
International Law and the First World War: Introduction

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The end of the centenary of the First World War is nearing. A staggering amount of new research has come out over the past four years, shedding new light on what has been known as the ‘great seminal catastrophe of this [the 20th] century’, as the American historian and diplomat George F. Kennan aptly described the horrors of the First World War.¹ The centenary provided the incentive for Gabriela Frei and Judge Bruno Simma to organize an interdisciplinary symposium on International Law and the First World War at Jesus College, Oxford, in 2015 with the aim of looking beyond the immediate events of the war and focusing on its far-reaching consequences for the development of important fields of international law in the 20th and 21st centuries, thus offering new insights for lawyers and historians alike.

A hundred years on, there is still an immense research interest in the First World War. The legal dimension of the war was the subject of much debate in the 1920s and only recently received renewed scholarly attention.² Most influential has been Isabel V. Hull’s 2014 book on international law in the First World War.³ As a historian, she examined how belligerent governments used international law as part of their justification for the war. Focusing on the German, British and French governments, she provides the reader with a gripping analysis of the use of law in politics. The book received immediate attention from scholars in law and history and sparked a more general debate about the role of international law in the First World War.⁴

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¹ G.F. Kennan, *The Decline of Bismarck’s European Order: Franco-Russian Relations, 1875–1890* (1981), at 3.
² J.W. Garner, *International Law and the World War*, 2 vols (1920).

³ I.V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (2014).

⁴ Diggelmann, ‘Book Review: I.V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (2014)’, 25 *European Journal of International Law* (2014) 1200; Mulligan, ‘Book Review: Isabel V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (2014)’, 151 *English Historical Review* (2016) 1565.

Her book served as an invaluable basis for the symposium. Many of the topics she raises in her book have been revisited by the authors from the symposium in their articles.

Gaining an interdisciplinary perspective and using the synergies of the two disciplines of law and history were the major goals of the symposium. It opened new avenues in capturing the complexity of the topics, especially since disciplines have different perceptions of the First World War. For lawyers, the war brought the collapse of the old international order and the beginning of a new one – the order of the League of Nations – and its (too timid) attempt to curtail the excessive liberties of the ‘Westphalian system’.⁵ For historians, the war signifies the ‘seminal catastrophe’ of the 20th century, and ever since it occurred, historians have been intrigued by it and pulled to investigate the causes that led to this catastrophe. One of the most recent examples of such research is Christopher Clark’s book on the origins of the war.⁶ Rarely though do the accounts of the two disciplines overlap or draw from each other’s expertise, with their approach and methodology often dividing them. Yet history and law are intrinsically linked with each other, and as the legal historian Randall Lesaffer has pointed out in recent publications, the research field of the history of international law needs to be highly interdisciplinary.⁷ The symposium brought together academics from history, law and legal history, who have examined international law from different disciplinary perspectives or drawn from their practical experience. The articles in this symposium are the result of a fruitful interdisciplinary exchange.

The symposium will be published in the *European Journal of International Law* over the four issues of our 2018 volume, reflecting different aspects and perspectives on the four-year global conflict and its influence on the development of international law in the 20th and 21st centuries. Jochen von Bernstorff’s article opens this collection of articles by examining the relationship between violence and international law prior to 1914. He argues that the violence in the colonies prior to the First World War returned to Europe’s battlefields with the outbreak of war. He offers an analysis of the applicability of international law prior to 1914 among the European powers versus those countries on the semi-periphery and the periphery, illustrating this with examples. The article raises an important point by contrasting the different legal regimes of the European powers with regard to the applicability of international law. The semi-periphery, in particular, sets a good example of illustrating the ambiguity of the applicability of international law at that time.

The articles in our second issue explore ideas surrounding belligerency and neutrality. Stephen Neff’s article deals with Great Britain’s blockade policy by examining the various blockade measures and how British legal advisors legitimized them in

⁵ W.G. Grewe, *Die Epochen der Völkerrechtsgeschichte* (2nd edn, 1988); for a translation, see W.G. Grewe, *The Epochs of International Law*, translated and revised by Michael Byers (2000); S.C. Neff, *Justice among Nations: A History of International Law* (2014).

⁶ C. Clark, *The Sleepwalkers: How Europe Went to War in 1914* (2012).

⁷ Lesaffer, ‘International Law and Its History: The Story of an Unrequited Love’, in M. Craven, M. Fitzmaurice and M. Vogiatzi (eds), *Time, History and International Law* (2006) 27; Lesaffer, ‘Law and History: Law between Past and Present’, in B. van Klink and S. Taekema (eds), *Law and Method: Interdisciplinary Research in Law* (2011) 133.

the framework of the traditional law of blockade as understood prior to 1914. At the same time, Neff analyses the blockade policy in the wider context of a fundamental struggle between specific rules and general principles. His research provides a valuable understanding of Great Britain's blockade policy and shows how the existing law was adapted as a result of modern conditions in war at sea. Furthermore, the author gives a good insight into the post-war discussions among jurists, which revolved around the fundamental debate over whether the advance of law should be pursued on the basis of specific rules or general principles and, thus, addresses broader issues concerning the advance of international law.

The article by Andrew Norris offers a complementary view on neutrality from the perspective of one of the foremost neutral countries. Norris examines the *Appam* case, which is unique in the history of the Supreme Court of the United States.⁸ The author illustrates the difficulties of the existing law of neutrality as it was set out prior to 1914 and examines the diplomatic encounters between the USA, Great Britain and Germany as a result of the peculiarity of the case.

The end of the war and, in particular, the peace negotiations at Versailles provide the focus for the articles in our third issue. Randall Lesaffer's article examines the idea of aggression in international law, and he argues that the concept did not emerge during the First World War but, in fact, can be traced back to the 17th and 18th centuries. He illustrates this using the case of Frederick II, the king of Prussia, and then moves on to explain how 19th-century international jurists dealt with the issue, before concluding with a detailed analysis of the Treaty of Versailles. His emphasis on the centuries prior to 1914 makes a strong case that not everything was new but, rather, had an earlier precedent.

Marcus Payk's article examines the role of international law at the Paris Peace Conferences in 1919. Although politicians were rather sceptical of international law, the Treaty of Versailles was a legalist venture, as Payk illustrates. This legalist venture led to an overly legalistic regime, and the author's analysis opens up a new debate about the importance of international law in politics at the time.

Finally, the articles in our fourth issue take a broad stance and examine existing bodies of law, their application during the war and how they changed or did not change after the war. Thomas Graditzky's article examines the law of military occupation in the period before and after the First World War. He concludes that the law of military occupation remained unchanged by the war and only changed minimally in the period after the war. The author looks for reasons for this immutability, arguing that the law of military occupation provided a flexible enough tool to apply it not only on the European theatres of war but also overseas as well as in the Allied occupation zones after the armistice.

Neville Wylie and Lindsey Cameron's article argues that, contrary to current literature, the First World War had a significant impact on the development of prisoner-of-war (POW) law after the war and, in fact, continues to do so today. An analysis of

⁸ *The Steamship Appam*, 243 US 124 (1917).

prisoner repatriation, the use of reprisals and the introduction of neutral oversight reveals the transformation of existing POW law and shows that many innovative proposals were developed after the war and during the interwar period. The article provides a new understanding of the development of POW law from the 1860s to the post-Second World War period. The research convincingly illustrates the emergence of a new legal status for POWs from 'disarmed combatants' to 'humanitarian subjects'. With this new interpretation, Wylie and Cameron have connected POW law to the broader theme of humanitarianism. The article benefits immensely from the scrutiny of a historian and a legal practitioner working together.

The articles in this collection illustrate the extent to which the First World War has had a lasting impact on our understanding of international law today. Bernstorff and Graditzky show that the application of international law in the colonial spheres became more prominently discussed during and after the war. Neff and Norris illustrate that neutrality was a vague concept, which raised doubts about the applicability of the 19th-century concept in the context of a total war. With the end of the First World War, politicians, lawyers and historians scrutinized the existing norms. While Payk shows the legalism behind the peace negotiations, Lesaffer reminds us that not all norms emerged as a result of the war but, rather, that some norms were revived from earlier periods and applied to new contexts. Similarly, Graditzky and Cameron and Wylie illustrate that legal regimes such as the law of occupation and POW law were adapted, but, as in the case of the law of occupation, they were not substantially altered as a result of the war experience. In summary, the First World War was a crucial turning point that led many to reflect on the role of international law in politics. However, in fact, when it comes to the application of particular norms, the war led to an adaptation, and, in some cases, an expansion, of the norms.