

Supra-State Order: The Development of the 'Law of Nations'

The development of the body of rules which, for centuries, was known throughout the English-speaking World as the 'law of nations' (now more commonly referred to as 'international law') has long been a subject of fascination to legal historians and legal theorists. Naturally, a limited selection of documents can never hope to tell the full story of the development of an idea, particularly one which, like the law of nations, evolved over many hundreds of years. For those who wish to examine this topic further several excellent works exist. Notable among them are Grewe's excellent *The Epochs of International Law* (Byers (tr), De Gruyter 2000) (a link to the introduction of which is provided below), and *The Oxford Handbook of the History of International Law*, edited by Fassbender and Peters (Oxford University Press 2012). The documents listed here cannot provide a full history of the discipline, but nevertheless have been selected in an attempt to give a flavour of its development.

The law of nations finds its roots in the relations between sovereigns. For many hundreds of years before the law of nations (in a recognisable form) emerged, international rules of conduct existed in the form of treaties and embassies. The treaty of Kadesh is an exceptionally fine example of an early treaty. Concluded in 1269 B.C., the treaty is the earliest surviving peace treaty, and was concluded between Hittite king Hattusilis III and the Egyptian pharaoh Ramses II. Unlike a modern treaty, which would be addressed to the State, the treaty of Kadesh was addressed to the rulers in their personal capacities as sovereigns.

It is very difficult, if not impossible, to pinpoint the moment at which international law came into being as a law between States and not simply between sovereigns. The documents selected seek to show the development of international law from power relations and personal agreements to its origins as a modern-style system in the 19th and 20th Centuries. Of particular significance, perhaps, are the writings of Grotius, often called the Father of international law, the Peace of Westphalia, and the writings of Vattel. As will be clearly seen by any reader, however, any claim that one or more of these sources represents a watershed moment are, at best, debateable.

Whatever its path, it is revealing to consider the roots of international law in the personal politics of sovereigns, and to consider critically to what extent our modern system has succeeded in shedding those characteristics. Certainly a credible argument can be made to say that international law is now a supra-State order of a truly legal, and even federal or quasi-federal, character (see, for example, the section on the UN Charter as a World Constitution). It may also be argued, however, that the continuing influence of sovereignty on international law defeats its legal character, 'relegating' it to the status of politics (see further the sections on Obligation in International Law and Sovereignty and Statehood).

- [Grewe, *The Epochs of International Law* \(Byers \(tr\), Walter de Gruyter 2000\) Introduction.](#)
- [Treaty of Kadesh](#) (Egyptian-Hittite Peace Treaty, Hittite Version).
- [Walker, *A History of the Law of Nations*, p.155-156 on Suarez and the first scholarly formulation of modern-style international law.](#)
- [Hugo Grotius, *De Jure Belli ac Pacis Libre Tres, prolegomena*.](#)
- [Peace of Westphalia, Treaty of Münster, 1648.](#)
- [Leo Gross, 'The Peace of Westphalia, 1648-1948', \(1948\) 42\(1\) *The American Journal of International Law* 20-41.](#)

- [Stéphane Beaulac, 'The Westphalian Legal Orthodoxy - Myth or Reality' \(2000\) 2 Journal of the History of International Law 148.](#)
- Vattel, Emer de, *Le Droit de Gens* (G. G. and J. Robinson, 1797), Prologue and General Principles.
- [Stéphane Beaulac, 'Emer de Vattel and the Externalization of Sovereignty' \(2003\) 5 Journal of the History of International Law 237.](#)
- [Oppenheim, Lassa F. L., *International Law, a Treaties, Volume 1: Peace* \(1st Edn, Longmans, Green and Co., 1905\), Introduction.](#)