

Cambridge University Press 978-1-108-47526-6 — Duelling for Supremacy Edited by Fulvio Maria Palombino Index More Information

Index

Alignment, 113, 122, 124–125, 236 American Convention on Human Rights 1969 (ACHR), 16–18, 163, 243, 326 Automatic incorporation, 47–48, 50, 65, 82, 121, 132, 169, 322 Autonomy of the municipal system, 73 Avoidance of international law, 122

Best interests of the child, 29
Bloque de constitucionalidad (constitutional bloc),
241–242
Bosphorus doctrine, 267

Brussels Convention 137

Cape Town Convention on International Interest in Mobile Equipment 2001, 138 Charming Betsy rule, 22, 32, 39

Charter of the United Nations 1945, (See United

Nations Charter) Chemical Weapons Convention 1997 (CWC), 383 Circumstance(s) precluding wrongfulness, 376 Comity (of nations), 30, 32, 38

Commonality of constitutional values, 268 Compensation for compulsory expropriation, 114 Conception française de l'ordre public

Conception française de l'ordre public international, 84

Consistent interpretation, 52, 113, 116, 121–122, 124–125, 230, 322

Constitutional human rights, 211, 215, 229, 283, 307

Constitutional identity, 67, 76, 79, 90, 92–93, 95–96, 103–104

Constitutional monism, 70, 86

Constitutional pacifism, 211, 213, 215, 224–225, 227–228

Constitutional popular sovereignty, 211, 220 Constitutional principles, (See Fundamental constitutional principles) Constitutional rules of reception, 27 Contestation of international law, 122, 276

Contrôle de conventionnalité (or conventionality control), 70

Convention Against Torture, Inhuman or Degrading Treatment or Punishment 1984, 36, 56

Convention for the Suppression of Unlawful Seizure of Aircraft 1970, 140

Convention for the Unification of Certain Rules relating to International Carriage by Air, 51, 102

Convention on the Elimination of All Forms of Racial Discrimination 1963, 56, 160, 230

Convention on the Elimination of Discrimination against Women 1979 (CEDAW), 142

Convention on the Rights of the Child 1989, 2, 29, 56, 170, 223

Convention Relating to the Status of Refugees 1951, 36

Conventionality control, 72, 81–82, 229, 231, 247, 249

Core interests (China), 55

Counter-limits (or counter-limits doctrine), 3, 257, 265, 267, 275–276, 299

Court of Justice of the European Union, 118, 191, 199–206, 209

Crimes against humanity, 163, 327

Criteria for the resolution of antinomies in international law, 3, 206

Customary international law, 4, 10, 28, 31, 36, 41, 45, 69, 74, 76, 85, 127–130, 132, 134, 145–146, 148, 168–169, 208, 236, 252, 258–260, 279, 282, 319, 321–323, 327, 332–334, 340, 349, 357–360, 365–366, 371–373, 379, 390, 393, 400, 402, 405



Cambridge University Press 978-1-108-47526-6 — Duelling for Supremacy Edited by Fulvio Maria Palombino Index <u>More Information</u>

Index 431

De facto supremacy of international law, 167 Death penalty, 145, 156–157, 166, 192, 307, 311,	Fundamental constitutional principles, 21, 32, 40, 76, 126, 234, 257, 298, 305, 307, 314–315, 376,
324–326, 381, 398 Declaration of the Rights of the Child 1989, 29 Declaration on the Rights of Indigenous People	383, 404 Fundamental principles of national (or domestic) law, 50, 54, 63
2007, 294 Diplomatic immunity, 141, 187, 282, 342	Fundamental values (of domestic law), 89–91, 95, 103, 191, 264
Diplomatic protection, 191	
Doctrine of incorporation, 130	Gaining back sovereignty process, 298
Doctrine of precedent, 286, 356, 360-361	Gender discrimination, 310
Domaine réservé, 374	General international law, 46, 70, 73, 78, 122, 184,
Dottrina dei controlimiti, (See Counter-limits)	186, 188–190, 200, 269, 354
Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)	General principles of international law, 73–74,
art.3, 22, 25, 41, 106, 304	Generally accepted (or recognised) rules of
art.32, 2, 22, 25, 106	international law, 108, 122
Dualism, 22, 24–25, 33, 35, 40, 65, 121, 127, 136,	Global constitutionalism, 254
143–146, 151, 171, 220, 234, 236–238, 251, 280, 356, 362–363, 376	Guatemala City Protocol 1971, 193
Dualist	Harmonious interpretation, 140, 268
approach, (See Dualism)	Hierarchy of sources, 113, 149, 237
doctrine, (See Dualism)	Human dignity, 93, 96, 104, 266
logic, (See Dualism)	Human rights, 6–7, 10, 16–20, 26–27, 29–30, 34,
standpoint, (See Dualism)	39–40, 45, 47–48, 51, 56–59, 63, 71, 73, 76, 80,
theory, (See Dualism)	85, 107, 110–112, 114, 116, 123–124, 130, 132, 136,
Duel, 1, 298, 402	138, 145, 147, 149, 153, 155–157, 161, 163,
··· / · / · / · / ·	166–167, 170–171, 175, 177, 180, 182, 188–191,
English Common Law, 167-168, 277, 365	193, 196–197, 199, 201, 206, 211, 214–215,
European Central Bank (ECB), 95, 415	218–220, 222–225, 229–232, 235, 237, 240–242,
European Coal and Steel Community (ECSC),	245–253, 255, 257, 267–270, 273–274, 276, 283,
198, 419	285, 288, 290, 298–301, 304–308, 314–315,
European Convention on Extradition 1957, 192	317–318, 323, 326–327, 330, 333–334, 336–337,
European Convention on Human Rights (ECHR)	339–341, 345–354, 375–376, 387–388, 399, 403
art. 6, 194–195, 208	Human rights treaty, (See Human rights)
art. 8, 97	3 7/1 3 /
art. 12, 273	ILO Convention No. 89 Concerning Night Work
art. 46, 369	of Women Employed in Industry 1948,
art. 53, 270, 272	192
art. 1 protocol 1, 115, 309, 314-315	Immunity of states, (See State immunity)
European Court of Human Rights (ECtHR), 3, 72,	Implementation of international law, 6, 48, 67-68,
87, 97, 194, 263, 270, 299, 308, 318, 345–347,	85, 144, 278, 282, 337, 343
369, 375	Inadvertent disregard for international law,
European Court of Justice (ECJ), 94, 178,	221
261	Inalienable rights belonging to each person,
European Union (EU) Law as a separate legal	188
order (ordre juridique propre), 112	Incorporation
Extradition treaties, 12, 192	doctrine, 138, 145, 171
Extradition Treaty between Italy and France	of international law, 7, 27, 65–66, 121, 137,
1870, 192	167–168, 172, 285, 297 of treaties, 10
Fourth Geneva Convention, 168, 171, 173	Inter-American Court of Human Rights
Freedom of the press, 98	(IACtHR), 229, 241, 243, 247
Frontal clash, 66, 88, 403	Internal reservations, 2



Cambridge University Press 978-1-108-47526-6 — Duelling for Supremacy Edited by Fulvio Maria Palombino Index More Information

432 Index

International Court of Justice (ICJ), 34, 39, 97, 100, 188, 225, 241, 259, 293, 358, 399
International Covenant of Civil and Political Rights 1966 (ICCPR), 33
International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), 56, 155, 162, 170, 220, 294, 299
International custom, (See Customary international law)
International law norms, 50
International responsibility, 3, 6, 19–20, 47, 64, 105, 111, 205, 207–208, 236, 266, 318, 334
International treaties, (See Treaties)
International-law friendly interpretation, 96, 99, 101

Interpretation neutralisante, 82 Interpretive presumption, 169 Investment treaties, 51, 81

Islamic law, 278

Israeli Separation Barrier, 174

Israeli-Jordanian Armistice Agreement 1949, 168

Jurisdictional immunity of the State, (See State immunity)

Jus cogens, 36, 39, 46, 165, 184, 188, 268, 315, 318

Last-in-time rule, 392–395, 397, 402 Law of the sea, 56, 61–63 Legal *aporia*, 3, 20, 63, 88, 183, 205, 232, 251, 295, 303, 333, 401 Legislative transposition, 68 Lex posterior, 3, 11, 19–20, 97, 101, 338, 342, 353

Lex posterior, 3, 11, 19–20, 97, 101, 338, 342, 353 Lex specialis, 3, 6, 11–15, 19–20, 97, 101, 185, 187, 207, 251, 338, 342, 353, 403

Lex superior, 3, 168, 172, 338, 342

Margin of appreciation, 27, 81, 195, 204, 209, 270–272

Margin of manoeuvre, (See Margin of appreciation)

Matter doctrine, 82

Monism, 25, 65, 70, 120–121, 135, 151–152, 169, 220, 254, 276, 280, 403

approach, (See Monism) logic, (See Monism)

stance. (See Monism)

Montreal Convention, (See Convention for the Unification of Certain Rules for International Carriage by Air)

Ne bis in idem, 115 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 152 Non-directly applicable international law, 260 Non-incorporation rule, 168 Non-refoulement, 129, 132–133 Non-retroactivity in malam partem principle, 169 Normative comparability, 174–175

Obligation to 'have regard' to public international law, 325 One-China Principle, 55 Open door policy, 29, 224, 324, 339

Open door policy, 29, 224, 324, 330 Ordine di esecuzione, 185

Pacta sunt servanda, 41, 133, 161, 314, 376
Penumbral international law principles, 173
Peremptory (norms of) customary international law, (See Jus cogens)

Persuasive authority (international law as), 26 Polluter pays principle, 130

Popular sovereignty, 211–212, 215–217, 220, 222–223, 231–232, 378, 393, 398, 402

Potsdam Declaration on Popular Sovereignty 1945, 215

Precautionary principle, 129–130, 164–165 Precision of criminal law principle (*principio di determinatezza*), 200

Preliminary reference procedure, 94–95 Presumption of conformity, 22–23, 28, 30–33, 37–38, 40–41

Presumption of intent, (See Presumption of conformity)

Preventive detention, 99

Primacy of the Constitution, (See Supremacy of the Constitution)

Primauté of EU law, 197, 201

Principe de la primauté du droit, 23

Principle of democracy, 92, 94, 123

Prohibition of the use of force, 46

Public interest, 98, 119, 190, 195, 209, 315, 350

Rank of international treaties (in domestic law), 6 Reasonable alternative means doctrine, 269 Reasonable resistance, 3, 20, 64, 145, 207, 232, 252, 276, 296, 317, 354, 401, 403 *Renvoi* to the international legal source, 50 Right of access to justice, 187, 189, 198, 207–208 Right to free elections, 312 Rule of law, 21–24, 40–41, 62, 99, 138, 183, 211, 265–266, 300, 306, 315, 330, 333, 341, 347–348,

Sanctity of law principle, 259 Self-determination, 41, 46, 92, 231 Self-executing treaties, 27, 322, 324, 389, 392, 394

350-351, 361, 371, 373



Cambridge University Press 978-1-108-47526-6 — Duelling for Supremacy Edited by Fulvio Maria Palombino Index **More Information**

> Index 433

> > 229-231, 235-239, 241-243, 245, 250, 255-258,

Separation of powers, 53-54, 66-67, 72, 75, 86-88, 169, 171, 211, 231, 356, 362–365, 372–374 Solange reservation, 90-91 Sovereign immunity, (See State immunity) State immunity, 39-40, 59-60, 63, 187-191, 197, 207-209, 270, 272, 391-392 State sovereignty, 55, 57, 62, 148, 207, 216, 299-300, 302–304, 315, 318, 378, 383 Supremacy clause, 27, 109, 237, 294 of domestic law, 23, 33 of EU law, 89-90, 94, 96, 103, 117-118, 203, 256 of international law, 1-6, 11, 41, 44, 48, 88, 135, 138, 154, 183, 206, 210-211, 215-216, 257-258, 260, 264, 274-276, 278-279, 282, 284, 286, 290, 293-297, 299, 304, 317-318, 333-334, 338-339, 342, 347, 349-350, 353-354, 378, 399, 401, 403-404 of Parliament, 22, 355, 362 of the Constitution, 3, 17, 45, 75, 84, 116, 123, 126, 218-219, 231, 247, 278, 296, 300, 302-303, 314-315, 323-324, 340, 382, 404 Surrogacy, 140 Taking into account, 257, 269, 316, 319 Targeted killings, 173 Tax treaties, 101 Traité matériellement constitutionnel, 84 Transfer of sovereign powers to the EU, 92 Transformation doctrine (international treaties), 138

Transposition of international law, 127

Treaties, 1-2, 6-12, 14-20, 25, 27, 29, 36, 43, 45-48,

50-52, 56, 61, 67-73, 75-78, 80-85, 89-90,

185, 192-194, 204-206, 210, 215, 217-218, 223,

96-97, 101-102, 104-105, 107-108, 111, 115,

120-121, 127, 129-130, 135-136, 138-140, 143-146, 148-149, 151, 156-158, 162, 168, 171,

260-264, 266, 276-281, 284-287, 290-291, 293, 296–297, 299, 301–305, 307, 321–323, 326, 328, 330, 336–341, 343, 346–347, 349–350, 357–359, 363, 365, 367, 374, 376, 379, 381, 384, 386–395, 400, 411 Ultra vires reservation, 90, 94 United Nations Charter art. 24, 370 art. 41, 369-370 article 103, 267-269, 273-275 United Nations Convention on the Law of the Sea 1982 (UNCLOS), 61-62, 69, 152 United Nations Human Rights Committee, 33 United Nations Security Council Resolution, 256 Universal Declaration of Human Rights 1948, 29, 57, 158-159, 163, 281, 350 Venice Commission, 307, 313, 345, 352 Vienna Convention on Consular Relations 1963 (VCCR), 60, 100, 141, 241, 342–343, 395–396, 398-399, 402, 414 Vienna Convention on Diplomatic Relations 1961 (VCDR), 60, 141, 151, 281, 382, 391, 398, 403 Vienna Convention on the Law of Treaties 1969 (VCLT) art. 27, 1-2, 21, 25, 41, 133, 156, 267 art. 30, 84 art. 31, 133-134, 207, 238, 251 art. 46, 2, 156, 293 War crimes, 327 Westphalian paradigm (or model), 21, 24-25 Working Hypothesis No. 1, 3, 299, 303

Working Hypothesis No. 2, 3 Working Hypothesis No. 3, 3, 299, 304, 318-319