n95

Economic Community of West African States (ECOWAS)

intervention in Côte d'Ivoire, 169-70

interventions in Liberia and Sierra Leone by, 47–8

Ecuador

investment treaty claims and, 90–3 third party countermeasures and, 343–7

effects test, investment treaty case law and, 105–8

Eichmann, Adolf, 4–5, 47–8 Eliot, T. S., 14

El Salvador, Gulf of Fonseca boundary dispute and, 258–9, 260–2

Enrica Lexie incident, 307–8, 310–21 environmental institutions, regime interaction and, 73–8, 81

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) (Australia), 114–17 epistemic communities, international relations scholarship on, 73–8 equality of states, Chinese Senkaku/Diaoyudao claims and, 134–6

equal protection clause (U.S. Constitution), international law and, 95–9

erga omnes dictum

State responsibility and, 297–301 third party countermeasures and, 343–7, 356–60

ethnic identity, self-determination and, 221

EULEX, Kosovo independence and, 161–6

European Community (EC) 'Exit' and 'Voice' dichotomy in law of, 93–5, 99–105

integration of, constitutional implications for, 99–105

investment treaties and law of, 90-3

European Convention on Human Rights (ECHR)

extraterritoriality and, 54–6 human rights obligations in non-sovereign territory of treaty parties, 67–70

jurisdiction 'triggers' and, 58–63 State responsibility concerning investment treaty claims and, 391–3

European Court of Human Rights, 56–7

'exceptional' nature of extraterritoriality and, 65–7 extraterritoriality in cases of, 65–7 human rights obligations in non-sovereign territory of treaty parties, 67–70

law of state responsibility and, 177–9

Namibia exception and, 177–9 recognition as intentional act under, 198–202

restrictive immunity doctrine and, 187–8

State complicity with corporate human rights breaches and, 321–4



INDEX 451

state immunity principles and, 182-7n52, 188 Turkish occupation of Cyprus and, European Court of Justice European Community legal order and, 99-105 law of recognition and, 177-9 national courts and, 90-3 European Union allocation of competences and external relations of, 407–11 Anastasiou case and, 177–9 Canadian asbestos dispute and, disclaimers in state recognition by, 205 - 6Eritrea recognition by, 192-6 exclusive competence regarding international agreements, 407-9 external relations of, 406-20 future challenges in external relations of, 419-20 international organisations and position of, 411-12 investment treaty claims and, Kosovo intervention and, 161-6 Member States' compliance with law of, 414-15 Member States' international agreements and, 409-11 need for coordination in, 413 postal services in, 415–17 recognition of Kosovo by, 192 - 6recognition of South Sudan by, 196 - 8representation of, in international institutions, 412-13 telecommunications regulations in, 417 - 19USU Target System of Terminal Dues and, 415-17 Eurotunnel dispute applicable law and jurisdiction in, 426 - 7claimants' position in, 427-8 damage determination in, 439

facts and background on, 422-3 failure to protect against incursions in, 432-4 favouritism towards SNCF and Port of Calais in, 434 Invitation to Promoters in, 429 - 32joint and several responsibility findings in, 427-32 legacy of, 439-41 legal claims in, 425-6 Millett dissent in, 436-8 partial award in, 426-36, 439 respondents' position in, 428 Sangatte claim findings in, 432-5 shared responsibility in, 434–5, 436 - 8Tribunal's analysis in, 429-32 EU-US Transatlantic Trade and Investment Partnership, 90-3 Evans, Gareth, 40 Exclusive Economic Zones (EEZs) Colombian-Nicaraguan boundary dispute and, 267-70 Senkaku/Diaoyudao Islands dispute and, 128-30 'Exit' and 'Voice' dichotomy case law on investment treaties, comparative law perspective, 105 - 8comparative law approach and, European Community legal order and, 99-105 in investment treaties, 93-5 U.S. civil rights litigation and international law and, 95-9 experts, enhanced role of, regime interaction and, 82–3 extraterritoriality 'exceptional' nature of in human rights law, 65-7 of free-standing obligations in treaties, ICJ affirmation of, 63-5 human rights law in context of, 51 - 4of jurisdiction, ICJ ruling on, 60 - 3'legal space' concept and, 67-70 treaty law framework on, 54-6



452 INDEX

Factory at Chorzów case, State EU membership in, 411–12 responsibility in, 292-6, 296n44 experts' role in, 82-3 factual exceptionalism regime interaction and, 80 Banković case and, 65–7 forceful intervention. See also third party countermeasures and, responsibility to protect (R2P); 356-60 unilateral intervention failed states in Kosovo, 161-6 UN Security Council intervention regime change and, 166-70 in, 155-6 third party countermeasures and, Western Sahara territorial 341,360-2Western Sahara territorial disposition states and concept of, disposition states and issue of, Fayt, Carlos, 90–3 Federal Court of Australia, 114-17 foreign policy issues, third party Federal Republic of Yugoslavia (FRY), countermeasures and, 350 foreign state immunity, Crawford's recognition of Bosnia-Herzegovina work on, xvi-xvii Forest Carbon Partnership Facility by, 196-8 state continuity and succession and (World Bank), 81, 81n56 dismantling of, 279-83 Fortier, L. Yves, 426 Federated States of Micronesia, 155-6 fourteenth amendment (U.S. Finland, Palestine statehood supported Constitution), international law and, 95-9 by, 239–42 Firearms Act of 1968 (United Fragd decision, European Community Kingdom), 315-21 legal order and, 99-105 fisheries law fragmentation of international law norm conflicts and, 71–3 Arctic sovereignty issues and, regime interaction and, 71-89 118 - 21Barbados maritime boundary France dispute and, 265 Antarctic sovereignty and, comparison of ICJ/PCIJ 114 - 17jurisprudence on, 302-3 European Community legal order regime interaction and, 71-3, 77, and, 99-105 Eurotunnel dispute and, 421-41 Senkaku/Diaoyudao Islands dispute Geneva Agreements of 20 July 1954 and, 128–30 and, 202–4 State responsibility and, 303n72 intervention in Côte d'Ivoire and, 169 - 70flag States firearms regulations, privately partition of Cameroon and, 262–4 contracted armed security recognition of Serbia by, 192-6 personnel compliance with, SS Lotus Case (France v. Turkey) and, 315 - 2180n51 responsibilities, PCASP protection Syrian chemical weapons attack and, and, 315-21 38-9, 347-51 Food and Agriculture Organisation Syrian weapons shipments and, 44-6 (FAO) accountability to sovereign states of, third party countermeasures and, 352-6



INDEX 453

Turkish negligent navigation prosecution against, 310-15 Vessel Protection Detachments for piracy defence from, 310-15 Western Sahara territorial disposition states and, 161 France-Manche S.A., 422–3 Sangatte migrants and, 425–6 Frente Polisario, 157-61 "Friends of the Syrian People International Working Group on Sanctions", 347-51 frontier controls, in Eurotunnel dispute, 432-4 Frontini case, European Community legal order and, 99-105 functional immunity, piracy defence and issues of, 310-15 Gabčíkovo Nagymaros judgment, 297-301 Gaddafi, Muammar, 34-5n51, 36 Gaelic language protections, European Community legal order and, 99-105 Gbagbo Laurent (President), 169 - 70General Agreement on Trade and Services (GATS), 365-9 Geneva Additional Protocol I collateral damage in, 325-7 qualifying words pertaining to collateral civilian damage in, 327-9 Geneva Agreements of 20 July 1954, 202 - 4geopolitics, UN Security Council and, 155 - 6Georgia, Palestinian statehood supported by, 236–9 Georgia, Russian invasion of, 31n34, 51-4, 56-8 Georgia v. Russia, 51-4 'free-standing' approach in, 63-5

colonisation of Cameroon by, European Community legal order and, 99-105 investment treaty claims in, 396n23 neutrality concerning Palestinian statehood, 241-2 third party countermeasures and, 343 - 7The Wimbeldon case, 149-50 Germany v. Italy case, 187-8 Ghana, ARA Libertad case and, 389-91 Gladstone, W. E., xiv global environmental issues, normative conflicts over, 71-3 globalisation, sovereignty demands and, 78-84 Goff, Lord, 182-8 good faith obligation, in public law, 107 - 8governmental authority law of immunity and test of, 188-90 law of state responsibility and, 179 - 82Palestinian statehood and principle of, 236-9 public body concept and, 365–9, 381 - 3restrictive immunity doctrine and, 182 - 8statehood dynamics and, 173-7, 188 - 90governmental liability doctrine, European Community legal order and, 99-105 Granital decision, European Community legal order and, 99 - 105Greece Don Pacifico affair in, 341 EU compliance by, 414-15 International Maritime Organization and, 409 recognition of Macedonia by, 196-8 'Green March' (Morocco), 157-61 Groener decision, European Community legal order and, 99-105

'legal space' concept and, 67-70

German classical school, statehood

theory and, 172

Germany



454 INDEX

Grotius, Hugo, 172

Group of 77, Kosovo air strikes opposed by, 26-7 Group of 77 states international legal order and, 141-3 opposition to humanitarian intervention among, 26-7 'Group of Friends of the Syrian People', 347 - 51Guantanamo Bay detentions, legal black hole cliché and, 18–20 The Guardian, 45–6 investment treaty claims in, 90-3 Guatemala, uti possidetis/uti possidetis juris principle and, 254n24 Guilfoyle, Douglas, 307-24 Guillaume, Gilbert, 426 Guinea Bissau/Senegal case, 249-50, 257n33, 270-2 Gulf of Fonseca, maritime boundary dispute concerning, 258-9, 260-2 Gumplowicz, Ludwig, 175-6 'gunboat diplomacy', third party countermeasures and, 341 Hague, William, 44-5 The Hague Academy, Crawford's courses at, xxi-xxii The Hague Agreement, 213-15 The Hague Regulations of 1907, responsibility to protect and, 34 - 6Haiti, UN Security Council intervention in, 166-70 Hale, Brenda Lady, 63–5 Haltern, Ulrich, 105 Hammerskjöld, Åke, 149 Han-key Lee, 141-3 Hans Island, Arctic sovereignty issues over, 118-21 Happy Days, 14, 17-18 Heard Island (Australia), 114-17

High Risk Area Privately Contracted Armed Security Personnel protection in, 'hinterland' principle, polar sovereignty and, 111-14 historic title principle Chinese position on Senkaku/Diaoyudao dispute and, critique of Chinese claims in Senkaku/Diaoyudao Islands claim based on, 134–6 Japanese position in Senkaku/Diaoyudao Islands claims and, 133-4 Hollande, François, 39 Holtzendorff, E. von, 344 Holy See, statehood status for, 241 - 2Honduras Gulf of Fonseca boundary dispute and, 258-9, 260-2 Nicaraguan boundary dispute with, 265 - 7Horn of Africa, piracy cases and 'legal space' concept and, 67-70 Huber, Max, 111-14, 144-5, Humane Society International (HSI), 114 - 17Human Rights Advisory Panel, Kosovo human rights violations and, 161-6 human rights law 'exceptional' nature of exterritoriality and, 65-7 extraterritoriality and, 51-4 investment treaties and, 90–3 Kosovo violations of, 161-6 'legal space' concept in, 67-70 NGO involvement in, 73-8 nonratification by U.S. of human rights treaties, 90-3, 95-9 normative conflicts over, 71-3 State complicity with corporate human rights breaches and, 321 - 4territorial control and, 58-60

Hegelian philosophy

277 - 9

Henkin, Louis, 17

Hesperides case, 177-9

East Asian sovereignty in context of,

state continuity and succession and,



INDEX 455

**UN Security Council powers** concerning, 24-5 Ilaşcu case, State complicity with corporate human rights breaches and, 321-4 Ilulissat Declaration, 121-4 immigrant issues, Eurotunnel dispute and, 425-6 Imperial Map of Native and Foreign Lands (Huangchao Zhongwai Yitong Yutu), 131 - 3imputation theory, statehood dynamics and, 173-7 inclusio unius, exclusio alterius principle, self-determination in West Papua and, 224-7 independence Kosovo intervention and establishment of, 161-6 legal characteristics of states and, 145 - 7Permanent Court of International Justice and, 147–9 self-determination in West Papua and, 210-13, 224-7 uti possidetis principle in Africa and, 252-8, 262-4 India Enrica Lexie incident and, 307-8, 310 - 15recognition of South Sudan by, 196-8 Indian Penal Code, Enrica Lexie incident and, 310–15 indigenous rights legal framework for, 88 regime interaction with institutions for, 73-8 West New Guinea decolonisation and, 213-15 individual criminal responsibility collateral civilian casualties and, 32.5 - 7threshold for, in collateral damage rulings, 329-30 individual liability, Eurotunnel dispute

Indonesia independence of, 213-15 invasion of East Timor by, Soviet arms shipments to, 217 - 19West Papua incorporation into, 209 - 28West Papua nationalism and, 215 - 16Indonesian Communist Party, 217 - 19in dubio pro libertate principle, independence vs. sovereignty and, 147 - 9'inherent territory' principle, Chinese position on Senkaku/Diaoyudao dispute and, 131–3 In Larger Freedom (Annan), 32-3 In re Gilbert, 310-15 Institut de Droit International, 198-202, 204-5 Crawford's presence at, xviii, xx-xxv third party countermeasures and, 347-51, 356-60 insult, cliché as expression of, 4-5 integration, self-determination in West Papua and, 224-7 intent in piracy defence, State responsibility and immunity and, 310-15 state recognition and element of, 198-202 Inter-American Commission on **Human Rights** 'exceptionalism' of extraterritoriality and, 65–7 extraterritoriality and, 54–7 Haitian intervention and, 166 - 70jurisdiction in, 60-5 Inter-American Declaration of the Rights and Duties of Man extraterritoriality and, 54-6 jurisdiction in, 60-5 Intergovernmental Commission (IGC), in Eurotunnel dispute, 422–3, 429-34

and, 427-8



456 INDEX

inter-governmental organisations (IGOs) accountability and assessment of, 84 regime interaction and, 73–8,

81–2 Interim Accord of 13 September 1995,

196–8 Interim Agreement between Israel and

the PLO, 239–42 international armed conflict collateral civilian casualties and, 325–7

International Association of Machinists and Aerospace Workers v. OPEC, 182–8

International Coalition for the Responsibility to Protect, 49n110

International Code of Conduct for Private Security Services Providers (ICoC), 315–21

International Commission on Intervention and State Sovereignty (ICISS)

Constitutive Act of the African Union and, 29–30

responsibility to protect and, 28–9, 32–3, 41–2, 48–50

International Committee of the Red Cross

Customary IHL Study, 327–9 International Committee of the Red Cross and Crescent (CRC), collateral civilian damage qualifications and, 327–9

International Committee on Economic, Social and Cultural Rights (ICESCR)

'exceptional' nature of extraterritoriality and, 65–7 Wall Advisory Opinion and, 63–5

International Court of Justice (ICJ)
Accordance with International Law of
the Unilateral Declaration of
Independence in Respect of Kosovo
opinion, 273–7

affirmation of extraterritorial 'jurisdiction' by, 60–3

Case Concerning the land and maritime boundary between Cameroon and Nigeria, Equatorial Guinea Intervening, 262–4 comparison of Permanent Court of Interpretional Justice with

International Justice with, 302–3

Corfu Channel Case, 47–8 East Timor self-determination opinions and, 227–8

'exceptional' nature of exterritoriality in human rights law and, 65–7

extraterritoriality applicability in rulings by, 56–8, 59–60n22

free-standing obligations in treaties, extraterritoriality in, 63–5 human rights cases before, 51–4 ICL collaboration with, on State responsibility, 297–301

impact on international human rights law of, 70

implied powers of international institutions and, 81–2

investment claim countermeasures and, 389–91

investment treaty law and, 107–8 Kosovo independence and, 161–6 Land, Island and Maritime Frontier Dispute, 260–2

Namibia Advisory Opinion, 58–60, 177–9

Nicaragua Case, 40n72, 41–2 normative principles of State responsibility and, 288–91 Nuclear Weapons opinion of, 147–9 on-going codification by, 305 polar sovereignty issues and, 110–11

primary and secondary rules of military necessity and, 337–8 regime theory and practices of, 73–8

restrictive immunity doctrine and, 187–8

State actors in non-sovereign territory of treaty parties, treaty obligations in, 67–70



INDEX 457

International Criminal Tribunal for the

Former Yugoslavia, 33–34n45,

statehood recognition and, 192-6 state recognition in opinions of, 198-202, 204-5 State responsibility and jurisprudence of, 287-8, 297-305 State responsibility in piracy defence and, 315-21 third party countermeasures and, 356-60 treaty law framework for extraterritoriality and, 54-6 uti possidetis principle and, 249-50, 255-8, 270-2 Western Sahara territorial disposition and, 157-61 WTO Appellate Body's interpretation of 'public body' concept and, 369-73 International Covenant on Civil and Political Rights (ICCPR) 'exceptional' nature of extraterritoriality and, 65-7 extraterritoriality and, 54-8, U.S. ratification of, 95-9 International Covenant on Economic, Social and Cultural Rights (ICESCR), 54-6, 60-5 International Criminal Court (ICC) collateral civilian casualties and, 325-7, 339 Palestinian statehood and, 242-6 qualifying words pertaining to collateral civilian damage and, 327 - 9state vs. individual responsibility thresholds for collateral damage and, 329-30 international criminal law Brussels Convention rules on criminal jurisdiction over collisions and, 310-15 collateral civilian casualties and, 325 - 7State responsibility and, 297-301 state vs. individual responsibility thresholds for collateral damage

297-301 binary analytic mindset concerning collateral damage in, 331 military necessity principle and, 332 - 7international criminal tribunals, national legal systems and, 161-6 international humanitarian law binary analytic mindset concerning, 331 collateral civilian casualties and, collateral civilian damage and, 327-9 military necessity principle and, primary and secondary rules of military necessity and, 337-8 specific rules of military necessity and, 332-7 state vs. individual responsibility thresholds for collateral damage and, 329-30 international human rights instruments extraterritoriality and, 54-6, 63-5 ICJ rulings and, 60-3 international institutions EU position in, 411-12 implied powers of, 81-2 investment treaties and, 90-3 legal framework for, 84 observer status for, 80 Palestinian statehood question and admission to, 245-6 regime interaction and, 73-8 'regimes' of, 73-5n14, 78 representation of EU in, 412–13 third party countermeasures and, 342 - 3International Labour Organisation, EU Member States' international agreements and, 409-11 international law. See also treaty law Chinese ascendancy and, 137–8,

141 - 3

and, 329-30



458 INDEX

international law (cont.) Chinese claims in Senkaku/Diaoyudao Islands dispute and, 134-6, 139-141n46 clichés in, 7-14 collateral damage in, 325-7 Crawford's democratisation efforts in, 93-5 Crawford/s influence in, xx-xxv in Eurotunnel dispute, 426-7 evolution and adaptation of, 88-9 extraterritorial applications of human rights law and, 51-4 fragmentation of, 71–89 independence principle in, 147-9 investment claim countermeasures and, 389-91 investment treaties and, 90-3 Japanese Senkaku/Diaoyudao Islands claims and, 136-7, 139-141n46 law of recognition and, 192-6, 204 - 5legal characteristics of states in, 145 - 7Palestinian statehood and, 229-31 palimpsestic reconstruction in, 139 - 41Permanent Court of International Justice rulings and, 151-2 piracy and, 307-8 polar sovereignty and, 121-4 privately contracted armed security personnel protection and, 315 - 21'regimes' of, 73-5n14, 78 regime theory and, 73–8 responsibility to protect and, 23-50 rise of China in, 126–8 rousing of clichés in, 15-21 rules on interpretation of UNGA resolutions and, 234-42 safety on merchant vessels and, 315-21 self-determination in, 210-13 sovereignty demands and, 79-80, state continuity and succession and, 273-84

statehood dynamics and, 173-7 state immunity in, 182-8 State responsibility and, 288-9n9, 291, 302n67 territorial disposition by UN Security Council and, 156-66 third party countermeasures and, 343-51, 356-60 uti possidetis principle and, 248-52 visual clichés in, 9-10, 20-1 West Papuan self-determination and violations of, 227–8 International Law as an Open System (Crawford), 389-91 International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts limits on military necessity and, 334 - 7Articles on State Responsibility, 47-8, 173-82, 188-90, 288-91 consequences of breach of State responsibility, 393-4 defence against piracy and, 308-9 Draft Articles on Diplomatic Protection, 391-3 fragmentation of international law and, 71-3 Guiding Principles on statehood and, 234-42 on humanitarian law, 336n53 ICJ collaboration with, on State responsibility, 297-301, 304-5 investment claim countermeasures and, 389-91 law of recognition and opinions of, 198-202, 203, 204-5 'master plan' for State responsibility of, 292, 297 mixed multi-party disputes and, 421 - 2Namibia exception and, 177-9 public body concept and, 365-9 relevance to SCM Agreement of, 375 - 83'special regimes' concept and, 73 - 8on State responsibility, 287–8



INDEX 459

State responsibility to investment treaty claims and, 391-4 status of articles on 'public body', third party countermeasures and, 340-1, 343-7, 352-60, 396-7 U.S.-Antidumping and Countervailing Duties (China) and, 363-4 WTO Appellate Body's interpretation of 'public body' concept and, 369-73 International Law Commission Commentary, Articles on Responsibility of States for Internationally Wrongful Acts limits on military necessity and, 334-7 international legal system, responsibility to protect and, International Maritime Organization (IMO) Court of Justice of the European Union and, 409 Guidance to Shipowners by, 315-21 guidelines for PCASP from, 315-21 international relations scholarship on Chinese-U.S. relations, 126-8 European Union external relationships and, 406-7 Palestinian statehood and, 229n3 regime interaction in, 73-8 rise of China in, 126-8 Senkaku/Diaoyudao Islands dispute and, 139-41 international responsibility, investment treaty claims and, 391-4 international security, Western Sahara territorial disposition states and concept of, 161 International Standards Organisation (ISO), PCASP certification and, 315 - 21**International Telecommunications** Regulations (EU), 417–19 International Telecommunication

international terrorism definitions of, 162n46 Kosovo and, 161-6 Western Sahara territorial disposition and, 157-61 international trade human rights institutions and, 73 - 8regime for, 73-8 International Tribunal for the Law of the Sea, State responsibility in piracy defence and, 315 - 21internet, International Telecommunication Regulations and, 417-19 inter-regime scrutiny, regime interaction and, 84 inter-State proceedings ADM v. Mexico investment claims and, 398-9 investment claim countermeasures and, 389-91 intervention. See forceful intervention intra-regime interaction, institutional organisations and, 73-8 investment arbitration tribunals, investment treaty case law and, 105 - 8investment treaties case law, comparative law perspective on, 105-8 countermeasures in investment claims and, 394-404 exit/voice dichotomy in, 93–5 ICSID Convention and, 90-3 legitimacy of, 90-109 NAFTA-based investment treaty claims and, 397-404 State responsibility concerning claims, ILC applicability in, 391-4 third party countermeasures in claims against, 396-7 Ionesco, Eugene, 14 Iran-US Claims Tribunal, investment treaty law and, 107-8 Iraq, third party countermeasures and, 352 - 6

Union (ITU), 417-19



460 INDEX

Iraq War, responsibility to protect and, overview of Senkaku/Diaoyudao claims, 133-4 Ireland, European Community legal Palestinian statehood supported by, order and Gaelic language 239 - 42protection in, 99-105 polar sovereignty issues and, Island of Palmas Arbitration, 111–14, 110 - 11postwar economic and financial rise 139-141n46 Israel of, 141-3 Eichmann trial and, 47-8 recognition of South Sudan by, ICJ on jurisdiction of, 60–3 196 - 8Senkaku/Diaoyudao Islands dispute 'legal space' concept and Palestinian occupation, 67-70 with China and, 126–8 military necessity claims and Japan v. Girard, 310-15 collateral damage by, 338n59 Jellinek, Georg, 172 occupation of Palestinian Territories Jennings, Robert (Sir), 198–202 Jessup, Philip, 174–5 by, 56-8, 60-3 Palestinian statehood resolutions Johns, Fleur, 18-20 and, 233-234n16, 236-9 Johnson, D. H. N., xviii rejection of extraterritoriality rulings 'Joint and Several Responsibility' by, 56-8 Eurotunnel dispute and, 427-32 Vessel Protection Detachments for reciprocity in, 435-6 piracy defence from, 310-15 joint liability, Eurotunnel dispute and, Wall Advisory Opinion and, 63-5 427 - 8Italian Constitutional Court, European joint statements, third party countermeasures and, 356-60 Community legal order and, Jones and Others v. UK, 187n52, 188 99-105 Italy Jordan, third party countermeasures and, 352-6 Enrica Lexie incident and, 307-8, 310 - 15Joyce, James, 14 European Community legal order jure gestionis, maritime law and piracy and, 99-105 defence and, 310-15 Palestinian statehood supported by, jure imperii maritime law and piracy defence 244n72 Vessel Protection Detachments for and, 310-15 piracy defence from, 310–15 state immunity and, 188-90 jurisdiction in ECHR, 58-60 Jamaica, Palestine statehood opposed by, 241–2 in Eurotunnel dispute, 426–7 Japan 'exceptional' nature of, 65-7 extraterritoriality and, 54-6, 58, Antarctic sovereignty and, 114 - 1760 - 3free-standing obligations in treaties, European law and Senkaku/Diaoyudao Islands ICJ affirmation of, 63–5 'legal space' concept and, 67-70 claims, 141-3 functional immunity case against in Namibia Advisory Opinion, U.S. in, 310-15 58-60 history of Senkaku/Diaoyudao Jurisdiction of Courts of Danzig Islands ownership and, 128-30 opinion, 151-2



INDEX 461

jus ad bellum, primary and secondary rules of military necessity and, 337 - 8jus cogens principle responsibility to protect and, 40 - 50State responsibility and, 297–301 weapons shipments and, 45-6 jus in bello, primary and secondary rules of military necessity and, 337 - 8justice, visual clichés of, 10 Kelsen, Hans, 173-7, 231-4 Kennedy, David, 17-18 Kerry, John (Secretary of State), Kibris Turk Hava Yollari v. Secretary of State for Transport, 177-9 Kirby, Michael, xvi Kissinger, Henry, 126-8 Kompetenz-Kompetenz problem, European Community legal order and, 99-105 Korean War, UN Security Council powers during, 24-5 Koskenniemi, Martti, 71-3, 90-3 Kosovo humanitarian crisis in, 26-7n16, 27n17 international recognition of, 198-202, 206-7 regime change and crisis in, 166-70 state continuity and succession in, 273 - 7statehood recognition and advisory proceedings on, 192-6 territorial disposition in, 161–6 Kosovo Advisory Opinion, 198–202 Krabbe, Hugo, 173-7 Kriegsraison geht vor Kriegsmanier doctrine, military necessity principle and, 332-7 Krupp case, military necessity principle and, 332-7 Kuwait Air Co. case, 182-90 Kuwali, Dan, 29-30

Laband, Paul, 172 la conscience juridique, Schachter's concept of, 15 LaGrand opinion, 151-2 Land, Island and Maritime Frontier Dispute, 260–2, 265, 267–72 Latin America competing colonial interpretations uti possidetis in, 252-8 early maritime boundary disputes in, 258-70 Honduran-Nicaraguan boundary dispute and decolonisation in, 265 - 7origins of uti possidetis principle in, 250-2third party countermeasures in, 341 Lauterpacht, Hersch, 277-9 Lauterpacht Research Centre on International Law, 51-4 Crawford at, xx-xxv Lavrov, Sergey, 31n34 law of collective security, third party countermeasures and, 352-6 law of countermeasures, third party countermeasures and, 352-6 law of occupation, 'legal space' concept and, 67-70 law of the sea international regime for, 73-8 uti possidetis principle and maritime boundary disputes, 248-52 League of Arab States, Syrian suspension from, 347-51 legal black hole, cliché of, 18–20 legal characteristics of states, 144–52 basic principles, 145-7 independence vs. sovereignty and, 147 - 9international/national divide concerning, 151-2 Permanent Court of International Justice sovereignty rulings and, 149 - 50statehood dynamics and, 173-7 Legal Counsel of the UN, 157–61 legal fictions, statehood dynamics and, 173-7

Kyodo Senpaku Kaisha, 114-17



462 INDEX

legal personality principle, state continuity and succession and, legal sovereignty, statehood dynamics and, 173-7 'legal space' concept, human rights obligations and, 67-70 legitimacy of European Community legal order, 99-105 'Exit' and 'Voice' dichotomy in investment treaties and, 93-5 of investment treaties, 90–109 of non-state actors, sovereignty demands and, 84 Leigh, Monroe, 90-3 lex generalis, primary and secondary rules of military necessity and, lex horrenda principle, third party countermeasures and, 343-7 lex specialis Eurotunnel dispute and, 436 mixed multi-party disputes and, 421 - 2NAFTA investment treaty claims and, 397-404 primary and secondary rules of military necessity and, 337 - 8public body concept and, 365-9, 371 - 3regime theory and, 73-8 State responsibility concerning investment treaty claims and, Liberia, ECOWAS intervention in, 47 - 8Libya arms embargo in, 43-4 humanitarian crisis in, 34-6, 36n56 no-fly zone established in, 37-8 Lisbon Treaty EU Member States' international agreements and, 409-11

corporate human rights breaches and, 321-4 loss, cliché as expression of, 4-5 *The Lotus* case, 147–9, 302–3, 303n72 piracy defence and rulings of, 310 - 15Maastricht judgment (German Constitutional Court), European Community legal order and, 99-105 Mabo case, xvii–xviii Macedonia, international recognition of, 196-8, 205-6 Macquarie Island (Australia), 114-17 Maine, Henry Sir, 173-7 Malay Indonesians, rights of, 213-15 Mali, Western Sahara territorial disposition states and, 161 maritime law Arctic sovereignty issues and, 118 - 21Barbados maritime boundary dispute and, 265 Beagle Channel arbitration, 259-60 Brussels Convention rules on criminal jurisdiction over collisions and, 310-15 Cameroon-Nigerian boundary dispute and, 262-4 Colombian-Nicaraguan boundary dispute and, 267-70 Gulf of Fonseca boundary dispute and, 258-9 Honduran-Nicaraguan boundary dispute and, 265–7 piracy defence and, 310-15 polar sovereignty and, 124-5 State responsibility under, 315-24 uti possidetis principle in maritime boundary dispute resolution, 255-8, 270-2 Martin, Paul, 31-2 Mawson, Douglas (Sir), 114-17 McCorquodale, Robert, 321-4 McDonald Island (Australia), 114-17 McEwen, A. C., 256n32, 271

Loizidou case, State complicity with

European Union external

relationships and, 406-7



INDEX 463

McLuhan, Marshall, 13-14 Mediterranean high seas, migration-related cases and 'legal space' concept and, 67-70 Meetings of the Parties (MoPs), State responsibility law and, 304 - 5Medhi, Rostane, 250-2 Melanesian West Papuans, rights of, 213 - 15mens rea, collateral civilian casualties and, 325-7 metaphors, clichés and, 12-13 Mexico, NAFTA investment treaty claim countermeasures and, 397-404 migration-related cases, 'legal space' concept and, 67-70 military necessity Articles on Responsibility of States for Internationally Wrongful Acts limits on, 334-7 collateral damage and concept of, primary and secondary rules of, 337 - 8special rules for incorporation of, 332 - 7Millett, Lord, 426, 436-8 Milošević, Slobodan, 162n47 Ming Dynasty, history of Senkaku/Diaoyudao Islands ownership and, 128-30 minimum regime concept, State responsibility and PCASP protection and, 315-21 MINURSO, 157-61. See United Nations Mission for the Referendum in Western Sahara MINUSTAH, 166-70. See United Nations Stabilisation Mission in Haiti mistaken of self-defence, piracy protection and, 310-15 mitigation, responsibility to protect

modern laws, of State responsibility, Mongolia, third party countermeasures and, 345n29 monism, statehood dynamics and, 174 - 5monopolies of rights and representation, regime interaction and, 83-4 Montevideo Convention, recognition of states under, 198-202 Morocco, 'Green March' into Western Sahara by, 157-61 multilateral treaties. See also treaty law impact on internal law of, 95-9 **UN General Assembly resolutions** and, 242-6 multinational naval deployment, piracy and, 307-8 Musil, Robert, 9-10 musyawarah practices, 224n59, 227 West Papua self-determination and, 218, 219-20 Namba v. McCourt, 95-9 Namibia Advisory Opinion, 51-4 law of recognition and, 177-9 legacy for human rights law of, 70 South African obligations in, 56-8 spatial and territorial definitions in, territorial control vs. sovereignty in, 58-60 Nansei Shoto Islands, Japanese Senkaku/Diaoyudao claims and, 136 - 7National Aeronautics and Space Administration (NASA), black holes explained by, 18-20 national constitutional standards, international law and, 93-5 nationalism, growth in West Papua of, 215 - 16Nationality Decrees opinion, 147-9 national law European Community legal order and, 105 in Eurotunnel dispute, 426-7

role in, 47–8

mixed multi-party disputes, State

responsibility in, 421-41



464

national law (cont.)

international law and, 93-5

international law and rule of

Cambridge University Press 978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford Edited by Christine Chinkin and Freya Baetens Index More information

INDEX

Nigeria

Nicaragua Case, 40n72, 41-2

Cameroon boundary dispute with, irrelevance of, 161-6 legal characteristics of states and, restrictive immunity doctrine and, 145 - 7186 - 7Permanent Court of International third party countermeasures and, Justice rulings and, 151-2 350 - 1pre-emption interpretation of, non-forcible countermeasures, 99-105 investment treaty claims and, restrictive immunity doctrine and, 395 - 6nongovernmental organisations 182 - 8rule of irrelevance and, 93–5 (NGOs) sovereignty and regime interaction accountability and assessment of, and, 80n50 statehood recognition and, 192-6 Antarctic sovereignty and, U.S. civil rights litigation and 114 - 17international law and, 95-9 legal framework for, 84 Naulilaa case, 356-60 regime interaction and, 73-8 nemo dat principle, uti possidetis non-intervention principle, Permanent principle and, 255-8 Court of International Justice and, neo-liberal capitalism, democratisation and, 166-70 non-member observer state status in Nervo, Padilla, 341 UN, Palestinian statehood and, 236-9, 242 Nesi, Giuseppe, 250–2 non-recognition of states, obligations Netherlands concerning, 207-8 Indonesian independence and, 217-19, 221-7 non-self-executing treaties, Bricker West New Guinea decolonisation Amendment for, 95-9 non-self-governing territories, and, 213-14n14, 215-16 Netherlands School of Human Rights decolonisation and, 221-2n50, research, 15-17

Palestine statehood supported by, 179 - 82239-42 legal framework for, 84 Ng, Angie, 213-15 Permanent Court of International Justice rulings and, 151-2 Nicaragua Colombian boundary dispute with, regime interaction and, 73-8 267-70 sovereignty demands and, 78-84 Gulf of Fonseca boundary dispute State responsibility for, 315-21 and, 258-9, 260-2 normative principles Honduran boundary dispute with, Chinese Senkaku/Diaoyudao claims 265 - 7and, 134-6, 138-9

non-state entities

188-90

and, 389-91

governmental authority test and,

investment claim countermeasures

law of state responsibility and,

New York Agreement on West Papua,

Antarctic sovereignty and, 114–17,

217-19, 221-7

New York Times, 45-6

New Zealand

121 - 4



INDEX 465

fragmentation of international law and, 71-3 ILC/ICI collaboration on State responsibility and, 297-301 Japanese Senkaku/Diaoyudao claims and, 136-7 legal framework for non-state actors and, 84 regime interaction and, 73-8 in Senkaku/Diaoyudao dispute, State responsibility and, 288-91 territorial claims and, 138-9 third party countermeasures and, 343 - 7norm entrepreneurship, responsibility to protect and, 23, 40, 48-50 North African states, migration-related cases and 'legal space' concept and, 67-70 North American Free Trade Agreement (NAFTA) Chapter 11 investment protections in, 90-3 investment claim countermeasures and, 389-91, 397-404, 405 United Postal Service of America Inc (UPS) v. Canada and, 179-82 North Atlantic Treaty Organiztaion (NATO) Banković case and, 65-7 Bosnian air strikes and, 25-6 Kosovo air strikes and, 26-7, 161-6 Libyan campaign of, 36-40 post-Cold War spending reductions and, 41-2 Serbian air strikes by, 331, 338n61 Northern Sea Route, Arctic sovereignty issues and, 118-21 Northwest Passage Arctic sovereignty issues and, 118n45, 121

Nuclear Tests cases, state recognition in, nuclear weapons legality, implied powers rulings concerning, 81-2 Nuclear Weapons opinion, 147–9 nulla poena sine lege, state vs. individual responsibility thresholds for collateral damage and, 329-30 nullum crimen sine lege principle, 329-30 Obama, Barack, Syrian policies of, 44 - 6objective statehood principle collateral civilian casualties and, Palestinian statehood and, 231-4 observer status of European Union, 412-13 state consent to non-member observer status, 80 O'Connell, D. P., xv Okinawa Revision Agreement, 129-130n16 Olbrechts-Tyteca, Lucie, 13-14 Operation Uphold Democracy (Haiti), 166 - 70opinio juris sive necessitates responsibility to protect and, 41-2 State responsibility in piracy defence and, 315-21 third party countermeasures and, 343-7, 350, 356-60 weapons shipments and, 45-6 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 2000, 54-6 Oregon Alien Land Law, international law and, 95-9 Organisasi Papua Merdaka ('Free Papua Movement') (OPM), 219-20 Organisation of African Unity (OAU), 29-30, 157-61 Orwell, George, 6-7, 11-12, 21 Ouattara, Alassane (President),

169 - 70

Oyama v. California, 95-9

polar sovereignty issues and,

Arctic sovereignty issues and,

law of recognition and, 192-6

110-11, 118-21

118 - 24

Norway



INDEX

466

Pahuja, Sundhya, 20-1 Palestine Liberation Organisation (PLO), 236-9, 240, 242-6 Palestinian Authority (PA), 236-9 Palestinian Territories collective recognition of statehood under UN General Assembly Resolution 67/19, 234-42 consequences of Resolution 67/19 for statehood in, 242-6 Israeli occupation of, 56–8, 60–5 legacy of UN General Assembly Resolution 67/19 for, 246–7 'legal space' concept and Israeli occupation of, 67–70 objective statehood principle and, 'permanent two-State solution' and, 236-9 state recognition for, 229-47 textual interpretation of Resolution 67/19 concerning statehood for, votes for statehood adoption, circumstances and explanations, 239 - 42palimpsestic reconstruction Chinese reascendancy and, 137-8 East Asian territorial sovereignty and, 126-8, 138-43 in Senkaku/Diaoyu Islands dispute, 139 - 41Palmerston (Lord), 341, 356-60 Paraguay, uti possidetis/uti possidetis juris principle and, 254n24 Paris Peace Conference of 1919, 221 Partridge, Eric, 4–5, 8 Paulsson, Jan, 426 peaceful coexistence principle, Chinese ascendancy and, 141-3 Peace Plan for Self-Determination of Western Sahara, 157-61 Pellet, Alain, 198-202, 287-8 Pemex case, 182-8 People's Daily (Chinese Communist Party newspaper), 133-4 Percy, Sarah, 315-21 Perelman, Chaim, 13-14

perimeter guard cases, functional immunity in, 310-15 Permanent Court of Arbitration (PCA), Eurotunnel dispute and, 425 - 6Permanent Court of International Justice (PCIJ) Arctic sovereignty rulings and, 118 - 21comparison with ICJ, 302-3 Eastern Greenland ruling, 111–14 foundational decisions on State responsibility by, 292-6 founding argument for sovereignty by, 80n51 independence and, 147-9 international/national divide and, legal characteristics of states and rulings by, 144-52 normative principles of State responsibility and, 288-91 on-going codification by, 305 sovereignty principles and, 80n51, 149 - 50State responsibility and jurisprudence of, 287-8, 294-295n36, 301-5 'permanent two-State solution', Palestinian statehood and, 236 - 9Peru, uti possidetis/uti possidetis juris principle and, 254n24 Peters, Anne, 279-83 The Philippine Admiral Case, xvi-xvii Phillimore, Robert (Sir), 182–8 Phillipson, Coleman, xv Phosphates in Morocco case, 292–6 *Pinochet* case, restrictive immunity doctrine and, 187–8 piracy defences against, 307-24 future challenges in defence against, state responsibility and immunity issues and, 310-15 use of force against, 308-9



INDEX 467

plenary competence, legal characteristics of states and, 145 - 7Poland investment treaty law and, 105-8 Permanent Court of International Justice rulings and, 151–2 Rolimpex case and, 186–7 state recognition of, 202-4 polar sovereignty Antarctic sovereignty, 114-17 Arctic sovereignty, 118–21 basic principles of, 111-14 contemporary challenges to, 121-4 current issues in, 110-25 Polish Nationals case, 292-6 'political question' doctrine, non-self-executing treaties and, 95-9 political will investment treaties and, 90-3 responsibility to protect and, 33-4 'Politics and the English Language' (Orwell), 11-12, 21 Portugal, investment treaty claims in Germany and, 396n23 power shared responsibility Eurotunnel dispute and, 436-8 statehood dynamics and use of, 173 - 7pre-modern legal practices, Chinese Senkaku/Diaoyudao claims based on, 137-9, 139n45 private bodies as government proxies, 376n65 WTO Appellate Body's interpretation of 'public body' concept and, 369-73 private enterprise, public body concept and, 365-9 private international law Namibia exception and, 177-9 state continuity and succession in, 277 - 9

private legal regimes, sovereignty issues and, 73–8 Privately Contracted Armed Security Personnel (PCASP), 307-9, 315 - 24Private Maritime Security Companies (PMSCs), 307-8 private military companies (PMC) arms regulations and, 315-21 increased use of, 324 law of state responsibility and, 179 - 82restrictive immunity doctrine and, 188 - 90private security minimum regime concept and, 315 - 21piracy defence and, 307-8 private military companies and, 179-82, 188-90 Privy Council (United Kingdom), state recognition and, 202-4 property rights, law of recognition and, 177 - 9proportionality test applications of, 325n1 Articles on Responsibility of States for Internationally Wrongful Acts limits on military necessity and, 334 - 7collateral civilian casualties and, 327 - 9investment treaty case law and, 105 - 8proportionality equation and, 330n24, 338n61 state vs. individual responsibility thresholds for collateral damage and, 329-30 'public body' concept. See also private bodies international legal interpretations of, 365 - 9legal implications of, 373-5 relevance of International Law Commission articles to, 375–83 status of International Law Commission articles on, 383–7

Private Law Sources and Analogies of

277 - 9

International Law (Lauterpacht),



INDEX

468

proportionality test (cont.)

U.S.-Antidumping and

Countervailing Duties (China)

and, 363–4

WTO Appellate Body's

interpretation of, 369–73

public law

good faith obligation in, 107–8

investment treaty law, comparative

analysis of, 105–8

law of recognition and, 177–9

statehood dynamics and, 173–7

public sector, public body concept and, 365–9

'Q&A on the Senkaku Islands', 133–4 Qing dynasty, history of Senkaku/Diaoyudao Islands ownership and, 128–30 Quéneudec, 255–8 Quigley, John, 229n3

racial discrimination
exterritoriality and cases of, 63–5
U.S. civil rights litigation and
international law and, 95–9
Rainbow Warrior arbitration, 297–301
Rasulov, Akbar, 296n45
ratio decidendi principle, Land, Island
and Maritime Frontier Dispute,

rationae materiae concept, military necessity principle and, 332–7 rationae personae status, state immunity and, 310–15 rebel forces, responsibility to protect and support for, 41n73, 42 reciprocal recognition of states, examples of, 196–8 reciprocity, in Eurotunnel dispute, 435–6

recognition, law of categories of acts and intention to recognise, 202–4 circumstance of statement of

conduct and, 207 collective recognition of statehood under UNGA Resolution 67/19, 234–42 constitutive approach to, 229–31 declaratory approach to, 229–31 disclaimers in, 205–6 express indication of, 196–8 identifying factors in, 204 intentional act under, 198–202 mechanisms and procedures, 192–6 non-recognition of states and, 207–8 non-state entities and, 188–90

organs or agents acting toward entity, 204 Palestinian state, 229–47 statehood and, 177–9

statehood and, 177–9 third party statements concerning, 206–7

Redfern, Walter, 4–5, 8, 12 reduced emissions from deforestation and forest degradation ('REDD') programs experts' role concerning, 82–3

indigenous and forest-dwelling communities and, 88 normative conflicts over, 71–3 regime interaction for, 81 regime change

in Côte d'Ivoire, 169–70 in Haiti, 169–70 in Kosovo, 161–6 UN Security Council and,

UN Security Council and, 166–70 regime interaction

experts' role in, 82–3 fragmentation of international law and, 71–89 impact on sovereignty of, 78–80n50, 84

of international laws and institutions, 73–8 legal framework for, 84 normative conflicts and, 71–3 reparations, State responsibility and,

292–6

Reparations case, 81–2

Republic of Korea, objective statehood principle and, 231–4

Republic of the Marshall Islands and

Palau, 155–6 responsibility, legal concepts of, 288–91



INDEX 469

responsibility to protect (R2P). See also forceful intervention; unilateral intervention arms shipments and, 44-6 Bosnian humanitarian crisis and, 25-6,43Constitutive Act of the African Union and, 29-30 development of, 24-40 International Commission on Intervention and State Sovereignty and, 28-9 international law and, 23-50 international legal system and, 48 - 50Iraq War and, 30-1 Kosovo humanitarian crisis and, 26-7n16-17 legal status of, 40-8 Libyan humanitarian crisis and Security Council Resolution 1973, mitigation role of, 47-8 norm entrepreneurship and, 23 post-Libya consequences for, 36 - 40rebel support and, 41n73, 42 regime change and, 166-70 Russian invasion of Georgia and, 31n34 Rwandan genocide and, 26 in Somalia (1992-1993), 25 threats, challenges and changes to, 31 - 2UN Secretary-General's report and World Summit Outcome Document, 32-3 **UN Security Council Resolution** 1674, 33-4 restrictive immunity doctrine law of state immunity and, 182-8 'separate entity' principle and, 188-90 Richards Lord Justice, 177-9 Ricks, Christopher, 11-12, 21 Riphagen, Willem, 350-1, 356-60 Roberts, Hugh, 37n59 Rolimpex case, 186-7 Roma Rights case, 63-5

Rome Conference (1998), collateral civilian damage and, 327-9 Rome Statute, collateral civilian casualties and, 325-7 Rosatti, Horacio, 90-3 Round Table negotiations on Indonesia, 213-15 rousing, international legal clichés and, 15 - 21Rowe, A. P., xiv rule-systems, normative conflicts over, 71 - 3Russia Arctic sovereignty issues and, 118 - 24ICJ on jurisdiction against, 60-3 invasion of Georgia by, 31n34, 51-4, 56-8 polar sovereignty issues and, 110 - 11rejection of extraterritoriality rulings by, 56-8 Syria and, 44-6 Rwanda, responsibility to protect and genocide in, 26 Saar Papier v. Poland case, 105-8 Saharawi people, Western Sahara territorial disposition and, 157 - 61St. Domingo, British recognition of, 202 - 4Salmond, John, xv San Francisco Peace Treaty (1951), 128 - 30Sangatte Hostel claimants' position in, 427-8 clandestine migrants at, Eurotunnel dispute and, 425–6 Tribunal findings on, 432–5 Sarkozy, Nicholas, 347-51 Sayre, Paul, 95-9 Schachter, Oscar, 15, 273-7 SeaFrance, Eurotunnel dispute and, 425 - 6sea ice melting, Arctic sovereignty issues and, 118-21 Second Hague Peace Conference, 342 - 3



470 INDEX

sector theory claims, polar sovereignty shared responsibility, in Eurotunnel and, 111-14 dispute, 434-5, 436-8 Sei Fujii v. State of California, 95-9 Shaw, LJ, 111-14, 198-202 self-determination Shelley v. Kraemer, 95-9 in East Timor, 227-8 shibboleths, clichés and, 5 ethnic identity and, 221 shipping industry in international law, 210-13 Arctic sovereignty issues and, uti possidetis principle and, 255-8 118 - 21Western Sahara territorial guidelines for PCASP for, 315-21 disposition and, 157-61 piracy and defence of, 307-8 West Papua and, 210-13, 221-7 Short, Dr. Augustus, xiv Senkaku/Diaoyudao Islands dispute Sierra Leone, ECOWAS intervention Chinese position concerning, in, 47–8 131 - 3Simma, Bruno, 352-6 critique of Chinese position in, Simons, Penelope, 321–4 134 - 6Singapore East Asian sovereignty and, 126-43 Palestine statehood opposed by, historical overview, 128-30 241 - 2Japanese position concerning, recognition of Taiwan by, 198-202 133-4 Sino-centric ideology, East Asian 'the name follows its owner' sovereignty and, 139-41 (mingcongzhuren) principle and, Sino-Japanese War, 128-30 139-41 Sivakumaran, Sandesh, 59-60n22 'separate entity' principle, dynamics of sleeping metaphors, clichés and, 13-14 statehood and, 188-90 Slovenia, international recognition of, September 11, 2001 attacks, regime 196 - 8change and, 166-70 Smith, Anthony L., 213–15 socialist states, law of state immunity Serbia Banković decision on air strikes in, and, 182-8 Société Nationale des Chemins de Fer Bosnian atrocities committed by, 43 Français (French Railways ethnic cleansing in Kosovo by, 26-7, National Society) (SNCF), in Eurotunnel dispute, 434 162n47 NATO air strikes in, 25-6 soft law instruments, PCASP guidelines and, 315-21 recognition of Kosovo and, 192-6, Solange I doctrine, European state continuity and succession and, Community legal order and, 279 - 8399-105 UN intervention in, 161-6 Solange II doctrine, European Settlement Plan for Western Sahara, Community legal order and, 99-105 157 - 61Seychelles, Vessel Protection Somalia Detachments for piracy defence humanitarian crises in, 25 in, 310-15 piracy from, 307-8 shared institutional practices Sorel, Jean-Marc, 250-2 EU Member States' international South Africa agreements and, 409-11 African National Congress and, normative conflicts over, 71–3 238n43



INDEX 471

Namibia Advisory Opinion and role of, 58-60, 177-9 third party countermeasures and, 350 - 1Southern Rhodesia, UN Security Council powers concerning, 24–5 South Ossetia, Republic of, 56-8 ICJ extraterritoriality cases and, 56-8, 63-5 South Sudan, Republic of creation of, 159n26 international recognition of, 196-8 sovereignty. See also legal sovereignty activity and decision-making limits for, 182-8 Antarctic sovereignty, 114-17 Arctic sovereignty, 118-21 Beagle Channel arbitration concerning, 259-60 challenges to, 88-9 Chinese reliance on, in Senkaku/Diaoyudao claims, 138 - 9clichés about, 17 demands and presumptions of, 78 - 84in East Asia, 126-43 European Community legal order and issues of, 99-105 human rights obligations in non-sovereign territory of treaty parties, 67-70 independence vs., 147-9 investment treaties and, 90-3 law of state immunity and, 182-8 legal characteristics of states and, 145 - 7legal framework for regime interaction and, 88 Permanent Court of International Justice founding argument for, 80n51, 149-50 polar sovereignty, 110-25 private international law and, 277-9 regime interaction and, 73-8 statehood and, 172, 188-90 state immunity and, 173-7

third party countermeasures and, West New Guinea decolonisation and, 213-15 Soviet Union Antarctic sovereignty and, 114 - 17arms shipments to Indonesia by, 217 - 19impact on international law of, 141 - 3polar sovereignty issues and, 110-11 Spain third party countermeasures and, Vessel Protection Detachments for piracy defence from, 310-15 spatial applicability. See extraterritoriality specialisation, regime interaction and, 73 - 8'special regime' principle, State responsibility and, 290n14 'spheres of influence' doctrine, polar sovereignty and, 111-14 Srebrenica massacre, 25-6 SS Lotus Case (France v. Turkey), 80n51 SS Manhattan voyage, Arctic sovereignty issues and, 118-21 SS Wimbledon. See The Wimbledon opinion Stahn, Carsten, 33n43 Stanford v. Kentucky, 95–9, 99n44 State consent legal characteristics of states and, 145-7 observer status and, 80 state continuity and succession constitutionalist reading of, 279-83 international law and, 273-84 private law reading of, 277-9 scepticism concerning, 273-7 statehood decolonisation and recognition of, 232n11 dynamic aspect of, 173-7



472 INDEX

statehood (cont.) future challenges for, 190-1 historical evolution of, 172, 174-5, International Criminal Court rulings on, 242-6 Kosovo independence and, 161-6 law of recognition and, 177-9, 192-208 mechanisms and procedures, 192-6 objective statehood principle, 231 - 4Palestine State recognition and, 229 - 47regime change and, 166-70 territorial disposition by UN Security Council and, 156-66 textual interpretations of Palestinian UNGA state resolutions and, 236-9 UN Security Council and concepts of, 155-71 Western Sahara case study, 157-61 state immunity, law of non-state entities and, 188-90 piracy defence, Vessel Protection Detachments, 310-15 primary and secondary rules of military necessity and, 337-8 statehood dynamics and, 173-7, 182 - 8State responsibility and, 302n68 state-owned commercial banks (SOCB), public body concept and, 365 - 9state-owned enterprises (SOEs), public body concept and, 365-9 state-owned natural resources, state immunity law and, 182-8 State responsibility. See legal characteristics of states collateral civilian casualties and, 325 - 7common intentions of state parties and, 71-3 comparison of ICJ/PCIJ jurisprudence on, 302–3 complicity with corporate human rights breaches and, 321-4

conduct of persons empowered by, countermeasures in investment treaty claims and, 394-404 dispute settlement activity and, in Eurotunnel dispute, 432-5 extraterritoriality and, 54-8 ILC/ICJ collaboration on norms for, 297-301 ILC 'master plan' for, 292, 297 international law and, 288-9n9, 291, 302n67 investment claim countermeasures and, 389-91, 404-5 investment treaties and, 391-4 judicial development concerning, 304 - 5law of, 179-82 in mixed multi-party disputes, 421-41 modern laws of, 291-301 Namibia Advisory Opinion and role of, 58–60 in non-sovereign territory of treaty parties, obligations involving, 67 - 70for non-state actors, 315-21 non-state entities and, 188-90 normative principles and, 88 PCIJ and ICJ jurisprudence and, 301 - 5PCIJ foundational decisions on, 292-6 piracy defence, Vessel Protection Detachments, 310-15 Privately Contracted Armed Security Personnel and, 315-24 recognition on basis of, 196-8 regime theory and, 73–8 sovereignty demands and, 78-84 third party countermeasures and, 342-7, 352-60, 396-7 threshold for, in collateral damage rulings, 329-30 U.S.-Antidumping and Countervailing Duties (China), 363-88 Stavropoulos, Constantin, 221–2



INDEX 473

Stephenson Lord Justice, 186-7 stereotypes, clichés and, 5-6 Steyn, Johan (Lord), 18-20, 63-5 Stone, Julius, xviii Strasbourg Court. See European Court of Human Rights 'strategic' trust territories, 155-6 'strict status neutrality' principle, third-party recognition of states, 206 - 7structural congruence (strukturelle Kongruenz), European Community legal order and, 99-105 subsidies definitions of, 365-9 U.S.-Antidumping and Countervailing Duties (China) and, 363-4 substantial departure standard, state immunity and, 313, 313n32 Sudan Palestine statehood opposed by, 241 - 2third-party countermeasures and, 352 - 6suffrage rights violations, in West Papua, 224-7 Suharto (President), 227-8 Sukarno (President), 213-16 Supremacy Clause (U.S. Constitution), 95-9 supremacy of EC law, 'Exit' and 'Voice' dichotomy and, 99-105 Supreme Court (U.S.), civil rights litigation and international law and, 95-9 Switzerland arms exports suspension by, 44–6 International Code of Conduct for **Private Security Services Providers** and, 315-21 Palestinian statehood supported by, 239-40n49, 242 Syrian war Arab League and, 37–8 arms shipments during, 44-6

responsibility to protect and, 36-40 third party countermeasures and, 347-51, 352-6, 360-2 tabula rasa, in East Asian sovereignty, 126 - 8*Tadić* Case, 33–34n45 Taiwan international recognition of, 205-6 Singapore's recognition of, 198-202 Tanzania, third party countermeasures and, 343-7, 350-1 'technicalisation of international affairs', regime interaction and, 82 - 3technology polar sovereignty and impact of, 111-14 power of, regime interaction and, 82 - 3Tecmed v. Mexico, investment treaty law and, 107-8 Tehran Hostages case, 297-301 terra nullius principle Chinese Senkaku/Diaoyudao claims and, 131-3 Crawford's work in, xvii-xviii Japanese Senkaku/Diaoyudao Island claims and, 133-4, 136-7, 139 - 41Senkaku/Diaoyudao Islands dispute and, 128-30 territorial claims Chinese position concerning Senkaku/Diaoyudao Islands dispute, 131–3, 134–6 East Asian sovereignty and principle of, 126-43 European law concerning, 141–3 Japanese position concerning, 133 - 4polar sovereignty and, 111–14 uti possidetis principle and, 255-8 territorial control, principle of in ICJ rulings, 56-8 in Namibia Advisory Opinion, 58-60 polar sovereignty and, 110-25

chemical weapons attack in,

38-9



474 INDEX

territorial disposition in Kosovo, 161-6 UN Security Council authority concerning, 156-66 Western Sahara case study, 157-61 'territorial' space. See 'legal space' concept Teubner, Gunter, 87 'the name follows its owner' (mingcongzhuren) principle, Senkaku/Diaoyu Islands dispute and, 139-41 third parties EU position in international organisations and, 411-12 recognition of states by, 206-7 third party countermeasures future challenges for, 360-2 international law and, 347-51 investment treaty claims, 396n23, joint statements of alleged abuse and, 356-60 obscurity of, 350 overview of, 343–7 in practice, 347-60 UN Charter Chapter VII enforcement parallel operation and, 352-6 Thompson v. Oklahoma, 99n44 tobacco lobbies, World Health Organisation and, 84 Tobago, Barbados maritime boundary dispute and, 265 torture restrictive immunity doctrine and, 188 - 90state use of, 34-6, 41n75 Total v. Argentina, 107–8 Toto v. Lebanon, 107-8 transnational institutions, regime interactions and, 73-8 transnational law legal framework for regime interaction and, 88 normative conflicts and, 71-3 Treaty concerning Territorial Questions at Issue between Colombia and Nicaragua, 267-70

treaty law Antarctic sovereignty and, 114-17 Bricker Amendment and, 95-9 EU allocation of competences and external relations and, 407-11 EU exclusive competences in, 407–9 EU Member States' international agreements and, 409-11 European Community legal order and, 99-105 in Eurotunnel dispute, 426–7 'Exit' and 'Voice' dichotomy in, 93 - 5extraterritoriality in framework of, 54-6, 63-5 of free-standing obligations in, ICJ affirmation of, 63-5 investment treaty claims and, 90-3 legal characteristics of states and, 145 - 7'legal space' concept and, 67-70 maritime law and, 308-309n7 need for EU coordination and, 413 nonratification by U.S. of human rights treaties, 90-3, 95-9 non-self-executing treaties and, 95-9 recognition of states in, 196-8, representation of EU in, 412-13 responsibility to protect and, 24-40 Treaty of Canterbury, 422-3, 426n14, 427 - 32Treaty of Peace, Friendship, Commerce and Navigation (1855), 259-60 Treaty on the European Union (TEU), 407-11 EU Member States' international agreements and, 409-11 EU position in international organisations and, 411-12 exclusive competence regarding international agreements in, 407-9 Member States' compliance with law of, 414-15 representation of EU in, 412-13 Trendtex case, 186-7 'triggers' of jurisdiction



> INDEX 475

extraterritoriality and, 54-6, 58, in Namibia Advisory Opinion, 58-60 Trusteeship Agreement, 155–6 Turkey 'legal space' concept and invasion of Cyprus by, 67-70 negligent navigation prosecution against France, 310-15 Palestinian statehood supported by, 2.36 - 42SS Lotus Case (France v. Turkey) and, 80n51 U.S. arms shipments to, 45-6 Turkish Republic of Northern Cyprus (TRNC), 177-9 international recognition of, 205-6 State complicity with corporate human rights breaches in, 321-4 Uganda ICJ on jurisdiction against, 60–3 'legal space' concept and law of occupation and, 67-70 rejection of extraterritoriality rulings by, 56-8 separation barrier with DRC, 56-8 unilateral intervention, responsibility to protect and, 30-1 UN Interim Administration in Kosovo (UNMIK), 161-6 United Arab Emirates, Swiss arms exports to, 44-6 United Kingdom Antarctic sovereignty and, 114–17, 121 - 4Corfu Channel Case, 47-8 Don Pacifico affair and, 341 Eurotunnel dispute and, 421–41 functional immunity cases in, 310 - 15Immigration and Asylum Act (1999), 425–6 Indonesian incorporation of West Papua and, 219-20 investment treaty claims and, 90-3 Kosovo air strikes and, 26–7, 38–9 law of recognition in, 177-9

Palestine statehood opposed by, partition of Cameroon and, 262-4 PCASP approval in, 315-21 recognition of Serbia by, 192-6 Roma Rights case and, 63–5 state continuity in laws of, 275n10, 277 - 9State Immunity Act of, 182-8 state immunity legislation in, 310 - 15Syrian chemical weapons attack and, 38 - 9Syrian weapons shipments and, 44-6 third party countermeasures and, 343-7, 350-1 **United Nations** EU external relations in, 411-12 law of recognition and, 192-6 Palestinian membership in, 229-31 Reparations case and, 81-2 third party countermeasures and involvement of, 356-60 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 315-21 United Nations Charter Article 41, 161-6 Chapter VII enforcement parallel operation with third party countermeasures, 352-6 legal characteristics of states and, responsibility to protect and principles of, 24-40 self-determination in, 210–13 third party countermeasures and, 342-3, 356-60 U.S. civil rights law and, 95-9 uti possidetis principle and, 255 - 8United Nations Commission on Indonesia, 213-15 United Nations Committee on the Rights of the Child, 56–7 United Nations Congress on the Prevention of Crime and Treatment of Offenders, 315-21



476 INDEX

United Nations Convention on the Law of the Sea (UNCLOS), 73-8 Antarctic sovereignty and, 116-17 Arctic sovereignty issues and, 118 - 21investment claim countermeasures and, 389-91 polar sovereignty issues and, State responsibility and PCASP protection under, 315-21 use of force against piracy and, 308 - 9Vessel Protection Detachments against piracy and, 310-15 United Nations Economic, Social and Cultural Organization (UNESCO), Palestinian membership in, 229-31, 239-42, United Nations Economic Commission for Asia, 128-30 United Nations Framework Convention on Climate Change (UNFCCC), Conferences of Parties to, 73-8 United Nations General Assembly Antarctic Treaty and, 114-17 decolonisation and self-determination resolutions of, Decolonisation Committee, 155-6 'Friendly Relations Resolution', objective statehood principle and resolutions of, 232n14, 231-3, Resolution 43/177, 229-31 Resolution 67/19, 229-31, 234-46 Resolution 181, 241-2 Resolution 1514, 155-6, 210-13, 221 - 7Resolution 1541, 155-6, 210-13, 221 - 7Resolution 1803, 182-8 Resolution 2504, 219-20 responsibility to protect (R2P)

rules on interpretation of resolutions by, 234-42 territorial disposition and, 155-6 textual interpretation of Resolution 67/19 and, 236-9 third party countermeasures and, 350 - 1'Uniting for Peace' resolution of, 28 - 9votes for Palestinian statehood adoption, circumstances and explanations, 239-42 West New Guinea draft resolutions and, 213-15 United Nations High-Level Panel on Threats, Challenges and Change, responsibility to protect and, 31 - 2United Nations Human Rights Committee 'exceptionalism' of extraterritoriality and, 65-7 jurisdiction in Views of, 60-3 Views and General Comments by, 56 - 8United Nations Human Rights Council, 157-61 United Nations Mission for the Referendum in Western Sahara (MINURSO), 157-61 United Nations Protection Force (UNPROFOR), 25-6 United Nations Security Council Bosnian crisis (1992-1995), 25-6 global politics and role of, 170-1 Kosovo air strikes and, 26–7, 161–6 Post war expansion of powers and scope, 155-6 regime change and, 166-70 Resolution 221, 24-5 Resolution 836, 25-6 Resolution 1244, 161-6 Resolution 1674, 33-4, 47-8 Resolution 1970, 43-4 Resolution 1973, 34-6n56, 40 responsibility to protect and, 24-40 rules of interpretation for resolutions of, 234-42

debate in, 31-2



INDEX 477

Senkaku/Diaoyudao islands dispute

Rwandan genocide and, 26 Somalian humanitarian crises and, statehood concepts and, 155-71 territorial disposition and, 156-66 third party countermeasures and, 342-3, 352-6 Western Sahara territorial disposition and, 157-61 United Nations Stabilisation Mission in Haiti (MINUSTAH), 166-70 United Nations Temporary Executive Authority (UNTEA), administration of West Papua by, 217 - 19United Postal Service of America Inc (UPS) v. Canada, 179-82, 188-90 United States Antarctic sovereignty and, 114–17 Arctic sovereignty issues and, 118 - 24arms shipments by, 45-6 China relations with, 126-8 functional immunity in perimeter guard case in Brazil and, 310-15 Haitian regime change and, 166-70 historical evolution of, 175n12 human rights treaties and civil rights litigation in, 90-3 Indonesian independence and, 217-19 international law and civil rights litigation in, 95-9 International Telecommunication Regulations and, 417–19 investment treaty claims and, 90 - 3Kosovo intervention and, 26–7, 161 - 6law of recognition, 192-6 military forces and Somalian humanitarian crises, 25 Nicaragua Case, 41-2 Palestine statehood opposed by, 239 - 42polar sovereignty issues and, 110 - 11recognition of new states by, 196-8

and, 128-30, 130n16 Syrian chemical weapons attack and, third party countermeasures and, 350 - 1United Postal Service of America Inc (UPS) v. Canada and, 179-82 UN Security Council and dominance of, 170-1 U.S.-Antidumping and Countervailing Duties (China) and, 363-88 Western Sahara territorial disposition states and, 161 United States Military Tribunal III-A (Nuremberg), 332-7 Universal Declaration of Human Rights, U.S. civil rights law and, Universal Postal Union (UPU), 415-17 University of Adelaide, Crawford's attendance at, xi-xix UN-led peacekeeping forces, Somalian humanitarian crises and, 25 UN Mission in Haiti (UNMIH), 166 - 70UN Operation in Côte d'Ivoire (UNOCI), 169-70 U.S.-Antidumping and Countervailing Duties (China), 363-88 U.S. - Countervailing Duty Investigation on DRAMS, 381-3 use of force guidelines for PCASP concerning, 315 - 21law of state responsibility and, 179 - 82piracy defence and, 308-9 statehood dynamics and, 173-7 US-Shrimp dispute, environmental regimes and, 81 USU Target System of Terminal Dues, EU treaties and, 415-17 uti possidetis/uti possidetis juris principle African decolonisation and, 250-2, 255 - 8



478

*uti possidetis/uti possidetis juris* principle (*cont*.)

Barbados maritime boundary dispute and, 265

Beagle Channel arbitration and, 259–60

Cameroon-Nigerian boundary dispute and, 262–4

categories of, 252-4n24, 258

Colombian-Nicaraguan boundary dispute and, 267–70

Gulf of Fonseca boundary dispute and, 258–9

Honduran-Nicaraguan boundary dispute and, 265–7

Land, Island and Maritime Frontier Dispute, 260–2

Latin American colonisation and,

maritime boundary dispute resolution, 258–70

Vattel, Emer de, 277–9 Venezuela, *uti possidetis/uti possidetis juris* principle and, 254n24 Verhoeven, Joe, 198–202

verticality principle, international law in opposition to, 134–6

Vessel Protection Detachments (VPDs) increased use of, 324

piracy defence and, 307–8 state responsibility and immunity issues and, 310–15

Vielleicht ('Maybe') decision, European Community legal order and, 99–105

Vienna Convention on the Law of Treaties (VCLT)

Palestinian statehood and, 234–42

public body concept and, 365–9, 374–375n62, 383

recognition of states in, 204–5 sovereignty demands and, 79–80

U.S.-Antidumping and Countervailing Duties (China)

and, 363–4

INDEX

WTO Appellate Body's interpretation of 'public body' concept and, 369–73

Vienna Conventions on State Succession, 279–83

'visible college' cliché, in international law, 15–17

visual clichés, in international law, 9–10, 20–1

'Voice'. See 'Exit' and 'Voice' dichotomy von Bulmerinq, August, 343–7 von Holtzendorff, F., 227–8

Waiting for Godot, 15–17

Wall Advisory Opinion, 51-4, 56-8

'exceptional' nature of

extraterritoriality in, 65–7

extraterritoriality of free-standing obligations in treaties, ICJ affirmation of, 63–5

ICCPR applicability in, 60–3

'legal space' concept in, 67–70 primary and secondary rules of

military necessity and, 337–8 State responsibility in, 297–301

Wang Tieya, 139–41

war crime rules

binary analytic mindset concerning, 331

state *vs.* individual responsibility thresholds for collateral damage and, 329–30

Warsaw Pact nations, responsibility to protect and, 41–2

Watts, Arthur (Sir), 41-2

weapons shipments, responsibility to protect and, 43, 44–6

Weber, Max, 175-6

Weiler, Joseph, 93-5, 105

Western Sahara

Kosovo case compared with, 165–6 territorial disposition in, 157n17, 161, 165n66

West New Guinea, postwar status of, 213–15

West New Guinea Council, 215–16 West Papua



> INDEX 479

analysis of Act of Choice impact on, historical background of, 209-10 Indonesian administration and incorporation of, 219-20 nationalism in, 215-16 New York Agreement concerning, 217 - 19Whale Sanctuary (Australia), 110–11, 114 - 17whaling industry, Antarctic sovereignty and, 114-17 Wilberforce (Lord), 176-7, 182-8 Williams, Paul, 29-30 Wilson, Woodrow, 221 Wimbeldon opinion case, 149-50, 294-295n36, 302-3 World Bank experts' role at, 82-3 Forest Carbon Partnership Facility, 81, 81n56 World Conference on International Telecommunications (WCIT), 417 - 19World Court, State responsibility laws and, 287-306 World Health Organisation (WHO) Framework Convention on Tobacco Control, 84 implied powers rulings concerning, 81 - 2statehood recognition by, 242-6 World Summit Outcome Report (2005) (UN), 33n43 responsibility to protect and, 32–3, 47 - 8UN Security Resolution 1973 and, World Trade Organisation (WTO) Appellate Body's interpretation of 'public body' concept, 369–73, 374–375n62, 376n64, 378n72, 383

Dispute Settement Understanding of, 205-6, 391-3 environmental regimes and, 81 EU membership in, 411–12 international trade regime and, 73 - 8investment treaties and, 90-3, 392n12 non-governmental bodies and, 379n73 observer status for, 80 standards established for, 84 status of ILC articles to 'public body' interpretations and, 383-7 U.S.-Antidumping and Countervailing Duties (China) and, 363-88 Vienna Convention on Law of Treaties Article 3(3)(c) ruling by, 79-80 wrongful conduct countermeasures in investment treaty claims and, 395-6 NAFTA investment treaty claims and, 397-404 normative principles of State responsibility and, 288-91 power theory), 126-8

Xingxing Daguo Guanxi (Chinese

Yan Shusen, 139-41 Yasseen, Mustafa Kamil, 292-6 Yudhoyono President, 209-10 Yugoslavia Arbitration Commission, 248 - 52

Zhongguo Guojifa Shijianyu Anli (International Law in China: Cases and Practice), 129-130n16, 131 - 3Zimbabwe, third party countermeasures and, 350-1