

Index

- Abi-Saab, G. 57
- ACHR *see* American Convention on Human Rights (ACHR)
- acquired or vested rights, theory of 209–12
- acte contraire* doctrine 108–9, 113
- Ago, R. 162
- Alma Ata Declaration (1992) 218
- amendment procedures, simplified 116–21, 124, 125, 142
- American Convention on Human Rights (ACHR) 59–60
- optional clause concerning jurisdiction of I-ACtHR 174, 181
- and reservations to human rights treaties 241–2
- withdrawal cases 155, 178, 182, 184, 185
- automatic succession doctrine 5, 190, 193
- ‘accidental’ emergence of 203–6
- automaticity rule, denial 213–14
- case law, inconclusiveness 221–30
- general case law 228–30
- Yugoslavian cases before ICJ 221–7
- consensualist paradigm 232–3
- emergence of 206–30
- ipso jure* succession 204, 205, 215, 216
- justifications for, with regard to human rights treaties 207–12
- nature of human rights treaties 208–9
- vested or acquired rights, theory of 209–12
- legal issues 213–20
- degree of automaticity 213–20
- lessons from conundrum 230–33
- notification 217–18, 230
- retroactive effect of notification 217–18
- practical unsustainability of 230–31
- see also* clean slate doctrine; public order treaties, succession to
- autonomy 2, 14, 16, 19, 27, 89
- and community 14, 15, 32
- of consent 93, 140
- in expression of consent to be bound 147, 148
- sovereign 100, 141
- State 3, 17, 19
- of will 24, 42, 64, 100, 106, 113, 141, 190, 191
- Azerbaijan 219
- Balkin, J.M. 13, 24
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989) 133
- Bederman, D. 45
- Belilos* case 279, 298, 303, 306
- Bergbohm, C. 39–40
- bilateral treaties 46, 48, 50, 53, 64, 72
- bilateralization of treaty regimes
- objections to 263–70
- reciprocity and bilateralization problem 264–5
- and reservations to human rights treaties 236
- binary and transformational analysis 16–30
- argumentative strategy 15, 38
- binary and transformational character of tension between self and community 15–16

- consensualist paradigm 18, 19
- constant oscillation and
 - transformation of theoretical constructions 30
- content, problem of 27–30
- egotism and cooperation/community 16, 17–21
- esoteric and constructed intent, fluctuation between 22–7
- individualism versus
 - communitarianism, fluctuation between 15–19, 22
- in law of treaties 16–30
- linear analysis, limitations 15–16
- mutual exclusiveness, impossibility of 15
- oscillation 19, 22, 24, 25
- pacta sunt servanda* principle 19–21
- poles, establishment of 15, 16, 18
- process and content, tension between 30
- rule/exception approach 37
- State will and subjectivism 23–4
- treaty as *negotium*, versus treaty as *instrumentum* 27–30
- binding nature of treaties 18, 19, 24
 - intention of parties 75–6
 - treaty form 22–7, 75
- Bosnia-Herzegovina 213, 217, 221, 222–3, 225, 228
- Bourdieu, P. 38
- Bowett, D. 255, 302
- Brierly, J.L. 91
- CAHDI *see* Committee of Legal Advisers on Public International Law (Council of Europe)
- Cartagena Protocol 144
- Chinkin, C. 26
- Churchill, R. 147
- classification debate
 - classification of treaty obligations 48–53
 - and construction of treaty identities 41–2, 47, 57–8, 64–7
 - contemporary classifications of treaties 58–67
 - common/collective interest 62–3
 - emergence of 34–7
 - historical attempts at classification 39–67
 - classification in the ILC
 - codification project 47–58
 - Rechtsgeschäfte* versus *Rechtsätze* 39–40
 - traités-contrats* versus *traités-lois* 42–7
 - Vereinbarungen* versus *Verträge* 40–42
 - merits and pitfalls of classification efforts 37–9
 - utility of classification 37, 38
 - necessity for classification 37
 - new types of treaties 82
 - over- and under-inclusiveness of treaty classifications 62
 - rule/exception approach 37
 - Vienna regime 42, 55, 63, 65
- clean slate doctrine 193, 196–203
 - ‘accidental’ emergence of the automatic succession principle and exceptions to 203–6
- continuity upon notification, right to 196–9
- and sovereignty 190, 191
- subject matter exception to 199–203
 - see also* automatic succession principle; public order treaties, succession to
- collective/common interest 1, 3, 8, 39, 103, 125, 232, 304, 310, 325, 326, 327, 328, 329
- classification debate 62, 63
- ‘collective interest’ treaties 58, 62, 66–7, 81, 82, 324
- egotism and cooperation/community 17, 18, 19
- expression of consent to be bound 140, 141, 142, 147
- reciprocity 83, 87
- reservations, human rights treaties 234, 236, 237, 239

- and right to denounce a treaty 167–74
- and soft law 79, 80, 81
- withdrawal from a treaty 186, 324
- Committee against Torture (CAT) 217, 220
- Committee of Legal Advisers on Public International Law (Council of Europe) 319
- common interest 62–3, 71
 - see also* collective interest
- communitarian considerations
 - ambivalence of notion of community interest 324
 - classification debate 35, 50, 57, 62, 66
 - community values 324, 325
 - identity of treaties 70
 - individualism versus
 - communitarianism, fluctuation between 15–19, 22
 - and reciprocity 84
 - and soft law 79
- Conferences/Meetings of the Parties (COP/MOP) 115, 134, 143–6, 150–51
 - delegation of rule-making authority to 115, 133, 134
 - and expression of consent to be bound 133 *et seq.*
 - theory of remote/general consent 131, 133, 134
- Congo v. Rwanda* case 228, 259, 260, 282, 287, 291–3
- consensualist paradigm
 - amendment procedures 116–21, 124, 125, 142
 - automatic succession doctrine 232–3
 - binary and transformational analysis 18, 19
 - flexibilization of 5, 6, 152
 - and legal security 102
 - outer limits of informality in 116–47
 - as plea for the construction of a participatory treaty model 281
 - tension between self and community 15–16
 - see also* Vienna Convention on the Law of Treaties (VCLT)
- continuity upon notification, right to 196–9
- contract law
 - and binary/transformational analysis 15–16
 - concept of contract 67
 - contrats d'adhésion* 67
 - and domestic law analogies 17, 43
 - freedom of contract 66
 - and reciprocity 42
 - see also* contractual treaties
- contractual treaties
 - classification debate 35–7, 39, 42–4, 46–7, 52, 54, 64–5, 67
 - see also* law-making treaties; treaties
- Convention on Facilitation of International Maritime Traffic 121
- Convention on International Civil Aviation 119
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 143
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 175, 267, 272–3
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) 272, 273
- Convention on the Rights of the Child 217
- critical approach to international treaty law 8–9, 13–16
 - binary and transformational character of tension between self and community 15–16
 - conceptual dualities 13
 - self and the community, fundamental tension between 14
- Croatia 213, 221, 225
- customary international law
 - disadvantages of, compared to treaties 71
 - shift to multilateral treaties from 71–3

- deformalization 141–7, 328
- Democratic Republic of the Congo (DRC) 259, 260
- denunciation of treaties *see* withdrawal of treaties
- dialogue dénonciateur* 8, 187
- dialogue framework, reservations 314–21
 - contribution of treaty actors in the *dialogue réservoir* 316–21
 - depository, role 316–17
 - dialogue réservoir* 8
 - preconditions for development of a *dialogue réservoir* 315–16
 - State parties, role 318–21
 - treaty bodies, role 317–18
- dialogue successor* 8, 232, 233
- dispute settlement clauses
 - exclusive versus complementary nature of 291–2
 - as fundamental object/essence of human rights treaties 180–86, 292–4
 - optional clauses and protocols 286–94
 - optional versus compulsory nature of 288–91
- do ut des* paradigm 57
- domestic law analogies 17, 43
- DPRK *see* North Korea, withdrawal from NPT
- Dupuy, R.-J. 79
- ECmHR *see* European Commission of Human Rights (ECmHR)
- Economic and Social Council Official Records (ESCOR) 268
- egoistical interests of States 3, 17–18, 35, 50, 57, 83
- egotism and cooperation/community 16, 17–21, 83
- enabling clauses 133–4, 146, 175
- environmental law, international 114, 115, 152
- erga omnes* status 46, 208, 297
 - erga omnes contractantes* 60, 265, 277
- Eritrea-Ethiopia Claims Commission, Partial Award on Ethiopia's Claim 4 concerning Prisoners of War 229
- esoteric and constructed intent, fluctuation between 22–7
- discursive juxtaposition 22–3
- form, recourse to 23
- European Commission of Human Rights (ECmHR) 58–9, 62, 66
- European Convention on Human Rights (ECHR) 63, 66, 187, 228
 - and classification debate 58–9
 - and reservations to human rights treaties 266, 279, 280, 288, 303–8
- European Court of Human Rights (ECtHR) 59, 63, 228, 273–4, 275, 279–81, 290, 298, 303, 307
- European Court of Justice (ECJ) 228
- expression of consent to be bound 5, 6, 71, 99–153
 - contractual relationship 17
 - deformalization and return to formalism 141–7, 328
 - and delegation of rule-making authority to treaty bodies 115, 133, 134
 - evolution of modalities for 99–113
 - individualism versus communitarianism 100, 101, 113
 - informality, move towards 'any other means' caveat in the VCLT 104–7
 - majority voting *see* majority voting new processes for 113–47
 - outer limits of informality in the consensualist paradigm 116–47
 - sociopolitical background of new means 113–16
 - one-step process and theory of remote/general consent 126–41
 - decisions adopted on basis of unanimity or consensus 127–32
 - whether consensualist paradigm preserved 127–32

- opting-out technique 118–26
- traditional contours of Article 11
 - VCLT 107–13
 - acte contraire* doctrine 108–12
 - formality, presumption of 108–12
 - North Sea Continental Shelf
 - dictum* 109–12
 - traditional means of consent 124
 - treaty-making process 99, 114, 116, 122–4, 126, 127, 133, 135, 142, 147, 149, 151, 153
 - VCLT, Article 11 122–6
 - whether preserved 127–32
 - whether remote consent theory
 - consistent with 139–41
 - see also* consent/State consent
- Federal Republic of Germany (FRG)
 - 110, 218
- Federal Republic of Yugoslavia (FRY)
 - 213, 219–20
 - case law 221–7
- Fitzmaurice, G. 47–8, 52, 91, 160
- flexibility
 - and formalism 101–3, 147
 - only on condition of common
 - agreement of States parties 112–13
 - soft law 77, 78, 79
- flexibilization 9, 80, 103, 152, 199, 324
 - of consensualist paradigm 5, 6, 152
- formalism 5–6, 9, 24, 153, 173, 193, 206, 231, 232, 281, 321, 322, 329
 - backlash towards 81, 124, 147, 153, 231, 328
 - content 89–90
 - deformalization 141–7, 328
 - expression of consent to be bound
 - evolution of modalities for 103, 106, 108, 112
 - new processes for 124, 125, 141
 - and flexibility 101–3, 147
 - and law of treaties 16, 88–95
 - return to 141–7, 187–8, 231, 328
 - treaty concept 82, 89, 91
 - in VCSST 193, 206
 - whether VCLT formalistic in nature 106–7
- FRY *see* Federal Republic of Yugoslavia (FRY)
- Gabčíkovo-Nagymaros* case 20–1, 166, 211
- General Assembly Official Records (GAOR) 273
- Geneva Conventions (1949) 49, 159, 228, 229
- Genocide Convention (Convention on the Prevention and Punishment of the Crime of Genocide, 1948) 49, 61
 - automatic succession doctrine 209, 221–8
 - humanizing purpose 239
 - ICJ Advisory Opinion on reservations (1951) 49–50, 236, 237–45, 248, 271, 287
 - reservations to 234, 237–48, 259, 260, 286–8, 291–3
 - role of UNGA 61
 - special nature 224
- German Democratic Republic (GDR)
 - 218
- Giraud, E. 159
- Harvard Draft on the Law of Treaties (1935) 20, 91
 - expression of consent to be bound 104
 - withdrawal from treaties 154, 158, 161
- Havana Convention on Treaties 158
- Herndl, K. 213
- High Contracting Parties 59, 62
- Hudson, M. 73
- human rights bodies 217, 259, 315, 322
 - automatic succession doctrine 232, 233
 - dialogue réservatoire*, role in 317–18
 - Fifth Meeting of Persons Chairing 213
 - imperialist motives of bodies and tribunals 295–6
 - implied powers doctrine 326
 - monitoring bodies *see* monitoring bodies

- and reservations to human rights treaties 271, 274, 280, 290, 291, 303, 311
 - see also* human rights treaties
- Human Rights Committee (HRCttee) 176, 177, 180, 181, 209, 210, 212, 213, 215, 217, 219, 267, 272–8, 284–5, 288–9, 294, 301, 308–10, 315, 317
 - General Comment 24 (GC24) 273, 277, 328
 - General Comment 26 (GC26) 176, 179, 209, 210, 212, 229, 327–8
- human rights treaties 49
 - automatic succession doctrine 207–12
 - dispute settlement clauses as fundamental object/essence of 292–4
 - institutionalized environment 60, 325–8
 - integrity 185–6, 211, 237–8, 241, 246, 248, 265, 276, 294–5, 310, 313
 - object and purpose *see* object and purpose test
 - reservations and State consent 234–70
 - specific traits 58–62
 - withdrawal from 174, 175–80
 - see also* automatic succession doctrine; human rights bodies
- I-ACtHR *see* Inter-American Court of Human Rights (I-ACtHR)
- ICAO *see* International Civil Aviation Organization (ICAO)
- ICCPR *see* International Covenant on Civil and Political Rights (ICCPR)
- ICJ Advisory Opinion on reservations (1951) 49–50, 236, 237–45, 248, 271, 287
 - non-reciprocal nature 246
 - object and purpose test 225
- identity of treaties
 - conclusions on 95
 - manipulation of 70, 79
- shaping in reference to other sources of international law 68–82
 - shift from treaties to soft law 68, 76–82
- ILC *see* International Law Commission (ILC)
- implied powers doctrine 326
- individualism versus communitarianism
 - in expression of consent to be bound 100, 101, 113
 - fluctuation between 15–19, 22
 - see also* binary and transformational analysis; communitarian considerations
- informality
 - move towards ‘any other means’ caveat in the VCLT 104–7
 - outer limits of, in the consensualist paradigm 116–47
 - opting-out technique 118–26
- institutionalization of treaty regimes 4, 5, 7, 57, 60, 62, 87, 147
 - trend towards 325
- instrumentum*, treaty as 5, 54
 - binary and transformational analysis 27–30
 - reciprocity 85
- Inter-American Court of Human Rights (I-ACtHR) 59, 155, 176, 185, 242, 274, 308
 - and reservations to human rights treaties 241–3
 - and withdrawal from optional clauses and protocols 174, 182, 183, 184
- Inter-American system 59
- International Atomic Energy Agency (IAEA) 168
 - Safeguards Agreement with 169, 172
- International Civil Aviation Organization (ICAO) 127
 - Council 119, 120
- International Committee of the Red Cross (ICRC) 207
- International Convention for the Safety of Life at Sea (SOLAS, 1974) 121, 126

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 176, 288, 314
- International Court of Justice (ICJ)
Advisory Opinion on reservations to Genocide Convention (1951) 49–50, 236–45, 248, 271, 287
on conundrum between compatibility and opposability 259–61
Congo v. Rwanda 228, 259, 260, 282, 287, 291–3
and formalism 91–3
Gabčíkovo-Nagymaros 20–21, 166, 211
optional clause 183–4, 288, 290, 293
Qatar v. Bahrain 25–6, 93–4
and South West Africa 129
Statute 129, 183, 221, 290
Yugoslavian cases before 221–7
Legality of Use of Force 224, 226, 259, 260
- International Covenant on Civil and Political Rights (ICCPR) 87, 174–7, 213, 219, 267–9, 272, 278, 280–81, 288
- First Optional Protocol 155, 180–81, 212, 266, 289, 305, 308, 310
- North Korea's attempt to withdraw from 155, 175–6
- International Covenant on Economic, Social and Cultural Rights (ICESCR) 175, 187
- International Criminal Tribunal for the former Yugoslavia (ICTY) 228
- International Health Regulations (IHR) 314
- International Law Association (ILA)
137, 194, 201
Committee on Aspects of the Law of State Succession 229
- International Law Commission (ILC)
codification project 36, 45, 47–58
drafting committee 162
Final Draft on the Law of Treaties 25, 46, 53, 56, 105, 109, 160, 162, 250–52, 257, 263, 271
- Final Draft on State Succession to Treaties 196, 199, 202, 204
Guidelines on reservations 256–9, 328
- international legal order 34, 113, 154, 186, 187, 195, 232, 265, 324, 325
and sources of international law 68–72, 77, 78, 80
- International Maritime Organization (IMO) 120
- International Tribunal for the Law of the Sea (ITLOS) 138
ipso jure succession 204, 205, 215, 216
Ireland v. United Kingdom case 63, 66
ius inter partes 40
Ivcher Bronstein case 60, 181, 185, 186, 290–91, 294–5
- Jellinek, G. 35, 191
- Jenks, W.C. 192, 199–202
- Kazakhstan 219
- Kelsen, H. 35–6
- Kennedy, D. 14, 67
- Klabbers, J. 301
- Koskenniemi, M. 152, 173
- Kratochwil, F. 140
- Kyoto Protocol non-compliance procedure 143–6
- Lauterpacht, H. 24–5, 36, 42–3, 65, 300
- Law of the Sea Conventions (1958) 110, 160
see also United Nations Convention on the Law of the Sea (UNCLOS)
- law of treaties
binary and transformational analysis
see binary and transformational analysis
consensual approach 15–16
doctrinal analysis 16–17
expression of consent 9
and formalism 16, 88–95
reciprocity, role of 82–8
rules 7–8
sociopolitical considerations 85, 113–16

- and soft law 74
- State intent 22, 24
- studies 1
- see also* law-making treaties
- law-making treaties
 - classification debate 35–6, 37, 39, 42–6, 52, 57
 - and clean slate doctrine 201–3
 - law-making character 61–2, 165, 196, 199
 - reciprocity 85
 - see also* contractual treaties; treaties
- League of Nations 128–9, 130, 235
- legal expectations doctrine 16
- Legality of Use of Force* case 224, 226, 259, 260
- lex specialis* 4, 48, 60, 182, 184, 270, 284, 329
 - effort to introduce a subject matter *lex specialis* on reservations 261–3
- linear analysis, limitations 15–16
- living instrument concept 326
- Loizidou* case 58, 244, 280, 304, 306, 308
- London Declaration (1871) 158
- majority voting
 - and expression of consent to be bound 116, 123, 139, 141, 142, 148, 149, 151
 - remote/general consent theory 133–8
 - supermajority 136
- Maritime Safety Committee 120–21
- MARPOL 73/78 118–19
- McNair, A. 36
- MEAs *see* multilateral environmental agreements (MEAs)
- Memorandum on Mutual Understanding on Issues of Succession to Treaties of the Former USSR Having Mutual Interest (6 July 1992) 218–19
- monitoring bodies 5, 6, 8, 63, 187, 231, 320, 325–6, 327
 - implied powers doctrine 326
 - reservations, human rights treaties 270, 271, 275, 286, 312, 313, 315, 317
- Montreal Protocol 117, 127, 134–6
- multilateral environmental agreements (MEAs) 121, 148, 149
 - remote/general consent theory 131, 133
- multilateral treaties 46, 48, 53, 54, 68, 265
 - shift from customary international law to 71–3
- municipal law analogies 17, 43, 64–5, 69
- nature of treaties 7–8
 - binding 18, 19, 24
 - human rights treaties 208–9
- negativist thesis, State succession 194, 195
- negotium*, treaty as 5
 - binary and transformational analysis 27–30
 - classification debate 43, 44, 54
 - reciprocity 85
- non-compliance mechanism 143, 145
- North Korea
 - attempt to withdraw from ICCPR 155, 175–6
 - withdrawal from NPT 154, 155, 168–9, 174
- North Sea Continental Shelf* cases 113
- NPT *see* Treaty on the Non-Proliferation of Nuclear Weapons (NPT)
- object and purpose test
 - classification debate 55
 - compatibility versus opposability conundrum 254–6
 - ICJ on 259–61
 - constructing, with regard to reservations to jurisdictional clauses 286–96
 - dispute settlement clauses/protocols as fundamental object/essence of human rights treaties 292–4
 - Genocide Convention 225
 - ICJ Advisory Opinion (1951) 243–5
 - introduction of 248–51
 - objections linked to 250

- objective nature 250, 255, 260
- permissibility/compatibility thesis 251–2, 254
- ‘real’ object and purpose of human rights treaties 295–6
- reciprocity 87
- and system of acceptances/objections 251–61
 - compatibility versus opposability conundrum 254–6
 - ICJ on conundrum between compatibility and opposability 259–61
 - ILC guidelines on reservations 256–9
- see also* reservations, human rights treaties
- O’Connell, D.P. 200–201
- Office of Legal Affairs (OLA) 149, 272, 273
- one-step processes, and theory of
 - remote/general consent 126–41
 - majority voting 133–8
 - whether remote consent theory consistent with consensualist paradigm of Article 11 VCLT 139–41
- opting-out technique 118–22, 235
 - and Article 11 of VCLT 122–6
 - and quorum technique 118
- ordre public* 307
- Organization for Economic Cooperation and Development (OECD) 143
- Organizations of American States (OAS) 178, 236
- oscillation 3, 6, 8, 9, 14, 19, 25, 27, 30, 34, 81, 142, 193, 216, 246–7, 322
 - binary and transformational analysis in law of treaties 19, 22, 24–5
 - between communication and autonomy 27
 - critical approach to international treaty law 14–5
 - between esoteric intention and external manifestations 24
 - expression of consent to be bound 103, 106, 142, 149
 - between form and content 25, 27
 - public order treaties, succession to 190, 193–4, 196
 - reservations, human rights treaties 246, 308, 314, 322
 - theoretical background to State treaties 30, 32
 - treaty withdrawal cases 158, 162, 166, 172–3, 181, 184–5
- pacta sunt servanda* principle
 - binary and transformational analysis 19–21
 - and *rebus sic stantibus* 19–21
 - reciprocity 85
 - and reservations 249
 - and withdrawal cases 156–7
- Pan-American Union 235–6, 240
- PCIJ *see* Permanent Court of International Justice (PCIJ)
- Pellet, A. 271, 312
- Permanent Court of International Justice (PCIJ) 92, 167, 210
 - Advisory Opinion on *Access to German Minority Schools in Upper Silesia* (1931) 129
 - Advisory Opinion on *Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland* (1923) 210
 - Advisory Opinion on *Railway Traffic between Lithuania and Poland* (1931) 128–9
- Peru 181
- positivism/positive law 40, 79
- pragmatism 193–4, 231, 319
- process and content, tension between 30
- public order treaties, succession 189–233
 - automatic succession doctrine *see* automatic succession doctrine
 - ipso jure* succession 204, 205, 215
 - right to continuity 189, 191, 193, 195–203, 205, 218–20, 227–8, 230
- State succession question, theory 189–94

- VCSST *see* Vienna Convention on Succession of States in Respect of Treaties (VCSST)
- Qatar v. Bahrain* case 25–6, 93–4
quorum technique 118
- ratification of treaties 45, 80, 300
Rawle Kennedy case 181, 289, 309, 310
rebus sic stantibus, exception of 19–20, 21
- reciprocity
and classification debate 42, 45, 47, 48
and communitarianism 84
consequences of acceptances/objections to reservations under the VCLT 263–5
in human rights treaties, absence of 60, 241–2, 246
when reacting to reservations to human rights treaties 265–70
international legal order 84–5
material 86
and question of bilateralization 84, 87, 246, 263–5
place in Vienna rules on reservations 263–70
role in law of treaties 82–8
in the treaty enforcement phase 86–7
regional human rights courts 275, 276
remote/general consent theory 126–42
decisions adopted on basis of unanimity or consensus 127–32
majority voting 133–8
and one-step processes 126–42
whether theory consistent with consensualist paradigm of Article 11 VCLT 139–41
- res inter alios acta* maxim 201
- reservations, human rights treaties
acceptances and objections, Vienna rules on consequences of 263–5
case law on reservations to optional clauses and protocols 286–94
dispute settlement clauses/protocols as fundamental
object/essence of human rights treaties 292–4
exclusive versus complementary nature of dispute settlement clauses 291–2
optional versus compulsory nature of dispute settlement clauses 288–91
compatibility/permissibility/admissibility thesis 251–2, 254–5
consensualist paradigm, challenging 270–314
dialogue réservatoire 314–21
and human rights bodies 271, 274, 280, 290–91, 303, 311
ICJ Advisory Opinion (1951) 236–45, 248, 271
ideal of integrity 237–8, 241, 246, 253, 255, 265, 294–5, 310
ideal of universality 238–43
introducing a subject matter *lex specialis* on 261–3
object and purpose test *see* object and purpose test
opposability thesis 252, 256
preliminary conclusions 245–8
reactions to, by contracting parties 235–6, 239–40, 243, 254–6, 278–80, 291, 305, 307, 313–15, 319–20
legal value of 254, 256, 276–83, 318–21
reciprocity, place in Vienna rules 263–70
reciprocity and bilateralization problem 264–5
Vienna rules on consequences of acceptances/objections to reservations 263–5
severability doctrine 296–314
theoretical analysis 234–7
treaty bodies versus State bodies in determining compatibility 272–86
validity, logic of 251
abandonment 315–16
- Rwanda 228

- scientific uncertainty 102, 115
- sectoral regimes 30
- Selbstverpflichtungslehre*
(self-limitation theory) 35, 191
- self and the community, fundamental
tension between 14
binary and transformational character
of tension 15–16
egotism and cooperation/community
16, 17–21
- self-determination 192
- Serbia 226
- severability doctrine 5, 296–314
see also reservations, human rights
treaties
- Simma, B. 72, 168, 268–9
- simplified amendment procedures
116–21, 124, 125, 142
- Sinclair, I., Sir 26
- Slovenia 217
- Socialist Federal Republic of
Yugoslavia (SFRY) 193, 213,
219–20, 222, 223
- socialization process 14, 17, 35, 66
socialization of States 83–4
- soft law
advantages, as compared to treaties
77–9, 80, 82
categories 74
and communitarian discourse 79
defining and delineating from treaties
73–6
flexibility 77, 78, 79
formalism and law of treaties 90–95
and heterogeneity of States 76, 77
informal nature 77, 81
international legal order 80
non-binding engagements 75
scientific uncertainty 76–7
shift from treaties to 68, 73–82
lessons for identity of treaties
76–82
soft instruments 74, 75
turn to 81
- SOLAS (International Convention for
the Safety of Life at Sea, 1974)
121, 126
- sources of international law
concept 68–9
formal 68–9
material 69
shaping of treaty identity in reference
to 68–82
- South Africa, Mandate over South West
Africa 129–30
- sovereignty
and clean slate doctrine 190–91
sovereign autonomy 100, 141
sovereigntist conception of
international law 72
and treaty denunciation 155
see also State sovereignty
- Soviet Union (USSR) 218
- State consent *see* consent/State consent
- State intent 22, 24
esoteric and constructed intent,
fluctuation between 22–7
- State sovereignty 325, 327
clean slate doctrine 196, 197, 200
and consensualism 234
expression of consent to be bound
124, 140
reservations question 234–6
- State volition 41, 131, 284
binary and transformational analysis
18, 19, 22, 23
see also State will
- State will 3, 4, 16
bare will 5, 18, 22, 27
constraints on 18–19
formalism 89
and subjectivism 23–4
see also State volition; will theory
- States
common agreement of parties 112–13
compatibility of reservations,
reactions to 276–86
egoistical interests of 3, 17–18, 35,
50, 57, 83
equality 66
heterogeneity of 76, 77
intent *see* State intent
non-performing 50–51
participation in treaty life 7–8, 66,
174, 179, 186–8, 232–3, 247,

- 270, 281, 315, 317–21, 325, 327–9
- socialization of 14, 17, 35, 66, 83–4
- sovereignty *see* State sovereignty and subjectivism 65
- volition *see* State volition
- will *see* State will
- Stern, B. 215
- subjectivism 23–4, 65
 - shortcomings of subjective exception to non-denunciable treaties 163–4
 - subjective and objective tests 5
- succession to public order treaties *see* public order treaties, succession
- superposition strategy 281
- symbolic struggles 38

- tacit agreement/consent 91, 118–26, 162, 279
- tacit amendment 5, 124, 126
- teleological interpretation of treaties 60
- Temeltasch* case 279, 285, 286
- Tomuschat, C. 151, 304
- treaties
 - advantages 71–3
 - bilateral 46, 48, 50, 53, 64, 72
 - binding nature of 18, 19, 24
 - intention of parties 75–6
 - classification of *see* classification debate
 - ‘collective interest’ 58, 62, 66–7, 81, 82, 324
 - communitarian aspect *see* communitarian considerations
 - concept of 4, 34–98
 - classification debate 34–67
 - deformalization 88
 - discursive shifts in international law influencing 70
 - reconstruction 34–98
 - traditional perceptions 2, 4, 9, 38, 53, 57, 64, 68, 82–95
 - consensual and contractual traits 28
 - disadvantages 73–82
 - dual hypostasis, enclosed in 34
 - identity *see* identity of treaties
 - institutional 57, 60
 - institutionalization of treaty regimes 4, 5, 7, 62, 87, 147
 - interpretation 60
 - in interwar period 36
 - law of *see* law of treaties
 - as law-making technique in international legal order 70
 - legislative versus contractual types 35–6, 37, 39, 42–7, 52–3, 54, 64, 65
 - multilateral 46, 48, 53, 54, 68, 265
 - shift from customary international law to 71–3
 - obligations
 - bilateralizable 48, 50, 51, 236, 265
 - human rights 49
 - integral 51, 60, 94
 - interdependent 48–9, 51
 - reciprocal effects of specific obligations 48
 - plurilateral 48
 - ratification *see* ratification of treaties
 - reconstruction of concept 34–98
 - soft content 74
 - soft law, shift to 68, 73–82
 - theoretical background *see* theoretical background to State treaties
 - traditional perceptions of concept 2, 9, 38, 53, 57, 64, 68
 - essential traits of ‘traditional’ concept 82–95
 - treaty as *instrumentum* (form/procedure) 5, 27–30, 54, 85
 - treaty as *negotium* (substance/content) 5, 27–30, 43, 44, 54, 85
 - treaty bodies, human rights *see* human rights bodies
 - treaty-making process *see* treaty-making process
 - tripartite distinction 48, 51
 - written form 71
- treaty concept *see* treaties
- Treaty on the Non-Proliferation of Nuclear Weapons (NPT) 187
- Conference of the Parties to 174
- Review Conferences (2005, 2010 and 2015) 171, 172, 187

- withdrawal from 154, 167–74
- treaty-making process 1, 2, 5, 7, 18, 90, 235
- consensus-based 115
- distinction from legislation by
 - international organizations 147–53, 325–9
- and expression of consent to be bound 99, 122–4, 126, 127, 133, 135, 142, 147, 149, 151, 153
- identity of treaties, shaping in
 - reference to other sources of international law 71–3, 80, 81
- stricto sensu* 127, 146
- treaty as *negotium* versus treaty as *instrumentum* 27–9
- Triepel, H. 35, 40–41, 42
- Trinidad and Tobago 289, 310
 - withdrawal from ACHR 174, 178
- Ulfstein, G. 147
- unilateralism 23, 66
- United Nations Charter 163
- United Nations Convention on the Law of the Sea (UNCLOS) 127, 137–8, 267
- United Nations Framework Convention on Climate Change (UNFCCC) 121, 144, 148, 149
- United Nations General Assembly (UNGA) 61, 239, 267, 273
- United Nations Security Council (UNSC) 169, 170, 221, 247–8
- Ušakov, N. 201
- VCLT *see* Vienna Convention on the Law of Treaties (VCLT)
- Venezuela, withdrawal from ACHR 174, 178
- vested or acquired rights, theory of 209–12
- veto power 249
- Vienna Conference on the Law of Treaties 105, 162, 252–3, 263
 - Committee of the Whole 202–3
- Vienna Convention on Consular Rights, Optional Protocol 186
- Vienna Convention on Succession of States in Respect of Treaties (VCSST) 2, 189
 - Article 2 195
 - Article 4 189
 - Article 11 196, 210
 - Article 12 196, 210, 211
 - Article 17 189
 - Article 20 197–8
 - Article 22 197
 - Article 23 197–8
 - Article 34 189, 196, 206–7, 227, 229
 - exceptions provided in 206
 - clean slate doctrine *see* clean slate doctrine
 - formalism 193, 206
 - historical background 194–6
 - relevant issues arising from 196–206
- Vienna Convention on the Law of Treaties between States and International Organizations 2
- Vienna Convention on the Law of Treaties (VCLT) 2
 - Article 5 55–6
 - Article 11
 - ‘any other means’ caveat in 104–7, 116
 - and consensualist paradigm 122–6, 152–3
 - doctrinal views on the
 - open-endedness of 106
 - expression of consent to be bound 104–13, 116, 122–6, 131
 - flexibility only on condition of common agreement of States parties 112–13
 - formality, presumption of 108–12
 - ... *acte contraire* doctrine 108–9
 - North Sea Continental Shelf *dictum* 109–12
 - and opting-out technique 122–6
 - traditional contours 107–13
 - whether formalistic in nature 106–7
 - and written form 107–8
 - Article 19 253–4, 258
 - Article 20 263, 268, 318

- Article 21 254–5, 263, 265, 267–8, 296–7
- and classification debate 46
- denunciation, rules on (Articles 54 and 56) 154, 155, 157–67, 172, 175, 179, 185
 - appraisal of rules 163–7
 - emergence of an ‘objective’ exception 164–5
 - emergence of rules 157–63
 - impossible streamlining (Article 56) 165–7
 - shortcomings of subjective exception 163–4
- general regime 30
- residual/dispositive regime 3, 29, 46, 55, 88, 267
- Vienna regime 2, 5, 30, 65, 88, 91, 251, 328
 - see also* Vienna Convention on Succession of States in Respect of Treaties (VCSST); Vienna Convention on the Law of Treaties between States and International Organizations; Vienna Convention on the Law of Treaties (VCLT)
- voluntarist theories 35
- voting 122, 127, 131
 - majority 116, 123, 133–8, 139, 141, 142, 148, 149, 151
 - one-step process and theory of remote/general consent 123, 126, 133–8, 139
 - supermajority 136
 - unanimous 118, 127–32, 249
 - veto power 249
- Waldock, H. 52, 161, 196–7, 249, 261–2
- will theory 15
 - acts of will 39–40
 - autonomy of will 24, 42, 64, 100, 106, 113, 141, 190, 191
 - bare will 5, 18, 22, 27
 - collective will 18
 - declarations of will 41, 100–101
 - external manifestations of will 101
 - merger of wills 65
 - reciprocity 83
 - State will *see* State will
 - subordination of individual will to the *Gemeinwille* 42
 - withdrawal from treaties
 - and collective interest treaties 186, 324
 - and contracting parties’ reactions to 156, 160, 167, 174, 176, 188
 - current discourse on 167–86
 - formalism, return to 142
 - general rule of non-denunciability 163
 - Harvard Draft on the Law of Treaties (1935) 154, 158, 161
 - human rights treaties 174, 175–80
 - non-denunciability, exception of 159
 - optional clauses and protocols 180–86
 - optional versus compulsory jurisdictional clauses 181
 - and *pacta sunt servanda* principle 156, 157
 - presumption of non-denunciability 162, 177, 179
 - prohibition of 5
 - State consent in 154–88
 - theory 155–7
 - Treaty on the Non-Proliferation of Nuclear Weapons (NPT) 167–74
 - unconditional right of 159
 - VCLT rules on denunciation (Articles 54 and 56) 154, 155, 157–67, 172, 175, 179, 185
 - appraisal of rules 163–7
 - emergence of an ‘objective’ exception 164–5
 - emergence of rules 157–63
 - impossible streamlining (Article 56) 165–7
 - shortcomings of subjective exception 163–4
 - whether participatory solution to conundrum of 186–8
- World Court 128
- World Health Organization (WHO) 119