

of Rotterdam, was by all accounts very successful. However, Grotius' rapid rise in the Dutch government came to a halt in 1618 when a coup by the Calvinists led to his arrest and trial on charges of treason¹. On June 6, 1619, Grotius was sentenced to spend life in prison at the Loevestein castle. Two years later, he staged a daring escape from the castle. Legend has it that Grotius arranged for his wife to send him a large trunk and, evidently using formidable advocacy skills, was able to convince prison authorities to ship home a number of books he had accumulated while in prison. In fact, it was Hugo Grotius in the trunk, and not his library, and he soon landed in Paris and rejoined his family².

Grotius remained in Paris for many years, and spent most of these as the Swedish Ambassador to France. While in Paris, he played a role in numerous important international law files, including the negotiations to end the Thirty Years War³. He was recalled from his ambassadorial duties in 1644. This was to be his final chapter: Grotius was shipwrecked in the Baltic Sea as he returned to Stockholm. In the late summer of 1645, Grotius was washed up on the shores of Rostock, Germany, where he died due to exhaustion from the storms and the harsh sailing conditions he had endured. Legend has it that Grotius' last words were, "By attempting many things, I have accomplished nothing"⁴. This seems like a very harsh, or perhaps overly modest, self-assessment, considering the life Grotius had led and the significant body of work he left behind. In all, Grotius published more than 20

¹ Oregon State University, 'Hugo Grotius 1583-1645' <<http://oregonstate.edu/instruct/phl302/philosophers/grotius.html>> accessed 6 May 2013.

² James Bacchus, 'Groping Toward Grotius: The WTO and the International Rule of Law' (1 October 2012) Harvard Law School Address <<http://www.worldtradelaw.net/articles/bacchusgrotius.pdf>> accessed 6 May 2013.

³ *Encyclopædia Britannica*, 'Hugo Grotius' <<http://www.britannica.com/EBchecked/topic/246809/Hugo-Grotius>> accessed 3 May 2013.

⁴ *Stanford Encyclopedia of Philosophy*, 'Hugo Grotius' <<http://plato.stanford.edu/entries/grotius/>> accessed 3 May 2013.

manuscripts, on a wide variety of legal, political, religious, and literary matters. Among the most famous of these, his texts “*On The Laws of War and Peace*” and “*The Free Sea*” are still considered as foundations of international law, and he rightfully earned the reputation as one of the fathers of international law⁵.

International economic law roots of investment arbitration

The story of Grotius and his times is not only colourful, but is also a good example of early scholarship developing international norms to regulate cross-border commerce. The increasing inter-connectedness of the world in the last century has accelerated the pace of international commerce and has made application of the rule of law in commercial matters ever more important. The broad challenge for this area has been to define a set of legal norms that States can endorse and will abide by, and to develop an effective enforcement mechanism to ensure compliance with the agreed upon norms. In response, the legal community has devised a series of economic agreements to enhance the welfare of all by lessening barriers to the free flow of goods, the provision of services, and the making of investments.

One of the fundamental characteristics of these agreements has been to create rules-based systems, which declare agreed-upon legal norms, and are supported by dispute resolution mechanisms to adjudicate alleged violations of the norms. Originally most of these models relied on State-to-State dispute settlement, where States were solely

⁵ On the life and writing of Hugo Grotius, see generally Edward Dumbauld, *The Life and Legal Writings of Hugo Grotius* (University of Oklahoma Press 1969). See also, Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford University Press 1999).

responsible for defining the legal norm, participating in litigation about that norm, and complying with the outcome of such litigation. As a result, an individual involved in foreign commerce who had a grievance against a State was obliged to persuade their home government to intervene on their behalf to obtain redress for the wrong done –the doctrine of diplomatic protection⁶.

A number of claims commissions and arbitral panels have been established on this model in the last 200 years. Well-known examples include the Jay Treaty of 1794⁷, mixed claim commissions by States such as Mexico⁸, Venezuela,⁹ and France¹⁰, and U.S.treaties of friendship, commerce and navigation (FCNs)¹¹. In more recent years, we have seen the

⁶ On diplomatic protection, see generally, James Crawford, Alain Pellet & Simon Olleson (eds), *The Law of International Responsibility* (Oxford University Press 2010); Chittharanjan Félix Amerasinghe, *Diplomatic Protection* (Oxford University Press 2008); W.K.Geck, 'Diplomatic Protection' in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law* (North-Holland 1993) Vol.1; F.V.García Amador, *The Changing Law of International Claims* (Oceana 1984) Vols.1-2; H.Lauterpacht, 'Allegiance, Diplomatic Protection and Criminal Jurisdiction over Aliens' (1947) 9 Cambridge L J 330; C.Eagleton, *The Responsibility of States in International Law* (New York University Press 1928); and Edwin Montefiore Borchard, *The Diplomatic Protection of Citizens Abroad* (Banks Law 1915). See also, *The Mavrommatis Palestine Concessions (Greece v.Britain)* (Judgment) [1924] PCIJ Rep Series A No 2, 12.

⁷ Treaty of Amity, Commerce and Navigation between Great Britain and United States (signed 19 November 1794, entered into force 29 February 1796) 52 Cons.TS 243. See also Barton Legum, 'The Innovation of Investor-State Arbitration under NAFTA' (2002) 43 Harv Intl L J 534.

⁸ See, e.g., the General Claims Convention of September 8, 1923 between the United Mexican States and the United States of America (signed 8 September 1923, entered into force 1 March 1924) <http://untreaty.un.org/cod/riaa/cases/vol_IV/7-320.pdf> accessed 3 May 2013.

⁹ See, e.g., the Mixed Claims Commission Mexico-Venezuela constituted under the Protocol of an Agreement between the Ambassador from Mexico to the United States of America and the Plenipotentiary of the Republic of Venezuela for Submission to Arbitration of all unsettled Claims of Mexican Citizens against the Republic of Venezuela (signed 26 February 1903) <http://untreaty.un.org/cod/riaa/cases/vol_X/693-705.pdf> accessed 3 May 2013.

¹⁰ See, e.g., the Mixed Claims Commission France-Venezuela constituted under the Washington Protocol of 27 February 1903 (signed 27 February 1903) <http://untreaty.un.org/cod/riaa/cases/vol_X/9-355.pdf> accessed 3 May 2013.

¹¹ See, e.g., the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic (signed 2 February 1948, entered into