Review: Peace through Law? The Failure of a Noble Experiment
Reviewed Work(s): All Quiet on the Western Front by Erich Maria Remarque and A. W. Wheen
Review by: Robert J. Delahunty and John C. Yoo

PEACE THROUGH LAW? THE FAILURE OF A NOBLE EXPERIMENT

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ALL QUIET ON THE WESTERN FRONT, By *Erich Maria Remarque*. A.W. Wheen trans. 1929. New York: Ballantine Books. 1982. Pp. 296. $13.95.

I. THE NOVEL AND ITS RECEPTION

Ever since its publication in 1929, Erich Maria Remarque's *All Quiet on the Western Front* has been regarded as a landmark of antiwar literature.[1] Appearing a decade after the end of the First World War, the novel became a literary sensation almost overnight. Within a year of publication, it had been translated into twenty languages, including Chinese, and by April 1930, sales for twelve of the twenty editions stood at 2.5 million.[2] Remarque was reputed to have the largest readership in the world. Hollywood took note, and an equally successful film appeared in 1930.[3]

The success of the novel was as unexpected as it was spectacular. Readers across Europe had displayed little interest in books about the war throughout the 1920s, but after Remarque's success, the public's appetite proved voracious.[4] It was as if the publics of the great belligerents needed the perspective of a decade before they could begin to relive the experience of the war.

The war's scale and horror are scarcely imaginable to us—indeed, they were similarly incomprehensible to those who lived through it. The military death toll was between nine and ten million.[5] France lost nearly one in every

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1.   George Kennan considered it "the greatest novel of the first World War" and said that it correctly forecast "the strength of totalitarianism, and the fatigue of democracy, in the period between the wars." GEORGE KENNAN, AMERICAN DIPLOMACY 1900–1950, at 59, 61 (1951).

2.   Modris Eksteins, *All Quiet on the Western Front and the Fate of a War*, 15 J. CONTEMP. HIST. 345, 353 (1980).

3.   ALL QUIET ON THE WESTERN FRONT (Universal Pictures 1930).

4.   In Germany, the number of newly published books about war rose from two hundred in 1926 to over four hundred in 1930 and over five hundred in 1933. DAVID STEVENSON, CATACLYSM: THE FIRST WORLD WAR AS POLITICAL TRAGEDY 462 (2004). Britain experienced a war-books boom from 1928 through the early 1930s, including Robert Graves's *Goodbye to All That* in 1929 and Vera Brittain's *Testament of Youth* in 1933.

5.   Stevenson gives the grand total of military war dead as 9,450,000. STEVENSON, *supra* note 4, at 442.

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five men mobilized, some 10.5% of the nation's active male population.[6] German, Austro-Hungarian, and British losses, though fewer, were commensurable. On average, almost 900 Frenchmen and 1300 Germans died every day between the outbreak of the war in August 1914 and the armistice of November 1918.[7] In a single day, July 1, 1916, some 20,000 men in the British and Dominion forces were killed and another 40,000 wounded—deadlier than any day in the Second World War.[8]

The violence done to these soldiers (largely recruited from the civilian population) was unprecedented. The war saw the use of new and dreadful weapons of destruction, including tanks, flame throwers, mortars, hand grenades, submarines, airplanes, and poison gas.[9] The machine gun, a fairly primitive weapon when the war began, became a fearsome defensive weapon capable of dealing out death and injury on an industrial scale.[10] Combat on the western front took place mainly over a "terrain swept by bullets, shells and gas."[11] About forty percent of all those mobilized were wounded at least once, and "the gravity and type of wounds inflicted . . . had no precedent." Despite medical advances, "[t]he fate of those who were wounded was by and large atrocious."[12]

Remarque's novel conveys these terrible realities unsparingly. With brutal literalness, it describes the shuddering horror of an artillery bombardment (pp. 58–59, 106–107), the panic of a gas attack (pp. 68–69), the agonies of the wounded (pp. 71–72), the indifference of medical personnel (pp. 31–32), the ubiquitous presence of terror and death, and the untrammeled sovereignty of chance. Paul, the book's hero-narrator, and his comrades come to realize how deeply and enduringly the war has alienated them from the world outside the front. One says: "Two years of shells and bombs—a man won't peel that off as easy as a sock" (p. 87). Another adds: "The war has ruined us for everything" (p. 87). Small wonder, then, that the

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6. EUGEN WEBER, THE HOLLOW YEARS: FRANCE IN THE 1930s, at 11 (1994).

7. STÉPHANE AUDOIN-ROUZEAU & ANNETTE BECKER, 14–18: UNDERSTANDING THE GREAT WAR 21–22 (Catherine Temerson trans., Hill and Wang 2002) (2000).

8. *Id.* at 23.

9. We do not mean to imply that all these weapons were *invented* during the course of the First World War. For example, visions of waging war beneath the sea had long been entertained. Robert Fulton, the inventor of the steamship, published a book entitled *Torpedo War and Submarine Explosions* in 1810. *See* Larry R. Smart, *Evolution of the Torpedo Boat*, 23 MIL. AFF. 97 (1959). But the world's first functional, operational submarine, the U.S. Navy's *Holland*, was commissioned only in 1900. U.S. NAVY, 100 YEARS FROM THE DEPTHS—SEAPOWER: THE EARLY YEARS, http://www.navy.mil/navydata/cno/n87/images/earlyyears.pdf.

10. With deadly efficiency and "mechanical casualness," a machine gun could wipe out an entire battalion of six hundred to eight hundred men in three minutes. JOHN ELLIS, SOCIAL HISTORY OF THE MACHINE GUN 142 (1975). So devastating were they that British Prime Minister Lloyd George attributed almost eighty percent of the war's casualties to the machine gun. *Id.*

11. AUDOIN-ROUZEAU & BECKER, *supra* note 7, at 27.

12. *Id.* at 24.

immense success of *All Quiet on the Western Front* was acclaimed by some as "a sort of plebiscite in favor of peace."[13]

Remarque's novel was primarily an exercise of imagination rather than of memory—not so much a depiction of the war as a "passionate evocation" of the general public mood of "dissatisfaction, confusion, and yearning" that pervaded Europe and the world at the end of the 1920s.[14] It would be a mistake to characterize that public mood as "pacifist" in an absolute sense[15]: even in Britain, which had the strongest peace movement during the interwar years, the largest pacifist society had only 136,000 members at its peak in 1936.[16] A kind of fatigue settled in after the war, however, most clearly in France and Britain.[17] That fatigue may help explain those two nations' policy of appeasement in the late 1930s, culminating in the infamous Munich Pact of 1938.[18]

If Remarque's work displayed the futility of the war, that of his countryman Ernst Jünger, another survivor of the trenches, sought to evoke the war's inner beauty and meaning.[19] While Remarque's narrator says "we believe in the war" despairingly, Jünger says it exultantly. Jünger thought that his fellow combatants were mistaken to ask what idea or cause gave meaning to the war: "[T]hey did not understand that the war *was* the meaning of their lives."[20] Artists like Remarque and Jünger showed that reflection on the experience of war could unfold in either of two directions. For Remarque, war is meaningless, nothing is worth killing or dying for, and peace is worth any price, even conquest and defeat. For Jünger, war is an ineluctable necessity of the human condition, and while we cannot escape our fate, we can transcend it by finding that the experience of war gives life meaning.[21] (For

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13. WEBER, *supra* note 6, at 18. On the other hand, the book was also denounced by reactionary and militarist forces. In 1930, under the threat of Nazi demonstrations, the Weimar Republic banned the American film adaptation as a threat to Germany's image. *See* STEVENSON, *supra* note 4, at 462.

14. Eksteins, *supra* note 2, at 362.

15. *See* Solomon Wank, *Introduction* to DOVES AND DIPLOMATS: FOREIGN OFFICES AND PEACE MOVEMENTS IN EUROPE AND AMERICA IN THE TWENTIETH CENTURY 11 (Solomon Wank ed., 1978).

16. *See* GEORGE L. MOSSE, FALLEN SOLDIERS: RESHAPING THE MEMORY OF THE WORLD WARS 197 (1990); *see also* John Braeman, *Power and Diplomacy: The 1920's Reappraised*, 44 REV. POL. 342, 346 (1982) (noting the limited influence of pacifism on American interwar policy).

17. *See* WEBER, *supra* note 6, at 17 (describing France); STEVENSON, *supra* note 4, at 468 (describing Britain).

18. Agreement Concluded at Munich, Sept. 29, 1938, *available at* http://www.yale.edu/lawweb/avalon/imt/munich1.htm.

19. For a brilliant, brief description of Jünger's writing on the First World War, see CHRISTOPHER COKER, WAR AND THE 20TH CENTURY: A STUDY OF WAR AND MODERN CONSCIOUSNESS 118–21 (1994).

20. *Id.* at 119.

21. *See* CHRISTOPHER COKER, THE FUTURE OF WAR: THE RE-ENCHANTMENT OF WAR IN THE TWENTY-FIRST CENTURY 14, 66–7 (2004).

many, the events of 1914–18 excluded a third possibility: that war could serve what Hegel called the "ethical idea" embodied in the state.[22])

Some would argue that the Remarquean belief represents the long-term trend and that the First World War in particular was a catalytic event that marked the end of warfare as one of mankind's master institutions.[23] But at least in Central Europe over the course of the 1920s and 1930s, the Jüngerian belief prevailed: Ernst Nolte, for instance, characterized the interwar period as the "era of fascism."[24]

II. THE PURSUIT OF PEACE THROUGH INTERNATIONAL LAW: 1919–1939

Remarque spoke for the millions of people in the interwar period who longed for an end to armed conflict. Those longings were expressed in law as well as in literature. An impressive body of international law developed after the Versailles Treaty that was specifically designed to prevent the recurrence of war. Yet by 1939, only a decade after *All Quiet on the Western Front* was published, the world stood on the brink of another, even more destructive war, and the tremendous legal structure that had been erected to prevent such a catastrophe lay in ruins. While noble in its goals, the peace-through-law movement failed because it was built on unrealistic assumptions about the malleability of national self-interests and overconfidence in the efficacy of law.

The interwar legal regime, centered on the idea of collective security, was an outgrowth of three seminal documents—Woodrow Wilson's "Fourteen Points,"[25] the Versailles Treaty,[26] and the Covenant of the League of Nations.[27] Three major trends, linked together under "the famous formula 'Arbitration, Security, and Disarmament,'"[28] were to dominate the formation of the law of war in the interwar period.

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22.   *See id.* at 13–14; *see also* Steven B. Smith, *Hegel's Views on War, the State, and International Relations*, 77 AM. POL. SCI. REV. 624, 624–629 (1983). The Hegelian position is represented in Remarque's novel by the figure of Dr. Kantorek, the schoolmaster who explains to Paul and his comrades "the classical conception of the Fatherland" that demands "a renunciation of personality." P. 22.

23.   *See* JOHN MUELLER, THE REMNANTS OF WAR 39–49 (2004). The German sociologist Gunnar Heinsohn has argued provocatively that after losing ten million dead in the First World War—overwhelmingly young males of fighting age—Europe entered into a secular demographic decline that does much to account for that continent's current antiwar sentiment. *See* Gunnar Heinsohn, Population, Conquest and Terror in the 21st Century (Aug. 2005, on file with the authors).

24.   ERNST NOLTE, THREE FACES OF FASCISM: ACTION FRANÇAISE, ITALIAN FASCISM, NATIONAL SOCIALISM 3 (Leila Vennewitz trans., Holt, Rinehart and Winston 1966) (1963).

25.   Woodrow Wilson, The Fourteen Points Address (Jan. 8, 1918), *in* 45 THE PAPERS OF WOODROW WILSON 536 (Arthur S. Link ed., 1984).

26.   Treaty of Versailles, June 28, 1919, 2 Bevans 43.

27.   League of Nations Covenant.

28.   A.C.F. BEALES, THE HISTORY OF PEACE: A SHORT ACCOUNT OF THE ORGANISED MOVEMENTS FOR INTERNATIONAL PEACE 313 (1931).

First, the prewar European "balance of power" system was thought to have failed to maintain the peace and to be inherently unstable.[29] Thus the interwar period saw the formation of international agreements that called for various kinds of collective-security measures designed to prevent or punish offensive war.[30] Second, the international system began to create permanent judicial and arbitral institutions intended to foster peaceful dispute resolution in accordance with international law.[31] Third, as an outgrowth of Article 8(1) of the League Covenant,[32] the interwar legal regime witnessed "the most sustained program of international disarmament in history."[33]

In addition, three further developments were at work. First, it was widely acknowledged that the prewar Hague Conventions had failed to effectively regulate new forms of weaponry.[34] Treaties were accordingly made

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29.   In his "Peace Without Victory" speech of January 22, 1917, Woodrow Wilson denied that a new European balance of power could produce a "stable equilibrium." Woodrow Wilson, A League for Peace, S. Doc. No. 64-685, at 5 (1917). And in his speech presenting the Versailles Treaty to the Senate on July 10, 1919, Wilson identified the balance of power as the cause of the War. Woodrow Wilson, Treaty of Peace with Germany, S. Doc. No. 66-50, at 10 (1919). For a searching account of the Wilsonian vision and its aversion to the use of a balance-of-power approach to maintaining peace, see PHILIP BOBBITT, THE SHIELD OF ACHILLES: WAR, PEACE, AND THE COURSE OF HISTORY 359–60 (2002). *See also* THOMAS J. KNOCK, TO END ALL WARS: WOODROW WILSON AND THE QUEST FOR A NEW WORLD ORDER 112–15, 195–96 (1992).

30.   *E.g.*, General Treaty of Renunciation of War as an Instrument of National Policy, Aug. 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 57 [hereinafter Pact of Paris].

31.   The greater use of international arbitration or adjudication as a means of promoting peace had been an American foreign policy objective for some decades before the League Covenant. *See generally* CALVIN DEARMOND DAVIS, THE UNITED STATES AND THE FIRST HAGUE PEACE CONFERENCE (1962). *See also* John Hay, *Instructions to the International (Peace) Conference at The Hague, 1899, in* 2 THE HAGUE PEACE CONFERENCES OF 1899 AND 1907 6–16 (James Brown Scott ed., 1909).

32.   In this clause, the League's member states "recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." League of Nations Covenant art. 8, para. 1. This clause in turn derived from the fourth of the "Fourteen Points." Wilson, *supra* note 25, at 537.

33.   WALTER RUSSELL MEAD, SPECIAL PROVIDENCE: AMERICAN FOREIGN POLICY AND HOW IT CHANGED THE WORLD 317 (2001). These efforts included the Washington Naval Conference of 1921–22, *see* Treaty Between the United States of America, the British Empire, France, Italy, and Japan, Feb. 6, 1922, T.S. No. 671, and the London Naval Conference of 1930, *see* International Treaty for Limitation and Reduction of Naval Armament, *opened for signature* Apr. 22, 1930, 46 Stat. 2858.

34.   The Hague Conference of 1899 had prohibited "the use of projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases," but "does not seem to have considered this declaration in depth or to have benefited from any significant experience with the use of the forbidden weapon." Detlev F. Vagts, *The Hague Conventions and Arms Control*, 94 AM. J. INT'L L. 31, 35 (2000). A broader ban appeared in the 1907 Hague Convention Respecting the Laws and Customs of War on Land that prohibited the use of poison gas. *Id.* The belligerents disputed whether these provisions prohibited the use of poisonous gases in combat, and Germany had taken the position that they did not. *See* Int'l Comm. of the Red Cross, *ICRC in WWI: efforts to ban chemical warfare*, Nov. 11, 2005, http://www.icrc.org/Web/eng/siteeng0.nsf/html/57JQGS.

Likewise, the traditional law of neutral rights had proven badly adapted to submarine warfare, giving rise to intractable legal problems. *See* EDWARD H. BUEHRING, WOODROW WILSON AND THE BALANCE OF POWER 18–57, 133 (1955).

or proposed in the interwar period to repair those omissions.[35] The results were mixed.[36] The Geneva Gas Protocol of 1925[37] reflected "the abhorrence and outrage with which the international community reacted to the use of gas in the First World War" and marked the successful culmination of earlier attempts to regulate and limit chemical warfare.[38] On the other hand, the draft Hague Air Rules of 1923[39] "never were adopted by any nation[;] they were an immediate and total failure."[40]

Second, the demand to outlaw war was expressed, not only in agreements designed to define and deter aggressive war, but also in provisions imposing individual criminal liability on the political and military leaders of the aggressor nations. This trend—which originated in wartime demands to bring the Kaiser to trial and was reflected in Article 227 of the Versailles Treaty—entailed a radical departure from prior rules of war that had privileged such leaders against personal liability.[41] The international criminalization of war was eventually implemented at the Nuremberg Trial of 1946.[42]

Finally, there was an extremely tentative development—unfulfilled at the time—for the creation of a pan-European union of states.[43]

All these efforts were anchored by the idea of collective security.[44] Woodrow Wilson had conceived that idea as follows:

> [C]ollective security involve[d] the creation of an international system in which the danger of aggressive warfare by any state is to be met by the

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35.   *See, e.g.,* GEOFFREY BEST, WAR AND LAW SINCE 1945, at 49–51 (1994); Chris af Jochnick & Roger Normand, *The Legitimation of Violence: A Critical History of the Laws of War*, 35 HARV. INT'L L.J. 49, 78–79, 83–84 (1994).

36.   For an overview, see Luc Reydams, A la guerre comme à la guerre: *patterns of armed conflict, humanitarian law responses and new challenges*, 88 INT'L REV. RED CROSS 729, 736–37 (2006).

37.   Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26.1 U.S.T. 571.

38.   R.R. Baxter & Thomas Buergenthal, *Legal Aspects of the Geneva Protocol of 1925*, 64 AM. J. INT'L L. 853, 857 (1970).

39.   Hague Rules of Air Warfare, drafted Dec. 1922–Feb. 1923, *reprinted in* THE LAWS OF ARMED CONFLICTS 207 (Dietrich Schindler & Jiří Toman eds., 3d rev. ed. 1988).

40.   W. Hays Parks, *Air War and the Law of War*, 32 A.F. L. REV. 1, 31 (1990).

41.   For a review of earlier law on this point, see Robert J. Delahunty, *Paper Charter: Self-Defense and the Failure of the United Nations Collective Security System*, 56 CATH. U. L. REV. 871, 895–96 (2007).

42.   *See* STEPHEN C. NEFF, WAR AND THE LAW OF NATIONS: A GENERAL HISTORY 321–22 (2005).

43.   For an early and influential statement of this idea, see RICHARD N. COUDENHOVE-KALERGI, PAN-EUROPE (1926). The proposal was in large part designed as a preventative to war. *See id.* at 105–17. Aristide Briand, the French foreign minister who had been an honorary President of Coudenhove-Kalergi's Pan-European Union organization, made proposals in 1929–30 for a "Federal European Union" with a permanent assembly and a common market. STEVENSON, *supra* note 4, at 437.

44.   For an analysis of the concept of collective security, see John J. Mearsheimer, *The False Promise of International Institutions, in* THEORIES OF WAR AND PEACE 329, 357–59 (Michael E. Brown et al. eds., 1998).

avowed determination of virtually all other states to exert pressure of every
necessary variety—moral, diplomatic, economic, and military—to frustrate
attack upon any state.[45]

This international security system was designed to be collective in a full and
exact sense: "[I]t purports to provide security *for* all states, *by* the action of
all states, *against* all states which might challenge the existing order by the
arbitrary unleashing of their power."[46] Collective security rejected the status
quo balance-of-power doctrine that international equilibrium could be main-
tained by shifting coalitions comprising small numbers of powerful states.[47]
The League of Nations Covenant adumbrated a (weak) form of collective
security under which all League members pledged to render assistance to
any fellow member that had been illegally attacked.[48]

But the idea of collective security proved to be illusory. Several flaws
doomed Wilson's system. It was inadequate to keep the general peace or
even to meet the specific security needs of nations like France,[49] if only be-
cause the United States soon opted to remain outside the League. Nothing in
the Covenant mandated that League members provide military assistance for
the defense of a fellow member that had been attacked. And Wilson himself
plainly recognized that Article 10—the core element of the League's collec-
tive security system—did not create a binding legal obligation on any of its

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45.   INIS L. CLAUDE, JR., POWER AND INTERNATIONAL RELATIONS 110 (1962).

46.   *Id.*

47.   For an account of a balance-of-power system of international relations, see MICHAEL W.
DOYLE, WAYS OF WAR AND PEACE: REALISM, LIBERALISM, AND SOCIALISM 161–74 (1997). The First
World War was widely perceived as "a conclusive demonstration that the balance of power system
could not provide security for either the powerful or the small nations of the world." Alfred Vagts &
Detlev F. Vagts, *The Balance of Power in International Law: A History of an Idea*, 73 AM. J. INT'L
L. 555, 576 (1979). And many jurists—Americans prominently among them—condemned the bal-
ance-of-power system in favor of what they saw as a more moral system. *Id.* at 576–77; *see also*
Christian Lange, *Histoire de la doctrine pacifique et de son influence sur le développement du droit
international*, 13 RECUEIL DES COURS 171, 222 (1926) (Neth.). The Wilsonian complaint that bal-
ance-of-power systems are inherently unstable may, however, be mistaken. *See* Marc Trachtenberg,
The Question of Realism: A Historian's View, 13 SECURITY STUD. 156 (2003).

48.   By Article 10, League members undertook "to respect and preserve as against external
aggression the territorial integrity and existing political independence of all Members of the
League." League of Nations Covenant art. 10. Article 11 required the League to "take any action that
may be deemed wise and effectual to safeguard the peace of nations." *Id.* art. 11. And Article 15
required League members, in the event of a dispute between them that was "likely to lead to a rup-
ture" but that was not submitted to arbitral or judicial settlement to "submit the matter to the
[League] Council." *Id.* art. 15. Finally, under Article 16, a League member that resorted to war in
disregard of these obligations would "*ipso facto* be deemed to have committed an act of war against
all other Members of the League," which were then pledged to implement various economic and
other nonmilitary sanctions. *Id.* art. 16. Further, in such a case, it was the duty of the League Coun-
cil "to recommend to the several Governments concerned what effective military, naval or air force
the Members of the League shall severally contribute to the armed forces to be used" against the
aggressor. *Id.* art. 16.

49.   During and after the negotiations over the Versailles Treaty, France had remained wedded
to traditional balance-of-power doctrine and had unsuccessfully sought Anglo-American guarantees
of its security against what it saw as the inevitable renewal of conflict with Germany. *See, e.g.*,
ARNOLD WOLFERS, BRITAIN AND FRANCE BETWEEN TWO WARS 14–20 (1940).

members to furnish troops or other military support to a victim of armed aggression.[50]

Throughout much of the 1920s, therefore, France sought other means of preserving the general European peace while protecting its national security. After several false starts,[51] the British and French jointly considered the draft Geneva Protocol of 1924, an amendment to the League Covenant that would have instituted a near-universal system of compulsory arbitration, enforced judicial and arbitral decisions by sanctions, and prohibited "aggressive war."[52] The basic standpoint of the proposed Geneva Protocol (at least as one contemporary author saw it) was as follows:

> [W]ar must be rendered altogether unwarrantable except when waged by the entire League against an aggressor State. . . . The Protocol accordingly outlawed "aggressive war," took cognizance of no hostilities except "in resistance to acts of aggression" or at the bidding of the League Council, and endeavored to furnish a logical chain of peaceful machinery for settlement which would obviate deadlock. The solution chosen was compulsory arbitration . . . . This complete system of arbitration provided, it was claimed, an "automatic test" of aggression.[53]

But political reality again intruded. In Britain, Stanley Baldwin's Conservative government succeeded Ramsay MacDonald's Labour government in October 1924, and the Protocol went unratified, in part because the new government was unwilling to shoulder a commitment to maintain peace throughout the whole of Europe, including areas of little strategic concern to Britain.[54] The more modest Locarno Pact of 1925,[55] which was founded to a

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50. *See, e.g.*, Woodrow Wilson, An Address in the City Auditorium in Pueblo, Colorado (Sept. 25, 1919), *in* 63 THE PAPERS OF WOODROW WILSON 500 (Arthur S. Link ed., 1990). Article 10 of the Covenant was in fact the outcome of a political dilemma for Wilson. On the one hand, he wanted the League to function effectively as the guarantor of peace in the post–First World War order, and hence he wanted its collective security provisions to have some bite. On the other hand, if the Versailles Treaty were construed to grant the League the legal authority to command American forces to enter a war in defense of a victim of aggression, the U.S. Senate would reject it. Wilson attempted to escape from the horns of this dilemma by "mak[ing] the [Covenant] obligations [to deter aggression] as compelling as possible, but . . . leav[ing] the commitment to the collective use of force to resist aggression just short of binding or absolute." G. JOHN IKENBERRY, AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE REBUILDING OF ORDER AFTER MAJOR WARS 146–47 (2001); *see also* Lloyd Ambrosius, *Woodrow Wilson, Alliances, and the League of Nations*, 5 J. GILDED AGE & PROGRESSIVE ERA 139, 148–51 (2006).

51. These efforts included a draft Treaty of Mutual Assistance, which was presented to the League Assembly in September 1923. "The Draft Treaty obligated all members to come to the aid of a victim of aggression (although military action was not required on another continent) with the Council allocating specific responsibilities." SALLY MARKS, THE ILLUSION OF PEACE: INTERNATIONAL RELATIONS IN EUROPE 1918–1933 60 (1976). France and other continental nations approved the proposal, but Britain rejected it in July 1924. *Id.*

52. *See* John F. Williams, *The Geneva Protocol of 1924 for the Pacific Settlement of International Disputes*, 3 J. BRITISH INST. INT'L. AFF. 288, 293 (1924).

53. BEALES, *supra* note 28, at 314.

54. *See* F.P. WALTERS, A HISTORY OF THE LEAGUE OF NATIONS 283–84 (one vol. ed. 1960).

55. Treaty of Mutual Guarantee Between Germany, Belgium, France, Great Britain and Italy, Oct. 16, 1925, 1292 L.N.T.S. 290 [hereinafter Locarno Pact]. The Locarno Pact was "aptly called a security pact between all, rather than an alliance against a particular state or group of states."

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great extent on the unratified Geneva Protocol, furnished a partial substitute. The Locarno Pact concerned only five Western European states and so embodied collective security of a limited, regional scope. After first guaranteeing the Versailles Treaty borders between Germany and its western neighbors France and Belgium, and then pledging that the three states would not attack or invade each other, the Locarno Pact committed all parties to furnish immediate assistance to the injured party in the event of a "flagrant breach."[56]

The culmination of the interwar trend toward collective-security arrangements came in 1928 with the Pact of Paris (or the Kellogg-Briand Pact).[57] Aristide Briand, the French foreign minister, proposed a bilateral pact with the United States to preclude any American intervention in European affairs that would bring it into conflict with France.[58] Frank Kellogg, the U.S. secretary of state, responded by offering to open the Pact to all the principal nations of the world and to embody therein an agreement to outlaw war.[59] This counterstroke was masterful: it enabled the United States to seize the lead in promoting world peace while also permitting it to avoid unwelcome entanglement in European politics. Outwitted by the boldness of the American proposal, the French, after some resistance, agreed.[60]

The terms of the Pact of Paris are ostensibly simple and straightforward. The operative clause is Article I, in which the parties "solemnly declare . . . that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another."[61] Further, under Article II the parties "agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."[62] The Pact of Paris was to be enforced by exposing any violator to the risk that the other parties might use force against it.[63] It therefore represented a type of collective-security system in which all were free (but not obliged) to come to the aid of each (in the event

William E. Lingelbach, *The History of Post-War Peace Proposals Beginning With the League Covenant*, PROC. ACAD. POL. SCI., Jan. 1929, at 10, 20. Accordingly, it exemplified the trend towards collective-security arrangements over adherence to balance-of-power doctrine.

56.   Locarno Pact, *supra* note 55, art. 4(3). The commitment was made subject to some qualifications.

57.   Pact of Paris, *supra* note 30.

58.   Jonathan Zasloff, *Law and the Shaping of American Foreign Policy: The Twenty Years' Crisis*, 77 S. CAL. L. REV. 583, 627–28 (2004).

59.   *Id.* at 628. Kellogg may have been motivated, at least in part, by the desire to play to a domestic political constituency—the Peace Movement. *See* JAMES T. SHOTWELL, WAR AS AN INSTRUMENT OF NATIONAL POLICY AND ITS RENUNCIATION IN THE PACT OF PARIS 83–92 (1929).

60.   ROBERT H. FERRELL, PEACE IN THEIR TIME: THE ORIGINS OF THE KELLOGG-BRIAND PACT 144–69 (1952).

61.   Pact of Paris, *supra* note 30, art 1.

62.   *Id.* art. 2.

63.   This interpretation is corroborated by both Briand and Kellogg. *See* Delahunty, *supra* note 41, at 896–97; *see also* Lingelbach, *supra* note 55, at 216–17 (explaining how the Pact was interpreted by Secretary Kellogg and MacKenzie King, the prime minister of Canada).

of a wrongful attack). Secretary Kellogg claimed that the Pact would be "an additional safeguard and a great moral obligation and in my judgment [it] will have a most beneficent effect."[64]

Critics of the Pact of Paris, on the other hand, were not slow to recognize its flaws: "As numerous commentators at the time emphasized, the treaty was 'a letter to Santa Claus,' 'a New Year's resolution,' or an 'international kiss' not 'worth a postage stamp.'"[65] More recently, Jonathan Zasloff described the Pact's determination to outlaw war as "a way of avoiding realpolitik. Law served as a substitute for politics."[66] From this perspective, the Pact of Paris was "a completely useless paper instrument, greeted with extraordinary fanfare and delusions of grandeur."[67] And that is what—judging by the Pact's ineffectiveness in preventing another world war—it was to prove.

III. THE PURSUIT OF PEACE THROUGH INTERNATIONAL LAW: 1945 TO THE PRESENT

Reflecting the antiwar mood expressed by *All Quiet on the Western Front*, the interwar effort to prevent armed conflict relied upon the linked concepts of collective security and international institutions. This was not just the idle invention of Woodrow Wilson: Europeans and their national leaders placed great faith in the idea that international institutions could prevent war by changing the decisions and even the interests of states. And it was far from a historical quirk limited to the interwar period. After the Second World War, the Allies, led by the United States, attempted to create in the United Nations a more perfect successor to the League of Nations. But they took the wrong lessons from history by relying on international law and institutions to provide a new collective security. Their attempt would fall prey to the same problems.

We are again in the midst of a period where multilateralism is all the rage. Some scholars, for example, attribute the end of military conflict in Europe to international institutions, including NATO and the EU.[68] Some decry the Bush administration's decision to wage war in Iraq because (they argue) it failed to receive approval from the UN Security Council and to obey the UN Charter.[69] Even though the United States is confronted with new security threats from international terrorism, rogue states, and the proliferation of weapons-of-mass-destruction technologies, some—such as Kofi Annan, the former UN Secretary General—have argued that the answer is to

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64. Zasloff, *supra* note 58, at 628–29.

65. Robert Dallek, *National Mood and American Foreign Policy: A Suggestive Essay*, 34 Am. Q. 339, 360 (1982).

66. Zasloff, *supra* note 58, at 626–27.

67. *Id.* at 629.

68. For a critical discussion of this literature, see Mearsheimer, *supra* note 44.

69. *E.g.*, Richard A. Falk, *What Future for the UN Charter System of War Prevention?*, 97 Am. J. Int'l L. 590, 596–98 (2003).

reinvigorate the United Nations rather than to seek security alternatives.[70]
Critics of current American foreign policy argue that the United States
should follow the UN Charter scrupulously in its decisions to use force.[71]
While the Wilsonian collective-security approach has repeatedly failed the
test of practice, many are convinced that it is at least a normatively superior
system to the balance-of-power or realist approach to international politics
that has held sway, as a descriptive matter, since at least the Peace of
Westphalia in 1648.[72]

A collective-security system attempts to delegitimize the use of force in
international relations by replacing power politics with a criminal-law un-
derstanding of conflict. It requires states to give up the right to use force
except in self-defense. In exchange, a supranational institution holds a mo-
nopoly on violence to prevent aggression. Only when the supranational
institution fails to protect a state from attack can it use force to defend itself.
The collective-security approach views the international system as inher-
ently peaceful and war as an unnatural aberration launched by criminal
leaders. Its underlying premise, shared by internationalists from Thomas
Paine to Woodrow Wilson, is that "mankind would naturally live in a state of
perfect harmony if it were not for the vested interests of governments" and
that "[t]he whole 'war system' was contrived to preserve the power and em-
ployment of princes, statesmen, soldiers, diplomats and armaments
manufacturers, and to bind their tyranny ever more firmly upon the necks of
the people."[73]

This approach obviously imposes a normative dimension on the use of
force. Immoral uses become illegal "aggression," while moral uses become
legal "self-defense." Viewing war through the lens of criminal law led natu-
rally to the Nuremburg trials, where Germany's leaders were tried for the
common-law crime of aggression, and ultimately to the Rome Statute's
creation of an International Criminal Court.[74] Earlier, Wilson had con-
demned Germany's conduct in the First World War in light of the same
criminal-law paradigm. As he commented at the end of the Versailles peace
conference, the terms of the treaty were "hard—but the Germans earned

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70. For a critical discussion of Annan's proposals, see John C. Yoo, *Force Rules: UN Reform
and Intervention*, 6 CHI. J. INT'L L. 641 (2006).

71. *See, e.g.*, Allen S. Weiner, *The Use of Force and Contemporary Security Threats: Old
Medicine for New Ills?*, 59 STAN. L. REV. 415 (2006).

72. CLAUDE, *supra* note 45, at 31.

73. MICHAEL HOWARD, WAR AND THE LIBERAL CONSCIENCE 31 (1978). Thus, although
Wilson originally maintained that the "military masters" of Germany were responsible for the con-
flict and that the German people were their mere "pawns and tools," he came to the conclusion as
the war progressed that the German people were behind their rulers' militarism. *See* Manfred F.
Boemeke, *Woodrow Wilson's Image of Germany*, *in* THE TREATY OF VERSAILLES: A REASSESSMENT
AFTER 75 YEARS 603, 610–12 (Manfred F. Boemeke et al. eds., 1998).

74. Viewing war as a matter of criminal law may also make war more difficult to end, as the
nation that loses will be viewed as the illegal and immoral aggressor, subject to a punitive peace. *See*
Michael Howard, *Temperamenta Belli: Can War be Controlled?*, *in* RESTRAINTS ON WAR: STUDIES
IN THE LIMITATION OF ARMED CONFLICT 1, 6 (Michael Howard ed., 1979).

that. And I think it is profitable that a nation should learn once and for all what an unjust war means in itself."[75]

Wilson's idea that aggressive war should be considered a crime rather than merely an extension of state policy anticipated Remarque's vision of the sheer senselessness of war. But the Wilsonian attempt to control aggression by using institutions like the League of Nations depended on the belief that international social norms could be fundamentally reshaped in favor of collective security—a belief that would make a constructivist international-relations scholar proud.

Problems immediately arose with this effort to change international politics. First, the norms of international politics did not change, even in the wake of the horrors of the First World War. Nations continued to use force or the threat of force to resolve international disagreements. The very fact that nations felt the need for security guarantees like the Locarno Pact underscores that they did not put their faith in the League's collective-security arrangements. Second, international institutions could not independently affect state decisions in the realm of security. The League of Nations succeeded in resolving some minor interstate disputes in its first decade but quickly proved unable to address significant military conflict. War occurred between Greece and Turkey and between Russia and Poland in the early 1920s. More serious wars in the 1930s, such as Japan's invasions of Manchuria and China, Italy's invasion of Ethiopia, and ultimately the events that led to the outbreak of the Second World War, demonstrated that the system of collective security could not prevent all wars.

Some believe that the fault lay in the specific features of the League, not in the idea of collective security itself. And undoubtedly the League had serious flaws. One chief problem was the absence of the United States after the U.S. Senate rejected the Versailles Treaty. Without the most powerful nation in the world, the League could not preserve the peace. Further, the League lacked any real enforcement mechanism. It could issue a decree that a nation had violated the ban on war, but it had no ability to force nations to obey or to convince third parties to intervene. Moreover, diplomats during the interwar years seemed to believe that the international system could be made to operate like the domestic legal system; that nations would obey voluntarily without the need for coercive sanctions to ensure compliance. They hoped that these new norms might become self-executing due to the enforcement of treaties in domestic legal systems and that violators would suffer sufficient harm in international opinion to deter a resort to armed conflict.[76]

But blaming the League itself simply covers up the more crucial reason behind the failure of collective security to prevent another war. The neces-

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75.   Boemeke, *supra* note 73, at 614. What Wilson failed to appreciate, however, was that "one man's justice might be another man's abomination" and that Germany, far from accepting Wilson's opinion on the matter, might have been left bitter, exasperated, and vengeful by the punishment he meted out. *Id.* at 613.

76.   *See* Zasloff, *supra* note 58, at 650–52.

sary changes in international norms were not feasible. The conventional historical account claimed that the roots of the Second World War rested in the harsh peace of Versailles, particularly the large reparations payments owed by Germany to France. But historians have come to doubt that reparations were the true cause.[77] The deeper structural problem was the "German Question": Germany's unification had created a nation in the middle of Europe that was more powerful than the nations around it. The Cold War solved that problem by dividing Germany for half a century.

Ironically, both the reaction to the horrors of the First World War—expressed in *All Quiet on the Western Front*—and the new norms the League aspired to bring forth undermined and distracted attention from realistic measures that could have established a more durable peace. The United States could have formed a permanent alliance with France and Britain and based troops in France to more effectively solidify the peace. An American military presence in Europe would have balanced Germany's greater economic and military potential, addressed France's security concerns, and encouraged both nations to pursue political and economic accommodation.[78] But such measures would have run counter to the Wilsonian idea that balance-of-power politics and alliances had produced the First World War and thus had to be supplanted by collective security, transparency in international relations, and reliance on world opinion to sanction aggressive states.

Nor has collective security fared any better since the reforms implemented by the United Nations supposedly cured the problems of the League.[79] The Allies created a Security Council with permanent members comprising the great powers, including the United States. The Security Council has the power to issue binding orders to member states to act against nations that threaten international peace and security. Nations are supposed to designate troops available to carry out UN missions to keep the peace.[80]

Yet the Cold War soon doused any promise that the United Nations could guarantee international peace. The United States and the Soviet Union used their vetoes to block any effective action by the Security Council. The General Assembly became a forum for anti-Western and anti-American declarations by various third-world nations. The United Nations was unable to stop numerous wars, ranging from the American intervention in Vietnam to the Soviet invasion of Afghanistan. During the Cold War alone, the United

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77. William R. Keylor, *Versailles and International Diplomacy, in* THE TREATY OF VERSAILLES: A REASSESSMENT AFTER 75 YEARS, *supra* note 73, at 469, 500–03; Marc Trachtenberg, *Versailles Revisited,* 9 SECURITY STUD. 191 (2000).

78. *See* Keylor, *supra* note 77, at 197–99.

79. "[T]here is more continuity between the world before and after 1945 than is usually acknowledged. World War II functions not as a caesura, but rather as an accelerator of preexisting tendencies." Antoine Fleury, *The League of Nations: Toward a New Appreciation of Its History, in* THE TREATY OF VERSAILLES: A REASSESSMENT AFTER 75 YEARS, supra note 73, at 507, 518.

80. For discussion, see Michael J. Glennon & Allison R. Hayward, *Collective Security and the Constitution: Can the Commander in Chief Power Be Delegated to the United Nations?,* 82 GEO. L.J. 1573 (1994).

States used force in Korea, Cuba, the Dominican Republic, Vietnam, Cambodia, Laos, Grenada, Panama, Libya, Sudan, Lebanon, and the Persian Gulf. Only the Korean War was authorized by the United Nations; the international body played no meaningful role in preventing or ending the rest.

It is true that the number of interstate armed conflicts in the post-1945 period has declined compared to earlier historical periods when corrected for the sharp rise in the number of nations since the end of the Second World War.[81] The large, multistate wars that produced the casualties and destruction depicted in *All Quiet on the Western Front* have virtually disappeared. During the post-1945 period, no major interstate wars occurred in Western Europe or North America, nor did any direct conflicts occur between the great powers. Wars seeking territorial conquest also declined during this period. Remarque may have been satisfied with this development, but he would have hardly been pleased to witness the dramatic increase in the number of civil wars, much less the number of casualties in such conflicts.

Although there was hope at the end of the Cold War that the United Nations might finally fulfill its promise, it has since proven incapable of confronting serious security threats in the post–Cold War period, including the genocide in Rwanda, the collapse of Yugoslavia, and the ongoing killings in Darfur. The United Nations has made little difference in reducing the threat from al-Qaeda before September 11, and it has been noticeably absent from the effort to defeat al-Qaeda and the Taliban in Afghanistan. And even if the current war in Iraq violated international law, the United Nations' refusal to authorize the conflict did not stop the United States and its coalition from overthrowing the regime of Saddam Hussein. Further, the United Nations, having identified the dangers of Iranian and North Korean nuclear-weapons programs, has been unable to halt their progress.

The empirical record of collective security's failures makes all the more puzzling the renewed calls for stricter adherence to the UN Charter's rules on the use of force in the wake of the Iraq war. Some scholars argue that treaties such as the Charter can form the basis of a lasting peace because nations have a strong interest in compliance.[82] Treaty compliance does not arise out of the threat of military action or sanctions but from a nation's desire to develop a reputation for keeping cooperative bargains. Obeying treaties will identify a nation as a good partner, making future agreements more likely. But there is no proven causal link between a reduction in interstate warfare and the adoption of a collective-security model. The interests at stake in national security will most likely swamp any reputational gains from treaty compliance.

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81.   John Yoo, *Using Force*, 71 U. CHI. L. REV. 729, 747 (2004).

82.   For the leading works that assert that nations will comply with international law, see ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (1995), and LOUIS HENKIN, HOW NATIONS BEHAVE (2d ed. 1979).

Advocates for stricter adherence to the ideals of collective security mistakenly assume that the international legal system caused the relative stability and peace of the post–Second World War period. They neglect to ask whether reliance on international institutions has produced any measurable improvement in security. Scholars from other disciplines attribute the reduction in warfare not to the United Nations but rather to the balance-of-power politics that the United Nations was supposed to replace. Diplomatic historians, for example, argue that the superpower rivalry between the Soviet Union and the United States, and their sizable nuclear deterrents, suppressed great power conflict.[83] Realists in international relations attribute the long period of stability to the bipolar distribution of power within the international system.[84] Others believe that the existence of nuclear weapons has given rise to informal rules governing and restricting interstate conflict.[85] The failures of the collective-security approach ushered into existence by the League of Nations should serve as a warning to modern efforts to assure security through international institutions.

This is not to say that nations do not or cannot successfully cooperate at the international level through alliances or other forms of organization. But there are many reasons to doubt that such cooperation will succeed in security (as opposed to trade or international economics). First, and perhaps most importantly, it does not appear that collective security has ever succeeded. Nations have acted in their rational self-interest to maximize power and security for at least five centuries.[86] While nations have cooperated through alliances and even-broader concerts, they have pursued realist goals, and their cooperation has been temporary. Events since the Cold War show no move toward collective security. Even the wars led by the United States in the Persian Gulf in 1991, Afghanistan in 2001, and Iraq in 2003 can be explained by U.S. national-security concerns. If it is possible for nations to turn away from a narrow self-interest in improving power and security, they have yet to do so.

Second, theoretical challenges make reliance on collective security unlikely. States must replace their traditional concerns about the security threats posed by other nations with trust.[87] They must be willing to reduce their military capabilities—such forces might be a temptation to offensive operations—and trust that other nations will come to their assistance if attacked. Nations must be willing to intervene to counter aggression, even if (or perhaps especially if) their vital national interests are not at stake. This requires that a state not just change its view of the world but also have confidence that other nations have replaced their considerations of narrow

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83. *See* JOHN LEWIS GADDIS, THE LONG PEACE: INQUIRIES INTO THE HISTORY OF THE COLD WAR 219–37 (1987).

84. *See, e.g.*, KENNETH N. WALTZ, THEORY OF INTERNATIONAL POLITICS 170–76 (1979).

85. *See generally* THEODORE CAPLOW, FORBIDDEN WARS: THE UNWRITTEN RULES THAT KEEP US SAFE (2007).

86. *See* Mearsheimer, *supra* note 44, at 44.

87. *Id.* at 30.

self-interest with collective security as well. So far, international institutions do not appear to have succeeded in convincing nations to make these important changes in their understanding of national interests or in their conduct.

Third, a collective-security regime could be subject to crippling collective-action problems. Collective security can be understood as an international public good, just as domestic law and order is a public good. Reducing the threat of international conflict will allow nations to reduce their military expenditures, reduce losses of life and property, and promote the conditions needed for international economic growth and development. Preventing conflict in different regions of the world will produce these benefits systemwide. One nation's enjoyment of international peace does not reduce the benefit to other nations: the consumption of international peace is thus nonrivalrous and nonexcludable. In fact, international security is the basis for solving other international problems, including global health and the environment.

Theory predicts that security, as an international public good, will be underproduced in the absence of an institution that can effectively tax all nations in proportion to benefits received.[88] Nations will be unlikely to support military actions in proportion to benefits received but instead will be tempted to free ride off the defense efforts of larger powers. This does not mean that no interventions will occur in which benefits accrue to free riders.[89] Nonetheless, such uses of force are likely the exception rather than the rule. Few if any nations will be able to fully internalize the costs and benefits of using force in these situations. Nations have shown great reluctance to use force to stop purely humanitarian disasters, such as in Rwanda and Somalia, even when the benefits to the international system were high and the relative commitment of troops was low. If the international system faces multiple problems and aggressors, it may not rest within the capabilities of any individual nation or alliance of nations to use force in all of these situations.

A final problem with the collective-security approach is that it assumes that the use of force is always a net negative for the international system except in cases of self-defense. But not all uses of force need constitute aggression. Military intervention to stop humanitarian disasters would be a desirable use of force, even if it violated the territorial integrity of a sovereign state. Preemptively attacking an enemy to forestall an even more destructive offensive or using force to eliminate a potential harm to the international system as a whole, such as an international terrorist organization or the acquisition of weapons of mass destruction by a rogue state, may be as well. While the impact of war described in *All Quiet on the Western Front* is indeed horrible, greater horrors may occur if nations abjure all uses of force.

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88.   *See* Yoo, *supra* note 81, at 784–94.

89.   A nation may intervene to prevent aggression if its expected benefits outweigh the expected costs, even though some of the benefits run to nonparticipating nations too.

The international legal system should adopt a rule that strikes the right balance between allowing use of force that benefits the international system and prohibiting aggression that harms it. Collective security as expressed in the UN Charter functionally bans almost all uses of force.[90] Instead, it could permit intervention beyond self-defense that addresses threats to international peace and security, but only if the Security Council approves.

CONCLUSION

Collective-security ideas that emerged from the First World War nobly sought to end the carnage depicted in *All Quiet on the Western Front*. The collective-security movement sought to create a system that protected the status quo by making existing national borders sacrosanct. Any violation of those borders would be treated like a criminal attack under a domestic legal system. But those who devised these rules could not have anticipated the very different threats confronting the international system today. Large, multistate conflicts have receded in the wake of the stability provided by the Cold War superpowers and now by the United States and its allies. International terrorism, failed states, rogue states, and the proliferation of weapons of mass destruction have emerged as the most serious threats to international security. Preventing these new threats from maturing may call for use of force that does not respect the territorial integrity of all nations to the same extent.

All Quiet on the Western Front reflected the reaction to the horrors of the First World War. It depicted war not just as destructive but also as utterly senseless. Such views led to the effort to replace balance-of-power politics with collective security as the new organizing principle in international relations. Collective security, however, has not worked because it sought to radically alter nations' definition of their self-interest in terms of power and security. Pursuit of the idealistic goal of world peace through international law diverted focus from more realistic measures that could have prevented the return of war in Europe. The experience of the interwar and postwar periods should serve as a cautionary tale for those who seek to solve the world's problems with a renewed faith in international law and institutions.

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90.   The Security Council's decisions are subject to the veto of the permanent members, which may block interventions that could enhance global welfare at the expense of their regional interests. Recent proposals for expansion of the Security Council to include more permanent members would only exacerbate these problems by increasing the number of vetoes and making collective decisions even more difficult to achieve.