

Supra-State Order: Sovereignty and Statehood

Although there are many differences, the primary factor that distinguishes the international legal order from the World's domestic legal systems is that international law is conventionally understood as having a multiplicity of sovereigns. Sovereignty can be defined as that quality of being the highest power within a jurisdiction. No other actor can exercise any form of authority over the sovereign, for that would be to subordinate them to the will of another, and thus demonstrate that they are not 'sovereign' properly-so-called. Domestic legal orders have a single sovereign, in the form of a monarch or, as in many democracies, a body which exercises the sovereignty of the people as proxy (the paradigmatic example being the UK Parliament), or a foundational document which codifies the will of the sovereign at a moment in time and can only be altered by another exercise of that sovereign will (such as the US Constitution). By contrast, in the international order each and every State is considered sovereign. Hence no State can be subjected to law except by its consent, for so to do would be to subordinate its sovereign will to the will of other States.

The connection between statehood and sovereignty is both a highly contentious question, and one that is perfectly mundane. On the one hand, it can be seen that all acknowledged States on the international plane are sovereign. It is not clear, however, whether sovereignty is a product of statehood, or a requirement for it. In other words, must an entity seeking statehood show that it is de facto sovereign before it can be recognised as a State, or is it sufficient to meet some lower threshold and for it to gain sovereignty with its statehood?

The cases, documents and writings selected here concern that connection between sovereignty and statehood. The existence of a connection between sovereignty and statehood is the subject of Beaulac's piece, wherein he analyses the work of Emer de Vattel – possibly the seminal thinker in the development of modern, positivist international law. Other documents, such as the Montevideo Convention and the European Community Declaration, are useful in determining whether sovereignty is the criterion for or the product of statehood; while the remaining documents, in particular the Customs Regime decision, the Declaration on Friendly Relations, and the Jurisdictional Immunities of the State case, give indications as to the scope of a State's sovereignty. What does sovereignty entail? What level of obligation or interference is acceptable before a State will be considered to have 'lost' its sovereignty, and what rights do sovereigns have to hold each other to account?

- [Stéphane Beaulac, 'Emer de Vattel and the Externalization of Sovereignty' \(2003\) 5 Journal of the History of International Law 237.](#)
- [Island of Palmas Case \(Netherlands/USA\), \(1928\) II RIAA 829.](#)
- [Customs Regime Between Germany and Austria, Judgment, \(1931\) PCIJ Series A/B, no.41.](#)
- [Customs Regime Between Germany and Austria, Individual Opinion of Judge Anzilotti, \(1931\) PCIJ Series A/B, no.41, p.55.](#)
- [Montevideo Convention on the Rights and Duties of States, \(1933\).](#)
- [Declaration on Friendly Relations, annexed to UNGA Res 2625 \(1970\) GAOR 25th Session, 121.](#)
- [Helsinki Final Act \(1975\).](#)
- [Military and Paramilitary Activities in and Against Nicaragua \(Nicaragua v United States of America\), Merits, \(1986\) ICJ Rep 14.](#)
- [European Community: Declaration on Yugoslavia and on the Guidelines on the Recognition of New States \(1992\).](#)

- [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, \(2004\) ICJ Rep 136.](#)
- [Jurisdictional Immunities of the State \(Germany v Italy, Greece intervening\), Judgment, \(2012\) ICJ Rep 99](#)