access to remedies
international law 15, 16, 17, 18, 28, 283
see also cluster-litigation
administrative law 155
international law and 29
Africa 20, 244
Amoco Cadiz case 117–18
Antarctic Treaty 233
arbitration
Espoo Convention 235
individuals/non-state entities 282
International Centre for the Settlement of Investment Disputes (ICSID)
Vivendi v Argentina 31–2
Irish sea, pollution of 21
Lac Lanoux 46–7, 277, 320
Trail Smelter 138, 175, 231, 320
exhaustion of local remedies 25
future cooperation 280, 285–6
good neighbour principle 136, 237
state liability 111, 159, 277
Argentina
pulp mills see pulp mills dispute
Vivendi case 31–2
Australia 228
Nuclear Test (Australia v France) 277–8
Austria 210, 212
CEZ case 145–6
banks
Equator principles 12, 22–3
ING 23
Belgium 26, 134, 210
Meuse see Meuse river basin
negotiating tactics 196
Bergkamp, L. 182
Bern Convention (1979) 29
Bhopal case 118
Bier/Potassium Mines/MDPA case 197, 211, 320
ECJ
forum for tort suit 15, 141, 186
parallel disputes/litigation 24, 33–4
tort suit
applicable law 147
applicable remedies 164–5
duty of care 161–2
forum 15, 141, 186
individual victims as claimants 152
international law and 31, 135–7
regulatory compliance defence 27, 183
bilateral treaties
Argentina/Uruguay see 1975 Statute of the River Uruguay under treaty interpretation
bird clean-up costs 165, 166–9
Birnie, P. 86
Bodansky, D. 94, 102
Borcea case 167–9
branches in EU 142–3
Bunker Convention 68, 77
business contracts 235, 245–7
Canada 180–81, 228
spaceship Cosmos 954 crash 111, 330
Trail Smelter arbitration 138, 175, 231, 320
exhaustion of local remedies 25
future cooperation 280, 285–6
good neighbour principle 136, 237
state liability 111, 159, 277
Trail Smelter II case 175–9, 187
Center for Human Rights and the Environment 57
CEZ case 145–6
Chen, William P. 267
Index

Chernobyl nuclear accident 111, 134–5, 326
China 228, 335–6, 344–5, 346–7
criminal law 262, 269
atmospheric, water or radioactive pollution 263–6
solid waste import and export 266–7
trafficking in endangered species 267–8
domestic liability
international human rights law 29
economic rise 262
Songhua River see Songhua River, pollution of
vessel-source marine pollution 89–90, 96, 97, 104, 344
analysis of Chinese law 82–4
historical development 79–82
introduction 78–9
Tokyo MOU 100
CITES (Convention on International Trade in Endangered Species of Fauna and Flora) 266
citizen suits
European Union 179–81, 187
Trail Smelter II case 175–9, 187
civil law, national see contracts, business; tort law
Civil Liability Convention/Fund Convention 68, 75–6, 83, 89, 170, 296
cluster-litigation 346
access 14
domestic courts 14–18
human rights courts 18–20
interstate claims, fora for 21–2
non-judicial fora 22–3
conclusions 35
introduction 11–14
limited scope of applicable law 27–30
applicable secondary rules of responsibility 30–32
options
complementary nature of 32–5
connections between 23–5
separate responsibility of parties 25–7
Coase, R. 130
costal state jurisdiction 101, 102
EEZ 76, 80–81, 93–4, 95–6, 97, 98
evaluation 95–7
high seas 95
internal waters and ports 91–2
overview 90–91
territorial sea 92–3, 98
Cockerill case 162–3, 165, 183–4
COLREGS (Convention on the International Regulations for Preventing Collisions at Sea) 68, 86
Columbia 228
compensation 33, 138, 164, 327–8
bunkers 68, 77
detection costs 171–2
hazardous activities, ILC proposal on loss allocation and 17, 31, 107–10, 280–82, 287–8, 327, 328, 329
conclusion 125
home state of MNC, role of 120, 123–5
international law 110–12, 116–19, 121–3
MNCs, role of 116, 119–20
origin state, role of 113–16, 125
hazardous and noxious substances 68, 76–7, 327, 328
industrial accidents 328, 329
NGOs, claims by 18, 165–72
nuclear activity 133, 170, 327–8
oil pollution 328
China 89–90
Civil Liability Convention/Fund Convention 68, 75–6, 83, 89, 170
preventive measures, costs of 330
Art 6:184 Dutch Civil Code 165–7
general Dutch tort law 167–9
international conventions 169–71
pure economic loss 157–8, 166
scope of possible 328–30
detection costs 171–2
preventive measures, costs of 165–71, 330
pure economic loss 157–8, 166
space activities 328
contracts, business 235, 245–7
Convention on Biological Diversity 49, 230, 326
Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment 169
Convention on EIA in a Transboundary Context (Espoo Convention) 48, 232, 234, 235
Convention on the International Regulations for Preventing Collisions at Sea (COLREGs) 68, 86
Convention on Jurisdictional Immunities of States and their Property 16–17
China 80–81
environmental impact assessments 233
free navigation 103
historical development 68–71
jurisdiction 100–101
coastal state 90–97, 98, 101, 102
flag state 85–90, 100, 101, 102
port state 97–100, 101, 102, 103
maximum level of protection 52
notification of emergency 326
Convention on Long-Range Transboundary Air Pollution 110
Convention on Persistent Organic Pollutants 53
Convention on the Protection of the Marine Environment of the Baltic Sea Area 234–5
Convention on the Protection of the Marine Environment of the North-East Atlantic 216–17
Convention for the Protection of the Marine Environmental and the Coastal Region of the Mediterranean 234
Convention on the Protection and Use of Transboundary Watercourses and International Lakes 216, 233, 323–4
Convention on the Transboundary Effects of Industrial Accidents 234, 288, 319, 322–3, 329
2003 Protocol 319, 328, 329
cooperation, duty of 43
Corfu Channel case 237, 277, 320
Council of Europe 254–5
crimes, transboundary environmental
Chinese law 262, 269
atmospheric, water or radioactive pollution 263–6
solid waste import and export 266–7
trafficking in endangered species 267–8
European law 254, 257–8, 268–9
Council of Europe 254–5
European Union 255–8
Germany 258–62, 268
introduction 253–4
summary/conclusion 268–9
customary environmental law 320–21
EIAs as 225–6, 238–41
enforcement 242–7
implications 241–2
Cyprus 99
Czech Republic
CEZ case 145–6
damages see compensation
De la Fayette, L. 91
democratic control 209–10, 215, 221
Denmark 140
developing countries 232, 242, 244
loss allocation scheme proposed by ILC 109, 123–5
international law 121–3
scenario 116, 120
diplomatic protection 21–2, 34
exhaustion of local remedies 24–5
domestic courts 14–18, 23–4, 28, 30–32, 345
complementary nature of different options 32–5
contracts, business 235, 245–7
tort law see tort law
dualism v monism 133–4
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>endangered species 267–8</td>
</tr>
<tr>
<td>environmental impact assessments</td>
</tr>
<tr>
<td>(EIAs) 346</td>
</tr>
<tr>
<td>China 293, 303</td>
</tr>
<tr>
<td>Convention on Biological Diversity 49</td>
</tr>
<tr>
<td>Convention on EIA in a Transboundary Context 48, 232, 234, 235</td>
</tr>
<tr>
<td>customary environmental law 225–6, 238–40</td>
</tr>
<tr>
<td>conclusion 247</td>
</tr>
<tr>
<td>enforcement 242–7</td>
</tr>
<tr>
<td>implications of EIA as 241–2</td>
</tr>
<tr>
<td>proving EIA as 240–41</td>
</tr>
<tr>
<td>Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities 49</td>
</tr>
<tr>
<td>obligation to conduct 229</td>
</tr>
<tr>
<td>customary environmental law 238–40</td>
</tr>
<tr>
<td>international environmental law principles 235–8</td>
</tr>
<tr>
<td>national legislation 229–30, 248</td>
</tr>
<tr>
<td>treaty 230–35, 249–50</td>
</tr>
<tr>
<td>overview and history of 226–8</td>
</tr>
<tr>
<td>pulp mills dispute 47–50, 56</td>
</tr>
<tr>
<td>UNEP Goals and Principles of Environmental Impact Assessment 48</td>
</tr>
<tr>
<td>World Bank 56</td>
</tr>
<tr>
<td>Equator principles 12, 22–3</td>
</tr>
<tr>
<td>Espoo Convention (EIA in a Transboundary Context) 48, 232, 234, 235</td>
</tr>
<tr>
<td>European Convention on Human Rights (ECHR)</td>
</tr>
<tr>
<td>Art 8: private life 19</td>
</tr>
<tr>
<td>Art 32: jurisdiction 29</td>
</tr>
<tr>
<td>individual victims, claims by 20</td>
</tr>
<tr>
<td>European Convention on State Immunity 157–8</td>
</tr>
<tr>
<td>European Court of Human Rights (ECtHR) 24</td>
</tr>
<tr>
<td>private life, right to 19</td>
</tr>
<tr>
<td>European Court of Justice (ECJ)</td>
</tr>
<tr>
<td>criminal law 255</td>
</tr>
<tr>
<td>customary international law</td>
</tr>
<tr>
<td>Wood Pulp case 243</td>
</tr>
<tr>
<td>forum for civil claims</td>
</tr>
<tr>
<td>Bier 15, 141, 186</td>
</tr>
<tr>
<td>CEZ 145–6</td>
</tr>
<tr>
<td>Lloyd’s Register 143</td>
</tr>
<tr>
<td>Owusu 144, 145</td>
</tr>
<tr>
<td>Somafer 143</td>
</tr>
<tr>
<td>European Union 104, 130</td>
</tr>
<tr>
<td>actors in tort claims</td>
</tr>
<tr>
<td>public authorities: Environmental Liability Directive 154–6</td>
</tr>
<tr>
<td>applicable law for tort claims: Rome II update 149–51, 181, 182</td>
</tr>
<tr>
<td>arrest warrant, European 257–8</td>
</tr>
<tr>
<td>compensation fund 296</td>
</tr>
<tr>
<td>Council Regulation 44/2001 140–46, 180, 184–6</td>
</tr>
<tr>
<td>crimes, transboundary environmental 255–8</td>
</tr>
<tr>
<td>environmental impact assessments (EIAs) 228</td>
</tr>
<tr>
<td>Environmental Liability Directive (ELD) 154–6, 163, 179–80, 181, 182</td>
</tr>
<tr>
<td>forum for tort claims 15</td>
</tr>
<tr>
<td>Brussels Convention 139–40</td>
</tr>
<tr>
<td>Council Regulation 44/2001: Brussels I regime 140–46, 180</td>
</tr>
<tr>
<td>Meuse river basin 204, 206–7, 218, 219</td>
</tr>
<tr>
<td>Rhine river basin 213, 218–19</td>
</tr>
<tr>
<td>Integrated Pollution and Prevention Control Directive 194–5</td>
</tr>
<tr>
<td>oil tankers 91–2</td>
</tr>
<tr>
<td>overlapping legal regimes 220–21</td>
</tr>
<tr>
<td>recognition/enforcement of judgments 184–6</td>
</tr>
<tr>
<td>Rhine river 211, 213</td>
</tr>
<tr>
<td>Framework Water Directive 213, 218–19</td>
</tr>
<tr>
<td>Rome II update</td>
</tr>
<tr>
<td>applicable law for tort claims: Rome II update 149–51, 181, 182</td>
</tr>
<tr>
<td>standing 154</td>
</tr>
<tr>
<td>exclusive economic zone (EEZ) 76, 80–81, 93–4, 95–6, 97, 98</td>
</tr>
<tr>
<td>externalisation of harm 129–30</td>
</tr>
<tr>
<td>financial institutions 108–9</td>
</tr>
<tr>
<td>banks 23</td>
</tr>
<tr>
<td>Equator principles 12, 22–3</td>
</tr>
</tbody>
</table>
flag state jurisdiction 101, 102
enforcement 87–8, 100
evaluation 89–90
prescriptive 85–7
ship registration 88–9
*forum non conveniens* 23–4, 144–5, 245
Fradkov, Mikhail 274, 279
France 134, 228
*Bier* case see *Bier/Potassium Mines/MDPA* case
*Lac Lanoux* arbitration 46–7, 277, 320
Meuse see Meuse river basin
*Nuclear Test (Australia v France)* 277–8
Rhine see Rhine river
*Gabcikovo-Nagymaros* case 55, 198, 343
Germany 134–5, 172, 228, 258–62
Meuse see Meuse river basin
Rhine see Rhine river
good neighbour principle 136, 236–7
Greenpeace 215
hazardous activities, ILC proposal on
loss allocation and 17, 31, 107–10, 280–82, 287–8, 327, 328, 329
conclusion 125
home state of MNC, role of 120, 123–5
international law 121–3
MNCs, role of 116, 119–20
international law 116–19
origin state, role of 113–16, 125
international law 110–12
hazardous activities, ILC proposal on
prevention of transboundary
harm from 49, 54–5, 124, 278
hazardous substances/waste 327
Basel Convention 266–7, 328
Basel Liability Protocol 170, 328
China 266–7, 325
Hazardous and Noxious Substances
Convention 68, 76–7, 170
United States 296
high seas 95
Hu Jintao 286
human rights 56
courts 18–20, 30, 32, 33
applicable law 28, 29–30
exhaustion of local remedies 24
life, right to 18–19
private life, right to 18–19
pulp mills dispute 12, 32
Hungary
*Gabcikovo-Nagymaros* case 55, 198, 343
*Icelandic Fisheries* case 55
indigenous peoples 20
Indonesia 228
industrial accidents
*Convention* 234, 288, 319, 322–3, 329
2003 Protocol 319, 328, 329
see also individual cases
industry funds 108–9
ING (Dutch bank) 23
injunctions 18, 153, 164–5, 169, 171, 346
cross-border 173–4
insurance 109
China 287–8, 294–5, 304–5
nuclear power plants 133
Inter-American Commission on
Human Rights
Inuit Circumpolar Conference 20
pulp mills dispute 12, 32
Inter-American Convention on Human
Rights 20, 56
*Interlas* case 161, 173–4
International Centre for the Settlement
of Investment Disputes (ICSID)
*Vivendi v Argentina* 31–2
International Convention on Oil
Pollution Preparedness, Response
and Co-operation (OPRC) 68, 74–5
International Convention for the
Prevention of Pollution from
Ships (MARPOL) 67–8, 71–3, 86, 89, 91, 98, 103
International Convention for the
Prevention of Pollution of the Sea
by Oil (OILPOL) 71
International Convention for the
Safety of Life at Sea (SOLAS) 68, 73, 86, 89, 91, 98
International Court of Justice

Argentina v Uruguay see pulp mills dispute

Corfu Channel 237, 277, 320

Gabcikovo-Nagymaros 55, 198, 343

Icelandic Fisheries 55

Nuclear Test (Australia v France) 277–8

nuclear weapons 278

Oil Platforms 53–4

International Labour Organization (ILO) 117

International Law Association (ILA) 30, 195, 323

International Law Commission (ILC)

Draft Articles on Diplomatic Protection 24–5

Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities 49, 54–5, 124, 278

Draft Articles on Responsibility of States for Internationally Wrongful Acts 321–3


conclusion 125

home state of MNC, role of 120, 123–5

international law 110–12, 116–19, 121–3

MNCs, role of 116, 119–20

origin state, role of 113–16, 125

International Maritime Organization (IMO) 71, 86, 92, 98, 101, 102

MARPOL 67–8, 71–3, 86, 89, 91, 98, 103

International Tribunal for the Law of the Sea 49–50

interstate claims 33–5, 138

applicable law 28, 30

exhaustion of local remedies 24–5

fora for 21–2

state responsibility see state responsibility

see also arbitration; International Court of Justice; International Justice, Permanent Court of Intervention Convention and Protocol 67, 69–70

Iran

Oil Platforms case 53–4

Ireland 21

Israel 225–6, 228

Italy 228

Seveso case 118, 329

Japan 79, 262, 263, 296

Jordan 330

judicial review 179–80

Kazakhstan 299

Kenya 244

Kiss, A. 286

Knox, J.H. 138

Koh, H.H. 13

Korea 262, 263

Kuwait 330

Lac Lanoux arbitration 46–7, 277, 320

liability law, national see tort law

Liberia 85–6, 99

Liechtenstein 210

Lloyd’s Register case 143

Load Lines Convention 86, 98

Lugano Convention 169, 329

Luxembourg 210, 211, 219

Meuse see Meuse river basin

marine pollution

Civil Liability Convention/Fund Convention 68, 75–6, 83, 89, 170, 296

shipping see vessel-source marine pollution

market-based regulatory tools 201
Index

MARPOL 67–8, 71–3, 86, 89, 91, 98, 103
Marshall Islands 111
MDPA case see Bier/Potassium Mines/MDPA case
MERCOSUR 57, 59–60
Meuse river basin 196, 197–8, 200, 203, 346
bilateral treaty 205–6
Cockerill case 162–3, 165, 183–4
Framework Water Directive 204, 206–7, 218, 219
International Meuse Commission 193, 203, 206–8
conclusion 208–10
dispute settlement 208
participation 208
Treaty 203–6
monism v dualism 133–4
Montenegro 254
multinational corporations
European Union
branches 142–3
hazardous activities 116–19, 329
home state liability 120–25
ILC draft Principles on loss allocation 119–20, 123–5
OECD
Guidelines 12, 22, 32–3, 57, 117, 121
specific instance reviews 35
multiple procedures see cluster-litigation
national tort law see tort law
negligence 158–9, 160–63
Netherlands 29, 31, 203
Meuse see Meuse river basin
negotiating tactics 196, 203
Rhine see Rhine river
tort law 131–2, 140, 187
applicable law 146–9
applicable remedies 164–9, 170–74
Bier see Bier/Potassium Mines/MDPA case
Borcea case 167–9
Cockerill case 162–3, 165, 183–4
foreign law, breach of 161
forum 141–2, 144
Interlas case 161, 173–4
international law and 134, 135–7
NGOs as claimants 152–4
public authorities as defendants 157
recognition and enforcement 184–6
regulatory compliance defence 27, 183–4
Sopar see Sopar case
strict liability 159–60
wrongfulness 159–63
NGOs (non-governmental organizations) 215
arbitration 282
civil law claims by 17–18, 152–4, 181, 185, 197
damages 18, 165–72
injunctions 18, 153, 164–5, 169
Meuse river basin 208
pulp mills in Uruguay 12, 23
Nollkaemper, A. 100, 136, 200
non-judicial fora 22–3
Norway 255
nuclear energy 133, 170, 327–8
Chernobyl accident 111, 134–5, 326
jurisdiction 328
European Union 145–6
nuclear weapons 278, 327
Nuclear Test (Australia v France) case 277–8
OECD
Guidelines for Multinational Enterprises 12, 22, 32–3, 57, 117, 121
specific instance reviews 35
Office of Compliance Advisor/Ombudsman (CAO) 12, 22
Oil Platforms case 53–4
oil pollution 328
Civil Liability Convention/Fund Convention 68, 75–6, 83, 89, 170, 296
MARPOL 67–8, 71–3, 86, 89, 91, 98, 103
OILPOL (International Convention for the Prevention of Pollution of the Sea by Oil) 71
OPRC (International Convention on Oil Pollution Preparedness, Response and Co-operation) 68, 74–5
see also vessel-source marine pollution
Owusu case 144, 145

Pakistan 228
Pakootas/Trail Smelter II case 175–9, 187
Panama 85–6, 99
Paris Convention on the Protection of Marine Environment of the North-East Atlantic 216–17
Philippines 228
Polak, M.V. 174
polluter pays principle 204, 216, 244, 324
port state jurisdiction 97–100, 101, 102, 103
Potassium Mines case see Bier/Potassium Mines/MDPA case
precautionary principle 204, 212, 216, 236, 244, 324
China 292, 293, 302–3
Protection and Indemnity (P&I) Clubs 104
public authorities and tort law
claimants 154–6
defendants 157–8
pulp mills dispute 11–12, 23, 32–3, 335
1975 Statute of the River Uruguay 21, 39–43
adequate information and EIA 47–50
cooperation and consultation 43–7
substantive pollution standards 50–54
utilisation, optimum and rational 54–5
background 39–41
conclusion 60–61
introduction 38–9
jurisdictional basis: ICJ 21, 40, 58–9
multi-faceted nature 56–60
Putin, Vladimir 286
regulatory compliance defence 26–7, 163, 180, 181–4
remedies 33
compensation see compensation
injunctions 18, 153, 164–5, 169, 171, 346
cross-border 173–4
specific performance 246
US citizen suits: Trail Smelter II 175–9, 187
availability in EU 179–81, 187
res judicata, principle of 59–60
Rhine river 200, 346
chloride pollution of see Bier/Potassium Mines/MDPA case
Framework Water Directive 213, 218–19
International Commission 193, 201–2
conclusion 214–15
introduction 210–11
tasks and procedures of 212–14
Treaty 211–12
Sandoz incident 326, 329
river basins, joint governance of concept of water management
holistic approach 193–5
non-binding rules 201–3
regime/managerial approach 198–200
standard setting 200–201
victim state, approach of 195–8
conclusion 221–3
international level 215–16
Helsinki Convention 216
overlapping legal regimes 220–21
Paris Convention 216–17
introduction 192–3
Meuse Commission 203, 206–8
conclusion 208–10
dispute settlement 208
participation 208
Treaty 203–6
overlapping legal regimes 220–21
Rhine Commission 193, 201–2
conclusion 214–15
introduction 210–11
tasks and procedures of 212–14
Treaty 211–12
Romano, C.P.R. 197–8
Rotterdam Port 196–7
Russia 262
Amur River see Songhua River, pollution of
see also Soviet Union

Saudi Arabia 330
Seveso case 118, 329
shipping
pollution see vessel-source marine
pollution
sic utere tuo ut alienum non laedas 114,
237, 276
Slovakia
Gabčíkovo-Nagymaros case 55, 198,
343
SOLAS (International Convention for
the Safety of Life at Sea) 68, 73,
86, 89, 91, 98
Somafer case 143
Songhua River, pollution of 13, 17
actions taken by China 289–90,
315–17
criminal law 265–6
environmental legislation, problems
with 300–301
compensation fund 294–6
counter-emergency system 296–8
dispute settlement 298–300
guiding ideology 292–4
implementation 293–4
insurance, liability 294–5
polluters, protection of 295
four kinds of potential disputes
between governments 276–81
Russian Government v PetroChina 281–2
Russian victims v Chinese
Government 282–3
Russian victims v PetroChina
283–5
international legal issues 317, 345
applicable international principles
and rules 318–21

conclusion 330–31
liability 327–30
nature of incident 317–18
state responsibility 321–7
introduction 273–6, 291–2, 315
recommendations
compensation fund 287–8,
305–6
counter-emergency system 287,
306
dispute settlement 307–8
equal treatment to non-citizens
288
guiding ideology 301–4
insurance, liability 287–8, 304–5
international cooperation with
China 285–7
revision of law 308–13
Sopar case 174
applicable law 147–8
enforcement 185
foreign permit 183
injunction 165, 173
jurisdiction 142
plaintiff 152, 181
violation of regulatory norm
160–61
South-East Asian Nations, Association
of (ASEAN) 233
sovereignty, state 46–7, 240
Harmon Doctrine 278, 320
immunity 16–17, 134–5, 157–8
see also state responsibility
Soviet Union
Chernobyl nuclear accident 111,
134–5, 326
spaceship Cosmos 954 crash 111,
330
see also Russia
space activities 110, 327, 328
Cosmos 954 crash 111, 330
Spain
Lac Lanoux arbitration 46–7,
277
specific performance 246
Sri Lanka 228
stabilisation clauses 51
standard setting, difficulties of
200–201
standing see actors under tort law
Index

state responsibility 121–3
international law 123–5
home state of MNC 121–3
origin state 110–12
loss allocation scheme proposed by ILC 123–5
home state of MNC 109, 113–16
origin state 109, 113–16
Songhua River incident 276–81, 321–7
see also sovereignty, state
STCW Convention (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers) 68, 74, 86, 98
Stockholm Declaration (1972) 111–12, 231, 244, 277, 321
strict liability 112, 158–60, 328
loss allocation scheme proposed by ILC 108, 113
Netherlands: dangerous substances 159–60, 165–7
nuclear activity 327
space activities 110, 328
Switzerland
Rhine see Rhine river
Sandoz incident 326, 329
Seveso case 118, 329
Taiwan 263
territorial sea 92–3, 98
Thailand 228
Tonnage Convention 86, 98
tort law
actors 16–17
individual victims as claimants 151–2
NGOs as claimants 17–18, 152–4, 181, 185, 197
public authorities as claimants and ELD 154–6
public authorities as defendants 157–8
applicable law 28
Dutch law 146–9
EU law: Rome II update 149–51, 181, 182
applicable remedies 164–5
citizen suits: Trail Smelter II case 175–9, 187
cross-border injunctions 173–4
detection costs 171–2
environmental liability directive 179–80, 181
EU: choice of law 180–81
preventive measures, costs of: Art 6:184 Dutch Civil Code 165–7
preventive measures, costs of: general Dutch tort law 167–9
preventive measures, costs of: international conventions 169–71
causation 131
conclusions 186–7
defences
regulatory compliance 26–7, 163, 180, 181–4
State of the Art 163, 180
forum 14–17, 23–4
Brussels Convention 139–40
importance 138–9
land 145–6
international law and 26, 28–9, 30–32, 137–8
MDPA case 135–7
monism v dualism 133–4
The Chernobyl case: Bonn court 134–5
introduction 129–32
recognition and enforcement 184–6
Songhua River incident
Russian victims v PetroChina 283–5
wrongfulness
Bier case 161–2
Cockerill case 162–3
environmental liability directive 163
foreign law, breach of 161
regulatory norm or duty of care 160–61
strict liability or negligence 158–60
Index

*Trail Smelter* arbitration 138, 175, 231, 320
exhaustion of local remedies 25
future cooperation 280, 285–6
good neighbour principle 136, 237
state liability 111, 277
serious consequence 159
*Trail Smelter II* case 175–9, 187
transnational corporations *see*
multinational corporations
treaty interpretation
1975 Statute of the River Uruguay 41–3
adequate information and EIA 47–50
conclusion 60–61
cooperation and consultation 43–7
substantive pollution standards 50–54
utilisation, optimum and rational 54–5
evolutionary approach 42–3
Vienna Convention 41–2, 49, 50, 53–4, 61

Uncertainty and environmental policies 201
UNCLOS *see* Convention on the Law of the Sea
United Kingdom 21
*forum non conveniens* 144–5
United Nations 253
Compensation Commission for 1991 Gulf War 329–30
Draft Code of Conduct on Transnational Corporations 117
Environment Programme 325, 326
Goals and Principles of Environmental Impact Assessment 48
Stockholm Declaration (1972) 111–12, 231, 244, 277, 321
United States 130, 296
Alien Tort Statute 14
citizen suits
*Trail Smelter II* case 175–9, 187

Clean Water Act 202
customary international law 244
domestic liability
international human rights law 29
Great Lakes 202
NEPA 1969 227–8, 229–30
*Oil Platforms* case 53–4
oil tankers 91, 96
*Trail Smelter* arbitration 138, 175, 231, 320
exhaustion of local remedies 25
future cooperation 280, 285–6
good neighbour principle 136, 237
state liability 111, 159, 277
*Trail Smelter II* case 175–9, 187
Uruguay
pulp mills *see* pulp mills dispute
USSR
Chernobyl nuclear accident 111, 134–5, 326
spaceship Cosmos 954 crash 111, 330
*see also* Russia

vessel-source marine pollution 336
China 89–90, 96, 97, 100, 104
analysis of Chinese law 82–4
historical development 79–82
introduction 78–9
ship registration 88–9
competences to remedy
coastal state jurisdiction 90–97, 98, 101, 102
comparative summary 100–101
flag state jurisdiction 85–90, 100, 101, 102
overview 84–5
port state jurisdiction 97–100, 101, 103
conclusion 101–4
evaluation 77–8
historical development
Chinese law 79–82
liability 75–7
prevention 71–4
response: OPRC 74–5
UNCLOS 68–71
introduction 64–6
<table>
<thead>
<tr>
<th>Overview: current legal framework</th>
<th>World Bank 237</th>
</tr>
</thead>
<tbody>
<tr>
<td>66–8, 69</td>
<td>pulp mills dispute 56</td>
</tr>
<tr>
<td>Treaties 41–2, 49, 50, 53–4, 61</td>
<td>World Trade Organization (WTO) 58</td>
</tr>
<tr>
<td>Wen Jiabao 274, 279</td>
<td>World Wildlife Fund 194</td>
</tr>
<tr>
<td>Wood Pulp case 243</td>
<td>Zou, K. 80</td>
</tr>
</tbody>
</table>