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The Perpetual Pursuit of Peaceful Dispute Settlement

Roger Alford (General Editor) (Notre Dame Law School) · Monday, February 28th, 2022

One often maps the path of history as the sordid account of one bloody war after another. But if one were to mark history by the great moments of peace, then the modern era began at 2:00 p.m. on May 18, 1899. From across the globe, representatives of the world's most powerful nations gathered for a purpose without precedent. A purpose filled with an earnest hope, but undoubtedly and intimately grounded in the stark realism of humanity's flawed condition. The delegates who gathered that day aimed to sign a peace treaty before there was war, to draft an agreement to reduce arms and resolve future disputes peacefully. The gathering came to be known as the Hague Peace Conference of 1899. The Permanent Court of Arbitration was the crowning achievement of the Hague Conference. The momentum for arbitration had been growing for years, and the delegates seized the opportunity by securing the best mechanism that was acceptable to all the major powers. The [Hague Conference](#) “conveyed to the world the united views of all the assembled nations upon the wisdom and expediency of arbitration as a substitute for war.”

But it was not to last. On August 1, 1914, Europe was at war. [The Times](#) leader announced, “The great catastrophe has come upon Europe.” When the German Ambassador delivered the declaration of war on Russia, the Russian Foreign Minister said, “This is a criminal act of yours. The curses of the nations will be upon you.... You could have prevented the war with one word.” Britain's King George V, cousin of both the Kaiser and the Tsar, telegraphed the Tsar, “I cannot help thinking that some misunderstanding has produced this deadlock.” There was no misunderstanding. Despite every attempt to resolve the matter peacefully—including numerous invitations to resort to the Permanent Court of Arbitration and four powers conferences—Germany and Austria-Hungary ushered in the Great War, the first world war in history. The pacific dream of reaching the lofty summit of universal peace through international arbitration fell headlong into the abyss. Great aspirations and grand experiments were of little value in the face of bellicose allies bent on war.

After the Great War they tried again, this time not with the Permanent Court of Arbitration but with an international league of nations. Upon the birth of the League of Nations in 1919, Woodrow Wilson reflected on the singular achievement of his presidency:

These men did not come across the sea merely to defeat Germany.... They came to defeat forever the things for which the Central Powers stood.... The thing that these men left us, though they did not in their counsels conceive it, is the great instrument which we have just erected in the League of Nations. The League of Nations is the

covenant of governments that these men shall not have died in vain. It is for us ... to use our weapons of counsel and agreement to see to it that there never is such a war again.

There is much to criticize about the Treaty of Versailles and its principal architect Woodrow Wilson. A bad war was followed by a bad peace. But all was not lost, for Wilson had his League, albeit without his own country as a member. From those imperfect beginnings, the foundations of international society were born. A society of nations slowly developed. The League became the central pillar of civilization for two decades, and the forerunner to the United Nations, the European Union, and dozens of lesser international organizations. The statesmen who were in Paris in 1919 wrought both the next world war *and* the new world order

But the new world order could not prevent the next world war. On October 3, 1935, Italy had invaded Ethiopia despite stern warnings from the British foreign secretary the previous month that “the League [of Nations] stands, and this country stands with it, for the collective maintenance of the Covenant in its entirety, and particularly for steady and collective resistance to all acts of unprovoked aggression.” Mussolini ignored such warnings because he knew that British saber rattling assumed French support for collective action, which he accurately predicted would not be forthcoming. Adolf Hitler was so impressed by the League’s indecisiveness that he took immediate action to test its mettle in the face of German aggression. In March 1936—less than six months after Mussolini’s invasion of Ethiopia—Germany withdrew from the Locarno Pact and invaded the Rhineland. It was a bluff, but once again collective action under the League of Nations was tested, and once again the League faltered. By 1936, the League of Nations was dead. “One day it was a powerful body imposing sanctions, seemingly more effective than ever before,” wrote historian A.J.P. Taylor. “The next day it was an empty sham, everyone scuttling from it as quickly as possible.”

So they tried again, this time not with the League of Nations, but with the United Nations. At 10:30 a.m. on August 21, 1944, U.S. Secretary of State Cordell Hull called the conference to order. For the first time during the war, the delegates of all four major powers—the United States, Great Britain, the Soviet Union, and China—were gathered together to frame the post-war world. The draft worked from the presumption that the new organization would be organized first and foremost in order to “maintain international security and peace.” Acceptance of this basic American framework allowed the delegates to focus on the details of the future organization. It also provided a forum for identifying the fundamental issues that still divided the major powers. The most significant dispute arose one week into the negotiations, when the Soviet Union refused to compromise on the question of the veto rights of permanent members. The Soviets argued that an absolute veto was justified given that “the great powers alone would have the force necessary to maintain peace and security.” The British and Americans countered that smaller nations would accept special arrangements given the major powers’ primary responsibility to maintain security, but they would not accept a complete veto, especially on matters to which a major power was a party.

U.S. President Franklin Roosevelt directly intervened in a September 8, 1944 letter to Soviet Premier Josef Stalin:

Since the founding of the United States, parties to a dispute have never voted in their

own case and I know that public opinion in the United States would neither understand nor support a plan of international organization in which this principle was violated. Furthermore, ... the smaller nations would find it difficult to accept an international organization in which the great powers insisted upon the right to vote in the Council in disputes in which they themselves were involved. They would most certainly see in that an attempt on the part of the great powers to set themselves up above the law.

Stalin replied on September 14, 1944 refusing to compromise, and insisting that the Council must “work on the basis of the principle of coordination and unanimity of the four leading powers on all questions, including ... those which directly relate to one of these nations.” Stalin prevailed, and the United Nations was born with a congenital defect. The UN Security Council could act on matters of international peace and security only upon the affirmative vote of the permanent members of the Security Council, including matters in which they were the aggressor.

On June 26, 1945, at the final plenary session of the San Francisco Conference, U.S. President Harry Truman expressed his hopes for the new United Nations:

You have created a great instrument for peace and security and human progress in the world. The world must now use it. If we fail to use it, we shall betray all those who have died in order that we might meet here in freedom and safety to create it. If we seek to use it selfishly ... we shall be equally guilty of that betrayal. The successful use of this instrument will require the united will and firm determination of the free peoples who have created it. The job will tax the moral strength and fiber of us all.... Upon all of us, in all our countries, is now laid the duty of transforming into action these words which you have written.

So, here we are today, with yet another failure of the international order to secure the peace. On February 25, 2022, fifty-two countries, including three permanent members of the Security Council, delivered a [joint statement to the United Nations](#) following Russia’s veto of a Security Council resolution that would have held Russia accountable for its aggression against Ukraine:¹⁾

The UN Charter was written with the express purpose of preventing a war like the one President Putin just started.... President Putin chose to violate Ukraine’s sovereignty. President Putin chose to violate international law. President Putin chose to violate the UN Charter.... President Putin is the aggressor here. There is no middle ground. We believe we have a particular responsibility to stand up to this violation of the UN Charter because Russia is a Permanent Member of the Security Council who is culpable. Those of us standing here today continue to believe in the Security Council’s solemn duty and highest purpose – to prevent conflict and avert the scourge of war. Russia has abused its power today to veto our strong resolution. But Russia cannot veto our voices. Russia cannot veto the Ukrainian people. Russia cannot veto their own people protesting this war in the streets. Russia cannot veto the UN Charter. Russia cannot, and will not, veto accountability.


Today we face a great calamity in Ukraine, and a great tragedy of an international body that is impotent to address Russian aggression. The perpetual pursuit of the peaceful settlement of disputes continues.

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References

On 27 February, the UN Security Council voted to call for a [rare emergency special session](#) of the **193**-member UN General Assembly on Russia's military operation in Ukraine, which will be held on Monday, 28 February 2022.

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