

## A Scrap of Paper: Breaking and Making International Law during the Great War

By Isabel V. Hull  
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Reviewed by Nicholas Rostow

This centenary of the beginning of World War I has spawned divergent reconsiderations of the war. Why should these different views and the Great War itself be of interest to readers of *Joint Force Quarterly*? The reasons concern everything from the nature of peace to military operations and innovation. World War I has had such a profound impact on the structure of our world that it has even made the subject of human misery an area of enduring interest. Nationally, of course, the war represents America's entrance onto the world stage, followed by a short, costly effort to retreat, followed by the continuing leading role since 1945 or, perhaps more accurately, since December 7, 1941.

Isabel V. Hull, author of *A Scrap of Paper*, is a learned historian of Germany and Europe, particularly German history

before and during World War I. Her scholarship merits the attention of *JFQ* readers because Americans and their partners who are engaged in armed conflict deal with its central themes every day: relations between civilians and military in the development and implementation of war plans; the conduct of war; the meaning of military necessity, content, relevancy, and role of international law in politico-military decisionmaking; and the different perspectives of governments and cultures.

Hull became interested in the role of international law in decisionmaking before and during World War I as a result of research on the German and other European conceptions of "military necessity" and her belief that the United States had wandered off the legal rails after the terrorist attacks of September 11. Hull begins with a simple statement from which so much else flowed: "The First World War began with an international crime: Germany's violation of Belgium neutrality" (p. 16). In exchange for accepting and recognizing Belgium's independence in 1839, the great powers of the day—Austria, Britain, France, Prussia, and Russia—guaranteed Belgium's perpetual neutrality (p. 17). Germany's war plan, first developed after 1890 and then refined most famously as the Schlieffen Plan memorialized in 1905, addressed the problem of possible simultaneous wars with France and Russia by a preemptive march through Belgium to knock France out of the war. The violation of Belgian neutrality was a catalytic event, turning the war into an unforeseen global conflict among behemoths. From the outset of World War I, Berlin justified this violation of international law on the ground of "military necessity."

Germany's conception of military necessity and the role and importance of law, and international law in particular, differed from majority opinion in Europe and America. This perspective provides the central theme for Hull's book. Her conclusion is that Germany's approach to law and order meant that the Great War had to be fought and won. Not necessarily the way it was fought and ended, but Germany had to be stopped lest German

views of world order prevail. Hull puts it starkly and uses her deep research in primary and secondary materials in many languages to support her conclusion. "Denigrating the importance of Belgian neutrality," she writes, "appeals particularly to those who believe that Britain should never have entered the war, or indeed that the war should never have been fought; the basis for this view is the belief that Imperial Germany was not a danger either to Britain's security or to Europe's. Significantly, specialists in German history do not generally share these views" (p. 33). For the German military and most civilian leadership including the Kaiser, "military necessity *was* the law of war. The grand goal of war [is] conquering the enemy's energy . . . and will. This *single* goal rules absolutely, it dictates law and regulation. The concrete form of this law appears as military necessity" (p. 69). The more common and at the time majority view outside German military and political circles was expressed by Francis Lieber during the American Civil War in his justly celebrated Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, dated April 24, 1863, which became the touchstone for subsequent understanding and development of the laws of war: "Military necessity . . . consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war" (p. 67). In short, Germany superseded law in the name of military operations. At the same time, the law defined both the aims of military operations and the nature of such operations. These different conceptions put Germany at odds with international law and order. Hull uses the contrasting approaches of Britain and France to issues of international law and the exigencies of war to drive the point home.

Some British and French leaders considered Germany to be "simply lawless" (p. 210). Germany was not lawless, but the German military and political leadership understood law in a different way from their British, French, and, ultimately, American counterparts (a subject

for additional research is Austrian, Italian, Ottoman, and Russian views on the subject) and did not consider it to be important, per se. From the first days of the war, German action triggered this kind of response and, indeed, British and French formal inquiries into Germany conduct. Germany's response to Belgium's refusal to stand aside was draconian—executions, arson, hostage-taking, use of human shields, killing of unarmed prisoners, and pillage (for example, 850 civilians were shot between August 5 and 8, 1914). These events highlighted the lack of civilian control of the military in Germany. Atrocities happened with embarrassing frequency to reinforce growing information warfare (propaganda) vilifying Germany—for example, the execution of nurse Edith Cavell for helping Allied soldiers and civilians escape to Holland, the execution of the captain of an unarmed British steamer for evading a U-boat (based on an alleged ramming), the burning of the Louvain University library of hundreds of thousands of medieval books and manuscripts (to “teach them to respect Germany and to think twice before they resist her” (p. 53), the calamities of unrestricted submarine warfare such as the sinking of the RMS *Lusitania*, the use of poison gas, the use of incendiary weapons, and the bombing of cities such as London. As early as 1915, the German military even sent covert agents to the United States armed with anthrax and glanders (a disease that affects livestock) to infect horses and draft animals bound for the Allies. This effort led to the establishment of a laboratory for biological agents for sabotage.

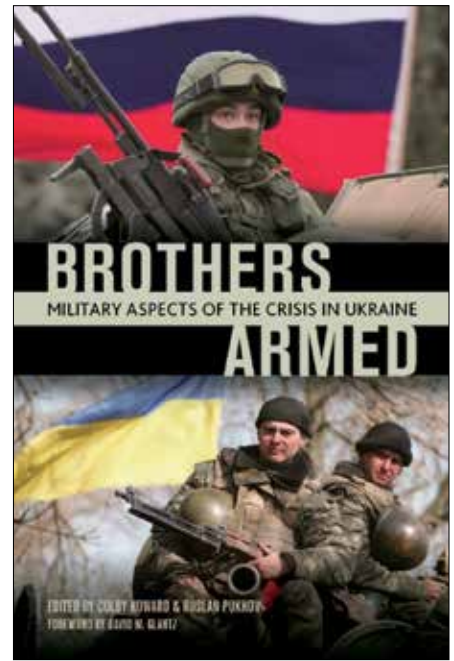
Each of these events involved assessments of the existing law of armed conflict, whether pertaining to occupation and the treatment of civilians or the war at sea and the treatment of merchant shipping, neutral or not. The German approach to legal issues in this context differed markedly from the British and French. For the British the most important test involved the blockade: what was required by the technology of war at the beginning of the 20<sup>th</sup> century, whether starving an opponent was lawful or even worthwhile, and related questions about

close and continuous blockade as well as the rights and obligations of neutrals. The British interdepartmental cabinet system ensured that civilian and legal views were continuously part of the decisionmaking process. French decisionmaking also coordinated civilian and legal views, particularly where potentially explosive issues such as reprisals for bombing of towns were involved. German decisionmaking followed different patterns. The Germans used poison gas for the first time without leaving behind a paper trail to illuminate the decisionmaking process, unlike in the case of unrestricted submarine warfare, meaning sink without warning. *A Scrap of Paper* principally compares British and German (and here and there French, Austrian, Russian, and American) approaches to the problems presented by the nature of World War I, the rules of international law, and the evolution of warfighting and international law during the conflict. The result is a cautionary tale for the contemporary policymaker and warfighter.

*A Scrap of Paper* is an illuminating study in relations between civilian and military establishments and the terrible impact of self-regard and hubris. The book is deeply learned (the author appears to have taught herself much international law), well written, arrestingly original, and accessible to the ordinary reader. It is recommended for serious students of international relations and strategy. It reminds us forcibly both that Clemenceau, France's World War I prime minister, had it right when he stated that war was too serious a business to be left to generals alone and that military necessity and military convenience are not synonymous. JFQ

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### Brothers Armed: Military Aspects of the Crisis in Ukraine

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Reviewed by Michael Kofman

**B**rothers Armed is an edited anthology comprising several essays detailing the history of Crimea, the post-Soviet history of the Russian and Ukrainian armed forces, and a detailed account of Russia's annexation of Crimea in March 2014. This volume is timely, especially given the dearth of existing scholarly sources on some of the subjects covered. It provides great insights into the annexation, comprehensively analyzes the historical context as well as the existing military balance, and delivers a full accounting in an objective and dispassionate manner.

The first chapter by Vasilij Kashin briefly covers the history of Crimea until its controversial transfer from Russia to Ukraine in 1954 by Nikita Khrushchev. A change of borders intended mostly for pragmatic reasons, the transfer proved unpopular with Russians and became