INTERNATIONAL LAW IN ANTIQUITY

Caique Tomaz Leite da Silva, University of Coimbra
João Paulo de Almeida Lenardon, University of Toledo

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João Paulo de Almeida LENARDON\textsuperscript{1}
Caíque Tomaz Leite da SILVA\textsuperscript{2}

\textbf{ABSTRACT:} International law binds the construction of its classical paradigm to the Peace Treaties of Westphalia (1648). However, we can find numerous institutes related to international relations in antiquity. In the Middle East, Greece and Rome, treaties were celebrated with expected penalties in case of noncompliance, the wars were limited and diplomatic relations with other people were object of high political concern. Diplomacy and alliances between peoples obeyed some guidelines that had solidified long before the Westphalian paradigm. It was also found indications that parity between the peoples and “balance of power”, usually associated with Jean Bodin’s work, has directed international relations in antiquity. The good faith in compliance with treaties was overvalued by the Romans, and institutes like asylum, by the Greeks. This combination of evidences allows the systematic study of a “pre-Westphalian international law”.


\textsuperscript{1}Researcher, member of the study group “State, Law and Society”, at University Center “Antônio Eufrásio de Toledo” of Presidente Prudente (BRA), coordinated by Professor Caíque Tomaz Leite da Silva.

\textsuperscript{2}Candidate for a doctorate in Public Law and post-graduated in Human Rights at University of Coimbra (POR). Civil Law and Civil Procedure specialist. Examiner at \textit{American University} (USA). Fellow of the Course on Humanitarian International Law and visiting professor at \textit{Ius Gentium Conimbrigae}, Human Rights Centre at University of Coimbra. Professor at University Centre “Antônio Eufrásio de Toledo” of Presidente Prudente (BRA). Professor at Escola Superior da Advocacia (ESA). Lawyer.
1 INTRODUCTION

International law is a subject somewhat neglected in Brazil, even though it is an area in which various other disciplines, of public and of private law, interact with each other, what allows a bigger and more harmonic communication between people from the most various countries (*ius communicationis*). This situation is worsened when we comprehend we live in an interdependent and globalized world, where the political boundaries that delineate countries’ borders do not hold the strength they once held, and where new problems turn the cooperation between peoples a necessity.

This ramification of law has followed humanity, and there are countless evidences on expressions of international law since antiquity. However, many say that, at that time, a systematization of rules did not exist, which impedes us to denominate it “international law”, but a primitive law, not totally conceived, with no solid foundation or power to work as an instrument capable of regulate the conduct of its participants. This observation is based on arguments like those that it is impossible to have existed a law between nations, properly saying, because there was not a previous sense of independency, a vision of legal equality between the nations nor the perception of sovereignty and self-determination. Other argument used is that the systematization of these laws did not have ground on notions of continuous and enduring peace, and so it was superfluous. Moreover, the international law did not have rational founts, once it was based solely on religion and, consequently, there were no higher legal principles to be respected. Its existence is even more difficult to be defended against the assertion that it lacked an instrument of coercion (BEDERMAN, 2001, pp. 11-14; 48-49; 267-280).

Some go even further and elicit that international law could not exist in antiquity, because even today, even with all advances, this ramification of law is yet something primitive, and both its system and development are faulty in many relevant aspects. For example: the international responsibility, the absence of recognition of the individual as having legal personality and the difficulties found to defend human rights, just to illustrate the observations given by the scholars about this matter (BEDERMAN, 2001, p. 12).
In this study, however, we applied ourselves with the duty of gathering traces of the existence of an international law before its systematization with the Peace Treaties of Westphalia (1648). For that, we will begin with a concept of international society by Hedley Bull (2002, p. 13). According to his work, it is “(...) a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations to one another, and share in the working of common institutions”. This theoretical presupposition constitutes the factual background to the emerging and development of the interstate relations because it incorporates the necessity of coexistence of the subjects in a singular world.

2 INTERNATIONAL LAW IN ANTIQUITY

The first note to be discussed is the existence of states that were conscious of the existence of others equally independent and sovereign, that saw each other with some degree of parity and that desired peace between them. Following this thought, specialised literature frequently reiterates that when one ancient state “become aware of its own corporate existence, found itself by the necessities of international intercourse obliged to accord recognition to the same quality in other communities.” (WALKER, 1899, p. 31). More recently, strong arguments are arising to corroborate the assertion that ancient states were sovereign and territorial; furthermore, they embraced the institute of community as a basis for a pacific international social order (LEECH, 1877, p. 4).

Still about the states, the traditions related to balance of power, diplomacy, and hegemonic alliances tended to perpetuate itself through the civilizations, which only distinguished themselves by their sizes, stability and duration of their empires and alliances (BEDERMAN, 2001, pp. 278-279). Before the existence of states capable of “making law” among them, it is important to rebate the critics concerning international law in that epoch. In this way, we shall highlight that the norms’ essential form remained the same:
emissaries were not killed, treaties should follow the good faith, aggressions should not be awarded and basic restrictions to the conduction of warfare should be observed (BEDERMAN, 2001, p. 278).

Although there were just a few primary obligations in the way the peoples treated each other, such rules are fundamental to the argument that the international relations were based on law since antiquity. The protection of emissaries means that friendship could be sustained even between states with very distinct ethnic and political characteristics. Granting statuses to foreigners who lived in other political entities allowed the construction of trade and cultural exchange, the biggest aims of pacific relations between states. Rules that facilitated the making of deals and its accomplishments helped raising sovereignties capable of cooperate in a wide range of matters, like diplomacy, politics, economy and law. Formalities concerning the resource of war could help preserving peace, allowing at least certain types of interstate disputes to be solved pacifically. And, finally, limits and restrictions to the conduction of hostilities not only made humanitarian interests evolve, but also brought states back to their harmonic conditions (BEDERMAN, 2001, 272).

When ancient states engaged themselves in the violation of well established norms of international conduct, they had to explain their acts with legal fundaments or offer what could be considered a juridical defence, always demonstrating their justifications and the eventual necessities that brought them to practice those acts (BEDERMAN, 2001, p. 276). Even the declaration of war was solemn and of great meaning to states in antiquity. They intended to always assure the satisfaction of the declaration’s religious formalities. The reasons to start a war were seriously considered and generally based on law. The passage from religion and rituals to juridical discourses is a characteristic of international military law in antiquity.

The law of nations sought to civilize the ancient states, creating what can be called “a state of minority” in international law. It gave voice to reason, even when it exhaled faith. And there was the will of making permanent peace. Cicero (1829, p. 30) has already pronounced the existence of a control and of parameters for judging the conduct of states in antiquity: “It is not one thing at Rome, and another thing at Athens: one thing to-day, and another thing to-morrow; but it is a law eternal and immutable for all nations and for all time.”
Thinking that there was no excess or that atrocities did not occur during wars in the ancient times would be naïve, for excesses in warfare are easily observed even in the present days. However, thinking it was commonplace is equally a mistake (BEDERMAN, 2001, p. 248).

Thus, norms of international law maintained the same purpose during antiquity: promote predictability and stability, shaping states conduct so it could maintain the balance of power and care about the intern legitimacy and the sovereignty of their decisions (BEDERMAN, 2001, p. 279).

2.1 Faith

First, the essential principle that international law sought to ensure was good faith. It should be granted upon an oath, which invoked some form of sanction in case of dishonour (BEDERMAN, 2001, p. 50). As to the argument that sanctions were purely religious and that, because of this, such codes of conduct could not be labelled as international law; one point stands out: it does not matter the origin of the sanction, if it was a largely accepted rule to regulate international relations and if it was strong enough to impose its fulfilment. A religious sanction is a completely legitimate fount to regulate state’s acting. Religious sanction did not impede, for the contrary, it added power to legal sanctions. The legal nature of such rules is attested by the fact that states were conscious of being bound by them and by the fact that they found their observance to be just while its inobservance were unjust and punishable (PHILLIPSON, 1911, pp. 51 e 271).

In addition, not only faith served as a normative fount at that epoch. Custom also played that role (BEDERMAN, 2001, p. 50). Religion and custom acted as complementary forces in society, and the later served as basis to beliefs’ and rituals’ peculiarities. Rituals were the expression of custom. Furthermore, the ones that strengthened the sense of legal obligation in the international area were invariably connected to powerful institutions.

Pindar’s maxim (HALICARNASSUS, 1890, book 3, passage 38), which dictated "of all things law is king" was respected by Greek rhetoricians and by Roman jurists. Sum up to that the little evidence of the use of custom as
an external fount of international law and, as a result, we can conclude that custom in antiquity cannot be confused with current consuetudinary law. Notwithstanding, it served as a basis to formalism and to rituals (PHILLIPSON, 1911, p. 68), what, on its turn, strengthened the compromising between the parts. Custom served as an intern fount of international life.

The ancient people used three different types of sanction in international relations. The first one was divine, with religious grounds, based on the fear of direct punishment by the invoked god(s). The other one was social, reinforced by the rituals, institutions and political legitimacy of the state, and manifested itself by the fear of being abandoned to its enemies. The last one was the intellectual sanction, whose fount was purely rational, developed by juridical argumentation and rhetoric, motivated by the fear of being deprived of moral and liberty (BEDERMAN, 2001, pp. 50-51).

Religion merged itself with custom and with reason to form different combinations of sanctions. It happens even in modern societies. Some historical events show us this reality. One of them is the historical plague of king Mursili (LANGDON, 1920, pp. 179 and 197; EDWARDS et al., 2006a, p. 85). According to it, in the second half of the fourteenth century BC, the reign of the Hittites, whose centre was located in Asia Minor, received a visit of a tenacious plague that depopulated the state. An oracle traced its origin back to the malfeasances of the prior king, father of the one in throne at the time. Those misdeeds included the violation of an international treaty, which was under the protection of the gods, because of a mutual oath. The deity, offended by the breach of the oath, was taking revenge on the transgressor's descendants.

Another one is the fable of Fabius (PLUTARCH, 1914, pp. 349-351). It tells that great misfortunes befell Rome and that the violation of sacred rights was the reason of these tragedies. When the Gauls were sieging Chiusi, Fabius Ambustus was sent as an ambassador to their camps with a peace proposal, but all he got was a harsh answer. Consequently, he set aside his diplomatic character and, taking arms for Chiusi, defied the bravest man in the Gaulish army. Fabius won, but the barbarians sent a herald to Rome to accuse him, for he used force against them, opposed to the treaties and the good faith, and he did that without a proper declaration of war. The herald also ordered the Roman senate to hand Fabius over to the Gauls, but Fabius appealed to the
Roman people and was absolved. Before such sentence, the Gauls marched on Rome and pillaged the city.

There is still the story of Darius’ heralds (HALICARNASSUS, 1890, book 7, passages 133-136). When king Darius of Persia sent his heralds to Athens and Sparta, in 491 BC, demanding earth and water as symbols of submission, the Athenians sent them to prison and the Spartans put them inside a well, insisting that they could get earth and water down there. Divine vengeance fell upon Sparta and they were incapable of having good presage during their sacrifices. Such misfortune was only gone after Sparta had sent two noble men to Darius’ successor, Xerxes, as a sacrifice, and they were refused. Greek historians disagree on the punishments suffered by the Athenians, but according to Herodotus, there is no connection between the facts above and the destruction of the city, ten years later.

With time, religion began to be partially repudiated in international relations (BEDERMAN, 2001, p. 50). The construction of secular obligations based on reason, in the law of nations, merged with custom and social sanctions, and with religion and the fear of divine punishment (BEDERMAN, 2001, p. 85). Among the secular responsibilities, there was the participation in three critical ceremonies to the characterization of a law of nations: the formal receiving of ambassadors, the formulation of treaties and the decreeing of war (BEDERMAN, 2001, p. 74).

In the law of nations in antiquity, ambassadors were the front of secularism in a state. The dispatch and reception of representatives was an act that symbolized the equality between states, as well as peace. Offending an ambassador was an insult to the dispatching nation and an invitation to war (2 Samuel, 10).³

In ancient diplomacy, the ritual and the custom had indispensable role in maintaining the state system. Receiving ambassadors was based on the belief that the one dispatched was a personification of the sending state and of its gods (BEDERMAN, 2001, p. 75).

International arbitration, practiced by the Greek and by the Romans, is an excellent example of this rationalist transformation. Its mystical

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³ Here, King David answers an insult made by Hanun, king of Ammon, to one of his ambassadors, with a violent war.
character reinforced its practice and gave it greater legitimacy, as a manner of solving conflicts between sovereign states and political entities in condition of parity (BEDERMAN, 2001, pp. 82-83). Records of Greek arbitrations allow us to have a little glimpse of what jurists of antiquity considered evidences of state practice to be. When they submitted to international tribunals, the parts offered records of treaties or previous decisions, maps and charts, writings by historians, interpretations of myths and legends, archaeological evidences and even witnesses. The parts knew that, independently of what based the decision, it would be given by a man, not a god or another deity (TOD, 1913, pp. 132-152; PHILLIPSON, 1911, pp. 162-163).

Another point that adds to the necessity of reflexion about the role of reason in the development of international law in antiquity is the concept of *ius gentium* in Roman law (PHILLIPSON, 1911, pp 70-76). A careful reading of the founts of Roman law (JUSTINIAN, 1904, p. 4, passage 5) make it clear that *ius gentium* was seen as a collection of non-written rational laws and customs (CICERO, 1928, p. 339). Nevertheless, the fact is that reason has always been present in international relations, as states acted many times to satisfy their own pretentions, sometimes driven by ambition and greed. This made them no different to the present nations.

2.2 Diplomacy

Two states could be competing or in a state of mutual distrust, and they would still maintain constant diplomatic contact, since they were not in war (BEDERMAN, 2001, p. 88). This statement shows the relevancy of diplomacy during ancient times, and the esteem states had to representatives of other states. Moreover, as it happens today, diplomats enjoyed protection and certain immunities, given their importance. After all, they were true representatives of the sending state and of their gods (BEDERMAN, 2001, p. 75).

There were some basic rules about the exchange of diplomatic relations. One of them is that the dispatched diplomats should be treated as guests. Another one dictated that, even though little amounts of personal coercion were tolerated, diplomats were immune to sanctions in the receiving
country. Almost all states respected these basic rules during antiquity. Such rules have also maintained themselves consistent during the entire antique world. The universality of the diplomatic law was a sign of its success (Bедерман, 2001, p. 93). And this was a crucial point in international practice, by virtue of being a great demonstrative of the vision that states had one another as being equally sovereign (Bедерман, 2001, p. 94).

A host’s duty to protect the diplomats and their inviolability was serious matter (Bедерман, 2001, p. 118). Romans, for example, were especially worried about diplomatic affairs, and they believed that an ambassador of an ally should not have his floor denied. Moreover, they believed that it was a duty imposed by the law of nations (Bедерман, 2001, p. 104).

Diplomacy was not periodic. Nations aimed peace and permanent cooperation, with the strengthening of their friendship. This way, sending representatives casuistically did not fulfil states' necessities in maintaining a lasting connection between them. Therefore, permanent missions begun to appear. Mesopotamia, Babylon, and Assyria, for example, had permanent missions (Bедерман, 2001, p. 107, note 95).

In some states, especially in Greece, the practice of hospitality grew in such a way that new institutes sparked from it. One of them was the philia or xenia, a title given as a sign of respect and devotion to leaders of ally military contingents (Xенофон, 1845, p. 275; Halicarnassus, 1890, book 7, passages 27-29, and 39). This was observed by the Mauryan Indian (Halicarnassus, 1890, book 3, passage 21), Egyptian dynasties, Carthaginians, as well as by Greek city-states and by their Macedonian conquerors (Hерман, 2002, pp. 45-46, 132-139).

Likewise, there was in ancient Greece the institute of asylia, where a city-state promised to a particular foreigner, or even to a family or clan, that he would not be victim of its citizens. There is evidence that it was practiced quite frequently (Ларсен, 1968, p. 212).

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4About the xenia made between Polycrates of Samos and Amasis of Egypt, see: Halicarnassus, 1890, book 3, passage 39.
5About the covenant made between Hannibal and Philip V of Macedon, see: Polybius, 1922a, p. 421.
6This book has a very comprehensive analysis of the occasions in which xeno and philo are mentioned in Greek classical literature.
Greeks had various diplomatic institutes that coexisted in harmony. And, to respect hospitality and grant asylum or proceed to the delivery of criminals, they created a system of negotiations known as isopoliteia. A simplified form of isopoliteia consisted in a deal between two cities freeing their citizens from the risk of androlepsia\(^7\) (BEDERMAN, 2001, p. 126).

The existence of the title of proxenos, should be noted too. It was given to a foreigner who lived abroad. The receiver of the title should, ergo, care of the interests of the conceding state in the city where he lived. According to Aeschines (1919, p. 357), “Proxenoi are those who in their own fatherlands look after [the affairs of] other cities.” The proxenos\(^8\) was, hence, “a prominent citizen to whom a foreign state officially entrusted the protection of its citizens and various diplomatic functions within his own state.” (NUSSBAUM, 1954, p. 6)

Proxenia had, apparently, an enormous significance in the Greek international life. With the possibility of acquiring double citizenship through sympoliteia, having a title of proxenos allowed the individual to have various political loyalties, refusing, thus, the civic exclusivity existent in the polis (PHILLIPSON, 1911, p. 148; LAURENT, 1850, p. 113).

Refined forms of diplomacy and the existence of various statuses and titles in the Greek city-states, along with extremely well elaborated and articulated relations of vassalage practiced by the cultures of Middle East and by the Romans, were all conceived as juridical relations, governed by pre-conceived notions of law and obligation. The participants were, in this way, controlled by the power of law (BEDERMAN, 2001, pp. 135-136).

2.3 Treaties

\(^7\)Androlepsia consisted in a tradition in which, if a citizen was killed outside his home state and the criminal was not delivered up to be punished, the relatives of the victim could arrest up to three citizens of the country where the offense took place, until the criminal was delivered. In case it did not occur, the captured citizens could respond for the crime.

\(^8\)While parallels between proxenia and the modern consular institution have been constantly made, they have very notable distinctions. First, the modern consul is generally a native of the country he represents, while only the opposite occurred to the proxenos. Secondly, having the title of proxenos did not grant the individual any right or privilege in his own country, but only in the country that chose him to such “labour”. At least, modern consuls do not have proper diplomatic functions, while the proxenos seemed to have such responsibilities. For more, look: PHILLIPSON, 1911, p. 149; TISSOT, 1836.
Regardless of the variety of orders in the body of a treaty, its basic unity remained the same in international covenants concluded by states of Sumerian, Egyptian, Hittite, Assyrian and Israeli cultures. Such construction was insistently repeated by the Mesopotamian and Mediterranean cultures (BEDERMAN, 2001, p. 138).

The Middle East peoples were deeply concerned about the construction of the treaty terms so they would be truly reciprocal and acknowledged as equally binding by the parts. The idea that reciprocity was something inherent to treaties raised only during the Middle East tradition, with the binding agreement conducted by Ramses II and Hattusili III (BEDERMAN, 2001, p. 203, note 432).

Once the notion of reciprocity had been incorporated by the ancient cultures, they could thus circumvent the problems concerning the internal and external ways of reinforcing a treaty. There had been certain tension between such approaches. The “internal” way emphasized rules concerning good faith, reasonable interpretation and a fit revalidation of the contracted terms with the passage of time. The “external” one implied personal guaranty, like the taking of hostages, and the responsibility of reinforcing the values protected by the treaty (BEDERMAN, 2001, pp. 202-203).

Every main culture in antiquity vigorously debated the question of coercion in treaties. These studies were conducted by dissertations on the morale of accepting hostages as a guaranty. Although condemned by scholars, this practice was largely spread, with the notable exception of the Greek polis. Even the Romans, with their great sense of *bona fides* in the observance of treaties, used this artifice. The Greek sought to deposit their trust in a new practice: anti-deceit clauses, which consisted on rules regarding the interpretation of treaties and refined doctrines on contractual terminology. The Greek approach towards treaties was definitely juridical. Romans conceived treaties as a form of legal obligation, but their vision was indeed too formalist (BEDERMAN, 2001, p. 203).

Withal, the problematic around reinforcement of international treaties did not seem to interfere in the process of juridical sophistication in international relations. One aspect present in all major states of that time was that with the passage of time, treaties became more and more diverse, as to
their objects and to their provisions. They also became more precise on the structuring of their clauses and, generally, with obligations interrelating in a more complex way (BEDERMAN, 2001, p. 204).

3 MIDDLE EAST: MESOPOTAMIA, SYRIA AND EGYPT

3.1 Sumer and Mesopotamia

Among the peoples of this period, two are of extreme importance: Sumerians and Mesopotamians. Researches made by Wolfgang Preiser (1954, p. 257) concluded with certainty that the Mesopotamian city-states had political structures that exteriorized sovereign powers, and that it happened to such a degree that it can be equated the contemporaneous insight of state organization (PREISER, 1954, p. 269). Lagash, Umma, Kish and their Sumerian neighbours concluded treaties, had regulations concerning diplomatic immunities and even, maybe, norms about the conduction of war (AGO, 1982, p. 215).

3.2 Great Empires

The most dynamic period of interstate relations in Middle East during antiquity occurred between 1400 and 1150 BC. It was in that period that literary production on the subject begun, giving present researches great evidences of the existence of an international law in antiquity (AGO, 1982, p. 216; LORTON, 1974, p. 177). It was a period marked by the ascension of five great empires: Egyptian, Babylonian, Hittite, Mitanni and Assyrian (BEDERMAN, 2001, p. 24).

The most recent archaeological evidences indicate that Assyrian had, in fact, developed a system of treaties on tributes with their colonies and with independent peoples (LARSEN, 1976 apud BEDERMAN, 2001, p. 26; ORLIN, 1970 apud BEDERMAN, 2001, p. 26). Everything indicates that Assyrian tributary rules had legal status and decentralized characteristics (EDWARDS et al., 2006a, pp. 21-44; 274-298; 443-477).
The Hittite’s diplomatic activities in this period are well documented. In addition, the majority of academics agree with the fact that they conceived the relationships with other political entities as something serious and with binding results (BEDERMAN, 2001, p. 26). The diplomacy and international relations developed by the Hittite largely influenced the state system in that epoch (MCCARTHY, 1963, p. 92; LORTON, 1974, p. 177). The reason for that is they controlled the balance of power in the region (BEDERMAN, 2001, p. 27).

All this context of international relations was acknowledged in a treaty in 1280 BC, between Ramses II of Egypt and Hattusili III of the Hittite. An emblematic covenant regarding the parity existent in the region (AGO, 1982, pp. 216-217).

This period of dynamic relations amongst states had two basilar attributes. The first was a relationship system between the great powers, in which the Egyptian, the Hittite and the Assyrian shined through. This has been named by some as a measure of checks and balances among the major powers (PREISER, 1954, p. 272). Besides the treaties of parity, there were also a great feudal system with tributary arrangements, generally exteriorized through covenants of vassalage. Great part of the documentary evidences about international relations in this period, however, are of vassalage treaties (AGO, 1982, p. 217).

Everything leads to the fact that most Babylonian treaties had, as their object, the construction of alliances. With resembling formularies, pacts of neutrality emerged in Babylon and its neighbours (MUNN-RANKIN, 1956, pp. 92-93; BEDERMAN, 2001, p. 141).

In addition to treaties concerning questions of war and peace, Babylonian archives are crowded of examples of other parity deals discussing, for example, the return of fugitives or of individuals illegally sent to other territories (BEDERMAN, 2001, p. 141, notes 29-30).

A consistent theme in the Sumerian, Babylonian, Hittite, Assyrian, Israeli and Egyptian practices was the oath. It was exchanged in a ceremony filled with elements and formalities that made reference to the penalties of its inobservance (BEDERMAN, 2001, pp. 62-63).

The structure and form of a Hittite covenant were very predictable. They included: a preamble; a prologue with a brief history of the relationship of
the contracting parts; the deal’s stipulations; provisions for the deposit of instruments in a temple and for periodic readings of the text; a list of the gods who served as witnesses; and, by the end, an enunciation of all the maledictions to fall upon the ones who failed on its fulfilment and all the blessings to the ones who achieved its accomplishment (MACCARTHY, 1963, pp. 93-94; MEDENHALL, 1954, pp. 49-76).

An example of such malediction can be observed in Hillers’ work (1964, p. 19): “this head is not the head of a ram, it is [my] head”, followed by “just as the ram’s head is torn off . . . so may [my head] be torn off”.

Delbert Hillers (1964, p. 80) explained that because “the ancient treaty was a public document . . . [c]opies . . . were distributed, preserved, and published.” It was mandatory to keep copies of the treaty, and to guard some other copies inside the temples of the gods who served as grantors of the deal, as well as to publically read the treaty at least twice or three times a year (MCCARTHY, 1963, pp. 37-38 e 76; WISEMAN, 1958).

The common language used in the treaties between 1500 and 500 BC was the Akkadian or Hittite. After, they gave space to the Aramaic (HILLERS, 1964, p. 81; DUPONT-SOMMER, 1949, pp. 84-98).

In this context, it is necessary to cite one emblematic treaty, result of good diplomacy. The Egyptian empire had been defeated by the Hittite forces. Then, at the year of 1280 BC, the treaty was made, aiming a perpetual peace between the two great kingdoms (EDWARDS et al., 2006a, pp. 229 e 258-259), and outlining their region of influence (LANGDON; GARDINER, 1920, pp. 201-205). The treaty was a result of years of delicate negotiations between the two kings, through diplomacy. Scholars speculate that they never met each other personally (LANGDON; GARDINER, 1920, p. 185).

### 3.3 Syria e Palestine

The ancient system dominated by the Hittite, Egyptian and Assyrian was later destroyed by the invasions of the Sea Peoples, Indo-European tribes that penetrated all Asiatic west and great part of Europe (BEDERMAN, 2001, p. 28). Then, the region was free of great potencies,
opening up space to the growth of two peoples: Israel and Phoenicia (MCCARTHY, 1963, p. 51). Phoenicia was formed by the grouping of various autonomous city-states in the Syrian coast, stablished around 1,000 BC. The Israeli state was the result of the unification of various tribal unities by Saul (around 1,010 BC). It was later governed by king David and king Solomon (1006-926 BC) and, after that, around 926 BC, it was divided in two: Israel in the north and Judah in the south (EDWARDS et al., 2006a, pp. 322-409, 562, 573, 583-584; PROSPER, 1978, pp. 253, 264-266). There are sundry reports on the relationship between the Jewish states and the Phoenician cities, as well as with other potencies, like Egypt and the new Assyrian Empire. King David imposed treaties of vassalage to the minor nations around Syria, while Solomon contracted with Tyre, in an agreement between equals (WALKER, 1899, p. 34; Judges 11: 12 – 28; 2 Samuel 8: 6, 14; 10: 10; 1 Kings 4: 21, 5: 12).

Israel adopted the parity system to their treaties. As an example of that, we can cite the deal made with the sovereign of Damascus (THOMPSON, 1964, p. 18; 1 Judges 15: 19, 20: 34) and the treaty made with Hiram of Tyre, which not only discussed about borderline settlements, but also about commerce between the nations (1Kings 5; Hebrews 5: 24). The highlander tribes of Syria were also known for their diplomacy and their science of treaties (THOMPSON, 1964, p. 12), as well as the Phoenician cities (EDWARDS et al., 2006b, pp. 461-472). Following the tradition regarding the treaties’ form, the truce between Yahweh and its chosen people of Israel was shaped according to the forms, patterns and syntax used by the Hittite and Assyrian (BEDERMAN, 2001, p. 30).

There were notable restrictions to the declaration of war, especially to a reshut, or optional war. The most important limitation can be found in the Old Testament (Deuteronomy 20: 10), that narrates: “When thou comest nigh unto a city to fight against it, then proclaim peace unto it. If peace were accepted, the lives would be spared (PROSPER, 1978, p. 299). There are more rules on the conduction of reshut in the bible. One passage says that prisoners should be released and fed (2 Kings 6: 22) and another says that women could not be enslaved (Deuteronomy 21: 10 – 14). There is even a
passage that prohibits the falling of fruitful trees, so they could serve people food (Deuteronomy 20: 19 – 20).

4 GREECE

The Greek developed a very extensive lexicon to describe different people and relationships in their treaties. As Robert Bauslaugh (1991, p. 35) noted: “Classical Greek diplomacy was far more sophisticated than a simple dichotomy of friends and enemies.” City unions were common and they happened through non-interference deals (symbola), broad citizenship guarantee to certain people (isopoliteiai), defensive or offensive alliances (epimachiai and symmachiai) or through the existence of common religious institutes (amphictyones) (EHRENBERG, 1960, pp. 103-131, 154-171).

In this context, where numerous degrees of relations were conceived, there was also space to the concept of neutrality, in which “the option of abstention [from conflict] was clearly enough defined and widely enough accepted to provide protection against belligerent hostility.” (BAUSLAUGH, 1991, p. 35).

Not enough, various Greek city-states ventured into federations. The Second Athenian League of 377 BC and the Corinthian League of 337 BC were both international associations formed by free, autonomous and equal cities (BEDERMAN, 2001, p. 36). In reality, Hellenic international relations were perfectly prepared to deal with other potencies on an equal footing. This can be noticed through the extensive number of peace treaties made between Greeks and non-Greeks (AGO, 1982, p. 223).

Regardless of all that, Robert Bauslaugh (1991, pp. 36 and 52) exempts:

“these interstate rules did not evolve into a written international law, but due to mutual respect born of shared culture . . . they exerted a surprisingly powerful hold over the thinking and actions of the classical Greeks . . . The authority of the agraphoi nomoi of interstate relations was, by necessity, grounded in the moral consciousness of those involved.”
With the development of more secular formalities, including rules on the publicity of treaties, the ratification and periodical renovation of the obligations on them, their obligatoriness grew stronger (PHILLIPSON, 1911, pp. 413-415). Good faith, with time, was also ensured by secular means, like the anti-deceit clauses, which substituted the exchange of hostages (LONIS, 1977, p. 215).

In ancient Greece, according to Homer, the mutual understanding that no hostility should occur without a just cause prevailed. Therefore, if a polis ever felt unjustly offended, it needed to demand a retractation to the offender (WARDOUR, 1872, p. 375). Sometimes, it was necessary a series of actions to configure a just cause. There was real concern about beginning a war, and these preoccupations had legal basis. Perhaps it occurred because of the neutrality existent in Greece at that epoch (BEDERMAN, 2001, pp. 212-222). During the conduction of warfare, certain rules should be followed too. The Odyssey (HOMER, verses 205-215) displays limitations to the use of dangerous arms as being the gods' proclaims. The polis even made treaties agreeing on terms to prohibit the use of certain types of arms in case the parts engaged in war (WALBANK, 1967, p. 416).

There was a great ethical restriction concerning the limits of war that, according to the philosophy of that epoch, should be universally respected. Diodorus Siculus (1957b, p. 303, passage XXX.18.2) wrote that every war, even the ones that offended human rights, respected some kind of law. Xenophon (1845, p. 125) was emphatic on this point, describing the law of war as “a perpetual law amongst all men.” Following this way of thought, Xenophon (1845, p. 85) described his ideal king as a warrior who would make a deal with his adversary so the workers would be left in peace on both sides, and so the warfare would be restricted to the ones holding arms.

Yet, wars should respect rules of immunity. The concept of temporary immunities in times of war and of truces inside the Greek territory may have appeared during the pre-Hellenic festivals9. When the games

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9 Many local festivals could be observed only in the cities that shared the same cults or the same temples. In 367 BC the Athenians, for example, declared a fifty-day truce to celebrate the Greater Eleusinian Mysteries, an Attic tradition. See: TOD, 1948, p. 111, No. 137.
approached, spondophoroi, people in charge of negotiating truces were sent to proclaim the sacred truce in all the affected communities (BEDERMAN, 2001, p. 252, note 300). Once proclaimed, the combatants had to give up hostilities during the sacred month (hieromenia) (THUCYDIDES, 1958, pp. 97-99, 115-117; Ibid, 1959, p. 107). Besides the truce, certain locals and structures were considered sacred and inviolable and should be respected and protected in times of war. The immunities extended themselves to some people too, like clergyman and participants of the games and festivals (BEDERMAN, 2001, pp. 249-250; PHILLIPSON, 1911, p. 271). Individuals that took refuge in temples should also be spared (SICULUS, 1957a, p. 279; PLUTARCH, 1962, pp. 463-467). A peculiar immunity conceded by the Greek was to take the bodies of dead men (BEDERMAN, 2001, pp. 257-260).

5 ROME

When it grew to be the major power in the Italian Centre, Rome begun to expand its diplomatic relations. There are documents recording treaties between Rome and Carthage dating back to 500, 348 and 306 BC. (BEDERMAN, 2001, p. 42). Their activity in international relations received great influence from the Greek. On this point, Thomas Walker (1899, p. 44) highlights:

“[i]n th[is] first period of her history, [...] there was room for the adoption by the Romans of some such conceptions of international obligation as those which prevailed amongst the Hellenes [...] [T]he practice of Rome in her international relations during this period reveals features similar to those distinguishable in the international practice of the Hellenic commonwealths.”

10This rule was applied even when the Greeks engaged in war against non-Greeks. There are numerous accounts that, because of Carnean and Hyacinthian festivals at the year 480 BC, the Greeks were delayed to defend themselves against the Persian attacks. See: HALICARNASSUS, 1890, book 7, passage 206.
Such influence occurred in consequence of the war against Pyrrhus, which brought Rome to the Greek zone of influence (AGO, 1982, p. 227).

Reciprocity and duality in the obligations were the basis of the Roman oaths. The Romans esteemed respect to the laws and had a very well built concept of good faith (*bona fides*), in such a way that, when they agreed to something, such deal were conceived by them as totally binding (BEDERMAN, 2001, pp. 47, 52-53 and 71). Coleman Phillipson (1911, p. 61) adduced that “The basis of all relationships, of all obligations was conceived to be sincerity and good faith.” Consequently, strong penalties arouse from their laws to punish eventual perjuries (BEDERMAN, 2001, p. 71, note 117), known as *dolus malus* or *dolo malo* (WHEELER, 1984, p. 253).

Just like the Greek, for Rome to enter in a war it was necessary the existence of a sufficiently strong reason to do so. Literature is well fed of references to Roman leaders utilising the rhetoric of *iusta causa* to justify the moral and military superiority of Rome (BEDERMAN, 2001, p. 222). However, differently from the Greeks, the Romans followed rigorously the principle of just war (WHEATON, 1845, p. 21). Marcus Tullius Cicero (PETERSSON, 1920, pp. 443-451) declared that the formalities concerning the declaration of war should be observed. Moreover, the whole participation in a conflict ought to be based on *iusta causa* or *pium*. Such cause could only exist if hostilities were conducted to avenge an evil suffered by the hands of the enemy or in cases of self-defence (CICERO, 1829, pp. 38 and 90). And so Cicero (1829, p. 92) said:

“He established a law also for the declaration of war, which most justly decreed by him, he made more sacred by the solemnity of Heralds: so that every war which was not proclaimed and declared, was deemed to be impious and unjust.”

Titus Livius (1905, passages 8.1-8.4, 8.23) blames the Samnite for starting the war between them. There was a *foedus*¹¹ between Rome and the Samnite since 341 BC. The Samnite, however, constantly violated the treaty,

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¹¹A treaty that associated a tribe with Rome, but did not concede the “title” nor of a Roman colony nor of a Roman city (*civitas*). Despite of that, the treaty imposed to the other part the supplying of soldiers to Rome, in case it was needed.
interfering with the conflict with Palaeopolis. The Romans demanded a restitution and suggested to submit the dispute to an arbitral tribunal, but the conflict was not resolved pacifically (MATTHAEI, 1908, pp. 241, 253-254).

Additionally to the adversary’s refusal to offer the offender to Rome (LIVIUS, 1905, passage 7.9), there were many other forms of violating international law strongly enough to characterize a just cause to a conflict. Malefactions to Roman diplomats were commonly a casus belli\textsuperscript{12}. Romans, moreover, believed that an affront to the sanctity of an ambassador was an obvious violation of ius gentium. The non-fulfilment of treaties received the same treatment. Specially after the Roman growth, at the end of the Second Punic War in 202 BC\textsuperscript{13}, the Romans begun to demand a strict fulfilment of the deals (BEDERMAN, 2001, pp. 224-225).

Polybius (1922a, pp. 259, 283-285, passages 8, 58; Ibid., 1922b, pp. 309-313, passage 6) by citing these rules of conduction of war, used words like “laws of war,” and “common law of mankind,” and “well-settled rules of human right.”

Due to the importance international law and the laws of war had in ancient Rome, even the Roman militaries could suffer serious punishments in case they disrespected one of these rules (BEDERMAN, 2001, p. 248). Rome with its expansionist polity treated to ignore some paradigms solidified as precedents of international law, as war grew more important on the conflicts resolution, and to look down other peoples. Even though, during the beginning of its expansionism, Rome still treated other nations as equal, independent and sovereign. With time, the Romans became more selective, sustaining embassies solely within the nations which had well-structured political and legal systems (BEDERMAN, 2001, pp. 45-47).

6 CONCLUSION

\textsuperscript{12} The truce occurred during the Second Punic War ended when the Carthaginian armed against the Roman envoys sent to contract with them. See: POLYBIUS, 1923, pp. 467-471. Passages 2 e 3.
\textsuperscript{13} Rome showed great reprove to the breach of 203 BC’s truce by Carthage. See: POLYBIUS, 1923, pp. 463-467, passage 1.
Although we used the term “international law” in this study, the law of nations in antiquity did not sought to protect certain natural or human resources or the advance of some kind of philosophical or ideological position. Its objective was to promote and maintain order. It reflected the thought of that time. Rules concerning interstate relations in ancient times transformed particularisms into cooperation. Friendship was achieved through the exchange of practices of hospitality in diplomatic institutions. At the same way, the ancient state became more tolerant with rules that permitted the movement of people, goods, and services across borders. Confidence was built with rituals and formalities on doing treaties and alliances. Finally, the contention of bellicose activities was a real concern to states in antiquity even in times of war either because of personal interests or because of the concern with order (BEDERMAN, 2001, p. 279).

This way, even though scholars defend the fact that the systematization of a “proper” international law had its factual footing in the Peace Treaties of Westphalia, there are plentiful of indications that the relationship between states have already been suffering with a series of voluntary and non-voluntary limitations since ancient times. Besides, a diverse gamma of institutions regulated by international law, as jus ad bellum and the diplomatic relations, have unquestionable precedents in the international relations developed by Greek and Romans. The roots of the "law" of treaties also rests on the relations conducted by those peoples.

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