

## Index

- Abbott, Grace (Advisory Committee), 150–1  
 abuse of rights, 372–3, 379–80  
 Adatci, Mineitcero (Japanese representative at Versailles/LoN), 73, 240, 268–9, 413, 414, 622, 626 n70  
 Advisory Committee on Traffic of Women and Children: *see* trafficking of women and children (role of the League)  
 aerial warfare: *see* civilian persons, protection of (aerial warfare)  
 aggression: *see also* use of force, attempts to regulate between the wars  
   ‘aggression’/‘acts of aggression’ distinguished, 262–3, 707  
   Convention for the Definition of Aggression (1933)  
     parties, 707–8  
     as a Soviet attempt to demonstrate peaceful intentions, 708–9, 708  
     text (Arts 2 and 3), 708  
   Covenant ban on (Covenant 10), 12–13, 29, 707  
   definitions/factors of possible relevance  
     distinction between legal and illegal war, 263  
     Geneva Protocol (1924), 263  
   Soviet ambivalence, 706  
   war of aggression as a war crime, exclusion, 396–7  
 Ago, Roberto (on State responsibility), 362, 372–3, 375–6, 380, 385–6  
 AILL (American Institute of International Law)  
   codification projects, 718, 743–4  
   Declaration of the Rights and Duties of Nations (1915), 727–9, 730–1  
   decline and fall, 718  
   establishment/inauguration (1912/1915), 720, 722  
   as an institutionalisation of international law in the Americas, 718, 720  
   founders (Alvarez and Scott), 70, 692, 722  
   principles (AILL/members of), 722  
     acceptance of US hegemonic role in the development of international law in the Americas, 722  
     adherence to the Platt Amendment (1905) (legitimation of US intervention in Cuba), 722  
     condemnation of violent interventions, territorial conquests and war, 722  
     continental solidarity and cooperation, 722  
     continental tradition, 718  
     hemispheric exceptionalism, 722  
     Monroe Doctrine, legitimacy of, 722  
     Pan-Americanisation of the Monroe Doctrine, 721, 743  
     solidarist ideal, 724  
     sovereign equality, 722  
   tensions, 718  
 air navigation  
   Aerial Navigation Convention (1919), 15–16  
   principles  
     exclusive jurisdiction of the territorial state over territory and territorial sea, 15  
     freedom of flight over areas not subject to national jurisdiction, 15  
 Åland islands regime  
   Åland Agreement (1921), 187–8  
   implementing legislation, 188  
   key provisions, 187–8  
   Non-fortification and Neutralisation Convention (1921), 188, 218

## Index

- Finnish recognition of Åland islanders' rights as members of the Swedish nation, 530
- League Council's recognition of Finnish sovereignty over the islands (June 1921), 703
- navigational rights in straits, 218–19
- self-determination principle (International Committee of Jurists (1920)), 20, 188, 226, 702
- standing the test of time, 187–9, 194
- Albania/Serb–Croat–Slovene State's territorial dispute (1925), 357
- Alvarez, Alejandro
- AAIL co-founder (1912)/enthusiasm for Pan-Americanism, 70, 692, 722
- codification of American international law, role, 726–34
- on humanitarian intervention, 727–9
- on the international rights of individuals and international associations, 727–9
- on the law of war, 293
- a legal sociologist, 84
- on natural law, 86–7
- tensions with James Brown Scott, 718, 727, 728–9, 731
- American Institute of International Law (AAIL)
- 'American' international law and, 90 n124, 718
- Déclaration des droits internationaux de l'homme (1929), 398 n41, 410, 411–12, 729
- establishment (1912), 70
- international criminal court and, 411–12
- Resolution VI (1931) (mandates), 248
- the Americas at the time of the League, overview, 717–18, 743–4: *see also* American Institute of International Law (AAIL); Monroe Doctrine
- American international law (continental vs regional versions)
- decline and fall, 717, 718
- definitions, 718
- tensions, 718, 724
- pioneering role/important projects, 717, 718
- US/continental objectives
- accommodation of international law to different continental and regional purposes, 717
- legitimation of US imperial legal projects in Latin America, 717
- the Americas' relationship with the League
- ambiguity of US and Latin American engagement with, 717–18
- Pan-American Union as a precedent/mutual benefits, 718–19, 743
- Saavedra Lamas Anti-War Treaty and, 718, 735–6
- scepticism towards the League/Covenant, 21
- as a competing organisation with the Pan-American Union, 718–19
- danger to the sovereignty and territorial integrity of Latin American countries, 724–6
- as a Eurocentric organisation dominated by the European great powers, 717–18
- imperialistic tincture, 724–6
- a preference for a pluralist regional Latin American approach, 724–6
- the US's hegemonic role, 724–6
- validation of the Monroe Doctrine as a consolidation and legitimisation of US exceptionalism, 724–6
- Anderson, Chandler P. (humanitarian law), 305, 312
- Anderson, Luis (on non-intervention), 636, 729–30, 731–2
- Anzilotti, Dionisio
- on absolute sovereignty, 90
- on *agreement*, 598–9
- Austro-German Customs Union*, 14–15, 178
- a bilateralist/on collective security, 366
- Certain Danzig Legislative Decrees*, 133–4
- on diplomatic immunity, 607–8
- on the individual in international law, 465–6
- a leading dualist, 137–8, 377
- on mandates, 236
- on Mixed Arbitral Tribunals, 464
- 'narrow obstructiveness', 73 n24
- on *pacta sunt servanda*, 81–2, 137–8
- on the relationship between law and morals, 77–9
- on reparation, 364
- on sovereignty, 90
- on State responsibility, 362–3, 377, 387–8
- on the treatment of aliens, 452
- Arendt, Hannah, 412, 501, 505 n17, 506 n20, 509 n42, 510, 513, 518 n100, 531–2, 541
- armed conflict: *see* law of armed conflict and neutrality between the wars (some neglect and stagnation)

## INDEX

- Armenia: *see also* crimes against humanity, Armenian massacres; international criminal law, prosecution of 'massacres' committed in parallel with the war (Sèvres)
- exclusion from the Mandates System/ incorporation into the Soviet Union (1922), 237
- asphyxiating gases/ chemical warfare, 313–22
- attempts to control
- Hague Regulations (1907), 316
- ICRC calls for restraint (1918) (HR 23(a) and (e)), 313, 316
- peace treaties (1919–21), 317
- possibility of sanctions (Covenant 16), 310
- LoN deliberations (1920–1924) (Committee on Chemical Warfare' report (1924)), 319–20
- Treaty of Washington on the Use of Submarines and Noxious Gases in Warfare (1922), 23, 314–15, 317–19
- Geneva Protocol on Asphyxiating, Poisonous or Other Gases (1925), 23–4, 317–19, 320–2
- attempts to control, evaluation
- clear positive results, 322
- continuing concerns about the risks, factors causing, 321
- use of gases by Italy and Spain, 60–1, 321–2
- WWII European combat, freedom from, 322
- attitudes towards
- Bourgeois, 310, 319
- evolution of, 322
- scepticism about the need for a ban, 316–18
- use in combination with aerial bombardment as particular concern, 299, 316–17
- WWI perception of unlawfulness/ justification as reprisals, 316–17, 320
- Geneva Protocol (1925)
- 'a remarkable innovation', 321
- an affirmation of the existing prohibition on use, 320
- finessing the concerns, 320–1
- negotiating history/US and Polish proposals, 320
- Assembly
- as main vehicle for the interests of the 'lesser States', 104, 109
- meetings
- 'at stated intervals' (Covenant 3), 182
- British resistance to frequent/regular meetings, 104
- immediate agreement on annual three-week meetings, 104
- Atlantic Charter (1941)
- Churchill's pride in his 'authorship', 496
- Lend-Lease Act and, 495, 496–7
- non-discrimination provision, UK/US differences over/resolution, 495–7
- scope, 495–6
- the trade-peace link and, 495
- UK draft, 495–6
- Austria, League's financial reconstruction of, 154–8
- an effective example of the international/ municipal law relationship, 155–6
- Austria's problems post-WWI, 155
- the League to the rescue, 155
- evaluation
- failure of Zimmermann's appointment, reasons for, 157
- successful application of the 'global economy' approach, 156–7
- Avenol, Joseph (deputy League secretary general (1923–33)/secretary general (1933–40))
- Avenol/Bruce Report, 115–16, 117–18, 126, 127–8
- desire to downsize the League, 484
- impact on the League's trade agenda, 484
- pro-German sympathies, 484–5
- refugees and, 534–5
- Balfour Declaration (1917), 48–9
- Basdevant, J. on
- positive/natural law, 86
- state responsibility, 363 n5, 372, 374, 378–9, 383
- bays, 209–13
- overview
- Gidel on, 210
- juridical bays, historic bays and pluri-State bays distinguished, 210–11, 221–2
- on-going lack of clarity about the rules, 210, 221–2
- problems with the low-water line rule, 210
- a sensitive issue, 210–11
- historic bays, 212
- absence of a single regime for 'historic waters'/'historic bays', 212
- Basis of Discussion No 8, 212

## Index

- Harvard Draft on the Law of Territorial Waters (1929), 212–13
- juridical bays (width)
  - draft codifications (1894–1928), 211–12
  - judicial practice, 212
  - Schücking memorandum/Basis of Discussion No 7, 211
  - State practice, 211–12
  - treaty practice (19th–early 20th century), 211
- jurisprudence
  - Fisheries (United Kingdom v Norway)*, 212
  - Anglo-Norwegian Fisheries* (1951), 212
  - Continental Shelf (Tunisia/Libya)* (1982), 212
  - Land, Island and Maritime Frontier Dispute* (1992) (Oda J dissenting), 212
  - North Atlantic Coast Fisheries* (1910), 210, 212
- pluri-State bays
  - absence of any special status, 213
  - Basis of Discussion No 9/State's observations on, 212–13
  - Harvard Draft on the Law of Territorial Waters (1929), 212–13
  - Japanese Branch of the ILA draft (1928), 212–13
  - Schücking memorandum (1927), 210–12
    - key distinctions, 210–11
- Beckett, W.E.: *see also* private international law (PIL) (LoN period)
- domestic/international law interface, 177
- individual rights, 466 n153
- PCIJ advisory procedure, 628 n80
- private international law, 555–6, 557–9, 571 n80, 585: *see also* private international law (PIL) (LoN period)
- belligerency (insurgency and civil wars), recognition of, 331–2
- criteria for recognition
  - effective control by the insurgents over part of the territory of the mother state, 332
  - intensity of the conflict, 333
  - organised character of the rebel troops, 332
  - rebels' compliance with the law of war, 332
  - regular exercise by the rebels of governmental functions over the part of the territory under their control, 332
- a legal vacuum caused by non-recognition, responding to
- 16th Red Cross Conference (1938) (Resolution calling for concentration on the application of humanitarian principles in times of civil war), 335–6
- public perception of the failure of the law of war, 335–6
- Spanish Civil War, foreign intervention in, 335–6
- modalities, 333–6
  - according belligerent rights while denying them recognition, 333–6
  - declarative vs constitutive effect, 335
  - disregard of the criteria/premature recognition, effect, 333
  - implicit recognition, 333–6
  - misunderstanding the effects of recognition, 334–5
  - objective vs facultative approach, 335
- a political concept?, 335 n321
- significance (recognition by the mother State)
  - applicability of customary law of war, 332
  - applicability of the humanitarian laws of war, 332
  - liberation of mother State from responsibility of acts of the insurgents, 332
- significance (recognition by third parties)
  - applicability of the customary law of neutrality between the involved parties, 331–2
  - displacement of the principle of non-intervention, 331–2
  - a *pis aller* (Baty), 331–2
- Bellot, Hugh Hale Leigh: *see* international criminal court (Bellot/ILA draft statute (1922–1926))
- Borchard, Edwin, views on
  - animus belligerendi*, 296
  - diplomatic protection, 363, 450, 451, 462
  - general principles of law, 449, 450
  - Kellogg–Briand Pact (1928), 278, 281–2
  - minimum international standard of treatment, 452–3, 454
  - state responsibility, 369, 374, 376, 379, 381, 447–8
  - US neutrality, 300
- Bourgeois, Léon
  - on asphyxiating gases, 310, 319–20

## INDEX

- Bourgeois, Léon (cont.)  
 enthusiasm for the League/'new worlds',  
 100–1, 112  
 the individual in international law, 514–15,  
 516  
 naive?, 100, 119, 127–8  
 on the PCIJ, 621  
 'right' over 'might', 100, 119  
 support for sanctions, 310
- Bourquin, Maurice  
 influence of, 73  
 Kellogg–Briand Pact (1928), 277, 279–80,  
 285–6  
 'Le problème de la sécurité internationale'  
 (1934), 262, 274, 277, 279, 280,  
 285–6, 350, 351, 355  
 'Les baies historiques', 211, 212  
 'Règles générales', 87, 90, 274, 335, 377,  
 387  
 'The crisis of democracy', 521
- Brest-Litovsk Peace Treaty (1918), 170, 306,  
 113, 479, 689, 695
- Briand–Kellogg–Briand Pact (1928): *see*  
 Kellogg–Briand Pact (1928)
- Brierly, James L.  
 activities  
   Hague Lectures (1928) ('Le  
   fondement'), 82, 84, 86  
   Hague Lectures (1936) ('Règles  
   générales du droit de la paix'), 332  
   membership of League peace  
   committees, 86–7  
 views on  
   belligerent status, 332, 333, 335  
   connection between law and morals, 86  
   legal positivism, methodological  
   advantages, 86  
   the mandate system, 241, 247  
   natural law as a useful fiction, 86  
   'resort to war'/'measures short of war',  
   264, 271, 274, 279–80, 282–3  
   the rule of law, 90  
   sources of international law/PCIJ 38(1),  
   629  
   sovereignty, 86, 89–90  
   state practice, 443
- Bruce Report (1949), 115–16, 117–19, 126,  
 127–8
- Bustamante Code of Private International  
 Law (1928), 565
- Bustamante y Sirven, Antonio Sanchez de  
 an elitist and technocratic approach, 731  
*Brazilian Loans* (dissenting), 580  
 on Latin American international law/  
   codification of, 724, 731, 741–2  
*Mavrommatis Concessions* (dissenting), 242,  
 252–3  
 Pan-American views, 70  
 on the treatment of aliens (IDI draft  
   Declaration (1929)), 546
- Butler, Geoffrey and Simon Maccoby (*The  
 Development of International Law*)  
 an incoherent account, 36–7  
 'development' vs 'history', 36  
 facts vs political-philosophical theories, 33,  
 36–7
- Calvo doctrine, 453–5  
 diplomatic protection, exclusion, 454: *see*  
   *also* diplomatic protection  
 domestic law/domestic jurisdiction, 454  
 Drago doctrine, 462  
 incorporation into investment treaties,  
 454–5  
 Montevideo Convention on the Rights and  
   Duties of States (1933), 454  
   non-repudiation of decisions of  
   international tribunals, 454  
   state responsibility/accountability,  
   454  
   national treatment, limitation to, 453–4
- China: *see also* Manchurian incident  
 unequal treaties, 57, 59
- citizenship: *see also* nationality; stateless  
 persons/refugees  
 in colonial territories, 232  
 minorities and, 529–30  
 nationality distinguished, 505  
 civil service: *see* international civil service  
 civil wars: *see* insurrection and civil wars;  
   Spanish Civil War (1936–1939)
- civilian persons, protection of (aerial  
 warfare): *see also* technological  
 developments, challenges for the  
 law of armed conflict
- overview/conclusions, 337–8  
 idleness in the face of an oncoming  
 catastrophe, 336  
 success stories, 336–7  
 aerial bombardment in association with  
   noxious products  
   arguments for and against a ban, 316–17,  
   322  
   risk to civilian populations, 316–17  
   risk of destruction of whole cities,  
   316 n183

## Index

- failure to address/reasons/consequences, 294–5, 302, 313–14, 323–4
- British use of aerial bombing over rebellious colonial territories, 323
- disillusionment with possibility of making war more humane/cynicism, 323–4
- dramatic increase in civilian casualties/acceptance of risks in military and political circle, 327–8: *see also* civilian persons
- living in a fool's paradise/emerging too late to tackle the issues, 301–2, 327
- underestimation of the potential dual use of aircraft, 323
- Hague Convention (IX) (1907), HC 1(1) and 2(1) ('military objective'), 325–6
- Hague Regulations 25 (prohibition of attack by whatever means on undefended towns, villages, dwellings, or buildings)
- applicability to aerial warfare, 324–5
- impracticability of the distinction between 'defended' and 'undefended', 324–5
- Hague Rules on the Control of Wireless Telegraphy in Time of War and Air Warfare (1923) by article
- 22 (prohibition of aerial bombardment directed at civilians/civilian property), 324–5
- 24(1) (limitation of aerial bombardment to a military objective), 324–5
- 24(2) ('military objective': exemplative list), 325–6
- 24(3) (dichotomy between rules applicable to the battlefield and rear areas) (abandonment), 325–6
- 24(4) (balancing military consideration and risk to civilians) (military necessity test), 325–6
- Hague Rules on the Control of Wireless Telegraphy in Time of War and Air Warfare (1923), evaluation
- counter-productive ambiguity, 325–6
- dissatisfaction with the list of 'military objectives', 325–6
- normative legacy, 326–7
- WWII (voluntary application of the Tokyo draft), 535
- ILA Draft Convention for the Protection of Civilian Populations against New Engines of War (1938), 327 n255
- Red Cross Resolution XII (1921) on the limitation of warfare, 324–5
- civilian persons, protection of (other than aerial warfare)
- concerns
- absence of treaty provisions relating to either wounded and sick civilian persons or internees, 328
- blurring of the line between combatants and civilian persons, 328
- divergent approaches to, 328
- dramatic increase in civilian casualties/acceptance of risks in military and political circle, 327–8
- steps towards addressing the issue
- 1921 (10th Red Cross Conference), call for new convention on POWs and deported persons, evacuees and refugees, 329
- 1922 (British/Council action in respect of atrocities in Turkey), 328
- 1923 (11th Red Cross Conference), call for a convention on civilians fallen in the power of the enemy/encouragement to belligerents to take account of principles of humanity, 329
- 1923 (draft code on POWs, deported persons and refugees), 329–30
- 1925 (12th Red Cross Conference), resolution on rights of enemy aliens, 329
- 1929 (ICRC recommendation on a new convention on enemy civilians in belligerent territory), 329–30
- 1930 (14th Red Cross Conference), tasking preparation of a new convention on enemy civilians in belligerent territory, 329–30
- 'civilised states': *see* general principles of law recognised by civilised States (PCIJ 38(3))
- Claude, Inis, 100
- Clemenceau, Georges (Prime Minister of France/member of the 'Big Four'), 49–50, 399, 407, 426, 432 n226, 475, 507 n28
- Cobden, Richard, 471, 473–4
- codification of international law: *see under individual headings*
- collective security under the League (overview), 348–52: *see also* preventive diplomacy,

## INDEX

- peacekeeping and peacemaking;
  - use of force, attempts to regulate between the wars
- Covenant provisions relevant to (Covenant 8-10 and 15-16), 54, 340, 349–51
  - UNC 39-42 distinguished, 349–51
- decline and fall/reasons for, 112–14, 340, 349–52
  - confused logics (Covenant/Kellogg Pact), 286–7, 350–1
  - continuing relevance, 168–9
  - Council's failure to identify a legal basis for action, 352
  - Council's limited powers, 348, 349–50, 351–2
  - Covenant's rigid normative architecture, 352
  - definitional problems, 280
  - Great Power interests and political scheming, 349–50, 351–2
  - initiatives towards conflict resolution and containment outside the League, 113–14
  - Member States' reluctance to use military force to protect the peace, 349–50
  - need for unanimous action, 113–14, 352
  - 'negative peace' fallback, 349–50
  - the envisaged machinery, 112, 349–52
  - evaluation, 359–60
  - as a key aim, 110–11
  - neutrality, impact on, 297–301: *see also* neutrality, interwar developments in the law of, collective security and, antinomy/implications of the Covenant
- collective security under the League (Covenant 11 (threats to the peace)), 352–60
- Covenant 11(1) ('preventive action') and 11(2) ('preventive mediation')
  - compared, 352–3
  - convergence to form a single rule, 354
- Covenant 15, a close connection/relative use of, 354
- frequency of resort to/examples, 353, 355
  - Albania/Serb–Croat–Slovene State's territorial dispute (1925), 357
  - Greek–Bulgarian border incident (1925), 357–8
  - Leticia conflict (Colombia–Peru War) (1932–1933), 358–9
  - Saar basin, League's administration of (1920–1925), 355–7
  - the 'pivot' of the Covenant/League, 354–5
  - pros and cons, 355
  - text, 353
- colonies
  - introduction, 224–7
    - history, 224
    - sacred trust concept, 224–5
- acquisition
  - cession (agreements with local chiefs), 227–8
  - conquest (use of force), 227–8
  - exchange and transfer of colonial territories between colonial powers, 228
  - modification of the status of a possession, 228
  - occupation of *terra nullius*, 227–8
  - 'treaties' with local chiefs
    - British practice, 228
    - as evidence of a valid title, 228
- applicable law, 228–30
  - British practice, 228–9
  - French practice, 228–9
- definition, absence of, 372–3
- indigenous law, applicability, 229
  - British practice, 229
  - French practice, 229
  - in indigenous courts, 229
  - legislative authority, 228–9
  - repugnancy test, 229
- legal personality/treaty-making powers, 230–2, 372–3
  - determination by the colonial power, 230–1
  - French practice (autonomous legal entities), 230–1
  - local governor's authority to conclude technical agreements, 230–1
- mandates distinguished, 226: *see also* Mandate System
- metropolitan sovereignty over, 228–9
  - colonial power's duties (protection, public order and administration of justice), 229
- MFN/national treatment, entitlement to, 232
  - Convention Revising the General Act of Berlin of 1885 (Saint Germain-en-Laye (1919)), 232
- mixed courts
  - competences a reinforcement of the imperial mindset, 644–5
  - examples (including Turkey), 645



## Index

- perceived benefits to the indigenous  
   population (General Act of Berlin  
   1895, Arts 6 and 9), 233–4
- personal status of natives and Europeans  
   determination by national law, 232  
   distinct regimes, 232  
   French practice, 232  
   naturalisation, scope for, 232
- political and administrative structure  
   British practice, 228–9  
   for determination by the metropolitan  
   State, 228–9, 372–3  
   French practice, 228–9  
   variety of approaches/determining  
   factors, 228–9
- private international law and, 583–5  
   attempts to shift the debate from  
   sovereignty-based European  
   theories to a humanist theory,  
   583–4  
   missed opportunity to apply PIL  
   principles to colonial  
   administration, 584
- protectorates distinguished, 225–6: *see also*  
   protectorates
- racism in, 583
- self-determination, Soviet promotion of,  
   10–11
- sovereignty, inapplicability to the Mandate  
   System, 243–4
- territorial applicability of treaties  
   customary international law (VCLT 29),  
   230–2  
   French practice, 231  
   ILO treaties (Versailles 421), 231–2  
   Italian practice, 231  
   mixed respect for the customary law,  
   230–1
- compensation for expropriation (existence of  
   CIL rules pre-1919): *see also*  
   expropriation (existence of CIL  
   rules pre-1919/elements  
   canvassed)
- diplomatic correspondence relating to  
   (Mexican expropriations (1938)), 19,  
   440–1, 444, 451–2, 454, 456–9, 463
- general principle of law, whether, 19, 442
- lawfulness of expropriation and, 439, 440,  
   442, 445–6, 449, 450, 458, 459–60
- relevant factors  
   equitable considerations, 441  
   nature and purpose of expropriation  
   (Lauterpacht), 443
- a variety of formulae  
   ‘adequate compensation’, 441  
   ‘prompt, adequate and effective  
   payment’ (Cordell Hull) (‘an  
   element of legal mythology’), 19,  
   439, 458 *nn* 13, 459
- Concert system, 36, 102–3
- contiguous zone, 206–10  
   definition  
     UNCLOS I: 24, 210  
     UNCLOS III: 33(1), 206–7, 210  
   early references to the concept  
     Harvard Draft on the Law of Territorial  
     Waters (1929), 206–8  
     *Projet de règlement relative à la mer  
     territoriale* (IDI) (1927)/adopted  
     version (1928), 206–8  
     *Projet d’une réglementation des voies de  
     communications maritimes en temps de  
     paix* (ILA (Alvares)) (1924), 206–8  
   Hague Codification Conference (1930),  
   208–10  
   draft proposal (Basis of Discussion  
   No 5), 208  
   opposition in principle/failure to reach  
   agreement, 208–9  
   State practice (‘Schedule of Points’  
   (1929)), 208  
   post-Hague Conference evidence of life,  
   209, 221  
   Gidel on, 209 *n* 86  
   US Anti-Smuggling Act 1935, 209  
   a problematic issue (territorial sea  
   delimitation), 203
- Corbet, Percy  
   League’s achievements, 115 *n* 66  
   on mandatory sovereignty, 247  
   *What is the League of Nations?*, 110, 111–12
- Corfu incident (2 August 1923), 256–7,  
   267–76, 368  
   evaluation  
     fuel to both sides, 275–6  
     inevitability of outcome, 275–6  
   facts in date order, 267–8  
     assassination of Italian general Tellini  
     and assistants in Janina (north-  
     western Greece) (27 August 1923),  
     267–8  
     Mussolini’s retaliation (occupation of  
     Corfu) (31 August 1923), 267–8  
   Greek appeal to the League citing  
   Covenant 12 and 15  
   (1 September 1923), 267–8



## INDEX

- Corfu incident (2 August 1923) (cont.)  
 referral of the Greek appeal, on the insistence of Italy, to the Conference of Ambassadors, 267–8  
 decision of the Conference in favour of Italy (8 September 1923), 268  
 establishment of a Special Committee of Jurists to resolve the issue (28 September 1923), 268  
 membership of the Special Committee/mandate (including question of forcible reprisals), 268  
 Special Committee's decision ('maybe, maybe not' / omission of relevance of Covenant 10) (24 January 1924), 268–9, 275–6  
 scholarly reactions to the Special Committee's report, 271–5: *see also* Special Committee's conclusions, reactions *below*  
 the issue (scope of the Covenant's prohibition on the use of force (Covenant 12 *et seq.*)), 267–8  
 Special Committee's conclusions, reactions  
 Assembly, 270–1  
 Briery, 271  
 Council, 269–70  
 De Visscher, 273–4  
 Guani, 274–5  
 McNair, 271–2  
 Politis, 274–5  
 Schwarzenberger, 271–3  
 Strupp, 271–2  
 as support for both a narrow and a broad interpretation, 271–5
- Council  
 Drummond's view on: *see* Drummond, Sir Eric  
 Great Power dominance, 43–4, 717–18  
 as institutionalised 'Great Power' diplomacy, 103–4  
 Manchurian incident, contribution to League's failure, 55, 59, 66, 280–2: *see also* Manchurian incident (1931)  
 Smuts on, 103  
 US hostility to, 109  
 meetings  
 frequency (Covenant 4), 103–4  
 S-G's power to summon forthwith at the request of any member (Covenant 11(2)), 103–4  
 as primary British focus, 103
- role  
 an operative approach, 344  
 executive-type authority to recommend action/impose sanctions, 29  
 minority petitions, 51–2
- Covenant: *see also* aggression; collective security; Mandate System (Covenant 22); PCIJ; treaty practice (Covenant 18–21)  
 characteristics/new features, 12–14, 41–2, 408–9  
 an attempt to prevent secret treaties (Covenant 18), 13  
 an 'institutional' model based on 'coexistence and cooperation', 408  
 an integral part of the WWI peace treaties, 408  
 a ban on aggression (Covenant 10), 12–13, 29, 707  
 condemnation of the use of force (Covenant preamble), 408–9: *see also* use of force (Covenant 10–16)  
 establishment of the PCIJ (Covenant 14), 14  
 from a society of states to an international community, 408  
 Hague Conventions (1899) and (1907) compared, 408  
 as a 'higher law', 12, 70, 120–1, 127, 180 *nl* 13  
 as a law-making treaty, 28  
 main axes, 408  
 mandates system (Covenant 22), 13  
 criticism of, 12–13, 342–3, 349–52  
 domestic jurisdiction (Covenant 15(8)), 16
- dual aims (peace and security) (Covenant Preamble): *see also* collective security under the League  
 'a remedy or the promise of a remedy' (Fischer Williams), 32  
 failure of the League's 'peace machinery', 113–14  
 integrating the dramatic and the mundane, 110–12, 115–16  
 international cooperation, the rise and rise of, 114–15: *see also* international cooperation under the League  
 peace and security agenda (Covenant 10–11)  
 decline and fall, 113–14  
 prioritization, 112–13

## Index

- promotion of international cooperation/  
 achievement of international peace  
 and security, 110–12  
 a tentative approach to ‘international  
 cooperation’, 112  
 foreign investment: *see* foreign  
 investment, protection of  
 (Covenant 23(e))  
 Monroe Doctrine and, 120 n91, 723–6  
 natural law/jusnaturalism and, 42  
 crimes against humanity: *see also* international  
 criminal law ; laws of humanity  
 Armenian massacres, Joint Allied  
 Declaration denouncing as first use  
 of term, 17–18, 405–6  
 endorsement by ICTY and ICTR, 402  
 n56  
 text, 18 n58  
 Commission of Fifteen’s examples of, 396,  
 403  
 as a core international crime, 391–2  
 focus on group rights, 548  
 Mandelstam’s use of (1917), 410–11  
 nexus with war crimes, 428–9  
 Nuremberg Charter, 17–18  
 protest against mass killings of Armenians  
 in the Ottoman Empire (May  
 1919), 18–19  
 stateless persons and, 549–50  
 Treaty of Lausanne (1923) and, 17–18  
 Treaty of Sèvres (1920) and, 406  
 trumping the reserved domain doctrine,  
 549–50  
 US objection to use of, 17–18, 405–6  
 cross-border family maintenance problems/  
 reasons for failure to resolve, 558,  
 567–8  
 Crowdy, Dame Rachel (head of the  
 Secretariat’s Social Section): *see also*  
 racial equality; trafficking of  
 women and children (role of the  
 League); women and the League  
 belief in  
 an internationalist approach, 149  
 animal protection, 656  
 the importance of social and health  
 conditions to the establishment of  
 peace, 149  
 need for an awakened public opinion,  
 150–1, 152  
 clashes with Drummond, 148, 149–50  
 unequal treatment of, 148–9  
 cultural cooperation: *see* international  
 cooperation under the League  
 customary international law  
 diplomatic relations, 598–9, 602, 604–5  
 foreign investment: *see* expropriation  
 (existence of CIL rules pre-1919/  
 elements canvassed); foreign  
 investment, protection of (CIL)  
 formation, ‘a process of continuous  
 interaction, of continuous demand  
 and response’, 441  
 Czechoslovakia  
 ethno-nationalism in, 52  
 ‘the most adored successor state’, 52  
 de Lapradelle, A. Geouffre  
 Descamps’s proposed international  
 criminal court, 412, 414  
 need for a consolidation of international  
 law, 414–15  
 de Visscher, Charles  
 Corfu incident (member of the Special  
 Committee on), 268, 273–4  
 human rights/personalism, 550–1, 552–3  
 minimum international standard of  
 treatment, 452–3  
 nationalism/individual freedoms, 524  
 protection of minorities, 521, 551  
 sovereignty, 169  
 state responsibility, 367, 377, 387  
 use of force, 264–5, 266, 273–4  
 Declaration of the Rights and Duties of  
 Nations (1915) (DRDN), 729  
 limitations on sovereignty and the non-  
 intervention principle (DRDN  
 1 and 2), 729  
 Maúrtua’s failed attempt to reinstate at  
 Havana (1928), 730–2  
 rejection of non-intervention provision  
 at Rio de Janeiro (1927), 730–1  
 Scott’s authorship, 729  
 US Declaration of Independence as model,  
 729  
 denial of justice  
 definition/content  
 ‘a necessarily ill-defined standard’  
 (Freeman), 453  
 ‘chaotic heterogeneity’ of scholarly  
 views’, 453  
 exclusion of diplomatic protection as, 454  
 Mexican Government’s view, 454 n96  
 minimum standard of treatment and, 453  
*Neer*, 444–5  
 sharp divergences (1930 Hague  
 Conference), 447, 452  
 state responsibility and, 375

## INDEX

- Depression: *see* financial crisis/Great Depression (1929-1939)
- Descamps, Baron M: *see also* international criminal court (Descamps's proposal for (1920))
- as chair of the PCIJ Advisory Committee of Jurists, 413-15
- views on/contribution to
- general principles of law, 87-8
  - a High Court of International Justice for crimes against international law, 413-15
  - Kellogg-Briand Pact, 21
- diplomacy: *see* diplomatic immunity (LoN period); diplomatic law, history in date order; diplomatic missions (LoN period); diplomatic premises and archives (LoN period); diplomatic protection; diplomatic relations; preventive diplomacy, peacekeeping and peacemaking
- diplomatic immunity (LoN period)
- acts in exercise of functions and private acts, emergence of a distinction between, 605-6, 610-11
  - Diena report, 605-6
- functional immunity
- case law, 606
  - Harvard draft, 606
  - Havana Convention, 606
  - IDI regulations (1895)/resolution (1929), 606
  - rationale, 606
  - state practice, 606
- immunity in civil and commercial matters
- counterclaim following voluntary submission to the jurisdiction, 609
  - developing practice, 511, 606-9
  - Diena report, 608, 609
  - from *Comina v Kite to De Meeus v Forzano*, 607-8
  - real actions, 608
- immunity in civil and commercial matters, exceptions, acts in pursuit of professional activity of a commercial nature, 608-9
- immunity from criminal jurisdiction
- absolute immunity (Diena report), 607
  - Havana Convention, 607
  - IDI regulations (1895)/resolution (1929), 607
  - municipal law, 607
  - inviolability of property, 609-10
  - ne impediatur legatio* as basis for, 606
- diplomatic law, history in date order
- pre-Congress of Vienna (1815), 589, 610
  - Congress of Vienna (1815)/Protocol of Aix-la-Chapelle (1818), 589-90
- Das moderne Völkerrecht der civilisierten Staaten als Rechtsbruch dargestellt* (Bluntschli) (1868), 591
- Il diritto internazionale codificato e la sua sanzione giuridica* (Fiore) (1890), 591, 597, 601-2
- IDI Regulations on diplomatic immunities (1895) (Cambridge), 590, 602, 603, 606, 607, 608
- early twentieth century bilateral treaties, 590, 610
- Diena Report on diplomatic privileges and immunities (1927), 591-2, 593-4, 597, 605-6, 608, 609, 610
- Havana Convention on Diplomatic Officers (1928), 590, 598, 605, 606, 607
- IDI resolution on diplomatic immunities (1929) (New York), 590, 601, 603, 606, 607, 609
- Harvard Law School Draft on diplomatic privileges and immunities (1932), 590-1, 597, 598, 601, 602, 603, 605, 606
- diplomatic missions (LoN period)
- dependence on the existence of diplomatic relations, 596
- diplomatic and non-diplomatic staff, appointment
- agrément*, irrelevance, 599
  - customary law, 599
  - Engelke v. Musmann*, 600
  - Harvard draft/Havana Convention provisions, 599
  - persona non grata* option, 599
  - state practice, 599-600
  - tacit consent requirement, 599-600
  - VCDR 7 and 10, 599 n53
- head of mission, appointment
- agrément* requirement, 598, 610
  - breach of the rule, 602
  - customary law, 598-9
  - exceptions to the rule pre- and post-1945, 603-4
  - Harvard draft/Havana Convention provisions, 598
  - state practice, 597-8
  - termination, 597-8

## Index

- diplomatic premises and archives (LoN period)
  - acquisition of premises
    - applicable law (law of the receiving state), 601
    - Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, 601
    - imperium vs dominium* (Harvard draft/VCDR 21), 600–1
  - exemption from execution, 603–4, 610
  - inviolability
    - definition, 601
    - extraterritoriality principle/change of approach, 593–5, 601–2
    - Fiori, 601–2
    - Harvard draft, 602, 603
    - IDI Regulations (1895)/IDI Resolution (1929), 601, 602, 603
    - the rule (customary law/VCDR 22), 602
  - protection (archives)
    - Harvard draft, 605
    - Havana Convention, 605
    - IDI resolution, 605
  - protection (premises)
    - customary law, 604–5
    - duties of the receiving state, 604–5
    - example of a protest against alleged failure, 604–5
    - Harvard draft, 605
- diplomatic protection, 461–3
  - as assertion of the state's own right vs individual's direct treaty rights, 450–1, 462–3
  - or a direct right of the individuals (MATs), 640–1
  - MATs approach, 640
  - states' undisputed right, 461
- Borchard on, 363, 450, 451, 462
- Calvo doctrine, incompatibility with/exceptions, 454–5: *see also* Calvo doctrine
- force as alternative
  - continuing resort to, 462
  - Convention on the Employment of Force for Recovery of Contract Debts (1907), 462
  - Drago doctrine (1902), 462
- jurisprudence
  - Certain German Interests in Polish Upper Silesia*, 640
  - Civil War Claimants Association*, 640
  - Janes*, 649
  - Lederer*, 640
  - Mavrommatis Palestine Concessions*, 461
  - North American Dredging*, 462–3
  - Payment of Various Serbian Loans Issued in France*, 461
- waiver of right to, 463
- diplomatic relations
  - 'diplomacy' (definitions), 599 n19
  - dogmas, disappearance
    - extraterritoriality of diplomatic premises, 593–5, 601–2
    - right of legation, 593, 610
  - preconditions
    - accreditation, 599
    - agreement, 595–6
    - functional necessity, 595
    - mutual recognition, 593
  - termination
    - events provoking, 597–8
    - a grave breach of the Covenant?, 597
    - Harvard draft, 597
    - as a protest against alleged unlawfulness, 597–8
    - termination of the diplomatic mission
      - consequent on, 596
      - as a unilateral act (LoN period), 596
      - VCLT 63 as governing law, 596 n39
- dispute settlement: *see also* PCIJ; preventive diplomacy, peacekeeping and peacemaking; Soviet approaches to international law, international arbitration and judicial settlement
  - overview, 612–14, 647–8
  - early initiatives in date order, 614–19
    - Jay Treaty (1794), 614
    - Alabama Arbitration* (1872), 615
    - Bering Fur Seals Arbitration* (1893), 615
    - First Hague Conference/Convention (1897), 615–16: *see also* PCA
    - Second Hague Conference/Convention (1907)/proposed Court of Arbitral Justice, 617–20, 625: *see also* Hague Peace Conference (1907)
    - Russian Claim for Interest on Indemnities (PCA)* (1912), 615
  - MATs, 635–47: *see also* mixed arbitral tribunals (MATs)
  - PCIJ, 620–33: *see also* PCIJ
  - 'peaceful settlement of disputes' as replacement for the 'Law of War and Peace' divide (Fischer Williams), 31
- doctrinal developments: *see* international law, developments in the interwar

## INDEX

- years; international law scholarship between the wars
- domestic jurisdiction, determining the bounds, 14, 16, 175–6: *see also* non-intervention principle, development of
- Certain German Interests in Polish Upper Silesia (1926), 175–6
- establishment of an international civil service, impact, 119
- mixed arbitral tribunals and, 643
- Nationality Decrees* (1923), 16, 176
- war crimes/ crimes against humanity, impact of decision to prosecute, 549–50
- Drummond, Sir Eric, views on
  - an international civil service, 105–6, 108–9
  - autonomous committees, 116–17
  - handling the 1927 Report, 152–3
  - League's environmental role, 654–5
  - the mandate of the Social Section, 148–9
  - a permanent mechanism, 101–3
  - permanent missions in Geneva, 104
  - political matters (self-restraint and self-effacement), 534 n187
  - refugee assistance, 534–5
- Duguit, Léon
  - on the Hungary–Romania dispute on the expropriation of rural landowners in Transylvania, 96–7
  - influence on Scelle, 83
  - as a leading legal sociologist, 83, 135, 516
  - distinction between international and municipal law, 135
  - on sovereignty, 89–90
  - views of (*Traité de droit constitutionnel* (1927)), 83, 89
- economic cooperation: *see* international cooperation under the League
- Economic and Financial Organization (EFO): *see also* Austria, League's financial reconstruction of; financial reconstruction, League's role; trade integration (League initiatives)
- answerability to national governments, 105 n21
- description of, 484
- history/structural changes, 484
- as key forum for trade discussions, 484–5
- personnel, 484–5
- as predecessor to the GATT, 470
- as response to post-WWI inflation crisis, 155
- Salter as head of, 105, 141 n44, 159, 484–5
- a technical committee, 470
- toothless mechanisms, impact, 156–7
- ECOSOC, 118–19
- environmental issues, League's role (overview): *see also* environmental issues (pre-League initiatives); environmental issues (proposals for action by the League) (in date order); pollution of the sea by oil (League's role); whaling and the League
- summary of the League's contribution, 651–2, 680–5
- anticipating current concerns and practice, 680–1, 682–3
- contribution of PCIJ jurisprudence, 683–4
- creation of new procedural mechanisms/international conferences, 682
- development of all-important environmental principles, 682–3
- UN highlighting of the issues, 650–1
- changing the rules of the game, 681
- development of new procedures, 682
- shifting the issues from domestic/transnational law to international law, 684–5
- competence issues, 681
- factors contributing to League involvement
  - global commons issues, 681
  - new stakeholders/new concerns
  - outwith the environment, 651, 681, 682
- novelty of the League as a natural ally, 653–4, 680
- omnipresence and urgency of an issue, 681–2
- recognition of the League's responsibility to humanity at large, 682
- the threat to social well-being, 682
- issues not addressed, 684 n74
- national societies' pro-active role, 654, 655–6
- reasons for failures
  - issues/stakeholders reaching above national jurisdictions, 682
  - seismographic talents but too many hindrances, 651–2
  - tensions between governments and civil society, 659

## Index

- environmental issues (pre-League initiatives)
  - Bering Fur Seal Arbitration* (1893), 652
  - International Convention to Protect the Birds Useful to Agriculture (1902), 653
  - London Convention for the Preservation of Wildlife in Africa (1900), 652–3
  - nineteenth century concerns/recognition of transboundary aspects, 650
  - proposal for a World Commission for Nature Protection (Sarasin, 1910), 652, 653–5
  - Spitzbergen as an international reserve (Sarasin, 1912), 653
- environmental issues (proposals for action by the League) (in date order)
  - attempt to bring the proposed World Commission under League auspices (1919), 653–4
  - Nitobe's support/general lack of enthusiasm, 653, 654
  - an international conference/inclusion on the Assembly's agenda (Nitobe) (1920), 654–5
  - dismissal by Drummond, 654
  - RSPCA's proposal for an international legal instrument (1920), 655
  - UK Foreign Office's counter-action, 655
  - campaign for recognition of the risks from international transport of animals (1928), 656
  - support of the head of the League's Section of Social Questions, 656
- ICIC report on safeguarding natural beauty (1928), 656–9
- IIC's survey of laws on national parks/ reasons for failure of their plans, 659
- League's Veterinary Convention (1930), 656
- call to ILO for basic rights for working animals (1932), 655
- petition to the 1932 Disarmament Conference on the treatment of wildlife (1932), 656
- environmental issues (rural hygiene campaign), League handling of, 676–80
  - the problem, 676
  - identifying the issues, 676–7
- context
  - colonial/imperial background, 677, 678–9
  - political and economic crises, 679–80
  - evaluation, 680
- international cooperation as preferred approach, 677–9
  - 1931 European Conference on Rural Hygiene, 678, 680
  - 1937 Intergovernmental Conference for Rural Hygiene in Far Eastern Countries, 678–80
- pre-League initiatives
  - 1918 influenza pandemic, 678
  - International Sanitary Conference (1851–1938), 678
- reasons for the League's involvement
  - fears for spread of pathogens, 677, 678, 679
  - a history of cooperation in sanitary matters, 678
  - the threat to social well-being, 682
- environmental issues (timber production/ deforestation), League handling of, 670–6
  - the issue (securing a balance), 670–1
  - economic considerations to the fore, 669–70
  - increasing concerns about deforestation, 671
  - technological changes as a major factor, 672
- complexity of League structure (Economic Committee vs Assembly role), 673–4
- parties to the discussions
  - external bodies, 673
  - International Institute of Agriculture, 673
  - International Timber Committee, 673
  - League as the major player, 673
- the search for a global regime of legal measures, 671–82
  - a continuing failure to secure international restriction on deforestation, 672–3
  - French role, 684–5
  - League/ Economic Committee's intervention, 674–5
  - 'private' domestic commercial actions alternative, 672–3
  - REDD+, 675–6
  - resistance to quotas, 672
- equality before the law (minorities)
  - Covenant, rejection of proposal for inclusion in, 528, 545
  - Declaration of International Human Rights (1929), 545

## INDEX

- equality before the law (minorities) (cont.)
  - ‘the same treatment and security in law and in fact’, 528–9
- equality as international legal standard, 522
- human rights/minority protection
  - relationship, tendency to underplay, 523–4
- minorities treaties provision for, 527–31
- special measures to protect group identities, conflict with, 531
- UDHR 7, 522–3, 527
- equality of belligerents principle, 296–7
  - applicability beyond humanitarian obligations, 296–7
- challenge during and immediately after WWII, 296–7
- Covenantant’s ban on aggression (Covenant 10) as a denial of, 12–13
- endorsement of the IMT and other post-WWII jurisdictions, 297
- ILA/Red Cross views, 296–7
- insistence that the Pact did not affect the humanitarian obligations in general treaties, 296–7
- equality of states
  - extraterritoriality and, 168, 192–3
  - on general principles of law, 87–8
  - law of the sea and, 222
  - League as a threat to, 341–2, 407–8
  - minorities treaties, 51
  - sovereignty and, 166, 167–8
  - Soviet Union’s views on, 10–11
  - supervision of trade in arms and war munitions and, 320
  - unequal treaties: *see* unequal treaties
  - Versailles 380 and 281 (Kiel Canal/ *The Wimbledon*), 180–1
- equality of treatment/national treatment: *see also* fair and equitable treatment of aliens; minimum international standard
  - agreed obligations, non-discrimination, 451
  - Calvo doctrine, 453–5, 460–1, 462–3: *see also* Calvo doctrine
  - FCN treaties and, 439–40, 459–60
  - Roberts*, 452
  - Soviet nationalisation of nationals’ property without compensation, impact, 18–19
  - sufficiency of equality (municipal law) vs an international standard, 450–3
  - ‘not the ultimate test’, 452
- equity as a source of international law/ *ex aequo et bono* jurisdiction (PCIJ 38 (4)), 87
  - a controversial topic, 88, 631–2
  - jusnaturalism and, 88, 631–2
- Ethiopia (status)
  - admission to the League (1923) (conditions), 17, 61
  - mandate status as an option/reasons against, 61–3
- Ethiopia–Italy relations in chronological order
  - Italy’s acquisition of Eritrea (1896) and Italian Somaliland (1908), 60
  - Italy’s defeat at the Battle of Adowa (1896), 60
  - Mussolini’s accession to power/attempt to expand Italy’s imperial power (1922), 60
  - League of Nations approach to impact of the admission of Ethiopia to the League (1923), 61
  - mediation/arbitration option, 62
  - sanctions, 63–4
  - Wawal incident (December 1934), 60–1
  - Second Italo-Ethiopian War (October 1935–February 1937), 21–2, 60
  - the pre-determined outcome, 61
  - Hoare–Laval Pact (December 1935), 62–3, 64
- ethno-nationalism: *see* minority protection
- expropriation (existence of CIL rules pre-1919/elements canvassed), 442–6: *see also* compensation for expropriation (existence of CIL rules pre-1919); standard of treatment of aliens
- timeline in date order
  - pre-WWI consensus (taking of foreign property with prompt and adequate compensation), 18
  - Soviet measures against nationals (1917 *et seq*)/impact on national treatment standard, 18–19, 435
  - Mexican expropriations (1938), 19, 435, 440–1, 444, 445, 449–50, 451–2, 454
  - n96, 456–9, 460, 463–4, 467
- basis for views
  - international decisions and domestic legislation, 443
  - reliance on state practice/lack of, 443



## Index

- compensation: *see* compensation for expropriation (existence of CIL rules pre-1919)
- divided scholarly views
  - Fischer Williams, 442–3
  - Kunz, 442
  - Lauterpacht, 443
- FCN provisions, 439
  - German concern about the possible effect on its Constitution, 445–6
- general principles of law (PCIJ 28)/domestic legislation, role, 445, 448–50
- international decisions, role in relation to customary rules
  - arbitrator Nielsen's views on the Mexico–US Claims, 444
  - contribution to the development of, 443
  - as evidence/clarification of, 443
  - exclusion as state practice, 443
  - Neer/Glamis Gold* and criticism of, 444–5
  - states' response to, relevance, 443
  - US dismissal of declaratory/binding effect (*Norwegian Shipowners' Claims*), 443
  - US's misplaced reliance (1938) on the *Selwyn* case (1903), 443
- lawfulness, conditions for
  - due process of law, 439, 442, 445
  - prompt payment of just compensation, 439, 440, 442, 445–6, 449, 450, 458, 459–60
  - public interest/public purpose, 442
- extraterritorial jurisdiction (preferential exemptions from the law of the host country), 189–93
- capitulations, 191
  - gradual abolition post-1899 9
  - Montreux Treaty abolishing capitulations in Egypt (1937), 9 n15
- description of, 167–8, 189, 191
  - administration of bureaucratic services, 191
  - a non-reciprocal extraterritoriality regime, 191
  - presence of foreign troops, 191
- elimination post-WWI, 9, 167–8
  - growing opposition to/reasons for, 192
- examples
  - capitulations: *see* capitulations *above*
  - China, 191
  - extraterritorial courts in the Ottoman Empire/Turkey and China, 189
  - mixed courts (Egypt), 189–90, 192
  - jus publicum europaeum*, significance, 189–90
  - Kelsen's endorsement of sovereign equality and, 168
  - Schmitt's endorsement of, 167
  - strategies for termination, 192–3
    - legal institution-building projects as most successful, 192–3
  - unequal treaties and, 190–1, 316: *see also* unequal treaties
- Fabela, Isidro, 738–41
  - anti-imperialism, 740
  - Havana Conference, role at, 733–4
  - League activity including advocacy of principles associated with the Mexican Revolution, 738–41
  - on the Monroe Doctrine/incorporation in the Covenant, 724–6, 733–4
  - on non-intervention/Saavedra Lamas Treaty, 735–6, 737–8
  - opposition to AILL codification projects, 730
  - a politicised/pluralist approach, 730, 731, 733–4, 735–6, 740
  - on the preservation of peace and non-intervention as inter-connected aspirations, 738–41
  - on the Spanish Civil War, the preservation of peace and non-intervention as inter-connected aspirations, 738–41
- fair and equitable treatment of aliens
  - Covenant 23(e) as ancestor of, 436–7, 485
  - draft Atlantic Charter (1941), 495–6
  - equal and non-discriminatory treatment distinguished, 478
  - evolution of the *Neer* standard, 444–5
  - as a general principle of law, 450
- Fance, racial discrimination and, 53
- FCNs (treaties of friendship, commerce and navigation), 438–40
  - divergence of views on, 436–7
- non-US treaties
  - absence of any reference to international law/standards, 439–40
  - reliance on national/MFN treatment, 439–40
- as precursors of modern investment treaties, 704
  - US inclusion of provisions on investment protection/compensation for expropriation, 439
- scope (a heterogenous mix), 438–9

## INDEX

- Ferrière, Suzanne (ICRC, 1918–53), 570  
 financial crisis/Great Depression (1929–1939),  
   11, 490–1: *see also* Keynes, John  
   Maynard  
   London Conference (1933) as response to,  
     491: *see also* trade integration  
     (League initiatives), London  
     Conference (1933)  
   Roosevelt's approach to/New Deal, 11  
   timber management and, 670–1, 673  
   UK/US departure from the gold standard,  
     491, 492–3  
   US/European problems, interrelationship,  
     490–1  
     German problems, cause and effect, 491  
 financial reconstruction, League's role: *see*  
   *also* Austria, League's financial  
   reconstruction of; Economic and  
   Financial Organization (EFO)  
 overview, 154  
 characteristics  
   continuity with the past, 154  
   criteria (1920 Brussels Conference), 156  
   a hybrid of direct and indirect  
     international administration, 154  
   international/municipal law relationship  
     and, 154  
   methods of discharging mandate, 154  
   transnational approach, 154  
 evaluation  
   an effective example of the  
     international/municipal law  
     relationship, 155–6  
   failure to match its promise, 157–8  
 examples (Austria, Hungary, Greece,  
   Bulgaria, Lithuania and Danzig),  
   156  
 League competencies (Covenant 23(e))  
   increased competence to affect domestic  
     change, 154  
   UK/US resistance position, 154  
 procedure  
   Austrian reconstruction as a template,  
     155–6  
   three-part process, 155–6  
 Finland: *see* Åland islands regime  
 fishing regulation, 215–18  
   Suárez's 'Report on the Exploitation of the  
     Products of the Sea' (1925), 216–18  
   Hague Conference decision not to  
     pursue, 218, 222  
   the issues, 216–17  
   recommendation for a conference/  
     agenda, 217  
   States' comments on, 217–18  
 treaty practice prior to the 1930 Hague  
   Codification Conference, 215  
   from territorial sea to high seas  
     regulation, 215  
   non-flag State enforcement on the high  
     seas, 216 n133  
 US–Great Britain Convention for the  
   Preservation of Halibut Fishery of  
   Northern Pacific Ocean (1923),  
   315  
   example of non-flag State enforcement  
     on the high seas, 216  
   International Fisheries Commission,  
     functions / a prototype of a  
     regional fishery management  
     organ, 216  
 foreign investment, protection of (overview),  
   435–6, 467  
   achievements of the period, 467  
   an uncertain and turbulent period, 473–4  
   codification of rules, impediments to  
     emergence of socio-political systems  
     repudiating protection of private  
     property, 435  
   failure to articulate an international  
     standard, 467  
   growth of nationalism and  
     protectionism, 435  
   sharp disagreements on key issues, 435,  
     467  
   Soviet and Mexican expropriations, 435,  
     699–700  
 League's focus, 435  
 weakness of remedies  
   diplomatic protection issues, 467  
   State control of, 467  
 foreign investment, protection of (CIL),  
   440–6: *see also* expropriation  
   (existence of CIL rules pre-1919)  
 controversy, sharp divergences and  
   incertitude, 440  
 parallel intertwined axes, 441: *see also*  
   expropriation; standard of  
   treatment of aliens  
 foreign investment, protection of (Covenant  
   23(c)), 438–9  
   'equitable treatment for the commerce of  
     all Members'  
   'a pactum de contrahendo', 437–8

## Index

- ‘a very general statement of principle’ /  
vague statement of principle’,  
437–8
- as ancestor to the fair and equitable  
treatment standard, 436–7, 485
- a compromise between divergent views  
on MFN treatment, 436–7
- international trade as primary target, 438  
but ‘a catalyst for efforts to strengthen the  
international economic order’, 437–8
- legislative history, 436–7
- a progressive dilution of obligations, 437
- a reflection of the progressive  
downgrading of US objectives, 437
- ‘subject to . . . international conventions  
existing or hereafter to be agreed  
upon’, 438
- termination of Economic Committee’s  
efforts (1922), 438
- foreign investment, protection of (FCNs): *see*  
FCNs
- Free City of Danzig
  - basis (Versailles 100-8 and accompanying  
agreements), 187
  - key provisions, 187
  - mandatory status, 115, 239–40
  - Poland–City of Danzig Convention  
(November 1920) (incorporation  
requirement), 187, 466
  - Certain Danzig Legislative Decrees*, 133–4
  - Free City of Danzig and the ILO*, 187, 240,  
246
  - individual rights, 465–6, 513–14
  - Jurisdiction of the Courts of Danzig* (PCIJ),  
465–6, 513–14
  - Litvinov Protocol, 707
- freedom of navigation
  - as a constraint on state sovereignty, 184,  
185
  - innocent passage and, 200–1
  - Wilson’s Fourteen Points, 476, 477
- Freud, Sigmund (*‘Zeitgemässes über Krieg und  
Tod’*), 7–8
- functionalism, 34, 84
- Garner, James W.
  - ‘Le développement et les tendances  
récentes du droit international’  
(1931), 89, 91, 292, 294
  - ‘Les lois de la guerre’, 301
  - ‘The new international law’, 293
  - ‘Proposed rules for the regulation of aerial  
warfare’, 325
- ‘Questions of international law in the  
Spanish Civil War’, 332, 335
- ‘Recognition of belligerency’, 334
- ‘La reconstitution du droit international’,  
299, 302, 314, 324
- ‘Review of Air Power and War Rights’, 325
- GATT/WTO: *see* trade integration
- general principles of law recognised by  
civilised States (PCIJ 38(3))
- absence of, impact on the Court’s  
jurisdiction, 631 n96
- basis for
  - ‘the conscience of civilised nations’, 448,  
631
  - ‘moral feelings of mankind’, 31, 81
  - municipal law, 450, 642
  - reason, equity and justice, 448, 449–50,  
467, 631
- ‘civilised states’, gradual abandonment of  
the term, 9–10, 25
- ILC reports on, 630
- jusnaturalists’ approach to, 87–8, 630–2
- legislative history, a disputed concept,  
87–8, 448–50, 630–2
- applicability to individuals, 450
- ‘civilised nations’, 87–8, 449, 630–1
- vagueness/differing perceptions of, 449
- use of
  - foreign investment, 445, 448–50
  - Mexico–US Claims, 449–50
  - Neer* case, 449–50
- views of
  - Borchard, 449, 450
  - Fischer Williams, 31
  - Lauterpacht, 81
- Geneva Convention (1864) (protection of  
wounded in the field), 6–7
- Geneva Convention (1929) (protection of the  
wounded and sick in the field): *see also* Prisoners of War Convention  
(1929) (PWC)
- key provisions/updates of the 1906  
Convention
  - recognition of the Red Crescent, Red  
Lion and Sun emblems, 23, 304
  - sanitary aviation, 23, 304
  - treatment of dead combatants, 304
- Geneva Conventions (1949)
  - ‘armed conflict’ (common article 2), 296
  - from coexistence to cooperation, 337
  - protection of the civilian population, 530
- George, David Lloyd, 395, 406–7, 475, 479,  
720

## INDEX

- Germany  
   ethno-nationalism in/protection of its  
     minorities abroad, 53–4  
   call for universal minorities regime,  
     53–4
- Gidel, Gilbert  
   bays, 211  
   contiguous zone, 207, 209 n86  
   fishing treaties, 215  
   innocent passage, 201–2  
   territorial sea sovereignty/delimitation,  
     202 n38, 203 n41, 205–6, 342
- global legal order: *see also* international law;  
   Mandate System; minority  
   protection
- League's role, 2–3, 42  
   continuing primacy of the Great Powers  
     post-1918, 43–4, 717–18  
   'Wilsonian sovereignty'/a new order  
     developed by States in transition,  
       44
- pre-1914, 42–3  
   advent of extra-European powers, 42–3  
   'bracketing' war, 85  
   *ius publicum Europaeum* (Westphalian  
     system), 42–3  
   protection of human rights at the core,  
     65–6
- Great Depression *see* financial crisis/ Great  
   Depression (1929–1939)
- Great Power status  
   continuing primacy post-1918, 43–4, 694,  
     717–18  
   League as institutionalised 'Great Power'  
     diplomacy, 103–4, 127, 343–4  
   vigorous defence of international law as  
     feature of identity, 64  
   Weimar Germany's search for, 10
- Greek–Bulgarian border incident (1925),  
   357–8
- Grewe, Wilhelm (*The Epochs*), 6, 12, 12 n32,  
   22, 70, 100–1, 111, 122, 127, 289,  
   290, 335–6
- Hague Academy of International Law's  
   summer courses (lecturers in the  
   interwar period): *see also* Ago,  
   Roberto; Basdevant, J.; Bourquin,  
   Maurice; Brierly, James L.; de  
   Visscher, Charles; Descamps,  
   Baron M; Garner, James W.; Gidel,  
   Gilbert; Kelsen, Hans; Korff, Serge;  
   Kunz, Josef; Kunz, Josef; Lauterpacht,  
   Hersch; Le Fur, Louis;  
   Mandelstam, André; Politis,  
   Nicolas; Scelle, Georges; Strupp,  
   Karl; Triepel, Heinrich; Verdross,  
   Alfred; Wehberg, Hans; Yepes,  
   José María
- Andrassy, Georges ('La souveraineté et la  
   Société des Nations') (1937), 341
- Arangio-Ruiz, G. ('[x2018]Le domaine  
   réservé') (1994), 549
- Arminjon, Pierre ('Les systèmes juridiques  
   complexes;') (1949), 574, 577
- Barthélemy, Joseph ('Politique intérieure  
   et droit international') (1937), 71
- Blühndorn, Rudolf ('Le fonctionnement et  
   la jurisprudence des TAM') (1932),  
   465, 641
- Borel, Eugène ('La Croix-Rouge'), 294
- Brouckère, Louis de  
   'La prévention de la guerre' (1934), 351  
   'La Société des Nations en matière de  
   désarmement' (1928), 317
- Cavaglieri, Arrigo ('Règles générales;')  
   (1929), 75, 164, 380, 452
- Diena, Giulio ('Les mandats  
   internationaux') (1924), 235
- Dumas, Jacques  
   'La responsabilité des États' (1931), 383  
   'La sauvegarde internationale des droits  
   de l'homme' (1937), 507
- Dupuis, Charles ('Les antécédents de la  
   Société des Nations') (1937), 341
- Eustathiadès, Constantin ('Les sujets du  
   droit international') (1953), 512
- Fitzmaurice, Gerald ('The juridical clauses  
   of the peace treaties') (1948), 547
- François, Jean Pierre Adrien ('Règles  
   générales') (1938), 354
- Giraud, Émile ('La théorie de la légitime  
   défense') (1932), 284
- Hafner, Gerhard ('The emancipation of the  
   individual') (2013), 511
- Higgins, Alexander Pierce ('Le droit de  
   visite et de capture;'), 294
- Kaeckenbeeck, Georges ('La protection  
   internationale des droits acquis')  
   (1937), 464, 577
- Kaufmann, Erich ('Règles générales')  
   (1936), 262, 349, 370
- Kunz, Josef L. ('L'article XI du Pacte')  
   (1932), 349, 351

## Index

- Mirkine-Guetzévitch, Boris ('Droit constitutionnel de la paix') (1933), 71
- Moresco, Emmanuel ('Les rapports de droit public') (1936), 228
- Niboyet, J.-P. ('Rôle de la justice internationale') (1932), 579
- Nolde, Baron Boris ('La clause de la nation la plus favorisée') (1932), 473
- Rauchberg, Heinrich ('Les obligations juridiques des membres de la Société des Nations') (1931), 351
- Rechid, Ahmed ('L'Islam et le droit des gens') (1937), 71
- Redslob, Robert ('Le principe des nationalités') (1931), 524
- Reid, Helen D. ('Les servitudes internationales') (1933), 69
- Rolin, Henri ('La pratique des mandats internationaux') (1927), 245
- Rutgers, Victor H. ('La mise en harmonie du Pacte de la Société des Nations avec le Pacte de Paris') (1931), 262, 345
- Saldaña, Quintiliano ('La justice pénale international') (1925), 383, 418
- Sandiford, Roberto ('Evolution du droit de la guerre maritime et aérienne') (1939), 294
- Séfériadès, Stélio ('Principes généraux') (1930), 330
- Smith, Herbert Arthur ('Les lois de la guerre maritime') (1938), 294
- Spiropoulos, Jean ('L'individu et le droit international') (1929), 508, 514
- Straznicki, Milorad ('Les conférences de droit international privé') (1933), 564
- Vabre, Henri Donnedieu de ('Le procès de Nuremberg') (1947), 424
- van Asbeck, Frederick Mari ('Étrangers dans les colonies') (1937), 227
- van Eysinga, W.J.M. ('La guerre chimique') (1927), 294
- Vichniac, Marc ('Le statut international des apatrides') (1933), 510
- Walz, G.A. ('Les rapports du droit international et du droit interne') (1937), 134
- Wambaugh, Sarah ('La pratique des plébiscites internationaux') (1927), 69, 348
- Werner, Georges ('Les prisonniers de guerre'), 294, 303, 305, 306, 309, 311
- Whitton, John B. ('La neutralité et la Société des Nations') (1927), 298
- Hague Codification Conference (1930): *see also under individual subject headings*
- archipelagos, 214
- contiguous zone, 208–10
- innocent passage, 200, 201, 222
- islands, 213–15
- reparation for breach of international obligation, 384
- State responsibility, 363 n5, 369–70, 374–5, 376, 381
- Suárez's 'Report on the Exploitation of the Products of the Sea' (1925), 218, 222
- Hague Conference on Private International Law
- conferences/conventions (1902–1905), 564
- establishment (1893), 564
- expansion of membership post-WWI/slow resumption of business, 565–6
- failure of conventions, 564–5
- League, relationship with/potential for conflict
- cross-border family maintenance, 558, 568
- a delicate dance, 566
- nationality issues, 569–70
- Pan-American conferences/Bustamante code compared, 565
- progressive unification of PIL as focus, 564
- withdrawals (1930s) consequent on German nationality and marriage laws, 564
- Hague Conventions regulating the Pacific Settlement of International Disputes (1899/1907): *see* PCA
- Hague Peace Conference (1907)
- agreement on the principle of obligatory arbitration, 619
- delegates' specific intention to promote the 'peaceful adjustment of international difficulties by arbitration', 617
- expanded representation (including Latin American states), 617–18
- refinements to the 1899 Conventions on weapons in armed conflicts, 618
- proposal for a Court of Arbitral Justice, comprehensive failure to agree on, 618–19, 625

## INDEX

- Hague Regulations (1899) (HR), 303  
 Hague Regulations (1907) (HR), 302–3, 305, 306, 308–9, 324–5, 331  
 Hankey, Sir Maurice, 105  
 Harley, John E. (*The League of Nations*)  
   Council's role as a central executive-type authority, 29  
   importance of sanctions, 29  
   international law as 'law', 29  
   League as 'an International Person of a New Type', 29  
   limitation of state sovereignty in respect to war (Covenant 10), 29  
 Hegel on sovereignty, 89, 95, 164  
 Hicks, Frederick C. (*The New World Order*), 28–9  
   common consent as the basis of international law, 28  
   Covenant as a law-making treaty, 28–9  
   international law as 'law', 28  
   League's lack of executive powers, 28–9  
   structure of the book, 28  
 High Court of International Justice: *see* international criminal law, introduction  
 Hoare–Laval Pact (December 1935), 62–3, 64  
 Huber, Max 'narrow obstructiveness', 73 n24  
 Hull, Cordell, 19, 115, 473, 476, 487, 491–2, 495  
 human rights: *see also* equality before the law (minorities); international human rights law (IHRL); minorities, refugees and human rights in the interwar years, overview; minorities treaties; minority protection; UDHR  
   Déclaration des droits internationaux de l'homme (1929), 398, 411–12, 544–5  
   humanitarianism and, 503  
   laws of humanity/Martens Clause distinguished, 412–13  
   minority rights, tendency to underplay the relationship, 523–4  
   muddled notions/a confused terminology (19th century), 409–10  
 human trafficking: *see* slave trade/slavery; trafficking of stateless refugees; trafficking of women and children  
 humanitarian intervention  
   an exception to the domestic jurisdiction rule (Covenant 15(8)), 549  
   nationalism and, 520  
   natural law and, 392  
   nineteenth-century roots, 392, 410, 549–50  
   Platt Amendment (1901–1934) and, 728–9, 730  
   views of  
   Alvarez, 727–9  
   Lamas, 730–1, 735–6  
   Mandelstam, 410–11  
   Maúrtua, 730–2  
   Rougier, 410  
   Scott, 729–31, 732, 741–2  
 humanitarian law: *see* crimes against humanity; humanitarian intervention; laws of humanity  
 humanitarianism, relationship with human rights, 503  
 Hungary (ethno-nationalism in/protection of its minorities abroad), 52, 53–4  
 ILO  
   competences  
   *Competence of the ILO* (personal work of the employer), 122, 140–1  
   *Competence of the ILO* (regulation of the conditions of the labour of persons employed in agriculture), 180  
   supervisory competences, 125 n116  
   treaty-making power, 122  
   relationship with the League  
     autonomy, 116–17  
     the League's peace and security objectives (ILO Preamble), 113 n60  
   Thomas's role, 116–17  
 ILO treaties and related instruments  
   applicability to colonial territories, 231–2  
   Minimum Standards of Social Policy in Dependent Territories (Philadelphia (1944) recommendation Ro70), 231–2  
   No 4 (Night Work (Women)) (1919), 519  
   No 29 (Forced or Compulsory Labour) (1930), 17, 231–2  
   No 64 (Contracts of Employment (Indigenous Workers)) (1939), 231–2  
   No 65 (Penal Sanctions (Indigenous Workers) Convention) (1939), 231–2  
 individual as a subject of international law, 8, 31, 511–20: *see also* diplomatic protection; minorities, refugees and human rights in the interwar years, overview; minority protection

## Index

- individual/group relationship
  - dependence of rights of individuals on membership of a group, 516–17
  - tensions, 16–17, 511, 516–18
- individuals' pre-League status as objects of international law
  - early challenges to, 26, 514–15
  - nationality as sole link with international law, 513
- international personality, 511, 512–14, 515–16: *see also* international legal personality
- interwar developments
  - a cautious evaluation, 513–14
  - development of clear rules on the treatment of aliens, 514
  - école solidariste* (France), 513–14
  - French theory, importance of, 516
  - Jurisdiction of the Courts of Danzig* (PCIJ), 513–14
  - release from positivism, 516
  - Steiner & Gross v Poland* (Arbitral Tribunal for Upper Silesia), 513–14
- MATS, access and standing, 640
- positivism and, 26, 513–15, 516
- post-UNC elevation of the individual, 523–4
- protection of rights and freedoms
  - appeals of stateless persons to the PCIJ, 512–13
  - dependence on status/international personality, 512
  - PCIJ equality standards in minority protection cases, tendency to ignore, 523–4
- scholarly contributions, 516
  - Mandelstam, 511
  - Oppenheim, 26
- innocent passage, 200–2: *see also* territorial sea
  - establishment of the right
    - 19th century origin, 200
    - Corfu Channel* (Azevedo J (dissenting)), 200 nn24 and 25
    - Hague Codification Conference (1930), 200, 222
- freedom of navigation/freedom of trade/ Covenant 23(e) as basis, 200–1
- warships
  - CIL/a contested issue, 201–2, 222
  - Gidel on, 201–2
  - Hague Codification Conference (1930), 201
  - Harvard Draft on the Law of Territorial Waters (1929), 201–2
  - IDI Resolution (1928), 201–2
- Institute of International Law (AIIL): *see* American Institute of International Law (AIIL)
- insurrection and civil wars, application of the law of war, 330–6
  - 1912 (9th Red cross Conference),
    - insurrection and civil war as purely domestic matters, 330
  - post-WWI, applicability of humanitarian rules/recognition for need, 330
    - difficulties encountered by the IRCI/ national societies, 330
    - test (degree of organisation/ability to comply), 330
  - 1921 (10th Red Cross Conference),
    - affirmation of the right of civil war/insurrection victims to receive assistance, 330–1
    - role of the ICRC/national societies, 330–1
    - specific obligations, 330–1
- belligerent status, significance, 331–2: *see also* belligerency (insurgency and civil wars), recognition of
- Inter-American Convention on the Prevention of War, Non-Aggression and Conciliation (1933): *see* Saavedra Lamas Anti-War Treaty
- international administration: *see* international civil service
- international administrative bureaux/*Zweckverbände*, 105, 109, 110, 111–12
- international civil service/status of League's employees
  - an auxiliary/indirect role, 140–1
- applicability (Secretariat and advisory bodies supporting the League's 'political' organs), 140
- Drummond's insistence on, 105–6, 108–9
- international/municipal law relationship,
  - impact on, 119, 140–60
  - international administration as a useful but auxiliary adjunct, 159
  - scholarly theorising vs the League's practical activities, 142
  - legal ambiguities, 109



## INDEX

- international civil service/status of League's employees (cont.)
  - a radical innovation/'experiment of international administration', 109, 140–2
  - a conscious experimentalism, 14
  - goal-orientation, 141–2
- theories
  - a burgeoning literature, 106
  - comparative studies of the national civil servant, 106 n25
  - emphasis on the technical/expert, 141–2
- international cooperation under the League:
  - see also* international law, institutionalisation under the League; League of Nations (LoN), a general mandate
- basis
  - Covenant 22 (exception to the deployment of Covenant 23), 115–16
  - Covenant 23 (an unexpected success), 115
  - Covenant 24 (a dead letter), 115
- Bruce Report (1949), 115–16, 117–18, 126, 127–8
- Central Committee for Economic and Social Questions, 115–16, 117
- continuity with the work of pre-WWI
  - permanently operating administrative bureaux (*Zweckverbände*), 110, 111–12
- emergence of technocratic governance as a key contributor to, 126
- examples, 110, 111–12, 114–15
- rise and rise of, 114–15, 117
- a success story
  - Bruce Report (1939), 115–16
  - Hull, Cordell on, 115 n66
- sustained treaty-making in areas identified by Covenant 23, 123–4
- international cooperation under the UN, 117–18
  - seventeen Sustainable Development Goals, 118
- international criminal court (Bellot/ILA draft statute (1922–1926)), 415–19
- chronology
  - Bellot's writings on war crimes and war criminals (1916/1917), 416
  - Third Committee's decision not to pursue Descamps's proposal (1920) as trigger, 415–16
  - Bellot persuades the ILA of the need for an international court (1922) and is instructed to prepare a draft statute, 415–16
  - establishment of the Permanent International Criminal Court Committee (PICCC) (1924)/membership, 416
  - ILA discussion (August 1926), 417–19
  - submission of revised draft to the ILA (1926), 416–17
- issues
  - 'Court ... before the Law, or the Law before the Court', 418–19
  - extension of jurisdiction to include non-military crimes, 417
  - lack of a precise definition of the crimes, 418
  - need for and practicability of such a court, 417
  - proposed status as a division of the PCIJ, 417
- parallel initiatives
  - IAPL (August 1926) (adoption of a *vœu* on the creation of an international criminal court), 417–18
  - IPU (1925) (establishment of a permanent subcommittee on wars of aggression), 418
- International Criminal Court, Convention for the Creation of (1937), 423
- international criminal court (Descamps's proposal for (1920)), 413–15: *see also* international criminal law, prosecution of 'acts in violation of the laws and customs of war' (Versailles)
- issues defined in the debate/need for clarification
  - applicable law, 414, 415
  - distinction between potentially eligible acts, 414
  - responsibilities of states and individuals, 414
- transmittal to the League Council as a *vœu* of the Third Committee, 414–15
- Council/Third Committee's preference for a criminal chamber within the PCIJ, 415
- shelving as 'premature', 415
- underlying principles, 413–14
- views of
  - Atatci, 414

## Index

- de Lapradelle, 412, 414
- Root, 414–15, 621 n45
- international criminal law: *see* international criminal law, introduction;
  - ‘international criminal law of the future’ (Pella); international criminal law, prosecution of ‘acts in violation of the laws and customs of war’ (Versailles); international criminal law, prosecution of ‘massacres’ committed in parallel with the war (Sèvres)
- international criminal law, introduction, 390–5
- the challenge
  - an overturning of classical conceptions of the state, law and justice, 390
  - reconciling competing demands of justice, law, peace and Realpolitik, 391–2
  - tension between repressing ‘unspeakable sufferings’ and respect for State sovereignty and penal legality, 394–5
- definition/scope, 391–2
  - core international crimes, 391–2
  - direct imposition of individual criminal responsibility, 391–2
  - elements/‘provinces’, 391
  - terminology, 391 n8
- history in chronological order
  - Peter von Hagenbach’s trial (1474), 393
  - ‘humanitarian intervention’ (protection of minorities) (19th century), 392, 409–10, 730–2
  - Moynier’s proposal for a permanent international criminal court (1872), 393–4, 416
  - Martens’ proposal for a convention on the laws and customs of war (1874), 395–6
  - Moynier’s revised proposal (1893), 394 n22
  - post-WWI treaties providing for judicial intervention, 394: *see also* international criminal law , prosecution of ‘acts in violation of the laws and customs of war’ (Versailles)
  - Commission of the Fifteen (25 January 1919), 396: *see also* international criminal law , prosecution of ‘acts in violation of the laws and customs of war’ (Versailles), Commission of Fifteen conclusions
- Commission on Responsibilities (25 January 1919), 396
- Nuremberg (1945) and Tokyo (1946) Charters, 394–5
- international criminal tribunals (1990s), 394–5
- jus cogens* and, 391–2
- ‘international criminal law of the future’ (Pella), 382–3, 394, 416–17, 419–26
- compatibility of approach with developing ideas on minorities and the codification of international law, 421
- Convention for the Creation of an International Criminal Court (1937), role, 423
- Convention on the Prevention and Punishment of the Crime of Genocide (1948), role, 425
- ‘criminal law of the future’
  - the cornerstone of the dual criminal liability of states and individuals, 421
- inevitability of an international criminal court, 421–2
- replacement of a ‘so-called law of war’ by a ‘law of peace’, 421–2
- role, 421
- ‘true international criminal law’ vs ‘classical international criminal law’, 421
- criminality of states, a theory of, 420
- acts qualifying as, 420, 421, 423, 425
- a ‘general plan for an inter-state criminal law’, 419–20
- IAPL adoption of Pella’s draft statute for a permanent international criminal court (1928), 422
- adaptability post-1945, 422
- LoN International Bureau for the Unification of Criminal Law as a secondary strategy, 422
- Pella’s final writings
  - changed approach to codification of the international criminal law, 424–5
  - criticism of rushed creation of Nuremberg and Tokyo Tribunals, 423–4
  - overall views on Nuremberg, 424
- ‘plan for a world criminal code’ (1935), 423
- acts attracting criminal liability, 423

## INDEX

- 'international criminal law of the future' (Pella) (cont.)
  - attribution of responsibility to actors other than states., 423
  - universal penal repression
    - 'a categorical imperative', 429
    - emphasis on legality as a bulwark against arbitrariness, 420
    - 'international coercion'/sovereignty relationship, 420–1
- international criminal law, prosecution of
  - 'acts in violation of the laws and customs of war' (Versailles), 395–401: *see also* international criminal court (Descamps's proposal for (1920))
- Commission of Fifteen conclusions
  - establishment of a 'High Tribunal', 396–7
  - examples of offences, 396
  - exclusion of persons found guilty by the High Tribunal 'from any amnesty', 396–7
  - exclusion of a war of aggression as a war crime, 396–7
  - inclusion of 'war crimes' and 'crimes against humanity'/examples, 396
  - personal criminal liability regardless of rank, 396–7
  - States' surrender obligation, 396–7
  - US/Japanese reservations on State sovereignty/penal legality, 397–8, 401
- Versailles 227–230 (penalties), 17, 398–401
  - British/French support for a law enabling the prosecution of all guilty parties, 398–9
  - Council of Four deliberations, 398–9
  - a doomed cause, 401
  - Larnaudé/Lapradelle report on the ex-Kaiser, 398–9
  - Wilson's approach to/draft text, 399
- Versailles 227 (arraignment of the ex-Kaiser)
  - failure to provide for the individual criminal liability of a head of State, 399–400
  - issues with/as precursor to Nuremberg/Tokyo Charters, 17–18, 399–400
  - Netherlands' refusal to extradite the ex-Kaiser, 399–400
  - proposed special tribunal, 399–400
  - Wilson's decision not to define the offence in question as 'criminal', 400 n50
- Versailles 228–229 (extradition and prosecution of accused persons)
  - a dead letter, 400–1
  - the Leipzig trials (1921–2), 400–1, 404–5
  - military tribunals, 400–1
- international criminal law, prosecution of
  - 'massacres' committed in parallel with the war (Sèvres) (in chronological order), 401–7
- terminology
  - 'atrocities', 401–2
  - 'crimes against humanity': *see* crimes against humanity
  - 'massacres', 405–6
  - 'race murder', 402
- Joint Allied Declaration denouncing 'new crimes of Turkey against humanity and civilization' (24 May 1915), 17–18, 18 n58, 401–2, 406
- Ambassador Morgenthau's representations, 401–2
- US opposition to proposal to hold Turkish government responsible, 401–2
- establishment of a special Turkish court martial (16 December 18), 404
- Politis's proposal to include consideration of Turkish government's responsibility for 'atrocities' in the Committee of Representatives' agenda (1919), 401–2
- careful choice of terminology, 402
- Armenian supplementary report (9 March 1919), 403, 406–7
- Commission on Responsibilities' final report (29 March 1919), 403
- examples of '[m]assacres of Armenians by the Turks systematically organized with German complicity', 403
- a finding of 'barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity', 403
- special court martial sentences (1919–1921), 404
- as first example of national courts applying domestic law imposing sentences for genocide, 404–5

## Index

- limitations/ the Leipzig trials compared, 404–5
- secondary trials, 404 n68
- Treaty of Sèvres (10 August 1919) (Sèvres 230 (surrender and prosecution of persons responsible for the Armenian massacres)), 405–6
- absence of any reference to ‘crimes against humanity’/ laws of humanity’, 405–6
- applicability only to ‘crimes during the continuance of the state of war’, 405–6
- distinction between ‘actions in violation of the laws and customs of war’ and ‘massacres’, 405–6
- ‘in conformity with the Allied note of 1915’, 406
- intended role of the League, 405
- as a precedent for Nuremberg 6(c) and Tokyo 5(c), 406
- proposed tribunal, 405
- abolition of the special court martial/ adoption of a policy of denial, 404–5
- Treaty of Lausanne (24 July 1923)
  - an amnesty for all crimes or offences committed from 1 August 1914 to 20 November 1924, 406–7
  - link between the Lausanne impunity and the Jewish holocaust, 406–7
  - as replacement for the Treaty of Sèvres, 406–7
  - ‘the black Treaty’ (Lloyd George), 406–7
- international human rights law (IHRL), 518:
  - see also* human rights; individual as a subject of international law; minorities, refugees and human rights in the interwar years; minorities treaties; minority protection
- human rights discourse distinguished, 501
- protection of rights
  - as a brake on aggressive nationalism, 509 n41
  - dependence of domestic protection on international protection, 512
  - individual’s legal personality/status as a subject of international law, importance, 510–11, 512
- International Institute of Agriculture (IIA), 110
- international law: *see* International Law Commission (ILC); international law, developments in the interwar years; international law, histories of; international law, institutionalisation under the League
- International Law Commission (ILC)
  - Crimes against the Peace and Security of Mankind, 424–5
  - diplomatic protection (2006), 591–2
  - general principles of law, 629
  - MFN clause (1969), 436–7
  - State responsibility, 362, 366 n16, 368 n24, 372–3, 374, 375–6
  - building on the 1930 Codification Conference legacy, 375 n51, 381, 447
- international law, developments in the interwar years: *see also* Covenant; international law scholarship between the wars
- pre-League inheritance
  - gaps, 1–2
  - Laski on, 1 n1
  - a rupture with the past, 1
- abolition of slavery, 6–8, 17: *see also* slave trade/slavery; trafficking/slave trade/slavery, international instruments relating to
- air navigation, 14, 15–16
- airspace regulation, 9, 14
- codification of international law, 2, 14: *see also* International Law Commission (ILC); international law, institutionalisation under the League
- crimes against humanity, 17–18, 405–6: *see also* crimes against humanity
- expropriation/protection of foreign investment, 18–19: *see also* expropriation; standard of treatment
- international criminal law, 17: *see also* international criminal court; international criminal law
- jus in bello*, 9, 23–4
- jus contra bellum*, 2, 21–2: *see also* use of force
- minorities and refugees, protection, 8, 10: *see also* minorities, refugees and human rights in the interwar years, overview

## INDEX

- international law, developments in the
  - interwar years: (cont.)
    - monist and federalist doctrines, rise of, 8:
      - see also* monism vs dualism
    - neutrality, 30: *see also* neutrality
    - nineteenth-century achievements, 6–7
    - non-intervention, 9: *see also* non-intervention principle, development of
    - peaceful settlement of disputes, 9: *see also* dispute settlement
    - polar regions regulation, 14, 15, 653
    - principles and rules in international jurisdiction and arbitration, 9
    - protection of the victims of war, 9: *see also* Red Cross (ICRC) conferences, 1921 (10th Conference)
    - reprisals, 9, 30
    - self-determination principle, 8, 10, 19–20:
      - see also* self-determination of peoples
    - State responsibility, 2: *see also* State responsibility
    - territorial waters jurisdiction, 30
    - terrorism, attempts to regulate, 9, 20–1: *see also* terrorism, attempts to regulate
    - treaty practice, 13: *see also* treaty practice (Covenant 18–21)
    - universal international organisations, 8:
      - see also* ILO; League of Nations (LoN)
    - vertical limitations on sovereignty, 16–17, 179–86
    - vertical limitations on sovereignty.: *see also* sovereignty, vertical limitations
    - war crimes (Versailles 227), 17, 30
    - war, partial prohibition of, 9: *see also* use of force
    - war zones on the high seas, 30
  - international law, histories of, 32–7: *see also* Butler, Geoffrey and Simon Maccoby; Korff, Serge; Vinogradoff, Paul; Vollenhoven, Cornelis van; Williams, John Fischer
  - oscillation between realism and idealism, 25, 26, 30–1, 37
  - use to demonstrate a particular theory/ impart a direction, 37
  - international law, institutionalisation under the League, 24–5, 119–26: *see also* international civil service; international/ municipal law, distinction; treaty practice (Covenant 18–21)
  - the Covenant's ambitions, 120–1
    - benefits of permanency and a general mandate, 127
    - a failure/ the legacy, 126, 127–8
    - 'firm establishment . . . of international law as the actual rule of conduct among Governments' (Preamble), 120–1
    - rules governing treaties (Covenant 18–21), 120–1
  - evidence/ examples of
    - establishment of an international civil service, 119
    - League's systematic use of its powers, 119
    - more than one path, 120
  - a gradualist approach, 126, 127
  - 'jurispractices', 41
  - international supervision, 124–6
    - hoped-for advantages, 124–5
    - minority protection and mandates as key areas, 124–6: *see also* Mandate System (Covenant 22), typology and supervisory system
    - risk of protecting States from scrutiny, 124–5
    - as route to critical discussion of underlying legal obligations, 125–6
    - supervision a proactive practice, 125–6
  - League's codification efforts (centralised approach), 122–3: *see also* contiguous zone, Hague Codification Conference (1930); Hague Codification Conference (1930); islands (Hague Codification Conference (1930)); State responsibility (codification/ alternatives to)
  - appointment of standing expert committee (1924), 122–3
  - areas identified as ripe for codification (standing expert committee's report (1924)), 122–3, 369, 591–2
  - variable/ disappointing results, 122–3
  - League's codification efforts (decentralised approach deploying Covenant 23), 123–4
  - expansion into new areas reflecting the League's changing priorities, 123–4
  - from State control of the law-making process to technocrats' control, 124

## Index

- revision, consolidation and extension of
  - existing treaty regimes, 123
- a 'new international law', 24–5, 31, 32, 119, 234–5
  - defects of the pre-1914 'old' international law (Fischer Williams), 32
  - the law of war and, 29, 398–9, 427–8, 508–9
  - resting on/revitalising the old foundations, 119
- international law scholarship between the wars: *see also* global legal order; Hague Academy of International Law's summer courses (lecturers in the interwar period); international law, developments in the interwar years; *and individual scholars*
- introduction, 24–32, 68–9, 97–8
  - abandonment of 'civilised' and 'Christian', 9–10, 25
  - an era of hope and creativity, 68, 71
  - capitalism/communism divide, 69
  - contribution to the shaping of as articulation of Great Power status, 42–3
  - a 'global community dominated by [men from] the West', 70
  - international law as a precondition for disorder/justice, 25
  - League's contribution to, 72
  - North-South divide, 69–70
  - persecution and exile of scholars, 68
  - post-WWI challenges, 30
  - role of the League/Covenant, 42
  - shared belief in the value of international law, 71
  - trends, 69–74
  - uncertainties and contradictions, 71
  - utopians, visionaries, and pacifists at large, 71
  - women, 69
- accessibility (an exclusive club), 69–70
- accessibility (non-western)
  - Chinese scholars, 70
  - Japanese scholars, 70
  - Latin American scholars, 70
  - Turkish scholars, 71
- basis
  - role of the League, 42
  - World Systems Theory, 42
- expansion (academic organisation and production)
  - Deutsche Gesellschaft für Völkerrecht*, 71
  - Hague Academy of International Law's summer courses, 71
- international law as 'law', 26–7, 28, 29, 30–1
- international law scholarship between the wars, a 'new international law', 24–5, 32, 119, 234–5
- legal foundations, ideology and method, 68–9, 74–88, 97
  - an over-reductive result, 158
  - between realism and idealism, 25, 26, 30–1, 37
  - definition, 26
  - focus on views critical of voluntarist positivism, 74–5
  - jusnaturalism, 68–9, 74–5, 85–91, 97: *see also* natural law/jusnaturalism
  - legal sociologists' approach, 68–9, 74–5, 82–4
  - monism/dualism, 79, 82: *see also* monism vs dualism
  - the negationists, 29, 72, 75
  - new subjects of international law, 24–5
  - new theoretical approaches/new foundations, 72
  - sovereignty, 69, 88–97: *see also* sovereignty
  - voluntarist positivism, 71, 83, 88–9, 158–9
- nationalism and state consent as villains of the piece, 71
- scholars' influence on contemporary affairs
  - international legal community including practitioners, 72
  - a modest effect, 74
  - scholars holding relevant governmental or diplomatic appointments, 73–4
- international legal personality
  - China, 57
  - colonies, 230–2, 372–3
  - definition/features, 511 n54
  - Kelsen, 139
  - recognition, need for, 511
  - rights and duties, 511, 515–16
- diplomatic relations and, 593
- the individual, 511, 512–14, 515–16: *see also* individual as a subject of international law
- international institutions, 137–8
- Kelsen on, 139, 382–3
- League, 244 n145

## INDEX

- international legal personality (cont.)
  - mandates ('spectral legal personality'), 47, 143 n50
  - a political threshold, 512
  - sociological school on, 514–16
  - State responsibility and, 382–3
  - theoretical basis, 139
- international relations (IR)
  - diplomatic studies and, 592 n19
  - a functionalist approach to, 84
  - idealist' or 'utopian' interwar scholarship, 141 n42
  - leading voices, 141, 159
  - a new discipline, 10, 159
  - organs entrusted with, 26
  - 'realist and down-to-earth', 10
  - relationship with international law, 159–60
  - Wilsonianism and, 170
- international/municipal law, distinction: *see also* monism vs dualism
  - countervailing forces (formalisation vs deformalisation), 158–60
    - an explanation, 158–9
  - international relations/international law, disconnect, 159–60
  - the issue, 158
  - post-WWII practices distinguished, 159–60
- as distinct legal orders/need for adoption/incorporation, 131
- history (nineteenth century)
  - examples of crude analyses, 132
  - limitation to definitions and implementation issues, 132
  - professionalisation of international law/emergence of dispute settlement systems, lack of impact, 130–1
- history (early twentieth century) (a flurry of attention)
  - Oppenheim* (3rd edition), 132–3
  - Bisschop (BYIL articles (1923–1924)), 133
  - Quincy Wright (AJIL article (1923)), 133
  - Triepel (Hague lectures (1923)), 75 n39, 133, 134–5, 137
  - Kelsen (Hague Lectures (1926)), 133
- importance of the distinction
  - 'a formidable tool', 131
  - existential function, 130–1
  - ordering functions, 130–1
- League approach to
  - dispute resolution procedures (Covenant 15(8)), 140
- impact of the new international
  - administration, 119, 140–58
- mandate regime/minority protection as
  - example of the interface, 143–7: *see also* Iraq Mandate
- PCIJ jurisprudence (substantiation and conceptualisation of the distinction), 133–4
  - Brazilian Loans*, 134
  - Certain German Interests in Polish Upper Silesia*, 133–4
  - Mavrommatis Palestine Concessions*, 134
- theories of, 130–6: *see also* monism vs dualism
  - dependence on a distinction between state and non-state, 143
  - discrepancy between contemporaneous but countervailing trends, 135–6
  - League/legal literature and judicial decision, lack of interaction, 135–6
  - legal rationality (Lauterpacht), 135
  - sociological pluralism and (Duguit et al), 134
  - static 'ancient' law vs dynamic modern law (Maine), 135
- interpretation issues: *see* use of force (Covenant 10–16) (interpretation problems)
- Iraq Mandate
  - absence of a formal mandate agreement, 234 n95
  - admission to the League, conditions
    - a compromise, 146
    - French, German and Italian reactions to, 146
  - Class A status., 237
  - a dynamic and dialectic relationship
    - between international and municipal law, 136, 143–7
  - Iraq–UK Treaty (1926), 144
  - progress towards independence/statehood, 143–7, 253
  - application of PMC techniques/deformalised norms, 145–6, 147
  - involvement of a deformalised and dialectical relationship between international law and municipal law, 147
  - termination of Mandate (1932)
    - British agreement to, 144–5
    - PMC opposition to/conditions for, 144–5



## Index

- islands (Hague Codification Conference (1930)), 213–15
- archipelagos
- the issues/impossibility of reconciling views, 214–15
- UNCLOS Part IV, 215, 221–2
- definition (high tide/low tide conceptions), 213–14
- Report of the Second Sub-Committee, 213–14
- States' divided views, 213–14
- entitlement to territorial sea, 214
- Report of the Second Sub-Committee, 214
- UNCLOS 121, 214 n121
- Japan: *see also* Manchurian incident (1931)
- racial discrimination against/attempts to overturn, 50–1, 53
  - withdrawal from cooperation with the League (24 February 1933), 59–60, 709–10
- Jitta, Josephus (*The Renovation of International Law*)
- public and private international law
  - 'juridical community of mankind' as the basis, 27
  - total detachment of the positive law of war, 27, 28
- jus cogens*, 391–2
- jusnaturalism*/natural law: *see* natural law/*jusnaturalism*
- Kellogg–Briand Pact (1928): *see also*
- Manchurian incident (1931);
  - measures short of war; reprisals (compatibility with the Covenant)
- introduction
- from bilateral to multilateral treaty, 276
  - limited subscription to/ineffectiveness, 21
  - Litvinov Protocol (1929), 707
  - Monroe Doctrine and, 281–2
  - parties to/global reach, 276
  - 'recourse to war' (Art 1)/'pacific means' (Art 2), divided views on, 171–2, 276–9
  - Soviet accession, 707
  - summary of provisions, 21
  - as tipping point from *ius ad bellum* to *ius contra bellum*, 257–8, 276–7, 290, 409
- criticisms of
- absence of sanctions mechanisms/parties' reservations particularly on self-defence, 21, 280–2
  - legality of 'warlike' measures, 276–7, 280, 452
  - Soviet criticisms, 707
- 'recourse to war' (Art 1)/'pacific means' (Art 2), broad interpretation (contextual interpretation), 282
- Art 2 as 'the heart of the agreement', 282–3
- language of the 1899 and 1907 Hague Conventions compared (absence of measure short of war), 283
- use of force as 'peaceful' but not an 'orderly process' (preamble/Brierly), 282–3
- 'recourse to war' (Art 1)/'pacific means' (Art 2), broad interpretation (subsequent practice), 283–6
- Bourquin's identification of, 285–6
- 'common sense' understanding, 283–4
- European States' declaration expressly prohibiting resort to force (2 March 1933), 284–5
- Japanese occupation of Manchuria, 283–4
- readmission of Germany to the Conference for the Reduction and Limitation of Armaments (12 December 1932), 284
- Roosevelt's statement on (May 1933), 285–6
- Uruguay's position on measures of coercion not intended to constitute acts of war, 285–6
- 'recourse to war' (Art 1)/'pacific means' (Art 2), narrow interpretation (analysis of the text)
- a clear and unequivocal text, 278
  - either/or approach, 282–3
  - limitation of the text to 'war', 277
  - literal interpretation, 277, 278
  - 'pacific means', incompatibility with armed reprisals, 277–8
  - restrictive interpretation principle, 277
- 'recourse to war' (Art 1)/'pacific means' (Art 2), narrow interpretation (preparatory work), 278–80
- cautious use of/sources, 278, 279–80
  - drafting history/main concerns, 278–80, 286

## INDEX

- Kellogg–Briand Pact (1928): (cont.)  
   ‘recourse to arms’/‘recourse to war’,  
     fluctuating use of, 279–80  
 views of  
   Borchard, 278, 281–2  
   Bourquin, 277, 279–80, 285–6  
   Brierly, 279–80, 282–3  
   Brown, 281–2  
   Eagleton, 277, 279–80, 281–2  
   Giraud, 284–5  
   Gonsiorowski, 277–8  
   Lauterpacht, 283–4  
   McNair, 283  
   Möller, 282, 283  
   Politis, 284–5  
   Quincy Wright, 282, 283–4  
   Vandy, 277, 280, 281  
   Wehberg, 277–80  
 Kelsen, Hans, 75–9  
   personal  
     academic interests, 75  
     Lauterpacht and, 79–80, 82  
     persecution and exile, 68, 78  
   criticism of, 77–9  
     ‘formalistic scientism’, 78  
     a strict separation between legal science  
       and moral values, 78  
     ‘unsolvable hypothesis’ thesis, 77–8  
   Hague Lectures (1926), 76–7  
   on international legal personality, 139  
   on Korovin, 693  
   on Mixed Arbitral Tribunals, 464  
   the pure theory of law  
     the *Grundnorm*, 76–7  
     law as an autonomous discipline based  
       on *Sollen*, 75–7  
     law as a scientific discipline, 75  
     monism/impossibility of conflict  
       between international and national  
       law, 72, 79, 82, 138–9  
     *Sollen/Sein* approach distinguished, 75–6  
   on sovereignty, 90  
   support for, 77  
 Keynes, John Maynard  
   ‘economic consequences of peace’, 490–1  
   on international cooperation, 493  
   ‘New Deal’ policies, 3, 492  
   on reparations, 479, 491  
   on state intervention, 11 n23  
 Korff, Serge (*Introduction à l’histoire du droit  
   international public*), 35  
 Korovin, Evgeny A.  
   on equality of belligerents, 297  
   on international law  
     accommodating the imperialistic vices  
       of European international law, 96  
     comparison with Pashukanis, 694–6  
     compatibility of international law with  
       both capitalism and communism,  
       95–7  
     ‘inter-Soviet law’ as replacement for, 692  
     *The International Law of the Transitional  
       Period*, 95–7, 687, 689–92  
     Kelsen’s views on, 692–3  
     a limited field of operation, 95  
     military intervention/war as expression  
       of the class struggle/justification  
       for, 661–2  
     multiple systems/no longer universal,  
       95, 689–90, 714  
     Pashukanis’s criticism of, 695  
     a separate discipline, 95  
     ships passing in the night, 95, 96  
     ‘social togetherness’, 689, 695  
     a Soviet international law, 687–8  
     Soviet opposition to international  
       arbitration, 690  
     a temporary truce, 692  
     treaties (*pacta sunt servanda* vs *clausula  
       rebus sic stantibus*), 691  
     Vyshinsky’s criticism of, 687–8  
   on the nature of the Soviet Union, 96  
   on neutrality, 300–1  
   on sovereignty, 92–3, 95–6, 690  
 Kunz, Josef Laurenz  
   criticism of Kelsen, 77–8, 79  
   ‘from overestimation to underestimation  
     of international law’, 122  
   ‘L’article XI’, 349, 351, 353, 354–5  
   on the law of war/*Kriegsrecht* und  
     *Neutralitätsrecht*, 293, 301, 328  
   on the protection of minorities, 523  
   on sovereignty, 89  
   ‘Sowjet-Russland und das Völkerrecht’, 93  
   ‘The Mexican expropriations’, 442, 445  
   on treaty practice, 121  
 Lansing, Robert  
   Commission of Fifteen chair, 396  
   relationship with Wilson, 399 n48  
   views on  
     a permanent court of international  
       justice, 397–8  
     prosecution of Turkish leaders for  
       crimes against humanity, 401–2  
     retroactivity, 397–9

## Index

- self-determination, 517 n92
- sovereignty, 397–8, 402 n57
- Latin America, jurists: *see* Alvarez, Alejandro; Bustamante y Sirven, Antonio; Sanchez de; Fabela, Isidro; Yepes, José María
- Lauterpacht, Hersch
  - belligerent status, recognition/non-recognition, 332, 333, 335–6
  - bellum justum*, 12–13
  - the Covenant as a higher law, 12, 70, 120–1, 127, 180 n113
  - crimes against humanity (Nuremberg), 548
  - dispute settlement optimism, 646
  - equality of belligerents, 297
  - equality as a human right, 522–3
  - expropriation/compensation, 443
  - filling the gaps/judicial role, 72, 79–80
    - as evidence of judicial ‘law-making function’, 81
  - general principles of law as a constraint, 81
  - use of arbitral and judicial decisions to support his arguments, 81
- focus on public international law, 79–80
- Function of Law in the International Community* (1933), 72, 79–80, 81–2, 90
- general principles of law, 81, 88
- Hague Lectures (1937), 82, 88, 378, 382 n78
- human rights, 505–6, 508
  - draft Bill of Rights, 547
- the individual in international law
  - Jurisdiction of the Courts of Danzig*, 465 n151, 513–14
  - links other than nationality, 508–9
  - as a protection against aggressive nationalism, 509 n41
- international law as an imperfect legal order, 81
- an internationalist, 179–80
- justiciability of all disputes/interrelationship between law and politics, 80–1, 90, 97, 617
- Kellogg–Briand Pact, 278
- Kelsen and, 79–80, 82
- League, support for, 179–80
- legal personality (individuals/minorities), 511 n53, 515–17
- Manchukuo, 272 n62
- mandate system, 235, 247, 252 n186
- minority protection/proposal for a UDHR clause, 548 n269
- monism vs dualism, 82
- a non-positive monist, 82, 139 n36
- pacta sunt servanda*, 81–2
- PCIJ 38, 629 n84
- Private Law Sources and Analogies of International Law* (1927), 24–5, 79–80, 135
- sovereignty, 81–2, 90, 179–80
- state responsibility, 374, 378–9
  - sanctions, 385–6
  - State organs, 382 n78, 383
- the ultimate source of the international legal order, 81–2, 97–8
- law of armed conflict and neutrality between the wars (some neglect and stagnation): *see also* equality of belligerents principle; neutrality
- introduction, 289–90
  - association of the interwar period with crisis, neglect and stagnation, 289–90
  - the defining trends, 290
- a changing terminology (from ‘war’ to ‘armed conflict’), 295–7
- adoption of ‘armed conflict’ in the 1949 Geneva Conventions and subsequent treaties, 295–7
- a blurriness about criteria for a ‘state of war’/the role of a declaration of war/*animus belligerendi*, 295–7
- examples of the use of ‘armed conflicts’ in the late 1930s, 295–7
- experts’ recommendation for the replacement of ‘war’ in the 1929 Convention by ‘armed conflict’, 295–7
- jus contra bellum*/*jus in bello* relationship, 290–2, 297
- living in a fool’s paradise/emerging too late to tackle the issues, 301–2, 327
- scepticism towards
  - inclusion of respected and experienced practitioners and publicists amongst detractors, 293
  - pre-war period distinguished, 292
- scepticism towards (examples)
  - BYBIL I (1920–1921) article, 291–2
  - Hague Academy, ILA and IDI discouragement of discussion of the topics, 293–4
  - marked decline in publication of works on the law of war, 293
  - Michigan Law Review* 19 (1921) reprint of BYBIL article, 291–2

## INDEX

- law of armed conflict and neutrality between the wars (some neglect and stagnation): (cont.)
- questioning of the dichotomy between international law in peace and in war, 293
  - scepticism towards (inhibiting effects)
    - destabilising effect on the applicability of the law of war, 295
    - failure to address aerial bombardment and civilian populations, 294–5
    - growing tendency to avoid recognising a state of war, 295
    - paucity of post-war treaties on the conduct of hostilities, 294–5
    - uncertainty about applicability of law of war to League actions, 295
  - scepticism towards (reasons for), 290–301
    - advent of *ius contra bellum* as negation of the need for regulating *ius in bello*, 290–2, 297
    - lack of WWI compliance, 290–1
  - law of armed conflict and neutrality between the wars (substantive engagement), 301–12
    - arguments for continuing relevance, 301–2
    - identification of the main deficiencies of the existing regime as first task, 302
    - support for the restoration and consolidation of the law of war
      - de La Pradelle, 301
      - Fauchille, 301–2
      - Garner, 301–2
      - Gouttes, 301–2
      - Kunz, 301–2
      - Oppenheim, 27
      - Rasmussen, 301–2
      - Rolin, 301–2
      - Root, 301
      - Werner, 301–2
    - technological developments: *see* technological developments
  - law of the sea (overview): *see also* bays; contiguous zone; fishing regulation; islands; protection of the marine environment, a neglected cause; straits, navigation rights; territorial sea
    - codification attempts during the time of the League, 196–8, 221
    - continuing absence of agreement on archipelagos (but useful discussion), 221–2
    - the breadth of the sea and delimitation methods, 221
    - the contiguous zone, 209, 221
    - fishing regulation/conservation of marine living resources, 222
    - a general rule on bays, 221–2
    - protection of the marine environment, 197–8
  - critical nature of the distinction between the territorial sea and the high seas, 197, 198–9, 221
  - the issues, 197–8
    - entitlement to marine spaces, 197
    - use of the oceans, 197
  - progress on
    - navigational rights and freedoms, 197, 222
    - regulation of the exploitation of natural resources, 197
  - traditional legal paradigm (the division of the oceans), 196, 202, 206, 221, 222
    - anticipation of the Truman Proclamation on the Continental Shelf (1945), 197
    - factors preventing progress, 222
  - law of war, enforcement
    - 1929 Convention, Art 30 (institution of an enquiry), 310–11
      - absence of a permanent structure/need for *ad hoc* agreements *durante bello*, 310–11
      - a dead letter, 310–11
      - failure of attempts to resolve the issue, 310–11
    - difficulties, 309–10
    - potential role of
      - ICRC, 305, 310
    - judicial settlement, a utopian prospect, 310–11
    - League, 310
  - laws of humanity: *see also* crimes against humanity
    - Armenian massacres, 403
    - association with *jus in bello*, 395–7, 402
    - Hague Conventions 1899 and 1907/
      - Martens Clause, 31, 395–6, 647–8
    - a principle of international law, 395 n24
    - US reluctance to apply post-WWI, 401, 402, 405–6
    - Versailles/Sèvres, absence from, 405–6
  - Le Fur, Louis
    - criticism of Kelsen, 78
    - 'Guerre civile d'Espagne', 298, 334–5

## Index

- 'La théorie du droit naturel', 515
- 'Règles générales' (1935), 78, 87, 88
- on reprisals, 274
- League Assembly: *see* Assembly
- League Council: *see* Council
- League of Nations (LoN): *see also* Covenant;
  - preventive diplomacy,
  - peacekeeping and peacemaking
  - introduction, 12–14, 41–4
  - factors militating against, 341–3
    - ambiguities in the Covenant, 342–3
    - concerns about impact on equality of states/national sovereignty, 341–2, 407–8
  - Council's limited powers, 348, 349–50
  - creation of new states/territorial disputes, 342
  - link to the WWI peace treaties, 343
  - non-participation of the US, 342, 480–3
  - troubled relations between the victorious and defeated WWI powers, 341–2
  - unstable membership, 342
  - unwillingness of colonial powers to accept emancipatory ideas, 341
  - voting issues, 342
- a general mandate, 109–19
  - advantages, 127
  - centralisation vs multi-polarity, 116–17
  - coordination challenges, 116–17
  - evolution, 110, 113–14, 116, 119, 127–8
  - as a model for the UN (UNC 1), 117–18
  - a novel concept, 110
- institutionalised international law, 119–26:
  - see also* international law,
  - institutionalisation under the League; treaty practice (Covenant 18–21)
- international status
  - Covenant 22(2) (responsibility of Mandatories to the League) (Fischer Williams/1926 ILA Report), 244 n144
  - a Eurocentric organisation, 717–18
  - false representation as a federal union, 12, 180: *see also* sovereignty, vertical limitations
  - international legal personality, 244 n145
  - a multiplicity of views, 12
  - 'jurispractices', 41
  - membership: *see also* the Americas' relationship with the League
  - Latin American countries, 718
  - Soviet Union (September 1934) (an idiosyncratic business), 709–13: *see also* Soviet membership of the League (1934–1939)
  - US failure to join, 54, 480–3, 718
- permanence, 101–9, 110, 112
  - advantages, 127
  - an enduring legacy, 109
  - an innovative feature, 101–2
  - Council and Assembly as permanent 'mechanisms'/institutionalised 'Great Power' diplomacy, 103–4, 127, 343–4
  - Council (permanent) vs Assembly (periodic), 103–4
  - a dual concept (permanent peace through permanent institutions), 101–2
  - evolution/flexibility, 127–8
  - permanence in the League's structures and processes, 102
  - permanent missions, Drummond's scepticism, 103–4
  - as response to the perceived failure of the Concert system, 102–3, 111
  - Secretariat as only truly permanent organ, 104–5, 127: *see also* Secretariat
  - significance of use in titles of associated bodies, 102
- pre-WWI permanently operating administrative bureaux (*Zweckverbände*) distinguished, continuity with the work of/encouragement to take under the League's direction (Covenant 24), 110, 111–12
- structures and processes shaping the League, 101, 127–8: *see also* League of Nations (LoN), a general mandate; League of Nations (LoN), permanence
  - a British framework coupled with Wilsonian policies, 103
  - complexity/shifting relationship between the organs/institutions, 673–4
  - lack of an executive (Hicks), 28–9
  - reform and rationalisation (Avenol/Bruce Report), 115–16, 117–18, 126, 127–8
  - success or failure?, 343–4

## INDEX

- League of Nations (LoN): (cont.)  
   ‘the birth of a new world’/‘a caesura’, 42,  
     100–1, 407–8: *see also* global legal  
     order  
   ‘a massively extended mandate’, 110  
   from a special to a general international  
     organisation, 110  
   just how new?, 109–19  
   the League as a living institution, 101,  
     127–8  
   lessons learnt/the Bruce report, 127–8  
   ‘*ligue*’ vs ‘*société*’, 407 n84  
   ‘species which had never previously  
     existed’ (Oppenheim), 407–8  
   ‘the first collective security alliance with  
     universal intent’, 12, 257–8, 340,  
     407–8  
   values and a public vocation, 521–2  
 legal order: *see also* global legal order  
 legal personality: *see* international legal  
   personality  
 legal sociologism (French), 68–9, 74–5, 82–4:  
   *see also* Duguit, Léon  
 Lemkin, Raphael  
   life and career, 404 n69  
   influence of the biographical on the  
     intellectual, 424–5  
   vendettas, 424–5  
   work on the Genocide Convention,  
     424–5  
 views on  
   the Armenian genocide, 404  
   genocide, 404 n69  
   the group vs the individual, 548  
 Lenin, Vladimir  
   capitalism as inimical to peace, 154  
   Declaration of the Rights of the Peoples of  
     Russia (1917), 701–2  
   on law as an instrument of economic  
     oppression, 92–3  
   on self-determination, 19–20, 701–3  
 Leticia conflict (Colombia–Peru War) (1932–  
   1933), 358–9  
 Leuchsenring, Emilio Roig de  
   distancing from AILL, 726  
   on the Monroe Doctrine/incorporation in  
     the Covenant, 724–6  
   a politicised/pluralist approach, 731, 733–4  
 Lotus principle, 128, 176–7, 634  
 Maine, Henry Sumner, 135  
 Manchurian incident (1931): *see also* Japan  
   facts of the incident, 55–6  
   impact  
     Japan’s withdrawal from the League,  
       59–60, 709–10  
     non-recognition doctrine, 21–2  
   a League failure/reasons, 21, 113–14, 179,  
     272–6  
   geopolitical realities and, 66  
   Great Power attitudes to the right of  
     self-defence, 280–2  
   Great Power domination/veto, 55, 59,  
     66  
 Lytton Commission  
   from appointment (December 1931) to  
     report (October 1932), 58–9  
   inquisitorial approach, 66  
   its charge (‘purely advisory’), 58–9  
   its hands tied by role of Great Powers in  
     the League, 59  
   mediation efforts/upsetting both sides,  
     59  
 Lytton Report/recommendations  
   China–Japan treaties (Japanese interest,  
     non-aggression and arbitration, and  
     commerce), 59  
   endorsement of policy of non-  
     recognition of ‘Manchukuo’, 59  
   formal recognition by China of  
     ‘special administration’ in  
     Manchuria, 59  
   ‘pacific means’/compatibility of armed  
     reprisals with the Pact, 283–4  
   self-defence justification, 57–8  
 parties’ positions  
   China, 56–7  
   Japan, 57  
 response to in date order  
   China (Guomindang)’s appeal to the  
     League Council  
     (21 September 1931) invoking  
     Covenant 11, 56  
   Kellogg–Briand Pact/Stimson notes (7  
     January 1932), 21–2, 58–9, 171–2,  
     283–4, 368–9  
   ‘independent’ Manchukuo’s  
     proclamation of Japanese  
     sponsorship (18 February 1932), 56  
 Japan–Manchukuo Protocol  
   (15 September 1932), 58  
 Lytton Report (October 1932), 56  
 Assembly’s near-unanimous  
   endorsement of the Lytton  
   Report’s conclusions (24 February  
   1933), 59–60

## Index

- Japan's termination of cooperation with the League (24 February 1933), 59–60
- Assembly resolution endorsing the Stimson doctrine/setting up the Lytton Commission (11 March 1933), 368–9
- Mandate System (Covenant 22), origins, concepts and aims, 44–9, 233–6: *see also* petitions (mandatory peoples)
- overview, 13, 44
- comprehensiveness of Covenant 22, 233
- mandatory tutelage in new States, rejection of Smuts's proposal for, 49
- a 'spectral legal personality', 47, 143 n50
- a challenge to imperialism, 46–7, 115 n68
- vs continued imperial domination of formerly colonised territories, 115 n68
- definitions/the concept (general)
  - a compromise between self-determination and the interests of the administrative powers, 20
  - mandate regime (Covenant 22) and Mandates/Mandate Agreements distinguished, 234–6
  - a mandate without a Mandate (Mesopotamia), 234 n99
- definitions/the concept (Mandate/Mandate Agreement), 234–6
- Anglo-Saxon (trust/trusteeship)/civil law (tutelage/guardianship), 235
- responsibility of the Mandatory for any breach of Covenant 22, 235
- Roman law analogy, 234–5
- treaty/constitutional status, 235–6
- a tutelage exercised on behalf of the League, 235
- guiding principles
  - 'a sacred trust of civilisation', 13, 45, 226–7, 235–6, 253–4
  - non-annexation, 235–6
  - well-being and development of the peoples, 236
- origins
  - nationalities principle/difficulties in application, 19–20, 233–4
  - peace treaties, possibility of inclusion in, 233
  - Wilson's Fourteen Points/1statement at the Paris Peace Conference, 233–4
- Mandate System (Covenant 22), sovereignty issues, 238–55
- competitors for sovereignty
  - League, 244–5, 244 n144
  - Mandatory, 242–4, 245–8
  - shared sovereignty, 248
  - suspended sovereignty, 247–8
- 'have ceased to be under sovereignty' of the defeated countries (Covenant 22(1)), 238
- League practice, 249
  - Council/PMC action in response to the South Africa–Portugal Agreement on the South-West Africa/Angola boundary (1926), 249–51
  - Hymans Report (1920), 249
- title (*ius nudum*) and exercise of functions (*ius exercitum*) distinguished, 243–4, 248
- Mandate System (Covenant 22), sovereignty issues (Class A mandates)
  - consent to cession of territories (peace treaties)/acceptance of obligations vis-à-vis the League, 239
  - private/public international law interface, 573–4
  - territorial modifications, approval requirement, 242
  - a voluntary renunciation of right to annex/transfer sovereignty?, evidence of, 239
  - 'a temporary tutelage' (*Construction of a Wall*), 253
  - cession and administration distinguished (Versailles 312), 239–40
  - as 'dormant' sovereignty, 242
  - 'Government exercising authority' (Versailles/Lausanne), 239
  - Palestine Mandate, Art 1, *travaux préparatoires*, 240–1
  - succession to the Ottoman debt (Lausanne 16 and 46), 239, 253
  - title (*ius nudum*) and exercise of functions (*ius exercitum*) distinguished, 243–4
  - transfer 'to the Mandatory Power in its capacity as such' (Versailles 257), 239–40
- Mandate System (Covenant 22), sovereignty issues (Class B and C mandates), 242–5
- jurisprudence (municipal)
  - absence of a *jus disponendi*, 253–5



## INDEX

- Mandate System (Covenant 22), sovereignty issues (Class B and C mandates) (cont.)  
     diversity of view, 253–5  
     literal and teleological interpretation/PMC practice, 242–4  
     Mandatory's sovereignty, denial, 242–3, 253–5  
 Mandate System (Covenant 22), sovereignty issues, jurisprudence, 252–5  
     *A-G v. Góral Schwili*, 252–3  
     *Annandale*, 254–5  
     *Antoine Bey Sabbagh v. Mohammed Pacha Ahmed*, 252–3  
     *Construction of a Wall*, 253  
     *District Governor, Jerusalem-Jaffa District v. Suleiman Murra*, 242  
     *Egyptian Enterprise and Development Company v. Minister of War (France)*, 252–3  
     *Extradition of Criminals to and from Mandated Territories*, 252–3  
     *Falema'i Lesa v. New Zealand*, 242–3  
     *Faul v. South African Railways*, 255  
     *Frost v. Stevenson*, 253–5  
     *Jolley v. Mainka*, 242–3, 246 n158, 254–5  
     *Ketter*, 252–3  
     *Klausner v. Levy*, 252–3  
     *Lebanon Expropriation Case*, 242  
     *Legal Consequences of the Continued Presence of South Africa in Namibia, Advisory Opinion*, 244–5  
     *Mavrommatis Concessions*, 242, 252–3  
     *Morgan Guaranty v. Palau*, 242–3  
     *Nationality Decrees*, 241  
     *Offen*, 242–3  
     *Ottoman Debt Arbitration*, 253  
     *Papua and New Guinea v. Blasius Tirupia*, 242–3  
     *South West Africa, Second phase, Judgment*, 245  
     *South-West Africa, Advisory Opinion*, 255  
     Read J (dissenting), 239–40  
     *South-West Africa, Preliminary Objections*, Winiarski J (dissenting), 244–5  
     *Stampfer*, 242–3, 252–3  
     *Tamasese*, 246 n158  
 Mandate System (Covenant 22), sovereignty issues, scholarly writings  
     AIII Resolution VI (1931), 248  
     Ayoub, 247–8  
     Balfour, 245–7  
     Baty, 247–8  
     Bonfils, 247–8  
     Camille, 247–8  
     Cioriceanu, 247 n162  
     Comisetti, 245–7, 248  
     Corbett, 247–8  
     Distefano, 239–40, 247 n162  
     Fauchille, 247 n162  
     Furukaki, 243–4, 245–7  
     Hales, 248  
     Kelsen, 166, 244 n144, 247  
     Lauterpacht, 247  
     McNair (*South-West Africa*), 248  
     Millot, 245–7  
     Pic, 245–7  
     Quadri, 245–7  
     Redslob, 247  
     Rolin, 245–7  
     Stoyanovsky, 245–8  
 Mandate System (Covenant 22), typology and supervisory system, 13, 236–45: *see also* petitions (mandatory peoples)  
     'access to the interior' of territories under mandate, 146, 147  
     categorisation of mandates  
       distinguishing features, 236  
       relevant factors (Covenant 22(3)), 236  
       Smuts' alternative proposal, 236  
     Class A mandates (Covenant 22(4))  
       ability to stand alone/capacity to gain independence test, 237  
       applicability ('communities' of the Ottoman Empire), 237  
       'community', 237 n110  
       equality of treatment, 240–1  
       included 'communities', 237  
       League's supervisory role, limitations, 242  
     protectorates compared/distinguished, 240–2, 243–4  
     Sèvres vs Lausanne provisions, 237 n110, 240–1  
     sovereignty issues, 239–42: *see also* Mandate System (Covenant 22), sovereignty issues  
       third-party (LoN) supervision as sole distinction, 242  
       variety of organisational systems, 237  
     Class B mandates (Covenant 22(5)), 237–8  
       applicability to most of the German colonies, 237–8  
       distribution of possessions, 238  
       included peoples/distribution of, 237–8  
       Mandatories' duties and obligations, 237–8

## Index

- Class C mandates (Covenant 22(6))  
 applicability (certain 'territories' of South-West Africa and the South Pacific Islands), 238  
 Mandatories' duties and obligations, 238  
 relevant factors, 238  
 simplicity/identity of arrangements, 238  
 League's supervisory role (Acovenant 22 (7)), 47  
 Council/Assembly/PCIJ, role, 244–5  
 hoped-for advantages, 124–5  
 institutionalisation of international law and, 124–6  
 as key innovatory feature, 242, 244–5  
 limitations, 242, 244  
 Mandatories' annual reports, 245  
 PMC's role, 125–6, 245  
 as a quasi-juridical body, 92  
 risk of protecting States from scrutiny, 124–5  
 supervision a proactive practice, 125–6  
 maintenance of 'order' as the highest objective of mandatory rule, 47  
 respect for vested rights, 577  
 mandate/minority tutelage regimes  
 a continuation of nineteenth-century regimes/League innovations, 144  
 international law  
 institutionalisation, 124–6  
 international/municipal law relationship, 143–7  
 Mandates (historical and legal context), 245–55  
 doctrinal diversity, 245–8: *see also* Mandate System (Covenant 22), sovereignty issues, scholarly writings  
 international and municipal jurisdiction, 252–5: *see also* Mandate System (Covenant 22), sovereignty issues, jurisprudence  
 League practice, 249: *see also* Mandate System (Covenant 22), typology and supervisory system  
 Mandelstam, André  
 life/career, 541–2  
 AIIIL Commission for the International Protection of Human Rights of Citizens and Minorities, 409–10  
 a liberal Russian exile in France, 409–10  
 Rougier's influence on, 410  
 a 'Russian jurist, diplomat and academic activist', 409–10  
 views on  
 the Armenian Question, 411–12  
*Déclaration des droits internationaux de l'homme*, 398 n41, 410, 411–12, 729  
 humanitarian intervention, 410–11  
 legal position of Russian refugees, 537 n264, 541–2  
 minority protection, 50, 420–1, 511, 515–16, 544–5  
 maritime delimitation: *see* contiguous zone; law of the sea (overview); territorial sea  
 Martens clause, 31, 395–6, 412–13, 647–8  
 Maúrtua, Victor Manuel  
 AIIIL Declaration (2015), support for, 730–2  
 an elitist and technocratic approach, 731  
 on the codification of international law, 741–2  
 on [humanitarian] intervention, 730–2  
 a member of the AIIIL Executive Committee/secretary general, 731  
 measures short of war: *see also* Kellogg–Briand Pact (1928); non-intervention principle, development of; reprisals; use of force  
 absence of armed measures from the 1899 and 1997 Hague Conventions, 283  
 absence from the Covenant and Briand–Kellogg Pact, 12 n31, 221, 257–8, 276–86  
 'aggression'/'acts of aggression' distinguished, 262–3  
 applicability of the ban on 'war' (a literal vs a teleological interpretation), 259–67: *see also* use of force (Covenant 10–16) (interpretation problems)  
 Corfu incident, 267–76: *see also* Corfu incident (2 August 1923)  
 examples  
 economic and financial vs armed reprisals, 273–5  
 military occupation, 277  
 military reprisals, 277  
 naval blockade, reprisal and intervention, 12 n31  
 sanctions, 29, 63–4  
 impact of the availability of Covenant 12 dispute resolution measures on the need for coercive self-help measures, 264–5

## INDEX

- measures short of war: (cont.)
  - legality of 'warlike' measures, dependence on State's intention, 263–4, 268, 280, 295
  - Naulilaa*, 221
  - State responsibility, 369–70, 381
  - 'war' vs 'measures short of war', 260–1
- Memel [Klaipeda] Territory, 95, 187
- MFN treatment
  - Cobden-Chevalier Agreement (1860), 473–4
  - colonial territories and, 232
  - divergent views on, 436–7
  - FCN treaties and, 439–40
  - Fordney–McCumber Tariff Act 1922, 473
  - ILC Report on (1969), 436–7
- minimum international standard of
  - treatment, 369, 436–7, 450–5, 514: *see also* Calvo doctrine; equality of treatment/national treatment; standard of treatment of aliens, overview
- definition/content
  - absence of (Borchard/de Visscher), 452–3, 454
  - 'civilised nations' test, 451, 452
  - continuing ill-definition of legal nature and content, 455
  - 'mild, flexible and variable according to circumstances' (Borchard), 452
  - 'minimal' outside the abuse of physical security, 453
- key components (physical security/denial of justice), 453: *see also* denial of justice
- sharp divergences
  - consistent rejection of, 455
  - as a key reason for the failure of the 1930 Hague Codification Conference, 369–70
  - US-led insistence on/Latin American-led opposition, 451–5
- support for
  - Anzilotti (1912)/Cavaglieri (1929), 452
  - Norwegian Shipowners' Claims* case, 453
  - US–Mexico Claims Commission (*Harry Roberts*), 452
- minorities, refugees and human rights in the interwar years, overview, 501–6: *see also* humanitarianism; individual as a subject of international law; international human rights law (IHRL); minority protection; sovereignty, vertical limitations
- introduction
  - current interest in the subject, 502
  - a heated debate, 503
- individual as a subject of international law, 511–20: *see also* individual as a subject of international law
- interrelationships, 502
  - distinct origins/a parting of the ways, 502
  - from minority into refugee and back (*Smyrna* 1922), 510
- interwar minority/refugee interactions, 8–9, 510
- minorities and refugees as the biggest losers, 509 n42
- shared denomination as 'status of non-nationals'/'treatment of aliens', 502
- unifying factor (outsider as outlaw), 509
- special regimes
  - Åland islands regime, 187–9: *see also* Åland islands regime
  - doomed to failure, 186–7, 194
  - Free City of Danzig, 115, 187
  - Memel [Klaipeda] Territory, 95, 187
- telling the story
  - avoiding a blanket judgement/the League's perceived failures, 504
  - caution in the retroactive use of terminology developed post-WWII, 505–6
- challenges, methodological and substantive, 502–3
- a combination of the development of rules, the history of ideas and the agency of individuals, 504
- scope of the discussion, 502–3
- structure of the chapter, 506
- universalism then and now, 504–5, 509–10
- minorities treaties, 49–51, 526–31: *see also* Polish Treaty of Peace (28 June 1919)
- 'a long established procedure', 507 n28
- disuse, 502
- examples, 50, 527–8
  - Berlin Congress (1878), 507–8
  - classification of states bound by minority-protection provisions, 527
- incorporation of provisions into domestic law, 49, 50

## Index

- levels of protection
  - all inhabitants (full protection of life and liberty), 527, 528
  - all nationals (equality before the law), 527, 528
  - minority nationals (equality in law and fact/special measures), 527–9
  - non-nationals (international standard of treatment on aliens), 527
- special measures of protection
  - linguistic and educational rights/ equitable share of funding, 529
  - right to citizenship, 529–30
  - ‘the same treatment and security in law and in fact’, 528–9
- state recognition, a condition for, 49–50, 527
- successor states’ negative reactions
  - an interference in domestic affairs, 538 n214
  - declaratory theory of recognition arguments, 51
  - states’ inequality of treatment, examples, 51
- as unequal treaties, 51
- minority protection, 49–54, 520–31: *see also* equality before the law (minorities); minorities, refugees and human rights in the interwar years, overview; racial equality
- background
  - failure to appreciate the rich League legacy, 520–1, 523–4
  - foundational status in the new legal order, 49–50
  - importance to the maintenance of domestic and international order, 10
  - minority protection as a constraint on ethno-nationalism, 49
  - post-WWI establishment of ethno-national successor States/ legitimisation of ethno-nationalism, 49, 525–6
- decline and fall
  - liberal democracies’ hypocrisies, 53
  - racial equality, opposition to, 50–1, 52
  - rise of ethno-nationalism/ a major contributor to WWII, 65–6
- equality with the dominant group/ protection and differentiation of group identities, conflict, 531
- human rights protection, relationship with
  - failure to acknowledge League legacy, 520–1, 523–4
  - lack of scholarly discussion of, 523–4
- individual vs collective rights, 529, 530
  - dependence of individual’s rights on membership of a recognised group, 516–17
  - examples of collective rights, 501 n1, 530
- League supervision of/ vesting in international institutions
  - from States as guarantors to international expert bodies, 124–5
  - hoped-for advantages, 124–5
  - institutionalisation of international law and, 124–6
  - minorities treaties and, 50
  - risk of protecting States from scrutiny, 124–5
  - supervision a proactive practice, 125–6
- the League system in practice/ impact, 521–3
  - internationalization of equality and non-discrimination, 522
- nationalism and, 520–1, 524–5
- nationalities principle and, 520–1
- PCIJ’s active role/ important decisions, 52
- petitions, 16–17, 51–2: *see also* petitions (minorities)
- recognition of new States, role in
  - procedure for, 49–50
- self-determination, Soviet promotion of, 10–11
- some success, 52
- a tutelage built into domestic law, 49, 50
  - an interference in domestic affairs (Paderewski), 538 n214
  - a limitation on sovereignty, 50
  - new States’ hostility to, 49
- UDHR, Lauteracht’s proposal for inclusion in, 548 n269
- Wilson’s proposal for a guarantee of religious freedoms/ Nobuaki’s racial equality clause, reactions to, 50–1
  - British Dominions, 50–1
- mixed arbitral tribunals (MATs), 635–47
- characteristics
  - Arbitral Tribunal for Upper Silesia, special features, 639
  - bilateral format, 638
  - commonalities/ marked variations, 637–8
  - as hybrids, 638, 640–1

## INDEX

- mixed arbitral tribunals (MATs) (cont.)
  - imperialist overtones, 647
  - scope, 636–7
- competence *ratione materiae*, variations, 642–4
  - MATs arising from the peace treaties/wild swings, 643–4
  - Mexican Mixed Claims Commissions, 642
  - Upper Silesia Arbitral Tribunal, 642
- decisions
  - absence of a coherent case law, 645
  - finality/direct enforcement, 645
  - statistics, 636–7
  - Upper Silesia Arbitral Tribunal, 645
- decisions/exceptional appeals to the PCIJ, 645 n173
  - Upper Silesia system, 645 n173
- imbalances/inequalities/asymmetries, 638–40, 646–7
  - factors contributing to, 639
- interwar MATs and colonial-era mixed courts distinguished, 644–5
- issues addressed by
  - corporate nationality, 641–2
  - diplomatic protection/nature of the right, 646
  - individuals' access and standing, 640–1
  - nationality and citizenship, 641
  - relationship between individual and state claims, 640
- PCIJ/MATs relationship, 644
- pre-WWI mixed claims commissions/WWI peace treaty MATs
  - distinguished, 635–6
  - peace treaty provisions, 636 n126
- the record
  - controversies relating to, 637
  - falling into desuetude/a living legacy, 637, 646–8
  - statistics, 636–7
- Molotov-Ribbentrop Pact (August 1939), 179, 706, 711–13, 715
- monism vs dualism, 136–40: *see also* international/municipal law, distinction
- dédoublement fonctionnel* (Scelle), 79
- the issues, 137–8
  - autonomy of international and municipal law, consequences, 137–8
  - finessing *pacta sunt servanda*, 137–8
- hierarchical relationship between legal orders, 139
- international legal personalities, 139
  - a major interwar debate, 8–9, 134–5, 136–40
- multiplicity of legal forms vs unity of legal phenomena, 137, 139–40
- Staatswillenpositivismus*, 137
- views of
  - Anzilotti, 137–8
  - Kelsen, 72, 79, 82, 138–9
  - Lauterpacht, 82
  - Oppenheim, 27
- Monroe Doctrine (from non-interference in Europe to Pan-Americanisation), 718–26
- definitions
  - 'a foundational continental and multilateral principle of American international law' (Alvarez), 721
  - 'a global doctrine' (Wilson), 723, 743
  - a doctrine of self-defence (Kellogg), 281–2
  - 'Pan-American principle of absolute non-intervention' (Drago), 721
- globalisation of, 718, 721–2, 723, 743
- League endorsement/inclusion in the Covenant (Art. 21), 120 n91, 718, 723–6
- negative reactions to, 724–6
- Kellogg–Briand Pact and, 281–2, 718–26
- Latin American jurists, role of, 720–1
- origin (1823), 718–19
- Pan-Americanism and, 718–19, 720–3
- a US unilateral principle vs a multilateral doctrine, 721
- Wilson's role, 718–26
- Montevideo Convention on Rights and Duties of States (1933)
- AAIL/American international law, paradoxical impact on achievement of its central legal aspirations, 734–5, 744–5
- contribution to loss of AAIL's *raison d'être*, 734–5, 744
- key provisions
  - non-intervention (Art 8), 734–5, 743–4
  - non-recognition of territorial changes carried out by force (Art 11), 22, 171–2
  - sovereign equality of States (Art 4), 734–5, 743–4
  - 'statehood' (Art 1), 14–15

## Index

- Morgenthau, Hans (German–American jurist)  
 an exile, 68  
 a realist/recognition of international law's subjection to political interest, 74–5, 79–80, 92
- Morgenthau, Henry (US Ambassador to the Ottoman Empire), 401–2  
 on 'race murder', 402
- Nansen certificate, 533–6, 538–41  
 expulsion of 'Nansen refugees', 536  
 a flawed concept  
   absence of any host obligations, 538–41  
   link to nationality, 533  
   recognition of refugeehood as a permanent status, 534  
 host states' reluctant acceptance of, 535
- Nansen, Fridtjof  
 death (1930), 542  
 Greco-Turkish population exchange, 510  
 as high commissioner for refugees (1921–30), 534 n185, 543  
 investigation of repatriation of prisoners of war (1920), 307, 308
- Nathan, Manfred (*The Renaissance of International Law*)  
 international law as 'law', 30–1  
 new issues addressed by, 30–1
- national treatment: *see* Calvo doctrine;  
 equality of treatment/national treatment
- nationalism, 506–20  
 disintegration and collapse of the multinational empires, 506–7, 525–6  
 failure of policymakers to adapt, 508–9  
 State formation following, impact on minorities, 49, 525–6  
 Versailles Treaty and, 508  
 human rights and, 508–9, 510–11  
 nineteenth century nationalism  
   de Visscher on, 524  
   disappearance/banishment by the League, 520–1  
   humanitarian intervention and, 520  
   minority protection and, 520–1, 524–5  
   presupposition of individual entitlements devolvable into society, 524  
   Renan on, 524  
 a vital force and fixated immobility, 508–9
- WWII, impact  
 a chance for ethnic and religious minorities to stake a claim, 506–7  
 from a war between States to a war between peoples, 506–7  
 minorities' and human rights in opposition, 506–7  
 a search for an ideology over and above State and national interests, 521  
 a watershed moment, 10, 507–8
- nationalities principle  
 a 19th-century concept, 19  
 as basis for the dismemberment of the Austro-Hungarian, Russian and Ottoman Empires, 10, 19–20  
 1919 peace settlement embrace of/application as a principle of law, 521  
 definition/features, 19  
 minority protection and, 520–1  
 relationship with self-determination, 19–20, 233–4
- nationality: *see also* stateless persons/refugees  
 codification attempts: *see* nationality and private international law (PIL)  
 definition/features, 505  
   citizenship distinguished, 505: *see also* citizenship  
   interwar change, 508  
   nationalism at the core, 508  
 as individual's sole link with international law pre-League, 513  
 MAT's approach to, 641–2  
 State's right to determine  
   *domaine réservé* principle, 176  
   *Nationality Decrees*, 16, 176, 225, 241, 560  
 women: *see* nationality (married women)
- nationality (married women)  
 continuing conflicts of nationality laws/statelessness risk, 587  
 dual nationality option (Ferrière), 570  
 the problem, 518 n105, 566, 569–70  
   a hot political potato., 565–6  
   risk of statelessness, 566  
 proposed League convention preventing women's loss of nationality on marriage, 568, 569–70  
 abandonment of League's responsibility towards women, 570  
 polarised views on the feminist campaign for, 569–70

## INDEX

- nationality and private international law (PIL), 557–8, 559–64
  - German nationality and marriage laws, 561–3
    - extraterritorial application of, 562
    - impact on nationality as a connecting factor, 562–4
    - retention of German nationality after naturalisation, protests, 562
  - nationality as a connecting factor, disenchantment with
    - extraterritorial application of legal restrictions and disabilities, 563
    - impact of German nationality and marriage laws, 562–4
  - nationality as a connecting factor, perceived advantages
    - Italian reunification and, 562
    - a stable cross-border status, 562–3
  - nationality as a proxy for determining legislative authority, 561–4
  - nationality/status of foreigners, impact on PIL, 557–8
  - parallel applicability of public and private international law, 559–61
    - connecting factors (PIL), potential use/distortion of, 560–1
    - Nationality Decrees*, 560
    - resolution of conflicting nationality laws, 560–1
- natural law/jusnaturalism, 68–9, 74–5, 85–91, 97
  - catholic philosophy, role, 85–6
  - the Covenant and, 42
  - dichotomy between morality and method, 86–7
  - general principles of law (PCIJ 38(3)) and, 87–8, 630–2
  - humanitarian intervention and, 392
  - impact on State conduct/positive law, 86–8
    - diversity of views, 88
    - inclusion of *ex aequo et bono* jurisdiction in PCIJ 38(4), 88
    - inclusion of general principles of law in PCIJ 38(3), 88, 630–2
  - interwar natural law doctrines as
    - abstract construct explaining the foundations of international law, 86–7
  - interwar renaissance/examples of pre-1914 enthusiasm for, 85–6
    - continuing popularity post-1945, 86
  - objective vs subjective justice, 86–7
  - views of
    - Brierly, 86
    - Descamps, 631 n93, 632
    - Maritain, 551 n283
    - Root, 631
    - Scelle, 83–4
    - Stučka, 93–4
- naturalisation of natives in colonial territories, 232
- neutrality, interwar developments in the law of, 297–301: *see also* law of armed conflict and neutrality
  - collective security and, antinomy/implications of the Covenant, 297–8
  - compatibility of Covenant 16 (economic sanctions), 299–300
  - compatibility of Switzerland's League membership with Covenant 15, 299
  - denial of rights of belligerents to interfere with neutral merchant ships, 298
  - general obscurity with regard to naval warfare/the 1909 London Declaration, 298
  - proposed effect of a breach on the Locarno Pact on neutrality, 298
- continuing relevance of neutrality
  - Allied Powers Declaration of Neutrality during the Greco-Turkish War (1919–1922), 299–300
  - for non-members of the League (including the USA), 300–1
  - a pragmatic approach, 299–300
  - SS Wimbledon*, 300
- post-WWII/trust in the UN, impact, 300–1
- 'the most innovative and creative [period] in the history of the law of neutrality' (Neff), 297–8
- Niboyet, Jean-Paulin (private international law), 562, 563, 569, 571–2, 573, 575–6, 579, 580, 585–6: *see also* private international law (PIL) (LoN period)
- Nippold, Otfried (*The Development of International Law*), 29–30
- Nobuaki, Makino, 50–1
- non-intervention principle, development of: *see also* measures short of war; use of force, attempts to regulate between the wars



## Index

- Covenant 15(8) (non-interference of the League in domestic jurisdiction), 14–15, 16, 265–6: *see also* domestic jurisdiction, determining the bounds  
*Nationality Decrees* (1923), 16, 176  
 Japanese intervention in Manchuria: *see* Manchurian incident  
 Latin American mission to protect itself against intervention, 90  
 Spanish civil war, 8–9  
 Nuremberg Tribunal/Charter: *see also* international criminal law  
 crimes against humanity (NC 6(c)), 17–28, 396, 406  
 ‘against any civilian population’, 559  
 personalist conception of rights, 553  
 crimes against peace (NC 6(a)), 22, 396, 400  
 suppression of the Molotov–Ribbentrop Pact, 712–13  
 criticism of, 423–4  
 rushed creation, 423–4, 428  
 equality of belligerents (*Hostage Case*), 297  
 establishment (1945), 394–5  
 Lemkin (group protection) vs Lauterpacht (individual protection), 548  
 reconciling competing demands of justice, law, peace and *realpolitik*, 394–5  
 reservations  
 on retroactivity, 397–8  
 state sovereignty and penal legality, 397–8  
*si omnes* clause, 303–4  
 switching positions on, 428  
 trumping the reserved-domain doctrine, 549–50  
 unrestricted use of submarines, 315–16  
 victors’ justice, 428–9  
 war crimes, 396
- expulsion of aliens, 535–6  
 international law as ‘law’, 26–7  
 international organisations, reluctance towards, 341, 407–8  
 international/municipal law relationship, 132–3  
 nationality, 505  
 PCIJ, 415–16  
 refugees, 538–9  
 social solidarity and international law, connection, 84  
 stateless persons, 513, 533–4, 535–6  
 subjects of international law  
 League, 27  
 ‘not a law for individuals’, 26, 57  
 states, 27
- war  
 applicability of international law, 27  
 ‘measures short of war’, 260–1, 264  
 war crimes use of term/proposal for a court to deal with, 415–16
- pacifism between the wars, 34, 71, 74, 90–1, 100, 286, 316–17, 735  
*pacta sunt servanda*, 31, 81–2, 87, 138  
 Soviet attitude towards, 691, 694–5, 697  
 Palestine (British Mandate)  
 Balfour Declaration (1917), problems caused by, 48–9  
 maintaining order pre-WWII, 48–9  
 Paris Pact (1928): *see* Kellogg–Briand Pact (1928)  
 Pashukanis, Evgeny B.  
 life and career  
 an exile, 68  
 a clash with Stalin’s political priorities/‘liquidation’ (1937), 94–5, 687  
 a highly influential lawyer, 94  
 views on international law  
 as a basis for the use of force by the Great Powers, 694  
 comparison with Korovin, 694–6  
 criticism of Korovin, 695  
 impossibility of reconciling the capitalist and socialist worlds, 696  
 international law as a form of politics and class struggle, 694, 696, 715  
 on the Kellogg–Briand Pact, 707  
*Ocherki po mezhdunarodnomu pravu*, 687, 693–6  
 role of custom, 694  
 ‘social togetherness’, 695  
 Soviet right to impose treaties, 695
- Oppenheim, Lassa  
 overview  
 career, 25–6  
*International Law* (structure/successive editions), 25–6  
 ‘civilised States’, definition/limitation of international law to, 26  
 custom and treaties as sole sources of international law, 26, 27  
 dichotomy between ‘Peace’ and ‘Disputes, War, and Neutrality’, 26  
 doctrinal influence on policy, 74  
 dualism, 27, 132–3

## INDEX

- Pashukanis, Evgeny B. (cont.)  
   treaties (*pacta sunt servanda* vs *clausula rebus sic stantibus*), 694–5  
   Vyshinsky's criticism of, 95, 687–8, 696  
   views on the law, 94  
   *The General Theory of Law and Marxism*, 94
- PCA (Permanent Court of Arbitration)  
   establishment (1899 Hague Conference)/evaluation, 616–17, 687–8  
   procedural norms (1899/1907 Hague Conventions)  
     adoption in the PCIJ/ICJ Statutes and by arbitral bodies, 617  
     applicability to 'questions of a legal nature'/justiciable questions, 617  
     as basis for emerging doctrine of sources (PCIJ 38), 617  
     model rules of procedure, 616  
     numbers and qualifications/background of arbitrators, 72, 616 n13, 619  
     a permanent administrative secretariat, 616  
     respect for law as basis, 617  
     a roster of state-nominated arbitrators, 616  
   procedural norms (1907 innovations), 619–20  
     compromissory clause (Art. 51)/unilateral seizure/competence de la compétence (Art. 53), 620
- PCIJ (overview): *see also* international criminal court; mixed arbitral tribunals (MATs); PCA; sources of international law  
   advisory vs contentious jurisdiction, procedural blurring, 184  
   from dream to actuality  
     an idea long in the making, 620–1  
     Advisory Committee of Jurists (role and composition), 413–15, 622–3  
     Covenant 14 (Council's obligation to formulate a proposal), 14, 621–2  
     longevity/near-identity with the ICJ, 633–4  
     negotiations (February to July 1920), 622–33: *see also* PCIJ (negotiating history)  
   impact on international law  
     as 'an organ/tribunal of international law', 14, 133–4, 633  
     consolidation of jurisprudence/respect for precedent, 124, 115, 634–5  
     customary international law, 635  
     environmental law, 683–4  
     extraterritorial jurisdiction, 634  
     general principles of law, 635  
     limitations on state immunity, 179–86  
     minority protection, 52  
     relationship between municipal and international law, 133–4, 634  
     State responsibility, 370–2, 374–5, 388, 634  
     statistics, 14  
     territorial sovereignty, 172–9  
     treaty interpretation, 634
- PCIJ (negotiating history)  
   advisory jurisdiction  
     alignment of advisory procedure with contentious cases (PCIJ 68), 628–9  
     concerns about compatibility with juridical principles, 627–8  
     a novel idea, 627  
   composition of the Court  
     British/US influence over the outcome, 623  
     a contentious issue, 623–4  
     involvement of both the Assembly and Council, 623–4  
   judges ad hoc, 623, 624  
   numbers and qualifications/background of judges, 73–4, 623–4  
   preponderant influence of the permanent members of the Council, 624  
   selective representation/electoral procedure, 23–4  
   compulsory jurisdiction vs arbitration-type ad hoc consent, 625–6  
   differences of view between Advisory Committee and Council, 625–6  
   the 'optional declaration' solution, 626–7  
   referral by consent of the disputing parties, 621  
   survival of the arbitral consent paradigm, 627
- Pella, Vespasianus: *see* 'international criminal law of the future' (Pella)
- Permanent Central Opium Board, 102, 125 n116
- Permanent Mandates Commission (PMC)  
   Iraq Mandate, role in the termination of, 144–7  
   PMC's techniques/deformalised norms for determining progress towards

## Index

- statehood/independence, 144, 145–6, 147
- personalism, 551–3
- petitions (mandatory peoples): *see also*
  - Mandate System (Covenant 22)
  - an alternative to overt resistance to
    - mandatory rule, 44
  - description of/procedures, 45–6
  - establishment of a formal system (1923), 45–6
  - non-legal status of, 46–7
- Permanent Mandates Commission (PMC)
  - limitations on effectiveness, 46
  - opinions vs judgments, 46
  - refinement of procedures (1925), 46
  - role, 45–6, 245
  - unsettling effect, 46
- statistics, 46–7
- petitions (minorities), 16–17, 51–2
  - right of direct petition, 16–17, 51–2
    - mandate peoples' right of petition
      - distinguished, 51–2
    - procedure, 51–2
  - a simultaneous expressing and silencing of
    - contestations of mandatory rule, 65
- statistics, 53–4
- Phillimore, Lord Walter, 87, 414, 416–17, 591, 622 n51, 623–5
- Poland
  - ethno-nationalism in, 53–4
    - call for universal minorities regime/
      - threat to abandon its 1919 Treaty, 53–4
  - Pilsudski's Sanacja, 53–4
  - German invasion of (1939), 21
  - Peace Treaty (1919): *see* minorities treaties
- Polish Treaty of Peace (28 June 1919)
  - Clemenceau on, 49–50, 507 n28
  - Mandelstam on (1923), 50
  - obligation to conclude (Versailles 93), 49–50
  - Paderewski on, 538 n214
  - signature, 49–50
- Politis, Nicolas
  - career, 73–4
  - a legal sociologist, 84, 84 n87, 135, 515–16
  - views on
    - abuse of rights, 372–3
    - Armenian massacres, 401–2
    - collective security and neutrality, 297–8
    - crimes against humanity, 402, 412–13, 417–18
    - inclusion of *ex aequo et bono* jurisdiction
      - in PCIJ 38(4), 88
    - individual criminal responsibility, 421 n168
    - internationalism, 71
    - Kellogg–Briand Pact (1928), 284–5
    - on legal personality (the individual), 515–16
    - natural law ('people's legal conscience'), 86–7, 88
    - the need for the law of war and
      - neutrality, 293
    - reprisals, 274–5
    - sanctions, 352 n47, 367
    - sovereignty, 89–90, 199 n20, 508–9
    - the state of international law, 427–8
    - State responsibility, 383
    - status of Palestine, 242
  - pollution of the sea by oil (League's role), 665–70: *see also* protection of the
    - marine environment
  - the problem, 665–8
    - from a national to a transnational
      - regional concern, 667
    - pollution/dying seabirds, 665–6
    - reasons for the pollution, 666–7
    - technological change post WWI, 666–7
  - British measures ('polluter pays'/
    - installation of a separator)
  - NGO persistence, 668
  - shipping industry's rejection of, 668
  - League campaign
    - establishment of a special committee, 669
    - 'NGO' approaches, 666–7, 668–9
    - 'NGO' offers of help, 666
  - the legacy, 670
  - special committee
    - draft anti-pollution convention (1935),
      - abandonment, 669–70
    - participation in discussions, 669
  - positivism/will of States as source of law
    - individual in international law, 26, 513
    - challenge to, 513–15, 516
  - jusnaturalism and, 85–9
  - legal sociology and, 82
  - views of
    - Kelsen, 74–9
    - Lauterpacht, 81–2
    - League, 42
    - voluntary positivism and, 71, 74–5, 88–9, 158–9
  - preventive diplomacy, peacekeeping and
    - peacemaking: *see also* collective
      - security; dispute settlement; use of
        - force

## INDEX

- preventive diplomacy, peacekeeping and peacemaking: (cont.)
  - introduction, 340–4
    - factors militating against the League, 341–3, 347–8
    - League's mixed record, 340
    - the new tools (a cooling-off period/collective action), 12 n31, 259, 340
    - a recent triptych/applicability to LoN activities, 340–1
  - conceptualisation for League purposes, 344–8
    - challenges of intemporal international law, 345
    - definitions (*An Agenda for Peace* (1992) (Boutros-Ghali)), 345–6
    - League's broad approach to threats to peace and security, 345
    - retrospective application of modern concepts, 344–5
  - Vilna dispute (1920), 346–8: *see also* Vilna dispute (1920)
- prisoners of war, classification as (HR 1-3)/retention by the 1929 Treaty: *see also* Prisoners of War Convention (1929) (PWC)
  - modest modification in the 1949 Treaty, 308–9
  - restrictive nature, 308–9
  - WWII practice, 308–9
- Prisoners of War Convention (1929) (PWC)
  - background
    - trigger (obsolescence of the Hague Regulations), 305
    - US–Germany Agreement Concerning Prisoners of War (1919), 305
  - continuing validity post-Pact, 296–7
  - drafting history in date order
    - 1923 (draft code on POWs, deported persons and refugees), 329–30
    - Red Cross approval of a draft code (1923), 305
    - ILA Report of the Prisoners of War Committee (1924), 305
    - Red Cross Resolution XV on a code for POWs, deportees, evacuees and refugees (1921), 305
  - implementation issues/approaches to enforcement, 309–10
  - ICRC as the guardian of the protection of prisoners of war, 305, 310
  - League, a possible role, 310
  - key provisions/updates of the 1906 Convention, 23
  - prohibition of reprisals and collective penalties: *see* reprisals (prisoners of war)
  - repatriation of prisoners of war: *see* repatriation of prisoners of war
  - representatives of prisoners of war (PWC 43-44), 23–4
    - work of prisoners of war (PWC 27–34), 23–4
  - protecting powers (PWC 86), 311–12: *see also* protecting powers (prisoners of war)
  - representatives of prisoners of war (PWC 43-44), 23–4
- private international law (PIL) (LoN period): *see also* Hague Conference on Private International Law
  - overview
    - a lost period in the history of PIL, 556
    - a post-WWII shrinking of the field, 587
    - a treasure trove of lessons to be learned, 587
  - connecting factors
    - from nineteenth century universalism to protectionism/nationalism and back again, 561–2, 586
  - Niboyet, 585–6
  - personal (nationality) vs territorial, 561
  - resurgence of universalism, 586
- the League (codification failures/causes), 558, 564–70
  - cross-border family maintenance, 558, 567–8
  - Hague Conference, potential for conflict, 566, 568, 569–70
  - married women's nationality, 568–70
  - PIL's reliance on the Hague Conference/Pan-American conferences, 365, 558
  - promise as an alternative to the Hague Conference, 558, 564–5
  - unification of nationality rules, 566
- Niboyet, views, 562, 563, 569, 571–2, 573, 575–6, 579, 580, 585–6
  - advocate of the territorial principle, 563
  - choice of law clauses, 575–6
  - conflation of recognition of the state and recognition of government, 571–2
  - 'fatal ideologies' of the peace treaties/the League, 586

## Index

- the impact of German nationality and
  - marriage laws, 562
- internment of aliens domiciled in
  - France, 576
- mixed arbitral tribunals, 579–80
- nationality and marriage, 569
- opposition to, 582
- Soviet denationalisation decrees, 573
- the stateless, 576
- nineteenth century theorising/focus on
  - state sovereignty, jurisdiction and choice of law, 555–7: *see also* private international law (PIL) (revisiting nineteenth-century focus on sovereignty)
- interwar use of, 557
- private/public international law
  - relationship
    - Beckett's view, 556–7
  - current ignorance of both public and private international lawyers, 556
  - 'two branches of one science' (Jitta), 27
- reconciling PIL theories and geopolitical events, 557, 558–9, 563, 587
- scope
  - Beckett on, 555, 585
  - complexities of individuals' transnational existence, 585
  - Nouvelle Revue* (1946), 585
- settling the boundaries (Beckett), 555–6
- distinguishing politics and diplomatic relations from law, 555
- focus on interpersonal rather than interstate relationships, 558
- the key issues, 555–6
- scope of PIL/technical character, 555, 585
- private international law (PIL) (LoN period)
  - (international justice responsibilities), 576–83
- the issue, 576–7
- vested rights post WWI, 577–9
  - application of foreign law and, 577
  - Arbitral Tribunal for Upper Silesia and, 577
  - challenging the Mexican and Romanian agrarian reforms, 577
  - diversity of views on, 577–8
  - a fundamental principle of public international law (Lauterpacht), 578
  - mandate system respect for, 577
- private international law (PIL) (revisiting nineteenth-century focus on sovereignty), 570–6
- the issues
  - conflicts of sovereignty/state laws vs conflicts of norms from different legal systems (Arminjon), 574–5
  - a 'private human law' or a testing ground for sovereign authority (Zeballos), 570–1
- grounds for challenge (Arminjon)
  - failure to address the problem of multiple legal systems in a single state, 575, 583–6
- failure to make sense of capitulations and extraterritorial privileges, 575, 683–4
- non-correlation between states and legal systems, 574
- non-state actors' role, 575–6
- too sharp a divide between territorial and personal connecting factors, 574–5
- recognition of Soviet Russia and the public policy exception, 571, 572–3
- denationalisation of Russian émigrés, 573
- divided views, 572–3
- expropriation of property located or brought abroad, 572–3
- mandated territories, complexities, 571, 572–3
- state recognition, applicability of PIL in the absence of, 574
- comity vs *lex loci/lex contractus* as basis for the application of foreign law, 572
- French vs German views, 571–2
- protecting powers (prisoners of war)
  - effectiveness of neutral powers' role pre-1919, 311–12
- formalization (Prisoners Code 1929, Art 85), 311–12
- dependence on a sufficiency of neutral States, 311–12
- protection of the marine environment, a neglected cause, 197–8: *see also* pollution of the sea by oil (League's role)
- proposed League Conference for the conclusion of a Convention on Pollution of the Sea by Oil (1937), 197–8
- Washington Conference on Vessel-Source Pollution (1926), 197–8

## INDEX

- protectorates, 176
  - colonies distinguished, 225–6: *see also* colonies
  - mandates distinguished, 44, 226, 240–2, 243–4: *see also* Mandate System (Covenant 22)
  - Nationality Decrees*, 16, 176, 241, 560
  - requirements
    - agreement between the protecting and the protected State, 225
    - agreement with local chief on conduct of external relations, 225
    - a prior form of sovereign organisation, 225
    - protecting State's powers and obligations, 225
  - sovereignty, 248
    - title (*ius nudum*) and exercise of functions (*ius exercitum*) distinguished, 239, 243–4, 248
  - thwarted plans for
    - Britain's support for Iraqi independence, 144–5
    - League plans for Ethiopia, 62–3
  - public policy exception: *see* private international law (PIL) (revisiting nineteenth-century focus on sovereignty)
- racial equality: *see also* equality; minority protection
  - Japan, treatment of, 50–1, 53
  - Nobuaki's racial equality clause proposal (1919), 50–1
  - opposition to, 50–1
    - Britain and France, 53
  - as premise of the new global order, 2–3
- racism in the colonies, 583
- recognition of belligerency: *see* belligerency (insurgency and civil wars), recognition of
- Red Cross (ICRC) (introduction): *see also* Red Cross (ICRC) conferences; Red Cross (national Red Cross organisations) (Covenant 25). Reference should also be made to subject headings related to armed conflict and neutrality including in particular, Geneva Conventions. establishment (1863), 6–7
- peacetime role, uncertainties as to, 311–12
- professionalisation, 311–12
  - as substitute for the protective powers, 311–12
- Red Cross (ICRC) conferences
  - 1912 (9th Conference), failure to overcome insistence that insurrection and civil war were purely domestic matters, 330
  - 1921 (10th Conference)
    - affirmation of the right of civil war/insurrection victims to receive assistance, 330–1
    - call for new convention on POWs and deported persons, evacuees and refugees, 329
    - suppression of the *si omnes* clause, 303–4
  - 1923 (11th conference), call for a convention on civilians fallen in the power of the enemy/encouragement to belligerents to take account of principles of humanity, 329
  - 1925 (12th Conference), resolution on rights of enemy aliens, 329
  - 1930 (14th Conference), tasking of ICRC with the preparation of a convention on enemy civilians in belligerent territory, 329–30
  - 1934 (15th Conference)
    - changing terminology, 295–6
    - Tokyo draft convention on protection of civilians of enemy nationality in the territory of a belligerent, 329–30
  - 1938 (16th Conference), Resolution calling for concentration on the application of humanitarian principles in times of civil war, 335–6
- Red Cross (national Red Cross organisations) (Covenant 25), 312
  - expansion of activities during peace time, 312
  - intervention on behalf of political detainees post-WWII, 330
  - League of Red Cross Societies (1919), 312
  - role in civil wars, 330–1
- refugees: *see* stateless persons/refugees
- religious freedom, 16, 230
- Renan, Ernest (on nationalism), 524
- reparation (for breach of an international obligation), 383–7: *see also* reprisals (compatibility with the Covenant); State responsibility

## Index

- acceptance of the principle
  - Factory at Chorzów* (Jurisdiction/Merits), 383–4
  - Hague Codification Conference (1930), 384
  - Spanish zone of Morocco claims*, 383–4
- Anzilotti on, 364, 384
- from reparation to sanction, 384–5
- Ago on, 385–6
- early emphasis on breach of obligation/reparation/protection of sovereignty link, 384, 386–7
- Kelsen's view of reprisals as sole response to breach of an international obligation, effect, 385–6
- Lauterpacht on, 385–6
- link between reparations and reprisals, 385
- reconciling the two, 386–7
- turn to link between breach of an obligation and sanction, 384–5
- repatriation of prisoners of war, 306–8
- exchange of prisoners distinguished, 307–8
- HR 20, limitations
  - 'conclusion of peace' requirement, 306
  - dependence on *ad hoc* agreements on the modalities of the repatriation, 306
  - misapplication of 'reciprocity' requirement, 307–8
  - practical and political obstacles to implementation, 306–7
  - repatriation of Bulgarian prisoners in Greece as an example, 308
- Prisoners Code 1929 provisions (Art 75), 308
- reprisals (compatibility with the Covenant), 12 n31: *see also* Kellogg–Briand Pact (1928), 'recourse to war' (Art 1)/'pacific means' (Art 2); measures short of war
- armed reprisals, 8–9, 263–4
  - Corfu incident (1923), 267–76: *see also* Corfu incident (2 August 1923), Special Committee's conclusions, reactions
  - examples of League reactions to, 272–3
  - threat of war (Covenant 11(1)) distinguished, 353
- link with reparations for breach of State responsibility, 385: *see also* reparation (for breach of an international obligation)
  - Naulilaa* (1928), 221, 385, 386–7
- reprisals (prisoners of war), prohibition of reprisals and collective penalties (1929 Prisoners Code) (Arts 2, 11 and 46), 23–4
- Roosevelt Corollary (1904), 280–2
- Roosevelt, Franklin D
  - an internationalist but America first, 492
  - Atlantic Charter and, 495–6
  - attitude to the London Conference (1933), 491–2
  - equality of states, 192
  - Good Neighbour Policy, 734
  - New Deal, 11
  - taking the US off the gold standard, 492–3
- Root, Elihu, views on
  - an 'international standard of justice . . . of such general acceptance by all civilised countries', 451
  - codification of international law, 421
  - general principles of law, 88
  - humanitarian interventionism, 731
  - innocent passage of warships (*North Atlantic Coast Fisheries*), 202
  - international criminal court, 414–15, 621 n45
  - the law of war, 301
  - natural law, 627, 631
  - PCIJ Statute (as a member of the Advisory Committee), 621, 623–5, 627, 631
  - use of gases, 318
- Saar basin, League's administration of (1920–1935), 355–7
- Saavedra Lamas Anti-War Treaty (1933), 22 n76, 257–8
  - an opportunity for Latin American engagement with the League, 718
- a distancing from the AAIL and Pan-American movement, 720
- domination of the Montevideo Conference, 735
- endorsement of absolute non-intervention principle, 735–6, 741–2
- post-Montevideo hostility of the AAIL Executive Committee, 741–2
- promotion by Saavedra Lamas before the League, 735–6
- as response to the Chaco War (1932–1935), 735–6
- signatories, 735–6
- territorial acquisition by force, exclusion, 171–2



## INDEX

- Saavedra Lamas, Carlos  
 absolutist approach to non-intervention,  
     730–1, 735–6  
 central role at Pan American Montevideo  
     Conference (1933), 730–1  
 Nobel Peace Prize (1936), 736  
 a pacifist, 735  
 a pluralist, 730–1  
 withdrawal from AILL codification  
     projects/criticism of US hegemonic  
     leadership, 735–6
- Salter, James Arthur (Head of the EFO), 105,  
     141 n44, 159, 484–5
- Sarasin, Paul (1856–1929) (Swiss  
     environmentalist), 652, 653–5
- Scelle, Georges, 2  
 career, 73  
 as leading legal sociologist, 83–4  
 on monism, 79  
 on role-splitting (*dédoulement fonctionnel*),  
     79
- Schmitt, Carl  
 extraterritoriality, endorsement of, 167–8  
*Großraum*, 168  
*jus publicum Europaeum*, lament for the  
     decline of, 42–3, 189–90  
 justiciability of all disputes/  
     interrelationship between law and  
     politics, 80–1  
 law of war, 12–13, 42–3  
 Nazi association, 91 n128  
 opposition to liberalism, 92  
*Political Theology*, 167  
 sovereignty, 69, 89, 91–2, 168–9  
     extraterritorial jurisdiction and, 189–90  
     opposition to the League and, 179–80,  
     189–90  
*The Concept of the Political/Political Theology*,  
     91, 167  
 universality of international law, 714  
 scholarship: *see* international law scholarship  
     between the wars
- Schücking, Walther and Hans Wehberg (*Die  
     Satzung des Völkerbundes*), 262
- Schwarzenberger, George  
 on civilisation/civilised states, 449  
 on the Corfu incident, 271–3  
 ideology, 75, 96 n155  
 on international criminal law/war crimes,  
     391 n7, 393 n18, 424  
 on the protection of civilian persons, 328  
 on state responsibility, 379  
 on territorial title, 174–5
- Scott, James Brown  
 AILL co-founder (1912), 70, 722  
 on an international prize court, 619 nn29  
     and 30  
 codification of American international law,  
     role, 726–34  
     an elitist and technocratic approach, 731  
     proposal for an alternative to AILL,  
     741–2  
 on the *Déclaration des droits internationaux  
     de l'homme* (1929), 411–12  
 Declaration of the Rights and Duties of  
     Nations (AAIL) (1915), 727–9, 730–1  
 on the human rights of the individual,  
     411–13  
 on [humanitarian] intervention, 729–31,  
     732, 741–2  
 Mandate System (AAIL Resolution VI) and,  
     248  
 on the PCA, 616  
 on a permanent court of international  
     justice, 397–8, 621 n45  
 on sovereignty, 397–8  
 tensions with Alejandro Alvarez, 718, 727,  
     728–9, 731
- sea, law of: *see* law of the sea
- Secretariat  
 civil service status: *see* international civil  
     service  
 evaluation  
     ‘a new model army’, 109  
     ‘a site of political imagination’, 108  
     status of the Council and the Assembly  
     distinguished, 108  
 experts, scope for employment of  
     belief in the potential of science to  
     identify objective solutions to  
     social and political issues, 107  
     a benefit of permanent League  
     employment, 106, 107  
     benefits to the experts, 107  
     disadvantages, 107  
 impartiality, crucial importance of, 108  
     a benefit of permanent League  
     employment, 106  
     Committee of the Thirteen’s report on,  
     106–7  
     Italian challenge to, 106–7  
 institutionalisation of international law  
     and, 119  
 permanence, 104–9  
     ‘a skeleton organisation’ vs ‘a  
     permanent bureaucracy’, 108–9

## Index

- advantages, 106, 127
- essentiality to the success of the
  - League's regular and emergency functions, 184
- from exponential growth in numbers to bare bones, 108–9
- as only truly 'permanent' organ of the League, 104–5, 127
- pre-WWI *Zweckverbände* distinguished, 105, 109
- Secretary General ('a cross between an international statesman and an international civil servant'), 108
- self-determination of peoples
  - Åland islands (status of the principle), 20, 188, 226, 702
- applicability to both minorities and colonies, 10–11
- as basis for the dismemberment of the Austro-Hungarian, Russian and Ottoman Empires, 10, 19–20
  - a selective approach, 508–9
- definitions
  - Lenin/Soviet Union, 10–11, 19
  - Wilson's Fourteen Points (Points 9–13), 19–20, 164–5
- mandate system and, 19–20
- nineteenth century concept (nationalities principle), 19–20, 233–4: *see also* nationalities principle
- Soviet approach to: *see* Soviet approaches to international law, self-determination, right to
- Sèvres, Treaty of: *see* international criminal law, prosecution of 'massacres' committed in parallel with the war (Sèvres)
- Shawcross, Sir Hartley, 549–50
- slave trade/slavery: *see also* trafficking of stateless refugees; trafficking of women and children
- abolition, 6–8, 17
- Ethiopia's admission to the League and, 61
- League supervision of treaties relating to (Covenant 23(c)), 112–13
- Smuts, General Jan Christian
  - on Council membership, 103
  - on mandates, 45, 143 n50, 236
  - on minorities, 49, 143
  - on mundane permanence, 104–5, 106
  - role in drafting the Covenant, 475
- social cooperation: *see* international cooperation under the League
- sources of international law
  - acceptance of PCIJ 38(1) as an authoritative statement of/objections to, 629–30
  - a constitutive influence on concept of international law, 629–30
  - 'common consent' (Oppenheim/Hicks), 26–7, 28
  - consent 'express ... or customary', 31
  - custom (PCIJ 38(2)/requirements), 630
  - equity: *see* equity as a source of international law/*ex aequo et bono* jurisdiction (PCIJ 38(4))
  - general principles of law: *see* general principles of law recognised by civilised States (PCIJ 38(3))
  - judicial decisions (PCIJ 38(d)), a subsidiary means, 632–3
  - 'juridical community of mankind' (Jitta), 27–8
  - 'moral feelings of mankind', 31–2
  - 'positive or conventional'/'original' (Fischer Williams), 31–2
  - treaties, 26
- South West Africa (South African mandate), 45, 46–8: *see also* Mandate System
- class C status, 237, 238
- independence (as 'Namibia'), 241
- International Status of South West Africa*, 236
- Legal Consequences*, 234, 244–5
- South West Africa Cases*, 235, 244, 245
- South West Africa, Second Phase*, 233
- SWA/Angola boundary, Portugal–South Africa agreement on, 249
- sovereignty, 88–97, 162–95: *see also* Mandate System (Covenant 22), sovereignty issues; territorial sovereignty, acquisition/respect for
- approaches to: *see also* Soviet approaches to international law
  - French sociologists, 90–1
  - Latin America, 90
  - liberalism and, 91
  - Soviet legal theorists, 69, 89, 92–6
  - voluntarist positivism and, 88–9, 97–8, 165
- conceptualising, 163–9
  - from absolute internal sovereignty to external limited sovereignty, 163–4, 168–9
  - from a political to a legal concept, 164, 165–6
  - 'jurisdiction', 'territory' and 'sovereignty', a conceptual and

## INDEX

- mutually interdependent triangle, 162, 163–4, 167–9, 177, 194
- nineteenth century (Borodin), 163–4
- post-WWI: *see* post-WWI/League developments *below*
- pre-WWI (colonial powers' sovereignty vs limitations on colonies and suzerain states), 165–6
- pre-WWI (focus on a state's capacity to wage war), 164
- constraints: *see* sovereignty, vertical limitations
- post-WWI/League developments
  - collapse of empires/emergence of small 'equal' states, impact, 164
  - as 'competence' vs 'prerogative', 89–90, 91, 164–5
  - limitation of criticism to absolute versions of, 89–91
  - mischaracterisations of classic doctrines, 89–90
  - post-WWI attack on, 89–91, 508–9
  - protecting sovereignty horizontally/structured vertical limitation, 169–86
  - recognition of inseparability of internal and external sovereignty, 165–6
  - Wilsonian right to self-determination, impact, 164–5
- statelessness and, 533
- views of
  - Anzilotti, 90
  - Bodin, 163–4
  - Brierly, 86, 89–90
  - de Visscher, 169
  - Duguit, 89–90
  - Hegel, 89, 95, 164
  - Kelsen, 90, 166
  - Kelsen/Schmitt, difference between, 91–2, 168, 179–80
  - Korovin, 92–3
  - Lauterpacht, 81–2, 90, 179–80
  - Politis, 89–90, 199 n20, 508–9
  - Scelle, 91
  - Schmitt, 69, 91–2, 168–9, 179–80, 189–90
  - Verdross, 89
  - Vollenhoven, 34
  - 'Wilsonian sovereignty', 44, 46, 54, 55
  - Yepes, 90
- whaling and, 662
- sovereignty, vertical limitations, 16, 179–86: *see also* League of Nations (LoN), international status; territorial sovereignty, acquisition/respect for
- introduction
  - acknowledgment of the impossibility of an unrestricted *domaine réservé*, 179
  - impact of the establishment of the League on the concept of 'absolute sovereignty', 29, 179
  - internationalists vs sovereignists, 180–1
  - customary international law limitations
    - cooperation of riparian states obligation, 185–6
    - freedom of navigation, 184, 185
  - status of the League/international organisations, 180
  - Competence of the ILO*, 180
  - functional jurisdiction (international organisations), 183, 185–6
  - PCIJ's avoidance of a principled answer, 180
  - performance of sovereign functions
    - delegated by member states, 186
- treaty limitations
  - acceptance of limitations and
    - abandonment of sovereign rights distinguished, 181
  - Exchange of Greek and Turkish Populations*, 182
  - restrictive interpretation, circumstances justifying, 181–2, 185
  - River Danube* case, 181–4, 185–6, 194
  - River Oder* case, 181–2, 184–6, 194
  - sovereign right to enter into
    - international engagements/obligation to respect, 181, 182, 194
  - The Wimbledon/Versailles* 380 and 381 (Kiel Canal), 181, 182, 184, 140
- Soviet approaches to international law: *see also* Korovin, Evgeny A.; Lenin, Vladimir; Pashukanis, Evgeny B.; Vyshinsky, Andrey
- forging a new approach post-1917, 10–11, 92–7, 686–9
  - a ferocious academic and political struggle, 687–8
  - focus on equality of states, 10–11
  - a form of politics and class struggle, 661–2, 686, 694, 696, 715
  - the historical dynamic/'transitional period', 95–7, 687–8, 689–92
  - ideological foundations, 10, 686
  - [im]possibility of reconciling the capitalist and socialist worlds, 96, 686, 688, 696–7, 714

## Index

- Marxist-Leninist principles as basis, 10–11, 697–8
- practice and rhetoric distinguished, 705
- a proponent of new interpretations, 689
- prospects for alternative directions, 686
- right to intervention in support of the working class, 11
- self-determination: *see* self-determination *below*
- Soviet claim to leadership of the democratic world, 713–14
- a Soviet international law?, 93, 688–92, 696–7
- a Soviet ‘subsystem’?, 687, 692, 696–7, 714
- treaty practice: *see* treaty practice *below*
- understanding the process, importance of, 688–9
- universality of international law, 95, 689–90, 714
- a ‘withering away’ of the capitalist world, 93, 687–8, 700
- international arbitration and judicial settlement
  - caution/distrust, 704–5
  - failure to honour concession agreement commitments to arbitration (*Lena Goldfields*), 704–5
  - refusal to participate in PCIJ proceedings (*Eastern Carelia*), 690, 704
- post-1917 developments, 697–705
  - abolition/nationalisation of private property without compensation, 18–19, 697–8
  - civil war (1917–1922), 698, 700–1
  - Comintern, formation (1919)/relationship with the Soviet government, 700
  - formation of the USSR (1 January 1923), 698–9
  - imperialistic and aggressive goals in Central Eastern Europe, 686
  - mass exodus including leading international lawyers, 699
  - recognition of ‘marginal’ states, 698
  - recognition of the USSR, 700–1
  - repudiation of foreign debt without compensation, 699–700
  - USSR, constituent elements, 700
- self-determination, right to, 701–3
  - colonies, 10–11, 702–3
- Declaration of the Rights of the Peoples of Russia (1917), 701
- minorities, 10–11
- recognition of right/immediate resovietisation, 702
- Soviet treaties providing for, 701–2
- treaty practice
  - [dis]continuity of old treaty relations, 704
  - publication of secret tsarist treaties, 703
  - Soviet right to impose treaties, 695
  - status of treaty establishing the USSR, 598–9
  - treaties (*pacta sunt servanda* vs *clausula rebus sic stantibus*), 11, 691, 694–5, 697, 715
  - unequal treaties, 703–4
- Soviet membership of the League (1934–1939)/approach to collective security, 706–14
- active participation in debates, 710
- admission to the League
  - ‘a somewhat idiosyncratic procedure’, 709–10
  - an act of political balancing, 710
  - context (departure of Germany and Japan from the League), 709
- Convention for the Definition of Aggression (1933), 707–9: *see also* aggression
- criticisms of the League/reasons for joining, 710
- expulsion from the League, factors contributing to
  - Molotov-Ribbentrop Pact (August 1939), 179, 706, 711–13, 715
  - Soviet–Finnish War (1939–1940), 712
  - Tehran (1943) and Yalta (1945) conferences, 713
  - a wise decision or not?, 713
- Spanish Civil War (1936–1939)
  - collective measures against submarine attacks, 315
  - impact on Spanish scholars, 85 n92
  - Mexican initiatives, 718
  - non-intervention principle, 8–9, 332, 335–6
  - protection of civilians against air attacks, 327
  - recognition of belligerency and, 331–2, 334, 335, 738–40
- standard of treatment of aliens, overview, 450–5: *see also* equality of

## INDEX

- treatment/national treatment; fair and equitable treatment of aliens; minimum international standard of treatment
- codification efforts
  - areas of agreement, 451
  - Draft Convention on the Treatment of Foreigners (1929), 412–13, 438, 446, 448, 490
  - fundamental differences of view ('too far' vs 'not enough')/failure, 446–7, 448
  - Hague draft Convention on State Responsibility on Damage to Foreigners and their Property (1930), 448
  - 'serious divergencies' of understanding/failure to conclude Paris/Hague draft Conventions, 446–7, 448
- the key divide (sufficiency of equality (municipal law) vs an international standard), 450–3
- state responsibility and, 362–3, 366–7, 369, 372–6, 388
- 'State'
  - for purposes of State responsibility, 380–3: *see also* State responsibility (progressive recognition as an autonomous field of international law), attribution of responsibility
  - as a subject of international law, 381–2, 387–8
  - 'territory, population, government and sovereignty', life before, 1
- State organs, attribution of responsibility to, 377, 381–2, 387–8: *see also* state responsibility (attribution) ('State' for purposes of)
- State responsibility: *see* reparation (for breach of an international obligation); state responsibility (introduction/conclusions); state responsibility (attribution) ('State' for purposes of); state responsibility (codification/alternatives to); state responsibility (Covenant); state responsibility (general conditions); state responsibility (progressive recognition as an autonomous field of international law); state responsibility (Versailles 231 (imposition on Germany of obligation to pay damages for loss and damage caused by the war))
- state responsibility (introduction/conclusions), 362–5, 387–8
- arbitral tribunals and claims commissions decisions, arbitral tribunals and claims commissions, 362–3
- early 20th century developments, 362, 372–3: *see also* State responsibility (progressive recognition as an autonomous field of international law)
- an instrument for protecting State sovereignty, 363
- contributory factors (PCIJ case-law/attempts at codification), 364–5, 369–70
- Corfu incident (1923), 368
- disappointment with League's role in preserving peace, 364
- focus on responsibility for damages to the person and property of aliens, 362–3, 369, 372–4
- growing importance with the development of international trade, 369, 372–3
- link with concern for the enforcement of international law, 363–4
- modest theoretical advances vs crucial consolidation of the basic principles and operative rules, 387–8
- as part of the interwar effort to 'broaden, widen and extend the law governing inter-State relations, 362–3
- a profound change of environment, 364
- rejection of State sovereignty as impediment to punishment, 364, 366–7
- reparation as sole consequence of responsibility, 363
- separation of responsibility from law enforcement, 363
- treatment as a sub-field of the treatment of aliens, 362–3
- Triepel and Anzilotti as important pioneers, 362–3, 372–3, 387–8
- a period of great advances/reasons for focus on, emphasis on the systemic importance of (Hague Codification Conference/Basdevant), 363 n5
- state responsibility (attribution) ('State' for purposes of), 380–3

## Index

- autonomy of international law vs exclusive
  - role of domestic law, 381–2
- Hague Codification Conference (1930)
  - (consolidation of rules), 381
- Latin American approach to, 380–1
  - ultra vires* acts, divided views, 380–1, 447
- recognition of a unitary conception of the State, 382–3
- State organs
  - de facto* organs/individuals, 381–2
  - for *ultra vires* acts, 380–1, 447
  - unitary conception of the State and, 382–3
- Triepel's influence, 381–2
- state responsibility (codification/alternatives to), 388
- Hague Codification Conference (1934), 369–70
  - an important record of States' positions/consensus on a number of general principles, 369–70
  - a fatally-split committee on the minimum standard of treatment, 369
  - limitation to responsibility for damage to the person or property of foreigners, 369
- PCIJ, 370–2, 374–5, 388
  - acknowledgment of the existence of principles and rules of responsibility, 370–1, 374–5
  - on the conditions and consequences of responsibility, 371–2
  - Factory at Chorzów*, 371, 374–5
  - Phosphates in Morocco*, 371–2, 376
  - pride of place to disputes concerning (PCIJ 36), 370–1
  - a shift from conferences to courts, 370
  - inappropriateness of codification (Kaufmann), 370
  - a wealth of arbitral tribunal/claims commission decisions, 370
- state responsibility (Covenant)
  - collective security (Covenant 10-17), 367–8
  - armed reprisals, effect on, 367–8
  - a 'communitarian dimension' to the law of State responsibility (Covenant 16)?, 367–8
- League as a forum for multilateral diplomacy, 368–9
- state responsibility (general conditions)
  - abuse of rights: subjective vs objective view, 379–80
  - the arguments, 379–80
  - Certain German Interests in Polish Upper Silesia*, 380
  - a limited impact on practice and case law, 380
  - a reflection of the underlying differences over international solidarity and State sovereignty, 379
- an autonomous conception vs domestic analogies, 376–80
  - the arguments, 376–7
  - PCIJ/IDI and Hague Conference agreement on breach of international obligation as the origin of responsibility, 376
- fault: subjective vs objective view, 377–80
  - dearth of State practice/judicial decisions, 377–8, 379
  - opposition to the objective view, 379
  - a reflection of differences over the role of domestic analogies, 379
  - support for the objective view/a trend away from fault, 378–9
- state responsibility (progressive recognition as an autonomous field of international law), 372–6: *see also* reparation (for breach of an international obligation); State responsibility (introduction/conclusions), a period of great advances/reasons for focus on
  - from a focus on the treatment of aliens to the determination of general principles, 372–3, 388
  - balancing the two/differences of perspective, 373–4
  - distorting effect of the continued privileging of the treatment of aliens, 375–6
- international legal personality and, 382–3
- key developments
  - Hague Codification Conference (1930), 374–5, 376
  - IDI's 1927 resolution on international State responsibility, 374, 376
  - PCIJ jurisprudence, 370–2, 374–5, 376, 388
  - treatment in the Treaty of Versailles/PCIJ Statute, 374–5
- risk of the ILC 'revolution' obscuring the interwar achievements, 372
- views of
  - Basdevant, 378–9

## INDEX

- state responsibility (progressive recognition as an autonomous field of international law) (cont.)
  - Kelsen, 378
  - Lauterpacht, 378
  - Triepel vs Anzilotti, 377
- state responsibility (Versailles 231 (imposition on Germany of obligation to pay damages for loss and damage caused by the war)), 365–7, 374–5
- choice of ‘responsibility’ as basis rather than ‘war indemnities’, 365
- factors contributing to, 366–7
- limitation of reparation obligation to acts clearly contrary to international law at the time, 366
- a novelty, 366–7
- reparations as war indemnities based on peace treaty, 366
- Verdross, 374, 382
- controversy, a correct application of general principles of responsibility to an unjust war, 365–6
- difficulty in determining the parameters, 365–6
- impact on the law of State responsibility, 366–7
- statehood (mandate/minority systems)
  - from non-state to state, pathway, 143
  - PMC’s development of techniques/deformalised norms for determining progress, 144, 145–6, 147
- stateless persons/refugees, 531–44: *see also* minorities, refugees and human rights in the interwar years, overview; minorities treaties; minority protection
- contributory factors
  - advent of nationalism, 506–7, 508–9
  - dismemberment of the Austro-Hungarian, Russian and Ottoman Empires, 531–2
  - Jewish refugees from Germany, 533
  - Russian civil war, 16–17, 533
- Convention on Conflict of Nationality Laws (1930) (Protocol on statelessness), 14
- definition/features
  - absence of a tangible link to a State, 510
  - IDI Resolution (1936) (Statut juridique des apatrides et des réfugiés), 531
  - n165
- lack of status as a self-standing category,
  - effect on individual’s rights, 516
  - n90
- ‘unwilled consequences of wartime dislocation’, 510
- as ‘least-favoured nation’, 531–3
- Arendt on, 531–2
- Oppenheim/Hammarskjöld on, 512–13
- Nansen certificate, 533–6, 538–41: *see also* Nansen certificate
- protection, impediments
  - complexity of the issues, 532
  - League/secretary general’s unwillingness to engage proactively, 534–5
  - misconception of refugee dynamics, 534
  - omission from the Covenant, 532
  - sovereignty/nationality issues, 533
  - status of the individual, 512–13
- the regime, 534–7
- statistics, 533
- terminology (evolution from twin categories to separate regimes), 531 n16, 5
- trafficking of, 533–4
- Stimson doctrine, 21–2, 58, 171–2, 283–4, 368–9
- straits, navigation rights, 197, 218–21, 222
- continuing applicability of ‘long-standing international conventions’ (UNCLOS 35(3)), 217–18
- examples, 217–18
- Montreux Treaty (1936) (Turkish Straits), 219–21
- continuing importance, 221
- different situations/different rights, 220
- merchant vessels (Section I), 220
- as a response to Turkey’s dissatisfaction with the Lausanne Peace Treaty provisions, 219
- strategic and geopolitical importance of the Straits, 219–20
- warships (Section II), 220
- Strupp, Karl
  - abuse of rights, 380
  - Corfu incident, 267, 271–2
  - MATs’ competence, 638–9, 641, 643
  - protection of the civilian population against aerial warfare, 321, 325
  - recognition of belligerency, 331
  - reprisals in time of peace, 367, 387
  - state responsibility, 374, 377 n58
- Stučka, Pēteris L. (Soviet lawyer), 93–4



## Index

- subjects of international law other than states, 31: *see also* individual as a subject of international law
- Holy See, 31
- League, 27, 31
- submarine warfare, 23, 290, 313–16
- Sweden: *see* Åland islands regime
- Switzerland, compatibility of neutral status with League membership, 299
- Syria, French Mandate, maintaining order in (1925–27), 48
- technological developments, challenges for the law of armed conflict, 312–22: *see also* asphyxiating gases/chemical warfare; civilian persons, protection of (aerial warfare)
- examples
  - aerial bombing, 313–14
  - asphyxiating gases/chemical warfare, 23–4, 60–1, 310, 313–22
  - automation and mechanisation of warfare, 312–13
  - motorisation of transport, 313–14
  - submarine warfare [against merchant ships], 313–16
  - use of chemical agents [in combination with aerial bombardment], 299, 316–17
- not a new problem, 312–13
- scientific and technological knowledge as aggravation rather than a mitigation, 313
- ‘terminological determinism’, 313
- Telegraph Union (TU), 110
- territorial sea (general), 198–206
  - adoption of term (Hague Codification Conference (1930)), 197 n6
  - continuing absence of agreement on the breadth of the sea and delimitation methods, 221
  - critical nature of the distinction between the territorial sea and the high seas, 197, 198–9, 221
- territorial sea, breadth (a disputed issue), 202–3
  - absence of rules a serious deficiency, 202, 206
  - contiguous zone complications, 203
  - from three miles to eighteen (Hague Codification Conference (1930)), 202–3
- Gidel on, 203 n41
- three miles (Harvard, IDI and Association de Droit International du Japon drafts), 202
- territorial sea, delimitation, 204–6
  - absence of rules/a crucial issue, 204, 206
  - Grisbadarna* (1909), 204 n46
  - median-line system, potential for inequity/remedies, 205–6
    - delimitation on a case-by-case basis by agreement (Storni), 205
    - median-line system as the general rule adjusted as necessary (Gidel), 205–6
  - median-line system, a preference for codification projects, 204–6
  - scholarly support, 205
  - treaties providing for, 204
- territorial sea, sovereignty over, 199–200
  - extension to the airspace above and the seabed/subsoil under, 199–200
- Hague Codification Conference (1930), Second Committee Report, 199–200
- Harvard Draft on the Law of Territorial Waters (1929), 199–200
- IDI *Projet de règlement relatif à la mer territoriale en temps de paix* (1928), 199–200
- innocent passage, 200–2: *see also* innocent passage
- Japanese branch of the ILA Draft (1928), 199–200
- territorial sovereignty, acquisition/respect for, 169–79: *see also* sovereignty, vertical limitations
- interwar development of the principles/collapse in the thirties, 14–15, 162–3, 179
- cession
  - ceding state’s right to exercise sovereign rights until the date of actual cession, 177
  - definition, 173
  - dependence of title on the validity of the original title, 173
  - dependence of transfer of sovereignty on entry of treaty into force, 173–4
  - as a transfer of jurisdiction, 173
- cession (jurisprudence)
  - Certain German Interests in Polish Upper Silesia* (1926), 174
  - Factory at Chorzów (Merits)* (1928), 174
  - Iloilo Claims* (1925), 173–4

## INDEX

- territorial sovereignty, acquisition/ respect for (cont.)  
     *Island of Palmas* (1928), 173  
     *Lighthouses in Crete and Samos* (1937), 174  
     *Reparation Commission v. German Government* (1924), 173  
 conquest/ force, exclusion of  
     Covenant 10, 170–1  
     Drago–Porter Convention (1907), 170  
     Kellogg–Briand Pact (1928), 21–2, 171–2  
     Locarno Treaties (1925), 171  
     LoN condemnation of territorial changes through aggression, 170–2  
     Montevideo Convention (1933), 22, 171–2  
 a paradigm shift, 172  
 possessory remedies (Covenant 11–17), 171  
 post-WWI factors causing a change of attitude towards, 161, 170–1  
 pre-Russian Revolution presumption of right, 170–1  
 Saavedra Lamas Anti-War Treaty (1933), 171–2  
 Stimson doctrine, 21–2, 171–2  
 discovery, insufficiency for acquisition of title, 173, 175  
 independence of states  
     definition (*Austro-German Customs Union*), 15, 178  
     *Island of Palmas* (1928), 14–15  
     states’ right to dispose of their ‘independence’/ constraints on, 178, 179  
 independence of states/ territorial  
     integrality, interdependence, 172, 176–9  
     Covenant 10, 170–1  
 jurisdiction  
     determining the parameters, 175–7, 179–80  
     *Lotus* principle, 128, 176–7, 634  
     transfer in parallel with the cession of territory, 173  
 jurisdiction (jurisprudence)  
     *Austro-German Customs Union* (1933), 178  
     *Certain German Interests in Polish Upper Silesia* (1926), 177  
     *Lotus* (1927), 128, 176–7, 379–80  
 recognition (jurisprudence)  
     *Eastern Greenland* (1933), 175  
     *Island of Palmas* (1928), 174, 175, 177  
     *Jaworzina Boundary* (1923), 175–6  
     *Nationality Decrees Issued in Tunis and Morocco* (1923), 175–6  
 recognition of territorial changes  
     a constituent element of territorial title?, 174–6  
     effect, 174–5  
 territory as essential basis for the exercise of sovereign jurisdictional powers, 169  
 title  
     dependence of ‘just possession’ on, 169–70  
     recognition, relevance, 174–6  
     validity *erga omnes*, 172, 177  
     validity, requirements for, 173, 174–5  
 terrorism, attempts to regulate, 8–9, 20–1  
     classification as a war crime, 396  
     Convention for the Creation of an International Criminal Court (1937), 423  
     Convention for the Prevention and Punishment of Terrorism (1937), 20–1  
     a definition, 21  
 Thomas, Albert (ILO S-G), 116–17  
 Tokyo Military Tribunal/ Charter: *see also* international criminal law  
     crimes against humanity (TC 5(c)), 396, 406  
     crimes against the peace (TC 5(a)), 400  
     establishment (1946)/ Charter, 394–5  
     reconciling competing demands of justice, law, peace and *realpolitik*, 394–5  
     reservations (state sovereignty and penal legality), 397  
     rushed creation (Pella), 423–4  
     unrestricted use of submarines, 315–16  
     victors’ justice, 428–9  
     war crimes, 396  
 trade integration (introduction and conclusion)  
     Atlantic Charter, 495–7  
     GATT inheritance, 470, 497, 498  
     interwar disappointment/ a more promising context post-WWII, 470  
 League/ EFO-sponsored conferences and conventions, 470: *see also* trade integration (League initiatives)  
 political will, good ideas but bad timing, 498  
 Versailles provisions, 469–71: *see also* trade integration (Versailles provisions)

## Index

- Wilson's Fourteen Points and, 469–70: *see also* trade integration (Wilson's Fourteen Points)
- WWI collapse of trade, 469
- trade integration (League initiatives), 483–95
- introduction
- downsizing of League personnel, effect, 483–4
- EFD role, 484–5: *see also* Economic and Financial Organization (EFO)
- Convention for the Abolition of Prohibitions on the Exportation of Hides and Bones (1927), 489–90
- Convention on the Treatment of Foreigners (1929) (draft), 412–13, 438, 446, 448, 490
- GATS 16(2) compared, 490
- Geneva Nomenclature (1931)/as basis for subsequent conventions and the Brussel Nomenclature, 490
- International Agreement relating to the Exportation of Bones (1928), 489–90
- International Convention for the Abolition of Import and Export Prohibitions and Restrictions (1927), 487–9
- difficulty in meeting the quorum, 489
- dispute settlement provisions, 488–9
- entry into force provisionally (1930), 489
- GATT 4 (screen quotas) and, 489
- GATT 20 (vital interests) and, 488
- negotiations, 487–8, 489
- summary of provisions, 488–9
- US withdrawal (1933), 488
- International Convention on the Simplification of Customs Formalities (1923), 485
- London Conference (1933), 490–5
- 1927–1932 financial crisis as background, 490
- collapse without result, 493–4
- Roosevelt's attitude towards, 491–2
- US role, problems relating to including competence issues, 491–4
- Protocol on the Export of Skins, Hides and Bones (1928), 489
- Tariff Truce (May 1933), 495–6
- World Conference (1927) (commerce committee)/final agreement, 485–6
- Colijn's chairmanship, 486
- GATT as heir to, 487
- political weight/no legal significance, 487
- recommendations, 486–7
- UK and US withdrawal from agreement, 487
- trade integration (pre-League), 470–5
- absence of international constraints, 473
- bilateral agreements
- Cobden–Chevalier Agreement (1860), 473–4
- US FCN treaties, 472, 474
- currency convertibility problems/instability, 470–1
- multilateral agreements, absence, 474–5
- stagnation of trade flows post-1911, 475
- tariffs (British practice), 471–2
- abolition of the Corn Laws, 471
- imperial preferences/Ottawa Agreements (1932), 471–2
- McKenna duties, 471
- tariffs (US practice)
- Fordney-McCumber Tariff Act 1922, 472–3
- Hamilton report on manufactures (1791), 472
- McKinley Tariff Act 1890, 472, 474
- MFN treatment, introduction of, 473
- Underwood Tariff Act 1913, 472
- Wilson's approach to, 472, 474
- trade integration (Versailles provisions), 470–1, 477–80
- introduction
- classification of provisions, 477
- not a highlight but a start, 480
- paucity of provision, 469–70, 477
- 'equitable treatment of commerce' (Versailles 23), 477–8
- ambiguity, 478
- an obligation of result, 478
- the core provision, 478
- GATT approach distinguished, 478
- multilateral treaties consequent on (1923 and 1927), 478
- Wilson's Fourteen Points distinguished, 478
- World Conference 1927 and, 478
- trade in arms (Versailles 23(d)), 479
- trade with Germany (miscellaneous provisions), 479
- reparations and, 479
- trade with Central Africa (Versailles 22), 479–80
- trade with China (Versailles 132), 480
- trade with Czechoslovakia (Versailles 86), 480

## INDEX

- trade integration (Versailles provisions)  
 (cont.)  
     trade with Poland (Versailles 93 and 97),  
     480  
     trade relations with belligerents (Versailles  
     16), 478–9  
     GATT/WTO distinguished, 478–9  
     rationale, 478  
 trade integration (Wilson's Fourteen Points),  
 469–70, 475–7  
     a balance between cosmopolitan ideals and  
     domestic political economy, 477  
     equality of trade conditions (Point 3), 437,  
     469, 472, 476  
     non-discrimination as key US concern,  
     476  
     signpost vs concrete legal obligations,  
     476  
     Versailles 23 distinguished, 478  
     freedom of navigation (Point 2), 476, 477  
     GATS and, 476, 477  
     US position on cabotage/Jones Act 1920,  
     476–7  
 trafficking of stateless refugees, 533–4  
 trafficking of women and children (role of the  
 League): *see also* trafficking/slave  
 trade/slavery, international  
 instruments relating to  
     Advisory Committee on, role/  
     impediments, 43, 147–53  
     introduction, 147–8  
     1927 Report: *see* Report of the Special  
     Body of Experts on the Traffic in  
     Women and Children (1927) (1927  
     Report) *below*  
     achievements, 153  
     limitation to transboundary issues, 149  
     limited resources/response to, 148–9  
     location in the Social Secretariat, pros  
     and cons, 148–9  
     mandate (Covenant 23(c)) (oversight of  
     the 1904 and 1910 Treaties),  
     112–13, 148  
     narrow scope of the 1904 and 1910  
     treaties, 148  
     redefining the legitimate province of the  
     international, 150–1, 153  
     schism between abolitionist and social  
     purity campaigners, 149–50  
     Report of the Special Body of Experts on  
     the Traffic in Women and Children  
     (1927), 150–1  
     American hew, 150–1  
     criticism of, 152–3  
     emphasis on the importance of the  
     national aspect of commercialised  
     prostitution, 151  
     financing of, 150–1  
     sources, 151  
     'the Advisory Committee's most  
     important achievement', 150–1  
     wide dissemination/influence in  
     municipal civil society, 150–1,  
     152–3  
 trafficking/slave trade/slavery, international  
 instruments relating to  
     Abolition of Slavery and Slave Trade  
     Convention (1926), 519–20  
     Covenant 22 (Mandatories' responsibility  
     for securing the prohibition of the  
     slave trade), 519–20  
     ILO Treaty No 29 (Forced or Compulsory  
     Labour) (1930), 17, 231–2  
     Mandate provisions, 519–20  
     Suppression of the Traffic in Women of  
     Full Age (1933), 17  
     Suppression of the White Slave Traffic  
     Convention (1904), 148–9  
     Suppression of the White Slave Traffic  
     Convention (1910), 148–9  
     Traffic of Women and Children  
     Convention (1921), 17  
     *Violation of the Laws and Customs of War*,  
     396  
 treaty practice (Covenant 18–21), 120–2  
     Covenant  
     failure for want of an active, sanctioning  
     Council, 121  
     as higher law (Covenant 20), 12, 70,  
     120–1, 127, 180 *nn* 13  
     as a law-making treaty (Hicks), 28  
     intended effect, 120–1  
     'open covenants . . . openly arrived at'  
     (Covenant 18), 13, 120–1  
     French and British opposition to, 121  
     registration requirement, effect, 13  
     Pollock's positive assessment (1922), 121  
     possibility of Assembly advice to  
     reconsider no longer applicable  
     treaties (Covenant 19), 120–1  
     China's diplomatic effort against  
     capitulations and, 121  
     recognition that international law would  
     not be moulded in the Covenant's  
     image, 121  
     treaties as a source of international law, 26

## Index

- treaty practice (secret treaties)
  - examples, 703
    - Molotov–Ribbentrop Pact (1939) (Protocol), 179, 706, 711–13, 715
    - Treaty of London (1915), 170
  - registration of treaties (Covenant 18) as protection against, 13: *see also* treaty practice (Covenant 18–21)
  - Soviet publication of secret tsarist treaties, 703
- Treaty of Sèvres: *see* international criminal law, prosecution of ‘massacres’ committed in parallel with the war (Sèvres)
- Triepel, Heinrich
  - ‘Les rapports entre le droit interne et le droit international’, 75 n39, 133, 134–5, 137
  - on State responsibility, 362–3, 373, 377, 381–2
- Turkey: *see* international criminal law, prosecution of ‘massacres’ committed in parallel with the war (Sèvres) (in chronological order)
- UDHR (Universal Declaration of Human Rights (1948))
  - at the centre of the new global legal order, 65–6
  - ‘barbarous acts which have outraged the conscience of mankind’ (Preamble 2), 391 n10
  - ‘a common standard of achievement’ (Preamble), 521
  - determining the scope, 522
  - equality, 522–3
  - ‘human person’ vs ‘individual’ (Malik), 553
  - minorities clause, Lauterpacht’s proposal for, 548 n269
  - predecessor texts, 520–1
    - post-WWII peace treaties with the Axis powers, 547–8
- unequal treaties, 190–1: *see also* extraterritorial jurisdiction (preferential exemptions from the law of the host country)
  - capitulations and, 9, 190–3
  - China, 57, 59, 121, 190–1
  - Covenant 19 (reconsideration of treaties), 120–1
  - features of, 190
  - Japan, 9 n15, 190–1
  - minorities treaties, 51
  - revision of, difficulties, 193
  - Covenant 19, ineffectiveness, 193
  - dependence of revision on acceptance of a Western ‘standard’ of civilisation, 193
  - Soviet Union’s complaint, 10–11
  - twentieth century analysis, 190
- United Nations
  - balancing a focus on peace with promotion of international cooperation, 117–18
  - coordination challenge, response to/an ongoing battle, 117–18
- League legacy and
  - Bruce reforms, 117–18, 127–8
  - a general mandate (UNC 1), 117–18
- United States (withdrawal from the League), 480–3
  - contributing factors
    - Congressional divisions, 480, 481–2
    - statutory majority requirement, 480, 481
    - Wilson’s poor health, 480, 482–3
  - deciding against/failure to reach the statutory threshold
    - Congress (1919/1920), 480, 482
    - US Senate Committee on Foreign Relations (CFR), 481
  - failure to accede to Versailles as a consequence/Knox–Porter Resolution (1921) terminating the US war against Germany, 482–3
  - points at issue
    - Covenant 10 and 16, 481–2
    - Versailles 10 and 16, 481–2
  - US continuing participation in League initiatives, 483, 485 n54
- Universal Postal Union (UPU), 110
- use of force: *see* Kellogg–Briand Pact (1928); measures short of war; reprisals; use of force, attempts to regulate between the wars; use of force (Covenant 10–16), summary; use of force (Covenant 10–16) (interpretation problems)
- use of force, attempts to regulate between the wars
  - overview, 257–9, 286–7, 340–4
  - ban on aggression (Covenant 10), omission, 12–13, 261–2
- Covenant/Pact, common features/interaction
  - admittance of war as a last resort vs limitation of war to self-defence, 257–8

## INDEX

- use of force, attempts to regulate between the wars (cont.)
  - failure to regulate ‘measures short of war’, 221, 257–8
  - from *ius ad bellum* to *ius contra bellum*, 257–8, 276–7, 290, 409
  - quasi-global reach, 257–8
  - scholarly controversy on interpretation (literal vs teleological), 258
- as groundwork for UNC 2(4), 257–8
- League’s record
  - Chaco War (1932–1935), 272–3
  - Italian invasion of Ethiopia (1935), 273
  - Leticia War (1933), 273
  - Manchuria incident: *see* Manchurian incident (1931)
  - Russian invasion of Finland (1939), 273
  - War of Stray Dog/Petrich incident (1925), 273
- sources of the law of war, 27
- treaties and comparable international instruments in date order: *see also*
  - Geneva Convention (1929) (protection of the wounded and sick in the field); Kellogg–Briand Pact (1928); use of force (Covenant 10–16) (interpretation problems)
  - Covenant (1919), 257–8, 408–9
  - Soviet non-aggression pacts (1920s–30s), 257–88
  - Treaty of Washington on the limitation of naval forces (1922), 409
  - Treaty of Washington on the Use of Submarines and Noxious Gases in Warfare (1922), 23, 314–15, 317–19
  - Hague Rules on Air Warfare (1923), 23
  - Geneva Protocol for the Pacific Settlement of Disputes (1924), 257–8, 409
  - Geneva Protocol on Asphyxiating, Poisonous or Other Gases (1925), 23–4, 317–19, 320–1
  - Locarno Treaties (1925), 257–8
  - Kellogg–Briand Pact (1928), 21, 257–8, 409
  - Geneva Convention on Prisoners of War (1929), 23–4, 289–90, 409: *see also* Prisoners of War Convention (1929)
  - Geneva Convention on the Wounded and Sick in the Field (1929), 23–4, 289–90, 304
  - Treaty of London for the limitation of naval armaments (1930), 23, 315
  - Convention for the Definition of Aggression (? July 1933), 409
  - OAS Anti-war Treaty of Non-aggression and Conciliation (1933) (Saavedra Lamas Treaty), 257–8
  - London *procès-verbal* on the rules of submarine warfare (1936), 315–16
- use of force (Covenant 10–16), summary, 12
  - n31, 264–5, 349
- ban on aggression (Covenant 10), 12–13, 29, 707: *see also* aggression; territorial sovereignty, acquisition
  - US issues with, 481–2
- a cooling-off period (Covenant 12, 13 and 15), 12 n31, 259, 340
- UNC 39–42 distinguished, 349–51
- use of force (Covenant 10–16) (interpretation problems), 259–67: *see also* Corfu incident (2 August 1923); use of force
- overview (a narrow vs broad view), 259
- broad/teleological interpretation/
  - criticisms of the literal interpretation, 263–7
- Covenant 10 as a general principle of non-intervention, armed or unarmed, 265
- failure to recognize the risk to peace from measures short of war, 263–4
- impact of the availability of Covenant 12 dispute resolution measures on the need for coercive self-help measures, 264–5
- opportunities to go to war legally, 263–4
- ‘definitions/examples
  - ‘acts of aggression’/‘wars of aggression’, 262–3, 707
  - measures short of war’, 260–1, 263
  - ‘war’, 260–1
- ‘likely to lead to a rupture’ as trigger for Covenant 12 dispute resolution, 259–60, 264–5
- ‘rupture’ and ‘an act susceptible of leading to a rupture’ distinguished, 271–2
- narrow/literal interpretation (limitation of use of armed force to full-blown war), arguments, 260–3
- agreement not to resort to ‘war’ (preamble), 261

## Index

- drafters' choice of 'war' / omission of  
   ' measures short of war', 12–13,  
   260–1  
 'external aggression (Covenant 10),  
   omission of definition, 12–13,  
   261–2  
 interconnectedness of the preamble,  
   Covenant 10 and 12–15, 263  
 limitation of Art 10 to wars of  
   aggression, whether, 261–2  
 views of  
   Bluntschli, 260–1  
   Bonfils and Fauchille, 260–1  
   Bourquin, 262  
   Brierly, 264  
   Brownlie, 260–1  
   Calvo, 260–1  
   Chamberlain, 262  
   de Visscher, 264–5, 266, 273–4  
   Eagleton, 265–6  
   Guani, 274–5  
   Hall, 260–1  
   Harley, 29  
   Hooijer, 265–6  
   IDI's 1934 resolution on the regime of  
     reprisals in time of peace, 367  
   Kaufmann, 262, 263  
   Kelsen, 265–6  
   Komarnicki, 263, 265–6  
   McNair, 263, 271–2  
   Neumann, 260–1  
   Oppenheim, 260–1, 264  
   Politis, 274–5  
   Quincy Wright, 262  
   Ray, 265–6  
   Rousseau, 260–1  
   Rutgers, 261–3  
   Schücking, 262  
   Schwarzenberger, 271–2, 273–4  
   Strupp, 271–2  
   Williams, 32  
   Yepes and Pereira da Silva, 265–6  
 Verdross, Alfred on  
   general principles of [international] law, 87,  
     445, 450  
 Hegel, 89  
 Kelsen, 77–8, 79, 87  
 minorities, 517  
 recognition of belligerency, 332, 333 nn304  
   and 305, 335  
 reprisals, 387  
 sovereignty, 89  
 state responsibility, 374, 382  
 treatment of aliens, 514  
 Versailles, Treaty of (1919): *see also*  
   international criminal law ,  
   prosecution of 'acts in violation of  
   the laws and customs of war'  
   (Versailles)  
 vested rights: *see* private international law  
   (PIL) (LoN period) (international  
   justice responsibilities)  
 Vilna dispute (1920), 346–8: *see also*  
   preventive diplomacy,  
   peacekeeping and peacemaking  
   Council's multi-faceted approach to/  
   principles, 347  
   doing everything right, 347  
   getting it wrong, 347–8  
   the issue/referral to the Council, 346  
   the League's weaknesses, 348  
   lessons learnt, 348  
 Vinogradoff, Paul (*Types of International Law*)  
   historical-ideal-typical categorisation, 33, 35  
   pre-Westphalian international law,  
     importance, 33  
   proposed five types of social organisation,  
     35  
   structure of the book/summary of  
     contents, 34–5  
 de Visscher, Charles on: *see* de Visscher,  
   Charles  
 Vollenhoven, Cornelis van  
   *Du droit de paix* (1932)  
   on diminishing state sovereignty, 34  
   on Grotius, 32–3  
   peace/pacifism, 34  
   *The Three Stages* (1919)  
   on the *bellum justum*, 12–13  
   a summary of, 33  
   on Vattel/Grotius, 12–13, 32–4  
 voluntarist positivism/emphasis on sovereign  
   will, efforts to depose, 71, 74–5,  
   158–9  
   an over-reductive result, 158  
   sovereignty and, 88–9, 97–8  
 Vyshinsky, Andrey  
   career  
   chief prosecutor at the Moscow Trials  
     (1936–1938), 94–5  
   criticism of Pashukanis, 95, 687–8, 696  
   Soviet permanent representative at the  
   UN, 688



## INDEX

- Vyshinsky, Andrey (cont.)  
 views on law, 694–5  
 rejection of any difference between  
 socialist and capitalist international  
 law, 687–8, 696  
 ‘The fundamental task of the science of  
 soviet socialist law’, 95, 687, 696–7
- war: *see* use of force, attempts to regulate  
 between the wars
- warships: *see* innocent passage; straits,  
 navigation rights
- Wehberg, Hans  
 on the feebleness of the League, 342 n9  
 ‘Guerre civile’, 294, 331, 333, 335  
 ‘La police internationale’, 350, 354  
 ‘Präzedenzfälle zum spanischen  
 Bürgerkrieg’, 333  
*The Outlawry of War*  
 ‘a historical survey’, 32  
 ‘discussions of principle’, 32  
 draft treaty for the outlawry of war, 32
- whaling and the League  
 from sideshow to major pre-occupation,  
 661–3  
 China’s sovereignty concerns, 662, 681  
 countries participating in the debate, 662  
 history of whaling/impact of the explosive  
 harpoon (1870), 660–1
- LoN Codification Committee  
 campaign leading to the 1931 Whaling  
 Convention, 661–2  
 general questionnaire (early 1927), 661  
 memorandum (January 1927) calling for  
 measures, 660
- Whaling Convention (1931)  
 novel ideas, 663  
 summary of provisions, 663
- Whaling Convention (1937) (London  
 Convention)  
 dealing with non-signatory states, 663,  
 664  
 problems addressed, 663  
 summary of provisions, 663–4
- Whaling Convention (1937) (London  
 Convention) (1938 Protocol),  
 664–5
- will of the State: *see* positivism/will of States  
 as source of law
- Williams, John Fischer, 96, 119, 171, 244  
 n145, 265, 442  
*Chapters on Current International Law*, 31–2
- classical international law vs a ‘new  
 international law’, 31–2  
 defects of the pre-1914 ‘old’  
 international law, 32
- Covenant as ‘a remedy or the promise of a  
 remedy’ (Fischer Williams), 32
- individuals in international law, 31
- ‘peaceful settlement of disputes’ as  
 replacement for the ‘Law of War  
 and Peace’ divide, 31
- sources (‘positive or convention’/  
 ‘original’), 31–2
- subjects of international law, 31
- Wilson, President Woodrow  
 life and character  
 on emotion, 432  
 international outlook, 475  
 a moral and legalistic tone, 170–1  
 poor health/stroke/death, 482
- principles/ambitions  
 ‘A World League for Peace’ (speech to  
 US Senate, 22 January 1917), 54
- ethnic minorities, 528
- freedom of religion, 50–1
- the ‘high warfare of principles’, 142
- individual vs collective rights, 516–18
- mandates and, 226, 233–4
- Monroe Doctrine, 718–26: *see also*  
 Monroe Doctrine
- Pan-Americanism, 718–26, 743
- permanent international court, 621 n45
- permanent international criminal court,  
 393 n19
- trade liberation, 472, 474
- ‘unspeakable crimes’, 395 n23
- ‘Wilsonian sovereignty’, 44, 46, 54–5
- Treaty of Versailles/US withdrawal  
 congressional disapproval of Wilson’s  
 negotiating tactics, 482
- US withdrawal, 480–3
- Versailles 227–230 (penalties) and,  
 398–401
- Wilson’s Fourteen Points (8 January 1918)  
 ‘a general association of nations’ (Point 14),  
 11
- freedom of navigation (Point 2), 476, 477
- ‘secret diplomacy’ (Point 1), 13
- self-determination/nationalities principle  
 (Points 5 and 6), 19–20, 164–5
- signpost vs concrete legal obligations, 476
- trade liberalisation: *see* trade integration  
 (Wilson’s Fourteen Points)

## Index

- the world as a trustee through a
  - mandatory (Paris Peace Conference), 233–4
- women: *see* nationality (married women);
  - trafficking of women and children;
  - women and international law;
  - women and the League
- women and international law
  - internationalisation of rights, importance, 519
- Interpretation of the Convention of 1919 concerning Employment of Women during the Night*, 519
- jurisdictional impediments to securing
  - family support across borders, 567–9
- nationality issues: *see* nationality (married women)
- progress
  - anti-FGM campaigns, 519
- Jeppe/Jebb (protection of children and their rights in the Middle East), 519
- Lima Declaration on Women's Rights (1938), 519
- women's suffrage, 519
- under the radar, 431–2, 518
- women's organisations engaged in fight for
  - international human rights, 519
- women and the League: *see also* Crowdy, Dame Rachel
  - assumptions about the innate competencies of men and women, 148–9
- Geneva as the locus for the interwar global
  - women's movement, 153
- influence on the work of the Advisory Committee, 148–9
- Woolf, Leonard, 102–3
- World War I (WWI)
  - Freud on, 7–8
  - international law developments
    - a belief in peace through international law, 9–10
    - globalisation of 'civilisation, 9–10
    - gradual abolition of extraterritorial jurisdiction treaties, 9
    - replacement of the 'European Age' with the US and Soviet Union, 9
  - nationalism (a watershed moment), 10, 507–8: *see also* nationalism
  - a surprise, 7–8, 37
- Wright, Quincy
  - views on
    - aggression/use of force, 262, 263, 272, 283, 295, 324
    - economic sanctions, 299
    - Ethiopian crisis, 63
    - international/municipal law relationship, 133
    - Kellogg–Briand Pact, 282
    - law of war, 292
    - legal personality, 512 n56
    - Manchurian incident, 56
    - mandate system, 44, 48, 145, 234, 254 n198
- Yepes, José María
  - Pan-American views, 70
  - on sovereignty, 90
  - on State responsibility, 373–4
  - on treatment of aliens (Covenant 23(e)), 437
  - on use of force (Covenant 10), 265–6
- Zimmern, Alfred (*League of Nations*), 103, 141, 159