Index

act of state doctrine, 141, 150, 152, 217
acte contraire doctrine, 58
African Commission of Human and Peoples Rights, 225–6
African Union, 230
Angola
natural resources as property of state, 73
Articles on State Responsibility. See under: International Law Commission
Berne Convention, 58
Blackstone, William, 25
Bolivia, 73
Bosnia and Herzegovina (BiH), 9, 19, 274–98
Dayton Peace Agreement as constitutional framework, 19, 274, 275
complexity of state organisation, 276
Constitution interpreted as treaty under VCLT, 278
criticisms of, 282–3
ECHR directly applicable, 278–9
international law, and, 278–82
Office of the High Representative, 279–82
Presidency, 277, 290–1
separation of powers, 276–8
veto power over all essential decision-making, 277
foreign relations law, role of the
Parliamentary Assembly in, 282, 290–5
controlling role, 292–3
prior approval for cancellation or withdrawal from treaties, 292
prior approval for ratification of treaties, 294–2
role of permanent Committees, 293–4
general constitutional and legal framework, 275–84
BiH and international law, 278–82
internal organisation of BiH, 275–8
shortcomings of current system, 282–4
Office of the High Representative, 279–82
criticisms of, 281
role and functions, 279–80
Brazil
mixed economy: constitutional democracy, 74
public monopoly for petroleum exploration/exploitation, 73
Brexit, 365–7
appeals to national liberation, 85
challenges to United Kingdom’s attempt to withdraw, 55
exercise of independent sovereignty, the people, and, 364
fight for sovereignty, as, 362
Miller case, 148, 149, 346, 365–6
parliamentary approval required for treaty withdrawal, 250
parliamentary involvement in Brexit negotiations, 148
the people determining engagement with world, 338
withdrawal from European Court of Justice jurisdiction, 364
Index

Calvo doctrine, 73, 78
Chile
Augusto Pinochet, 61
corporations, 71
controlling conduct of, 82
dominance of transnational companies in, 60–1
nationalizations, 71–2
constitutional amendment, 72
President Salvador Allende
corporations as supranational force, 71
manifesto of peripheral perspective, speech as, 68–9
nationalizations, 71–2
postcolonial peripheral perspective, speech attacking global economic order, 60–1, 70, 76
sovereignty, 71–2
China
business and human rights treaty, supporting, 82
corporations, non-liberal conceptions of, 80–1
economic aggression/expansion, 75–6
emerging power, as, 76
foreign relations law
academic study of, 206–7, 318–20
Chinese environmental diplomacy, 324–6
congruent basic legal principles of Chinese/international environmental law, 326–8
debates on, 318–21
environmental law and policy, 324–8
no field recognized as such, 317
silence of Chinese law on foreign relations, 325–4
underdeveloped nature of, 321–4
global environmental governance, 19, 317–39
administrative organs involved in external environmental relations, 328–9
allocation of China’s public powers in, 328–34
allocation of powers in cooperation with global environmental institutions, 333–4
allocation of powers on conclusion/approval of international treaties, 329–32
approval of agreements by State Council, 332
approval of treaties by Standing Committee of National People’s Congress, 330–2
common but differentiated responsibilities as guiding principle, 325–6
Global Environmental Facility, cooperation with, 333–4
international environmental treaties, legal status of, 334–8
international law, traditional perspectives on, 321–3
South-South Cooperation Fund, building, 334
Huawei, 76, 80
legal status of international environmental treaties, 334–8
direct application, treaty implementation by, 337–8
execution by administrative measure, treaty implementation by, 337
place of environmental agreements in Chinese law, 335–6
transformation through legislation, treaty implementation and, 336–7
state-owned enterprises
globalization of, 80
invoking sovereign immunity in U.S. federal courts, 81
civil law, 107, 142, 146, 345
deference to executive, 97
rejection of doctrines of judicial abdication, 142
role of foreign states in domestic courts, 97
climate change
China, 333
duty of care to citizens, 146
Paris Agreement. See Paris Agreement on Climate Change
United Nations Framework Convention on Climate Change, 25, 38, 39, 332
Cold War, 128, 191, 197, 314
Colombia
Constitutional Court
BITs, 147, 347
free, prior and informed consultation, 73
human rights, 74
colonization/colonialism
British colonialism, 106
colonial hierarchies in privatized property relationships, 70
Commonwealth and colonialism, 87–91
Index

375
decolonization. See decolonization
property rights, sovereignty and, 70
transnational corporations, and, 70
common law, 87, 90, 106, 107, 142, 345
countries preferring Roman law, 90
deference to executive, 97
embedded common law and colonial
continuity, 94–6
foreign affairs exceptionalism, influence
of, 143
imposition of, 126–7
India. See under India
role of foreign states in domestic courts, 97
Commonwealth
colonialism, and, 87–91
overlooking legal history, 89–91
foreign relations law of, 87–9
comparative foreign relations law, 60–85
changing context-peripheral echoes in
centre, 75–7
epistemic structure of liberal foreign
relations law, 65–7
liberal foreign relations law from
centre, 64–7
agency and legal subjectivity, 66–7
particular ideas defining perspective, 65
shaped by specific contexts, 65
sovereignty, understanding of, 65–6
peripheral perspectives on contemporary
trends, 77–84
business and human rights, 82–4
hybrid foreign relations and state-owned
enterprises, 80–1
rebalancing sovereignty and property in
foreign investment law, 77–9
postcolonial perspective from periphery
agency and legal subjectivity, 71–2
Allende’s 1972 speech as manifesto
of, 68–9
epistemic structures, 70–1
experience of statehood after
decolonization, 69
public ownership of natural
resources, 71–4
regional integration, 74–5
sovereignty, understanding of, 70
taking global comparisons seriously, 60–4
foreign relations law embedded in different
varieties of constitutionalism, 63
liberal perspectives from centre, influence
of, 61–2
two perspectives on foreign relations law,
64–75
liberal foreign relations law from
centre, 64–7
postcolonial perspective from periphery,
67–75
comparative international law
emergence of, 7
foreign relations law, and, 8, 29
function of, 29
Comprehensive Economic and Trade
Agreement between Canada and the
EU (CETA), 4, 78, 173–4
Conseil Constitutionnel jurisprudence on
limitations of sovereignty, 17, 161–79
costitutionality review of international
treaties before ratification, 163–5
critical assessment of Conseil
Constitutionnel’s decisions, 177–9
arguments built on case by case basis,
177
no guidance which treaties will be
compatible, 178–9
droit des relations internationales and
foreign relations law, 161–3
international engagements not compatible
with French Constitution, 168–77
CETA case, 173–4
clauses running counter to Constitution,
171–2
essential conditions for exercise of
national sovereignty, 168–9
essential conditions for exercise of
national sovereignty jeopardized,
169–70, 171
habilitation clauses, 176–7
imposition of conditions, 173–4
jeopardizing rights and freedoms in
Constitution, 174–6
Statute of International Criminal Court
case, 174–6
Treaty establishing a Constitution for
Europe case, 171–2
Treaty of Amsterdam case, 171
Treaty of Lisbon case, 172
Treaty on European Union (Maastricht I)
case, 169–70
Treaty on Stability, Coordination and
Governance case, 173
limitations of sovereignty doctrine and its
criticisms, 165–8
Index

- constitutional law. See domestic law
- constitutional values, 253, 353
- sovereignty as placeholder for, 17, 212
- sovereignty, 365
- control limits, 15, 153, 152
- Convention on the Elimination of Discrimination Against Women, 32
- Convention on the Rights of Disabled People, 32
- courts, domestic. See domestic courts
- customary international law, 368
- environmental impact assessments, 3
- jurisdictional immunity of states, 15, 153–5
- new actors excluded from formal international law-making, 11
- self-determination, 368
- source of international law, as, 5
- decolonization
  - continued economic dependence, 69
  - integration and disintegration of states in course of, 4
- peripheral statehood, 69
- political independence, achieving, 70
- postcolonial law ‘modernized’ in image of Western law, 70
- sovereignty over natural resources, 68
- deference, 152, 179, 237
- executive, to, 87, 97, 141, 142, 344
- ICJ, to, 154
- international institutions, to, 302
- deference decreasing, 313, 316
- treaty law’s deference to domestic law, 56
- deformatization of international law, 11, 18
- democracy, 6, 65, 66, 83
- economic democracy, 84
- international law, and, 6
- shareholder democracy, 84
- Switzerland. See Switzerland
- developing countries
  - binding treaty on business and human rights, seeking, 82
- China financial support for 2030 Sustainable Development Goals, 334
- common but differentiated responsibilities as guiding principle in environmental governance, 325–6
- non-binding commitments on climate mitigation, 25, 31, 35, 38, 42, 43
- promoting economic democracy in, 84
- Dicey, Albert Venn, 25, 366
- domestic courts, 152
- control of executive and legislative in foreign affairs, 14–15
- extraterritorial regulators, as, 83
- greater role in controlling executive in foreign affairs, 48
- implementation of international law, 7
- judicial reach over foreign relations, expansion of, 143–4
- judicial review, foreign relations and. See judicial review, foreign relations and global administrative law
- justiciability principles limiting capacity, 56
- legal value of corporate human rights standards in litigation, 83–4
- recognising parliamentary rights to participate in treaty withdrawal, 54–5
- role in extraterritorial protection of human rights against corporate misconduct, 82–3
- sovereign immunity in US federal courts, 81
- domestic law, 2, 6
- asserting authority of domestic legal orders vis-à-vis ‘the international’, 7–8
- competence to conclude treaties, violation of, 2
- courts. See domestic courts
- democratic legitimacy, need for, 5
- executive, treaties and. See executive authority in entering and exiting treaties
- foreign relations law, and, 150
- granting international law domestic rank and effect, 3
- human rights-conferring aspects of, 47
- implementation of international law, 2–3
- importance of domestic procedures, 3–4
- international law, and. See international law and domestic law
- international legal instruments, effects of, 5
- internationally wrongful state acts, 2
- national parliaments. See parliaments
- not justifying non-compliance with international obligations, 2
- regulating competence to consent to treaties, 49
- domestic procedures, 14
- impact on international law foreign relations, 18
Index

importance of, 3–4
international institutions paying increasing attention to, 3–4
dualism, 12, 17, 114, 370–1
India. See under India
environmental law, international. See international environmental law
European Convention on Human Rights (ECHR), 154, 168
Dayton Peace Agreement
breaches of ECHR obligations, 283
ECHR directly applicable to, 278–9
European Court of Human Rights, 128
property rights of state-owned enterprises, 81
quality of domestic decision-making
influencing substantive review, 3
rights of corporations, 75
European Union
agency and legal subjectivity, 66–7
autonomy of European Union legal order, 172
Charter of Fundamental Rights of the European Union, 171
Court of Justice, 75, 145, 361
foreign relations law of supra-national entities, 28
France. See France
fundamental rights, 152–3
Germany. See Germany
international law, and, 153
legal personality, 172
Paris Agreement on Climate Change, 37
Poland
breaches of rule of law, 273
representation in European Council, 264–6
referendums on treaty arrangements, 149
rescue policies for Eurozone crisis, 44
UK’s departure from. See Brexit
effective authority in entering and exiting treaties, 46–59
international law regarding executive power as sufficient, 47
ratification, 48–53
executive authority as incident of sovereignty, 48
international law constraint on foreign relations law, 50–1
legislative approval of treaties, 48–9
unilateral acts doctrine, 52–3
VCLT provisions, 51
withdrawal, 53–8
analogous exemption for manifest violations, 56–7
constitutional restraints, possibility of, 58
executive’s right to withdraw, 55
parliamentary rights to participate, 54–5
role of courts, 56
satisfying separation of powers procedures, possibility of, 58
VCLT provisions, 53–7
foreign act of State. See act of state doctrine
foreign investment, 66, 82
constitutional rights of foreign state-owned corporations, 81
domestic effect of international investment law and arbitral awards in host countries, 79
international investment arbitration, 4
investor-state disputes, 71–2
jurisdiction and enforcement of arbitral awards, 78–9
legal relations between foreign investors and host state, 77–8
rebalancing sovereignty and property in foreign investment law, 77–9
role of home states in extraterritorial protection of human rights against corporate misconduct, 82–3
sovereign immunity, and, 81
sovereign wealth funds, 80
foreign legal policy, 108–29
consequences for international law, 119–25
decision-making, international law and, 122
foreign legal policy shaping international law, 120–1
violations of international law, 121–2
elements in determining, 113–15
existing in relation to broader national interest, 112–13
operating at interface of the domestic and international, 115–16
primacy of, 112–16
role and function of, 116–19
foreign relations exclusion from judicial scrutiny, 98–102
global administrative law of. See judicial review, foreign relations and global administrative law
foreign relations (cont.)
hybrid foreign relations and state-owned
to enterprises, 80–1
Poland. See under Poland
proportionality, 149, 151
South Africa. See South Africa
sovereignty, 165–7
Switzerland. See under Switzerland
foreign relations law
bargaining tool, as. See foreign relations law
as a bargaining tool
Bosnia and Herzegovina (BiH). See under
Bosnia and Herzegovina (BiH)
China. See under China
comparative foreign relations law. See com-
parative foreign relations law
comparative international law, and, 8, 29
Commonwealth, foreign relations law
of, 87–9
overlooking legal history, 80–91
contemporary trends in. See under com-
parative foreign relations law
defining, 64, 88–9, 109, 182, 343–6
dimensions of encounters, 15–15
domestic foreign relations law, 47
embedded in different varieties of
constitutialism, 63
emergence of, 25–9
Ersatz international law, as. See under
foreign relations law and inter-
national law
executive entering/exiting treaties. See
executive authority in entering and
executing treaties
foreign affairs exceptionalism, 6
foreign legal policy as background to. See
Lacharrière, Guy Ladreit de
France. See under France
Germany. See under Germany
global administrative law as analytical
approach to, 138–40
hybridity as effect of, 12–13
India. See under India
international law, and. See foreign relations
law and international law
judicial review, 95 f., 98, 114, 130 ff., 216, 219,
237, 350
manifestation of exceptionalism, as, 6
nature and meaning of, 1–2, 9–10, 24
Poland. See under Poland
scholarly study of, 27–9
scope, sources and functions, struggles with,
135–8
South Africa. See under South Africa
Switzerland. See under Switzerland
United Kingdom. See under United
Kingdom
United States. See under United States
foreign relations law and international law, 2,
10–12, 343–74
close linkages between, 29
concurrent existence of, 4
emergence of foreign relations law and
relationship to international law, 25–9
foreign relations law as Ersatz international
law, 8, 12, 359–62
foreign relations law’s effects on
international law, 347–9
guiding questions, 1–6
international law’s effects on foreign
relations law, 349–53
missed encounters, 6–9
proceduralization of interface of
international and domestic law, 3–4
foreign relations law as a bargaining tool,
23–45
between real risks and bargaining tool, 37–42
conditions for, 42–4
emergence of foreign relations law and
relationship to international law, 25–9
impact of foreign relations law on treaty
negotiations, 30–1
Obama administration and non-bindingness
of climate mitigation
commitments, 34–7
veto powers in treaty-making, 24
foreign relations law, nature of, 9–10
forum non conveniens doctrine, 150, 151
France
Conseil Constitutionnel
constitutionality review, 163–5
creation of, 163
margin of appreciation, 165
sovereignty, and. See Conseil
Constitutionnel jurisprudence on
limitations of sovereignty
Constitution, 162, 300
amendments to, 165
International Criminal Court, and, 175–6
international treaties, and, 163–5
sovereignty, 165–7
foreign relations law, 109, 161–2
Index

de Lacharrière, and. See Lacharrière, Guy
Ladreit de
monism, 109
primacy of international law, 109
referendums, 166
Supreme Courts, 162
use of force, 299, 300
Friendly Relations Declaration
human rights and fundamental freedoms, 368

Germany
constitution and international legal order, relationship between, 27
Constitutional Court, 44
acta iure gestionis, 81
constitutional protection of property, 81
courts
controlling executive and legislative in foreign affairs, 14–15
rejecting doctrines of judicial abdication, 142
US armed drone missions, 14–15, 130–1, 145–6, 155
legislature supporting foreign policy approach of government, 44
participation in EU, executive decision-making and, 250
referendums, 149
state immunity, 13
global administrative law, 17, 130 ff.
Global Compact on Safe, Orderly and Regular Migration, 11
global governance, 134, 138, 139, 158
courts, and, 135, 140, 158
institutions of, 67, 200

Harvard Research, 49
human rights
Beijing Declaration, 362
business, and, 82–4
Colombia, 74
domestic law, and, 47
European Union respect for fundamental rights, 152–3
Friendly Relations Declaration, 368
indigenous peoples, 75
Latin America, 74
migration, 11
promoting implementation by domestic parliaments, 3

UN Human Rights Committee, 3, 102
hybridity
effect of foreign relations law, as, 12–13
hybrid character of foreign relations law, 24
hybrid foreign relations and state-owned enterprises, 80–1
hybridity of international and domestic law created by foreign relations law, 1–2

immunity
sovereign immunity. See sovereign immunity

India
common law, 86, 87, 102, 107
borrowing from jurisdictions other than England, 102
inherited, 89
Constitution, 86, 88, 89
Article 51 and international law, 91–4
directive principles, 93–4
independence, 94
Supreme Court, 91, 95
uti possidetis, 103–6
dualism, 93, 94
exclusion of foreign relations from judicial scrutiny, 98–102
Sikkim case, 101–2
Supreme Court and UN Charter, 99–101
executive, powers of, 92–4
foreign relations law, 86–107
concord of Western peoples, as, 87–91
Constitution and uti possidetis, 103–6
foreign relations, exclusion from judicial scrutiny of, 98–102
principles, policy and law of Supreme Court, 91–8
Goa, 99–101, 102
independence, 94
international law in Indian legal system, 23
judicial review, 95–6
executive actions, of, 98
Parliament, powers of, 92–4
Sikkim, 87, 101–2
sovereignty remaining an important principle, 98
Supreme Court, 23
Constitutional superiority, 87
dissenting judgments and opinions, 91
embedded common law and colonial continuity, 94–6
extradition of aliens, 96–8
India (cont.)

international law, 91–4, 99–101

political questions doctrine, 101–2

role and authority, 95

UN Charter, 99–101

uti possidetis, 103–4

treaty-making

role of executive, 44

uti possidetis, 87, 103–6

constitutional perfecting of, 103–4

declaratory perfecting of, 103–6

indigenous peoples

constitutional land rights, 73

human rights, 75

transnational corporations, and, 73

individuals

consequences of international legal

instrument for, 5

protection of individual rights, international

law and, 6

subjects of international law, as, 10

informal instruments, 5, 11–12

informal instruments/law, 205–10

compliance-monitoring, 204

importance of informal instrument as

criterion for democratic legitimacy, 205–6

informal international law superseding

formal international law, 199–200

informal law-making complicating

relationship between sovereignty and

international cooperation, 181

‘legislative’ informal instruments, 205

nature of, 205

participants, nature of, 208–9

process, nature of, 209

rejection of, 209–10

states as just one actor, 208

transnational corporations, and, 200

treaties, and, 205

international agreements

states not opting for, 11

treaties. See treaties

international comity, 141, 150, 151

International Court of Justice, 348

de Lacharrière, and, 111, 123

heads of state to be presumed competent, 52

India, and, 103–6

Italian Constitutional Court, and, 153–5,

349, 350

state immunity, 13

Index

International Criminal Court, 128, 234

dissent of some African states with, 125

French Constitution, and, 175–6

South Africa’s attempted withdrawal. See

under South Africa

threatened collective withdrawal of African

states from, 351, 353

United States, and, 351

international environmental law

environmental impact assessments, 3, 353

Montreal Protocol on Substances that

Deplete the Ozone Layer, 337

do harm principle, 3

Rio Conference/Declaration, 325, 327

Stockholm Environmental Conference,

317, 324

Vienna Convention for the Protection of the

Ozone Layer, 337

international institutions and organizations, 3

defence to, 302

decreasing, 313, 316

far reaching implications of, 5

new states, and, 70

paying increasing attention to domestic

procedures, 3–4

secondary law creating, 5

subjects of international law, as, 10

international investment. See foreign

investment

International Labor Organization

restricting withdrawal from treaties, 58

international law

armed drone missions, 14–15, 150–1,

145–6, 155

comparative international law. See com-

parative international law

deformalization. See deformalization of

international law

domestic constitutional principles, and, 6

domestic law, and. See international law and

domestic law

environmental law. See international envi-

ronmental law

European Union law, and, 172

expansion of, 10–11

far-reaching implications of, 5

foreign legal policy, and. See under foreign

legal policy

foreign relations law, and. See foreign rela-

tions law and international law

international law as law, 360–62
Index

nature and meaning of, 2, 10–12
new actors in, 181
populism, and, 355–8
privatization, 18
self-defence, 314–15
self-determination. See self-determination
sources of, 5
states as main players in, 180
subjects of, 10–11
use of force
role of international law in domestic
parliamentary discourse, 326–11
state decisions on use of force,
implications for international law of, 311–15
international law and domestic law,
distinction between as doctrinal remnant, 5
distinction rooted in laws of treaties and state
responsibility, 2
foreign relations law as bridge builder
between, 29
foreign relations law as site of encounter, 4
hybridity of international and domestic law
created by foreign relations law, 2–2
international law not deferring to domestic
law, 47
proceduralization of interface between,
3–4, 14
role of domestic law, 8
states’ implementation of international legal
obligations, 2–3
International Law Commission, 2
Articles on State Responsibility
State acts as internationally wrongful, 2
Guiding Principles 2006, 52, 53
unilateral acts doctrine, 52
VCLT, and, 54
investment. See foreign investment
Iran
authoritarian system, 74
‘Iran deal’, 11
mineral deposits as property of state, 73
Italy
state immunity, 13, 153–5, 349
use of force, 299
judicial review, foreign relations and global
administrative law, 130–58
administra tivisation of jurisdiction and
juridification of foreign relations, 130–5, 156–8
bringing together foreign relations law and
global administrative law, 135–40
global administrative law as analytical
approach to foreign relations law, 138–40
legal standards used on the merits, 144–7
standing, 143–4
struggles of foreign relations law with scope,
sources, and functions, 135–8
taxonomy of global administrative law of
foreign relations, 140–58
interaction norms, 150–8
review norms, 141–50
Kaczyński, Jarosław, 269
Kenya
minerals and mineral oils as public land, 73
Kosovo, 289–90
Kyoto Protocol, 25, 38
Lacharrière, Guy Ladreit de
background and experience, 111–12
La politique juridique extérieure, 108–29
assessment of, 125–9
consequences for international law,
119–25
elements in determining foreign legal
policy, 113–15
foreign legal policy existing in relation to
broader national interest, 112–13
foreign legal policy operating at interface
of the domestic and international,
115–16
nature of, 110–11
primacy of foreign legal policy, 112–16ole and function of foreign policy law,
116–19
strength of analysis of, 122–4
League of Nations, 51, 106
legal advisers
advice on torture or use of force, 128
de Lacharrière, as, 110, 111, 117, 123, 126,
127, 128
international law, and, 127
liberal personality
European Union, 172
international legal personality, 10, 169,
181, 200
liberalism
dominant ideological influence, as, 65
economic liberalism, 76
Index

liberalism (cont.)
liberal and postcolonial perspectives. See comparative foreign relations law liberal internationalism, 76 neo-liberal structural adjustment, imposing, 69 separation of economy and politics by domestic constitutionalism, 66 Locke, John, 25, 131, 364

margin of appreciation, 150, 165 Mexico, 211 Constitution, 68 state ownership of natural resources, 73 Minamata Convention on Mercury, 41, 332 monism, 17, 109, 114, 370 Montréal Document, 209 multinational corporations. See transnational corporations

national parliaments
authorisation of treaty-making, 190–4 earlier information about imminent foreign policy decisions, 18 implementation of secondary law, and, 5 parliamentary participation in foreign affairs, 14 state decisions on use force, implications for international law of, 311–15 use of force role of international law in domestic parliamentary discourse, 306–11 use of force, involvement in decisions on, 209–301 natural resources. See under sovereignty Netherlands climate change, duty of care to citizens and, 146 Constitution, 300 use of force, 209 deployment of forces abroad, 300 New International Economic Order, 72 Allende’s 1972 speech as milestone towards, 61 Declaration, 68 no harm principle, 3 non-governmental organisations (NGOs), 181

opinio juris, 112, 121

Pakistan, 87 foreign relations law, 86 parallelism, 180, 182 Switzerland, in. See under Switzerland Paris Agreement on Climate Change, 11, 58 United States, 16, 31, 34–7, 42–5 non-bindingness of commitments, 24–5 real risks and bargaining tool, 37–42 withdrawal, 45 Permanent Court of International Justice, 10 domestic law, 46 Pinochet, Augusto, 61, 152

Index

control over Council of Ministers and Foreign Affairs Committee, 270–1
declaration of state of war, conclusion of peace and ratification of treaties, 269–70
EU affairs, 271–2
President constitutional role in foreign affairs, 259–63
role in practice, 266–9
separation of powers, Council of Ministers, and, 255–7
referendums, 270
populism exclusionary identity politics, key tenet as, 355
international law, and, 355–8
sovereignty, and, 355–6
Portugal India, and, 99–101, 102
postcolonialism decolonization. See decolonization India, and. See India national liberation, 85
postcolonial constitutions allowing for nationalization of assets, 72
privatization, 18
property disputes between investors and states, 77
proportionality, 134, 141, 145
foreign relations, and, 140, 151
substantive ground, as, 141
United Kingdom. See under United Kingdom United States. See under United States public international law. See international law reasonableness, 141, 145, 152
substantive ground, as, 141
US courts, 151
referendums
European Union, 149
France, 166
Germany, 149
legislative referendums, 48
Poland, 270
Switzerland. See under Switzerland United Kingdom, 364, 365
rule of law, 10
foreign relations, and, 132
international law, and, 6

invoking sovereign immunity, and, 81
original theories of, 131
Poland’s breaches of, 273
principle of legality, and, 188–90

Scelle, Georges, 109, 123
de´doublement fonctionnel, 7
secondary law, 5, 264
self-determination, 372
collective self-determination, 69, 70, 84
economic self-determination, 69, 284
hyperglobalization, and, 359
India, Sikkim and, 102
International Covenants, in, 371
newly decolonized states, and, 119
peremptory norm in international law, as, 358
principle of international law, as, 367–9
sovereignty, and, 181, 212, 363, 368
UN Charter, 357–8
separation of powers, 10, 15, 65, 66, 83, 216
BiH, 276–8
distinctive feature of modern constitutionalism, as, 151
encompassing pushes and pulls, 83
foreign affairs, in, 23
withdrawal from treaties, 58
Sikkim. See under India
soft law, 5, 11, 352
demands for hard participatory rights for, 202–5
development of soft participatory rights for, 200–2
transnational corporations, soft law code of conduct for, 82
Solange doctrine, 130, 150, 152
South Africa, 18, 215–38
Constitution, 149
Bill of Rights, 218
deliberative constitution, 217
foreign relations, 216
international law, and, 27
Constitutional Court
Kaunda case, 217–19, 220–1
SADC Tribunal case, 146–7, 215, 221–30, 361
foreign relations, executive discretion in, 215–16, 217–37
Democratic Alliance cases, 230–7
Kaunda granting very wide margin of discretion, 218
South Africa (cont.)
SADC Tribunal case, 221–30
Grace Mugabe case, 215, 230–5
International Criminal Court, attempted
withdrawal from, 35, 149, 235–7
legislature supporting foreign policy
approach of government, 44
Mandela administration, 18, 219
Mbeki administration, 219
Ramaphosa administration, 238
Von Abo cases, 219–21
Withdrawal case, 149, 215, 235–7
Zuma administration, 216, 237
mistrial of, 216
sovereign immunity, 150, 152
state-owned enterprises, and, 81
sovereignty, 15, 65, 70
colonization, and, 70
concluding treaties as exercise of, 107
Conseil Constitutionnel jurisprudence. See
Conseil Constitutionnel jurisprudence
on limitations of sovereignty
economic self-determination, and, 70
economic sovereignty, 71
external, 131, 358
hybrid foreign relations and state-owned
enterprises, 80–1
internal, 131, 358
international tribunals, and, 361
liberal foreign relations law, in, 65–6
natural resources
foreign relations law, and, 71–3
UN Declaration on Permanent
Sovereignty over Natural Resources, 68
parliamentary, 148
placeholder for constitutional values, as,
17, 212
popular sovereignty, 66
populism and popular sovereignty,
355–6, 358
primacy of, 112
quasi-sovereignty, 75
limiting or legitimizing, 82–4
rebalancing sovereignty and property in
foreign investment law, 77–9
self-determination, and, 181
sovereign immunity. See sovereign
immunity
state consent, 66
treaties, and, 17
war powers, 243

Index
whether indivisible, 362–69
state responsibility, law of, 2
Articles on State Responsibility. See under
International Law Commission
state-owned enterprises
constitutional rights of, 81
globalization of Chinese state-owned
enterprises, 80
hybrid foreign relations, and, 80–1
property rights of, 81
sovereign immunity invoked by Chinese
state-owned enterprises, 81
states
agreeing flexible non-binding
instruments, 11
courts. See domestic courts
domestic law. See domestic law
executive entering/exiting treaties. See
executive authority in entering and
exiting treaties
external relations. See foreign relations law
foreign investment. See foreign investment
foreign legal policy
foreign policy
foreign relations law, and,
not opting for binding international
governments, 11
regulatory autonomy, 5
role in extraterritorial protection of human
rights against corporate
misconduct, 82–3
state consent, 66
state immunity, 13
subsidiarity principle, 129, 150, 171, 271
Switzerland
allocation of powers for treaty-making,
democratization and, 190–9
concept of parallelism in Switzerland,
191–3
far-reaching democratic participatory
rights, 193–7
reaction to legalisation of world politics,
190–1
strong treaty focus, 197–9
Constitution, 183, 188–90
direct democracy as main feature of
constitutional system, 180, 193
Index

foreign policy, 184–5, 201–2
horizontal separation of powers, 186–8
optional referendums, 206–7
parliamentary approval for specific
treaties, 191, 195–6
vertical separation of powers, 185–6
democratic participation in international
law-making, 18, 180–212
allocation of powers for treaty-making,
democratisation and, 190–9
to foreign relations, towards normalisation
of, 188–90
informal international law-making,
199–210
foreign relations law, 182–90
allocation of powers on foreign policy,
185–8
nature of, 181–2
substantive guidance for conduct of
foreign policy, 184–5
towards normalisation of foreign relations,
185–90
whether exists, 182–4
informal international law-making, 199–210
challenges in building new bridges,
203–10
demands for hard participatory rights for
soft law, 202–5
development of soft participatory rights
for soft law, 200–2
informal international law superseding
formal international law, 199–200
Migration Pact, 200, 201, 202–5, 207–8,
211, 363
parallelism, 180, 182, 197, 198
concept of, 191–3
referendums, 194, 203, 207
granted if predefined criteria are met, 207
mandatory referendums, 192, 196–7
optional referendums, 191–3, 196–7, 206–7
Supreme Court, 184
Transatlantic Trade and Investment
Partnership (TTIP), 4, 78
transboundary movements and effects
Basel Convention on the Control of
Transboundary Movements, 331, 336
industrial sites, 3
transformative constitutionalism, 74, 83
transnational corporations, 63, 77
actors in international legal system, as, 10
changing attitudes towards, 63
collective participation rights, allowing, 84
colonization, and, 70
economic and political dominance of, 60–1
foreign investment. See foreign investment
human rights, and, 82–4
indigenous peoples, and, 73
informal instruments, creating, 200
international law-making, and, 181
internationalizing corporate obligations,
failure of, 82
nationalization of assets of, 72
not possessing international legal
personality, 181, 200
quasi-sovereign status, human rights
obligations and, 83–4
role of home states in extraterritorial
protection of human rights against
corporate misconduct, 82–3
soft-law code of conduct, 82
strong executive needed to confront, 71
UN Commission on Transnational
Corporations, 82
Trans-Pacific-Partnership, 78
treaties, 180
bargaining tool in negotiations. See foreign
relations law as a bargaining tool
Conseil Constitutionnel, role of. See
Conseil Constitutionnel jurisprudence
on limitations of sovereignty
domestic law regulating competence to
treaty consent to, 49
entering and exiting. See executive authority
in entering and exiting treaties
exercise of sovereignty, as, 167
domestic law regulating, treaties dependent
on, 46
full powers doctrine, 53
impact of foreign relations law on treaty
negotiations, 30–1
informal agreements concluded by
signature, 48
law of treaties, domestic law, and. See under
domestic law
new actors excluded from formal
international law-making, 11
notification of consent, 49
Paris Agreement. See Paris Agreement on
Climate Change
proliferation in, 197–8
ratification, 48–53
treaties (cont.)
executive authority as incident of sovereignty, 48
legislative approval of treaties, 48–9
unilateral acts doctrine, 52–3
significant reduction in number of treaties, 198–9
source of international law, as, 5
sovereignty, and, 17
states as main actors in treaty-making, 208
VCLT: See Vienna Convention on the Law of Treaties (VCLT)
veto powers in treaty-making, 24
violations, 121–2
widening scope of treaty-making, 48
withdrawal, 53–5
parliamentary rights to participate, 54–5
UN Charter, 99–101, 225
domesticating decisions on military action, impact on, 315
self-determination, 367–8
UN General Assembly, 60, 230, 362, 367
UN Security Council, 11, 248
Al-Qaeda, resolutions on, 153
military intervention
authorization as supplementary source of authority, 352
decreasing role in deciding on, 311–13
military intervention not authorised, 311
Suez crisis, 308
targeted sanctions, 5
use of force, failure to act in, 307
unilateral acts, 52–3
creating treaty obligations through, 351
international law being developed at domestic level, 319
unilateral acts doctrine
full powers doctrine for treaties, and, 53
use of force, 316
United Kingdom, 299–316
act of state doctrine, 141, 152, 217
big tech companies, concerns about, 76
Brexit. See Brexit
forum non conveniens doctrine, 151–2
parliamentary sovereignty, 148, 305–7
prorogation of Parliament (Miller (No 2) case), 366
proportionality, 310–11
referendums, 314
Supreme Court, 365–66
procedural requirements on foreign relations issue, 148
use of force, 19
failure of Security Council triggering domestication of decision-making, 307
implications for international law, 311–15
Iraq, 302–3, 304, 309–10, 313
major military action requiring explicit parliamentary approval, 303–4
proportionality and necessity, 310–11, 316
role of international law in domestic parliamentary discourse, 306–11
role of MPs, 301–6, 309–11
Suez crisis, 308
Syria, 304, 305, 308, 311, 313
War Powers Convention, 301, 307, 311, 312, 313
War Powers Convention, birth of, 303–6
who has power, 302–15
United States
American Law Institute, 26, 369
Restatement (Second) of Foreign Relations Law of the United States, 27
Restatement (Third) of Foreign Relations Law of the United States, 27, 29, 33
armed drone missions, 14–15, 150–1, 145–6, 155
China, 80
concerns about, 75–6
Huawei, 76
state-owned enterprises invoking sovereign immunity in US federal courts, 81
Clean Air Act, 39, 41
Clinton administration, 32, 38, 351
congressional-executive agreements, 26, 32–4, 41
Constitution, 23, 25, 86, 346
absence of process-based requirements, 245
commerce, 242
distribution of power in, 239, 241
international agreements, 244–2
treaty-making under, 31–4
uses of force, 241
foreign affairs, 6
foreign relations law, 109, 346
approach to, 12, 150–1, 156
Byrd-Hagel Resolution, 38
Congress, role of, 33, 45, 47
constraining treaty-making, 24
development of, 26
distinguishing types of agreements, 33–4
executive treaty negotiations, 24–5, 31, 34–42, 47
history of, 7
importance of, 10, 25
manifestation of exceptionalism, as, 6
originating in United States, 63
Presidential power in. See United States
foreign relations, checks on
Presidential power in
Senate, role of, 32, 44
human rights treaties, endorsing, 32
International Court of Justice, and, 348
International Criminal Court, and, 351
Kyoto Protocol, 38, 39, 42
Obama administration, 24–5, 31, 32, 42–5, 251
non-bindingness of climate mitigation
commitments, and, 34–7
Paris Agreement. See under Paris Agreement
on Climate Change
political question doctrine, 34, 41–2
courts reducing use of, 142, 143
international agreements, 148
proportionality, 145
reasonableness, 151
sole executive agreements, 33–4, 39
Supreme Court, 23, 251
Alien Tort Statute case law, 82, 151
international agreements, 33
narrowing scope of act of state doctrine, 150–1
rejection of Chevron approach in foreign
relations matters, 143
reluctance to judicialize foreign affairs,
25, 43
withdrawal from treaties, 41
Trump administration, 45, 80, 145, 247, 249, 253
use of force, 299
war on terror, 145
United States foreign relations law, checks on
Presidential power in, 18, 239–51
erosion of scope-based constitutional checks
on President's foreign relations powers, 249–4
causes of rise in President's powers, 243
President's vast swath of foreign affairs
powers, 241–2
scope-based limits, 243–4
meaning of scope-based and
process-based, 240
rise of process-based checks on Presidential
power, 244–50
Presidential power in age of process-based
checks, 242, 249–50
process-based checks grounded in
interface with international law, 6, 247–9
process-based checks grounded in U.S.
domestic law and practice, 245–7
scope of Presidential power, 239–40
scope, process, and comparative practice,
250–1
use of force. See under national parliaments;
UN Security Council; United
Kingdom
uti possidetis, 87
India, and. See under India
Vienna Convention on the Law of Treaties
(VCLT), 47
Art. 46, 29, 38
defect in state’s consent to be bound, 54
limited to internal law provisions on
competence, 36
manifest violations, 50, 52, 57, 351
never successfully pleaded, 50
possibility of invalidity of international
agreement, 2
security of treaty obligations, 57
Dayton Peace Agreement, 278
domestic law not justifying non-compliance
with international obligations, 2
establishing international law constraint on
foreign relations law, 50–1
international agreements, manifest violation
of domestic provision and, 2
subsequent practice, 227–8, 229
successive treaties, rules on, 229
treaties applying throughout entire territory
of parties, 353
unilateral acts, creating treaty obligations
through, 351
withdrawal from treaties, 53–7, 350–1
notice periods, 54
World Trade Organization, 155, 323
Dispute Settlement, 4
Zuma, Jacob. See under South Africa