



Kent Academic Repository

Eslava, Luis (2017) *The materiality of international law: violence, history and Joe Sacco's The Great War*. London Review of International Law, 5 (1). pp. 49-86. ISSN 2050-6325.

Downloaded from

<https://kar.kent.ac.uk/57540/> The University of Kent's Academic Repository KAR

The version of record is available from

<https://doi.org/10.1093/lril/lrx001>

This document version

Author's Accepted Manuscript

DOI for this version

Licence for this version

UNSPECIFIED

Additional information

Versions of research works

Versions of Record

If this version is the version of record, it is the same as the published version available on the publisher's web site. Cite as the published version.

Author Accepted Manuscripts

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding. Cite as Surname, Initial. (Year) 'Title of article'. To be published in *Title of Journal*, Volume and issue numbers [peer-reviewed accepted version]. Available at: DOI or URL (Accessed: date).

Enquiries

If you have questions about this document contact ResearchSupport@kent.ac.uk. Please include the URL of the record in KAR. If you believe that your, or a third party's rights have been compromised through this document please see our [Take Down policy](https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies) (available from <https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies>).

**The Materiality of International Law:
Violence, History and Joe Sacco's *The Great War***

Luis Eslava¹

Abstract

Thinking through Joe Sacco's *The Great War* (2013) and adopting a materialist approach to the international legal order and its history, this article re-maps both the temporal scope and the actual location of the violence endured in the First World War and lays out some of its ongoing everyday material manifestations.

Key Words

W

International Law; History; Anthropology; Military Law; Violence.

THE LOCATION OF VIOLENCE AND HISTORY

In this article, I explore two distinct yet interconnected questions that I believe reside at the core of our study of international law, and which become impossible to ignore as soon as we use the First World War as a key point of reference for the field. The first question is about the temporal location of violence in international legal accounts of WWI. Like the other contributors in this Special Issue, my concern at this level is how we should understand the scope—the duration, the start and the end—of the violence experienced during the War. This is a question about the nature of violence, its sources and its existence in time. The second question, a more methodological and perhaps more general one, is about where—in which places, sites and objects—we can

¹ Senior Lecturer in International Law, Kent Law School. I must thank Eric Loefflad for his invaluable research assistance and Rose/Sydney Parfitt, Charlotte Peevers, Genevieve Painter and Madelaine Chiam for their comradeship and wonderful inputs into this article. Thanks also to Richard Barnes for drawing me back again to David Miller and to the blind reviewers for their perceptive reading and their timely suggestions. All the photographs of *The Great War* included in the article are mine. *The Great War* ©2013 by Joe Sacco, is published by Jonathan Cape/Penguin Random House in the UK and by W.W. Norton & Company in the US. My use of *The Great War* in this article is by permission of Aragi Inc. All shortcomings of the article are entirely mine.

apprehend the history of the international legal order. What, in short, is the archive of international law? This second methodological question invites us to approach the field not just as an ideological venture, but instead (or, perhaps, also) as a project of world-making—a historical material project with widespread effects.²

In my previous work, I have explored some of the ways in which international law has come to be woven into the fabric of our everyday life.³ What I mean by this is that international law structures our daily existence both in an ideological sense and in a physical sense, producing and reproducing the world in which we live.⁴ In my reading, this material dimension of international law has evolved as part of the historical unfolding of the international legal order across the world since the expansion of European empires in the 16th century and later through the proliferation of the nation-state form, the expansion of the global capitalist order and the consolidation of today's multiple global regimes of governance. As a result, for me, international law and its history have come to be present—directly but mostly indirectly—even in those norms, processes, places, bodies and things that we deem ordinary, quotidian, municipal, or domestic. To put it bluntly, we could say that traces both of international law, and of the history of the world that it has made, are everywhere. From here, a whole series of new questions arises. For example, what shape does international law give to our surrounding realities? What disciplining function takes place in the interaction between the international order and its materialisation on the ground? And what alternative readings of the international legal order can emerge from an appreciation of the operation of international law at the level of the everyday?

As the reader will appreciate, the definition of materiality that I employ here is a broad one. It aims to overcome the traditional separation between subjects and objects and, most importantly, between ideas and the physical world. This take on materiality points

² See, e.g., on the material dimension of law, A Hunt, *Explorations in Law and Society: Towards a Constitutive Theory of Law* (Routledge, 1993); A Pottage & M Mundy (eds), *Law, Anthropology and the Constitution of the Social: Making persons and Things* (Cambridge UP, 2004); J Bringham, *Material Law: A Jurisprudence of What's Real* (Temple UP, 2009).

³ See, e.g., L Eslava, 'Istanbul Vignettes: Observing the Everyday Operation of International Law' 2(1) *London Review of International Law* (2014) 3; L Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge UP, 2015).

⁴ See on the ongoing importance of structural thinking in international law, M Koskenniemi, 'What is Critical Research in International Law? Celebrating Structuralism' 29 *Leiden Journal of International Law* (2016) 727.

to an understanding of the material that moves beyond the narrowly-defined sphere of physical things and views it as existing in constant interaction with the ideational.⁵ Materiality in this context refers, therefore, not only to man-made objects or artefacts; it also comprises subjective, bodily and spatial formations. All of these are part of that unrolling universe which international law continually generates and transmogrifies according to its own parameters. Materiality comprises, as we shall see in the context of WWI, not only guns and trenches but also landscapes, noises, soldiers, tunnels, horses slaughtered in the battlefield and bleeding ears, all part of that material economy that international law produced during the War.

The particular argument that I advance in this article is that the violence experienced by soldiers and civilians (and by the broader non-human and physical world) in WWI is still with us; that it is not in the ‘past’—as international legal accounts of WWI often seem to suggest. As I explain in more detail below, legalised asymmetrical power relationships between those who ordered the suffering and those who suffered were the reason behind much of the pain and losses experienced during WWI. Violence in WWI was not simply a question of the disregard for, or absence of, a set of norms which would otherwise have deterred the War’s expansion, or of the uncontrolled, even irrational, mass-mechanisation of its means of prosecution—reasons usually heralded in the legal context as the causes of the War’s enormous wreckage.⁶ Here I suggest instead that WWI’s violence should be traced back to the era’s military relations of authority which were backed up by normative force and large, entrenched political and economic interests. These ‘structures of authority’, as I call them here, crystallised in themselves the imperial, armamentalist and economic expansionist impulse of the powers that clashed in the War and that made the lives and the places of many expendable. These structures of authority mapped, in this way, an entire economy of destruction onto the battleground which spoke, in itself, of the system of class, race and political-economic relations that underpinned this imperial war both within Europe and beyond. In my view, these structures—which as I explained here are sometimes visible

⁵ See on this reading of materiality, D Miller, ‘Materiality’ in D Miller (ed.), *Materiality* (Duke UP, 2005).

⁶ Isobel Hull has recently explained, for example, how WWI has come ‘to stand for tragic senselessness and pointless mass death’. I Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (Cornell UP, 2014) 3.

and at other times silent—continue to lurk behind much of the violence experienced in our unequal and still-violent present.

Now, if the violence of WWI is still with us, and, as I argue here, still present in those asymmetrical structures of authority that continue to crisscross our everyday, we should train ourselves, as I go on to argue, to read that violence in contemporary norms and institutions and, most importantly, in contemporary artefacts, and not simply through international ‘historical’ evidence, for example archival records or antique objects from the War. As important as these examinations of ‘past’ exceptional artefacts are, the material ordinary ‘present’ is also a key site in which we should learn to grasp the nature and the dynamics of the violence that surfaced during WWI and that continues to inform the international order at all levels.

Briefly, then, what I want to offer here is a reading of international law that takes seriously its history and its central role in the constitution of our world: a world that does not fall into orderly temporal categories or neat divisions between the international and the domestic, or the ideological and the material. As we experience on a daily basis, the world presents itself to us, instead, as the outcome of its own convoluted unfolding. As Walter Benjamin so famously argued, the history of the world is an inescapably material history, consisting of piles of ‘rubble on top of rubble’, hurled before our feet.⁷ Our historical engagement with that world must start, as a result, from the realisation that its objects and their meaning are formed not in ‘homogenous and empty time’, but in ‘the here-and-now’.⁸

This kind of Benjaminian approach, which understands the world as a living archive, is treated in this article as an invitation to make the most out of the exercise of bringing together a historical and an anthropological sensitivity to our study of international law. This is, indeed, precisely what the History, Anthropology and the Archive of International Law (HAAIL) project is all about. As Bernard Cohn once described it, the encounter between anthropology and history is particularly productive in that it holds

⁷ Walter Benjamin, *On the concept of history* (1940), available at <<https://www.marxists.org/reference/archive/benjamin/1940/history.htm>> (last visited 16 December 2016).

⁸ *Ibid.*

out the possibility of using the anthropologist's attention to the reification of human relations—in social interactions, utterances and things—together with the historian's ability to unveil the long construction of the present.⁹ According to Cohn, anthropology 'takes what can be observed or drawn out of various performances and statements elicited or heard in the daily flow of activities and seeks to establish abstractions, relations, structures and meanings'.¹⁰ The end result of this anthropological reading of social life is a type of functional objectification: one that can help us to grasp some sense in the tumultuous array of things that furnish our everyday. History, on the other hand, can compliment this synchronic attention to social life with a study of its construction and constitution over time.¹¹ For Cohn the value of thinking transversally through anthropology and history lies, as a result, in its ability to allow us to appreciate how '[t]he past exists not only in records of the past, but survives in buildings, objects and [social and built] landscapes of the present day'.¹²

My chosen artefact for this article, *The Great War*, is a single, wordless 24-foot long accordion-fold panorama by one of the most important living graphic novelists, Joe Sacco. The panorama tells the story of the events of 1 July 1916, the first day of the long and infamous Battle of the Somme. Published in 2013, *The Great War* invites us to question the location of the violence experienced in WWI, as well as the role of materiality in our accounts of international legal history. On the one hand, in its depiction of the battle, the book offers an incisive take on the structures of authority that were behind much of the suffering in WWI and on the way in which such structures organised an entire material landscape geared towards destruction. On the other hand, at the level of its format, the book's extraordinary layout forces us to confront the way in which international law traverses and encroaches on our material world, as much today as it did yesterday. *The Great War* summons its readers thus to witness, at first hand, the dynamics of violence in WWI and their ongoing legibility in our material 'present' (Fig. 1-2).

⁹ BS Cohn, 'History and Anthropology: The State of Play' 22(2) *Comparative Studies in Society and History* (1980) 198.

¹⁰ *Ibid* 217.

¹¹ *Ibid*.

¹² *Ibid* 221.

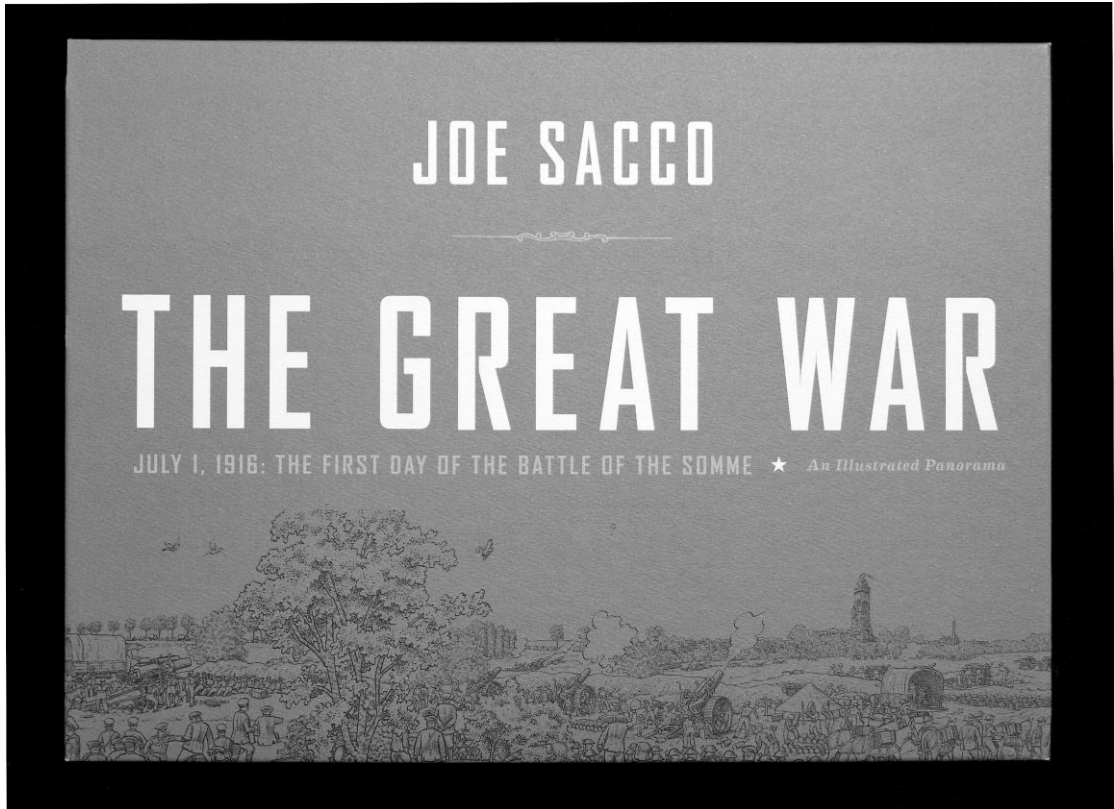


Figure 1. Front Cover. *The Great War*.

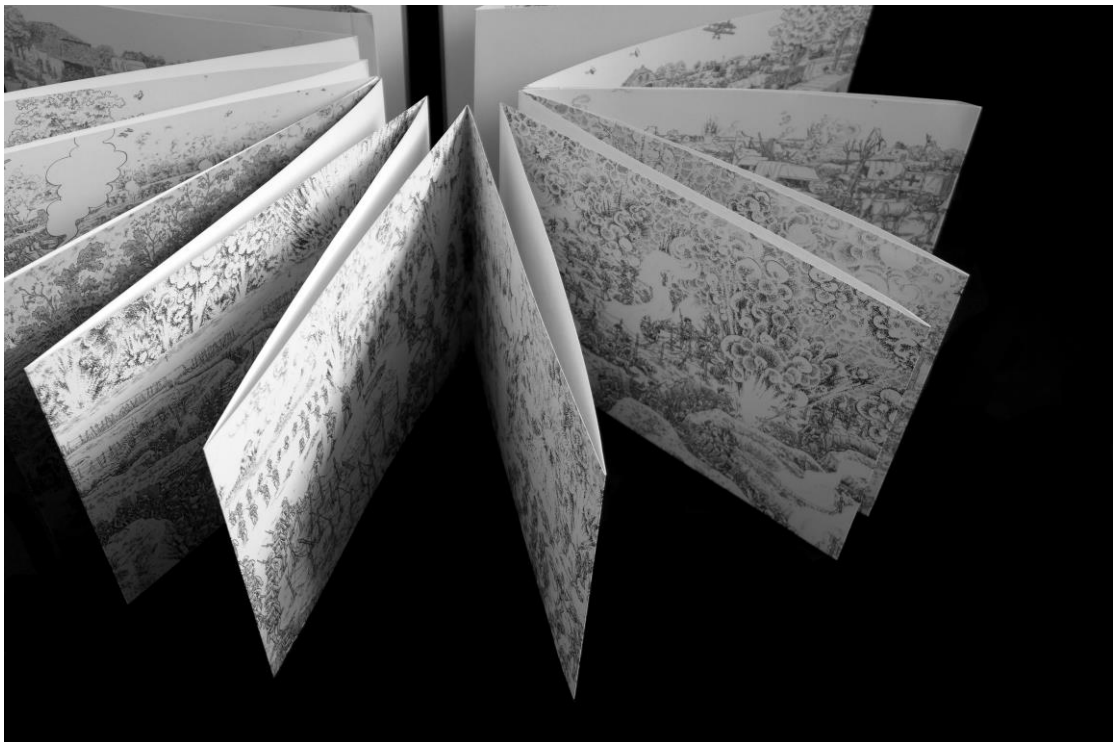


Figure 2. Accordion-fold panorama. *The Great War*.

With these introductory notes in mind, I will begin by exploring common readings found in international legal sources and institutional accounts of WWI's violence in more detail in the next section. After that, in Section III, I describe the Battle of the Somme and Sacco's depiction of it in *The Great War*. In Section IV, the final section, I turn to the larger lessons that we can extract from this exceptional publication.

VIOLENCE'S PAST, VIOLENCE'S PRESENT

The War is behind us

Often remembered for its industrialised violence and its brutal excesses, WWI is frequently presented in the international legal context as the landmark event that signals the type of violence that is strictly prohibited under international law today. As Parfitt and Peevers also argue in this Special Issue, WWI's violence is described, in mainstream international legal accounts and accompanying official processes of memorialisation, as usefully belonging to the (legal) past, where it remains as a kind of 'monument' whose function it is to remind us of the value of 'modern' international law and its institutional achievements since 1918.

For example, the International Committee of the Red Cross (ICRC) Commentaries on the Additional Protocols to the Geneva Conventions exudes this reading of the violence of WWI.¹³ The ICRC narrates WWI as an exposé of the failure of the early Geneva Conventions of 1864 and 1906 and the Hague Conventions of 1899 and 1907 to control the violence unleashed by modern warfare. Violence and modern warfare are here associated with the arms race between European powers at the turn of the century and with their unrestrained use of lethal force during the First World War (and in other early 20th Century international conflicts, such as the Russo-Japanese War of 1904-1905). WWI is understood, from this perspective, as the *raison d'être* for the consolidation and expansion of the constraining frameworks put in place by the revised Geneva Conventions and its additional Protocols, first in 1929 and later in 1949, which attended more closely to the victims of warfare.

¹³ International Committee of the Red Cross, *Commentary on the Additional Protocols to the Geneva Convention* (Martinus Nijhoff, 1987) 586.

The ICRC sees the updated versions of the Geneva Conventions and Protocols as having come to fill a regulatory gap, addressing (at least from the perspective of international normativity) the challenges posed by modern warfare, which only become more severe during the Second World War and that culminated tragically with the nuclear bombardment of Hiroshima and Nagasaki.¹⁴ According to the ICRC, '[a]t this point' the need for even more restrictive regulations became absolutely necessary, unleashing a new bend of what B.S. Chimni has identified as the long road away from WWI paved with 'peace through law' efforts.¹⁵

A similar approach to the past-ness of WWI's violence also underlies the official foundational narratives of several international and intergovernmental organisations, from the League of Nations (1920) and the United Nations (1945), to the Organisation for the Prohibition of Chemical Weapons (OPCW) (1997). Like the ICRC's approach to the Geneva Convention and its Protocols, the reading of the significance of the War put forward by these and other international institutions has had a profound impact on the international legal historiography of the War, allowing the creation of these institutions to be narrated as a series of ascending steps, each of which refines the international legal order a little further. Many historians have scrutinised this reading but it remains dominant in international law handbooks and in more doctrinal accounts of the field nonetheless.¹⁶

The League of Nations and the United Nations were both constituted explicitly in direct opposition to the excesses of the First and then the Second World War. In the League's Covenant, for example, members embraced new arms regulations and especially the principle of non-aggression, with a supervisory role assigned to the League itself. Unchecked aggression and military escalation were understood as having been unleashed immediately after the assassination of Archduke Franz Ferdinand on 28 June

¹⁴ Ibid.

¹⁵ Ibid 587. BS Chimni, 'Peace through law: lessons from 1914' 3(2) *London Review of International Law* (2015) 245.

¹⁶ See, e.g., M Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton UP, 2009). See on the continuing reading of international law as a history of progress: R Parfitt, 'The Spectre of Sources' 25(1) *European Journal of International Law* (2014) 297.

1914, allowing events quickly to spiral out of control.¹⁷ In response to this, and according to Article 10 of the Covenant:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

This commitment to leaving war behind through the institutional resolution of international disputes is present, even more strongly, during the founding of the UN.¹⁸ According to the UN Charter, the members of the organisation determined at the moment of its constitution ‘to save succeeding generations from the scourge of war, which twice in [their] lifetime ... brought untold sorrow to mankind’.¹⁹

A similar narrative underpins the formal rationale for the creation of the OPCW. According to the organisation’s official history, the widespread use of chemical weapons during WWI, which resulted in more than 100,000 fatalities and a million casualties, ignited international efforts to ban the use of such weapons.²⁰ The result was the 1925 *Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods of Warfare* (known commonly as the Geneva Protocol), which was later expanded in the 1997 *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*. The OPCW emerged as the administering body for this latter convention. Positioning itself, once again, as the agent of transition away from the barbarity of WWI, the OPCW uses the conflict as a marker of the type of violence that was once beyond the scope of the law but which thankfully, today, has now been outlawed. The international legal order emerges through the OPCW, again, as being on

¹⁷ See especially, League of Nations Covenant (1924), Art. 8.

¹⁸ See also the Kellogg-Briand Pact – *General Treaty for Renunciation of War as an Instrument of National Policy* (signed 27 August 1928, entered into force 25 July 1929).

¹⁹ United Nations Charter, Preamble.

²⁰ See especially, Organization for the Prohibition of Chemical Weapons (OPCW), *Genesis and Historical Development*, available at <<https://www.opcw.org/chemical-weapons-convention/genesis-and-historical-development/>> (last visited 16 December 2016).

the side of progressive self-learning, decisively walking away from the errors of the past.

A final example of this tendency to locate the violence of WWI as belonging to the past can be found in the typical presentation of the adjudicatory mechanisms that appeared in the interwar period and after WWII. The creation of the Permanent Court of International Justice and later the International Court of Justice and the Nuremberg Tribunal, as well as the more recent International Criminal Court, all tend to be presented as quintessential examples of the international legal order's capacity to resolve the problem of the lack of enforcement in international law, and in particular to overcome the legal blindspots that permitted the violent excesses that marked the two World Wars.²¹ Sir Hartley Shawcross pinned this view down in his intervention at Nuremberg on the morning session of 4 December 1945. For Shawcross, Chief Prosecutor for Great Britain and Northern Ireland before the Tribunal:

[o]ne has only to recall the circumstances following upon [WWI] to see the dangers to which, in the absence of any authoritative judicial pronouncement, a tolerant or a credulous people is exposed. With the passage of time the former tend to discount ... the stories of aggression and atrocity that may be handed down; and the latter ... come to believe that it was not they but their opponents who were guilty of that which they would themselves condemn.²²

The tribunal at Nuremberg had the chance, according to Shawcross, of rectifying these alleged distortions which had come to affect the collective memory of the First World War, offering not only a judicial reckoning for war crimes committed during WWII but also a clear lesson for the international community, instructing it to move firmly on into the future, leaving behind the disasters of the early 20th century. The international legal order is presented, from the perspective of Nuremberg, as emerging anew from the ashes of those mistakes and unaccounted acts of violence suffered in WWI and WWII.

²¹ See especially for a critically exploration of this reading of international tribunals as markers of 'progress', T Skouteris, 'The New Tribunalism: Strategies of (De)Legitimation in the Era of International Adjudication' XVII *Finnish Yearbook of International Law* (2006) 307.

²² Nuremberg Trial Proceedings, Volume 3 (4 December 1945 (Morning Session)). Sir Hartley Shawcross, available at: <<http://avalon.law.yale.edu/imt/12-04-45.asp>> (last visited 16 December 2016).

With adjudicatory mechanisms in place, and unsanctioned violence relegated to the past, the future belonged now, according to Shawcross, to a more mature international law.

From this record shall future generations know not only what our generation suffered, but also that our suffering was the result of crimes, crimes against the laws of peoples which the peoples of the world upheld and will continue in the future to uphold – to uphold by international co-operation, not based merely on military alliances, but grounded, and firmly grounded, in the rule of law.²³

The War continues

As valuable as these different means of locating WWI's violence in the past can be for rhetorical or institutional purposes in international law, they are still problematic when we confront the way in which human suffering and destruction were themselves entrenched in the very normative and institutional apparatus that underpinned the War and that continues in many different ways today. The conceptualisation of WWI, as the cataclysmic starting point of our assumedly more organised and legal present, is sustained, in this way, by a particular view of international law. According to David Kennedy, international law is conceptualised in these readings, 'as alternately strong and supple, standing above political struggle.'²⁴

However, WWI did not occur in a legal vacuum.²⁵ As difficult as it might be to appreciate today, given the triumphalist and, indeed, teleological rhetoric that often accompanies international legal recollections of the War, the logic and normative underpinnings of 1914-18 were part and parcel of the terrible violence experienced during those years. WWI was not, in fact, an exceptional conflict, but took place and evolved within a thick and relatively resilient normative, political and economic environment associated with the Concert of Europe, in operation from the end of the Napoleonic Wars (1815) to the outbreak of the First World War. The famous 'web of alliances'—crystallised through secret treaties and a legitimate aggrandisement of

²³ Ibid.

²⁴ D Kennedy, 'The Move to Institutions' 8 *Cardozo Law Review* (1989) 841, 985.

²⁵ See especially, Hull (2014).

armed forces, industrial power and colonial expansion—that brewed up over the previous century in the continent, organised the different powers in the region in such a way that WWI became almost inevitable.²⁶ For some historians, the War should be even understood, for these reasons, as the logical outcome of an imperial military-industrial complex that had expanded across Europe and much of the rest of the world by that time.²⁷

Against this background, it is possible to appreciate how WWI was not only the result of tensions already present in Europe, but it was also a means through which to reassert a system of influences—‘spheres of influence’—over the continent and beyond. Financial interdependence, industrial growth, and trade and military expansionism constituted, therefore, the very ground upon which WWI was fought. It was over this ground, and not over the muddy and desolate ‘no-man’s land’ so familiar from our collective memory of trench warfare, that the parties to the conflict sought to gain control.²⁸ WWI reaffirmed, in that way, the contradictions of the ‘long nineteenth century’, a period that generated, according to Hobsbawm, a ‘world made by and for the bourgeoisie’.²⁹ This was a world in which developed industrial economies, always in need of expansion and in increasing competition, came to produce all of those ‘small bodies of men who, with an almost contemptuous ease, could conquer and rule over vast empires’.³⁰ The capitalist order of the time pushed, as a result, ‘the world in the direction of state rivalry, imperial expansion, conflict and war.’³¹ Lenin, Luxemburg, Bukharin, Du Bois and Trotsky, amongst many other influential Marxist thinkers of the time, had for these reasons no illusions about the link between imperialism, capitalism and the origins of the First World War.³² The entry of the United States into the War

²⁶ See on the ‘web of alliances’, J Joll & G Martel, *The Origins of the First World War* (Routledge, 3rd ed, 2006) 49.

²⁷ See especially, F Fischer, *War of Illusions: German Policies from 1911 to 1914* (Chatto and Windus, 1975). Fischer’s reading of the origins of the War has been contested by M Hewitson, *Germany and the Causes of the First World War* (Bloomsbury, 2004). See for a recent recuperation of Fischer’s work, G Eley, ‘Germany, the Fischer Controversy, and the Context of War: Rethinking German Imperialism, 1880–1914’ in A Anievas (ed.), *Cataclysm 1914: The First World and the Making of Modern World Politics* (Brill, 2015) 23.

²⁸ See especially on the economy as a battlefield in WWI, H Strachan, *Financing the First World War* (Oxford UP, 2004); NA Lambert, *Planning Armageddon: British Economic Warfare* (Harvard UP, 2012).

²⁹ E Hobsbawm, *The Age of Empire: 1875-914* (Abacus, 1987) 6.

³⁰ *Ibid* 9.

³¹ *Ibid* 316.

³² For a systematic analysis of the contribution and importance of Marxist thinkers to the study of First World War, see especially, A Anievas (ed.), *Cataclysm 1914* (Brill, 2015).

was, in many ways, the result of this global economic, and also political and military, order of the early 20th century, which industrialists and statesmen in the US sought to harness for their own benefit.³³

After the War, the arrangements created through the Concert of Europe were reorganised to regulate the new European—and now also American—imperial interests in peripheral territories arising from the War. These were coordinated (from 1919) through the League of Nations' Mandate System, and most importantly through new networks of trade and financial interests crisscrossing the world at large.³⁴ Importantly, within Europe and increasingly also among previously colonial (and soon-to-be decolonised) territories in Latin America, Africa, Asia and the Pacific, these interests started to present themselves at this point more clearly as 'national' (as opposed to necessarily imperial).³⁵

As the 'nation-state' form took hold across the globe, however, local populations came to be ever more subject to (economic and political) 'national' interests and 'international' pressures. This situation, especially from WWII onwards, transformed warfare and its technologies of killing into an increasingly internal affair. Less 'international' but perhaps more chronic and systemic, internal wars—categorised now as 'mere' civil wars—have now become a key marker of our present world.³⁶

Violence during WWI was also shaped by the fact that the most significant mechanised means of annihilation used during the operations were clearly permitted under international law, and in fact remain exalted and in full production today regardless of the efforts of international lawyers and organisations in this area.³⁷ The relationship between the arms industry and the pre-1914 arms race is, as we have seen, a well-known

³³ See especially, C Capozzola, 'The United States Empire' in R Gerwarth & E Manela (eds), *Empires at War: 1911-1923* (Oxford UP, 2014).

³⁴ See in the case of Latin America, B Albert, *South America and the First World War: The Impact of the War on Brazil, Argentina, Peru and Chile* (Cambridge UP, 2002).

³⁵ R Gerwarth & Erez M, 'Introduction' in R Gerwarth and E Manela (eds), *Empires at War: 1911-1923* (Oxford UP, 2014) 15.

³⁶ See e.g., H Münkler, *The New Wars* (Polity, 2004); M Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford UP, 3rd ed., 2012).

³⁷ See e.g., S Kendall & C da Silva, 'Beyond the ICC: State Responsibility for the Arms Trade in Africa' in K Clarke, A Knotternus and E de Volder (eds), *The ICC and Africa: An Introduction* (Cambridge UP, forthcoming).

trigger for the start of the War and its global expansion.³⁸ As recently stressed by Isobel Hull, ‘[a]rtillery shells and machine guns, the two main causes of combat death [during WWI], were perfectly legal’.³⁹ Today the production and trade in arms continues to be one of the most lucrative businesses in the world—a ‘legal’ trade that can grow by 100 times from year to year in our convoluted present.⁴⁰ These arms underpin large—as well as small—scale violence: violence that not only continues to be experienced in irregular or illegal confrontations but is also unleashed in the name of international and national security, regional alliances and global peace.⁴¹

Finally, and perhaps most importantly, the particular military command structures, those structures of authority perfected during the 1914-18 War, that pushed wave after wave of low-rank soldiers—‘cannon fodder’—from across the empires to the front lines, remain a key marker of present-day conflicts. By the time WWI broke out in 1914, these structures had come to be solidified after at least two centuries in which national military forces had been gradually refined across Europe—a process that accompanied the maturation of the idea of the nation-state in the continent and its imperial ambitions abroad.⁴² This process gave birth to war offices and admiralties in each state, authorised to provide both the training and the command structures without which the prosecution of a ‘world war’ would have been unthinkable.⁴³ The ‘rich modern states’ of Europe were thus able to create, over the course of the eighteenth and nineteenth centuries, ‘the disciplined and organized forces that allowed the conduct of coherent and effective military operations over long periods not only in Europe, but also ... across broad expanses of the world’s oceans’.⁴⁴ Importantly, national armies were forced during this period of rapid professionalisation and expansion ‘to give much greater emphasis to drill and

³⁸ See e.g., D Stevenson, *Armaments and the Coming of War: Europe, 1904-1914* (Oxford UP, 2000).

³⁹ Hull (2014) 3.

⁴⁰ ‘British arms companies ramp up bomb sales to Saudi Arabia by 100 times despite air strikes on civilians’ (The Independent, 20 January 2016), available at <<http://www.independent.co.uk/news/world/middle-east/british-arms-companies-cash-in-on-humanitarian-catastrophe-and-ramp-up-bomb-sales-to-saudi-arabia-by-a6822491.html>> (last visited 16 December 2016).

⁴¹ See, e.g., A Festein, *The Shadow World: Inside the Global Arms Trade* (Picador, 2012).

⁴² RF Hamilton and HH Herwing, ‘World Wars: Definition and Causes’ in RF Hamilton and HH Herwing (eds), *The Origins of World War I* (Cambridge UP, 2003) 5-6.

⁴³ Ibid.

⁴⁴ Ibid.

discipline’, and to produce ‘more elaborate arrangements for command and control’.⁴⁵

As we shall see in the next section, WWI’s characteristic command structures, as well as army policy and military laws, deployed troops to the battlefields and trenches in large numbers, often on the basis of an unapologetic race and class imperial hierarchy, ensuring that casualties would themselves follow a social hierarchy.⁴⁶ Frequently the marginal nature of the military goals of these operations bore no relation to the enormous human cost associated with their achievement (or otherwise). Extremely high civilian casualty rates—‘collateral damage’, in modern military language—were the norm.⁴⁷

Today, as war has significantly moved from the international to the national and trans-border realms, and from the center to the peripheries of the world, casualty rates continue to be high or even higher in some accounts, notwithstanding the international legal ‘developments’ celebrated by the ICRC and others. Like today’s ‘collateral damage’—that ‘peculiar’ form of lawful killing as Frederik Rosén has recently described it—the assessment of human losses in WWI was undertaken by commanders, strategists and officials.⁴⁸ These were individuals often far removed from the field itself, whose role was, as it continues to be, to attend not to the needs of individual soldiers per se but to the larger interests pursued by their states and allies (known today as ‘the overall advantage’ of military actions).⁴⁹ During WWI, structures of authority of this type operationalised what Anne Orford has identified, in the context of current global economic relations, as an ‘economy of sacrifice’: a sacrifice of some ‘accompanied by the promise of the reward of the righteous in the future’.⁵⁰ Even a brief perusal of the extension of civilian ‘collateral damage’, and ongoing military losses, in recent wars confirms that this ‘economy of sacrifice’ is still functioning,

⁴⁵ Ibid.

⁴⁶ See, e.g., A Lentz-Smith, *Freedom Struggles: African Americans and World War I* (Harvard UP, 2011); RS Fogarty, *Race and War in France: Colonial Subjects in the French Army, 1914-1918* (Johns Hopkins UP, 2012); S Das, *Race, Empire and First World War Writing* (Cambridge UP, 2014).

⁴⁷ See, e.g., S Rockel & R Halpern (eds), *Inventing Collateral Damage: Civilian Casualties, War, and Empire* (Between the Lines, 2009).

⁴⁸ F Rosén, *Collateral Damage: A Candid History of a Peculiar Form of Death* (Hurst, 2016).

⁴⁹ Ibid.

⁵⁰ Anne Orford, ‘Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice’ 18 *Leiden Journal of International Law* (2005) 179, 182.

continuing to make palatable the daily execution of often racialised and low socio-economic civilians and security forces in today's many, apparently intractable conflicts.⁵¹ Current levels of socio-economic segregation, silent deployments of lethal force, and a global system economic and racialised conscription continue to place killable individuals from the 'bottom of the pile' on battlefields and embattled streets everywhere. Together they constitute a depressing picture of ongoing devastation.⁵²

Interestingly, indeed tragically, those structures of authority, responsible for so much suffering both yesterday and today, are conspicuous either by their absence from official accounts of the War (especially national military histories) or by the strenuous way in which they are contested by the authors of such accounts. A good example here is the British Army's current *Army Doctrine Publication*, 'the capstone doctrine for the British Army', which reflects on previous operations and 'the enduring nature and evolving character of conflict'.⁵³ Targeted at 'British Army sub-unit, unit and formation commanders, and staffs at each level', together with 'all officers (commissioned and non-commissioned) ... and their subordinates', the *Publication* informs its readers that the 'British Army of the First World War has had a bad press'.⁵⁴ Accordingly, '[a]ny attempt to assess the British commanders and the way they conducted operations has to get past a series of tired stereotypes'.⁵⁵

The popular image is of 'lions led by donkeys'. Baffled by trench warfare, it is commonly believed the generals (who were unimaginative at best and

⁵¹ See, e.g., in the case of civilians deaths in Iraq, The Iraq Body Count Project available at <<https://www.iraqbodycount.org/>> (last visited 16 December 2016), and military casualties in Iraq and Afghanistan, iCasualties.org available at <<http://icasualties.org/>> (last visited 16 December 2016). On the number of military and civilian casualties resulting from UK's involvement in Afghanistan and Iraq, see e.g., F Ledwidge, *Investment in Blood: The True Cost of Britain's Afghan War* (Yale UP, 2013). On US's wars, see e.g., J Tirman, *The Deaths of Others: The Fate of Civilians in America's Wars* (Oxford UP, 2012).

⁵² On past and present dynamics of economic conscription, see e.g., J Keith, *Rich Man's War, Poor Man's Fight: Race, Class, and Power in the Rural South during the First World War* (University of North Carolina Press, 2004); D Li, 'Offshoring the Army: Migrant Workers and the U.S. Military' 62 *UCLA Law Review* (2015) 124.

⁵³ British Army, *Army Doctrine Publication* (2010), available at: <<https://www.gov.uk/government/publications/army-doctrine-publication-operations>> (16 December 2016).

⁵⁴ *Ibid* E-8.

⁵⁵ *Ibid*.

downright stupid at worst) could think of nothing better than to throw ever more men into battles of attrition.⁵⁶

After outlining these critiques, the manual continues, however, in the following way: ‘One wonders, if the critics are correct, how it came about that the British Army won the First World War, and the German Army lost it’.⁵⁷ This success, the manual insists, was the result of a process of learning.

Overcoming enormous problems, between 1914 and 1918 the British Army transformed itself from a colonial gendarmerie into a continental-sized army. In 1918 this Army took the lead in defeating the German Army on the field of battle, winning the greatest series of military victories in British history.⁵⁸

From this perspective, the more than 1 million military deaths across the British Empire—and the roughly 18 million deaths across the world—during WWI was a sort of necessary and external stage in the British Army’s process of structural refinement and evolution.⁵⁹ As British Army’s account (paradoxically) clarifies, however, these human losses were the result of an institutional exercise of violence that was (and remains) predicated on the expendability of some human life. With this, it is time to turn to Joe Sacco’s *The Great War*.

SACCO’S *THE GREAT WAR*

Unexpectedly, perhaps, for those who are not familiar with graphic novels, Sacco’s *The Great War* is not the first denunciation of the First World War’s violence to have become famous in this genre. Indeed *Charley’s War*, written by Pat Mills and illustrated by Joe Colquhoun, is still considered perhaps the most famous graphic rendition of WWI. It ran in the United Kingdom in the *Battle Picture Weekly* from 1979 to 1985. In his introduction to the special reissue of the full comic series, published in 2004, Mills

⁵⁶ Ibid.

⁵⁷ Ibid E-9.

⁵⁸ Ibid.

⁵⁹ Commonwealth War Graves Commission, *Annual Report* (2013-2014).

unpacks for the reader his engagement with the War.⁶⁰ For Mills, who used this comic as a means through which to express his frustrations with the mystifications associated with our received knowledge about WWI, *Charley's War* was an attempt to show how, 'at the deepest level', the First World War should be understood not as an inter-state war or as a war against German expansionism but instead as 'a class war, a war against the poor'.⁶¹ According to Mills, '[i]t's estimated that in World War One, American corporations made \$16 billion from the conflict. Their normal profits leapt by 200, 300, even 900 per cent!'—profits that he claims were shared only by a handful of billionaires.⁶² To put these figures in perspective, Mills notes how, in comparison with these few billionaires, '60,000 British soldiers were killed or wounded on the first day of the Battle of the Somme'. Bearing this disparity in mind, and given the fact that 'billionaires don't tend to turn up in the trenches', he decided that Charley, his main protagonist, had to be a working class boy.⁶³ In this way, it became possible for Mills to denounce what 'Charley and his mates were really fighting for and dying for'—'[n]ot nationalism and outmoded power blocs, gallant little Belgium, assassins in Sarajevo or crazy Kaisers', for at the end of the day, 'Charley and his mates were actually fighting to make someone else rich'.⁶⁴

A similar attention to the experience of the common man of WWI is evident in other recent graphic books and anthologies related to the War, many of them inspired by *Charley's War* itself. Tardi's classic graphic novels, for example, *It was the War of the Trenches* (1993) and *Goddamn this War!* (2008-09) and those of Barraoux, such as *Line of Fire* (2011), as well as the childrens' stories by Beck and Belton, *The Little Hen and the Great War* (1996), Cooper and Haywood, *One Boy's War* (2010) and Robinson and Impey, *Where the Poppies Now Grow* (2014), all share an acute sensibility towards the everyday pain and suffering of soldiers and their families.⁶⁵ In particular, they all try to make evident, with a more or less critical sense, the way in which these ordinary

⁶⁰ P Mills 'Introduction' in Pat Mills and Joe Colquhoun, *Charlie's War (2 June 1916-1 August 1916)* (Titan Books, 2004).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ See also the illustrated collection of WWI poetry by C Duffy (ed.), *Above the Dreamless Dead* (First Second, 2014) and the WWI graphic anthology by J Clode & JS Clark (eds), *To End All Wars* (Soaring Penguin Press, 2014).

individuals saw themselves being dragged into the War by economic and political forces that were beyond their control.

Joe Sacco's *The Great War* arrived to join this tradition in 2013. Embracing the powerful critique of the War advanced by Mills, Tardi and others, Sacco's *The Great War* stands out, however, from this body of graphic engagements. It does so thanks to three distinct characteristics, which make it an invaluable artefact with which to reflect on the nature of violence in WWI and, more generally, on the materiality of the international legal order and its history. Let me explain these three characteristics.

The dynamics of violence

Firstly, in *The Great War* Jose Sacco draws masterfully on his previous experience as a graphic reporter of contemporary conflicts. Born in Malta and raised in Australia and the US, Sacco has been reporting on war zones using the genre of the graphic novel over the last three decades. In his novels on Palestine and Bosnia, for example, Sacco consistently explores violence as something encountered from the bottom up: violence as experienced by individuals, with its high and low peaks, with its sudden intensities, and, especially, with its external quality—its occupation of a space that is by definition out of the individual's full control.⁶⁶ The same may be said of his depiction of the Battle of the Somme. In this case, Sacco offers an intimate account of the peculiar unfurling logic of violence and its accompanying suffering by depicting, in as much detail as possible, the physical and human terrain of the battlefield before, during and after the confrontations of the first day of the battle.

The precision of the illustrations in *The Great War* is magnificent. Sacco is able to achieve this thanks to the substantial length of the concertina that comprises the book, each square centimeter of the space packed with soldiers arriving at the front line, getting ready for the confrontations and then experiencing the carnage and consequences of that horrifying day (Fig. 3-6).

⁶⁶ See, e.g., J Sacco, *Palestine* (Jonathan Cape, 2003); J Sacco, *The Fixer: A Story from Sarajevo* (Jonathan Cape, 2004); J Sacco, *War's End: Profiles from Bosnia 1995–96* (Drawn and Quarterly, 2005); J Sacco, *Safe Area Goražde: The War in Eastern Bosnia 1992–1995* (Jonathan Cape, New Ed, 2007); J Sacco *Footnotes in Gaza* (Jonathan Cape, 2009).

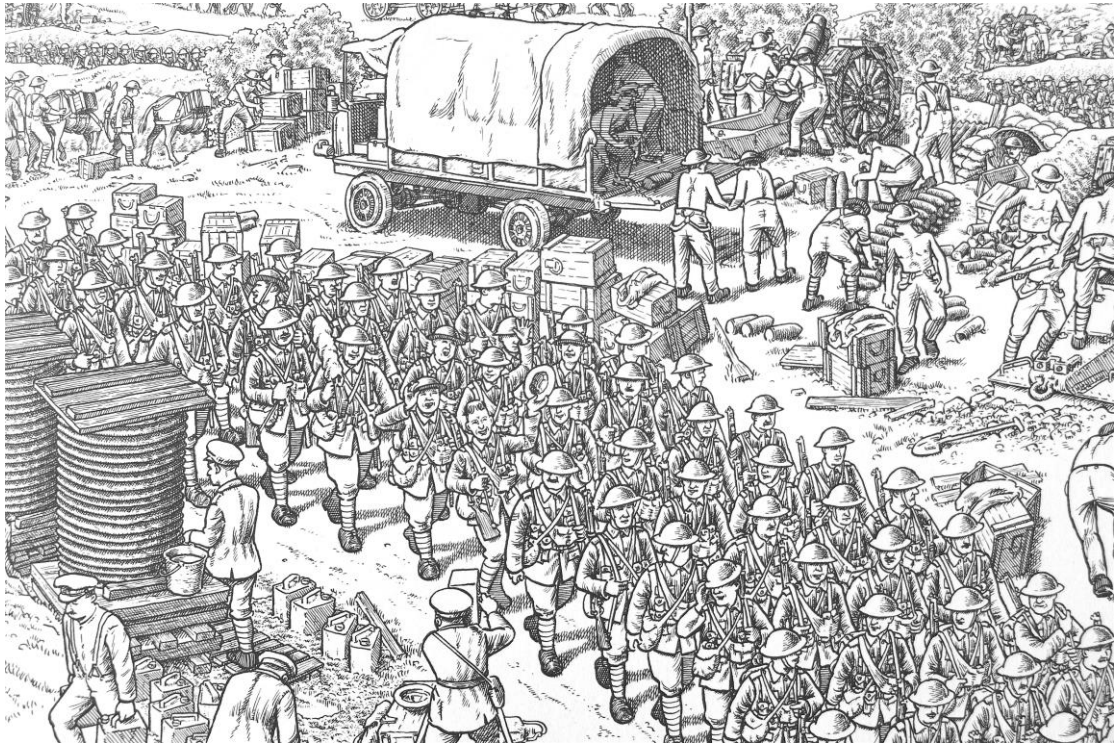


Figure 3. Soldiers arriving at the front line.

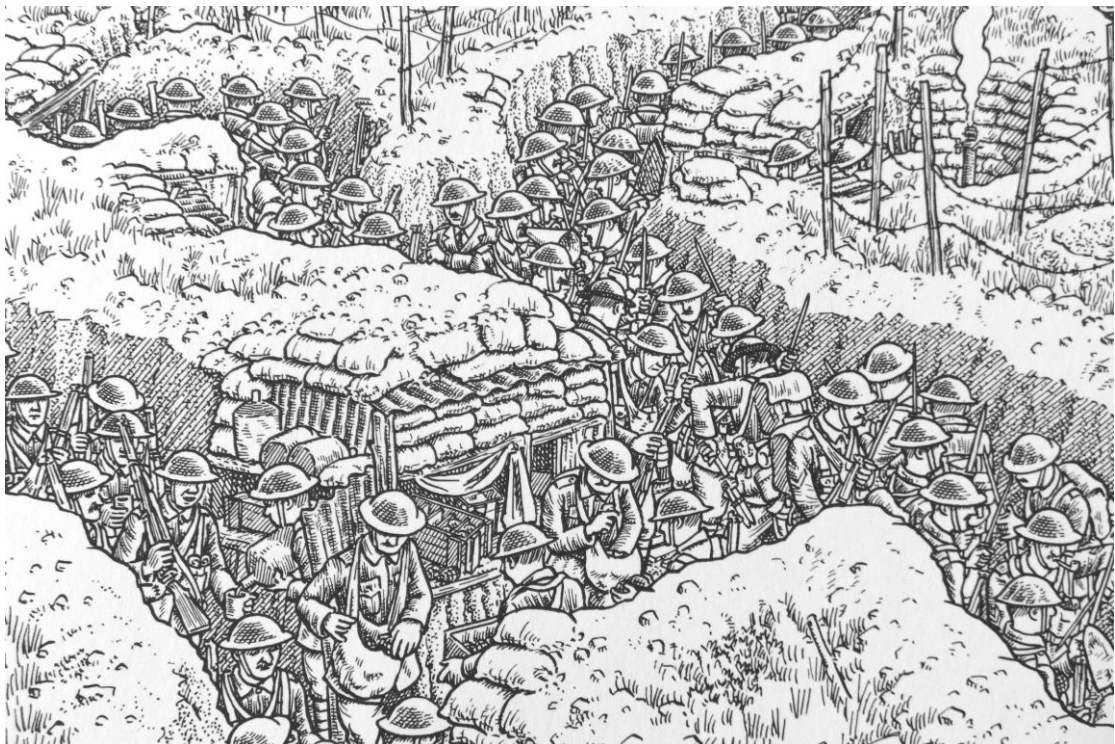


Figure 4. Preparations in the trenches before of the start of the battle.

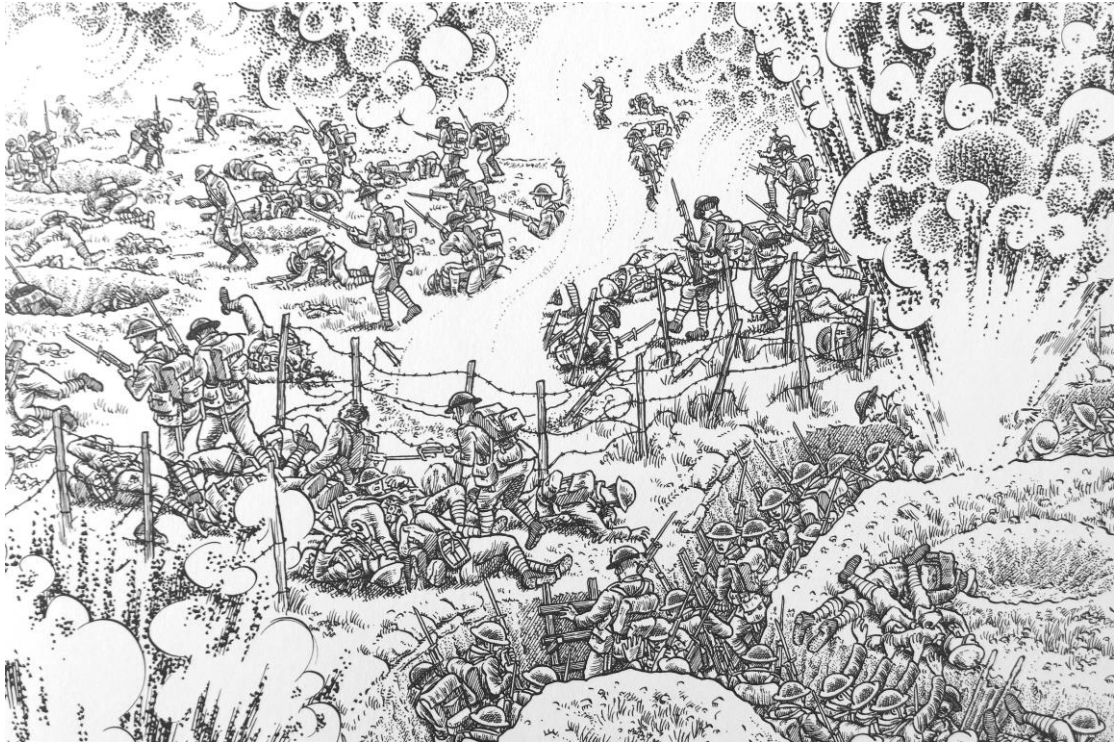


Figure 5. Soldiers under fire in the battleground.



Figure 6. The aftermath of the battle.

In these intricate drawings, which co-exist in a physically unbroken interrelationship on the page, violence becomes an unrolling experience, an experience that cannot be

corralled into a particular segment of time or space. To achieve this effect, Sacco abandons the format of consecutive vignettes through which graphic novels and comics normally construct their narratives and adopts, instead, the typically modernist format of the panorama—a format which by the 1900 Universal Exhibition (commemorating the peak of European imperialism) and certainly by 1914 had become an extremely popular and widespread style of figurative presentation.⁶⁷

Interestingly, however, Sacco adopts the format of the panorama not simply in order to offer a wide-angle view of space, as panoramas were traditionally used in the classic Victorian era, to immerse the spectator wholly in a totalising experience of the achievements of modern man. Instead, Sacco uses the panorama to depict a single day from start to finish, transforming time itself into the stage—or, rather, the page—upon which human affairs play out.⁶⁸ Thus, time in Sacco's depiction is not a question of one moment separated from another moment, but an unfolding field, saturated with human action and, occasionally, uncontainable brutality: violence that surfaces here and there according to its own dynamics and rationale (Fig. 7 and 8).

⁶⁷ See, amongst others, on the emergence and history of panoramas, S Oetterman, *The Panorama: History of a Mass Medium* (Zone Books, 1997); DB Oleksijczuk, *First Panoramas: Visions of British Imperialism* (University of Minnesota Press, 2011).

⁶⁸ According to Joe Sacco, the panorama he had in mind when he planned *The Great War* was the Bayeux Tapestry, which depicts the Norman invasion of England. J Sacco, 'Author's Note' in *The Great War* (Norton & Company, 2013).



Figure 7. Soldiers facing unexpected shelling.



Figure 8. Suffering in the trenches.

The end result is a brilliantly grounded depiction of violence: a savagery that is overwhelmingly mundane yet extraordinarily powerful, given the uncontrollability of

events, in particular, from the perspective of soldiers immersed in the mud and blood of the battlefield.

This micro-scale and temporally pervasive representation of violence in *The Great War* is particularly suited to an exploration of the Battle of the Somme, one of the largest and bloodiest battles of WWI, fought by the armies of the British and French Empires against that of the German Empire, and hence with troops drawn from all across the world.⁶⁹ The battle took place between 1 July and 18 November 1916 along the banks of the river Somme in France.

Preparations for the battle had been underway for many months, but it unfolded unexpectedly, especially on the first day of confrontations—the day portrayed, from the Western Front, in Sacco’s panorama. The Allies decided to put together a significant part of their existing resources and troops in one single battle on the French northern front, and in this way to undertake a ‘Big Push’ against the German army. Britain itself, in order to display its commitment to the plan, contributed 120,000 men to the battle. The sheer numbers, in terms of weaponry and artillery used during the Somme, and the casualties they caused, were unprecedented in world history. According to official accounts, a million men were wounded or killed during that four and a half month period. The battle is famous also for the massive use of air power, machine guns, chemical weapons and trench warfare, as well as for the first ever use of the tank. On the first day of the battle alone there were 60,000 casualties among the British troops, including 20,000 deaths. Of these 20,000 killed, at least 10,000 men died in the first hour of the battle and 30,000 casualties were incurred between 7:30am and 8:30am in the morning, mostly victims of German machine guns. On top of these figures from the British side, the French took 1,590 casualties and the German lost between 10,000 to 12,000 men that day.⁷⁰

Leading to the start of the confrontation, there was intense bombardment of the German front for days, until just a few minutes before the start of the battle. As Adam

⁶⁹ The most significant accounts of the Battle of the Somme are M Middlebrook, *The First Day on the Somme* (Penguin, 1984); L Macdonald, *Somme* (Penguin, 1993); G Sheffield, *The Somme: A New History* (Weidenfeld & Nicolson, 2004).

⁷⁰ See especially, M Middlebrook, *The First Day on the Somme: 1 July 1916* (Penguin, 2006) 146-58, 262-71.

Hochschild narrates in a short essay included in a booklet that accompanies *The Great War*,

[a]s it grew close to zero hour, 7:30am on July 1, men detonated ten enormous mines planted by British miners tunneling deep beneath the German Trenches ... [This was preceded by the explosion of] 224,221 shells in the last sixty-five minutes [and many days of continuous shelling of the German front over the last days] ... More shells were fired by the British [that] week than they had used in the entire first twelve months of the war; some gunners bled from the ears after seven days of nonstop firing.⁷¹

According to the plans, all of this bombardment, and the clouds of chlorine gas that the British also released towards the German lines, was done in order to decimate the arms and human power of Germans. Allied troops would then be able to leave the trenches safely at 7:30am that morning, walk across no-man's land, confront the few Germans who would be left, and then march on forward. The commander behind this operation, the famous British General Douglas Haig, who served as commander-in-chief of the British Expeditionary Force (BEF) on the Western front from late 1915 until the end of the war, had decided, with an invincible sense of conviction, that this was the way things were going to happen. As he noted in his diary the day before the start of the battle:

With God's help I feel hopeful ... The wire has never been so well cut, nor the artillery preparations so thorough. I have seen personally all the Corps Commanders and one and all are full of confidence.⁷²

It is with this scenario of preparation, this sense of imperial certainty, and these images of individual soldiers as the barely visible, fully dispensable cogs in a gigantic machine, that Sacco's account of the battle begins. The unprecedented disaster that actually unfolded, in defiance of these plans and expectations, is what we find on the planes of

⁷¹ Hochschild's short essay included in *The Great War* is an adaptation from A Hochschild, *To End All Wars: A Study of Loyalty and Rebellion, 1914-1918* (Houghton Mifflin Harcourt, 2011).

⁷² G Sheffield & J Bourne (eds), *Douglas Haig: Diaries and Letters 1914-1918* (Weidenfeld & Nicolson, 2005).

Sacco's panorama as it springs open in our hands (Figures 3-8). When the whistles blew, and troops started to leave the trenches, they began to be shot by German machine-guns immediately. The troops realised, at that moment, that all the bombardment of the previous days had not, in fact, destroyed the German artillery and that all the bombs that had been dropped had not, in fact, flattened the German barbed-wire. Instead, the shells had left the terrain full of dangerous holes and unexploded bombs—making an even easier target of the Allied soldiers than before.⁷³

As panicking soldiers began to abandon their trenches they were forced back to the front by the Military Police, acting under orders from central command to deter everyone who had not been fully authorised to leave the battleground. There are even reports of Military Police taking action against soldiers who had self-wounded to avoid entering into the battlefield and reports of 'Red Caps' (as Military Police personnel are often known in the British Army) executing troops for cowardice on the spot.⁷⁴ As Martin Middlebrook describes it, '[t]heir orders were to stop any fit man leaving the trenches without permission and to ensure that, when an attack had been ordered no one remained behind'.⁷⁵

The troops were thus forced over the top and into no-man's land, round after round, after each artillery deployment. Indeed, this 'wave system' had been carefully preplanned. According to the *Fourth Army Tactical Notes*, which set the basis on which 'all the training of troops in reserve' during the summer of 1916 had to be carried out:⁷⁶

[T]he only safe method of artillery support during an advance is a fixed time-table of lifts to which both the infantry and artillery must conform ... No changes must be made in the time-table by subordinate formations without reference to corps H.Q.'s, or confusion is sure to ensue.⁷⁷

This strategy of rigid alternated attacks between the artillery and the infantry proved disastrous. With the headquarters located many miles away from the battle-field, with

⁷³ See especially, Middlebrook (2006) 272-92.

⁷⁴ Ibid 108-09, 220-21.

⁷⁵ Ibid 220-21.

⁷⁶ *Fourth Army Tactical Notes*, May 1916 (Stationery Services Press, 1996).

⁷⁷ Cited in Middlebrook (2006) 281.

soldiers carrying heavy packs of provisions and ammunition and in the midst of escalating chaos spread out over an enormous area, a day of suffering unprecedented in history unfolded, the catastrophe escalating literally from minute to minute as it is possible to perceive as the reader moves her eyes along *The Great War*.

Sacco's account of the violence of the War as an uncoiling, uncontrollable experience helps us grasp, in a really visceral scene, this horrendous process of suffering and annihilation in which the soldiers and their surroundings were caught up on that terrible first day of the Battle of the Somme. Here a material universe (human and non-human) is presented as being trapped within a set of structural forces that spelled destruction.

The violence of authority

This reading of the uncontrollable and grounded character of the Somme's violence is accompanied in *The Great War* by a very particular understanding of the type of structures that made such violence possible. Although not directly accusatory (a style present in some literature about WWI),⁷⁸ Sacco's drawings nonetheless reveal the way in which soldiers were deployed on the battlefield as mere pawns in a grand strategy that was not only military but also economic and political. This is evident in the panorama's focus on the use of colonial battalions in an imperial battle, the cramming of nameless soldiers into trenches, the ruthless bombardment of German troops for days on end, and the senseless 'feeding' of the cannons with wave after wave of soldiers in the name of 'national' interests and power blocs. Sacco emphasises the structures underpinning this hardheaded approach to human life by starting his book with a close-up of Lord Kitchener's famous recruitment poster of 1914, then switching focus immediately to General Haig.

The first illustration that the reader encounters as soon as the front cover of the accordion is turned over is therefore a close-up of Lord Kitchener's face, with a cold commanding look, pointing his finger at the reader (Fig. 9). As Secretary of State for War from 1914 until he was drowned in 1916 en route to Russia in the sinking of the *HMS Hampshire*, Lord Kitchener led the recruitment of the largest volunteer army

⁷⁸ See, e.g., the theatrical piece, J Littlewood, *Oh What A Lovely War* (Methuen Drama, 1967).

that the world had seen, in response to the infamous ‘Great Retreat’ of the British Army after its crushing defeat by the Germans in August 1914. Some two million men were eventually recruited into ‘Kitchener’s Army’, as it became known. These were the soldiers who would eventually be sent to the Somme and other war fronts over the following two years.⁷⁹ Kitchener’s poster became an iconic symbol of this operation, which was then used as a template for the ‘Uncle Sam’ recruitment poster in the US from 1917. With this allusion to the recruitment operations across the world, Sacco catapults us into his panorama, which begins in earnest with an illustration of General Haig taking his morning stroll around the Allies’ headquarters at the Château de Beauquesne. Located at a safe distance from the actual battlefield, we see the General, by himself, calmly absorbed in his own thoughts, while – as the following pages illustrates – hundreds of his men are already fully engaged in a chaos of anxious preparation for the start of the confrontation in the Somme (Fig. 10-11, see also Fig. 3-4).

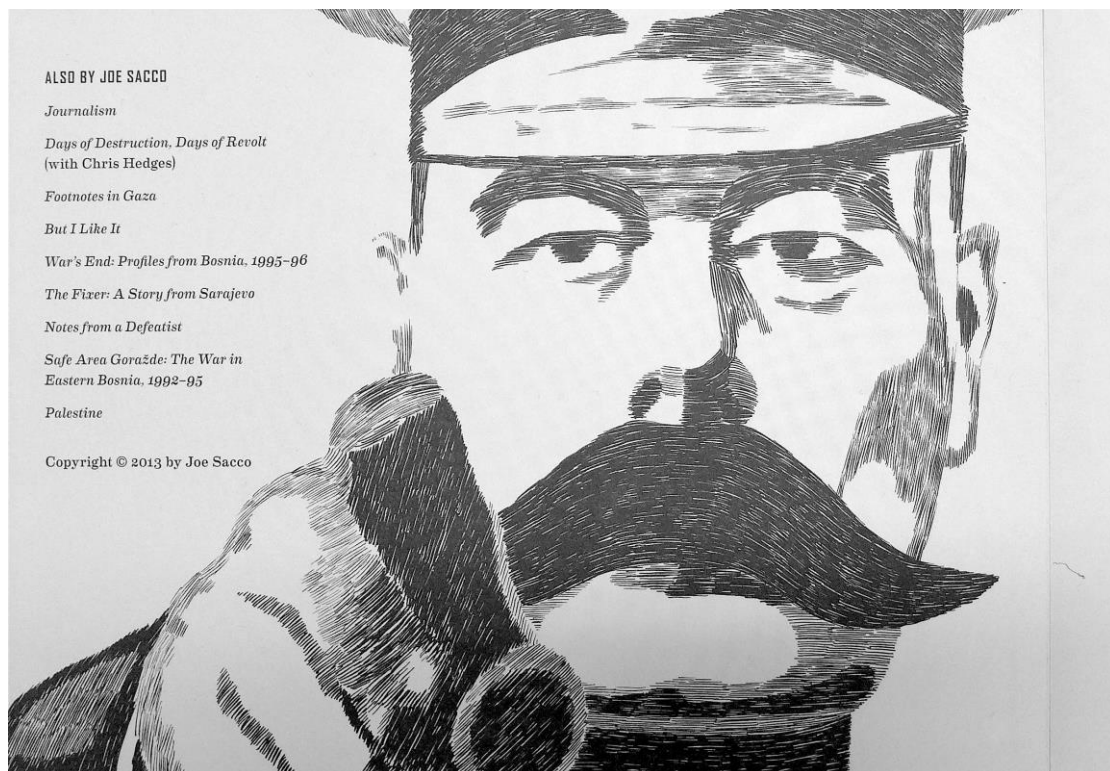


Figure 9. Sacco’s version of ‘Lord Kitchener Wants You!’ recruitment poster.

⁷⁹ See especially, Middlebrook (2006).

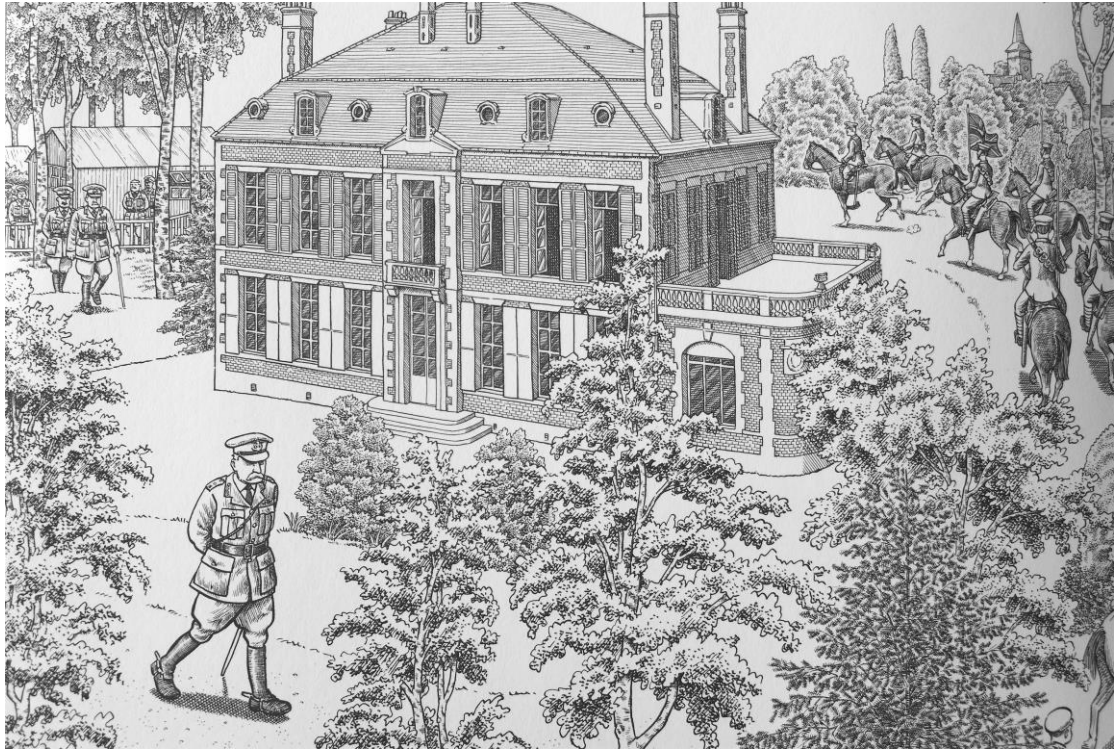


Figure 10. General Haig at the Château de Beauquesne.

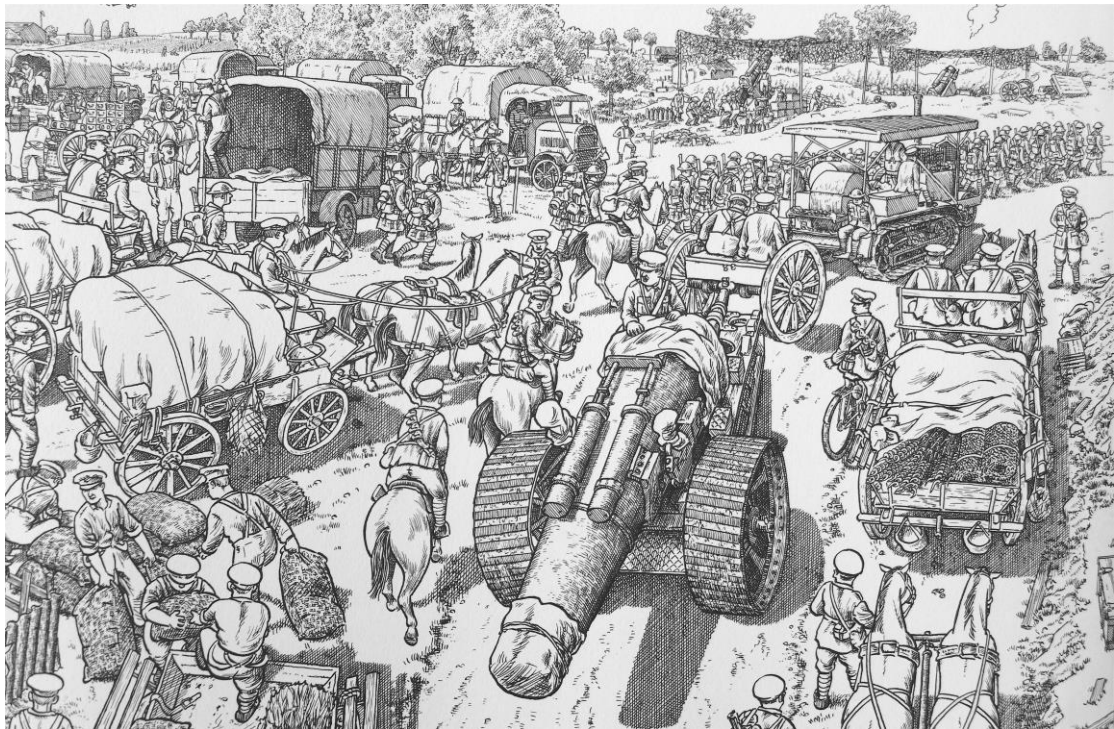


Figure 11. Chaos before the battle.

Crucially, the point of Sacco's focus on Haig is not to single him out as personally responsible for the disaster of 1 July 1916, notwithstanding the historical evidence as

to the General's role not only in the catastrophe of the Somme but also that of Passchendaele (1917) and others.⁸⁰ Instead, Sacco's aim is to emphasise the way in which the self-assurance of the General and his hierarchical positioning vis-à-vis the soldiers was itself the consequence of a pre-existing system in which some human lives were widely accepted as being more dispensable than others. Again, this dispensability was a feature not only of the Battle of the Somme but of the entire War and the history that preceded it and that continued from then on. 'After that disastrous first day', as Sacco points out, 'the army butted its bloody head for a few more months and then stopped, licked its wounds and set its mind on the next "Big Push"'.⁸¹

Behind the repetitious cycle of death and suffering, as *The Great War* makes clear, lay then not a single, flawed individual but a wide network of imperial interests and many years of national militarisation, including not just the accumulation of hardware but also the coding of national military laws and the creation of Military Police forces, which would ensure that by 1914, as we saw above, soldiers *could* be commanded to die by their millions, whether by Haig or by another general. These developments in military law had reached a pinnacle by the time of the outbreak of the War and were crucial to the latter's unfolding.

In the context of the British Empire, Military Law rose to the top of the agenda during the late 19th century with the passage of the Army Discipline and Regulation Act of 1879, which finally brought together, in one piece of legislation, a whole series of different laws relating to mutiny and insubordination among Britain's imperial subjects, along with the more general laws of war. The Act was a response to the significant expansion of the British Empire and the increasing complications it faced across its diverse and expansive territories. By 1914, the Act had already been revised (in 1881), and complimented with additional pieces of legislation, for example the Territorial and Reserve Forces Act of 1907 and the Official Secrets Act of 1911. A full account of this updated body of law was given in the *Manual of Military Law*, re-published by the War Office in 1914, and reprinted in 1916.

⁸⁰ See, e.g., JP Harris, *Douglas Haig and the First World War* (Cambridge UP, 2009). On revisionist readings of General Haig's role, see among others, G Sheffield, *The Chief: Douglas Haig and the British Army* (Aurum Press, 2012); G Mead, *The Good Soldier: The Biography of Douglas Haig* (Atlantic Books, 2014).

⁸¹ J Sacco (2013), 2.

The development of the British Military Police, like Military Law, followed a similar process of consolidation. With its early origins in the 14th century in the form of the Royal Provost Marshal, the modern Military Police emerged with the professionalisation of the army and the enlargement of the British Empire in the 19th century. With the outbreak of the First World War, the Military Police grew rapidly from 508 men across all ranks to 25,000 by 1918.⁸² As we saw above in the case of the Somme, during the WWI, Military Police personnel were key to the process of enforcing order and discipline amongst the troops, and were responsible for arresting those who ended up court-martialed, with punishments ranging from penal servitude and cashiering to death. Just as an indication of the role of such punishments in the trajectory of the War, 5,952 officers and 298,310 men from other ranks were court-martialed in total during those four years, 3,080 of them sentenced to death.⁸³

It was this particular body of Military Law, and its accompanying institutional outcomes in the form, for example, of recharged Military Police forces, that informed and gave voice to those structures of authority whose devastating effects Sacco's panorama depicts. These legal and institutional structures translated the large interests underpinning the War onto the battlefield and made the many men brought to the trenches into moving, killing and killable beings, even though their motives for signing up for the War were, in the first place very different (e.g. from earning a salary to travel, to seeing the world).⁸⁴ Military laws helped to channel the aura of certainty that surrounded the planning of the Battle of the Somme into a relentless 'push' forwards that took no heed of the unfolding human catastrophe. As Middelbrook puts it in his famous account of this fateful day, the 'supreme confidence' of the Allied generals in their supposedly fool-proof plan passed down to corps commanders and then '[found] its way down to the ordinary soldiers', cascading down the structures of authority as '[b]attalions were paraded and addressed by senior officers, usually brigadier-generals', immediately prior to the battle.⁸⁵

⁸² Regimental Headquarters of the Royal Military Police, *Short History of the Royal Military Police and its Antecedents* available at: <http://rhqmp.org/rmp_history.html>

⁸³ C Baker, *The Long, Long Trail: The British Army in the Great War of 1914-1918* <<http://www.1914-1918.net/crime.htm>> (last visited 16 December 2016).

⁸⁴ See especially the articles by M Chiam and G Painter in this Special Issue.

⁸⁵ Middlebrook (2006) 96-97.

The outcome of the battle was, however, far from victorious as we have seen and as Sacco carefully illustrates in his panorama. As soon as the battle started and men began to climb out of the trenches, the first German ‘machine-guns were soon in action and found easy targets’.⁸⁶ From this moment, large geo-political and economic interests channeled through laws and articulated through structures of authority were transformed into ‘waves’ of sheer pain, suffering and death. The battle went on until the end of that day, restarting the following morning and continuing for many more months. Sacco hints at this protracted character of violence at the end of his panorama: the final frame showing a whole new ‘wave’ of fresh troops arriving, at dusk, to sustain the conflagration for the days to come, driven there by an invisible and yet all too familiar force (Fig. 12).



Figure 12. The arrival of new troops.

The materiality of violence

⁸⁶ Ibid 122-23.

This brings us to the third characteristic that makes *The Great War* a unique artefact from the perspective of international law and international legal history: Sacco's acute awareness of the relationship between structures of authority and materiality. We can appreciate this if we attend to Sacco's honest explanation of why he depicted the Battle of the Somme from the point of view of the Allies. For Sacco, the question of choosing a side was not a matter of joining in unapologetically with the commemorations of the 100-year anniversary of WWI as a war of bravery and manhood fought against all odds—common themes in its recent memorialisation. Instead, Sacco's decision to depict WWI from the Allies' point of view corresponds, he tells us, to his ingrained familiarity with the War. Raised in Australia, the First World War had 'loomed large in [his] psyche since [his] school days when every 25 April [they] commemorated the anniversary of the ANZAC landing at Gallipoli'.⁸⁷ This experience made him 'cognizant', even from this early age, 'that a war dubbed the The War to End All Wars must have thrown up such horrors that the survivors believed it was the last word on the matter'. As a result of this, when he engaged in his illustration of WWI, he chose to depict the Battle of the Somme, which according to Sacco, was 'the point where the common man could have no more illusions about the modern nature of warfare.' His aim was thus 'to get the details right'—to depict how violence surfaced through the spaces, people and objects that were there.

Sacco's attention to this groundedness of violence is also clearly conveyed through his deliberate omission of any dialogue or explanatory notes in the panorama. This absence of text invites the reader to question for herself how the materiality on the ground and the actions that took place in the battlefield were the vessels and the outcome of a particular structuring, or as Foucault would put it, a particular 'order of things'.⁸⁸ According to Sacco:

Making this illustration wordless made it impossible to provide context or add explanations. I had no means of indicting the high command or lauding the sacrifice of the soldiers. It was a relief not to do these things. All I could do was

⁸⁷ J Sacco (2013).

⁸⁸ Michel Foucault, *The Order of Things: An Archeology of Human Sciences* (Routledge, 1989).

show what happened between the general and the grave, and hope that even after a hundred years the bad taste has not been washed from our mouths.⁸⁹

This invitation to remember the structures of authority that came to organise the landscape at the Somme, in a particularly violent way, was picked up by Rachel Cooke in her short but moving review of *The Great War* for *The Guardian*.⁹⁰ According to Cooke, Sacco's dispensation of realistic proportions, both spatial and temporal, in his panorama and his decision to omit all types of text in his illustration of the battle, makes time shift 'queasily' for the reader. 'The reader's eye', as a result, 'doesn't dart quickly over the pages, pulled along by a sense of narrative.' '[R]ather, we are invited to look closely at every inch of every page, and it's only in this intense inspection that the horror hits ... So when a face or a gesture is visible, you're pulled up, caught out, remembrance suddenly sour and fierce rather than merely mournful.'

As Cooke's account suggests, Sacco invites us to approach the suffering of the Battle of the Somme, and suffering more generally, as part of a continuum produced by structures—sometimes visible, sometimes silent—that are often beyond our reach. From this reading, a historical approach to WWI and its violence, or to the 'past' in general, becomes more than a preoccupation with irretrievable truths. It becomes, instead, an exercise in understanding how the world (past and present) is the result of a long world-making process. The materiality of the world is, from this point of view, both the detritus of history and the container of history. Violence ends up, in turn, being not simply the outcome of a particular unruly action but the result of structures and forces that crisscross and create that very reality that surrounds us, and of which we are also a part of.

From this reading it is possible to appreciate how the bodies of soldiers blown up in the air, as well as the cannons deployed on the field and the trenches dug at the Somme—that we can see for example in Fig. 4-8—are not just features or facts of WWI. They were instead part of a material universe produced by history and full of history.

⁸⁹ J Sacco (2013).

⁹⁰ Rachel Cooke, 'The Great War by Joe Sacco', *The Guardian*, 9 September 2013, available at: <<http://www.theguardian.com/books/2013/sep/09/great-war-joe-sacco-review>> (last visited 16 December 2016).

They were, indeed, the most visible features of a violent battle, shot through with the traces of both those military structures and of those larger forces that underpinned WWI. But this also holds in the case of some of the more innocuous elements, which Sacco's panorama does not leave aside, like the tents for the wounded and the shovels used to dig trenches and mass graves for the fallen (see Fig. 6 and 12). These less extraordinary artefacts are also part of the same history. Certainly, they were not violent in themselves and were not there to inflict suffering. They were, however, all fractions of that material universe—of that history—that marked the Battle of the Somme and the rest of the War, and that remains with us today.

The value of Sacco's *The Great War* resides, as a result, not only in the way it draws our attention to the nature and dynamics of the violence that underpinned so much of the suffering in WWI. *The Great War* also makes us aware of the materiality that has always been an intrinsic part of the history of the international legal order by the power of its illustrations and, importantly, by its format, which makes the book itself a wonderful container of history. As an accordion that we can open and close, this book is a perfect instantiation—we could say, a clear pedagogical statement—of the way in which even innocuous artefacts, even ordinary present things and bodies, contain history and are full of history. Let me use the final section to explore this point in more detail.

MATERIALITY AND INTERNATIONAL LAW

Asserting that the history of international law resides in our material surroundings does not mean that 'all' the history of the international legal order and 'all' of the history of the world that it has created reside in 'all' the objects that surround us. The point here is instead to appreciate the widespread effects of the evolution of international law, and its inseparability from the production, organisation and re-organisation of our material world, as well as from our political, economic and social, realities.

Approaching international law in this way, of course, challenges one of the main assumptions that sustain the field—that it is, in essence, a construction of the mind.⁹¹ This ‘abstractness’ is underpinned by the common identification of international law as a technical space in which to think about and to search for global order and justice—order and justice which are normally defined in opposition to ‘hard’ realities. Yet international law is also a social process.⁹² In particular, it has been a process that has aimed to regulate life across the world at all levels. Indeed, it has always been a process of ‘constituting order’ in the world.⁹³ Understanding international law in this way offers one explanation for the inescapable interpenetration that has come, undeniably, to exist between international law and national and local legal, institutional and social orders. As I argued in the introduction, today our everyday lives and surroundings, and the sense of ourselves, are already embedded, and will become increasingly imbricated, in the sweeping yet particular juridical framework—the *ius publicum europaeum*—that began to unroll across the planet in the 16th century.⁹⁴

The place of history and international law

China Miéville, following Pashukanis, has pointed to the importance of approaching international law not just as an ideological or normative project, but also as something that is inescapably and constantly articulated in material relations.⁹⁵ These material relations, formed by grounded practices, processes and arrangements, end up organising life at all levels. In Marx’s *Preface to a Critique of Political Economy* (1859) we can find the most succinct summary of this approach to international law and to law in general:

⁹¹ See, e.g., on international law as belonging to the realm of ideology, S Scott, ‘International Law as Ideology: Theorizing the Relationship Between International Law and Politics’ 5 *European Journal of International Law* (1994) 313.

⁹² See especially, S Marks, ‘Introduction’ in Susan Marks (ed.), *International Law on the Left: Re-examining Marxist Legacies* (Cambridge UP, 2008) 1, 6.

⁹³ A Orford, ‘Constituting Order’, in J Crawford & M Koskeniemi (eds), *The Cambridge Companion to International Law* (Cambridge UP, 2012) 271.

⁹⁴ See especially, Eslava (2015); Eslava (2014).

⁹⁵ C Miéville, ‘The Commodity-Form Theory of International Law: An Introduction’ *Leiden Journal of International Law* (2004) 271, 280.

[L]egal relations as well as forms of the state are to be grasped neither from themselves nor from the so-called general development of the human mind, but rather have their roots in the material conditions of life.⁹⁶

At its core, the attention by Marx to materiality aims to overcome the ostensibly clean distinctions that underpin (international) law—and modern thought broadly—between subjects and objects and the ideal and the material and, with this, between law and reality and structure and agency. Departing from Hegel in order to theorise the inescapability of materiality, Daniel Miller has argued convincingly that these dichotomies blind us to the fact that ‘there can be no fundamental separation between humanity and materiality’.⁹⁷ According to Miller, this is because, at the end of the day, ‘everything that we are and do arises out of the reflection upon ourselves given by the mirror image of the process by which we create form and are created by this same process’.⁹⁸ As a result, ‘[w]e cannot know who we are, or become what we are, except by looking in a material mirror, which is the historical [material] world created by those who lived before us’ and that we go on creating.⁹⁹ We are thus always already, and have always been, engaged in a ‘fundamental process of objectification’.¹⁰⁰ In this sense, there is really no pre-objectified or purely immaterial form either in the shape of law or in the shape of culture, ideology or history. All of these are, in important ways, material ventures that reside—as I described, referring to Benjamin in Section I—in ‘the here-and-now’.

Interestingly, this attention to the materiality of international law is not something new or even something necessarily radical. Bronislaw Malinowski invited us, only shortly after the War’s end, to approach law and international law in this way in his classic study of the Kula exchange in the Trobriand Islands. In the *Argonauts of the Western Pacific*, first published in 1922, Malinowski convincingly advanced a reading of social (international) relations in which material objects were the repositories and the channels of particular distributions of power, identity and wealth—of particular ‘structures of

⁹⁶ D McLellan (ed.), *Karl Marx: Selected Writings* (Oxford UP, 1977) 389.

⁹⁷ Miller (2005) 8. Miller grounds his reading of materiality on GWF Hegel, *Phenomenology of Spirit* (Pennsylvania State UP, 1994).

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.* See also, T Hamling & C Richardson, *Everyday Objects: Medieval and Early Modern Material Culture and its Meanings* (Ashgate, 2010).

authority’ in the language that I have used in this article. As Malinowski put it, the Kula exchange offered us not only some reflections upon the origins and evolution of ‘wealth and value, of trade and economic relations in general’. It also ‘shed light upon the development of ceremonial life, and upon the influence of economic aims and ambitions upon the evolution of intertribal intercourse and of primitive international law’.¹⁰¹

Mainstream accounts of international law continue, however, to disavow its materiality. Nor is this unique to international law. Yet it seems, as Miller has also argued, that ‘the more humanity reaches toward the conceptualization of the immaterial’, either through theological discourses or through secular projects (such as global order or justice), ‘the more important the specific form of its materialization’.¹⁰² This materialisation, however, tends to drift away to the background of our visual scope.

Focusing this argument specifically on the international legal context, it is then important to realise that the material objects that international law creates sometimes present themselves to us explicitly as ‘international’ and therefore as exceptional – in the form, for example, of an international tribunal, an international intervention, a fact-finding mission or indeed an international confrontation like the Battle of the Somme. But we know, however, that as significant as these materialisations of international law may be, these ‘things’ are, in fact, very rare in international law – and that they are hardly ever able actually to alter political or economic patterns if we think of these in terms of their assumed objectives. On many other occasions, however, international law presents itself to us in the form of things that are ordinary or foreign to its economy, in that they exist under the rubric of the national or the local, or are understood simply as being too banal to fit in to the glamorous, crisis-ridden realm of the ‘international’.¹⁰³

Ordinary (‘domestic’, banal) things form and structure our lives profoundly, however. Think, for example, of all of those objects around us that are constituted through the

¹⁰¹ B Malinowski, *Argonauts of the Western Pacific: An account of a Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (Routledge & Kegan Paul, 1922) 515.

¹⁰² Miller (2005) 28.

¹⁰³ See especially, A Orford, ‘Embodying Internationalism: The Making of International Lawyers’ 19 *Australian Year Book of International Law* (1998) 1; H Charlesworth, ‘International Law: A Discipline of Crisis’ 65(3) *Modern Law Review* (2002) 377.

regime of private property, today a key part of the international legal order.¹⁰⁴ Think also of the role of money in the disciplining of population.¹⁰⁵ Or think about how ‘natural’ spaces, such as the Mediterranean sea or ‘national’ territories, have been constituted through international legal arrangements in order to produce specific outcomes in terms, for example, of deterring ‘migrants’, or of leaving them to die.¹⁰⁶ Or think about all of those little things that are produced, traded and delivered through the international legal economic order—little things that end up furnishing and organising our daily lives through and through.¹⁰⁷ Or think about how some ‘people’, some bodies on the ground and not others, continue to be deemed killable on the basis of rationales and structures of authority that were in operation in the battle of the Somme and that continue to exist today in less overt ways, as we saw in Section II.

History and the present

Although all of these examples of ‘extraordinary’ and ‘ordinary things’ that I just gave come from diverse sections of our heavily fragmented global legal order, they are still all part of the general material economy of international law, using Bataille’s language.¹⁰⁸ They are all part of the world created by international law, and by all the forces and structures that it supports. Some objects, of course, find themselves carrying through their function, shape and location a clearer, more explicit story about international law. As we saw above, soldiers in the front line, canons and trenches are a good example of this when we think about WWI and how the war and its violence, and its structures of authority, were materialised and lived on the ground. But less conspicuous things on the battlefield, and in the towns and cities across Europe and its colonial possessions and beyond were also carrying the traces of the international legal order of that terrible time. As I have suggested above, even a shovel, on the battlefield,

¹⁰⁴ On the important role of private property in the history of the international legal order, see especially, M Koskenniemi, ‘Empire and International Law: The Real Spanish Contribution’ 61 *University of Toronto Law Journal* (2011) 1.

¹⁰⁵ See e.g., K Hart, *Money in an Unequal World* (W.W. Norton, 2000); R Kreitner, ‘Legal History of Money’ 8 *Annual Review of Law and Social Science* (2012) 415.

¹⁰⁶ See e.g., C Heller & L Pezzani, ‘The Left-To-Die Boat: The Deadly Drift of a Migrants’ Boat in the Central Mediterranean’ *Forensic Architecture*. Available at: <<http://www.forensic-architecture.org/case/left-die-boat/>>.

¹⁰⁷ See e.g., L Russi, *Hungry Capital: The Financialization of Food* (Zero, 2013).

¹⁰⁸ See on ‘the general economy’, G Bataille, *The Accursed Share: An essay on General Economy* (Zone, 1988).

was no longer just a shovel. It was a shovel in the midst of war, in which millions of men had been commanded to die by the same structures that ordered them to dig the trenches in which they would live and the mass graves in which they would be laid to rest. The shovels had been issued in every case according to clearly stipulated regulations which also laid out the ‘shoveling’ ratios for each activity – for example, one cubic foot of loose earth to be shoveled by one unit per minute. Such instructions were to be found in the *Field Service Pocket* manual, published in 1914 and revised in 1916, which all officers were given upon deployment.¹⁰⁹

We can see today how drones and the victims of collateral damage continue to carry the international legal order of our time and its structures of authority within them. In so doing, these present things carry, as I show in Section II, the history of the world within them. But ordinary present-day things, even our own bodies, also do the same. After all, as Foucault powerfully argued, our bodies should be understood as the inscribed surface of past and present events.¹¹⁰ Again, if perhaps not as conspicuously, all these things, from bodies to shovels, are, whether willingly or not, part of the ‘general economy’ of a world that is profoundly shaped by international law.

The task ahead is then to figure out how and which part of the international legal order reside in the objects around us and with what effect. My aim with this article has not been to set out a list of instructions about how to do this. This is a complex exercise that can take different forms and follow different avenues of inquiry—as this Special Issue as a whole attempts to show. My aim instead has been to use *The Great War* to illustrate the importance of this task, and the value of it if we want to grasp the resilient structures of authority that underpinned the massive violence both of WWI and of the present day. This is a crucial task in a world in which the relation between international law and violence continues to be articulated in the name of virtue. For example, according to Chris Jenks and Geoffrey S. Corn, both Lieutenant Colonels retired from the U.S. and the former contributor and the latter co-editor of the recently published volume

¹⁰⁹ *Field Service Pocket* (General Staff, War Office, 1914) contained a detailed overview of all aspects of army life and operations, including army structures, march discipline, food rations, information and intercommunication procedures, instructions for building and demolitions, etc.

¹¹⁰ M Foucault, ‘Nietzsche, Genealogy, History’ in Paul Rabinow (ed.), *The Foucault Reader* (Penguin, 1991) 83.

U.S. Military Operations: Law, Policy, and Practice,¹¹¹ law continues to have a ‘transcendent’ influence in military operations.¹¹² Interestingly, however, according to Jenks and Corn this influence is not necessarily about regulating, condemning or deterring violence. Instead, they confirm, that:

While there are legal and moral reasons a military commander seeks to ensure the conduct of hostilities and other aspects of military operations comply with international and domestic law, first and foremost such compliance enhances the probability of mission accomplishment. [As a result, what], military legal advisers understand is that legal compliance will ultimately contribute to mission effectiveness and resource efficiency.¹¹³

As part of the large body of literature that has tried to grapple with the First World War, especially in recent years with the arrival of its centenary, *The Great War* is, in an important way, part of the world created by international law. But the beauty of this book is not simply that it gives us another account of the War and the rationales that underpinned it. Instead, the kind of ‘graphic justice’ that we can see on display in its illustrations and format aims specifically to contain and display the history of the War before our ‘present’ eyes.¹¹⁴ In this sense the book, as an object, makes explicit one way in which we could approach our material world—again using Benjamin—as a site for ‘telescoping the past through the present’.¹¹⁵ Sacco’s invitation, I believe, is that we should approach many of the other things that surround us, and of which we are also a part, in the same way—not as ‘mere’ objects, but instead as panoramic artefacts which can tell us as much about the past as they do about the present. As Hobsbawm once explained it, history (and, we might add, also international law) is ‘not not like a bus-line on which the vehicle changes all its passengers and crew whenever it gets to the

¹¹¹ GS Corn, RE VanLandingham, SR Reeves (eds), *U.S. Military Operations: Law, Policy, and Practice* (Oxford UP, 2015).

¹¹² C Jenks and GS Corn, ‘The transcendent influence of law in military operations’ Oxford UP Blog, 25 January 2015, available at: <<http://blog.oup.com/2016/01/law-in-military-operations/#sthash.xj1p2aOR.vLCGE8Oi.dpuf>> (last visited 16 December 2016).

¹¹³ Ibid.

¹¹⁴ See on the concept of ‘graphic justice’, T Giddens, ‘Lex comica: On comics and legal theory’ in T Giddens (ed.), *Graphic Justice: Intersections of Comics and Law* (Routledge, 2015).

¹¹⁵ W Benjamin, *Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Harvard UP, 2002) 471.

point marking its terminus.’¹¹⁶ Instead history and international law unfold and unroll continually in and through the world.

The end result is surely far from neat. The material world is not just full of history, but it is constituted and continually reconstituted by a contradictory and multiple living network of histories. On some occasions, our material world even seems to have an agency of its own. The world that we have created, for example, backfires on us every now and then, as the phenomenon of global warming reminds us no less than the resistance displayed by people with their own bodies and through their own artifacts of disobedience to each wave of international disciplining.¹¹⁷ Here we can find an additional value of paying attention to the past and present materiality of international law and its history.

¹¹⁶ Hobsbawm (1987) 6.

¹¹⁷ See, e.g., C Flood and G Grindon, *Disobedient Objects* (V&A Publishing, 2014).