

The Rise of International Law

Contents

• The Nature of International Law	4
• The Roles of International Law	6
• The Early Beginnings of International Law	9
• Dueling Philosophies	13
• Contending Modern Approaches	16
• Operating Conditions: What Helps and What Hinders?	20

The discipline of political science failed for decades to give international law its due as a framework for constraining and channeling politics at the international level. The competitive, and sometimes conflictual, interactions among states over "who gets what, when, and how" has prevented many international specialists from imagining that international law could perform a role similar to law inside countries (Ku & Diehl 1991: 3–5). These political scientists, known as *realists* with a focus on power-driven international politics, either ignore international law or place it on an idealistic plane with limited prospects for taming ungoverned international politics. E. H. Carr once observed that many scholars could only hope to "transfer our differences from the turbulent political atmosphere of self-interest to the purer, serener air of impartial justice" (Carr 1946: 170; Hsiung 1997). Yet, as Carr went on to point out, "In practice, law and politics may be different but are indissolubly intertwined." An interplay between politics and law at the international level is an ongoing process, with each shaping the meaning of the other. Bearing in mind that the two fit closely together, like a hand in a glove, *studying international law in its political setting is the guiding perspective of this textbook*. Fortunately, international specialists have recently taken international law more seriously. They are no longer

dismissive of it simply because this law lacks a central authority with strong enforcement powers.

The following chapter sections should help the reader form a clear picture of the evolution and status of international law. This chapter begins with a discussion of international law as to whether it is real law followed by a section on the roles international law can play to serve international society. Then, a section on the early history of international law appears with sections on the views of early legal philosophers and current approaches to this law coming next. The favorable and unfavorable conditions operating around international law is the last chapter section before the chapter summary.

The Nature of International Law

Anne-Marie Slaughter says that professors of international law have long known that international law can constrain and channel conflictual politics into cooperative patterns, but she thinks political scientists in the international relations field need to catch up to this thinking and believes they began to do so in the 1970s through their study of **regimes**. These entities are sets of rules and norms that states converge around and usually obey. For instance, the rules of the International Whaling Commission against hunting whales amount to the *whaling regime*. Slaughter claims that international relations specialists have rediscovered international law and are simply giving it a different name (Slaughter Burley 1993: 205–39; see also Slaughter, Talumello, & Wood 1998: 367–97). Luckily, there is now an ongoing dialogue between law and political science professors (Arend 1999: 6). The belated appreciation for world law may have been due to the absence of a world government to generate and enforce this law. For decades, many international relations scholars and the informed public regarded international law as a marginal specialty, well meaning but naïve and mostly irrelevant (p. 4).

Yet, it is the workability of international law in **anarchy**, that is, in a system without a centralized government, which makes this subject so fascinating. A full appreciation and understanding of international relations is not possible without recognizing that international rules do exist and are very much needed. Louis Henkin has argued persuasively that law is a major force in international affairs since states rely on it, invoke it, and observe it in all aspects of their foreign relations (Henkin 1979). Argentina's invasion of the Falkland Islands in 1982 and Iraq's aggression against Kuwait in 1990 were defeated, in part, because most states saw these acts of force as illegal. Throughout most of the twentieth century and continuing into the twenty-first, aggressive behavior has been seen as a violation of **jus cogens**. This concept involves a peremptory norm so fundamental that its transgression is always unacceptable. Nevertheless, major powers, and sometimes lesser powers, still choose to use force, posing a tough problem for international law. At least when states rely on force, they are put on the legal defensive as they struggle to rationalize their actions as "self-defense," the sole allowable justification in the UN Charter for the independent use of force. International law may be weak and imperfect compared to some national legal systems, but its several hundred years of

development and influence are incontestable. This law, as with other human institutions, survives, and even flourishes, because it is functionally useful.

A clear definition of the core concept is necessary. **International law** is the collection of rules and norms that states and other actors feel an obligation to obey in their mutual relations and commonly do obey. In international relations, **actors** are simply the individuals and collective entities, such as states and international organizations, which can make behavioral choices, whether lawful or unlawful. **Rules** are formal, often written, expectations for behavior, while **norms** are less formal customary expectations about appropriate behavior that are frequently unwritten. Diplomats receive immunity from their host states as a clear treaty *rule*, while a diplomatic *norm* requires spoken and written correspondence to be very polite.

Is international law really law? This question is an enduring one for many scholars and leaders. The observable behavior of states and other actors, as well as their frequent references to law in communications and documents, demonstrate the law's reality. Perhaps a more suitable question is whether international law can be viable without emanating from a world government. Some theorists look down their noses at international law, regarding it as primitive, because this law lacks a *command* feature. Effective sanctions are not readily available to punish transgressors, as is possible inside countries (Bull 1995: 124). Countries cannot be arrested and simply put in jail. Nor does this law have a *vertical* structure involving an authority operating over the heads of the states. Thomas Hobbes, a seventeenth-century English philosopher, is often quoted for having said, "where there is no common power, there is no law" (p. 124). Theorists of this persuasion view international law as little more than international morality easily ignored in an anarchical world where naked power tends to prevail.

Actually, compelling reasons do exist for reaching the conclusion that international law is true law. International law is not based on commands backed by sanctions but instead rests on *voluntary compliance*. As a matter of fact, **municipal law**, or domestic national law, from Afghanistan to Zimbabwe counts heavily on the cooperation of the various citizenries. If a national government had to force every citizen to obey every law, that government would need to hire mercenary police officers equal in number to that country's citizens. Although there are enough law-breakers in every country to justify a prison system, people usually obey the law because they believe it is in their enlightened self-interest to do so. Drivers halt at stop signs because they do not want to die in a car wreck or, less severe, receive a ticket. Paying taxes, serving on juries, and respecting the rights of other citizens is fairly natural to most citizens because they understand this kind of behavior creates a more wholesome society for everyone. Consequently, law does not succeed or fail depending on enforcement alone.

This observation applies equally well to a horizontal authority system in which the "citizens" (primarily the states) are **sovereign**, meaning they are legal equals and free of any central authority operating over their heads. States obey the law because it is usually in their interests to do so, and a legal structure makes international life less dangerous and costly. Because of international law, states have confidence that they can safely send their ambassadors to foreign soil; they can ship goods across borders and expect payment; their ships on the high seas will not be interfered with; or, in the case of a breakdown in relations that leads to war, refugees and POWs will be

repatriated. The reason this decentralized legal system is able to work does not depend on the few risky sanctions available to states, such as war or retaliation including breaking off trade or diplomatic contact. States hang together within a legal system due to a relationship of **reciprocity**. This relationship is one of give and take, with states returning in like kind the privileges and services they receive from other states.

The energy propelling international law is positive, not negative. Of course, the degree of cultural consensus, shared material interests, and the growing sense of global interdependence says a lot about how well this relatively non-coercive, non-centralized, legal system can work. Most diplomatic and economic exchanges move along smoothly, and to mutual advantage, although general world public opinion might have a hard time realizing the everyday usefulness of international law. The pervasive global media of today stress violent conflict, much like local news programs choose to show the wreck and carnage on our highways rather than steady flows of traffic moving safely to their destinations. The regular practice of international law by most actors results in a more orderly and predictable world, which goes unappreciated by a CNN world addicted to news of suicide-bombers and bloody ethnic civil war.

Fully appreciating the nature of international law is possible only by recognizing that international law is built into the **order** of international relations. An order is an enduring pattern of values and behaviors which structures the relationships of actors over time, usually decades or even centuries. Today's order includes democratic, human rights, and capitalist values rising to primacy with the major states striving to get along and trying to persuade lesser states to accept more fully the same order, with its decidedly Western character. The rules of international law help to establish and perpetuate a particular world order.

States vary greatly in size and power, but all try to shape the international order by influencing the content of international law. Since the end of the Second World War, the United States, with its power growing to **hegemon** status, or the world's most powerful state, has tried to secure its vision of world order through international organizations and international law. The creation of the UN, the World Bank, the World Trade Organization (WTO), the promotion of human rights treaties, and much else of the post-Second World War structure have come about in large part due to US influence. In the past, some observers claimed that the world order had begun to resemble not just a Western but a *Pax Americana*, an American designed peace in particular. Any lasting American imprint on the global order may be in question since the United States has become hesitant to support important treaties, and its vaunted military and economic prowess are undermined by the seemingly endless Afghanistan and Iraq wars plus the sharp downward turn in the US economy in 2008–9.

The Roles of International Law

The first role of international law is to *arrange for the cooperation most actors wish to have most of the time*. Try to imagine a world with global trade grinding to a halt, diplomats unable to represent their governments to other states, radio and television signals jamming each other across borders, students unable to study or go backpacking

in other countries because they cannot acquire visas, health and economic development programs in poor countries screeching to a halt because the UN ceases to exist, or the degradation of the oceans, outer space, and Antarctica because these common heritage spaces no longer enjoy the protection of treaties. Modern international life, as we know it today with its pervasive and predictable patterns of cooperation, would be impossible without the rules and understandings bound up in international law. Without rules to develop and sustain multiple kinds of positive interactions, international relations would be little more than a set of states co-existing in an atmosphere of constant worry over security threats. The “law of nations,” as these rules are sometimes called, is at least a cornerstone, if not the foundation, of modern international relations.

Another essential role is that international law *identifies the membership of an international society* of sovereign states (Bull 1995). Under law, states are granted formal recognition as members of the international society, and given rights and duties within this society. Enjoying membership, states can engage other states over competitive as well as mutual interests through diplomacy and at the forums of numerous organizations and international conferences. Additionally, there are non-state actors as well participating in international society, such as the United Nations, revolutionary movements, and even individuals in some circumstances. Non-state actors have a lesser degree of legal standing reflecting the continued primacy of the state over other actors sharing international society.

The law is also a mechanism to *regulate the competing interests of the various actors and to carry their agreements into the future*. Any place where people intermingle in patterns of cooperation or conflict can be called a “political space” (Rochester 2000: 43; Lung-ch Chen 2000: 410). The world political space contains nearly two hundred states with several other kinds of actors, with most of these wanting to believe that what has been arranged today will still be in place tomorrow (Starr 1995: 302). When a challenge to the *status quo* does occur between those wanting change and those who do not, international law helps constrain the ensuing political struggle by providing diplomatic and judicial options such as arbitration (Carr 1946: 179–80). States mostly accept international society, underpinned by a legal system, because they see the possibility of protecting what they have or making some gains with minimum costs (Hurrell 2000: 328). The law can be a means to a political end (Ku & Diel 1991: 6). This role of international law has been summed up in one sentence of Christopher C. Joyner's that “international law codifies ongoing solutions for persistent problems” (Joyner 1998: 263).

International law as well *empowers weaker countries as they press for change against the will of the powerful*. In diplomatic conferences and international organizations, where strength is partly measured in votes, small and medium-sized states have sometimes won the day. For instance, at the Law of the Seas Conference, 1958–82, the majority of states successfully pressed for a 12-mile offshore territorial jurisdiction to replace the traditional three-mile limit. The Soviet Union and the United States, despite being Cold War adversaries, wanted the three-mile jurisdiction to remain in place as an international rule. This traditional rule, dating back to the seventeenth century would leave them with a greater expanse of ocean for their powerful blue water navies. Superpowers on occasion have had to bend their knees

Box 1.1 Community or Society?

American specialists in international relations are prone to use *international community* and *international society* as if they are interchangeable synonyms, but it is useful to distinguish the two. Both call for a degree of cohesion and interdependence among the actors associating in some sort of group affiliation. The difference in degree between the two, however, is great. A *community* has more solidarity, as in the cases of the family, a village, a church, or a small ethnic group where personal interaction is possible. The identity with and loyalty to the group are strong. A *society*, in contrast, is always busy adjusting significant differences among a loose association of actors. The actors of the society relate to one another within a shared group in meaningful ways but lack a strong sense of common identity and loyalty. Examples might be a joint stock company or today's international relations among a core of Western states. A society is less likely to withstand internal conflict since it must regularly deal with the centrifugal force of self-interest by the members. International law is important because it provides the platform for the adjustments necessary to keep the society whole. The best hope for a society to continue its life is that members will focus on the common interest to a society-sustaining degree.

It is possible to think of a society evolving into a community, or a community deteriorating into a society. The nascent international society has a long wait before turning into a community, if it ever does. If there is an international community today, it might be in the limited sense that many people around the world hold a cosmopolitan belief in the oneness of humanity. For instance, people on one side of the globe deserve to be treated as well as people on the other side; after all, humankind is one great family of individuals with all deserving to enjoy a full range of human rights.

Sources: Main source is George Keeton and Georg Scharzenberger, *Making International Law Work* (New York: Garland Publishing, Inc., 1972; originally published in 1939 and a second edn. in 1946). Other sources are Mathias Albert, Lothar Brock, and Klaus Dieter Wolf (eds.), *Civilizing World Politics: Society and Community Beyond the State* (Lanham, MD: Rowman & Littlefield, 2000); and Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (New York: Oxford University Press, 2000).

in a world conditioned by the existing law as well as by a majority of states pressing for new law. This situation did not change when the United States held sway as a lone superpower in the 1990s. David J. Bederman put the matter poignantly when he said, "It is patently false to believe that one state – even a superpower – can unilaterally captivate the course of international law" (Bederman 2001b: 10).

As international law channels and controls the push and pull of politics, it can sometimes serve as an instrument to *promote justice*. Decades ago, Gerard Mangone wrote, "The functions of international law, as in any system of law, are to assist in the maintenance of order and in the administration of justice" (Mangone 1967: 1). Hedley

Bull believed if an international order were to endure, it not only needed the support of major powers, but this legal system must also provide justice for the international society as a whole (Bull 1995: 74–94). Bull recognized this role of international law concerning such matters as improving human rights and promoting economic development for the less advantaged states. At the same time, Bull cautioned about going too far, too fast with "social engineering" by means of law. Demands for radical change can be disruptive to an international order, he stated, since international law has always depended on a large degree of consensus (1995: 136–55).

Finally, the most interesting and ambitious role of international law is the *outlawry of war*. Historically, leaders regarded war as the *ultima ratio Regis* (or the ultimate means of a king), but in the twentieth century, a sea change occurred when war ceased being a legitimate option of foreign policy. Eliminating war as a normal means of international politics were core elements of the League of Nations' Covenant and the UN's Charter. Should war break out anyway, international law is sufficiently prepared so that if *jus ad bellum* (law to begin war, but often understood as war for a just cause) is violated, *jus in bello* (law of war) goes into effect. The intent of this momentous reform was to move political conflict into diplomatic and judicial channels. Toward this end, international law offers many options for conflict resolution short of war (Starr 1995: 307–8). Admittedly, however, international law has a more successful record regulating trade, international electronic communications and airline travel, as well as many other subjects, than is the case when national leaders perceive and react to security threats against their states (Brierly 1963: 77–8; Wilson 1990: 292).

The Early Beginnings of International Law

Scholars interested in international law seem to enjoy a game of one upmanship as they try to pinpoint the earliest possible beginnings of international law. Some scholars draw attention to the rules of the ancient civilizations of China, the Greek city-states, the Indian states, and Persia in the dealings of these entities with outsiders. A favorite point of other writers is that the Mesopotamian communities concluded treaties as early as 3100 BCE. Still other scholars prefer to begin with Roman law. The elaborate code law of the Romans heavily influenced continental Europe long after the collapse of the Roman Empire, and the study and use of Roman law exposed Europeans to the notion of natural law that the Romans had earlier borrowed from the ancient Greeks. Roman law also had a nice distinction between *jus civile* (civil law for Roman citizens) and *jus gentium* (law of nations). The latter governed the relations of Romans and non-Romans, although not on a basis of equality.¹ In the centuries after Rome's collapse, law among separate entities would be known as the "law of nations" until Jeremy Bentham introduced the term "international law" in 1780. In some languages, the law of nations is still preferred, as in the cases of Dutch and German speakers who use *völkerrecht* (Malanczuk 1997: 1).

Martin Wright once argued that international law began with the sixteenth-century debate in Spain over the status of "Indians" in the Americas. Did Spain have the right

10 Making the World More Lawful

to absorb much of the Americas in the western hemisphere into their empire by refusing to recognize any rights on the part of the indigenous peoples to their own lands? (Epp 1998: 56–7). The Spanish and other Europeans came to view the Americas as *terra nullius*, that is, land belonging to no one and subject to European conquest. The interests of the indigenous peoples were simply brushed aside. Many scholars, as a convenience, date the beginning of international law, along with the sovereign state system, from the 1648 *Treaty of Westphalia*.

This textbook operates from the assumption that to understand the beginnings of international law, investigation must start with the collapse of the Roman Empire in the West in 478 CE and the Byzantine half of the empire not long afterward. The epochal recession of the Roman Empire left in its wake the Medieval Age (476–1350 CE) with its mishmash of entities, including manor estates, duchies, walled cities, monasteries, and fiefdoms ruled by kings. As for unity, there existed only a loose order of overlapping authorities, the *Roman Catholic Church* (RCC) and the *Holy Roman Empire* (HRE). Together, these overlapping authorities headed a ramshackle society in Western Europe known as *Christendom*. With the disappearance of Roman rule, Europe lost its unity under an effective central authority. Rome did leave behind the important legacy of the *Justinian Code*, the apex of Roman law compiled between 528 and 534 CE. Not only did this law, when rediscovered by Europeans centuries later, set the basis for the code laws of European states (with the notable exception of England's customary or common law), it also allowed the notion of law among separate peoples to survive. Europeans were able to conceptualize that if Rome could have special law governing relations with the peoples living on the periphery of their empire, then Europeans might have law among independent kings. *Jus gentium* no longer applied to the inferior barbarians outside the boundaries of the Roman Empire but to the rudimentary states of Europe.

If the Church offered spiritual authority, the HRE tried to offer temporal authority. The HRE built on Charlemagne's (742–814 CE) effort to establish a Christian kingdom in Western Europe. About 150 years after Charlemagne's death, the HRE tried to pull his empire back together. Usually governed by a German emperor, with the approval of a RCC pope, the HRE existed from 962 until 1806. Over its history, the HRE tended to recede in territory rather than expand until Napoleon Bonaparte dissolved it in 1806 after the HRE had become hardly more than a whimper. Voltaire (1694–1778), the famous French philosopher, denouncing the HRE as an artifice, reportedly said that it was "neither Holy, Roman, nor an Empire."

The two overlapping but weak vertical authorities of Christendom, a kind of rule that P. E. Corbett once called a "thin film over political anarchy" (1951: 6), exerted little effort to develop a full body of international law in medieval Europe. In time, powerful historical forces undermined the semblance of vertical law and created a strong functional need for a horizontal legal system appropriate for a set of independent kingdoms.

The Reformation devastated the Catholic religious monopoly over Europe. This period started in 1517 with a demand for religious reform. Martin Luther, a Professor of Theology, nailed his 95 Theses on a door at the University of Wittenberg and triggered a widespread debate over the corruption and doctrine of the RCC. With the aid of the relatively new technology of the printing press, the debate spread rapidly across

Europe until protest against the RCC led to the creation of various sects of the Protestant faith. The Reformation eventually divided Europe into Catholic and Protestant states, a situation that contributed heavily to the Thirty Year War (1618–48).

The Renaissance also contributed to the making of strong kings and countries. This period began in the late fourteenth century in Italian cities and in the fifteenth century in the cities of Holland. In this era, there was a great flowering of new ideas in art, science, and even politics. A new merchant class, or *bourgeoisie*, arose because of inventiveness in technology, and the belief that people should fulfill themselves in all their creative and economic potentials. This thinking spurred on the *Protestant Ethic* of the Reformation which called for people to work hard and sacrifice now in order to enjoy economic success later, an approach to life believed pleasing to God. The new bourgeoisie class could provide loans and taxes for kings who, in turn, could develop professional armies equipped with cannon capable of knocking down castle walls. Recalcitrant nobles could no longer resist the will of their king by holding up in impregnable castles. In time, the kings of Europe developed unqualified control in their realms and needed to doff their crowns neither to the Pope nor to the Emperor of the HRE. Except for the cataclysm of the Thirty Years War, the stage was now set for the emergence of modern international law to govern public affairs. Private business law, known as merchant law, was already underway.

Many scholars nonchalantly refer to the cause of the Thirty Years War as rivalry between the Protestant and Catholic states. The religious cause was, indeed, a major one, but the war was more complex. Protestant Sweden and Catholic France feared that the Hapsburgs would dominate Europe much as Napoleon and Hitler would try to do later in history. Although of different religious persuasions, France and Sweden fought as allies to block the expansion of the Hapsburg alliance that included, among others, Austria, the Netherlands, Northern Italy, and Spain. For the times, the war was fought with great intensity, leaving much of central Europe (chiefly the German princely states) in devastation (Kegley & Raymond 2002).

The principal outcome of the 1648 *Peace of Westphalia*, ending the Thirty Year War, was the acceptance of the thinking of Jean Bodin (1530–1596) that kings and their states should enjoy their sovereignty as legal equals and able to act independently of each other. A critical rule that emerged was that states could not interfere with one another in internal matters for religious or other reasons. After Westphalia, with a group of independent states in place, a strong functional need arose for a set of horizontally based rules. Without the guidance of a superior authority, such as a pope or emperor, sovereign kings would need new rules on how to deal with one another (Malenczuk 1997: 10).

These rules would have to emerge from the customary practices of states and the writings of philosophers. After all, there was no world parliament or other overarching authority to perform the task of making rules. The Peace of Westphalia was the first explicit expression of a nascent European society, a society that had been forming before 1648 and continues to develop today, but now on a global scale (Jackson 2001: 42–6). Following from the Enlightenment Age (1648–1789), the seedtime of progressive views, the acceptance of democracy and human rights would eventually characterize most of the states of the European state society. Through exploration by

Box 1.2 Merchant Law

During the Renaissance period, rising numbers of towns and cities in Europe became centers for fairs, markets, and banks. These centers drew merchants from other countries as maritime and land travel improved. Since Roman and early medieval law did not contain concepts that supported sufficiently the expanding business enterprises of the day, merchant organizations and craftsman guilds began to develop their own rules and regulations. Usually regarded as fair, private merchant law and courts were accepted in many countries to handle business issues. Government and church courts came to use *lex mercatoria*, or merchant law, as well.

Merchant law provided a smooth surface for trade that transcended the local and national peculiarities that otherwise would have obstructed business among merchants of different countries. This law came to full-bloom under the guidance of the Hanseatic League (1241–1669), which began as a merchant guild in the German states and reached outward to include 85 cities across northern Europe. Agents of the League were very useful for enforcing merchant law at large annual trade fairs in various countries.

This area of law continued into modern times and is known today as commercial law. Originally it was thought of as *private law* because business people are private actors. However, in modern times, with powerful multinational corporations tangling with host governments in the latter's courts, commercial law has edged into the *public law* category. Today, national courts in many countries recognize a growing *corpus* of commercial law that has roots in the merchant courts of the medieval age.

Sources: Ana Mercedes López Rodríguez, "Lex Mercatoria," School of Law, Department of Private Law, University of Aarhus, Aarhus, Denmark (written as a PhD student); Helen West Bradley, "History of the Law Merchant," found at <http://szabo.best.vwh.net/lex.html>.

sailing ships, colonization, and international trade, European states gradually carried the Westphalian system out into the world with transforming effects.

By the nineteenth century, the European states began to insist on a "civilized standard" that non-European states would have to meet before they could participate in the international society Europeans had created. Europeans expected non-Europeans to accept international law, to practice diplomacy in the European way, to have an integrated and efficient government bureaucracy, to practice a form of justice in their countries suitable for European visitors, and to accept the European views opposed to polygamy, suttee, and slavery as legitimate moral norms (Sørensen 2001: 50ff.). It would be unusual in history if the militarily strong and rich peoples did not think they were also culturally superior to others.

Ironically, before the nineteenth century, European statesmen did not think of international society as belonging to Europeans alone. In fact, natural law theorists from the sixteenth through the eighteenth century viewed international society as global. Hedley Bull states the irony aptly, "There is . . . an element of absurdity in the claim that states such as China, Egypt, or Persia, which existed thousands of years before states came into existence in Europe, achieved rights to full independence only when they came to pass a test devised by nineteenth century Europeans" (Bull 1984: 123).

Turkey, located at the geographical intersection of Europe and Asia, would become the first non-Christian state accepted fully by Europeans, but it was as the Ottoman Empire that this entity took a seat at the diplomatic table at the 1856 Concert of Europe (Melanczuk 1997: 12). With the collapse of European empires after the Second World War, the newly independent peoples readily accepted the Westphalian system (Watson 1992: 275–6, 299), and helped quadruple the number of states in the international society. Interestingly, the European colonizers helped sow the seeds of their own demise by inadvertently inculcating in their colonial peoples the emotional appeal of nationalism and the strong ambition for sovereign independence.

Dueling Philosophies

The international legal system had developed a life before the Westphalia system crystallized into place; however, the emergence of territorial states in the sixteenth and seventeenth centuries required a more pronounced set of rules to coordinate the relationships among these states. To fill this void, **publicists**, or legal commentators, stepped forward to offer recommendations. The earliest legal writers had philosophical or theological backgrounds since law professors in universities did not come on the scene until the late sixteenth century (Brierly 1963: 25). During the Renaissance, publicists tried to offer reasoned tracts on what they thought the law should be; they hoped the kings of Europe would observe these suggested rules in peace and in war. For sources, the publicists drew on the Bible, Canon Law, Greek and Roman literature, and various treaties that reached back into antiquity (Corbett 1951: 7–8).

Two legal philosophies duelled for supremacy, with first **natural law** and later **positivism** holding sway. Natural law originated in ancient Greece and centered on the idea that laws of divine origin governed human affairs much as laws of nature ruled in the physical world. These rules inherent in nature supposedly could be deduced by insightful minds, but good minds often reached markedly different conclusions. Natural law was so broad it was difficult to employ for solving practical problems, and leaders of countries could easily stretch natural law's moral norms to fit their own selfish interests. At the very least, it was available as a source sort of some legal structure when little else existed (Carr 1946: 173; Charlesworth & Chinkin 2000: 25). On this matter, Sir Henry Maine once said, "The grandest function of the law of nature was discharged in giving birth to modern international law" (Brierly 1963: 24). By the seventeenth century, most publicists accepted natural law philosophy as the basis of international law, as did many political leaders.

After a long intellectual struggle lasting through the seventeenth and eighteenth centuries, positivism ultimately mounted a strong and successful challenge to the dominance of natural law. Positivism argued that international law could be no more than what states were willing to accept as obligations, especially in written treaty form. Positivism was realistic since it placed emphasis on "what is" and not "what ought to be." This simple but practical approach blended well with the modern state and its emphasis on sovereign independence. The operation of power politics in Europe was comfortable with a philosophy that permitted states to shape rules to their liking. Although positivism ascended to a superior position in the nineteenth century, natural law was not entirely eclipsed. Natural law made an important comeback in the post-Second World War period with the birth of the modern human rights movement and later, as a *just war* rationale, at least as rhetoric, when the UN approved a coalition in 1990 to undo Iraq's invasion of Kuwait. More specific justification favored the positive law of the UN Charter. A brief look at the positions of some of the publicists will help clarify the two philosophies. This task is a difficult one because some writers do not fit neatly in one camp or the other.

Francisco de Vitoria (1480–1546), a Dominican professor of theology at the University of Salamanca in Spain, argued that state obligations depended on the principles of natural law. He was a humanist who concerned himself mostly with Spain's brutal treatment of indigenous peoples (Indians) in the Americas, but Vitoria also lectured on just wars, among other subjects. A Spanish Jesuit professor of theology at the University of Coimbra in Portugal, *Francisco Suárez* (1548–1617) worked on the *duality of law* concept, trying to find the appropriate relationship between natural law and human-made law. He wanted to go beyond the metaphysics of natural law. Suárez believed *jus naturale* mandated observance by all, whereas, *jus gentium* required the consent of all. For him, natural law was universal and immutable while the law of states could change over time. Suárez is a writer that some authorities might classify as an *eclectic*, or a writer able to derive international law from more than one source.

If there has been a purist natural law advocate, that writer would be *Samuel von Pufendorf* (1632–1694). He was a German professor of law at the University of Heidelberg and later at Lund, Sweden. Pufendorf asserted that eternal truths, founded upon the laws of God and reason, were the basis of international law. Consequently, he disapproved of treaties derived from human experience and custom. For him, a superior source of authority, higher than the subjects of law, must supply the law, and this point applied to sovereign states as well as to individuals. Thus, consent among kings was insufficient as a basis of law. Pufendorf is better known for the purity of his views than for producing a legal legacy. *Emerich de Vattel* (1714–1769), a Swiss who worked in the diplomatic service of the German state of Saxony, published his *Le Droit des Gens* (*The Law of Nations*) in 1758, a work that had influence on other theorists through the nineteenth century and was cited by judges into the twentieth century. Vattel is another thinker called an eclectic; in fact, some scholars call him the originator of the eclectic approach to international law. To him, the law of nature applied to all people and, since states are made up of people, states too must obey this higher law. Vattel saw two levels of law:

God-given *jus naturale* and the other human-made *jus gentium voluntarium* that states voluntarily accept. The latter forms as leaders try to understand and apply natural law to state affairs.

As states grew confident in their legal independence but paradoxically found their relationships more interdependent with economic and diplomatic ties, their leaders grew receptive to a more practical law. They wanted a law that would accommodate their respective interests but with attention to the common good of all (Carr 1946: 177). The positivist philosophy increasingly seemed well-suited to a system of sovereign states. *Alberico Gentili* (1552–1608), an Italian protestant who fled to England and became a professor of civil law at Oxford University, often receives credit for separating international law from theology and ethics, as well as for initiating the positivist approach. Although Gentili recognized natural law of divine origin, he preferred to look at treaties and the practice of states for the content of law. *Richard Zouche* (1590–1660), an Englishman, replaced Gentili after his death at Oxford and also became a forceful advocate of the positivist school of thought. He too recognized the existence of natural law, but thought that the behavior of states was based on reason that could be drawn from principles of nature.

Cornelius van Bynkershoek (1673–1743), a Dutch judge, strongly recommended the central idea of the positivists, that states must give their consent before they can be bound by law. Additionally, he preferred that recent precedents receive emphasis over ancient ones so that international law could adjust to newly arising needs. Bynkershoek specialized in commercial and maritime law. He is best remembered for suggesting that a state's territorial sea extends three miles from shore. Among positivists, the purist would be German professor *Johann Jakob Moser* (1701–1785), who led a vigorous intellectual revolt against the use of natural law as opposed to relying on the customary conduct of states. He thought of natural law as metaphysical, and as such unobservable. Natural law was little more than what any person thought was right or wrong. A prolific writer, Moser broke a path for positivism that allowed it to arrive in the nineteenth century as the dominant philosophy in the field of international law.

One publicist stands out from the rest, in the opinion of many modern international law specialists. He offered an eclectic approach but with a clarity that had special impact in the foreign ministries and courts of Europe. This Dutch writer, as well as a diplomat and lawyer, was *Hugo Grotius* (1583–1645). He built a bridge between natural law and positivism by arguing that the two were compatible and that states should obey both. Grotius wanted states to develop the law of nations through custom and treaties and, as they did so, to take into account the basic principles of natural law. Grotius further argued that natural law must be separated from theology and given a rational basis. Moreover, his writings recognized the presence of an embryonic international society emerging from the old medieval order and in need of rules to govern the growing interactions of the states.

The best-known work by the prolific Grotius is *De Jure Belli Ac Pacis* (1625) (*On the Law of War and Peace*), which offered a general system of law suitable for both Catholic and Protestant states. As with other publicists, he was keenly interested in determining when war is just or unjust. Another special interest of Grotius was

freedom of the seas, discussed in his *Mare Liberum* (1609). Grotius audaciously challenged the closed-sea doctrine of Spain and Portugal, the leading sea powers of the day, by arguing for open seas. All sea-going states, he argued, could then travel freely and trade with each other for mutual economic benefit. For his notable contributions, Grotius is frequently called the "Father of International Law." This honor may be excessive, for even Grotius acknowledged his debt to other writers (Corbett 1951: ch. 1; Brierly 1963: 25–40; Bledsoe & Boczek 1987: 20–5). Probably scholars today should speak of "Fathers of International Law."

Contending Modern Approaches

During the Renaissance, publicists debated over the source and nature of international law, a debate that contributed many rules for the *corpus*, or body, of international law. Modern-day scholars' contentions are more critical in the sense that they argue over whether international law has any real importance. Two main camps of theorists exist today, although there are numerous strands of thought within each camp. The **realists** are skeptical of international law and focus instead on power. Scholars who credit international law with providing some order to the world, and who believe this law will play an increasing role in an interdependent and globalizing world, are **liberals**. Most theorists fit in one of these camps.

The realists have a strong intellectual tradition stretching back across the centuries, including the thinking of Thucydides in the fourth century (BCE) Athens, Machiavelli in early sixteenth-century Florence, and Thomas Hobbes in seventeenth-century England.

Realists rose to prominence in America after the disillusionment with the League of Nations (1919–39) and the UN's (founded in 1945) inability to check national power and to prevent wars in an anarchic world. These world bodies came to life through international treaty arrangements and operated on the belief that sovereign states would comply with world rules even in matters of national security. The thinking of realists became the paradigm of international relations studies in the United States in the 1950s and 1960s and had influence in other countries as well.

Realism is a parsimonious approach that tries to account for much that happens in the world by focusing on power. In realist thinking, states are unitary actors that behave rationally over their chief concerns, namely security and power. States focus on pursuing power so they can use it as means of defense or to expand their influence and control over other territories and peoples. States have little other choice because of the dangerous anarchy that is the world, and they do not expect conditions to improve. Realists can see nothing but a dark, hostile future because history is an endless cycle of warfare. After all, the lust for power that drives states into conflict is rooted in unchangeable human nature. The attitude of realists is reflected in some of the truisms that have flowed from realist pens: "states are always getting ready for war, fighting wars, or getting over wars;" "the strong do as they please, and the weak suffer what they must;" "the enemy of my enemy is my friend;"

Box 1.3 The Career of Hugo Grotius

Hugo Grotius was born in Delft, Holland, in 1583 and died in 1645. This noted lawyer, poet, theologian, and scholar wrote and published in Latin, as did many of his contemporaries, and even changed his Dutch name, Huigh de Groot, to the better-known Latin version. Grotius entered the University of Leiden at age 11 and graduated at age 15 as a lawyer. His involvement in Dutch politics landed him in prison for life in 1619, but he escaped two years later with the aid of his wife. She hid him in a large box intended for transporting books to and from his cell.

After his famous escape from prison in 1621, he fled to Paris where he wrote his classic *De Jure Belli ac Pacis* in 1625, which many legal scholars regard as the first definitive text of international law. Earlier Grotius had published *Mare Liberum* (1609).

This book may be the first call for the free use of the seas by all states, a practice that greatly benefited oceanic trade. Only in 1864, with the discovery of *De Jure Praedae* (*The Law of Prizes*) written in 1604, did later generations of scholars realize that *Mare Liberum* was all along Chapter 12 of *De Jure Praedae*. Grotius, one of the most prolific of writers among the Renaissance publicists, also wrote on contemporary Dutch affairs. Grotius finished his career as an ambassador representing the Swedish king to the French court from 1635 to 1645, the year of his death. On his deathbed, his last words were, "By undertaking many things, I have accomplished nothing" (Dumbauld 1969: 18). His inventory of his own life was a gross understatement.

Sources: Edward Dumbauld, *The Life and Legal Writings of Hugo Grotius* (Norman, OK: University of Oklahoma Press, 1969); the ideas and impact of Grotius are well presented in Hedley Bull, Benedict Kingsbury, and Adam Roberts (eds.), *Hugo Grotius and International Relations* (Oxford: Clarendon Press, 1992).

"if you want peace, prepare for war;" and "might makes right." Not surprisingly, realists denigrate the role of international law, if they mention it at all. They view international law as but an epiphenomenon of power, or, put another way, the rules of the strong states.²

Among the modern realists, E. H. Carr, in his 1939 *The Twenty Years Crisis* sounded the warning about counting heavily on legal structures, such as the League of Nations, for this organization had been too idealistically contrived, he thought, to blunt the power urges of the aggressors of the 1930s (Carr 1946). Although trained in international law, Hans Morgenthau, the best known modern realist, concluded after the Second World War that while international law existed, it was an ineffective tool for restraining power. His masterpiece, *Politics Among Nations*,³ published originally in 1948, had a tremendous impact on generations of American political scientists. Generally, they accepted Morgenthau's observation that international law is

weak and primitive. His one chapter on this subject focused mainly on the problems of international law, not its effectiveness or promise. The thrust of his book is that international politics is a struggle for power, largely unaffected by law. So impressive was Morgenthau's work that some realists believed the prototype of a true political theory was at hand, a theory built on power that could afford to give short shrift to international law.

Liberal thinkers, as supporters of international law, did not surrender or retreat to an academic wilderness as realism ascended in prominence. They continued to speak, though with a weak voice, until dramatic historical forces intruded on the realist conceptualization of the world. Global interdependence intensified so that by the 1970s and 1980s, especially in the world economy, strong patterns of cooperation were taking place. Also, international government organizations (IGOs) exploded in growth after the Second World War magnifying cooperation to new historical levels. The European Union (EU), in particular, has been successful, attracting 27 member-states with others eagerly waiting in line to join and enjoy a bundle of economic benefits. Normative goals of non-government organizations (NGOs), such as Amnesty International in the human rights field and Greenpeace in the environmental area, also influence the world agenda.

Liberals believe that human nature is essentially good and that people are improvable. They doubt wars have to happen in recurring cycles; rather, humans can strike out on a linear path toward progress (Kelgley, Jr 1995: 1–24). Liberals also view the world as more than a system of states focused only on their mutual fears and security calculations. Liberals see a *social* nature inherent to the character of international relations, with states able to carry on a social life despite the absence of a world government (Hurrell 2000: 330). Harkening back to the publicists such as Grotius, modern liberals also believe that social interaction leads to rules despite the absence of a world government. As some of the medieval publicists would say, "*ubi societas ibi ius*," or, where there is society, there is law (Corbett 1951: 39–40).

Liberals live under a "big tent" containing multiple strands of thought. A modern strand of liberal thinking that has much to say about international law is the *English School*. Non-English scholars have also participated in this approach, but it is so-named because the founding thinkers met at Cambridge and Oxford Universities.⁴ These meetings began in the 1950s, the period when realism ascended to prominence in the United States. At the time, few American scholars thought about the world in societal terms.

If the English School had a single "founding father," that scholar would be Martin Wight. Strongly influenced by the work of Hugo Grotius, he reminded modern scholars that there was a "middle way" between the warring anarchy assumed by the realists and some sort of world government preferred by the idealists. Wight is important because he renewed the insight that the social nature of humans was ultimately the glue that holds a society of states together. He asked the critical question for the English School: "What is international society?" Wight observed that states form a society through commerce, diplomacy, and especially international law.⁵

If one name stands out prominently among English School thinkers today, it is that of Hedley Bull. He thought that a society of states formed out of functional need similar to the development of national and local societies. The main functions he identified are: the control of violence, the protection of property, and the enforcement of agreements. To international law, he assigned the grand task, "to identify, as the supreme normative principle of the political organization of mankind, the idea of a society of sovereign states" (Bull 1995: 134).

As if playing off Wight's question about "what is international society," Bull wanted to know "how much international society is there." In time, Bull became interested in thinking about an "international society" that would take into account a variety of actors besides the states, such as IGOs and NGOs. Also, Bull eventually moved past thinking about international society as merely an *order of peace* because he thought this society could also be an *order of justice*. Not long before Bull's death, his 1983 Hagey Lectures reflected a growing concern among English School thinkers about the conditions of humanity as well as the health of the society of states. These lectures addressed human rights, the environment, and especially the unjust economic disparity between peoples of the rich and poor states.⁶

Finally, Bull and other English School scholars worried much over the quality of international society following the break up of European Empires. Would the explosion in the numbers of new states in Africa and Asia, with their myriad cultures, cause a dilution and disruption of international society, or would they fit in comfortably? (Buzan 1991: 166–74) Bull and his co-editor, Adam Watson, concluded in 1984 *The Expansion of International Society* that the international society developed in Europe might possibly absorb a wide-range of new states, but these new states could also dilute this society. The new states recognized that *sovereignty* meant replacing colonial status with independence and legal equality with their old colonizers; *international organizations* provided a platform for collectively addressing the rich, powerful states with their grievances; *diplomacy* offered the chance to advance the interests of new states in both bilateral and multilateral contexts; and *international law* presented the opportunity to make new rules that might restructure the world in a more favorable way for deprived states.⁷

At about the time of the Cold War's end, a seemingly new approach appeared on the theoretical scene called *constructivism*. It is a direct heir of *social constructivists'* thinking from the sociology departments of American and English universities and, as a result, constructivism has a strong societal bent. The English School has had a considerable influence on constructivism, although not all constructivists will agree. John Gerard Ruggie has claimed constructivism is *sui generis*, although he leaves room for a slight influence by the English School (Ruggie 1998: 11). Timothy Dunne, in contrast, believes there is a strong affinity between the approaches (Dunne 1995: 384).

Adherents of constructivism believe people make, or "construct," the world through a social process of generating and sharing ideas. The world ultimately hangs together, according to this approach, through rules and norms produced by social interaction, a process that can happen successfully in spite of anarchy. As the

rules and norms stabilize into persistent patterns, the order, or *social structure*, of international society takes shape. International law contains many of the more important rules that have been constructed (Onuf 1989; Wendt 1992: 424–5). Some constructivists speak of a special identity involving masses of people around the world, the **global civil society**. This society involves a mix of private persons, and their organizations, which link up across national borders, usually through NGOs, to pursue a common agenda for the good of humankind, including working on human rights, disarmament, and the environment. The depth of commitment to a civil society on a global scale is difficult to know especially since national outlooks, particularly the nationalistic affection that people hold for their respective countries, are still strong.

Closely tied to the rise of a global civil society is the role of **global governance**, another concept supported by constructivists. A loose array of states, IGOs, and NGOs exercise a weak *supranational* authority to influence global policy and global law in various issue-areas. The actors taking part and the level of success varies with each issue (Hewson & Sinclair 1999: 6–11). For instance, a well-known example of an NGO affecting global policy is the case of Amnesty International leading a moral crusade to persuade states and the UN to accept first the 1975 *Declaration on Torture* and then the 1984 *Convention on Torture*. This convention received numerous ratifications and helped dampen the heinous practice of torture. Global governance is now sufficiently established that some scholars have turned their attention to making global governance more democratic and transparent (Held 1995). The general notion that human progress is possible and that international law can help make for a better international society inspires this textbook.

Operating Conditions: What Helps and What Hinders?

Every individual and institution is environed in some manner. The institution of international law, at the core of international society, operates within a mixture of conditions that sometimes enhance this law's prospects and at other times undermine its usefulness. On balance, conditions in the world are pushing international law forward more than holding it back.

The historical process of **globalization** has intensified in the last quarter of a century to an unparalleled degree. A cause that begins in one part of the world can quickly resonate in other places, even throughout the world. Commercial air travel, economic exchanges, violations of human rights, terrorist attacks, transnational crime, arms races and sales, and much else produce widespread, troublesome effects that require global cooperation. The role of international law will almost certainly expand with the globalization process. More human activities and interactions will require more regulation. So close has today's international society pulled together that it has long been known as a "global village."

This interconnected nature of the world has been greatly facilitated by the nearly instantaneous modern communication grid that encircles the globe with satellites, cell phones, computers, and optic fiber lines, all enmeshed together to provide an

electronic highway that binds the world together to a degree unimaginable by earlier generations. The use of English as the global *lingua franca*, providing a common language for diplomacy and business, further streamlines global communication and, potentially, cooperation.

Regional identities and activities cannot be lightly dismissed, however. **Regionalism** refers to an identity among a sub-set of states linked together through a shared culture, history, and geographical proximity. States sharing regional identities often endeavor to promote common interests with treaties and organizations to that group of states.⁸ The existence of the African Union, the European Union, the League of Arab States, and the Organization of American States, among many others, bear testimony to faith in regional arrangements. Often both global and regional efforts are both needed. In truth, global and regional orders are mostly compatible and even reinforce one another.

Closely related to regionalism are cultural differences. There are myriad distinctions among the peoples of the world, distinctions relating to history, languages, religions, and outlook on law, among others. Writing several decades ago, Abba Bozeman saw a fundamental incongruence between a culturally diverse world and an international law drawn from the Western experience. She advocated accepting the world for what it is, a world of vigorous power politics and feeble international law (Bozeman 1971: esp. 186; 1984: 387–406). In contrast Werner Levi thought it is erroneous to claim, for international law to work, there must be substantial agreement among legal cultures. He believes it is clashing national interests, and not cultures, that tear at international law. Levi insists that common norms and rules of international law will evolve and grow strong as all parties work through their disagreements and conflicts (Levi 1974: 417–49; 1976: 135–50).

A powerful force binding the world together is the global market. An integrating world economy requires constant negotiation and reworking of the many rules and regulations that allow the world's gigantic economic machine to operate. The world is increasingly aware of its economic interdependence. The United States needs China as a source to borrow huge amounts to cover its budget deficits, and China requires the large consumer market of the United States to keep its factories busy. Not everyone is equally happy with the global economy, however. The world remains divided between the "haves" and "have nots." The poorer states are in the majority, but have not been able to "reform" the world economy and its supporting legal regime in substantial ways. Despite some economic progress by the poorer states, Joseph S. Nye, Jr. has had to offer the opinion that the poor states may be doing better but, because the rich states are advancing at an even greater pace, the gap between the two is still widening (Nye, Jr 2002: 133).

Many scholars, especially the realists, place a great deal of attention on the distribution of power to explain international outcomes. One might think power spread among several or more major states would be the preferred power distribution. The reasoning goes, since no one state can dominate, states are more willing to cooperate and develop rules for their interaction. History suggests, however, that a hegemon, or dominant power, often has controlled ideas and values that pervade international

society, such as the rules of international law. The decades-old, classic study of Wilhelm G. Grewe, *The Epochs of International Law*, identifies a series of hegemonies that impacted on the rules of their eras: Spain 1494–1648, France 1648–1815, and Great Britain 1815–1919 (Grewe 2000).

After the Second World War, did the United States take up a similar mantle and manage global affairs in a way that promoted international law? Following this war, the United States appeared to be on such a mission with its efforts to rebuild the world's shattered economy. Unfortunately, the United States has established a mixed record at best regarding international law. In recent times, the United States has failed to ratify multiple treaties world opinion considers of the highest importance. Some examples are the 1982 *Law of the Sea Convention*, the 1996 *Comprehensive Test Ban Treaty*, and the 1998 *Statute for the International Criminal Court*.

Grewe, in an epilogue to the 1998 edition of his magisterial work, taking note of disappointment in the United States' record, suggested international society as a whole might be able to shape international law in the global interest without the driving force of a great power (2000). He is probably correct. Since Grewe first published *The Epochs of International Law*, conference diplomacy has changed from the meeting of the few to a meeting of the many. Some modern conferences have had 180 or more states in attendance, and the weight of the majority has been able to trump the will of major powers.

All worthwhile endeavors meet with challenges, and so it is with the promotion of international law. Yet, this law has proven very successful in its service to international society, enjoying more help than hindrance.

Chapter Summary

- International law emerged as a functional necessity, as a set of rules for the Westphalia state system.
- International law spread from its Eurocentric base to become a global framework, especially after the break-up of colonial empires and the creation of numerous new states.
- The chief role of international law is to accommodate mutual interests and allow for peaceful change.
- Among the earliest sources of international law were ethical principles and the writings of publicists.
- Realist thinking in modern political science gave international law short shrift but constructivists, since the 1990s, have recognized its power to help structure an international society.
- International law is inchoate as a legal system and far from the level of accomplishment found in a well-governed state.
- The future of international law is promising but not guaranteed.

Discussion Questions

- 1 Is international law really law given that it has a horizontal structure within an anarchical world?
- 2 Some scholars distinguish between an *international society* and *international community*. What is the difference between the two?
- 3 International law performs several roles. Which one do you think is the most important and why?
- 4 Who is Hugo Grotius? Should he be called the “father of international law?”
- 5 Who are the realists and what is their view of international law?

Useful Weblinks

<http://www.washlaw.edu/forint/>

Website of Washburn University School of Law Library. Basically an easy to use search engine arranged alphabetically. It includes subjects, authors, countries, and occasional titles.

<http://www.globalpolicy.org/> go to “International Justice”

Website of a study group that focuses on the UN System. First page offers many very accessible links to such topics as sanctions, globalization, 9/11, and the Secretary-General.

<http://www.etown.edu/vl/>

Included are many options such as legal dictionaries, search engines, and directories. The first page contains a wide range of links to multiple subjects in international relations, including “International and National Law.”

<http://www.asil.org/>

Website of the American Society of International Law. It is an authoritative source for almost every imaginable subject in international law.

<http://www.un.org/en/law>

The section of the UN website devoted to international law. This site covers the international law bodies of the UN, treaties, and courts and tribunals.

Further Reading

Albert, Mathias, Brock, Lothar, and Wolf, Klaus Dieter (eds.) (2000) *Civilizing World Politics: Society and Community Beyond the State*. Lanham, MD: Rowman & Littlefield.

Anghele, Antony (2000) *Imperialism, Sovereignty and the Making of International Law*. New York: Cambridge University Press.

Bederman, David J. (2001) *International Law in Antiquity*. New York: Cambridge University Press.

- Biersteker, Thomas, J. (2007) *International Law and International Relations: Bridging Theory and Practice*. New York: Routledge.
- Buzan, Barry (2004) *From International to World Society? English School Theory and the Social Structure of Globalization*. New York: Cambridge University Press.
- Byers, Michael and Nolte, George (eds.) (2003) *United States Hegemony and the Foundations of International Law*. New York: Cambridge University Press.
- Century of International Law: American Journal of International Law Centennial Essays, 1906–2006 (2007) Washington, DC: American Society of International Law.
- Chieh Hsiung, James (1997) *Anarchy and Order: The Interplay of Politics and Law in International Relations*. Boulder, CO: Lynne Rienner.
- Clark, Ian (2005) *Legitimacy in International Society*. New York: Oxford University Press.
- Covell, Charles (2004) *Hobbes, Realism and the Tradition of International Law*. New York: Palgrave Macmillan.
- Craven, Matthew C. R., Fitzmaurice, M., and Vogiatzi, Maria (2007) *Time, History and International Law*. Boston, MA: Martinus Nijhoff Publishers.
- International Law: 100 Ways It Shapes Our Lives* (2006) Washington, DC: American Society of International Law.
- Kaikobad, Kaiyan Homi and Bohlander, Michael (eds.) *International Law and Power: Perspectives on Legal Order and Justice*. Boston, MA: Martinus Nijhoff.
- Koskenniemi, Martti (2002) *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960*. New York: Cambridge University Press.
- Müllerson, Rein (2000) *Ordering Anarchy: International Law in International Society*. Boston, MA: Martinus Nijhoff.
- Sands, Philippe (2005) *Lawless World: America and the Making and Breaking of Global Rules from FDR's Atlantic Charter to George W. Bush's Illegal War*. New York: Viking.
- Simpson, Gerry (ed.) (2001) *The Nature of International Law*. Burlington, VT: Ashgate/Dartmouth.
- Slaughter, Anne-Marie (2004) *A New World Order*. Princeton, NJ: Princeton University Press.

Notes

- 1 Shaw 1994: 15. For a general work on ancient roots of international law, see Bederman 2001.
- 2 For some of the most interesting literature on realism, see Donnelly 2000; Mastanduno 1999; Legro & Moravcsik 1999: 5–55; Kegley, Jr. 1995; Baldwin 1993.
- 3 Morgenthau 1978. This is the last edition handled entirely by Morgenthau.
- 4 Dunne 1998. Another interesting work on this approach is Buzan 2004.
- 5 Wight (1992), G. Wight and Porter assembled writings and notes by M. Wight to produce this work.
- 6 For an assessment of Bull's writings, see the review article by Henderson 2001: 415–23.
- 7 Bull & Watson 1984. Also, refer to Dunne 1995: 381.
- 8 Recent efforts to define and assess the importance of regionalism are Mansfield & Milner 1999: 589–627; Väyrynen 2003: 25–51; and Fawcett & Hurrell 1995.