III. CONCLUSION

It would not be an overstatement to say that, from now on, no serious practitioner or dedicated scholar of international criminal law can afford to be without quick access to these volumes. Ambos approaches his topics with the extraordinary care and precision characteristic of the "scientific approach" to the law, and the amount of detail and the depth of analysis that he provides across the spectrum of issues seem unparalleled. The volumes are heavily annotated and even have extensive online bibliographies.

At the same time, these virtues necessarily circumscribe the appeal of the project. Ambos has written for the scholars and technicians. These volumes are not the place to look for an easy introduction to the field, for quick answers, or for a broad overview, much less for an assessment of the political dimension of international criminal law in the international system writ large. Moreover, the analyses that they contain are (by necessity) rooted both in his evaluation of the decisions of the various courts and tribunals that have preceded the ICC and in light of the formulations contained in the Rome Statute. Predicting future trends against this background—how the ICC may apply the Rome Statute and how other tribunals may assess the state of customary international law—is speculative at best.

These volumes are well-structured and thoroughly researched, and they make a very substantial contribution to the literature in the rapidly growing field of international criminal justice. Although the author's civil-law training permeates the discussion (as evident in his predilection for Latin terminology), he makes a serious effort to provide a comparative basis for his conclusions, which this reviewer found remarkably useful and truly appreciated. The technical nature of the topics and the rigor of Ambos's research and analysis mean that these volumes will primarily be reference books, rather than, say, recreational reading or assigned texts for students. Assuming that the structures of the system do not crumble in the face of ever-present practical obstacles and political challenges and that the ICC actually begins to develop as intended, the real task will be to keep these volumes current.

DAVID P. STEWART
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BOOK REVIEWS

A Scrap of Paper: Breaking and Making International Law During the Great War. By Isabel V. Hull. Ithaca NY: Cornell University Press, 2014. Pp. xiii, 368. Index. $45.

Its jacket characterizes *A Scrap of Paper: Breaking and Making International Law During the Great War* as "the most powerful defense of the role of law in international crisis." I am always skeptical about references to "support of international law" or "defense of international law." No more do I care for references to "supporting" the United Nations. I support the Arsenal Football Club—but I do not "support" or "defend" tax law, contract law, or international law. International law is a reality, which does not need our "defense." Of course, we may oppose, or defend, particular resolutions or treaties or judicial decisions within the vast corpus of international law, but that is another matter.

In any event, I see this book differently. It is an impressive analysis, by a remarkable historian, of specific international laws (both customary and treaty-based) that were historically regarded as important by the protagonists at the outset of World War I, the Great War of 1914–18. The book's author, Isabel Hull, a professor of history at Cornell University, contends that breaches of these rules were at the heart of the perceived need to have recourse to war.

The steps discussed in traditional teaching—politics and events, domestic and international—that culminated in World War I receive little attention here in themselves. It is when these events coincide with legal norms, for example, perceptions of what was required by the neutrality of Belgium, that the author turns her formidable intellectual powers to their scrutiny.

In Europe, we are awash with centennial commemorations of the Great War. There have been

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ceremonies at the vast and moving military cemeteries in France and Belgium. Schoolchildren have been engaged on a multitude of Great War-related projects. Hugely impressive exhibitions have been mounted at museums. The media carry a variety of programs on the events of 1914–18.

At the same time, there has been a conscious effort to make these commemorations personal. To be sure, members of the Western European governments—including Germany—have attended the ceremonies. But the exhibitions, television programs, and schools' study projects have deliberately been given a human face. The public is invited to follow the lives, in these terrible years, of soldiers in the trenches, of comrades lost, and of families waiting in endless anxiety at home.

Schoolchildren and the public will undoubtedly have learned much, but the emphasis has been so little on identifying the causes of the war or on ensuring a deeper understanding of the history of the period. The average child or indeed adult, while now exposed to the horrors of the war—and the poetry—probably still knows only that the war was caused by the assassination of Archduke Franz Ferdinand and his wife by Gavrilo Princip. An invocation of a simple fact is hardly an understanding of the history.

Of course, the commemorations have seen the publication of some informative books on the subject. Yet the author of *A Scrap of Paper* believes that the actual reasons why the Allies fought have been forgotten.

There is still a public understanding of the reasons why the Allies fought World War II and support for the idea that Adolf Hitler could not be allowed to advance further. But in World War I, so terrible were the conditions of war in the trenches, so appalling was the loss of life, and so manifestly unwise was the Treaty of Versailles at the conclusion of the war, that today a widespread view has emerged that that war was "unnecessary" and the outcome of base political machinations on all sides, that the generals were incompetent and without concern for the lives of their soldiers, and that a generation of young was lost for little reason.

The author describes the wide skepticism today about the values at stake in World War I as "revisionism" (p. 12). I think that this skepticism has taken such hold on our generation that it has reached the stage that Hull contends that our generation has forgotten about the "revisionist" realities (*id.*). Christopher Clark's book, *The Sleepwalkers: How Europe Went to War in 1914* (2013), which largely exonerates the Kaiser's Germany from responsibility for World War I, has sold hundreds of thousands of copies. Revisionism depends on one's starting point. . . .

It is thus against this current perception that Hull recalls the memorandum approved by Robert Cecil, the British parliamentary undersecretary of state for foreign affairs, setting out why the Allies had fought and how the "principles at stake in the war" were to be explained (p. 1). Prussian militarism had to be destroyed, and a "peaceful settlement based on the rights of small nations [and] on the reign of international law" had to be achieved (*id.*). Hull also recalls that British Prime Minister Herbert Asquith had at the outset of the war explained to Parliament that Britain must fight "to fulfill a solemn international obligation" not to allow small nations to be crushed "in defiance of international good faith" (*id.*).[1]

Of course, all states in conflict with others will invoke international law to support their case. But the author asserts that the National Archives of the United Kingdom reveal extensive and apparently sincere references in internal exchanges to international law, both as a reason for the war and as an essential guide to the conduct of war. So the prism through which Hull has prepared this marvelous book is "international law" (p. x), a forgotten but key element—she alleges—in our understanding of World War I.

Hull is not an international lawyer. But with this study, she joins the pantheon of experts from other fields, usually international relations, who have been appreciated by international lawyers for their interest in, and understanding of, their subject. Sydney Bailey (United Nations law), Adam Roberts (the laws of war), and Stanley Hoffmann (international legal theory) are familiar names for the readers of this journal.

[1] *See also* J. A. SPENDER & CYRIL ASQUITH, LIFE OF HERBERT HENRY ASQUITH (1932).

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Hull, however, as noted, is a historian (though at what point history passes into international relations is an oft-asked question) with particular expertise in German history. She is thus also a linguist of great competence. This is above all a study relying on primary sources (though secondary sources are not forgotten). The research in the Archives du ministère des affaires etrangères and in the Service historique de l'armée de terre is impressively thorough. The National Archives of the United Kingdom have proved a treasure trove: those of the Admiralty, the Cabinet, the Foreign Office, and the War Office form an essential part of Hull's exposition. And the German archives—Auswärtiges Amt-Politisches Archiv, Bundesarchiv Berlin-Lichterfelde, and Kriegsministerium—have given voice to the many points made in this study.

The author joins the ranks of those providing useful histories of the outbreak, course, and conclusion of the Great War. *The Cambridge History of the First World War* (Jay Winter ed., 2014); Max Hastings's *Catastrophe 1914: Europe Goes to War* (2013), *The Oxford Illustrated History of the First World War* (Hew Strachan ed., 2014), Alexander Watson's *Ring of Steel: Germany and Austria-Hungary at War, 1914–1918* (2014), and Mike Webb's *From Downing Street to the Trenches: First-Hand Accounts from the Great War* (2014) are among the many recent publications.

Among these writings are occasional voices, such as John Röhl, insisting that the current received wisdom involves "the sidelining or suppression of so much of the knowledge we have gained through painstaking research over the past 50 years."[2] Thus, he is at one with Hull in seeing as important what we have forgotten.

The reader learns much from these writings, but Hull's book is different altogether. There is no other book that so focuses on historical aspects of international law, rooted in what she has learned from immersing herself in the archives of the various nations. She reports that in the National Archives of the United Kingdom, from 1910 through the war, "I discovered a large number of rubrics and a staggering number of files dealing directly with issues of international law during the war" (p. ix). Each file revealed extensive correspondence within the Foreign Office, and between the Foreign Office and the War Office, the Admiralty, and the attorney-general, arguing about what was and was not permissible in war. This knowledgeable immersion in the archives has allowed her to show—in Germany in particular—the diverse views, held within that government on these issues, often turning on legal philosophy as to the scope of military necessity.

This author eschews generalizations. The reader will not find "England thought that . . ." or "Germany took the different view that . . .". The work is too scholarly and too deep for that. Differences on the great legal issues of the day were not only held between the protagonists; they also existed, as archival material shows, within the governments of the countries concerned.

Hull has obviously familiarized herself, to a remarkable extent, with the international legal issues that were proving both important and controversial. At the same time, her terminology sometimes seems singular to international law. We are not used to it being said that international good faith is synonymous with international law. The Allies charged Imperial Germany with violations of international law, "a clearly judicial matter" (p. 10). The Treaty of London is referred to as a cornerstone of European international law, rather than European international relations. The notion of good faith for Hull is assimilated to other legal norms.

But no matter. Her premises are strong and clear. The treaties existing in the years preceding the Great War, together with customary international law—which contained concepts relevant to the conduct of war—are seen by Hull as the international legal order of the day. She sees violations by Germany of that order as a fully understandable reason for going to war. And the postwar arrangements, even if open to criticism, were in her view directed to restoring an international legal order.

The author uses the subject of the North Sea blockade both to examine that issue in her customary meticulous fashion and to insert some pages on "Britain's Understanding of International Law"

[2] John C. G. Röhl, *Goodbye to All That (Again)?: The Fischer Thesis, the New Revisionism and the Meaning of the First World War*, 91 INT'L AFF. 153, 155 (2015).

(p. 194) and, in the context of the blockade, "making international law" (p. 183).

The difficulty with reviewing this book is that in every chapter, indeed on every page, there are insights and scholarly findings that I wish to share with the reader. Her chapters on Belgian neutrality; the story of the so-called "Belgian atrocities," including the reprisals, occupation, and *levée en masse*; occupation and the treatment of enemy civilians; the blockade; and "new weapons" (aerial warfare, poison gas, and unrestricted submarine warfare) are all covered in a masterly way.

What the author has to say on each of these subjects is taken from a meticulous scouring of the archives of Britain, Germany, and France. Her research reveals how foreign policy, and the place of international law, were formulated in each of these countries. Her findings are intrinsically interesting, and her analysis and the sources that she deploys to sustain it show us not only the disagreements between the Allies on a variety of critical issues where questions of international law were at stake. They also show the disputes within the various governments on the formulations of these principles. And these internal controversies are made even more specific by names being named. The reader can see what was said by Cecil J. B. Hurst (the chief legal adviser to the British Foreign Office), Lord Robert Crewe-Milnes (the British secretary of state for India), Moritz von Bissing (the governor general of the Prussian army), Paul von Hindenburg (a leading German general), Paul Cambon (the French ambassador to Britain), Henri Fromageot (the chief international lawyer at the French Foreign Ministry), and a multitude of others in the making—and perhaps breaking—of international law.

Throughout each of these chapters run the different perspectives of Britain, Germany, and France on the concepts of "military necessity." Hull explores the legal contentions surrounding the plans formulated by Imperial Germany (the Schlieffen Plan), which would address Germany's perceived geographical exposure to a two-front war by action against Belgium, Luxembourg, and the Netherlands. In the years preceding World War I, Belgium alone was in focus, and violation of its neutrality was increasingly regarded as a necessity.

The debates within the German government are followed closely. The limits to military necessity imposed by customary international law were swept away. The concept of protection of vital interest came to be expanded to include victory, and also mere military convenience. As with every paragraph in this book, Hull's assertions are backed up by a deployment of archival material. The literature, sometimes conflicting, is also taken into account. The concepts of *Notstand* (state of emergency) and *Notwehr* (self-defense), and the extent to which they were present in international law, are discussed in great detail, full reference also being made to the writings on this point of Charles de Visscher and Max Huber, among many others. "Few Germans publicly accepted that the invasion was a legal wrong; among the exceptions were two great jurists, Hans Wehberg and Walter Schücking" (p. 48). Equally well done is the analysis of Belgian neutrality in Britain, where archives, memoirs, and Cabinet evidence are relied on. The great divisions in the Cabinet as to whether Britain should go to war over a violation of Belgian neutrality are deployed in some detail. And now the doctrine of changed circumstances has entered the debate about the consequences of legal obligations.

The chapter on "The 'Belgian Atrocities' and the Laws of War on Land" contains much interesting information on the manuals of the various protagonists. The French manual "explicitly made the rules binding only on condition of reciprocity . . . [a view that] had severe consequences once the war began" (p. 84). And, interestingly, notwithstanding the vast attention given to "military necessity" in Germany, neither the prewar French nor the British manuals defined it or even included it in their indexes (p. 85).

The concept of reprisals receives a chapter of its own. The focus, once again, is what is to be found about them in the archives and in and within every corner of government. The British legal views are bound into the political arguments of the time. The contentions of Cambon, Hurst, and Sir Edward Grey (a British foreign minister) and so many others are laid before us and woven into the

story. Hull's study does not stop with the arguments of the authors of the past era; she makes reference also to contemporary authors—Geoffrey Best, Hersch Lauterpacht, Michael Byers, Martin Dixon, Martti Koskenniemi, and many others—writing on these points.

This splendid publication does not in any general sense determine where responsibility lay for World War I. Many books have recently addressed this topic. But that is not the author's intention. Rather she intends—and totally succeeds—to show that World War I cannot be understood without an appreciation of where the Great Powers stood on the momentous international law issues of the day. Thus she reveals through prodigious scholarship, eschewing the broad sweep and examining in this fashion every relevant international law controversy before and during the war. And through this indirect means (ideally with the help of recently written important histories of World War I), the reader will also have a better sense of Germany's relentless advance towards hegemony. And the reader whose field is international law will have seen deployed in these pages an understanding of various possible interpretations of critical elements of law. Ideas relating to military necessity, self-defense, neutrality, reprisals, "new weapons," and constraints in submarine warfare are unfolded here as never before because the historical context in which they were formulated and invoked is so marvelously explained.

A Scrap of Paper is an outstanding book and a work of exceptional scholarship.

ROSALYN HIGGINS*
Of the Board of Editors

The Twilight of Human Rights Law. By Eric A. Posner. Oxford, New York: Oxford University Press, 2014. Pp. x, 185. Index. $21.95, £14.99.

Eric Posner, a professor at the University of Chicago Law School, does not believe that international human rights law has value, and he seems uncertain about the value of human rights in general. As indicated by the title of his book, *The Twilight of Human Rights Law*, he sees human rights law as experiencing a lingering twilight existence due to "competing and unresolvable claims about which interests deserve human rights protections, which interests do not, and how much weight should be placed on each" (p. 140). The general thesis of this short volume is that "human rights law has failed to accomplish its objectives" (p. 7) and that "[i]t is time to wipe the slate clean and start over with an approach to promoting well-being in foreign countries that is empirical rather than ideological" (p. 8). While the book's main aim is to advance his argument against human rights law, he also intends the volume to serve "as a general introduction to the subject" (*id.*). Overall, he does better in presenting his arguments than in introducing human rights law, in part because of the selectivity of sources, coverage, and data throughout.

Chapters 1 and 2 provide a limited version of the history of international human rights law and its normative content and institutions. Posner then turns more directly to his critique, asking in chapters 3–5 why states enter into and comply (if they do) with human rights treaties. He presents a view of the relationship between human rights law and war in chapter 6 and concludes with a call for abandoning "the utopian aspirations of human rights law" (p. 7) in favor of selective foreign development aid. He claims that "[w]hen human rights advocates try to help a country, their goal is to bring the country into compliance with rules—fewer detentions, less torture, more free speech—which do not necessarily advance the well-being of the citizens in the target country" (p. 144). Instead of this purpose, he asserts that "[i]t might make more sense for Western donors to help a country build a reliable road system than to force it to abolish torture" (p. 145). His subtitle of the second part of chapter 7, "The White Man's Burden," indicates his understanding of human rights law as a Western imperialistic imposition on undiscerning governments in the rest of the world. As for the people in those countries, most of them, he asserts, "pay little attention to international human rights law" (p. 115).

* [Editor's note: Judge Higgins served as a member of the International Court of Justice from 1995 to 2009 and as its president from 2006 to 2009. She currently serves as the president of the British Institute of International and Comparative Law.]

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