

Index

Introductory Note

References such as '178–79' indicate (not necessarily continuous) discussion of a topic across a range of pages. Wherever possible in the case of topics with many references, these have either been divided into sub-topics or only the most significant discussions of the topic are listed. Because the entire work is about 'international dispute settlement', the use of this term (and certain others which occur constantly throughout the book) as entry points has been restricted. Information will be found under the corresponding detailed topics.

```
acquiescence, 202, 240
ad hoc appointment of judges, 226
ad hoc arbitration, 189-90, 269
ad hoc chambers, 225, 298-9
ad hoc commissions, 46, 106, 281, 391, 413
ad hoc judges, 219, 223-4, 226, 229
ad hoc tribunals, 165, 175
ADF (Arab Deterrent Force), success, 397
adjudication
  and concilliation, 60
  and negotiation, 54-61
  and regional organisations, 402-7
  arbitration, similarity to, 194
  characteristics, 420-5
  costs, 430-1
  financial assistance for see trust funds for.
  good judgments, importance, 433
  law, role, 420
  legal perspective, 420-5
  negotiation as precondition, 54-8
  prejudicial link with negotiation, 60
  proliferation of adjudicatory bodies, 434
  regional organisations, 402-3
  substantive relation to negotiation, 59-61
  third party interventions, 425
admirals, 85-7
admissibility, 9, 32-6, 55, 199, 204, 216, 218,
       371, 373-4
advisory jurisdiction, 204, 218-21, 372, 375
advisory opinions, 218-21, 236, 238, 254,
       256, 274-5, 296-7, 300-1, 355, 372
affidavits, 231, 233
Afghanistan, 357, 361, 365, 378
```

```
Africa, cultural and political factors, 236
African Court of Human and Peoples'
       Rights (AFCHPR), 398
African Union, 383, 387-9, 397, 400, 411
  dispute settlement provision, 383
  peace-keeping operations, 397
Agenda for Peace report, 411
aggression, 82, 196, 233, 348-9, 358-9, 375,
       391, 394
  external, 384, 387
air pollution, 45, 153
Åland Islands dispute, 98
Albania, 203, 235
  adjudication by ICJ, 235
Algeria, 68-9, 71-2, 74, 76, 79-80, 236, 391,
       409
  adjudication by ICJ, 236
  Ben Bella affair, 113
  experts from, use, 250
  mediation, 68-9, 71-2, 76, 79-81
  OAU intervention, 391, 409
amicus curiae briefs, 183, 328, 330
ancillary questions, 149, 273
Angola, 378
Annex VII arbitration, 285, 287, 302
Annex VII tribunals, 168, 286-8, 301, 432
annulment, 21-3, 189-90, 208, 339
  grounds for, 23, 186
  of arbitral awards, 161-5
Antarctic, 43, 51, 204, 215, 234
anticipatory co-operation, 43
Antigua, 336-7
antitrust proceedings, consultation, 39
```



460 Index

appeal arbitration procedures, 333, 338 arbitral awards, nullity claims as to, 161-5 appeals, 21-2, 59, 158-9, 164, 325-8, 331-3, arbitration decision, support by regional 339, 365, 368-9 organisations for implementation, 403 arbitration awards, 159 DSU, 328-32, 342-5 as to compensation payment, 152-8 basis of decisions, 152-8 ICJ, 216-17 interim, 332-3, 338 bilateral agreements, 140 Appellate Body, 22, 258, 323, 336-7, 342-5, binding, 80, 94, 334-5 415, 434 by collegiate body, 135 composition and mandate, 326-7 by commission, 133 dysfunction, 332-3 by foreign head of state or government, functions, 326 133 - 4importance, 328-32 by specially qualified individual, 134 procedure, 327-8 clauses, 172-4 reports, 316, 329, 334 consent, 162 decision-making criteria, 133-5 appellate review, 325-33, 343, 414 definition of issue, 146-8 applicable law, 27, 152-3, 181, 185-7, 238, DSU, 337-9 241, 271-2, 302, 422 effect of awards, 158-65 clauses, 186, 273 effect of awards in, 158-65 appointing authorities, 137-8, 140 appointments, 136-42, 145, 162, 184, 222, equity, application, 154-6 224, 285, 288-9, 332 errors in decisions, correction, 161 Arab League, 387, 389, 397, 401 essential error as reason for nullifying, dispute settlement provision, 389 164-5 division within, 401 established after dispute has arisen, 132 Arab states, non-recognition of Israel, 61 established before dispute, 132 Arab-Israeli conflict failure to give reasons for decision, 163-4 Camp David Agreements, 379 forms, 132-6 fraud as reason for nullifying award, 164 ICJ advisory jurisdiction, 220 ICSID, 174, 181, 188-90 non-recognition issues, 61 UN intervention, 351, 353 inquiry differing, 94 arbitral awards, 22-3, 35, 161-2, 165, inquiry resembling, 90 168-70, 188-9, 208, 338-9, 403-4 interpretation, revision and rectification, 159-61 annulment, 161-5 international, 169-70 inter-state, 10, 18, 134-6, 143, 149, 169 interpretation, revision and rectification, investment see investment arbitration. 159-61 investor-state see investor-state arbitral process, 181, 431 arbitration. arbitral tribunals, 19-21, 29-30, 136-7, law applicable to the merits, 152-4 139-43, 148-9, 185-6, 271-4, 284-5, limits to jurisdiction of arbitral tribunals, 148-52 294 - 6special, 270, 289 majority vote decision, 135 work, 148-9, 273 mixed, 167, 342 arbitration, 132-70 municipal law and ex aequo et bono, adjudication differing, 132 agreements, 117, 136, 140, 142, 149, 154, nullity claims as to awards, adjudication, 161 - 5and negotiation, 55 panels, 112, 191, 342 Annex VII, 285, 287, 302 procedural rules, 144-6 annulment of arbitral awards, 161-5 revision of award due to new facts, 160-1 appeals, 159 rules, 10, 27, 29, 141, 143-4, 175, 180-1



461 Index

sovereign, 133-4 negotiations, 50 special, 102, 263, 288-90 proliferation of adjudicatory bodies, terms of reference, 144-52 problems arising from, 435 UN intervention, 353 treaties of, 91, 137, 156, 407 Austro-Hungary inquiry, 86 negotiation, 91 UNCLOS, 284-8 authority, discretionary, 219, 277 under municipal law, 153-5 automatic competence, 21, 23 utility, 165-70 autonomy, party, 177, 263, 338 arbitrators appointing authority, 140 Bahrain, 53-4, 178, 199, 210, 363, 431-2 authority invalid, claims that, 161-2 adjudication by ICJ, 199, 431-2 independence and impartiality, 141-4, 185 negotiation, 53 list, 134, 142, 285 UN intervention, 363 majority voting, 282 Balkans, UN Special Committee on neutral arbitrators, 137-8, 285 (UNSCOB), 352 party-appointed, 137, 139-42 Barbados, Law of the Sea Convention, 287 qualities, 142 Beck-Friis, Ambassador Johan, good offices, selection and appointment, 136-44 single, 134-6, 337 Belgium, 92, 105-9, 112-13, 115, 135, 159, sovereign, 133-4, 163 180, 204, 209 terms of reference, 144-52 adjudication by ICJ, 204 third party selection, 137-8 arbitration, 135, 159 Argentina, 42, 51, 63, 67-8, 70-1, 134, conciliation, 107, 109, 112, 115, 129 178-9, 190-1, 208-9, 417 conciliation treaty, 105 adjudication by ICJ, 209 good offices, 353 arbitration, 134, 147, 152, 164 inquiry, 92 consultation, 41-2 UN intervention, 353 Contadora process, 395 Belize, 395, 403 mediation, 67-8, 70-1, 76, 82 OAS intervention, 395 Ben Bella affair, 113, 115, 129 negotiations, 51, 63 severing of diplomatic relations, 61 treaties of arbitration, negotiation, 91 adjudication by ICJ, 226, 251 UAM intervention, 401 UN intervention, 361 armed conflict, 67, 70, 98, 196, 280, 347, Bernadotte, Count Folke, good offices, 353 Biafra and Nigeria, mediations between, 70 361, 380 armed forces, 2-3, 93-4, 205, 360 bilateral agreements, 122, 266, 337 arrest, 88-9, 92, 272 arbitration, 140 ASEAN (Association of Southeast Asian conciliation, 39, 105, 116-17 Nations), 267, 390 consultation, 39, 42 Asian Development Bank, fact-finding negotiation, 51-2 tribunals, 101 without prejudice clauses, 51-2 Association of Southeast Asian Nations see bilateral investment treaties see BITs. ASEAN. bilateral negotiations, 51, 235 asylum, political, 15, 256 binding arbitration, 80, 94, 334-5 atmospheric nuclear tests, 16-17, 257 binding decisions, 9, 19-21, 24, 57, 96, 132, Australia, 16, 50, 129, 145, 168, 204-5, 266-7, 414, 421 283-4, 288, 333 binding settlement, 269-70, 280, 304 adjudication by ICJ, 204-5 BITs (bilateral investment treaties), 30, 79, good offices, 353 172-5, 178, 180, 186-7, 191 Law of the Sea Convention arbitration, Black Sea, 138, 150, 273, 279 288 Bolivia, 64, 107, 393



462 Index

border disputes, 129-30, 391, 393, 403, 409 Central America, 106, 232, 246, 378, 380, 387, 394-5, 401, 410 adjudication by ICJ, 200, 217, 233 OAS, 386-7, 394 arbitration, 156 sub-regional organisations, role, 401 ICJ and the Security Council, 371 UN intervention, 379-80, 410 Chaco Commission, 107-9, 112-15, 129-30, mediation, 70 UN intervention, 371, 374, 379, 410 Botswana, adjudication by ICJ, 198, 239-40 Chaco War (Bolivia/Paraguay), conciliation, boundaries, 148, 152, 164, 169, 197, 208, 107, 112-15, 130, 393 239, 241, 249-50, 252 Chad maritime, 50, 129, 147, 153, 251, 274-5, financial assistance for adjudication, 431 278-9, 283-4, 286-7, 301 OAU intervention, 402 Boutros-Ghali, Boutros, Agenda for Peace Chagos Archipelago, 150, 221, 238-9, report, 409 274-5, 355 Brahimi Report, 428 chambers, 214, 217, 224-8, 240-3, 250-1, Brazil, 91, 113, 128, 333, 342, 395 292, 298, 300-1, 422, 424 Contadora process, 395 further development of procedure, 431 procedures, 224-9 treaties of arbitration, negotiation, 91 British Guiana, arbitration, 164 special, 274-5, 287, 302 Bulgaria, 12, 138-9 use, 225, 228, 292 adjudication by ICJ, 139 Chile, 64, 68, 71, 75, 82, 91, 95-6, 128, 134, arbitration, 138 2.87 Burkina Faso, 17, 205, 226, 240 arbitration, 134, 147, 152, 164 Bush, President George H., meeting with conciliation treaty, 104 Gorbachev, 47 Law of the Sea Convention arbitration, cafeteria approach, 270, 305 mediation, 68, 71, 75, 82 Cambodia treaties of arbitration, negotiation, 91 adjudication by ICJ, 216, 253 China, 139, 222, 264, 267, 278, 304, 325, UN intervention, 363, 365, 378 330, 333, 432-3 Belgrade embassy bombing, 98 adjudication by ICJ, 256, 406 DSU, 326, 330 ICJ judges panel, representation on, 222 negotiation, 48 Camp David Agreements, 379 ITLOS membership, 291 Canada, 39, 44-5, 60, 201, 225-7, 329-30, Security Council membership, 222 333, 337, 340, 384-5 UN intervention, 353-4 adjudication by ICJ, 201, 225-8, 245 choice of law, 186, 271, 293, 305 arbitration, 151, 153-4 ICJ, 236 consultation by, 39 Iran-United States Claims Tribunal, 136 DSU, 319, 329-30 Law of the Sea Convention, 271-2, 305 choice of means good offices, 60 DSU, 343 good offices of GATT Director, 319 Law of the Sea Convention, 304-5, 348, Joint Commission with US, 45 negotiation, 60 regional organisations, membership, CJEU (Court of Justice of the European 384-5 Union), 384, 398, 402 Caribbean Court of Justice, 398 classes of cases in arbitration, 132-6 categories of disputes, 28, 276, 278, 304 coastal States, 150, 273-7, 300-1, 304 ceasefires, 68, 78, 80, 205, 351, 353, 356-7, Cod Wars 361-2, 364, 392 duty to negotiate, 63 Central African Republic, 352, 358-9 NATO involvement, 391, 401



463 Index

negotiation, 391 following negotiation, 52 timing, 419 ICJ, 374 Cold War ITLOS ruling as to, 301 and regional organisations, 408 UN Compensation Commission, 100 negotiation during, 52 competence, 22-3, 26-7, 151-2, 198-200, UN intervention during, 377-8 222, 283-4, 289-91, 295-8, 368 collective action by regional organisation, automatic, 21, 23 395-8 exclusive, 399 collegiate body, arbitration by, 135 limited, 27 Colombia, 46, 99, 156, 214, 218, 252, 333, compétence de la compétence, 27, 198 394 competent authorities, negotiation via, 45 adjudication by ICJ, 214, 252, 256 compliance arbitration, 156 panels, 334, 336 Contadora process, 394 procedures and conciliation, 126-7 UN, 99 compromis, 6, 95-6, 133, 136, 145, 147-9, 152, 159, 162, 241 colonisation and decolonisation and ICJ, 219, 236, 256 compromissory clauses, 6-7, 10, 26, 28, 31, and UN, 378 34, 49, 56, 145, 147 compulsory conciliation, 119, 129, 278, terra nullius, 236, 256 COMESA (Common Market for Eastern 283-4 and Southern Africa), 341 compulsory jurisdiction, 3, 6, 196-7, 224, commercial arbitration and municipal law, 270-1, 304, 420-1, 432, 434-5 153 compulsory settlement, 2, 6, 195, 199, commercial transactions, 176-7 262-3, 266, 269, 276, 278, 280, 284, commissions 296, 305 arbitration by, 133 principle, 269, 275, 278 negotiation by, 45-6 concessions, 42, 62, 70, 76, 95, 115, 128, 154, commissions of conciliation, 38, 102, 104-8, 176, 335-7 111-15, 119-20, 124, 128, 319 suspension, 277, 316, 324, 331, 333-5 conciliation, 104-31, 278, 281-3 role and powers, 113-16 commissions of inquiry, 84-90, 92-4, 96-8, and adjudication, 61 100, 102, 106, 127 and compliance procedures, 126-7 introduction of international, 84-5 and the OSCE, 123-6 League of Nations, 98 as to compensation payment, 109, 118 committees of experts, 164, 235-6 bilateral agreements, 39, 105, 116-17 Common Market for Eastern and Southern combined with other methods of Africa see COMESA. settlement, 120-2 Commonwealth of Independent States (CIS) compliance procedures in environmental, establishment, 385 126 - 7compensation, 90, 96, 100, 109, 118, 146, compulsory, 119, 129, 278, 283-4 157, 167, 174, 333-7 current trends, 413-14 arbitration as to, 152-8 DSU, 318-19 conciliation as to, 109 emergence, 104-6 DSU provisions as to, 126-7 Law of the Sea Convention, 277, 280-3, ICJ ruling as to, 374 289 limitations, 129-30 payment as to arbitration as to, 146-7 meaning, 66 conciliation as to, 118 mediation distinguished, 66 DSU provisions, 333-4 Model Rules, 122 payment of modern treaty law, 116-22 following inquiry, 90, 95-6 multilateral treaties, 117-20



464 Index

conciliation (cont.)	lack of, 220
nature, 112-13	of states, 7, 26, 28, 31-2, 149
negotiation, resemblance to, 112	to adjudication by ICJ, 194-5, 203
non-use, reasons for, 128	to mediation, 69-73
OAS, 394	conservation, 50, 237, 277, 288, 306
OSCE, 123-5, 393-4	consistency, 214, 258, 327-8
practice, 112-16	consultation, 39-44
procedures, 120-1, 124, 129, 283	ad hoc process, 43
recent developments, 122-7	and dispute prevention, 39-41
significance, 127-31	and legislative co-ordination, 43-4
single conciliator, referral to, 110-11	as form of negotiation, 39
success, 129	bilateral agreements, 39, 42-3
time-limit for acceptance, 115	compliance with arrangements for, 42
treaties, negotiation, 104-6, 116-17	consent distinguished, 39-40
type of process, 112	difficulty of institutionalising, 43-4
UNCLOS, 281–4	growth, 44
conciliation commissions, 38, 102, 104-8,	multilateral agreements, 44
112-15, 119-20, 124, 128, 319	notification distinguished, 39
active role, 114	overview, 39-45
confidentiality, 115	role in dispute settlement, 41-3
functions defined, 105	stages, 41
League of Nations resolution	value, 39
recommending, 105	Contadora Group, 394, 401
proposals, 114	Contadora process, 55, 246, 394, 405-6
reports, 114	contentious jurisdiction, 194-204, 218-20,
role and powers, 113-16	224, 355, 375
work, 106-12	Cooperation Council of Arab States, 54
conciliators, 111, 114-16, 124, 282, 415, 418,	Cordovez, Diego, good offices, 361
421	Corfu Channel dispute
single conciliator, referral to, 110-11, 114	adjudication by ICJ, 235
concurrence, meaning, 43	committee of experts, use, 235
Conference of American States, inquiry and	UN intervention, 351
conciliation by, 107	corruption, 23, 164, 190, 432
confidentiality, 82, 115, 183, 317, 323, 430	Costa Rica
conflicts of interest(s), 11, 143, 326	adjudication by ICJ, 203, 214
Congo, 198, 232, 235, 244, 251, 358-9, 378	arbitration, 135
Democratic Republic (DRC)	Contadora process, 394
adjudication by ICJ, 232-3, 244	OAS intervention, 394
negotiation, 55	costs, 71, 74, 77, 109, 202, 226-7, 239, 250,
Republic of	258, 430
adjudication by ICJ, 198	diplomatic, 69
consensuality, 102, 148, 195, 211-12, 218,	of adjudication, 430–1
297, 355, 425	political, 73, 168
consensus, 312-13, 321, 325-6, 328, 342,	Council of Europe, dispute settlement
382, 410	mechanism, 384
reverse, 313, 316, 321	counter-claims, 1, 217-18, 246
consent, 5–8, 21–30, 34, 151, 173–5, 182–3,	Court of First Instance, 341
194–5, 198, 202–4	Court of Justice of the European Union
and arbitration, 148	(CJEU), 384, 398, 402
consultation distinguished, 39–40	Croatia, mediation, 70
expression, 6, 8, 26, 174, 204	Cuba, arbitration, 178



465 Index

Cuban missile crisis, UN intervention, 363, system, 22, 262, 310, 313-14, 317, 320, 365, 377, 408 330, 338, 343, 414 cultural factors, 236, 417 Dispute Settlement Body (DSB), 31, 313, Cyprus, NATO involvement, 390 316, 320-2, 325-9, 332-6, 338-9, Czechoslovakia adjudication by ICJ, 237 awards reviewed by, 338 conciliation, 128 establishment, 313 conciliation treaty, 105 good offices, 320 UN intervention, 377, 409 panel procedures, 320-6 panel proceedings, 320-6 Da'esh see ISIL. responsibilities, 313 deceit, 23, 164 Dispute Settlement Understanding (DSU), decisions ex aequo et bono, 24, 158, 256, 275 9, 22, 31, 311-16, 320-6 decolonisation, 219, 221, 238-9, 256, 274, appellate review, 326-32 arbitration under, 337-9 355, 378-9 cases dealt with by, 102, 325-32, 335-7 delimitation, 148-9, 151, 155, 197, 240, 243, choice of means, 343 245, 274-5, 278-9, 287 exception, 279 compensation provisions, 126-7 conciliation, 318-19 maritime, 50, 53, 147-8, 155, 199, 214, 223, 232, 267, 431 current trends, 414-15 Democratic Republic of the Congo see DRC. development from original GATT dispute Democratic Republic of Timor-Leste, 129, settlement system, 312-13 283-4 experts, rules for the use of, 325 good offices, 318-19 Denmark adjudication by ICJ, 212 historical background, 310-11 conciliation, 107, 112, 115, 118, 129 implementation of rulings and inquiry, 90, 92 recommendations, 333-7 Red Crusader incident, 92-4 innovations introduced by, 313 detention, 205, 245, 295-6, 361, 369, 433 Law of the Sea Convention Compared, dialogue, 83, 112, 129, 318, 351 diplomacy, 24, 52, 60, 353, 413 least developed countries, provisions for, personal, 72, 354 preventive, 381, 392, 410, 428 main principles and jurisdiction, quiet, 353, 364, 366, 380 314-16 mediation, 318-19 diplomatic exchanges, clarification of dispute via, 58 origins, 310-11 diplomatic methods, 5-6, 24-5, 318, 406, panel reports, 324 417 disputed areas, 108, 113, 156, 205, 208, 237, diplomatic negotiations, 47, 113, 156, 312 240, 357-8 diplomatic relations, 61, 72, 107, 197, 199, disputes 390-1, 396-7 clarification by diplomatic exchanges, severing of, 61 direct negotiations, 38, 48, 61, 67, 77, 342, commitment to peaceful resolution, 1 350, 364, 400, 405 court's recognition of existence, 58 discretion, 33, 219, 276-7, 280, 300, 302, definition, 8-14 361, 366, 372 inter-regional, 398, 411 discretionary authority, 219, 277 inter-state, 11, 23, 178, 189, 204, 220, 341 discrimination, racial, 12, 49, 55-6, 209-10 intra-state, 364 dispute settlement meaning, 1 methods, 2, 5-9, 21, 24, 38, 207, 263, 296, political, 13-14, 67, 72, 77, 244, 246, 248, 414 255



466 Index

disputes (cont.) El Salvador, 203, 214, 217, 226, 380, 394, 403 territorial, 61, 68, 134, 165, 216, 226, 398, adjudication by ICJ, 203, 214, 217, 226 401, 403, 431 Contadora process, 394 elections, 71, 221-2, 290-2, 298, 354 trade see trade disputes. dissenting opinions, 15, 48, 286 Elizabeth II, Queen, arbitration by, 134 Dixon, Sir Owen, good offices, 354 enforcement, 81, 168, 170, 189-90, 252-3, documentary evidence, 217, 231-4, 431 300, 349 Dogger Bank Inquiry, 85-7, 97, 102 of arbitration decisions, 253, 300 domestic courts, 32, 174, 183, 187, 189-90, powers, 348-9, 358 254, 296 environmental agreements significance compared to international conciliation provisions, 126-7 courts, 254 equality domestic jurisdiction, 70, 196, 349, 364, 379, of the parties, 23 400 sovereign, 5, 7-8, 24 equitable geographical distribution of ICJ domestic law, 152-4, 170, 186, 244, 332, 422 Dominican Republic judges, 222-3 equity, 24-5, 155-6 OAS intervention, 396, 408 regional commission inquiry, 396 and ICJ, 239, 242-3 doubts, justifiable, 141, 143-4 infra legem, 242-3 DRC (Democratic Republic of the Congo), Eritrea 55, 232, 244, 358 arbitration, 147, 149, 152, 157, 159, 163 DSB see Dispute Settlement Body. OAU intervention, 392 DSU see Dispute Settlement Understanding. errors in arbitration decisions, correction, dual nationality, 179 dysfunction of Appellate Body, 332-3 essential error as reason for nullifying arbitration award, 164-5 East African Community case, 110-11, Ethiopia 114-16, 130-1 arbitration, 152, 159 East Timor (Timor-Leste) negotiation, 47-8 adjudication by ICJ, 205 OAU intervention, 392 Eastern Europe, 222, 291, 378, 385, 419 European Convention on Human Rights collapse of Soviet Union, effect, 385 (ECHR), Law of the Sea Convention regional organisations, membership, 385 compared, 271 Warsaw Pact, 385 European Court of Human Rights (ECtHR) Economic Community of West African functions, 117-18 States (ECOWAS), 340-1, 398, 401, judicial settlement by, 132 European Court of Justice (ECJ) economic sanctions, 70, 76, 348, 358, 360, suspension of arbitral proceedings 373, 380, 408 pending judgement by, 287 ECOWAS see Economic Community of European Union/European Community West African States. (EC, EEC, EU), 44, 181-2, 329, 333, ECOWAS Community Court of Justice, 398 339-40, 384, 393, 399 Ecuador, arbitration, 42-3, 156 dispute settlement provision, 384 EEZ see exclusive economic zone. DSU, 319, 325, 329-31 Egypt, 71, 80, 116, 135, 147-8, 210, 220, 357, expansion and integration, 384 379 good offices of GATT Director-General, adjudication by ICJ, 220 use, 313, 319 arbitration, 135, 147 intervention by, 410 Camp David Agreements, 379 jurisdiction over members' internal conciliation, 116 affairs, 399-400 mediation, 71, 80 Law of the Sea Convention arbitration, 302



467 Index

mediation, 69 France, 40, 46, 86-7, 105-9, 112-15, UN, co-operation with, 380 129-30, 159-60, 257 evidence, 53, 60, 88-9, 107-8, 111, 113, adjudication by ICJ, 135, 198, 200, 257 163-5, 227, 231-5 arbitration, 46, 135-6, 138, 146, 148, 152, documentary, 217, 231-4, 431 158-61, 249-50 scientific, 231, 234-6 Ben Bella affair, 113, 115, 129 use in ICJ proceedings, 232-5 conciliation, 108-9, 115, 129 excess of authority, 23 conciliation treaty, 105 exclusive economic zone (EEZ), 148, 197, experts from, use, 250 238, 243, 271, 277, 286, 297, 301, 304 ICJ judges panel, representation on, 222 exhaustion of remedies, 54, 80, 271, 344, 404 inquiry, 86-8, 92 experts, 53, 158, 164, 231, 234-6, 250-1, mediation, 82 286, 288-9, 319, 323-4 Security Council membership, 222 committees of, 164, 235-6 treaties of arbitration, negotiation, 91 France-Switzerland Commission, 109 use Franco-Siamese dispute, 108, 112-13, 129 DSU, 324 ICI, 232-5, 250 fraud, 23, 164, 431-2 Law of the Sea Convention, 270 fraud as reason for nullifying arbitration award, 164 free choice of means of settlement, 7-8 fact-finding, 80, 87, 97, 100, 123, 232, 351, 363, 367, 394 friendly settlements, 18, 117-18 failure to give reasons for arbitration decision, 163-4 GATS (General Agreement on Trade in fairness, 142, 282, 285, 289 Services), 314, 317 procedural, 432 GATT (General Agreement on Tariffs and Falkland Islands crisis Trade), 9, 310, 312-17, 319, 326, failure of negotiations, 62-3 329, 332, 337-9, 344 see also World Gibraltar dispute contrasted, 417 Trade Organization. material dimension, 417 consultations, 316-18 mediation, 67-8, 70, 73, 76-7, 79 dispute settlement, 312-13 regional organisations, role, 399, 401 dispute settlement, original system, severing of diplomatic relations, 61 UN intervention, 362, 365 good offices of Director General, 313 finality, 19-21, 217 historical background, 310-11 ICJ judgments, 248-50 origins, 310-11 Finland panels, 9, 312 adjudication by ICJ, 212 working groups, 313 Åland Islands dispute, 98 General Agreement on Trade in Services see inquiry, 98 First World War, submarine incidents, General Assembly see United Nations 88-90 General Assembly. fisheries, 275-7, 288-9 general international law, 5, 27, 29, 151, 158, Fitzmaurice, Judge Gerald, 33-4, 48 272-3, 330 flag states, 296-7 Georgia, 34, 49, 55, 223, 379, 393, 410 foreign head of state or government adjudication by ICJ, 223 arbitration by, 133-4 EU intervention, 393 foreign investors, 78, 120, 172-4, 180, 189, UN intervention, 379, 410 432 Germany fork-in-the-road clauses, 174 adjudication by ICJ, 214 formalisation, 2 conciliation, 128 forum prorogatorium, application of, 198 conciliation treaty, 105



468 Index

Germany (cont.)	UN Compensation Commission, role of,
First World War submarine incidents,	100
88-90	UN intervention, 367
inquiry, 88-90	
Gibraltar	Hague Conventions, 84, 86-91, 93, 97-8,
dispute contrasted with Falkland Islands	102, 134, 144
crisis, 417	1899, 84–5
UK-Spain negotiations, 62, 65	arbitration rules, 144-5
Gondra Treaty, 106-7	1907, 87–90
good faith, 19, 41, 63, 121, 124, 160, 242,	arbitration rules, 144-5
316, 406, 433	Hague Peace Conferences, 2-3, 85
good judgments, importance, 433-4	Haiti
good offices, 24–5, 66–7, 74, 318–20, 353,	OAS intervention, 410
361-5, 367, 384-5, 390-1, 427-8	UN intervention, 380, 410
Director-General, WTO, 319	Hammarskjöld, Dag, good offices, 354
DSU, 318-19	Hariri, Rafiq, assassination, 352
GATT, 313	hearings, 182-3, 283, 373
individuals, 319	oral, 93
meaning, 66	public, 115, 328
NATO, 391	high moral character, 120, 184-5, 222
Norway, 391	highest reputation, 142, 282, 285, 289
OAU, 391	historic bays, 277–9
UN Secretary-General, 361-3	historic rights, 238, 279
UNGA, 353	historic titles, 153, 279
UNSC, 353	home states, 172, 174, 179, 181
Gorbachev, President Mikhail, meeting with	Honduras, 13, 55, 161, 199, 203, 214, 391,
President Bush, 47	394-5, 403, 405-6
Graham, Dr Frank, good offices, 354	adjudication by ICJ, 199, 203, 214
Greece	arbitration, 161
adjudication by ICJ, 59, 207, 215, 245, 248	Contadora process, 55, 394
conciliation, 129	negotiation, 55
negotiation, 53, 59	honour, 15, 85, 87, 97
UN intervention, 350, 390	host states, 32, 120, 172-4, 177-80, 184-6,
Greenwood, Christopher, 142, 144	189, 191
Gros, Judge André, adjudication by, 243	hostilities, 13, 71, 77, 196, 351, 361-2, 364,
Group of 77 and Law of the Sea Convention,	390, 393, 395
280, 303–4	Huber, Max, arbitration by, 135
Guatemala, 333, 395, 403, 409	human rights, 18, 117-18, 347, 350, 352,
Contadora process, 394	384–5, 389, 398, 402
OAS intervention, 395	adjudication, 423
Guinea	AFCHPR, 398
arbitration, 136, 160	arbitration as to, 42, 136
Law of the Sea Convention arbitration,	conciliation, 117–18
301	Council of Europe, 384
Guinea-Bissau, 136, 160, 162-3, 208, 301	ECOWAS Community Court of Justice,
adjudication by ICJ, 162-3	341
arbitration, 136	EU, 384, 393, 399
Law of the Sea Convention arbitration,	ICJ and, 138, 233, 237, 244
301	OAU, 389
Gulf War 1991	OSCE, 385
mediation, 82	UNGA, 350



469 Index

United Nations, 347 current trends, 413-14 violations, 99 first use of a lawyer, 90 Hungary, 12, 63, 70, 138-9, 181, 198, 232, flexibility, 97 infrequent use, 97-8 adjudication by ICJ, 139, 198, 232, 237 meaning, 84 arbitration, 138 non-use, reasons for, 97-8 mediation, 70 overview, 84-103 negotiations, 63 post-Second World War practice, UN intervention, 377 92 - 7regional organisations, 393-5 ICC see International Criminal Court. treaty practice 1911-1940, 91 Iceland value, 97-103 adjudication by ICJ, 199, 237-8, 242, 253 integrity, 142, 219, 282, 285, 289, 431-4 conciliation, 111 intellectual property rights, 176, 314, 326, negoriation, 391 negotiations, 50-1, 62-3 intentions, 64, 75, 144, 154, 161, 247, 249, regional organisations, membership, 384 325, 327, 333-4 ICJ see International Court of Justice. original, 96, 332 ICSID see International Centre for the Inter-American Commission on Human Settlement of Investment Disputes. Rights, 95 immovable property, 176 Inter-American Development Bank, factimmunities, 150-1, 199, 237, 278 finding tribunals, 101 impairment, 314-15 Inter-American Peace Committee impartiality, 141-4, 185, 187, 191, 323, 328, commission established by, 250 343, 411, 421-2 interim appeals, 332-3, 338 independence and, 141-4, 185, 187, 323, interim measures, 204-12, 214, 216, 245, 328, 343 254, 374, 404 implementation, 80-2, 159-60, 249-51, 313, International Bank for Reconstruction and 333-4, 336-7, 352-3, 364 Development (IBRD) inadmissibility, 33, 36 conciliation, 114 incidental jurisdiction, 203-18, 252 mediation, 76 independence, 141, 143-4, 185, 238-9, International Centre for the Settlement of 322-3, 353, 364-6, 397 Investment Disputes (ICSID), 28-9, and impartiality, 141-4, 185, 187, 323, 172-3, 175-7, 179, 182-3, 190 arbitration, 174, 181, 188-90 India, 73, 76, 136-7, 150, 166, 196-7, 199, International Civil Aviation Organization 201, 287 (ICAO), inquiry, 100-1 adjudication by ICJ, 199, 201-2 International Committee of the Red Cross arbitration, 138, 152, 154-5 (ICRC) Indonesia, 174, 215, 353 mediation, 67, 72, 77 adjudication by ICJ, 215 International Court of Justice (ICJ), 3, 6-13, 15-23, 25-6, 28-9, 142-4, 194, negotiations, 353 innovations, 91, 93, 146, 174, 236, 238, 269, 274-5, 402-3 313, 317 absence of clear legal practice, inquiry, 84-103 adjudication in cases where, 237-8 1899 Hague Convention, 84-5 advantages, 258-9 advisory jurisdiction, 218-21 1907 Hague Convention, 87-91 and colonisation/ decolonisation, 219, arbitration differing, 94 arbitration resembling, 90 236, 256 commissions, introduction, 84-5 and equity infra legem, 242-3 compensation following, 52, 84-5, 90 and human rights, 233



470 Index

International Court of Justice (ICJ) (cont.) third state intervention, power to allow, and UN political organs, 367-72 212 - 15chambers, 224-9 third states' consent to adjudication, 203 compensation, ruling as to, 374 transferred jurisdiction, 202 consent to adjudication by, 194-5, 203 uti possidetis principle, 240 contentious jurisdiction, 194-8 work, 231-59 counter-claims, 217-18 workload, 254 counter-claims, power to consider, international courts 217 - 18meaning, 194 cultural factors as to choice of law, 236 significance compared to domestic courts, decision-making process, 231-8 disputes over jurisdiction, 198-204 International Criminal Court (ICC), 14, 143, documentary evidence, 231-4 175, 182 effect of judgments, 248-54 international friction, 255, 349, 351 effects of judgments, 248-54 International Labour Office (ILO), inquiry, elections to, 221-4 International Law Commission (ILC) enforcement of arbitration decisions, 253 equity, application, 239, 242-3 arbitration rules, 144 establishing the facts, 231-6 International Monetary Fund (IMF) establishment, 389 conciliation, 114 evidence, use, 232-5 concurrence, 43 extension of function, 239-44 international organisations, 47-8, 77-9, 128, finality of decisions, 248-50 218-19, 224, 289, 293, 425, 430 forum prorogatorium, application of, 198 conciliation mechanisms, 122-7 good judgments, importance, 433-4 mediation, 67 human rights, 138 negotiation, 48 identifying the law, 236-9 international peace and security, implementation of decisions, 250-4 maintenance, 4, 347-8, 351, 354, improving legal capacity, 429-37 362, 368, 407-9 incidental jurisdiction, 204-18 International Seabed Authority (ISA), 28, interim measures of protection, 204-12 293, 298-300 intervention, 212-15 international trade disputes, 310, 317-18 see ITLOS compared, 290-3 trade disputes law, sources of, 236-8 International Trade Organization (ITO), legal and political disputes, 244-8 membership, 221-4 International Tribunal for the Law of the optional clause declarations, 195-7, 200-2 Sea (ITLOS), 10-11, 28-9, 137-9, organisation and procedure, 194-229 142-4, 261, 263-4, 287, 289-91, 301-4 political disputes, adjudication in, 244-8 recommendations, 243 advisory opinions, 296-7 referral of cases to, 195-8, 270 cases dealt with by, 302 res judicata, application, 216, 435 compensation, ruling as to, 301 revision and interpretation of judgments, financial assistance by, 431 ICJ compared, 290-3 215-17 revision of judgments, 160-1 judicial policy, 290-2, 302 scientific evidence and experts, 234-6 jurisdiction, 293-4, 304-5 prompt release of vessels, 295-6 Security Council, 371 selection of neutral arbitrators by, 137-8 provisional measures, 294-5 significance, 254-9 referral of cases to, 41, 57 soft law, use, 237 Special Chamber, 274, 287 special agreement, consent by, 197-8 structure and composition, 290-2



471 Index

interpretation, 10-12, 21-2, 29, 120-1, Ireland, 18, 136, 287 149-50, 159, 215-16, 252, 265-9, arbitration, 136, 287 Law of the Sea Convention arbitration, inter-state disputes, 11, 23, 189, 204, 220, irreparable prejudice, 206, 208 341 intra-state disputes, 364 risk, 294 investment arbitration, 144-5, 154, 167, 169, risk of, 206-7 ISA see International Seabed Authority. investment treaties and consent to ISIL, 352 arbitration, 173-5 Islamic Court of Justice jurisdiction of investment tribunals, establishment, 390 175 - 80Israel law applicable to the merits, 185-8 adjudication by ICJ, 220, 223 procedural law, 180-5 advisory opinion by ICJ, 220 arbitration, 135, 147 validity of awards and implementation, Camp David Agreements, 379 188 - 91investment treaties, 172-3, 175-80, 183, conciliation, 116 186-8, 191 see also BITs inquiry, 99 investors, 78-9, 120, 172-6, 178, 181, 187, non-recognition issues, 61 189, 191, 432 UN intervention, 372 investor-state arbitration, 10-11, 18, 23, 30, Italy, 87, 110, 114-15, 134, 150, 174, 178, 213-15, 218 32, 35, 44, 120, 173-4, 180 clauses, 30, 56, 174 adjudication by ICJ, 213-14, 227 Iran, 71-4, 76-7, 79-80, 151-2, 168, 245-6, arbitration, 178 361-3, 370, 416-17 conciliation, 110, 115, 129 adjudication by ICJ, 200, 218, 245-7 inquiry, 87-8 arbitration, 136-7, 154 sovereign arbitration by, 134 Kurds, mediation involving, 71 Turco-Italian war of, 1911-12, 87-8 Italy-Switzerland Commission, 110, 114-15 mediation, 71 severing of diplomatic relations, 61 ITLOS see International Tribunal for the UN intervention, 363 Law of the Sea. Iran hostages crisis court's recognition of dispute, 58 Jan Mayen case, 111-13, 131 definition as legal or political issue, 424 Iapan material dimension, 418 adjudication by ICJ, 204 mediation, 68, 71, 74, 79-80 conciliation, 114, 129 severing of diplomatic relations, 61 DSU, 319, 325 UN intervention, 361, 369 good offices of GATT Director-General, Iran-Iraq conflict use, 319 mediation, 71-2, 76-7 Law of the Sea Convention arbitration, UN intervention, 361, 378 288 Iran-United States Claims Tribunal, 136, negotiation, 57 151, 154, 168, 170 proliferation of adjudicatory bodies, arbitrators selection, 136-7 problems arising from, 435 choice of law, 154 Jarring, Dr Gunnar, good offices, 354 jurisdiction by, 151-2 judges Iraq, 71-2, 76, 81-2, 352, 361, 367, 378-80, 'equitable geographical distribution', 222 - 3Arab League intervention, 397 ad hoc appointment, 223-4 compensation, payment, 100 African and Asian representation, 222 mediation, 71 chambers, 224-9



472 Index

judges (cont.) King of Spain (Alfonso XIII), dispute over comparison of municipal and arbitral award by international practice, 224 arbitration, 161-2, 165 competence and qualification, 222 negotiation, 162 disqualification, 223 OAS intervention, 391-2, 403 election, 221-4 Knox treaties of arbitration, negotiation, 91 judicial functions, 9, 16-17, 59, 219, 239, kompetenz-kompetenz, 27 258, 368 Korea, South judicial process, 133, 232, 422-3, 431-2 inquiry, 100-2 juridical persons see legal persons. KE 007 incident, 100-2 jurisdiction, 25-32 Korean War, UN intervention, 353-4 advisory, 204, 218-21, 372, 375 Kosovo, bombing of and consent, 6 adjudication by ICJ, 206, 355 compétence de la compétence, conferral, Kosygin, Alexei, leverage as mediator, 76, 80 198 Kurds, mediation involving, 71 compulsory, 3, 6, 196-7, 224, 270-1, 304, Kuwait, 82 420-1, 432, 434-5 Arab League intervention, 397 contentious, 194-204, 218-20, 224, 355, land sovereignty, 149, 273 375 language, 24, 145, 216, 236, 406 disputes over ICJ, 198-204 domestic, 70, 196, 349, 364, 379, 400 Latin America exercise, 16, 23, 34, 56, 150, 203, 371 relations with US, 377 for adjudication, 53-8 UN intervention, 377 incidental, 203-18, 252 Latvia, 18 Iran-United States Claims Tribunal, Law of the Sea Convention (UNCLOS), 151 - 228-9, 140-4, 149-50, 167-8, ITLOS, 293-4 261-307, 319-20, 414 of investment tribunals, 175-80 and ICI, 269 prima facie, 206, 294-5 applicable law and jurisdiction of tribunals, 271-5 ratione materiae, 26-30, 35, 176-8, 270, 314-15, 321, 368 arbitration, 270, 284-8 avoiding compulsory settlement, 265-9 ratione personae, 26-8, 178-9, 293, 314 ratione temporis, 14, 26, 30, 180 choice of law, 305 ratione voluntatis, 5 choice of means, 304-5, 348, 414 residual, 294 choice of methods of binding settlement, Seabed Disputes Chamber (SBDC), 269-71 298-300 compulsory settlement, 269-81 jurisdictional conditions, 26, 31-2, 34-6 conciliation, 277, 280-4, 289 jurisdictional questions, 148-9, 273 determination of whether claims well jurisdictional requirements, 6, 26, 32, 36, founded, 271 dispute settlement, basic principles, 175, 178 262-9 justiciability, 14-16, 34, 60, 244, 247, 255, DSU compared, 311-12 justifiable doubts, 141, 143-4 ECHR compared, 271 exceptions and limitations to compulsory Kashmir settlement, 275-81 mediation, 68, 71-3, 76, 78, 80-1 experts, use, 270 UN intervention, 76, 80, 361 fact-finding tribunals, 289 KE 007 incident (South Korean airliner shot free choice of referral to, 263-9 down over Soviet territory), 100-2 general provisions and voluntary Kenya, 110-11, 267 methods of settlement, 263-5



473 Index

Group of 77's views on, 280 Maine incident, 84-5 jurisdiction under, 270-1 maintenance of international peace and principles of compulsory settlement, security, 4, 347-8, 351, 354, 362, 368, 407, 409 protective measures under, 270-1 majority vote decision for arbitration, 135 significance, 301-7 Malaysia special arbitration, 270, 288-90 adjudication by ICJ, 198, 215, 287 lawyers, first use in inquiry, 90 consultation, 41 LCIA (London Court of International Law of the Sea Convention arbitration, Arbitration), 182 41, 57 League of Nations, 105-6, 197, 347, 407 Maldives, 274, 287 and regional organisations, 407 Mali, adjudication by ICJ, 205, 211, 226, 240 commissions of inquiry, 98 Malta conciliation treaty, 106 adjudication by ICJ, 213-14, 228, 249 conciliation, resolution as to, 105 UN intervention, 364 election of judges to International Court, manifest excess of power, 186 marine environment, 218, 276, 287, 289, failure, 347 292, 294 maritime boundaries, 50, 129, 147, 153, 251, least developed countries, DSU provisions for, 320 274-5, 278-9, 283-4, 286-7, 301 Lebanon, UN intervention, 380 maritime delimitation, 50, 53, 147-8, 155, legal basis, 96, 153, 321, 397 199, 214, 223, 232, 267, 431 legal interests, 16, 203-4, 214, 330 maritime zones, 148, 150, 155, 278-9 legal means, settlement by, 132 material dimension of disputes, 417-18 legal methods, 25, 263, 406, 420, 429 Mauritania, adjudication by ICJ, 236, 256 legal persons, 178-9, 293, 299, 341, 384 Mauritius, 142, 150, 221, 238-9, 264, 274-5, nationality, 179 legal perspective, 420-5 Mavi Marmara incident, 99 McNaughton, General Andrew, good legal questions, 89, 219, 246-7, 296, 300, 327, 341, 370, 372, 375 offices, 354 legal rights, 16, 61, 109, 157-8, 169, 205, means of international dispute settlement, 245, 247, 253, 414 legality, 16, 94, 162, 201, 206, 341, 373-4, media precautions regarding sensitive 420 negotiations, 52 Letelier and Moffitt, 95-7, 103 mediated settlements, 70, 75-9 lex specialis, 25, 153, 160 implementation, 80-3 Liberia mediation, 5-6, 66-84, 318-20, 352-3, ECOWAS intervention, 401 386-8, 391-2, 402 negotiation, 47-8 advantages, 66 Libya conciliation distinguished, 66 adjudication by ICJ, 212-13, 215-16, 228, consent to, 69-73 DSU, 318-19 240-1, 243, 249 functions, 74-8 arbitration, 154, 163 ICRC, 67 NATO intervention, 99 limits, 79-80 negotiation, 55 UN intervention, 99-100, 364, OAS, 391-2 OAU, 392-3 373_4 Lithuania, conciliation, 107 OSCE, 392 London Court of International Arbitration overview, 66-83 politics of accepting, 70-2 (LCIA), 182 Luxembourg, conciliation, 107 refusal, 70



474 Index

mediation (cont.)	municipal law see also domestic law.
regional organisations, 391-3	arbitration under, 153
Secretary-General, 363-6	judicial practice compared with
mediators, 66-70, 79-80, 83, 353-4, 356,	international law, 224
363, 391, 393, 400	mutual agreement, 42, 63, 137, 338
agreeing on, 72-3	
persons acting as, 67–9	Namibia
unwillingness to act, 69	adjudication by ICJ, 198, 223-4, 239-40
MERCOSUR, 342	mediation, 76
methods	UN intervention, 355, 377
compulsory, 2, 266, 278, 284	nationality, 142, 178-9, 184, 222-3, 285
diplomatic, 5, 24-5, 318, 406, 417	dual, 179
legal, 25, 263, 406, 420, 429	of legal persons, 179
of settlement, 5-8, 24, 59, 120, 196, 261,	NATO see North Atlantic Treaty
267, 304, 413	Organization.
peaceful, 38, 345, 348, 359, 417-18	natural persons, 178–9
Mexico, 176, 195, 252, 331, 333, 340, 342,	natural resources, 233, 235, 330, 340
353, 394	Nauru, adjudication by ICJ, 300
adjudication by ICJ, 252	negotiated settlement, 38, 49, 52, 55-6, 58,
arbitration, 133	62, 88, 133, 221
Contadora process, 394	negotiation, 38-65
DSU, 331	and adjudication, 54-61
UN mediation, 353	as precondition to adjudication, 54-8
United States-Mexican General Claims	bilateral agreements, 51-2
Commission, 133	commissions, 45–6
middle-rank states, mediation by, 68	conciliation resembling, 112
military activities, 276-7, 279-80	consultation as form of, 39
mixed commissions, 45-6, 80, 133-4, 250,	control of details, 52
395	court's competence, 59
Model Rules on Conciliation, 122-3	current trends, 413
Moffitt, Mr Michael, injury to, 95-6	diplomatic, 47, 113, 156, 312
Moffitt, Mrs Ronni, murder, 95-6	direct, 38, 48, 61, 67, 77, 342, 350, 364,
Moldova, CSCE intervention, 392	400, 405
mootness, 14, 16-18, 34, 257	during Cold War, 52
Morocco, 113, 115, 174, 177, 224, 256, 391,	duty to negotiate, 62
409	forms, 45-9
adjudication by ICJ, 224, 256	in multilateral setting, 47-9
conciliation, 113, 115	international organizations, 48
OAU intervention, 391, 409	limitations, 61-5
Mosul dispute, 98	means of dispute handling, 38
Mox Plant case, 57, 168, 264, 272, 287	media restrictions, 52
MPIA (multi-party interim appeal	non-recognition issues, 61
arbitration arrangement), 332-3,	normal diplomatic channels, 45
338	official communications relating to
multilateral agreements	controversy over, 53
arbitration provisions in regional treaties,	package deals, 52
402	prejdicial link with adjudication, 60
on peaceful settlement, 140, 402	sensitivity, 52
Multinational Force and Observers (MFO), 379	special committees of the UN, assistance by, 353
Munich agreement conciliation 77	splitting of dispute, 50



475 Index

substantive aspects, 49-54 non-aggravation, 210-11 substantive relation to adjudication, non-cooperation, 138, 283 59-61 non-intervention, declarations of, 396 time-limit for, 56 non-justiciability, Seabed Disputes Chamber without prejudice clauses, 51-2 (SBDC), 300 Netherlands, 90, 92, 135, 174, 178-9, 264, non-participation, 305, 432 374 non-recognition issues as to negotiation, 61 arbitration, 135 non-retroactivity, 180 experts from, use, 235 non-violation complaints, 9, 315-16 First World War submarine incident, 90 normal diplomatic channels, negotiation inquiry, 90, 92 via, 45 MH17 incident, 101 North American Free Trade Agreement UN intervention, 353 (NAFTA), 187, 340 neutral arbitrators, selection, 136 North Atlantic Treaty Organization (NATO), 67, 69, 73, 99, 380, 384-6, neutral members, 133, 136-41, 160 neutrality, 29, 72, 153, 285, 358 390-1, 401, 410 new facts, revision of arbitration award due dispute settlement provision, 384 to, 160 disputes, involvement in, 390 New Zealand, 16, 99, 135, 146, 157, 159-60, expansion, 385 good offices, 391 168, 204, 215, 364 adjudication by ICJ, 204, 215, 257-8 UN, co-operation with, 410 arbitration, 146, 159-60 Norway, 111, 200, 329, 333 Law of the Sea Convention arbitration. adjudication by ICJ, 200 conciliation, 111 proliferation of adjudicatory bodies, DSU, 329 problems arising from, 435 experts from, use, 235 Nicaragua, 161-2, 199, 201-3, 214, 218, First World War submarine incidents, 232-3, 252-3, 368-9, 403-6, 424-5 adjudication by ICJ, 199, 201, 203, 211, good offices, 391 214, 218, 232, 244, 246, 252 notification, 32, 39-42, 121, 139, 209, 317, arbitration, 161, 165 consultation distinguished, 39 Contadora process, 55, 394 nuclear tests, atmospheric, 16-17, 257 negotiation, 55 OAS intervention, 394 nullification, 22, 163, 314-15 Nicaragua-United States dispute nullity, 22-3, 148, 161-3, 165, 169-70, 422 adjudication by ICJ, 201, 203, 211, 232, OAS see Organisation of American States. Contadora process, role, 404 OAU see Organization of African Unity. third party interventions, 424 objections, preliminary, 47, 199, 216, 274, UN intervention, 368 405 Niels Ebbesen, 92 objective assessment, 84, 321, 327 objective determination, 12 Niger adjudication by ICJ, 226, 251 objectivity, 12, 73 ECOWAS Community Court of Justice, obligations general, 5, 116, 348 UAM intervention, 401 substantive, 6, 42, 56, 180, 340 Nigeria, 216, 264, 406-7 OEC see Organization of Eastern Caribbean States (OEC), 117 adjudication by ICJ, 216-17, 406 mediation, 70 OIC (Organization of the Islamic refusal of mediation, 70 Conference), 389-90, 397 UN intervention, 364 omissions, 79, 180, 282, 285, 289, 296



476 Index

ONUCA (United Nations Observer package deals linking negotiations, 52 Group in Central America), Pakistan, 68, 73, 76-8, 136-8, 154-5, 166, 380, 410 173-4, 356-7, 361 optional clauses, 7, 196-8, 200-3, 206, 254, adjudication by ICJ, 201-2 arbitration, 138, 152, 154-5 421, 430 declarations, 195-7, 199-202, 267 mediation, 68 Organisation of American States (OAS), 67, Palestine, 10-12, 200, 351, 353, 356, 378 386-7, 391, 394-6, 399-401, 403, Palestinians see also Arab-Israeli conflict 408 - 11advisory opinion by ICJ, 220 arbitration decision, support for non-recognition issues, 61 implementation, 403 UN intervention, 98, 372 collective action, 396 Panama conciliation, 394-5 Contadora process, 394 Contadora process, 394 Law of the Sea Convention arbitration, 301 dispute settlement provision, 386 panel proceedings, 319-27, 338, 343-4, 414 foreign ministers' Meeting of panel reports, 101, 313, 325-7, 330-3, 339 Consultation, 386 panellists, 322-3, 343 General Assembly, 386 panels, 123, 125, 137, 312-13, 316-35, OAS mediation by, 394-5 344-5, 430 arbitration, 112, 191, 342 purposes, 386 resources deployment, 394 composition, 321-3 Secretariat, 387 jurisdiction, 330, 343 Soviet Union, 409 mandate, 320-1 Organization for Security and Co-operation procedure, 324-6 in Europe (OSCE), 123-6, 385, Papua New Guinea, negotiations, 50 392-4, 397, 400 Paraguay, conciliation, 112-13 and conciliation, 123-6 parallel regimes, 268 conciliation, 393-4 party autonomy, 177, 263, 338 PCA see Permanent Court of Arbitration. conciliation provisions, 123-5 expansion, 385 PCIJ see Permanent Court of International mediation by, 392 Organization of African Unity (OAU), peace agreements, 351, 364, 392, 401 117, 387-9, 391-3, 396, 400-2, peace treaties, 12, 80, 110, 138-9, 162, 219, 409 boundaries agreement, 396 peaceful means, agreement to settle disputes dispute settlement provision, 388-9 by, 413 division within, 401 peaceful methods, 38, 345, 348, 359, 417-18 good offices, 391 peaceful settlement of disputes, 2-5, 38, mediation by, 391 77-8, 140, 195, 263, 265, 387, 402-3 peace-keeping operations, 402 importance of issue, 437 Organization of Eastern Caribbean States peaceful transfer of power, 351, 364 (OEC), 117 peacekeeping, 340, 348, 358, 381, 396, conciliation provisions, 117 410-11, 428-9 Organization of the Islamic Conference by regional organisations, 396-7 (OIC), 389-90, 397 forces, 356, 378-9, 392, 397, 401-2, 410, dispute settlement provision, 390 OSCE see Organization for Security and operations, 355, 358-9, 362, 378, 380-1, 396-7, 411, 415, 428-9 Co-operation in Europe. overlapping entitlements, 279 Brahimi report, 428 ozone layer, conciliation provisions in by UN Secretary-General, 362 protocols for protecting, 126-7 political capacity, improving, 428



Pérez de Cuéllar, Javier, 365

477 Index

good offices, 67, 98 prompt release of vessels, 270, 295-6 provisional measures, 13, 145, 204, 206, Permanent Court of Arbitration (PCA), 2-3, 15, 134-5, 137, 140-1, 143-5, 208-11, 294-5, 302, 371, 373 166, 173, 222, 431 PTAs (preferential trade agreements), continuing role, 134 339-40 financial assistance by, 431 public international law, 5, 181, 345 selection of appointing authority by, 141 Permanent Court of International Justice Qatar, 53, 199, 207, 209-11, 431-2 (PCIJ), 3, 5, 10-12, 96, 102, 106, 194, adjudication by ICJ, 199, 431-2 201 see also International Court of negotiation, 53 **Justice** qualifications of judges and/or arbitrators, personal diplomacy, 72, 354 135, 142-3, 184, 222, 243, 282, 285, personal jurisdiction see jurisdiction, ratione 322, 432 personae. persons of high moral character, 120, 184-5, racial discrimination, 12, 49, 55-6, 209-10 Rainbow Warrior affair, 25, 135, 146, 157-9, 222 Peru, 15, 188, 395 169, 364-5 adjudication by ICJ, 256 arbitration, 159-60 Contadora process, 395 UN intervention, 135, 157 Philippines, 139, 215, 264, 268, 288, 304-5 reasonableness, 60, 70, 185 plausibility, 206, 209, 294, 404 reasoned awards, 23, 135, 163-4 Poland receivability, 35 conciliation treaty, 105 recommendations, 41, 91, 111, 119, 243-4, troops interned in Switzerland, 282-3, 321, 333-5, 349-51, 387-8 conciliation as to, 109 reconciliation processes, 351, 363-4 political asylum, 15, 256 rectification, 21, 159 political contexts, 13, 246, 416, 430 Red Cross, mediation by, 67, 72, 77 political disputes, 13-14, 67, 72, 77, 244, Red Crusader, 92-7, 290 246, 248, 255 refusal to negotiate, 55-6 political methods of dispute settlement, regional agencies, 8, 407-8 improving capacity, 425-9 regional courts, 398, 402 political perspective on dispute settlement, regional organisations, 339-40, 379-80, 417 383-411, 415 material dimension, 417-18 14.4suggested changes, 429 overview, 415-20 and adjudication, 402-7 timing of dispute, 418-20 and Cold War, 408 politics, 108, 236, 247 and United Nations, 354, 407-11 domestic, 82 collective action, 395-8 of accepting mediation, 70-2 consultation, negotiation, and good Portugal, procedural rules for arbitration, offices, 390-1 156 dispute settlement role, 383 predictability, 20, 236 disputes within member states, ability to preferential trade agreements see PTAs. deal with, 399-400 preliminary objections, 47, 199, 216, 274, geographical limitations, 398 405 in Europe, 384-5 prima facie jurisdiction, 206, 294-5 inquiry and conciliation, 393-5 procedural fairness, 432 inquiry by, 102 procedural rules, 6, 20, 81, 87, 125, 173, 181, jurisdictional conflicts with UN, 408 184-6, 296 League of Nations, 407 arbitration, 144-6 limitations, 398-402

proliferation of adjudicatory bodies, 434



478 Index

regional organisations (cont.) Russo-Japanese war, 85-7 mediation, 391-3 Rwanda, negotiation, 55 peacekeeping operations, 396-7 St Vincent and the Grenadines, Law of the range of, 383-90 Sea Convention arbitration, 301 regional solidarity, influence, 400-2 resource constraints, 402 Samoré, Cardinal Antonio, mediation by, role, 390-8, 404, 411 68, 72, 75 sub-regional organisations, importance, sanctions, economic, 70, 76, 348, 358, 360, 390, 401-2 373, 380, 408 survey, 383-90 satellite imagery, 233 trade systems, 339-42 Sauser-Hall, M. George, arbitration by, 135 UN, 397, 407-11, 415 SBDC see Seabed Disputes Chamber. regional solidarity, influence on regional SCC see Stockholm Chamber of Commerce. organisations, 400-2 scientific evidence, 234-6 sea boundary delimitations, 276-8, 284 see regional trade agreements, 331, 339 regional trade systems, 339-42 also maritime boundaries Seabed Disputes Chamber (SBDC), 270, remoteness, 7, 96 representatives, 40, 45, 76, 93, 98, 138, 312, 291-4, 296-301, 303 316, 323, 353 ad hoc chambers, 298-9 reputation, highest, 142, 282, 285, 289 advisory opinions, 300 res judicata, application, 216 competence, 298-300 reservations, 6-7, 126, 195-6, 199-201, 206, composition and functioning, 298 213, 262-3, 267, 303 constituting of, 297-8 resources, natural, 233, 235, 330, 340 enforcement of decisions, 300 resubmission of claims, 36 establishment, 303, 306 reverse consensus, 313, 316, 321 jurisdiction, 298-300 revision, 21, 159, 161, 215-17, 226, 261-2 non-justiciability, 300 rights role, 270 intellectual property, 176, 314, 326, 337 Security Council see United Nations legal, 16, 61, 109, 157-8, 169, 205, 245, Security Council. 247, 253, 414 self-defence, 196, 358, 386 self-determination, 238, 417 sovereign, 218, 245, 274-7, 280 Senegal, 136, 162, 208-9 adjudication by ICJ, 139, 223 adjudication by ICJ, 204 arbitration, 138, 179 arbitration, 136 conciliation, 130 Serbia conciliation treaty, 106 adjudication by ICJ, 233 royalty payments, 178 mediation, 70 rule of law, 20, 58, 420 settlement, notion and functions, 18-23 rules of procedure see procedural rules. Seychelles, inquiry, 98 Russia, 34, 49, 86, 127, 138, 223, 264, 305, Siam (Thailand), 108 385, 394 Singapore, 41, 57, 198, 287, 333 adjudication by ICJ, 198, 287 Russian Empire, Dogger Bank incident, 85-7 Russian Federation, 49, 55, 138, 150, 222, consultation, 41 273, 279-80, 385 Law of the Sea Convention arbitration, 57 adjudication by ICJ, 223 negotiation, 57 conciliation, 127 single legal culture, 224, 236 Slovakia ICJ judges panel, representation on, 222 ITLOS membership, 432 adjudication by ICJ, 198, 232 regional organisations, membership, 385 negotiations, 63 Security Council membership, 222 Slovenia, 139-41



479 Index

small states, mediation by, 337	state enterprises, 293, 299
soft law, ICJ's use, 237	statehood, 200
Somalia, 267, 393, 428	Stockholm Chamber of Commerce (SCC),
OAU intervention, 393	175, 182
South Africa	strict time limits, 317, 324, 327
adjudication by ICJ, 224	subject matter, 27–9, 45, 49, 54, 81–2, 91,
negotiation, 47–8	203, 209, 321, 326
OAU membership, 401	jurisdiction, 26–30, 35, 176–8, 270,
South China Sea Arbitration, 139, 264,	314–15, 321, 368
267-8, 271, 278-9, 288, 304, 432	submarine incidents, First World War,
Southern Bluefin Tuna, 57, 167, 268, 276,	88–90
288, 304, 435	sub-regional organisations, importance, 390,
sovereign arbitration, 133-4	401
sovereign equality, 5, 7-8, 24	substantive obligations, 6, 42, 56, 180, 340
sovereign rights, 218, 245, 274-7, 280	Sudan
sovereignty, 51, 62, 65, 147, 150, 273-5,	arbitration, 164
278-9, 388, 393-4	AU intervention, 397
land, 149, 273	Suez Crisis, UN intervention, 377
territorial, 40, 147, 149-50, 153, 250,	summit discussions, 46-7
273–4, 280	surveillance, 316, 333-4, 336
Soviet Union	suspension of concessions, 277, 316, 324,
collapse, 385	331, 333–5
inquiry, 100-2, 418	Sweden, 90, 98, 104, 128, 138, 179, 353, 363
KE 007, 100-1	Åland Islands dispute, 98
KE 007 incident, 418	arbitration, 179
mediation, 68, 73, 82	conciliation treaty, 104
negotiation, 361	experts from, use, 235
OAS, 409	inquiry, 90, 98
refusal of mediation, 70	selection of neutral arbitrators by, 138
regional organisations, membership, 385	UN mediation, 353
UN intervention during the Cold War,	Switzerland, 105, 109-10, 115-16, 157, 264,
377-8	333
Spain, 30, 40, 46, 49, 62, 85, 89, 161-2, 201,	arbitration, 157
236	conciliation, 110, 115, 129
adjudication by ICJ, 201	conciliation treaty, 105, 116
arbitration, 46, 138	,
inquiry, 85	Taba dispute, 152
Spanish-American war, 84-5	Taft treaties of arbitration, negotiation, 91
Spanish–American war, 84–5	Taft, Chief JusticeWilliam Howard,
special agreements, 6, 10, 17, 53, 60, 195,	arbitration by, 135
197-8, 206, 239-41, 249-51	Tanzania
special arbitration, 102, 263, 270, 288-90	conciliation, 110–11
special committees of the UN, negotiation	OAU intervention, 393
assisted by, 352	Tavignano Inquiry, 87–9, 92, 97
specially qualified individual, arbitrationby,	termination of diplomatic relations, 61
134	terms of reference, 38, 86, 89, 92, 172, 180,
Spender, Judge, opinion by, 48	320-1, 399, 414
splitting of dispute, negotiation as to, 50	arbitrators, 144–52
Sri Lanka, 173	terra nullius, 236, 256
stability, 20, 68–9, 155	territorial disputes, 61, 68, 134, 165, 216,
state consent, 5–8	226, 398, 401, 403, 431



480 Index

territorial jurisdiction, 26-7 trust funds for adjudication territorial seas, 149, 197, 286, 301 UN General Assembly's, 431 territorial sovereignty, 40, 147, 149-50, 153, UN Secretary-General's, 430 250, 273-4, 280 Tubantia Inquiry, 90, 93 Tunisia, adjudication by ICJ, 212-13, Thailand adjudication by ICJ, 216, 253 215-16, 240-1, 243 conciliation, 108 Turco-Italian war of, 1911-12, 87-8 UN intervention, 363, 365 Turkey, 21, 53, 59, 99, 118, 207, 245, 350, 390 third parties, 24, 66, 151, 183-4, 317, 326, adjudication by ICJ, 59, 207, 245 338, 340-1, 424-5 conciliation, 118 disinterested, 84, 133 inquiry, 98-9 interests, 317, 338 Mosul dispute, 98 third party intervention negotiation, 53, 59 forms, 66 UN intervention, 350, 390 ICJ power to allow, 120, 425 U Thant, good offices, 363 whether indespensible, 425 third party selection of arbitrators, 137-8 UAM, intervention by, 401 third states, consent to ICJ adjudication by, Uganda, 110-11, 232, 235-6, 251, 393 203 adjudication by ICJ, 232 conciliation, 110-11 third-party settlement, 265-6 OAU intervention, 393 Tiger Inquiry, 88-90, 97 Ukraine, 101, 138, 150, 223, 273-4, 280, 394 time limits, 56, 145, 216, 328 adjudication by ICJ, 223 conciliation, acceptance, 115 for negotiation, 56 MH17 incident, 101 strict, 317, 324, 327 ultra vires, issue, 372 timing of disputes, 418-20 Umbricht, Dr Victor, work as a conciliator, Timor Sea, 104, 129, 145, 205, 283-4, 306 110-11, 114 trade disputes, 310-45, 414-15 see also UN Compensation Commission, role, 100 GATT; World Trade Organization. UN Human Rights Council (UNHRC), 98-9 appellate review, 326-33 arbitration, 337-9 UN Special Committee on (UNSCOB), 352 consultations, 316-18 UNCITRAL Arbitration Rules, 10, 141, good offices, conciliation and mediation, 144-5, 172, 175, 180, 182-3, 186, 318-20 188, 299 UNCLOS see Law of the Sea Convention implementation of rulings and recommendations, 333-7 Union Africaine et Malagache (UAM), panel proceedings, 320-6 intervention by, 401 procedure, 310, 324-6 United Arab Emirates, 207, 209-11 trademarks, 178, 339 United Kingdom, 15-16, 62-3, 135-6, 142, Trail Smelter case, 154 146, 221-2, 237-9, 248-9, 274, transferred jurisdiction of ICJ, 202 416 - 17transparency, 182-4, 427 adjudication by ICJ, 199, 237-8, 241-2, treaties 248, 253 investment, 79 arbitration, 55, 135-6, 138, 146-8, 152-3, 155-6, 158-9, 161, 164, 249-50 of arbitration, negotiation, 91 British-Venezuelan Commission, 133 on peaceful settlement, 117 treaty practice, 1911-1940, 91 consultation, 41-2 Trinidad and Tobago, Law of the Sea Dogger Bank incident, 85-7 Convention, 287 inquiry, 92 troops interned in Switzerland, conciliation judges panel, representation on, 222 as to, 109 Law of the Sea Convention arbitration, 287



481 Index

mediation, 67-8, 70 United Nations General Assembly (UNGA), Mosul dispute, 98 97-8, 122, 220-1, 256, 348-56, negotiations, 51, 57, 62-3, 391 360-1, 365-7, 372 Red Crusader incident, 92-4 fact-finding by, 97, 351 Security Council membership, 222 good offices, 353 severing of diplomatic relations, 61 recommendations to states, powers to sovereign arbitration, 134 make, 98, 350-1 treaties of arbitration, negotiation, 91 referral of cases to UNSC, 354 UN intervention, 361, 363, 390 referral to other UN bodies, 354 United Nations (UN), 71-3, 218-20, role, 348-55 347-83, 397-9, 411, 415, 425-7 United Nations Secretary General advisory opinions, 355, see old war other UN bodies, activities related to, and regional organisations, 407-11 assistance with negotiation, provision of, political capacity, improving, 427-8 United Nations Secretary-General An Agenda for Peace, 381 Cold War, intervention during, 377-8 arbitration by, 135, 138-9, 146, 159-60 colonisation and decolonisation, 378 creation, 347 arbitraton by, 157 EC, co-operation with, 380 compensation, ruling as to and effectiveness, 376-82 Contadora process, 387 election of judges to International Court, good offices, 361 independence, 365-6 222 fact-finding, 351-60 investigation, power of, 360 human rights, 347 mediation, 363-6 independence of Secretary-General, 364-7 mediation by, 67 peace-keeping operations, 362 inquiry by specialised agencies, 100-1 machinery of organisation, 348-50 restraint oof hostilitites, action for, 361 main ogans, 348-50 success of intervention, likelihood of, 367 mediation, good offices and conciliation, trust funds for adjudication, 430 United Nations Security Council (UNSC), Model Rules on conciliation, 122 69, 252-3, 347-56, 358-81, 397, Observer Group in Central America see 408-11, 426-9 compensation Commission, 100 peacekeeping operations and action ECOWAS peace-keeping operations, under Chapter VII, 355-60 support for, 401 political organs and International Court, fact-finding by, 351 367-76 good offices, 353-4 purposes, 347 inquiry by, 98 recommendations concerning the jurisdictional conflicts with regional settlement of disputes, 350 organisations, 408 regional organisations, 397, 407-11, 415 membership, 222 role of Secretary-General, 360-7 political capacity, improving, 426-7 Secretary-General, suggested changes, 67, powers, 348-9 70, 427-9 recommendations to states, power to Security Council and General Assembly make, 349 in action, 350-60 referral of cases to other UN bodies, 354 special committees, 352 referral of cases to UNGA, 354 United Nations Conference on the Law of role, 348-55 the Sea (UNCLOS III), 238 suggested changes, 426-7 negotiation of dispute settlement United States, 67-74, 201-3, 245-6, 330-2,

provisions, 262-9

336-7, 368-70, 377-80



482 Index

United States (cont.) Vatican adjudication by ICJ, 199-201, 203, 211, arbitration by, 133 225-8, 232, 244-7, 368 mediation by, 68, 71-2 Venezuela, 59, 95, 133, 164, 169, 187, 342, and Iran, 61, 68, 72, 74, 416-17 arbitration, 55, 135-6, 136-7, 138, 146-7, 394, 396 153-5, 161 arbitration, 164 Camp David Agreements, 379 British-Venezuelan Commission, 133 Chinese embassy in Belgrade, bombing, Contadora process, 394 inquiry, 95 compensation, payment, 98 MERCOSUR, 342 conciliation, 107, 128 OAS, 396 conciliation treaty, 106 vessels, prompt release, 270, 295-6 consultation, 39 Vietnam, UN intervention, 363 DSU, 330-1, 336-7 good offices, 353 Waldheim, Kurt, investigation by, 361 war crimes, 98-9, 237, 352 ICJ judges panel, representation on, 222 Warsaw Pact, dispute settlement provision, inquiry, 85 Joint Commission with Canada, 45 without prejudice clauses, use, 51 mediation, 67, 71 World Bank, 101, 111, 173, 310 negotiation, 45, 60 World Trade Organization (WTO), 310-11, 314-15, 317, 323, 325-6, 330-2, 342-3 OAS, 408 regional organisations, membership, Dispute Settlement Body see Dispute 384-5 Settlement Body. Security Council membership, 222 Dispute Settlement Understanding see severing of diplomatic relations, 61 Dispute Settlement Understanding. Spanish-American war, 84-5 establishment, 311 treaties of arbitration, negotiation, 91 financial assistance by, 431 UN intervention, 353 good offices of Director-General, 319 UN intervention during Cold War, 377-8 in context, 342-5 United States-Mexican General Claims Appellate Body see Appellate Body. written submissions, 93, 95, 100, 183-4, Commission, arbitration by, 133 United States-Mexico-Canada Agreement (USMCA), 340, 344 WTO see World Trade Organization. urgency, 206-7, 295, 317, 324, 415 adjudication by ICJ, 209, 234 arbitration, 147, 149, 152, 157, 163 Contadora process, 395 Yugoslavia, 69, 98, 200, 206, 216-17, 233, Uruguay Round of GATT, establishment of 359, 371, 380 WTO, 311 Yugoslavia, conciliation treaty, 106 USMCA (United States-Mexico-Canada Yugoslavia, dissolution, 69 Yugoslavia, dissolution of Agreement), 340, 344 uti possidetis principle, 240 adjudication by ICJ, 200, 206 cases following, 434 validity, 22, 100, 119, 164, 169-70, 182, 188, Chinese embassy bombing, 98 190-1, 199, 375 OSCE missions, 392 Valletta procedure (OSCE conciliation

Zimbabwe, 399

provisions), 123-4, 126