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## **Bargaining for Justice: Ukraine, Gaza, and the Ethics of Conflict Termination**

C. Anthony Pfaff

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<https://press.armywarcollege.edu/monographs/973>

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MONOGRAPH SERIES

# BARGAINING FOR JUSTICE

Ukraine, Gaza, and the Ethics  
of Conflict Termination

C. Anthony Pfaff



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# **Bargaining for Justice: Ukraine, Gaza, and the Ethics of Conflict Termination**

C. Anthony Pfaff

September 2024



Strategic Studies Institute

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**ISBN 1-58487-859-2**

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## Foreword

In this book, Dr. C. Anthony Pfaff tackles the complexities of resolving the conflicts in Ukraine and Gaza. His approach involves a thorough analysis of how belligerents can optimize their outcomes based on their relative capabilities and cost tolerances. He then extends the principles of the just-war tradition, particularly *jus ex bello*, to find a just way forward.

The point of this analysis is twofold. First, the conflicts in Ukraine and Gaza have exposed shortcomings in the moral frameworks by which we can assess policy options in the context of war; in this case, specifically, the just-war tradition. The result is policy confusion, as without a clear standard, knowing when one has achieved the justice one can is difficult. Thus, the pressure to keep fighting continues to outweigh the harm the fighting causes. Second, resolving policy confusion is possible by pursuing policy alternatives that provide security for the victims of aggression while making the aggressor worse off for aggressing but better off for ceasing hostilities.

These conditions, of course, are not meant to be a full account of *jus ex bello*, but they do address concerns regarding the establishment of, if not a better state of peace, the best state of peace one can establish. Moreover, the adjudication of actors' interests offered at the end of the book is not intended to provide mathematical precision—that is neither possible nor desired. But by assigning relative values associated with military capability and cost tolerance and by weighing outcomes using principles of the just-war tradition, one can identify the features of the conflict worth fighting for and the features that can be subject to settlement. Doing so may not provide a single best choice but should at least illuminate features of the conflicts relevant to revising war aims or settling.

Dr. Antulio J. Echevarria II  
Editor in Chief  
US Army War College Press





# Executive Summary

## Introduction

Conflicts generally end in one of three ways: one side wins, both sides settle, or stalemate. From a moral perspective, the preference is for the just side to win. However, as Ukraine and Gaza show, a just-side victory may not always be possible. In that case, the moral way forward is less clear, as settling entails compromising with the unjust side. Under these circumstances, continuing to fight is not necessarily a morally better option. If defeat is inevitable, or at least highly likely, incurring the same result at a higher cost makes no sense. This moral opacity has practical implications. Since how a conflict could end is inherently probabilistic, whether compromise is necessary, and if it is, what compromises are morally permissible, is difficult for decisionmakers to know. The resulting confusion often places decisionmakers in a position where, as long as they can fight, they will fight. This leaves open the question of whether they *should* fight. This book provides a framework for answering this last question, given conditions of uncertainty and incomplete information.

To resolve this confusion, this book first examines the possible outcomes of the wars in Ukraine and Gaza given the value of the interests at stake, belligerents' relative capabilities, and their cost tolerance. Given those outcomes, it next applies the just-war tradition (JWT) to identify the moral factors that inform how one should value those outcomes. In doing so, it identifies gaps in traditional just-war approaches and argues for revisions in just-war theory to account for conditions in Ukraine and Gaza better. With those revisions in mind, the book assesses the prospects for just settlements under conditions of limited information.

Since what one should do depends on what one can do, moral decision making depends on assessing possible outcomes and then considering which one optimizes the moral commitments at stake. In this context, possible outcomes are a function of belligerents maximizing their minimum outcome. Where that range of outcomes lies is the space for settlement on a rational, if not desirable, basis. However, rational outcomes may not always be moral, which can make the path to settlement one should take less clear. Moral commitments can clarify that path by placing boundaries on what outcomes one is permitted to pursue and by informing interests, opening up new potential for settlement. Thus, just-war norms can inform the bargains one can make and guide those that one should make. Applied to the challenges of Ukraine and Gaza, the integration of

bargaining theory and the JWT can provide a cogent way forward to optimize justice, given conflicting interests.

## Bargaining Theory

This book uses bargaining theory to analyze the possible outcomes of the Russia-Ukraine War and the Israel-Hamas War, as well as the likelihood and desirability of those outcomes. Bargaining theory is a branch of game theory exploring how actors whose interests do not align can find mutually beneficial, and presumably acceptable, outcomes. Like other aspects of game theory, bargaining theory analyzes the choices actors *can* make—from a rational perspective—given their expectations regarding the choices others *will* make. It further assumes actors are rational and will maximize their utility in each situation. In practice, the bargaining process involves actors maximizing their share by imposing costs and offering benefits to change how much an opponent values a good. Thus, bargaining problems model situations in circumstances of justice where actors claim what they deserve based on reasons they expect others to accept. Where actors agree on how to divide an interest, bargaining principles can become principles of justice.

In war, bargaining begins before the fighting, continues during the fighting, and concludes with a settlement. Throughout this process, belligerents update their expectations regarding the other's capabilities and cost tolerance to determine the prospects for victory or, failing that, settlement. The bargaining process poses additional barriers that complicate the settlement process, including low levels of trust that make negotiating difficult and communication difficulties that may lead to misinterpretation.

Conflict resolution depends not only on what actors bargain with but also on what they bargain for. Wars end when one side expels the other or forces its adversaries to choose between unilaterally capitulating or mutual withdrawal. In some cases, no actor chooses, and the conflict simply freezes. When all sides in a conflict find themselves in a position where either they cannot choose or no other choice leaves them better off, the conflict has reached an equilibrium. Whether an equilibrium is worth bargaining for depends on the extent to which it maximizes the interest at stake and the extent to which it establishes a better state of peace than prior to the conflict. The terms ending World War II were arguably morally preferable to the terms ending World War I because the former sought to make former enemies better off than before the war, making future conflict less likely. Thus, not all equilibria are morally equal and some may represent a “rotten compromise,” where too much has been conceded

to the unjust side. Under those conditions, the just belligerent must decide what to fight for to maximize what justice it can achieve.

In the context of Ukraine, absent some wild-card event, Ukraine and Russia must eventually choose between a ceasefire, a more permanent settlement, or letting the conflict freeze. Which outcomes are more likely and preferable will depend on continued support from Ukraine's partners. In the context of Gaza, the Israel Defense Forces are more militarily capable but have not been able to terminate the conflict on their own terms. Possible outcomes appear to be engaging in a costly occupation or returning to the prewar status quo and containing Hamas from outside Gaza. Determining a way forward requires finding a way to establish a better state of peace that, at a minimum, vindicates the rights of the victims of aggression.

## Just-War Tradition and the Ethics of War Termination

The purpose of the JWT is to prevent war or, failing that, to minimize the harm caused by war. Historically, this tradition addressed the conditions justifying the resort to war and the rules for fighting it. More recently, just-war scholars have expanded the tradition's reach to include obligations after a war has concluded. Each of these phases imposes conditions on war termination. Where belligerents determine continued fighting is disproportionate or futile, *jus ad bellum*, which concerns the justification for armed force, would require them to stop fighting. *Jus in bello*, which governs war fighting, would place boundaries on how belligerents should fight to make settlement more likely. *Jus post bellum* specifies post-conflict obligations and provides the ingredients for just settlements.

Within this phased approach to governing war, the JWT contains several controversies regarding the ethics of war termination. These controversies include the difficulty of establishing what counts as reasonable or successful under *jus ad bellum* provisions, the difficulty of ending wars and reaching just settlements after *jus in bello* violations, and the utility of using *jus post bellum* to determine what to do when the conditions for a just settlement cannot be met. What boundaries the JWT would place when the conditions for just settlement are not achievable is less clear. As actors better understand what they can achieve, the nature of the cause and what counts as achievable and proportionate can also change. Adjudicating these changes is the role of *jus ex bello*, a relatively new branch of the JWT, which establishes conditions governing whether actors should fight, settle, or continue the struggle through nonviolent means.

## Conclusion

This book establishes a moral framework and an understanding of *jus ex bello* that provides a more usable way to determine what outcomes would be morally permissible and thus what additional conditions are worth fighting for. The book also adjudicates the possible outcomes of the Russia-Ukraine War and the Israel-Hamas War. This adjudication is not intended to be mathematically precise but assesses the likely outcomes by assigning relative values associated with military capability and cost tolerance. It then applies the principles of the JWT to weigh those outcomes. Doing so may not provide a single best choice but should at least illuminate features of the conflict relevant to revising war aims or settlement. For both conflicts, avoiding rotten compromises entails finding equilibria where the aggressors are worse off for starting the war but better off for agreeing to terms to end the fighting, even if the outcome is just a ceasefire.

## — Part One —

# The Bargaining Model of War

## Introduction

Since Michael Howard and Peter Paret translated Prussian general Carl von Clausewitz's *On War* into English in 1976, the American military has conceived of war as "politics by other means," where one imposes one's will on the enemy.<sup>1</sup> As political scientist Dan Reiter pointed out in his survey of literature regarding the bargaining model of war, Clausewitz's view raises the question of whether one should consider war a failure of diplomacy or a continuation of the bargaining diplomacy entails.<sup>2</sup> If the former, then war and diplomacy are distinct. As Cold War scholar Thomas C. Schelling observed, "a difference between taking what you want and making someone give it to you" exists, suggesting war occurs when one cannot convince an adversary to concede and thus must resort to war to force the issue.<sup>3</sup>

However, Schelling points out war is always a bargaining process in which "threats and proposals, counterproposals and counterthreats, offers and assurances, concessions and demonstrations, take the form of actions rather than words."<sup>4</sup> Bargaining in war can be explicit or tacit, where adversaries communicate what they want, and what they are willing to pay for what they want, by how they fight as much as by what they say. Viewed this way, coercion and war are part of a continuity of bargaining differentiated by the interaction of actor preferences. As long as actors prefer concession to war, the utility of force is limited, as the use of force risks escalation. This preference does not entail actors will concede, but rather that what risks they will take to avoid concession will have rational limits.

Where those preferences are flipped—and actors prefer war to concession—war is possible, though not inevitable. As Schelling also points out, the power to take and the power to hurt are different, and with sufficient military force, an actor may not need to bargain.<sup>5</sup> But actors often resort to war without sufficient military force, which places them in a position where force is used more to convince than to take. Where this is the case, as Reiter argues, viewing war as a continuation of bargaining rather than a break better allows one to link "causes, prosecution, termination, and consequences into a single theoretical framework." In Reiter's view, bargaining occurs during all phases of war. Fighting breaks out when belligerents cannot reach a bargain and prefer to go to war. Fighting continues

as long as both sides believe fighting will increase their chances of gaining a favorable settlement. Fighting ends when belligerents can find terms they both prefer to war.<sup>6</sup>

The phases of bargaining in war provide a rough normative framework for a practical and moral discussion of war. Answering the questions of when one should prefer concession to war, when one should continue fighting, and under what terms one should cease fighting requires answering questions about what is possible and what is obligatory, permissible, or prohibited. The discussion in this section will focus on what is possible, given the zero-sum nature of the interaction once fighting breaks out.<sup>7</sup> For this discussion, *rational* refers to actors' willingness and ability to align action with an objective. But what informs those objectives may result from nonrational or irrational processes.

The model used here examines how actors with limited knowledge of their opponents might settle into a stable pattern of interactive behavior.<sup>8</sup> In this view, war terminates when actors reach an equilibrium, defined as an outcome where no actor is incentivized to change its strategy, given the other actor's strategy.<sup>9</sup> Splitting the chocolate cake in half is an equilibrium for actors with similar preferences for the cake that will get no cake if they disagree. Assessing whether an equilibrium represents a morally permissible outcome will be the subject of part two.

In game theory, an equilibrium refers to a state where all actors have selected strategies that result in outcomes from which no actor has an incentive to deviate unilaterally. However, the term *equilibrium* can encompass several types of equilibria depending on the context and the game's specific rules. Nash equilibria, for example, represent a particular type of equilibrium where no player can benefit by changing its strategy, while the other players keep their strategies unchanged.<sup>10</sup> The equilibrium described in the chocolate cake example would be a Nash equilibrium. Assuming both actors prefer the cake equally, they would always be incentivized to withhold agreement should the other actor try for more than half.

Also, a dominant-strategy equilibrium exists, in which each player has a strategy that yields a better outcome than any other strategy, regardless of what the other players do. The well-known prisoner's dilemma illustrates a dominant strategy well. In a prisoner's dilemma, two actors are present, each of whom has two strategies: defect or cooperate. If both cooperate, they get the second-highest possible payoff. If one cooperates and one defects, the defector gets the highest possible payoff, and the cooperator receives the lowest. If both defect, they each get the third-highest payoff.

Under the conditions of the prisoner's dilemma, if an actor expects the other actor to defect, that actor should defect to avoid the worst payoff. If the actor

expects the other actor to cooperate, that actor should again defect to obtain the highest payoff. Since no matter what the other actor does the other should defect, mutual defection represents the dominant-strategy equilibrium. A dominant-strategy equilibrium can also be a Nash equilibrium. The prisoner's dilemma has been used to model arms races and other international competition features.<sup>11</sup>

Subgame perfect equilibrium is a refinement of the Nash equilibrium applicable in dynamic interactions with a sequential structure. A subgame perfect equilibrium requires that actors' strategies constitute a Nash equilibrium in every subgame of the original game. For example, if one iterates the prisoner's dilemma, opportunities arise to impose costs for defecting, making cooperation the rational choice as long as the other does the same.<sup>12</sup> As political scientist Robert Keohane observes, the subgame perfect equilibrium models the kind of interaction between self-interested parties that can account for the acceptance of moral norms.<sup>13</sup> These norms' moral status may be independent of this acceptance; however, where actors can benefit from upholding the norms, the actors seem to have an additional *prima facie* moral obligation to cooperate.

Finally, the Bayesian Nash equilibrium is also relevant here. These equilibria apply when actors have incomplete information regarding other actors' preferences. Actors reach this equilibrium when each maximizes its expected utility, given its beliefs about other players' preferences. Despite the apparent applicability to bargaining situations, Bayesian Nash equilibria are challenging to calculate, especially in real-world situations where preferences are not easily quantifiable. In such situations, often the best one can do is formulate possible equilibria and assign probabilities to actor choices based on which possible strategies are optimal given one's original beliefs regarding a problem and any updates to those beliefs based on other players' possible moves.<sup>14</sup> This kind of equilibrium and analysis will feature in part three.

The concept of equilibrium may seem abstract; however, it has important practical implications for terminating otherwise intractable conflicts. Among belligerents, trust is a function of how rational they perceive their adversary to be. To the extent belligerents believe a settlement is in their adversary's interest, they are more likely to trust that adversary's commitment to maintaining the settlement. This trust should diminish the chances of miscommunication and misinterpretation, making the settlement more sustainable. Even simply committing to finding an agreement, to the extent all actors perceive commitment to be beneficial, can provide a foundation for negotiation. Framework agreements, which are essentially agreements to agree, have been influential in international relations, setting conditions for agreements on trade, arms control, and other issues.<sup>15</sup> In effect, framework agreements introduce a shared norm for cooperation that can transform zero-sum interactions



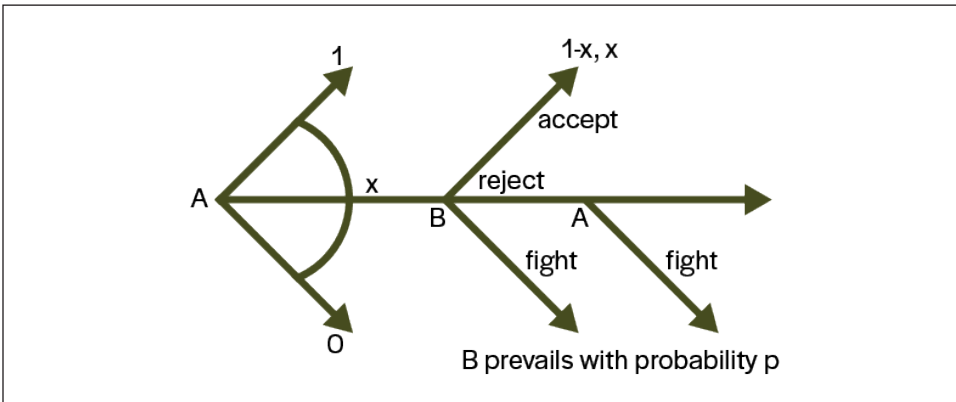
into positive-sum ones, where both sides can gain. However, while equilibrium may be a necessary condition for a just settlement, equilibrium is not a sufficient condition for a just settlement. As discussed in part two, an actor may be forced to concede too much injustice to justify a settlement.

The first puzzle to solve, as political scientist James D. Fearon points out, is why war breaks out in the first place. Given the high and uncertain costs of war, rational actors should always agree to settle at any phase. Even for the weaker side, an adverse settlement without fighting should always be preferable to the same settlement with fighting. Fearon attributes the failure to settle to three factors. The first two are a function of incomplete information. First, sides may disagree about relative military capabilities, thus overestimating their chances of winning. Second, belligerents may be uncertain if they can trust the other side can or will maintain its commitment to any settlement. The last factor is a function of the interest in conflict. Where the interest is not divisible, like territory, the only options are to concede or fight.<sup>16</sup>

In Fearon's view, the function of fighting, in part, is to reduce uncertainty, which makes striking a bargain more likely. Once the fighting begins, both sides update their beliefs about the other's capability and intent, allowing expectations to converge.<sup>17</sup> As expectations converge, actors should be able to identify the point where the cost of further fighting exceeds any expected benefit. Under these conditions, settlement would be more likely to occur the longer the war goes on. Reduced uncertainty may not always bring convergence. Belligerents' relationship to the interest at stake can also affect the prospects for settlement. Daniel Kahneman and Amos Tversky point out actors are risk averse regarding potential gains and risk seeking when avoiding loss.<sup>18</sup> This cognitive bias should give an advantage to the defender as long as the interest at stake is divisible.

Figure 1-1 illustrates Fearon's basic bargaining model, where one actor, actor A, challenges actor B over an interest, such as territory.<sup>19</sup> Actor A's demand is represented by a range of values ( $x$ ) between zero (0) and one (1). Where an interest is indivisible, actor A can only demand one (1) since indivisible stakes are all-or-nothing. Where the interest is divisible,  $x$  represents how much of the whole actor A seeks. If actor B accepts actor A's demand, actor A receives the payoff  $x$  and actor B receives the payoff  $1 - x$ . If actor B rejects the demand, actor A can concede as the situation returns to the status quo. If actor A does not concede, the confrontation continues. Assuming actor A does not change its demand, actor A's options to strike a bargain depend on its ability either to impose a cost (or threaten to impose a cost) higher than actor B's value of the interest or to lower the value of the interest for actor B. Actor B may accept or reject the demand, which will either lead to conflict or to actor A's concession. In this model, only one opportunity

to strike a bargain is present. Once the fighting begins, results depend on how much one side or the other can take. Thus, as political scientist Robert Powell points out, actor A's resolution is like a lottery, as it depends on prior conditions actors do not influence after they decide to fight.<sup>20</sup>



**Figure 1-1. Basic bargaining lottery model**

The lottery model aptly illustrates what Schelling describes as an effort to take. Once bargaining fails, the aggressing actor attempts to seize the interest while the defender attempts to prevent that from happening. Applied to the Russia-Ukraine War, this model helps explain why the conflict is so far intractable and what needs to happen to improve the conditions for termination. Putin has offered several rationales for Russia's intervention and subsequent invasion of Ukraine, including protection of Russian nationals, intervention by invitation, and a response to NATO encroachment.<sup>21</sup> At the outset of the conflict, the Russians significantly raised the stakes with their December 17, 2021, ultimatum that demanded no further NATO enlargement and cessation of military cooperation with post-Soviet countries, withdrawal of US nuclear weapons from Europe, and withdrawal of NATO forces to the borders of 1997, which would include the 14 eastern European and Baltic states that joined after that date.<sup>22</sup> A year later, Russian Foreign Minister Sergey Lavrov reduced the scope of Russia's demands, stating in late December 2022 Ukraine must accept Russia's annexation of Luhansk, Donetsk, Kherson, and Zaporizhzhya.<sup>23</sup>

Most recently, Putin offered to end hostilities if Ukraine gave up NATO ambitions and ceded the entirety of the provinces Russia has annexed.<sup>24</sup> Other sources indicate Putin would accept a ceasefire along current front lines and begin talks for a permanent settlement.<sup>25</sup> Given the current situation, to conclude Russia would likely accept international recognition for the territory it has annexed in exchange for a cessation of hostilities seems reasonable. Doing so ends a costly war while posturing Russia to impose further costs should Ukraine continue

to draw closer to Western Europe. So, one way to understand Russia's (as actor A) demands ( $x$ ) in this model is as some combination of territory and policy control, especially regarding Ukraine's relations with the West, whose value falls between 1 and 0.

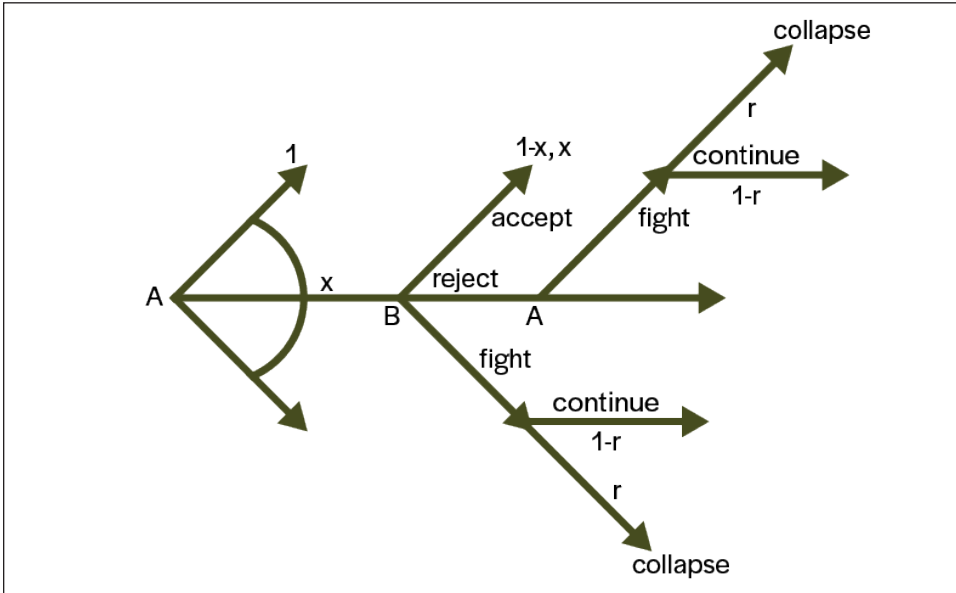
Ukrainian President Volodymyr Zelensky, for his part, outlined 10 conditions for ending the war. Summarized, the demands call for the cessation of hostilities and the complete restoration of Ukrainian sovereignty, including the return of Crimea, which Russia annexed in 2014. Zelensky also added punitive measures, which include accountability for war crimes as well as compensation for damage to Ukraine's environment and infrastructure. Finally, Zelensky asked for a publicly signed confirmation of the end of hostilities endorsed by the UN.<sup>26</sup>

Here, Ukraine rejects Russia's demands and imposes additional conditions. Because Ukraine sees its territory as indivisible, any demand for territory by the Russians will be calculated as indivisible (1), leaving Ukraine with an outcome of zero (0). This leaves some room for negotiation over policy control. However, Ukraine's incentive to concede is a function of the perceived likelihood of success, which is significantly impacted by Western support. As long as support remains above a certain threshold, little space will remain for negotiation.

For their part, Ukraine's Western partners have expressed other, though supporting, goals for the assistance they provide. The NATO Secretary-General Jens Stoltenberg and French President Emmanuel Macron justified NATO's assistance as "the only way" to get Russia to the negotiating table, suggesting some compromise might be acceptable.<sup>27</sup> The United States' support seems more open-ended and directed at fully restoring Ukraine's sovereignty.<sup>28</sup> More recently, Kusti Salm, the permanent secretary at Estonia's Ministry of Defence, stated Russia must be degraded and "economically ruined" to the point it will "walk away with the understanding that international law and the rule-based world functions and that you cannot bend it as you wish."<sup>29</sup> These aims are significant only to the extent they impact the level of support Western partners provide Ukraine and how Western support impacts Ukraine's chances for success.

Although this basic bargaining model provides an adequate description of how the conflict in Ukraine started, the model provides little guidance on what to do now that Putin's effort to take and Ukraine's efforts to take back have stalled. Powell argues Fearon's view unnecessarily treats war as a game-ending move. In Fearon's model, strategic interaction stops once actors decide to fight, and both receive the payoff reflected in their power distribution: the strong win, and the weak lose.<sup>30</sup> Although Fearon does not use the analogy, battle, viewed this way, is like calling in poker. If players cannot

convince their opponents to fold, at some point, one player calls, and all players show their cards. The one with the strongest hand wins. The trouble with this view is actors learn as the war progresses and may use the new information gained in battle to update their beliefs about their prospects and objectives.



**Figure 1-2. Bargaining process model**

Figure 1-2 describes conflicts where outcomes are less dependent on the distribution of military power and more dependent on an actor's willingness to accept risk and costs ( $r$ ).<sup>31</sup> As with the basic bargaining model, actor A demands something from actor B, and actor B can accept, reject, or fight. Unlike the basic model, which treats the outcome as a kind of lottery where the initial distribution of military power determines the winner in the fight, bargaining continues throughout the fighting under conditions where costs and payoffs can differ at each iteration. Bargaining ends when one side collapses or both sides find an equilibrium.<sup>32</sup>

Applied to Gaza, Israeli military operations may not be adequate to extract concessions or eliminate Hamas resistance, leaving little space for bargaining. Israel's Prime Minister Benjamin Netanyahu has consistently stated Israel's goals are to destroy Hamas and bring back the remaining hostages.<sup>33</sup> More precisely, Israel seeks to destroy Hamas's ability to govern Gaza and reconstitute to conduct more attacks against Israel.<sup>34</sup> Israel is also conducting attacks against Iranian proxies in Lebanon and Syria in an apparent attempt to limit Iran's ability to use other proxies to open a second front.<sup>35</sup> As with Ukraine, Israel's demands reflect a view the country's objectives are indivisible, which explains, in part, why the

recent ceasefire proposal by Egypt and Qatar, which would have allowed Hamas to remain in Gaza, was rejected.<sup>36</sup>

Hamas initiated the Israel-Hamas War with its attack on October 7, 2023, nominally as a response to Israeli security operations at the Al-Aqsa Mosque. Hamas also demanded the release of thousands of Palestinian prisoners and the lifting of access restrictions to Gaza.<sup>37</sup> The attack also served Tehran's broader regional goals. By catalyzing a conflict between Hamas and Israel, Tehran likely hoped to impose costs on Israel to deter future attacks against Iran's proxies in Palestine and elsewhere. Moreover, successfully resisting Israel will increase Hamas's influence outside Gaza, bringing more of the region under Iranian control. Both Hamas and Tehran also likely hoped to derail the normalization of relations between Israel and Arab states, which may explain the timing of the attack.<sup>38</sup> At this point, all Hamas likely needs to do to claim victory is survive, which should allow it to meet its goals of deterring future Israeli military operations as well as increase its—and subsequently Tehran's—regional, if not global, influence. Thus, Hamas and Tehran likely have more room to bargain on specific settlement terms, since forcing Israel to accept anything less than a complete victory counts as a win for them.

The current ceasefire proposal calls for an initial six-week period when Hamas would release some hostages, Israel would release some Palestinian prisoners, and Israeli forces would withdraw from Gaza's urban areas. At the end of a second six-week period, if Israel and Hamas can agree to a more permanent cessation of hostilities, there will be a larger release of hostages and prisoners and Israeli forces will complete their withdrawal from Gaza. That larger release and full withdrawal, however, are contingent on Israel and Hamas reaching an agreement on "other conditions." The trouble with these other conditions is that Netanyahu has stated that the ceasefire proposal is not incompatible with Israel's military goals of removing Hamas from power and disabling its ability to conduct offensive operations. As a result, Hamas has countered that Israel should withdraw forces independent of the results of any negotiations.<sup>39</sup> Domestic pressure for the return of the hostages may incentivize Netanyahu to concede on some goals; however, absent an agreement on those other conditions, any ceasefire will not likely be permanent.

Even when the victor seems clear, continuing the bargaining process rather than settling may still be rational for the losing actor. As Paul Kecskemeti points out, even for actors facing imminent defeat, continued fighting may allow them to impose sufficient costs on the enemy to attain better terms for ending the conflict.<sup>40</sup> As long as that hope is alive, the weaker actor's continued fighting is rational. Getting the North Vietnamese government to accept the Paris Peace Accords

was, in fact, President Richard Nixon's rationale for expanding US operations into Cambodia and Laos, as well as for conducting the Christmas bombing campaign against North Vietnam despite having concluded the Vietnam War was not a war the United States could win.<sup>41</sup>

Like Reiter, Powell argues that in war, bargaining begins before any fighting, continues during the fighting, and concludes with a settlement.<sup>42</sup> In wars where a challenger dissatisfied with a status quo attacks a satisfied defender, the chances of settlement increase the more the satisfied challenger concedes. However, the defender wants to concede as little as possible to incentivize the challenger to settle. Thus, bargaining here is characterized by a finite number of rounds where the defender offers increasingly higher concessions, and the challenger responds by fighting until the offer is satisfactory or one actor collapses.<sup>43</sup>

Whether actors should concede or fight is contingent on the distribution of power and the costs of fighting relative to the value of the interest. Where defenders are weaker or unwilling to pay the cost of defending, they should concede. In this case, defenders' offering should include the minimum necessary components to satisfy the most challenging version of the actors they may be facing. Where challengers are weaker or cost averse, they should not challenge in the first place, avoiding war altogether. But in practice, actors are frequently uncertain about who is stronger or more committed; thus, uncertainty about the distribution of power or cost tolerance increases the likelihood and duration of war.<sup>44</sup> Given such judgments are probabilistic, whether demanding or offering, settlement decisions will always entail physical and moral risk. The two are related. The physical risk is one ends the war on worse terms than otherwise. The moral risk is causing more destruction than one's cause can justify. Minimizing physical and moral risks requires understanding how to optimize outcomes given a particular bargaining environment.

Although each conflict will entail unique features that will affect what counts as possible outcomes and reasonable objectives, the structure of bargaining is the same. In a war with a challenger and a defender, the challenger is incentivized to get the most it can and the defender to lose the least required. Suppose actors cannot simply force the issue. In that case, bargaining in war becomes a minimax problem, where actors seek an equilibrium value representing the maximum gain for the challenger and the minimum loss for the defender. Under these conditions, successful bargaining requires finding the minimax value of the challenger's and defender's interaction.

The minimax theorem holds for any finite, two-actor, zero-sum game a value ( $v$ ) exists, which is the value one actor can attain from the other if both act rationally. Whatever that value is, the other player cannot rationally prevent the

first from achieving it; therefore, one can infer the first player will not settle for less than  $v$ . Also, a strategy exists for the other player that ensures the player will lose no more than  $v$ , which prevents the first player from attaining more than  $v$ . Since the second player wishes to minimize its losses, the second player is motivated to limit the first player's outcome to  $v$ .<sup>45</sup> Mathematician John von Neumann, who originated the minimax theorem in 1928, argued no rational actors would settle for anything less than their attainable maximin payoff, and because they would expect the other to have the same desire as well, neither actor would try to get, much less actually get, their maximin payoff once identified.<sup>46</sup> When it comes to dividing the chocolate cake, no actor has a reason to accept less than half, given the alternative is to get nothing.

Table 1-1 illustrates such an interaction, where one player's gain entails the other's loss. Given the table's values, no equilibrium exists in a single-iteration interaction. Regardless of what pair of strategies the actors select, one will be incentivized to change. However, both actors can employ mixed strategies to find a Nash equilibrium. For every player, a security level exists that represents the minimum payoff actors can obtain if they announce in advance they are pursuing a particular strategy. As the table shows, if actor B knows actor A will play  $S_1$ , actor B will naturally play  $S_2$ . Thus, actor A's security level for  $S_1$  is one, and for  $S_2$  is two. Since the game is zero-sum, actor B's security level for  $S_1$  is negative three, and for  $S_2$ , actor B's security level is negative four.

**Table 1-1. Finite, two-actor interaction**

|         |       | Actor A |       |
|---------|-------|---------|-------|
|         |       | $S_1$   | $S_2$ |
| Actor B | $S_1$ | 3/-3    | 1/-1  |
|         | $S_2$ | 2/-2    | 4/-4  |

The idea mixed strategies may be the best way to find a minimax equilibrium has important implications for approaching real-world problems. For example, as political scientist Ivan Arreguín-Toft argues, opponents can pursue direct or indirect strategies, in which direct strategies aim to destroy the opponent's forces and indirect strategies aim to break the opponent's will. In the case of insurgencies, for example, stronger sides will naturally prefer to engage insurgents directly; however, the latter's ability to avoid direct combat provides them a strategic advantage. To the extent they can use the strategic advantage and indirectly exploit the political vulnerability of the stronger, stronger sides can win.<sup>47</sup>

Table 1-1 reflects this dynamic. If actor A is the counterinsurgent, and actor B is the insurgent, actor B would rationally employ an indirect strategy ( $S_2$ ) if actor A employs a direct one ( $S_1$ ). If actor A only employs a direct strategy, the actor will obtain the least preferable outcome. Since this is a minimax problem, no equilibrium exists in a single iteration where either actor would not rationally change its strategy given the other actor's choice. But an equilibrium can emerge, as the interaction iterates if players find an optimal mix of the two available strategies. In this case, actor A's optimal mix employs each strategy half the time. For example, actor A's security level increases from the best possible two to two and one-half in four iterations. Actor B optimizes outcomes by employing  $S_1$  three-quarters of the time and  $S_2$  one-quarter of the time, which improves the actor's security level from negative three to negative two and one-half.<sup>48</sup>

The values here are hypothetical and meant only to illustrate how mixed strategies can be a better path to equilibrium. Where war has taken on the character of a minimax engagement, optimizing outcomes will depend on finding the right mix of costs and benefits to determine  $v$ , given the distribution of power and cost tolerance. In practice, strategies that rely exclusively on attrition or otherwise imposing costs will likely be ineffective. Given the zero-sum nature of the interaction, actors need to determine what costs they can impose and what costs they can bear to craft the optimal approach.

The role of mixed strategies in determining settlements was evident in the Vietnam War. Although the United States did employ indirect measures such as the Strategic Hamlet Program, where US and South Vietnamese forces created oil spots of stability, and the Phoenix program, which was an attempt to eliminate the Viet Cong leadership, these measures were poorly managed and unsuccessful.<sup>49</sup> Political scientist Steven Rosen argues the United States relied on its conventional military superiority and pursued a more direct attrition-based strategy as the path to victory. The North Vietnamese and Viet Cong, on the other hand, pursued both direct conventional operations and indirect measures such as guerrilla and political warfare.<sup>50</sup> Although the North Vietnamese direct measures were not always



effective, they were better integrated into the overall approach. The Tet Offensive, for example, initially inflicted severe losses on US and South Vietnamese forces but was eventually repelled.<sup>51</sup>

However, costs that North Vietnamese direct measures did impose amplified their political messaging and thus played a crucial role in undermining public support in the United States, which played a significant role in the US withdrawal. As a result of that withdrawal, North Vietnam prevailed. Rosen attributes this outcome to the fact the US approach emphasized the ability to harm. In contrast, the North Vietnamese approach relied on its ability to sustain harm while imposing costs on its adversaries.<sup>52</sup> This point does not mean the willingness to suffer always beats the ability to hurt. Al-Qaeda in Iraq, for example, was arguably more cost tolerant than the US forces that opposed it. But US success here may also be considered a more effective mixed strategy. In addition to numerous kinetic operations against al-Qaeda leadership, US leaders also partnered with local leaders to isolate them politically. As a result, the United States and its Iraqi partners were able to drive al-Qaeda leadership from major urban areas.<sup>53</sup>

## Power Ratios and Projecting Terms for Settlement

Whatever strategies one pursues, assessing probabilities of success and costs is complex. As noted briefly above, assessments depend on what actors value, and what actors value depends on a multitude of political, cultural, and personal factors. Assessing these factors internally is difficult enough. Comparing these values across political regimes, cultures, and persons is even more so. Having said that, modeling how values relate to each other is possible. So, where one can obtain reasonable estimates of relative values, one can at least narrow the range of values that could count as an equilibrium. One can express the interaction between relative strength and cost tolerance as a power ratio for actors A and B, who have strengths of  $S_A$  and  $S_B$  and cost tolerances of  $CT_A$  and  $CT_B$ .<sup>54</sup>

$$PR(A, B) = \frac{CT_A / S_B}{CT_B / S_A}$$

This ratio compares actor A's and actor B's ability to tolerate the costs the other can impose, illustrating the tradeoff between the ability to harm and the willingness to suffer. As Rosen points out, assessing strength and cost tolerance can depend on subjective, and sometimes unknowable, factors. To resolve some of this uncertainty, Rosen identified gross national product as a factor that strongly correlates

with military capabilities. Where gross-national-product data is unavailable, the revenue available to the government is also strongly correlated.<sup>55</sup> The point here is a practical one. Although several factors, many of which are intangible, may impact these values, one can simplify analysis by finding correlates to the outcomes one wishes to achieve.

Cost tolerance can be more complex to measure since several kinds of costs exist, and people will assess those costs differently. Often, people do not know how much cost they are willing to bear in advance. Measuring simply in terms of lives lost, Rosen found the party that lost a smaller percentage of its population won 75 percent of wars. However, the loss rate did not matter as much as the population's size. Thus, in absolute terms, the winner frequently suffered more losses than the loser, suggesting cost tolerance was a factor. Rosen also found an upper threshold to population loss—around 5 percent for the less populated side—after which it usually surrendered.<sup>56</sup>

Losses, as a metric, however, are backward looking and thus an imperfect correlate for cost tolerance. One RAND Corporation study found public tolerance for casualties was better assessed as a function of the gravity of the situation, the expectation of victory, and the principles at stake.<sup>57</sup> Another relevant measure of cost tolerance Rosen does not consider is the losses military organizations can take before they lose effectiveness or begin to affect popular support. This variable may play a more significant role in extra-systemic conflicts where the non-state actor can take a more substantial percentage of the loss and still reconstitute, and is less affected by noncombatant casualties, and may benefit from those casualties.

Although one may not be able to assign precise values, one can assign relative values that capture the quality of the relationship in question. For example, an actor may believe public support is high and assign a higher value to cost tolerance—and believe military capabilities are medium relative to the political objectives and assign a middle value to the actor's strength. Doing the same for the opposing actor, actors can assess their probabilities and prospects for success. As I will discuss in part two, ethical norms that govern the kinds of harm one may impose and should suffer will impact this relationship as well.

The closer the power ratio is to one, the likelihood of success is subject to chance, so one can assign a value of 50 percent. Assessing costs may be more complex. Although one can assume the closer the power ratio is to one, the costlier the conflict will be, the same can be true when a disparity in relative power exists. Moreover, those costs may not be evenly distributed to the weaker side. So, when a wittingly weaker side decides to fight, one can assume this side is willing to bear

a high cost to succeed. That willingness to bear a high cost can entail an ability to inflict a higher cost, since the higher the tolerance, the more risks that side is willing to take and the longer that side will likely stay in the fight. Whether the higher cost is sufficient depends on the opponent's strength and cost tolerance.

Even when adopting a more qualitative approach, political will and cost tolerance are not simply about the value leaders or the public assign to war aims. For example, according to one poll, though around 50 percent of the Russian population supports some settlement with Ukraine, 75 percent are supportive of Russian military operations. Moreover, those who opposed the war had little sense protest or opposition would make any difference.<sup>58</sup> Thus, sometimes public apathy can be more valuable to a government waging war than public interest. Sometimes, public support can change once the fighting starts. Before October 7, 2023, only 29 percent of Gazans had any trust in Hamas, and 73 percent of Palestinians favored a peaceful settlement with Israel.<sup>59</sup> In December 2023, support for Hamas rose to 57 percent in Gaza and 82 percent in the West Bank, despite the apparent incongruence between the attack and public preferences.<sup>60</sup> The difficulty of obtaining accurate surveys in Gaza is also essential to underscore. A more recent poll conducted by the Palestinian Center for Policy and Survey Research suggested two-thirds of Gazans opposed Hamas's October 7 attack and would prefer an end to the fighting. Whether Gazans' opposition turns into any action that could impact Hamas's ability to resist is uncertain, as the group has a history of brutal suppression of dissent.<sup>61</sup>

Although the values expressed here are not precise, understanding the relationship between military strength and cost tolerance allows one to estimate the probability of success based on what one knows and what one can learn to refine that evaluation. The likelihood of success, however, does not entail a particular outcome. As Kecskemeti observed, actual war aims can change once the war begins, and belligerents may no longer be fighting over the same thing. As a result, even where one side has a higher chance of success, what counts as success is a function of the bargain the side with the lower probability can strike, which may not fully realize the other's goals.

However, as Alex Weisiger observes, in cases where a declining power, for example, initiates a preventive war to prevent decline or otherwise avoid unfavorable political consequences, the declining power may undermine that perception of rationality, making settlement harder. If the target of the aggression does not perceive itself as ascending, the target will likely attribute the attack to an aggressive disposition.<sup>62</sup> For example, more room to bargain exists if one perceives the Russian invasion of Ukraine as a rational response to NATO encroachment rather than as motivated by an irrational desire to restore

the boundaries of the Russian Empire. Similarly, if one perceives Hamas's October 7 attack—and Iran's support thereof—as motivated by a rational fear of further marginalization and decline following Arab states normalizing relations with Israel, rather than as motivated by an irrational hatred of Israel and the Jews, one will again perceive more room to bargain.

## Patterns of War Termination

Where relative capabilities and cost tolerances represent what actors are bargaining with, more needs to be said about for what actors are bargaining. For bargaining to be possible, as the political scientist Paul R. Pillar observes, three conditions must hold: 1) both parties conclude they would be better off with an agreement; 2) mutual action is required to attain an agreement; and 3) more than one agreement is possible.<sup>63</sup> Where these conditions exist among belligerents, settlement is, in principle, possible. Where these conditions do not exist, the purpose of fighting becomes bringing the conditions about, unless one side can take what it wants simply.

Whatever the relative capabilities and cost tolerances, according to Pillar, wars end in one of five ways: absorption, extermination or expulsion, withdrawal, capitulation, or intervention by international actors. For this discussion, I will simplify the category extermination or expulsion to expulsion since, arguably, if one side has the power to exterminate the other, it probably does not need to bargain. Absorption and expulsion occur absent a political decision to cease fighting. In the case of absorption, a local conflict is absorbed into a larger one. In the case of extermination or expulsion, one side renders the other incapable of continued resistance. Capitulation represents situations where one side surrenders or ceases to resist. Capitulating allows the winning side to dictate terms. Withdrawals occur when both sides settle on terms, formally or informally, that lead to an end to the fighting, though not necessarily the end of the dispute. Negotiated settlements are those where belligerents formally come to terms that both end the war and resolve the conflict. Negotiated settlements differ in terms of whether negotiations begin before or after ceasing fighting. Finally, international organizations can intervene in ways that either impose a settlement or change belligerents' calculus regarding the benefit of settlement.<sup>64</sup>

To this taxonomy, one should add frozen conflicts. Unlike withdrawals, where belligerents decide to stop fighting and accept the status quo, frozen conflicts occur when both sides can no longer effectively fight but neither side is willing to agree—implicitly or explicitly—to a ceasefire or settlement. Thus, unlike withdrawals or capitulations, belligerents make no new decisions regarding their

interests or cost tolerances. Under such conditions, some fighting may continue, as did the occasional exchange of artillery fire between Ukraine and Russian-backed separatists in the period before the Russian invasion.<sup>65</sup> But the fighting's purpose would be to signal continued resistance. To the extent force can alter the status quo, the conflict would no longer be frozen.

Frozen conflicts also affect the kinds of bargains belligerents can strike. Political scientist Richard Jordan argues the possibility of stalemate decreases the utility of peacetime concessions, making the weaker side's resort to war more likely.<sup>66</sup> As mentioned, a weaker or declining power should always concede if the power is certain it will lose anyway. However, if the weaker or declining power is uncertain it can win—the possibility of a stalemate exists—then it would be incentivized to resist. This outcome is partly because concessions often bring on additional demands, thus decreasing the value of the concession while increasing the value of resistance.<sup>67</sup>

For this analysis, these end states represent the outcomes to which actors can assign preferences. But preference here is not simply a function of desire. For example, Ukraine may prefer Russian expulsion over capitulation or withdrawal. However, suppose the power ratio suggests expulsion is impossible or too costly. In that case, Ukraine should—from a rational point of view, at least—prefer the achievable, cost-effective alternative that maximizes the desired good in question.

Power ratios are not the only factors to consider when assigning probabilities—and thus preferences—to outcomes. The likelihood of particular outcomes can also depend on the nature of the actors in conflict. Drawing on the survey of war outcomes by Melvin Small and J. David Singer, Pillar distinguishes between interstate, extra-systemic, and civil wars. Interstate wars are those where belligerents are members of the state system. Extra-systemic wars are those where only one side is a member of the state system. Civil wars are those, obviously, where fighting is internal to a single state.<sup>68</sup> In practice, specific conflicts may not fit neatly into this taxonomy. Although the Russia-Ukraine War seems to be a clear example of interstate conflict, the presence of a separatist movement injects features of a civil war. The conflict between Israel and Hamas seems to be an equally clear instance of an extra-systemic war; however, Iran's support of Hamas threatens to widen the war into an interstate war. Both these additional features may have a bearing on what counts as rational and ethical.

Of 142 wars occurring between 1800–1980, Pillar points out most wars ended in settlement, whether achieved as a function of withdrawal or as a function of negotiation. Where wars did not end in settlement, one side was expelled.

Settlements, unsurprisingly, were more likely where stakes were divisible; though, as Weisiger notes, settlement can also occur should the good being fought over be destroyed, even if the good is indivisible.<sup>69</sup> Because the existence of a state is rarely at stake in interstate wars, settlements comprised two-thirds of interstate wars. Even where the existence of a particular government or regime was at stake, the gap between government interest and national survival created at least some space for negotiation.<sup>70</sup>

Civil wars are the most intractable since state control is difficult to divide and since belligerents tend to view the other as a traitor that will not honor any settlement. Thus, the struggle for power becomes a struggle for survival. Few conflicts were settled by international intervention, and when they were, the intervening organization was the UN Security Council. More conflicts terminated in capitulation; however, Pillar observed the number decreased after World War II because of polarization and increased communications that made distant conflicts more accessible and significant to superpower security.<sup>71</sup>

Pillar also observed, in the post-World War II order, the gap between military and political objectives widened so war termination through military force grew increasingly difficult, if not irrelevant. This gap applied almost exclusively to extra-systemic, postcolonial conflicts in Asia and Africa, where actors, frequently fueled by ideology or nationalism, were incentivized to continue and capable of continuing political resistance independent of military outcomes.<sup>72</sup> This dynamic resulted in more mixed results, suggesting a war's extra-systemic character had less to do with the outcome than other factors.

Of 112 conflicts occurring between 1980 and 2007 and surveyed by the Correlates of War project, 13 were interstate conflicts. Of those 13, 6 ended in a clear winner, 4 ended in some kind of stalemate, 3 transformed into another conflict, and only 1 ended in compromise.<sup>73</sup> Fully accounting for what appears to be a pattern change is difficult. Before the end of the Cold War, the potential for nuclear war kept direct conflict between state actors to a minimum, but the potential for nuclear war led to a proliferation of extra-systemic conflicts, as superpowers confronted each other indirectly through proxies. After the Cold War, the resulting depolarization allowed the remaining great powers more latitude to embark on an interstate war without having to worry about another superpower intervening.

One lesson from this analysis is settlement potential is often contingent on the global order in which the war is fought. As Tyrone L. Groh points out, the greater the polarization, the more pressure on weaker actors to choose sides among the great powers. Thus, in a bipolar order, superpowers are especially

incentivized to maintain an advantage through alliances and partnerships with weaker powers. In multipolar orders, great powers are still incentivized to partner with weaker actors to avoid direct conflict; however, weaker actors have more options with which to partner. In the unipolar world, the hegemon has less need for partners except in regions where the hegemon is weak, but vital interests still need to be protected.<sup>74</sup>

Under bipolar conditions, the two superpowers have more control over when conflicts occur and how they end. Although this control does not entail conflicts will end on terms the superpowers like, the control does mean the superpowers have a greater capability to end conflicts on terms they prefer, given the alternatives. Under these conditions, one would expect a plurality, if not a majority, of disputes to end in settlement, which is what occurred in Pillar's listing. Of 31 conflicts occurring between 1950 and 1980, 18 conflicts (58 percent) ended in negotiation or international intervention. In a multipolar order, one would expect more mixed results since greater powers have less control over what wars are fought and how they end. This pattern also seemed to bear out. Arguably, in the more multipolar period before the Cold War, of 111 wars, 46 wars (41 percent) ended in negotiation, while 54 ended in expulsion or capitulation. Instances of rarer forms of conflict termination, such as absorption and withdrawal, were also greater, though still few.<sup>75</sup>

In a unipolar order, one would expect wars to be settled by capitulation or expulsion, where the hegemon has a vital interest. Where the hegemon does not have a vital interest, settlement will be sensitive to local conditions. Although the sample size of wars occurring during US hegemony after the Cold War is smaller, fewer instances could be described as negotiated settlements in interstate conflict, where the United States typically prevailed. Still, instances where the United States unilaterally ceased operations, even though political outcomes had not been achieved, partly accounted for the higher instances of capitulation.

The power-ratio model described above uses relative capabilities and cost tolerances to assess the certainty of preferred outcomes. Where the ratio is close to one, outcomes will have a high degree of uncertainty. The closer to zero, the more likely one side will be able to settle the conflict on its terms, as defined by the potential outcomes described above. The model predicts, the higher the degree of uncertainty, the greater the likelihood fighting will break out. Although, in principle, fighting will reduce uncertainty, other factors associated with the nature of the conflict and the international order can facilitate and impede conflict termination. The following sections will apply the above analysis to the Russia-Ukraine War and the Israel-Hamas War to identify the stakes in question, possible outcomes, the potential for settlement, the range for bargaining, and possible

steps belligerents, as well as international actors, can take to encourage settlement. The result should provide paths to resolution that can be assessed ethically.

## Ukraine

As noted above, the Russia-Ukraine War is best described as an interstate conflict, though the war also includes civil-war features. The most likely outcomes of interstate conflicts are expulsion, capitulation, or settlement. Here, the expulsion of Russian forces from territory Ukraine held before 2014 probably best describes Ukraine's current aims, while Ukraine's capitulation to Russia's post-2014 annexation best describes Russia's. Both outcomes rely on a strategy of attrition, which in this case has entailed a lengthy and costly conflict. The problem for both is neither's maximalist goals are likely achievable given their current capabilities, suggesting room for settlement.

Attaining a settlement will depend mainly on the divisibility of the interest at stake, the values belligerents place on possible divisions, and the relative ability of belligerents to impose costs for failing to settle. Complicating the possibility of settlement is Russia can exploit the separatist movement to increase resistance, since separatists may have much to lose should the Ukrainian government reassert control and decide to prosecute or otherwise punish them. Ukraine's incursion into Kursk, if it remains successful, could expand the bargaining space by giving Ukraine territory it can trade that is not its own. This move could allow Ukraine the ability to incentivize a Russian withdrawal or increase domestic pressure on Putin to make concessions, points I will take up in chapter 3.<sup>76</sup> Absent these outcomes, the conflict will likely freeze.<sup>77</sup>

Given both sides' aims, possible outcomes are: 1) Ukraine expels Russia; 2) Ukraine capitulates, effectively recognizing Russia's annexation of Luhansk and Donetsk; 3) Ukraine withdraws without recognizing Russia's annexation; or 4) Russia expels Ukrainian forces. Although Ukraine currently can limit Russian gains, its counteroffensive has stalled. Moreover, should external support drop below a certain threshold, as the support did earlier this year, Russia may be able to retake the offensive and, over time, allow Zelensky's government to capitulate.<sup>78</sup>

Applying the power ratio confirms this outlook. Cost tolerance may slightly favor Ukraine, but not in a way that will significantly impact the conflict. As mentioned earlier, Russia's authoritarian structure renders popular support mainly irrelevant to its cost tolerance. Popular support's influence on cost tolerance could change, as it did in Afghanistan when Russian mothers protested and non-Russian Soviet republics resisted because of a perception they were bearing the greater burden of the war. But even then, the Soviet Union did not capitulate



until leadership changed.<sup>79</sup> With few public protests and no change in leadership in sight, Russia will likely continue to grind away until Ukraine collapses.

Regarding military capabilities, the current stalemate demonstrates neither side can easily undertake offensive operations because both have adequate defensive capabilities. Given the current situation, the conflict can end in a withdrawal or freeze. However, the disparity in gross national product likely gives Russia a long-term edge. As George Beebe and Anatol Lieven point out, time is on Russia's side. They argue, though battle lines have not appreciably moved, the conflict is not precisely a stalemate. Russia's current strategy is both to attrit Ukraine's forces in the field and destroy its capacity to reconstitute its losses. Since Ukraine cannot similarly impact Russia's ability to reconstitute, the Ukrainians will eventually lose unless a significant and rapid increase in offensive capabilities occurs.<sup>80</sup> At the time of this writing, Russian forces have managed to move the lines a bit more, are threatening the Ukrainian city of Kharkiv, and appear to be reconstituting for a renewed offensive.<sup>81</sup>

Moreover, support from Ukraine's partners seems to have limits. Although the United States has been the largest provider of military assistance, aid stalled over domestic differences, which placed Ukraine's forces at a disadvantage. Although aid has since been renewed, Russian troops were able to take advantage of the pause and renew their offensives.<sup>82</sup> Support from the EU has also faltered as Hungary vetoed extending 50 billion euros to Ukraine as part of the EU budget.<sup>83</sup> Individual European countries, notably Denmark, Finland, Germany, the Netherlands, Norway, Poland, Sweden and the United Kingdom have also provided support on a bilateral basis.<sup>84</sup>

Although US or NATO assistance will likely continue in the short term, strains on these nations' defense industries, increasing war-weariness, or higher priorities could again force Ukraine's foreign partners to revise or end their support.<sup>85</sup> Should that happen, the contest will become one of endurance, which is a contest Russia could win. Should Russia win or even end up better than before starting the war, it may be emboldened to provoke NATO and its neighbors again.

Even if aid increases, whether any level will significantly impact Ukraine's situation favorably enough to renew its offensive is unclear. For example, integrating Western weapon systems (such as F-16s and M-1 Abrams tanks) not only requires training but also the development of logistics and maintenance capabilities that can take a while. F-16s, for example, were promised in August 2023, but the first did not arrive until July 31, 2024, almost a year later.<sup>86</sup> Shortly after they were placed in operation, Ukraine lost one of its best pilots, which some have blamed on friendly fire, mechanical failure, or inadequate training.<sup>87</sup> As a result, the F-16s'

impact will likely be limited, at least in the short-to- medium term.<sup>88</sup> The impact of M-1 Abrams tanks is similar. The United States delivered 31 tanks in October 2023; however, maintenance and sustainment restrictions have limited their deployment.<sup>89</sup> So, unless less sophisticated Western assistance can keep Ukraine in the conflict for at least another year, the impact of more sophisticated weapons systems will have a limited effect.

Wild cards that could lead to a rapid resolution are hard to account for but do exist. As one RAND Corporation study argued, if Putin is replaced or Russia's demoralized army collapses, the conflict could be resolved quickly, especially if the army collapsing leads to the government collapsing. A desperate Putin could also escalate by attacking NATO forces or employing tactical nuclear weapons.<sup>90</sup> For this analysis, we will discount these possible outcomes. Of the remaining possible outcomes, expulsion of Russian forces or capitulation by Ukraine seem unlikely. If either Russia or Ukraine makes no new decisions, then the conflict will likely freeze, at least until Russia can adequately reconstitute its forces and degrade Ukraine. Then, Russia will likely retake the offensive, and if Western partners do not provide adequate support, Ukraine will likely collapse. Ukraine or Russia could settle by simply withdrawing or negotiating a binding settlement.

Each of these outcomes raises moral concerns associated with loss of life, destruction of property, and the stability of the international order. A frozen conflict may result in diminished destruction and loss of life; however, it will give Russia time to enact military reforms, allowing it to renew hostilities on more favorable terms. Escalation, of course, entails greater destruction and loss of life, and it increases the likelihood of direct involvement by NATO forces, even if Putin does not order the use of nuclear weapons. Although replacing Putin or the collapse of the Russian military may seem like welcome news, the second- and third-order effects of a possible subsequent Russian government collapse could lead to even greater instability.<sup>91</sup>

### Israel-Hamas War

Also, as noted above, the Israel-Hamas War is best described as an extra-systemic conflict influenced by state actors. Historically, a plurality of extra-systemic conflicts ended in capitulation, with settlement and expulsion splitting the difference.<sup>92</sup> Given Pillar's dataset, these outcomes make sense. Since many of the conflicts that fit the extra-systemic category were postcolonial conflicts in which the stakes for the nonstate actor were much higher than for the state actor, that the state actors frequently decided continued resistance was not worth the cost and unilaterally ceased fighting should not be surprising.

However, in these cases, actors were separated by distance, often diminishing the stakes for the state actor.<sup>93</sup>

Calculating the power ratio here is more complicated. As Pillar and Rosen observed, there is frequently a gap between what military operations can achieve and the political objectives military operations wish to attain. Political scientist Patricia Sullivan describes that gap as the difference between achieving brute force and coercive objectives. Brute force, in this context, refers to objectives one can physically take. They fall outside the bargaining space. Where war aims may be achieved by destroying the enemy's capacity to resist, such as by seizing territory or through a regime change, military and political objectives closely align. When the objectives do align, achieving is more like taking than coercing. Coercive objectives refer to those that require a degree of cooperation to achieve. However, the more dependent the war aim is on cooperation, the more difficult translating military operations into political outcomes is. This difficulty arises because the enemy decides how much punishment it will take before complying. This gives the enemy the initiative, which makes prediction difficult.<sup>94</sup>

The fact Israel's gross national product is much higher than Gaza's may not provide as much predictive value as in the case of Ukraine. Moreover, the fact the Israel Defense Forces (IDF) are objectively far militarily superior to Hamas may allow one reasonably to conclude the IDF will be able to occupy Gaza. Still, whether Israel can sustain the occupation is unclear. That difficulty, in part, is due to Hamas's external support from Iran that enables Hamas to resist strategies of attrition. The other part is due to Palestinian resistance independent of Hamas's goals.

Cost tolerance, in this case, is easier to assess and remains high for both parties. In the aftermath of the October 7 attack, Israelis overwhelmingly supported an armed response and became more hawkish in general toward the broader Israeli-Palestinian conflict. Moreover, Israelis were uncharacteristically more reluctant to exchange large numbers of Palestinian prisoners for fewer Israeli hostages than they had been in the past. Interestingly, Israelis expressed more hope regarding the future, partly due to the sense of unity the attack created.<sup>95</sup> Polling 100 days after the conflict suggests support for continued fighting remains high.<sup>96</sup>

Before the October 7 attack, Palestinians expressed extreme dissatisfaction with Hamas leadership, blaming them more than external sanctions for Palestinians' poor economic situation.<sup>97</sup> But 60 days after the attack, overall Palestinian support for Hamas increased from 12 percent to 44 percent in the West Bank. Support in Gaza rose a modest 4 percent, from 38 percent to 42 percent.<sup>98</sup> Although this support may seem inadequate to justify a high cost tolerance, another survey indicated almost three-quarters of Palestinians in both the West Bank and Gaza supported

the October 7 attack.<sup>99</sup> As noted above, more recent reporting suggests support may be waning.

Like Russia, Hamas is also insulated from the total costs Israel may try to impose on it, though for different reasons. Violent extremist organizations like Hamas are often more resilient to kinetic operations and other coercive measures than state actors because they are not anchored to territory and can thus avoid or absorb costs better than state actors that are anchored to territory. Violent extremist organizations' ability to operate globally and in secret often allows them to reconstitute even significant losses quickly, enabling significant sacrifices in pursuit of their ideals.<sup>100</sup> Thus, Hamas's preference will likely be to withdraw when the group comes under what it feels is significant pressure as opposed to capitulation. Thus, given Israel's stated objectives, Hamas's ability to survive independent of territory, and the gap between military operations and political objectives, the possible outcomes are: 1) Israel expels Hamas from Gaza; 2) one or both sides withdraw, likely with some conditions; and 3) the conflict freezes, effectively returning the situation to the status quo before October 7, where Israeli forces have withdrawn from Gaza, but restrict border access to contain Hamas and prevent external support.

These options suggest strategies that rely on simply imposing costs will likely fail and that more than controlling territory or degrading Hamas will be required for victory. This point does not mean imposing costs should not be a key feature of an overall strategy, but as the discussion of minimax strategies suggested, finding the right mix is critical to success, which here depends on how Israel can close the military-political gap for its operations to be successful.

Closing the gap will be difficult. Where Israel's goal may be characterized as the expulsion of Hamas, as discussed, Hamas's goals are more limited. Although their ultimate political objective might count as expulsion, even extermination, they gain enough political advantage in the current fight by simply surviving. Even if formally unable to govern, retaining an ability to operate will allow Hamas to continue to spoil other peace initiatives, giving Iran the leverage required to exploit the conflict for its regional objectives.

The fact Hamas is untethered to territory also suggests more than one bargain may be struck. As evidenced by the polling, Palestinians, whether in Gaza or the West Bank, support a solution to their isolation and political marginalization.<sup>101</sup> But bargains require actors that can commit to the bargain's terms, which the Palestinians cannot. Further, should another governing entity emerge in Gaza, the entity must either be able to compete with Hamas or be accepted by it. The former is unlikely, but the latter may not be helpful if Gaza's association with Hamas prevents negotiation.

## Conclusion

The above analysis leaves us with several questions that require a normative answer. In Ukraine's case, it could settle at the current status quo; continue to fight for a better, if not complete, outcome; or continue to fight until it achieves its maximalist goals. The first option represents more a pause than an equilibrium. Any pause would give Russia time to reorganize, rearm, and renew hostilities when ready; however, any pause would also allow Ukraine to keep what it has gained back and also recover. From Ukraine's perspective, the second option is better than the first but comes with similar stability concerns and higher costs. The third option more closely represents the just-war ideal but may be too costly or impossible. The problem here is that it is difficult to know until one makes the attempt.

Israel is in a similar situation but for different reasons. The non-state nature of Hamas entails a gap between what military operations can achieve and what Hamas's defeat looks like. Tehran's role both in providing Hamas support and in instigating a regional crisis further complicates assessing what a reasonable, achievable end state looks like. Given these uncertainties, Israel can hedge its bets, withdraw from Gaza, and effectively return to the *status quo ante bellum*; engage in a costly occupation; or find alternatives to resolve the political crisis that drives the conflict. Any effective solution will likely involve a combination of all three.

Choosing among these alternatives requires more than identifying optimal outcomes, as optimal is not coextensive with justice. However, as discussed in the next section, an overlap exists. Often, what counts as a cost or benefit, and the values of costs and benefits, are informed by moral commitments. Connecting bargaining and justice allows one to understand better how ethics constrains and enables action in pursuit of justice, even in situations where costs are high and the gains are uncertain.

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## Endnotes

1. Carl von Clausewitz, *On War*, trans. and ed. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1976), quoted in Antulio J. Echevarria II, *War's Logic: Strategic Thought and the American Way of War* (Cambridge, UK: Cambridge University Press, 2021), 224.
2. Dan Reiter, "Exploring the Bargaining Model of War," *Perspectives on Politics* 1, no. 1 (March 2003): 27, 29.
3. Thomas C. Schelling, *Arms and Influence* (New Haven, CT: Yale University Press, 2020), 2.
4. Schelling, *Arms and Influence*, 142.
5. Schelling, *Arms and Influence*, 1–2.
6. Reiter, "Exploring the Bargaining Model," 33.
7. Prior to fighting breaking out, the interaction is better described as a positive-sum interaction, where both can gain. In this case, both actors can benefit from avoiding war. I owe this point to Dr. Richard Jordan, e-mail message to author, March 20, 2024.
8. Peter Vandershraaf, *Bargaining Theory* (Cambridge, UK: Cambridge University Press, 2023), 1.
9. Frank C. Zagare, *Game Theory, Diplomatic History and Security Studies* (Oxford, UK: Oxford University Press, 2019), 10–11.
10. Frank C. Zagare and D. Marc Kilgour, *Perfect Deterrence* (Cambridge, UK: Cambridge University Press, 2000), 45.
11. Zagare, *Game Theory*, 9–11.
12. Robert Axelrod, *The Evolution of Cooperation* (New York: Basic Books, 1984), 13.
13. Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 2005), 127.
14. James D. Morrow, *Game Theory for Political Scientists* (Princeton, NJ: Princeton University Press, 1994), 176.
15. Geoffrey Brennan et al., *Explaining Norms* (Oxford, UK: Oxford University Press, 2013), 96–97.
16. James D. Fearon, "Rationalist Explanations for War," *International Organization* 49, no. 3 (Summer 1995): 381–82.
17. Reiter, "Exploring the Bargaining Model," 31.
18. Daniel Kahneman and Amos Tversky, "Prospect Theory: An Analysis of Decision under Risk," *Econometrica* 47, no. 2 (March 1979): 273.
19. Adapted from Robert Powell, "Bargaining and Learning While Fighting," *American Journal of Political Science* 48, no. 2 (April 2004): 346.
20. Powell, "Bargaining and Learning," 344.
21. Christian Marxsen, "The Crimea Crisis from an International Law Perspective," *Kyiv-Mobyla Law and Politics Journal* 2, no. 2 (December 2016): 13–36.
22. "Agreement on Measures to Ensure the Security of the Russian Federation and Member States of the North Atlantic Treaty Organization," Ministry of Foreign Affairs of the Russian Federation (website), December 17, 2021, [https://mid.ru/ru/foreign\\_policy/rso/nato/1790803/](https://mid.ru/ru/foreign_policy/rso/nato/1790803/); and Françoise Thom, "What Does the Russian Ultimatum to the West Mean?," Desk Russie (website), December 30, 2021, <https://desk-russie.info/2021/12/30/what-does-the-russian-ultimatum-to-the-west-mean.html>.
23. Vladimir Putin, "Address by the President of the Russian Federation," President of Russia (website), February 24, 2022, <http://en.kremlin.ru/events/president/news/67843>; Gabrielle Tétrault-Farber and Tom Balmforth, "Russia Demands NATO Roll Back from East Europe and Stay Out of Ukraine," Reuters (website), December 17, 2021, <https://www.reuters.com/world/russia-unveils-security-guarantees-says-western-response-not-encouraging-2021-12-17/>; and Isabel van Brugen, "Russia Outlines Three Conditions for Peace It Will Not Accept from Zelensky," *Newsweek* (website), December 29, 2022, <https://www.newsweek.com/russia-lavrov-conditions-peace-talks-zelensky-1770088>.

24. Vladimir Soldatkin, "Putin Demands More Ukrainian Land to End War; Kyiv Rejects 'Ultimatum,'" Reuters (website), June 14, 2024, <https://www.reuters.com/world/europe/putin-says-west-needs-find-way-work-with-russia-2024-06-14/>.
25. Guy Faulconbridge and Andrew Osborn, "Exclusive: Putin Wants Ukraine Ceasefire on Current Frontlines," Reuters (website), May 24, 2024, <https://www.reuters.com/world/europe/putin-wants-ukraine-ceasefire-current-frontlines-sources-say-2024-05-24/>.
26. Volodymyr Zelensky, "Ukraine Has Always Been a Leader in Peacemaking Efforts; If Russia Wants to End This War, Let It Prove It with Actions – Speech by the President of Ukraine at the G20 Summit" (speech, G20 Summit, Kabupaten Badung, ID, November 15, 2022), <https://www.president.gov.ua/en/news/krayaina-zavzhdi-bula-liderom-mirotvorchih-zusil-yaksho-rosi-79141>.
27. Alys Davies and Hugo Bacheaga, "Ukraine Must Get Long-Term Support, Warns NATO Chief," *BBC News* (website), January 1, 2023, <https://www.bbc.com/news/world-europe-64140403>.
28. U.S. Department of State, *U.S. Security Cooperation with Ukraine* (Washington, DC: U.S. Department of State, June 14, 2023).
29. David Brennan, "NATO Needs Russia 'Ruined' in Ukraine for Future Peace: Official," *Newsweek* (website), December 29, 2023, <https://www.newsweek.com/nato-needs-russia-ruined-ukraine-future-peace-1856390>.
30. Powell, "Bargaining and Learning," 345.
31. Many game-theoretic models account for potential randomness by introducing a variable, nature, to account for a combination of irresolvable uncertainty given the complexity of, in this case, fighting, and possible random events that might affect the outcome. In this model, nature would feature after A's decision to fight or not. I owe this point to Dr. Richard Jordan, e-mail message to author, March 20, 2024.
32. Adopted from Powell, "Bargaining and Learning," 346.
33. Elliott Gotkine, "Netanyahu's Mission: Destroy Hamas, Bring Hostages Home – and Get Reelected," *CNN* (website), December 20, 2023, <https://www.cnn.com/2023/12/19/middleeast/netanyahu-hamas-war-mission-reelected-intl/index.html>.
34. Natasha Turak, "Can Hamas Actually Be Eliminated? This Is What Military and Security Analysts Think," *CNBC* (website), December 12, 2023, <https://www.cnbc.com/2023/12/12/israel-gaza-war-can-hamas-actually-be-eliminated-experts-weigh-in.html>.
35. Laila Bassam, Suleiman al-Khalidi, and Maya Gebeily, "Israel Shifts to Deadlier Strikes on Iran-Linked Targets in Syria," Reuters (website), January 8, 2024, <https://www.reuters.com/world/middle-east/israel-shifts-deadlier-strikes-iran-linked-targets-syria-2024-01-08/>.
36. Sam Mednick, Josef Federman, and Bassem Mroue, "Hamas Accepts Gaza Cease-Fire; Israel Says It Will Continue Talks but Presses on with Rafah Attacks," Associated Press (website), May 6, 2024, <https://apnews.com/article/israel-palestinians-gaza-hamas-war-humanitarian-aid-8659eac6e0a7362504f0aa4aa4be53e0>.
37. "What Is Hamas and Why Is It Fighting with Israel in Gaza?," BBC (website), April 5, 2024, <https://www.bbc.com/news/world-middle-east-67039975>.
38. Mohammad Ayatollahi Tabaar, "Why Iran Is Gambling on Hamas," *Foreign Affairs* (website), November 1, 2023, <https://www.foreignaffairs.com/middle-east/why-iran-gambling-hamas>.
39. James F. Jeffrey, "The Gaza Ceasefire Proposal Could Still Resolve the Israel-Hamas Conflict," Wilson Center (website), July 1, 2024, <https://www.wilsoncenter.org/article/gaza-ceasefire-proposal-could-still-resolve-israel-hamas-conflict>.
40. Paul Kecskemeti, *Strategic Surrender: The Politics of Victory and Defeat* (Stanford, CA: Stanford University Press, 1958), 15–16.
41. Steven L. Rearden, *Council of War: A History of the Joints Chiefs of Staff 1942–1991* (Washington, DC: National Defense University Press, 2012), 316–26.
42. Powell, "Bargaining and Learning," 345.
43. Powell, "Bargaining and Learning," 348–49.
44. Powell, "Bargaining and Learning," 351.
45. Morrow, *Game Theory*, 89.
46. Hargreaves-Heap and Varoufakis, *Game Theory*, 43.

47. Ivan Arreguín-Toft, "How the Weak Win Wars: A Theory of Asymmetric Conflict," *International Security* 26, no. 1 (Summer 2001): 100–105.
48. Morrow, *Game Theory*, 89.
49. Andrew F. Krepinevich Jr., *The Army and Vietnam* (Baltimore: Johns Hopkins University Press, 1986), 66–68, 228–29.
50. Steven Rosen, "War Power and the Willingness to Suffer," in *The Scientific Study of Peace and War*, ed. John A. Vasquez and Marie T. Henehan (Lanham, UK: Lexington Books, 1999), 255–56.
51. Krepinevich, *Army and Vietnam*, 248–51.
52. Rosen, "War Power," 256.
53. Joel D. Rayburn and Frank K. Sobchak, *The US Army in the Iraq War*, vol.2, *Surge and Withdrawal 2007–2011* (Carlisle, PA: Strategic Studies Institute, US Army War College Press, 2019), 153–59.
54. Rosen, "War Power," 257.
55. Rosen, "War Power," 258–60.
56. Rosen, "War Power," 265–67.
57. Eric V. Larson, *Public Support for U.S. Military Operations* (Santa Monica, CA: RAND Corporation, 1996).
58. Denis Volkov and Andrei Kolesnikov, *Alternate Reality: How Russian Society Learned to Stop Worrying about the War* (Washington, DC: Carnegie Endowment for International Peace, November 28, 2023).
59. Amaney A. Jamal and Michael Robbins, "What Palestinians Really Think of Hamas," *Foreign Affairs* (website), October 25, 2023, <https://www.foreignaffairs.com/israel/what-palestinians-really-think-hamas>.
60. Karin Laub, "Palestinian Poll Shows a Rise in Hamas Support and Close to 90% Wanting US-Backed Abbas to Resign," Associated Press (website), December 13, 2023, <https://apnews.com/article/israel-hamas-palestinians-opinion-poll-wartime-views-a0baade915619cd070b5393844bc4514>.
61. Gabrielle Weiniger, Amal Helles, and Samer Al-Atrush, "Are Angry Gazans Ready to Rise Up against Hamas?," *Times* (website), May 16, 2024, <https://www.thetimes.com/world/israel-hamas-war/article/as-anger-grows-at-hamas-are-gazans-ready-to-rise-up-qlz3g9vdc>.
62. Alex Weisiger, *Logics of War: Explanations for Limited and Unlimited Conflicts* (Ithaca, NY: Cornell University Press, 2013), 12.
63. Melvin Small and J. David Singer, *Resort to Arms* (Beverly Hills, CA: SAGE Publications, 1982), quoted in Paul R. Pillar, *Negotiating Peace: War Termination as a Bargaining Process* (Princeton, NJ: Princeton University Press, 1983), 37–38.
64. Pillar, *Negotiating Peace*, 14–15.
65. John E. Herbst, "Russia, Not Ukraine, Is Serial Violator of Ceasefire Agreement," Atlantic Council (website), June 21, 2017, <https://www.atlanticcouncil.org/blogs/ukrainealert/russia-not-ukraine-is-serial-violator-of-ceasefire-agreement/>.
66. Richard Jordan, "Rational Origins of Revisionist War," *International Studies Review* 24, no. 4 (December 2022): 9–10.
67. Thomas de Waal and Nikolaus von Twickel, *Beyond Frozen Conflict: Scenarios for the Separatist Disputes of Eastern Europe* (London: Rowman and Littlefield Publishers, 2020), 3; and Todd S. Sechser, "Reputations and Signaling in Coercive Bargaining," *Journal of Conflict Resolution* 62, no. 2 (2016): 321.
68. Pillar, *Negotiating Peace*, 15–16.
69. Weisiger, *Logics of War*, 21.
70. Pillar, *Negotiating Peace*, 25.
71. Pillar, *Negotiating Peace*, 22–23, 26.
72. Pillar, *Negotiating Peace*, 29–30.
73. Meredith Reid Sarkees and Frank Wayman, *Resort to War: 1816–2007* (Washington, DC: CQ Press, 2010).
74. Tyrone L. Groh, *Proxy War: The Least Bad Option* (Stanford, CA: Stanford University Press, 2019), 48–53.
75. Pillar, *Negotiating Peace*, 19–21.



76. Nataliya Gumenyuk, “Ukraine on the Offensive: How Kyiv’s Attack on Russia—and Successful Defense of Its Northern Flank—Has Changed the War,” *Foreign Affairs* (website), August 16, 2024, <https://www.foreignaffairs.com/ukraine-offensive>.
77. Hrair Balian, “Will the War in Ukraine Inevitably Freeze?,” *Responsible Statecraft* (website), January 28, 2023, <https://responsiblestatecraft.org/2023/01/28/the-war-in-ukraine-will-inevitably-freeze/>.
78. Lawrence Freedman, “Who Is Winning?: Parsing the Narrative Shifts in Russia’s War on Ukraine,” *New Statesman* (website), January 30, 2024, <https://www.newstatesman.com/world/europe/ukraine/2024/01/who-is-winning-ukraine-russia>; and Robert Tait, Joan E. Greve, and Chris Michael, “US House Approves \$61bn in Military Aid for Ukraine after Months of Stalling,” *Guardian* (website), April 20, 2024, <https://www.theguardian.com/us-news/2024/apr/20/us-house-approves-61bn-aid-ukraine>.
79. Rafael Reuveny and Aseem Prakash, “The Afghanistan War and the Breakdown of the Soviet Union,” *Review of International Studies* 25, no. 4 (1999): 688–99.
80. George Beebe and Anatol Lieven, “Russia’s Upper Hand Puts US-Ukraine at a Crossroads,” *Responsible Statecraft* (website), January 11, 2024, <https://responsiblestatecraft.org/russia-ukraine-peace-talks-2666922064/>.
81. Alexander Smith, “Ukraine Withdraws Troops around Kharkiv as Russian Offensive Gathers Pace,” *NBC News* (website), May 15, 2024, <https://www.nbcnews.com/news/world/ukraine-withdraws-forces-kharkiv-russian-troops-enter-vovchansk-new-of-rcna152169>.
82. Christina L. Arabia, Andrew S. Bowen, and Cory Welt, *U.S. Security Assistance to Ukraine*, Congressional Research Service Report (CRS) IF12040 (Washington, DC: CRS, January 3, 2024); and “Biden Administration Announces New Security Assistance for Ukraine,” U.S. Department of Defense (website), May 24, 2024, <https://www.defense.gov/News/Releases/Release/Article/3787579/biden-administration-announces-new-security-assistance-for-ukraine/>.
83. Gabriela Baczynska, “EU Aid to Ukraine: What Are the Options and What Does Hungary Want?,” *Reuters* (website), January 30, 2024, <https://www.reuters.com/world/europe/eu-options-granting-aid-ukraine-what-hungary-wants-2024-01-18/>.
84. “Ukraine Support Tracker,” Kiel Institute for the World Economy (website), n.d., accessed October 31, 2023, <https://www.ifw-kiel.de/topics/war-against-ukraine/ukraine-support-tracker/>.
85. Elbridge A. Colby, “The U.S. Must Support Ukraine, but China Must Be Our Priority,” *TIME* (website), February 27, 2022, <https://time.com/6152096/us-support-ukraine-china-priority/>; and Jordan Williams, “US Defense Industry Strained by Ukraine Weapons Deliveries,” *Hill* (website), May 4, 2022, <https://thehill.com/policy/defense/3476193-us-defense-industry-strained-by-ukraine-weapons-deliveries/>.
86. Tara Copp, “Ukraine Receives First F-16 Fighter Jets to Bolster Defenses against Russia, Officials Tell AP,” *Associated Press* (website), July 31, 2024, <https://apnews.com/article/ukraine-f16-jets-russia-missile-98fab7aa19e093bf8df3de015bc9006a>.
87. Ellie Cook, “Details of Ukraine’s First F-16 Loss Revealed by Zelensky’s Army Chief,” *Newsweek* (website), September 9, 2024, <https://www.newsweek.com/ukraine-f-16-crash-oleksandr-syrskiy-volodymyr-zelensky-1950676>.
88. Audrey Decker, “F-16s Would Make No ‘Fundamental Change’ in Ukraine’s War Effort, USAF Secretary Says,” *Defense One* (website), May 22, 2023, <https://www.defenseone.com/policy/2023/05/f-16s-would-offer-no-fundamental-change-ukraines-war-effort-usaf-secretary-says/386645/>.
89. Carla Babb, “All 31 Abrams Tanks in Ukraine, US Military Confirms to VOA,” *Voice of America* (website), October 16, 2023, <https://www.voanews.com/a/all-31-abrams-tanks-in-ukraine-us-military-confirms-to-voa/7313918.html>; and David Axe, “The Biggest Problem with Ukraine’s M-1 Tanks: They Don’t Like Staying Dirty,” *Forbes* (website), November 30, 2023, <https://www.forbes.com/sites/davidaxe/2023/11/30/the-biggest-problem-with-ukraines-m-1-tanks-they-dont-like-staying-dirty/>.
90. Peter A. Wilson and William Courtney, “How the War in Ukraine Could End Sooner Than Expected,” *RAND Corporation* (website), January 17, 2023, <https://www.rand.org/blog/2023/01/how-the-war-in-ukraine-could-end-sooner-than-expected.html>.
91. Alexander J. Motyl, “It’s High Time to Prepare for Russia’s Collapse,” *Foreign Policy* (website), January 7, 2023, <https://foreignpolicy.com/2023/01/07/russia-ukraine-putin-collapse-disintegration-civil-war-empire/>.
92. Pillar, *Negotiating Peace*, 25.
93. Bruce Bueno de Mesquita, “Excerpts from the War Trap,” in Vasquez and Henehan, *Scientific Study*, 145–47.

94. Patricia L. Sullivan, "War Aims and War Outcomes: Why Powerful States Lose Limited Wars," *Journal of Conflict Resolution* 51, no. 3 (June 2007): 505–7.
95. Anna Gordon, "What Israelis Think of the War with Hamas," *TIME* (website), November 10, 2023, <https://time.com/6333781/israel-hamas-poll-palestine/>.
96. Estelle Shirbon, "Enduring Pain Keeps Public Support for Gaza War Strong in Israel," Reuters (website), January 18, 2024, <https://www.reuters.com/world/middle-east/enduring-pain-keeps-public-support-gaza-war-strong-israel-2024-01-18/>.
97. Jamal and Robbins, "What Palestinians Really Think."
98. Brian Mann, "As Israel Fights to Destroy Hamas, the Group's Popularity Surges among Palestinians," Wisconsin Public Radio (website), December 21, 2023, <https://www.wpr.org/news/israel-fights-destroy-hamas-groups-popularity-surges-among-palestinians>.
99. Andrew Carey and Abeer Salman, "Palestinians Support Hamas Decision to Go to War with Israel, Survey Suggests, with No Political Solution on Horizon," *CNN* (website), December 21, 2023, <https://www.cnn.com/2023/12/21/middleeast/palestinians-back-hamas-survey-intl-cmd/index.html>.
100. Frank Harvey and Alex Wilner, "Counter-Coercion, the Power of Failure, and the Practical Limits of Detering Terrorism," in *Detering Terrorism*, ed. Andreas Wenger and Alex Wilner (Stanford, CA: Stanford University Press, 2012), 98.
101. Yasmine Salam, "Gazans Increasingly Back a Two-State Solution, as Support for Hamas Drops," *NBC News* (website), March 21, 2024, <https://www.nbcnews.com/news/world/gazans-back-two-state-solution-rcna144183>.



## — Part Two —

# The Ethics of War Termination

## Introduction

Based on the previous discussion, the perspective of rational self-interest clearly shows no stable equilibria would satisfy all belligerents in either the Russia-Ukraine War or the Israel-Hamas War. However, from a moral perspective, they might. As the introduction mentions, a bargaining problem models the agents' situations in circumstances of justice. Circumstances of justice characterize the interaction between mutually disinterested persons who put forward conflicting claims about the division of some good under conditions of moderate scarcity. Without such conditions, no opportunity for justice would exist, just as without danger, no occasion for courage would exist.<sup>1</sup> In such circumstances, actors can affect others' prospects by cooperating or defecting based on preferences for alternative cooperative schemes.<sup>2</sup> To the extent the interest in question reflects a social good, like security, preferences for cooperative schemes reflect different justice claims. To the extent the justice claims are incompatible, actors must bargain. Here is where moral reasoning can provide a shared conception of justice to help adjudicate conflicting claims.

For example, the just-war tradition (JWT) plays such a role when it identifies actors are entitled to defend sovereignty and are even entitled to punish when sovereignty is violated. In this view, preferences that violate sovereignty should be discounted, all things being equal. To the extent all actors value their sovereignty, they should be similarly motivated to value others' sovereignty. The shared valuing of sovereignty thus creates a shared expectation that all actors will prefer not to violate another's sovereignty unless to defend their own. This shared expectation is an application of the principle of cooperation and illustrates how norms, including those of the JWT, describe equilibria that actors, even those in conflict, reach as a matter of self-interest. As Robert Sugden argues, where strategies exist that actors should adopt as long as others do, actors have a rational and prima facie moral obligation to adopt that strategy.<sup>3</sup> Sugden's principle applies to friends and enemies alike. This is a way to consider how JWT principles become salient and, more importantly, enforceable, either as a matter of international law or the willingness of like-minded states to impose costs for violations.

Moral commitments can have an important influence on bargaining situations in terms of how they affect actors' preferences and how the interaction between those preferences gives rise to moral commitment. Goertz points out norms, of whatever kind, express preferences regarding expectations of others' behavior. As preferences, norms also represent strategies actors see as being in their interest to adopt, typically on a reciprocal basis, to incentivize others to behave similarly so actors may maximize benefits and minimize costs in any series of interactions. Moral commitments play a role by informing what those costs and benefits are.<sup>4</sup>

This effect may not always expand the bargaining space, but it often does. To illustrate, Gregory G. Brunk, Donald Secrest, and Howard Tamashiro conducted a survey in 1996 that asked several US policy elites to respond to the question of whether they would support a hypothetical war with Nicaragua based on a set of six scenarios, each of which represented an increasing threat to the United States. At the low end, Nicaragua established a communist government, and at the high end, it joined in an attack on the United States. In between are varying degrees of intervention against neighboring states. Participants were also asked questions that divided them into realists, who adopted a better-safe-than-sorry attitude that privileged interest over other concerns; just-war adherents, who accepted the basic principles of just-war theory and the constraining effect they can have on interest; and those with mixed views.<sup>5</sup>

For all groups, the more removed the threat from the United States, the fewer the participants who supported the war. For all scenarios, more realists than just-war traditionalists supported war. This was even the case for the high-risk scenario where Nicaragua participated in an attack on the United States that clearly provided the United States with a just cause. Goertz accounts for this disparity as a function of the greater weight just-war traditionalists give to moral norms realists do not.<sup>6</sup> However, suggesting realists are more warlike than just-war traditionalists would be wrong. As Valerie Morkevičius observed, prominent realists like Robert Art, John J. Mearsheimer, Thomas C. Schelling, and Kenneth N. Waltz opposed the 2003 invasion of Iraq as not in the United States' interest, while prominent just-war traditionalists like Jean Bethke Elshtain, James Turner Johnson, and Michael Walzer supported the invasion, though with important qualifications regarding the specific ends.<sup>7</sup>

Thus, as Goertz observes, individuals hold a mix of self-interested, instrumental, and moral norms whose weight varies among persons and applications.<sup>8</sup> Applying the principle of cooperation described above, where norms optimize outcomes for all actors as long as all actors uphold them, norms take on moral significance. As Daniel Statman observes, much of the law of war gains its salience from this contractual process. In Statman's view, states have a strong interest

in self-defense, and since they cannot always know in advance whether they will be the stronger or weaker party in a conflict, states have an interest in agreeing to rules that govern and limit war.<sup>9</sup> Arguably, such a process applies to *jus in bello* as much as *jus ad bellum* norms. Protections for noncombatants, including prisoners of war, as well as prohibitions against certain means, like chemical weapons and soft-lead munitions, are upheld because even enemies are usually better off by adopting the protections.

Moral norms are also external factors that can inform actors' perceived costs and benefits. For example, the impulse to endorse specific constraints on war was arguably motivated by moral concerns independent of self-interest. The Geneva Conventions, for example, originated with Henri Dunant's repulsion at the suffering he observed at the Battle of Solferino.<sup>10</sup> The prohibition against the use of soft-lead munitions below a specific caliber is in place because, in 1864, the Russian imperial war minister believed they cause suffering unnecessary for the destruction of an enemy's military capability, and in 1868, the minister gained 19 signatories in Saint Petersburg to ban soft-lead munitions.<sup>11</sup> Other norms have similar origin stories. In these cases, moral commitments identified an issue over which cooperating was in the belligerents' interest.

Moreover, norms' breach has a cost. For norms of any kind to be meaningful, they must, in principle, be sanctionable. Sanctions can be internal or external, formal or informal. One may, for example, uphold a norm simply because of one's values, independent of the cost of doing so. But for any collective norm to remain salient, an externally imposed cost for violations must exist.<sup>12</sup> Violations can subject one to criminal proceedings, like the Nürnberg trials after World War II, or more currently, by the International Criminal Court or the International Court of Justice. Where these more formal processes fail, the taint from such violations can also impose a cost. Walzer famously recounts the fate of the United Kingdom's Royal Air Force Bomber Command at the end of World War II. Because of the command's indiscriminate bombing of German cities, albeit acknowledged as necessary by the civilian leadership, its efforts were not celebrated, and its commander, General Sir Arthur "Bomber" Harris, was not awarded a peerage given to others of similar rank and achievement.<sup>13</sup>

Moral norms have a different structure than practical ones. Practical norms are contingent on preferences but say little about where those preferences come from. For example, different cultures will have different preferences regarding what counts as a suitable constraint on war fighting. As Statman observed, in ancient warfare, the annihilation of the enemy, which included killing the men and enslaving the women and children, was frequently normative, as annihilating

the enemy was viewed as the best way to secure a stable peace.<sup>14</sup> Leaving an enemy to reconstitute all but guaranteed a war of vengeance in the future.

Moral norms, on the other hand, are universalizable, sanctionable, and coherent with other moral norms. Because moral norms reflect judgments of shared values more than personal desires, they apply to anyone in similar circumstances. Because moral norms apply to anyone in similar circumstances, sanctions reduce the payoff for cheaters and reinforce the collective commitment to the norm. Moral codes must be coherent because when they accommodate conflicting moral obligations, they undermine actors' ability to coordinate and cooperate, an essential function of any normative regime.<sup>15</sup> So, pursuing an annihilation strategy like the ancients would not be normative, even if all sides agreed the pursuit was permissible, because the strategy is rights violating.

When applying norms to a bargaining process, they must also be usable. As Gabriella Blum and David Luban point out, a usable norm can guide action under conditions of uncertainty. Actors making decisions will make *ex ante* judgments about what to do and *ex post* judgments about what they and others have done. If applying a principle to those judgments requires either information that is unknowable or a standard of certainty that is impossible to meet under the circumstances, the principle is unusable. Also, if resolving a dispute requires further resolving prior normative questions that are unanswerable or subjective, the principle is also unusable.<sup>16</sup> For example, when questions about sovereignty over Jerusalem depend on answers that draw on a disputed history or seek to establish which religion has a greater claim, the salience of the principle of sovereignty is diminished, as is the utility of applying the principle. This diminished salience and utility does not invalidate the principle or remove the possibility it might be useful in other contexts. However, when its salience and utility fall below a certain threshold, the principle ceases to be action guiding; thus, one must look elsewhere.

As Walzer points out, the JWT acknowledges the reality of state interest but seeks to temper its application.<sup>17</sup> Thus, the JWT is well suited to addressing the practical concerns associated with competing interests and the moral concerns pursuing those interests raises. Like the blind men and the elephant, different aspects of the JWT address different moral problems associated with war fighting. As mentioned in the introduction, *jus ad bellum* governs the resort to war; *jus in bello* governs conduct in war; *jus post bellum* governs conduct after the war; and *jus ex bello* governs the termination of war, especially when the just cause has not been achieved. Each of these features addresses war termination in part. Thus, they must be considered together to determine the whole.

## *Jus ad Bellum*

Though *jus ad bellum* governs the initiation of hostilities, its conditions apply throughout a conflict. Should one of those conditions no longer hold, the war would no longer be just. These conditions include just cause, reasonable chance of success, proportionality, legitimate authority, public declaration, and last resort.<sup>18</sup> For example, should a just cause no longer exist, whether because it has been attained or it no longer holds, fighting should stop. Application of a reasonable chance of success and proportionality is more complex, partly because of their logic and partly because they rely on information that is often unknowable or difficult to confirm.

The other conditions are less germane to a discussion of war termination. As long as a legitimate authority publicly declared a war after attempting all other nonviolent alternatives, those conditions are met for the duration of the war. The legitimate authority may cease functioning, at which point that side has likely been defeated. If not, that side should consider surrendering as a matter of *jus ex bello*. As a matter of *jus post bellum*, the victor must also consider with whom it will negotiate a surrender, so legitimate authority would also apply. Public declaration would apply to any settlement but is, again, a matter of *jus post bellum*. Since war was the last resort, little else remains to consider but how to end the war, which is a matter for *jus post bellum* and *jus ex bello*.

### Reasonable Chance of Success

Reasonable chance of success prohibits fighting where defeat is inevitable, as imposing suffering on others if nothing is to be gained makes little moral sense.<sup>19</sup> As the Spanish theologian Francisco Suárez argued, “for a war to be just, the prince ought to be so sure of the degree of his power, that he is morally certain of victory.”<sup>20</sup> He further argues that for the prince to risk more losses than any potential gain is also wrong. Suárez acknowledges certainty is unattainable but that princes must demonstrate the chances of victory are preponderant relative to the chances of defeat. He also recognizes the greater the consequences of defeat, the greater the risk princes may take. For that reason, defensive wars require less certainty than offensive ones. Suárez also notes greater certainty may be attainable only through fighting, suggesting an *ex bello* role for this principle.<sup>21</sup>

The jurist Hugo Grotius reiterated this point when he systematized just-war principles in *On the Law of War and Peace*. Where Suárez’s concerns seemed prudential, Grotius saw certainty of victory as an obligation governments owe their subjects. Grotius argued a king risking his subjects’ lives for trivial or unnecessary purposes is wrong.<sup>22</sup> Thus, the condition of reasonable chance



of success rejects undertaking uncertain offensive wars as well as futile defensive ones. Unfortunately, a reasonable chance of success does not provide much of a brake at the outset of hostilities and provides even less of a brake once fighting is underway. As Suárez noted, defensive war entails a different threshold of what counts as reasonable. Leaders are incentivized to resist, even if the odds of winning are slim. The comparisons of Zelensky to British Prime Minister Winston Churchill, whose defiance in World War II is legendary, underscore this point.<sup>23</sup>

Thus, in practice, for the just belligerent, a reasonable chance of success is frequently interpreted as any chance of success greater than zero. Given proving one does not have a nonzero chance of failure is logically equivalent to proving a negative, this condition can provide few persuasive reasons to settle, especially when neither side is apparently losing. For example, if Ukraine is unable to liberate all the country's eastern provinces, much less Crimea, that does not mean it should not try to liberate as many provinces as possible.<sup>24</sup> The difficulty is in determining when Ukraine has reached the limit of liberating all possible provinces, especially when that means leaving parts of Ukraine's population under a ruthless Russian occupation.

For Israel, the threshold of success is higher and, as the discussion on war aims suggests, more difficult to calculate. Although Israel's aims are defensive in nature, they are offensive in character. Unlike Ukraine, which is fighting to retake its territory, Israel is fighting outside its territory to prevent future attacks. Thus, Israel's concern is not about whether it can be successful but is about what success entails. Although rescuing hostages is certainly quantifiable, destroying Hamas is not clearly quantifiable. As mentioned above, success will depend less on attrition than on changing the minds of Hamas leadership and those who support them regarding their interests.

Changing those minds will likely be difficult. Hamas's ability to obtain Iranian support and operate outside Gaza suggests a military occupation will not remove Hamas as a threat.<sup>25</sup> As previously discussed, Hamas views governing Gaza as a means rather than an end. Underscoring this point, after the attack, one Hamas leader stated the group's priority was to conduct a war with Israel, not to govern Gaza.<sup>26</sup> So, though denying Hamas Gaza as a base of operations would certainly be disruptive, it may not be decisive.

Even if denying Hamas Gaza as a base of operations were decisive, it is not clear that doing so would prevent future attacks like the one on October 7, 2023. Without some legitimate organization to take Hamas's place, the ensuing power vacuum could lead to fragmentation that enables other Palestinian

extremist groups to increase their power base, allowing them to continue attacks. Gazans would continue to suffer, enabling outside extremists to recruit while further isolating Israel from the international community.<sup>27</sup> These consequences would be compounded if Hamas survived in any form and reconstituted, this time with greater legitimacy and international support.<sup>28</sup>

However, unrealistic is not the same as unreasonable. Both Ukraine and Israel have more at stake than retaking Ukrainian territory or disrupting Hamas. Ending these wars on any terms that make the Russians or Hamas better off than when they started would likely incentivize future aggression. If nothing else, Russia could be in a position to continue provoking Ukraine and NATO, leading to further instability, much as Russia did under the Minsk Agreements.<sup>29</sup> Hamas, for its part, has already promised to conduct future attacks, suggesting efforts to disrupt those attacks would count as worthwhile, even if the efforts only disrupt a few attacks.<sup>30</sup> So, to the extent continued resistance prevents aggression or provocation elsewhere, it may be permitted, even if its primary goal seems futile.

The point here is the reasonable chance of success principle is difficult to apply after the war begins. This point is especially true in defensive wars, primarily for three reasons. First, establishing reasonable thresholds is difficult, and second, determining whether one has crossed reasonable thresholds is also difficult. Third, externalities such as future deterrence or disruption can shape what counts as reasonable, even when the cause may be unrealistic. These points do not mean instances will not occur where thresholds are well defined, limits are clear, and externalities are sufficiently discounted, making the application of this principle relatively straightforward. But given the epistemic issues outlined above, the use of the principle of reasonable chance of success as an ethical guide for war termination appears limited.

### Proportionality

Applying *jus ad bellum* proportionality provides a little more clarity. Proportionality is a constraint on actions, where in pursuit of a good, an act carries the potential for harm. Proportionality requires that any harm caused not exceed the value of the intended good.<sup>31</sup> As Christine Gray points out, proportionality is closely related to necessity. Necessity requires that there be no equally effective alternative response, as proportionality applies to the response's size, duration, and targets. Equally effective but costlier alternatives are unnecessary since the less costly alternative is more efficient. Less effective but equally costly alternatives would not be proportional. The higher the risk of failure, the more likely the destruction caused is to be in vain. For this reason, as Gray also points out,

proportionality and necessity rule out acts of self-defense that are retaliatory or punitive.<sup>32</sup>

For this discussion, proportionality also serves as a boundary on interest. A disproportionate outcome would not be permitted, even if its overall utility was positive. As an inherently consequentialist principle, proportionality accounts for the goods and the harms that all affected actors experience, including enemy combatants, noncombatants, and bystanders.<sup>33</sup> Proportionality is also forward-looking. As revisionist just-war theorist Jeff McMahan points out, assessing proportionality solely based on the harm suffered is simply reprisal. Adding harm to harm creates more harm. Instead, the expected harm of war must be measured in terms of the good the harm is intended to achieve.<sup>34</sup>

However, calculating proportionality in practice can be impossibly complex. First, goods and harms exist that matter and are difficult to quantify. Although things like casualties and economic impacts may be measurable, the value of things like sovereignty and quality of life are less so. Second, even if one could quantify all relevant goods and harms, how to compare them is unclear. Simply put, a harm like lives lost and a good like deterrence cannot be compared in an objective way. Third, given the effects of war may be felt for some time, how to weigh short-term and long-term effects is also unclear. How to determine what all the long-term effects would be is even less clear.<sup>35</sup> These concerns suggest proportionality may be less useful as an action-constraining principle.

Despite concerns about calculating proportionality, it can serve a limiting function. Devising an objective measure, for example, between suffering and deterrence, may be impossible. However, if one has a sense of the scale, duration, and aims of the war one is deterring, then one has a sense of the overall costs at stake. As imprecise as it might be, this measurement has utility. As just-war theorist Brian Orend argues, determining if an act is disproportionate is easier than determining if an act is proportionate. For example, threatening divorce over a disagreement about dinner is easily discernible as disproportionate, even though what counts as a proportionate response is less clear. So, given the context of war, proportionality serves less as a bright line one should never cross than as a reminder the effects of aggression have to be so severe that killing is not obviously disproportionate.<sup>36</sup>

The universal nature of *jus ad bellum* proportionality does leave one with a puzzle. If all harms count equally, then an otherwise legitimate act of self-defense could conceivably be disproportionate if the expected harm to the aggressor and the harm the aggressor will cause in response exceed the value of the interest at stake. Such an outcome enables acts of aggression and encourages atrocities

in response to a successful defense. For example, fighting an aggressor that is willing to sacrifice large numbers of conscripts or its citizens to achieve even trivial objectives, or that commits atrocities to intimidate the defending population, is less proportionate than fighting one that abides by the laws of armed conflict. Given enough conscripts and atrocities, fighting such an adversary may be obviously disproportionate. However, constraining an otherwise legitimate act based on another actor's illegitimate acts seems ethically self-defeating.

One way out of that particular conundrum is to conclude that though all harms matter, not all harms matter equally. Governments, for example, have a duty of care to their citizens they do not owe to others, particularly if those others are part of an aggressing army.<sup>37</sup> Since governments' citizens are not liable to harm and the aggressors are, the harm done to the citizens, even those participating in the victim's defense, is more salient than the harm done to the aggressor, which is liable to harm based on the act of aggression. So, a resort to war that reduces the harm done to those not liable will be proportional, assuming it meets the condition of having a reasonable chance of success.

It does not follow, however, that the harm to the aggressor does not count at all. As McMahan points out, though aggressors may be liable to harm, they are not liable to just any harm. By way of illustration, McMahan uses the example of Bernard Goetz, who shot and wounded four men who tried to rob him in a subway station. In McMahan's view, Goetz's act was disproportionate in the narrow sense since the amount of money the men would have stolen was small. The men may have been liable to some lesser harm, such as breaking their hands with a truncheon, but not harms that could kill or debilitate. Because firing into a crowded subway station also put those who were not liable to harm at risk, Goetz's act may also be disproportionate in the wide sense since these persons were not liable to harm.<sup>38</sup> Both senses count when calculating proportionality, but since repelling the attack also counts as a good, the limit of harm proportionality places on the attacker is higher. But the perpetrators should possibly bear some responsibility since their actions prompted Goetz's response. That fact may not make the act less disproportionate; however, it may reduce actor responsibility, which will have important implications for actor accountability, which will be discussed later.

Even if one could determine a bright enough line between proportionality and disproportionality, applying *jus ad bellum* proportionality to war termination involves additional difficulties. *Jus ad bellum* proportionality would require a belligerent to cease fighting once the cost exceeded a certain threshold. McMahan calls this the "quota view." If one takes the quota view, assuming one's

prior proportionality estimate was correct, fighting should cease once the threshold is crossed, even if victory is close at hand. This view seems unduly restrictive and incentivizes atrocity since *jus ad bellum* proportionality must account for the harms the aggressor commits as well.<sup>39</sup>

However, one problem with assigning a quota is the harms associated with the unjust cause accrue even after the war ends. Moreover, so does the good associated with the just cause. As David Rodin points out, given enough time, proportionality assessments become contingent on the cause.<sup>40</sup> An unjust war fought proportionately becomes disproportionate to the extent it perpetuates the injustice it intended to achieve. On the other hand, a just war fought disproportionately becomes proportionate to the extent the justice it achieves endures.

To conclude, however, that one should terminate a just war that will cost little to continue because of a threshold determined before the fighting begins also seems odd. As mentioned earlier, belligerents rarely go to war under conditions of perfect information. Fighting provides that information. Fighting both reveals information potentially available before the war and creates new information relevant to the decision to continue the war. This point suggests proportionality estimates require revision once the fighting starts.

For example, war tends to accelerate the development of increasingly destructive weapons that can have an impact after the war is over. At the outset of World War II, no Allied leaders would have thought to consider the impact of atomic weapons when considering the resort to war.<sup>41</sup> Doing so would not necessarily have made the war disproportionate. Still, the example demonstrates that new facts will raise questions regarding the moral legitimacy of fighting once a war starts. Although the development and employment of atomic bombs may not have altered the proportionality of World War II, to ask whether that use was proportionate to an alternative settlement seems reasonable given how one could reasonably expect the introduction of nuclear weapons to affect global security.

War aims may also undergo revision once the fighting starts in ways that would affect proportionality calculations. As Cécile Fabre points out in “War Exit,” toward the end of World War II, the German army continued fighting to buy time for civilians to escape occupation by the Red Army, which imposed brutal conditions in the areas it controlled.<sup>42</sup> Arguably, fighting in service of that cause could be proportionate based on the suffering it alleviated. However, this more prospective approach effectively renders *jus ad bellum* proportionality irrelevant to the decision to go to war. As long as the conditions for just cause and reasonable chance of success are met, proportionality follows.

This conclusion is likely too strong. Just as it does before a war, applying proportionality during a war serves as a constraint rather than an enabler. One could reach a state where fighting for a just cause becomes obviously disproportionate; in which case, the just belligerent should consider finding other ways to strike a just bargain. However, the fact the logic of *jus ad bellum* proportionality would propel fighting forward entirely based on cause does suggest its usefulness is limited. These points indicate the need for an independent feature of the JWT to govern war termination, just as the ethics of resorting to war are independent of the ethics of fighting a war.<sup>43</sup>

An additional problem arises for the prospective view, as it treats past losses as sunk costs. By focusing on the good that remains to be achieved, this view allows actors to consider only the future costs of continued fighting relative to the expected future harms. Moreover, as McMahan argues, the cost of war has its own prospective value, as fighting to redeem past losses has value. Conceivably, under the quota view, past losses would be in vain once the threshold had been crossed, perhaps even more so if victory were close. Given dying in vain is its own kind of harm, the good of preventing that outcome adds to the war's overall proportionality.<sup>44</sup> That a harm that would count against war at the outset but count for it once the war has begun seems equally odd. Even if one accepts past sacrifice adds to the value of future fighting, engaging in that fighting to make the war more proportional makes no moral sense.

Fighting to redeem losses can lead one into what Rodin refers to as “rational entrapment.” He gives the example of a senior auction, where two actors bid on a one-dollar bill and both actors must pay what they bid, regardless of who bids the most. Rationally, once the bidding hits 50 cents, the auctioneer will make a profit. At 99 cents, no additional bid will be worth the gain. But to continue bidding as a way to mitigate one's costs can still be rational. If actor A has bid 99 cents and actor B has bid 98 cents, for actor B to bid one dollar is rational since, if she wins, her losses are zero. Moreover, no absolute upper limit exists, since no matter how high the bidding goes, actors lose less by bidding more. Rodin's point is the only way out of this trap is to avoid it altogether.<sup>45</sup>

Given the comprehensive accounting *jus ad bellum* proportionality requires, the rational trap would allow all harms to count toward continued fighting which, of course, would render the application of proportionality nonsensical. As Fabre points out, claiming a certain number of persons are protected before fighting but gradually lose those protections as the fight goes on seems self-defeating. Fabre's solution is to permit just belligerents who risk violating *jus ad bellum* proportionality to continue fighting to the point where they achieve a “just-all-things-considered” peace, defined as one where the just belligerent

may not fully vindicate its rights, but given expected future costs, it has reached a threshold of vindication or security to which it can reasonably consent.<sup>46</sup>

This solution places an upper limit on permissible harm by placing an upper limit on permissible good. Assuming a just-all-things-considered peace is attainable, this may be one way out of the trap. This solution raises two concerns, however. First, how to determine such a peace needs to be clarified. For example, would Ukraine's concession of the Donets Basin to Russia lead to just-enough peace or incentivize future aggression? Would NATO security guarantees promote peace or provoke more aggression? If Ukrainian citizens in those regions preferred to risk the suffering caused by fighting rather than the suffering caused by Russian occupation, would that matter? Moreover, would them agreeing to such a settlement represent a better state of peace? As Rodin points out, settling prematurely risks rewarding military aggression with political legitimacy.<sup>47</sup> That legitimacy both encourages and validates future aggression.

Second, such peace may not be attainable; in which case, one must choose between remaining in the trap or surrendering. Drawing on Clausewitz, Statman points out war's logic is inherently escalatory. Without some consensus among the belligerents regarding what counts as a reasonable stopping point, no logical alternative to achieving a better state of peace is available other than the enemy's surrender. Thus, without some binding contract regarding the limits of fighting, war itself is a kind of trap.<sup>48</sup>

Of course, war is not always a trap one can avoid. One can always refuse to fight, but an act of aggression forces the question. To the extent one possesses a high level of certainty regarding relative military capabilities and projected harms, applying *jus ad bellum* proportionality can provide reasonably good guidance regarding the resort to war. But once a war has begun, *jus ad bellum* proportionality becomes much less useful, as the following applications to Ukraine and Israel will illustrate. The rational trap works because mitigating loss is rational.

## Ukraine

Applying *jus ad bellum* proportionality before hostilities does not seem problematic for Ukraine. Nothing is obviously disproportionate about repelling Russian combatants from Ukrainian territory. As the war continues, what counts as obviously disproportionate is less obvious. Even if we disregard the cost to the Russians, how many Ukrainian lives are worth liberating the territory—and the people—that remain is unclear. To the extent the people are willing to bear that burden, one may increase that threshold, but the threshold will never disappear, leaving the question of when enough is enough.

The calculation is further complicated if one considers the cost to the Russians. To the extent Russian soldiers are coerced to fight and are not necessarily willing to give their lives, how one would count their deaths is also not clear. As discussed, killing the adversary is discounted relative to the good a successful defense achieves.<sup>49</sup> However, that discount suggests the number of permissible enemy combatant deaths will still have limits, especially when the threat enemy combatants represent changes as a function of fighting. To kill anyone, even the enemy, over trivial ends makes no moral sense. As the war goes on and to the extent the ends are divisible, identifying a point where further killing is no longer worth the gain may make sense.

The point here is not that a threshold of liberated territory exists that, once crossed, makes further fighting no longer permissible. Instead, as gains seem less valuable or less likely, the salience of Russian soldiers' lives may not increase but will have a greater impact on the proportionality calculation. As less territory exists to liberate, less harm would reasonably be permissible in liberating that territory. As I will discuss later, reasons to override this constraint may exist, but good *prima facie* reasons to keep it in place also exist. Consideration of Russian soldiers' lives makes a more stable peace likelier over the long term, and second- or third-order concerns, like the possible adverse effects of a collapse of the Russian government, discussed previously, suggest not every good end warrants any means.

### Israel

As the discussion regarding a reasonable chance of success suggests, the calculations for Israel may be more complicated. On the surface, Israel's response may seem disproportionate based on the difference in lives lost. Where the Hamas attack reportedly killed around 1,200 Israelis, the Israel Defense Forces (IDF) have, by their accounting, killed around 16,000 Palestinians.<sup>50</sup> This is less than half the controversial UN-reported number of 35,000, which recently revised the number of women and children killed by about half. The UN numbers are sourced from Hamas-run ministries and, like the Israeli numbers, are impossible to verify independently. Although the Israeli report does not specify the number of displaced persons, the UN report places the number at around two million.<sup>51</sup> A full account of proportionality would require accounting for deaths, injuries, and displacement, as well as other harms.

Whatever the numbers actually are, the significant gap between the number of Israelis and the number of Palestinians harmed raises some important points. First, to fight a proportionate war disproportionately is conceptually possible. The logic of *jus ad bellum* proportionality is the greater the harm an act



of aggression represents, the greater the harm that may be committed to prevent it. This point does not justify employing disproportionate means in war. It only means employing such means does not necessarily violate *jus ad bellum* proportionality. Second, the Israeli numbers also include the 14,000 Hamas militants that were also killed. This point raises the question of how Hamas militants factor into the proportionality calculation. If one accepts Israel has a just cause and those deaths contribute to realizing it, the militant deaths would count positively, and 16,000 civilian deaths would seem a lot more proportionate. On D-Day, Allied forces killed 20,000 French civilians, while German military casualties are estimated at most to be 9,000 killed, wounded, or captured.<sup>52</sup> Few, however, consider the number of civilian casualties disproportionate given the cause. Again, the point here is not to adjudicate the legality of IDF operations or diminish the tragedy befalling the Palestinian people. Rather, it is simply to illustrate the complex and sometimes subjective nature of *jus ad bellum* proportionality calculations.

How benefits and harms count depends on the good one is trying to achieve. Unfortunately, “self-defense” is too vague to provide much clarity. Absent an account of what victory looks like and how one will achieve it, measuring the goods and harms associated with any particular military operation is impossible. So, as also discussed above, what Israel can achieve relative to its actual security needs is unclear and does not help these calculations. The comment by the IDF’s top spokesman, Rear Admiral Daniel Hagari, “Anyone who thinks we can eliminate Hamas is wrong,” only underscores this point.<sup>53</sup> If driving Hamas from Gaza could result in greater insecurity for both Israel and Palestinians, then how any means that cause any collateral harm would be proportionate is hard to see. Having said that, considering Hamas’s apparent intention to continue to carry out future attacks on the scale of the October 7 attack and its stated goal of destroying the Israeli state, the stakes can seem existential. In this view, practically any amount of collateral harm would be insufficient to render the conflict disproportionate, which is only exacerbated by a lack of clarity on ends and means.<sup>54</sup>

The fact Hamas could reconstitute in a stronger position only strengthens this point. A reconstituted Hamas capable of future attacks complicates comparing the disparity of harm between Israel and Palestine. The greater the value one places on avoiding future attacks, the more collateral harm permitted. For the resort to war to fail the *jus ad bellum* standard of proportionality, one must calculate the response’s size, duration, and scope relative to the stakes. Given the open-ended nature of the Hamas threat, that calculation may not be possible. This point does not entail that Israeli operations have all been proportionate. However, the fact of possible war crimes does not derogate an actor’s right

to self-defense. As discussed in the next section, possible war crimes imply an obligation to cease such operations and hold violators accountable.

Although simple comparisons of collateral harm are insufficient to conclude whether the resort to war is proportionate, the conclusion thousands of Palestinians dead and millions displaced are proportional to the future threat Hamas represents is certainly counterintuitive. While Hamas may have existential designs on Israel as a state, it cannot currently see those designs through. However, the rational trap entails, moving forward, all those losses count toward future fighting, which seems equally counterintuitive. Rather than endorsing continued operations, this point also illustrates *jus ad bellum* proportionality's limited utility regarding war termination.

I will discuss the issue of sunk costs in more detail in the *jus ex bello* section. But these points illustrate decisions about war termination will be taken under different circumstances and consider different facts than decisions about whether to resort to war. As this discussion has illustrated, the value of war and the value of fighting are different, and not conflating that difference is important. Still, applying *jus ad bellum* proportionality establishes the initial threshold one would adjust based on *jus ex bello* considerations. Other conditions, such as public declaration, legitimate authority, and right intent, can also influence how a war ends. Still, their requirements are better reflected in *jus post bellum* and *jus ex bello* conditions, so I will reserve discussion of these conditions for the *jus post bellum* and *jus ex bello* sections. But at the level of *jus ad bellum*, to point out, should those conditions fail, the war would become unjust, is sufficient and thus imposes an obligation to cease fighting.

### *Jus in Bello*

Conceptually, *jus in bello*, which governs conduct in war, could also specify conditions requiring the just side to cease hostilities unilaterally, even if just cause has not been achieved. This feature of the JWT requires force to be both discriminate and proportionate. Discrimination requires combatants only to attack legitimate targets, and proportionality here requires any resulting collateral harm not to exceed the value of the military objective the attack is intended to achieve. Where collateral harm is possible, *jus in bello* requires belligerents to take extra risks to avoid harm to noncombatants.<sup>55</sup> Should such permissible means be ineffective, one should cease hostilities rather than violate *jus in bello* conditions

However, if the stakes are high enough, the doctrine of supreme emergency, though controversial, could allow actors to loosen *jus in bello* requirements

when defeat is grave and imminent. In Walzer's account, gravity refers to the consequences of defeat and imminence refers to defeat's temporal proximity. In this view, minor territorial adjustments would likely not satisfy the condition of gravity, but loss of independence and subjugation might. Imminence entails not so much that defeat is inevitable, but that combatants face the choice to uphold these constraints or fail in their duty to defend their population. To the extent the population has a right to be defended, this dilemma entails rights violations either way. To the extent loosening restrictions reduces rights violations, doing so may be permitted but only to the extent that defeat is no longer imminent or the consequences no longer grave, at which point the permission would no longer apply.<sup>56</sup> Supreme emergency also requires that no equally effective and morally permissible alternatives exist. To illustrate, Walzer cites the example of the indiscriminate British bombing against Germany in World War II. Given the threat Nazi Germany represented, the consequences of defeat were arguably grave. After the fall of France, when Britain represented the sole resistance, German forces began bombing British cities to force capitulation. The Royal Air Force Bomber Command was Britain's only capability to respond; however, the bomber command could not respond discriminately. Under these conditions, Walzer argues Britain's use of indiscriminate strategic bombing was permissible. But once the United States entered the war, Britain was no longer alone; thus, defeat was no longer imminent. At that point, permissions associated with a supreme emergency ceased.<sup>57</sup>

Even if one rejects the doctrine as justification for violating *jus in bello* norms, the doctrine may still impact the settlement bargaining process. As Orend argues, the choice between the grave and imminent defeat of the just side and the violation of *jus in bello* norms is a kind of moral tragedy, where one has run out of permissible options but must nonetheless act. Under these circumstances, violating *jus in bello* norms may not be justified, but doing so may be excused. For violating *jus in bello* norms to be excused, Orend argues, any violation must represent a genuine last resort and be conditioned by a public declaration and a reasonable chance of success. Public declaration is necessary to give the international community an opportunity to intervene, eliminating the need for the violation. Reasonable chance of success requires measures associated with any violation to be capable of staving off defeat.<sup>58</sup> To the extent one accepts this revision, excusing violations could affect accountability requirements in postwar settlements, which will be discussed more fully in the next section.

Also worth considering is whether supreme emergency applies to all violations equally. Although Ukraine as a whole may not be facing imminent defeat, the consequences of the Russian occupation of its eastern provinces are arguably grave and ongoing.<sup>59</sup> One would not want to countenance indiscriminate

or disproportionate violence; however, something like the logic of supreme emergency could persuasively enable nonlethal or limited measures that may be illegal or whose status is not settled, like the media exploitation of Russian prisoners, disruptive cyberattacks, or kinetic attacks on certain civilian infrastructure, allowing one plausibly to push the thresholds of *jus in bello* a little higher.

Israel's case here is more straightforward. Although the threat Hamas represents is undoubtedly grave, equally sure is this threat is not imminent. Israel may expect more terrorist attacks in the future; however, terrorism, as a means, is likely not capable of achieving an outcome equivalent to subjugation, loss of independence, or something equally dire. Thus, though the IDF should moderate its operations to reduce civilian casualties—which it has reportedly done at the time of this writing—*jus in bello* would not require the IDF to cease operations.<sup>60</sup> International humanitarian law would require investigations into alleged violations and appropriate sanctioning of perpetrators. Much more could be said about who investigates, how to adjudicate suspected violations, and what is an appropriate sanction. At the time of this writing, the International Criminal Court has issued warrants for both Netanyahu and Hamas leaders.<sup>61</sup> But as long as investigators are recognized as competent and impartial and the process is recognized as transparent and public, the investigation would meet the accountability requirement.

The fact *jus in bello* has limited application when determining obligations to cease fighting does not exhaust its relevance to a discussion of war termination. As Kant points out in “To Perpetual Peace: A Philosophical Sketch,” belligerents should not permit acts that undermine the trust between belligerents necessary to establish future peace.<sup>62</sup> The logic here is pretty straightforward: when both sides obey the laws of war even when the stakes are high, they can reasonably conclude the other side will maintain its commitment to peace when the stakes are arguably lower, thus lowering a critical barrier to the trust necessary to reach a just settlement. As Weisiger observes, wars are more prolonged and destructive when actors distrust the other's willingness to commit.<sup>63</sup>

The importance of *jus in bello* adherence to a better state of peace raises concerns about belligerents whose strategy depends on provoking law-of-war violations. Hamas's practice of placing military assets in proximity to civilian or other protected facilities significantly increases the harm done.<sup>64</sup> By using Palestinians as human shields, Hamas is itself violating the proportionality condition. In doing so, Hamas places the IDF in a bind, where it has to choose between inaction, thus leaving Israeli citizens vulnerable to future attacks, or potentially committing war crimes. This bind leaves little room for legitimate

acts of self-defense, which is precisely the point of using human shields. As a recent US Department of State report on possible Israeli law-of-war violations points out, the current legal standard requires belligerents to treat human shields as civilians in applying the principles of discrimination and proportionality as long as those civilians are not directly taking part in hostilities.<sup>65</sup>

This standard, however, may be self-defeating, as it encourages using human shields. In the current situation, though both Israel and Hamas may share responsibility for violating *jus in bello* proportionality, costs only seem to accrue to the Israelis in the form of reduced assistance or greater international isolation.<sup>66</sup> But placing all the blame for civilian casualties on the belligerent that employs human shields could be self-defeating as well, to the extent it incentivizes the other side to disregard any constraints on the use of force. The fact Hamas deliberately chose to kill, rape, and torture Israeli civilians to provoke a disproportionate response confers at least some level of culpability if Israeli attacks turn out to violate *jus in bello* norms.<sup>67</sup> But without establishing how shared responsibility impacts the proportionality calculation, if at all, applying the calculation in practice will be difficult.

Although primarily a matter of *jus in bello*, situations like this can pose significant obstacles to war termination. A stable peace, if not reconciliation, often depends on accountability for the crime of war as well as any war crimes. The more egregious the violation, the easier demonizing the other is; thus, to stop the killing is more difficult. Therefore, the ethics of war termination obligate observing the ethics of warfighting. But *jus in bello* accountability only facilitates settlement. It says little about the specific terms belligerents should accept, especially when *jus ad bellum* conditions, like cause and reasonable chance of success, cannot be met.

### *Jus post Bellum*

As mentioned, the purpose of a just war is to establish a better state of peace. At a minimum, as the just-war theorist A. J. Coates puts it, such a state of peace requires “the vindication of the international community and of the rights of its members.”<sup>68</sup> Vindicating those rights precludes a return to the status quo, since those status quo conditions led to war in the first place. But since vindicating the international community and its members’ rights is conditioned on the relative aim of creating a better or more stable peace, it does not necessarily require complete satisfaction of the just belligerent’s objectives or the unjust belligerent’s obligations.

Orend argues postwar settlements should meet three conditions: roll back the act of aggression, punish the aggressor, and demilitarize and possibly

rehabilitate the aggressor, depending on the nature and severity of the aggression.<sup>69</sup> Like *jus ad bellum*, principles of *jus post bellum* include cause for termination, proportionality, right intention, public declaration, legitimate authority, domestic rights protection, and accountability for war crimes. These principles make intuitive sense. Wars should not end until the demands of justice are met. Moreover, any postwar settlement should be commensurate with the aggression and should be implemented to establish a stable peace that is transparent and representative of the societies in conflict. The victor is additionally obligated to ensure the defeated population remains secure and international law is upheld.<sup>70</sup>

The conditions of postwar settlements suggest three models of potentially just postwar settlements: overlapping-consensus, retributive, and rehabilitative models. Overlapping consensus represents a minimal standard that is preferable to the retributive model and better than nothing in situations where the rehabilitative model is impractical. In the overlapping-consensus model, the aggressor must publicly end hostilities; exchange prisoners of war; apologize; demilitarize, at least to the point it cannot renew hostilities; and be held accountable for war crimes.<sup>71</sup> Without meeting these minimum conditions, grievances will fester while the aggressor's capability to renew violence is preserved, if not strengthened.

The retributive model is a backward-looking approach intended to make the aggressor worse off than before the war. It includes the features of the overlapping-consensus model and adds the aggressor's compensation to the victim and sanctions to impede the aggressor's ability to restore its economy and reconstitute its military capabilities. It does not include any postwar reconstruction assistance. For Orend, the retributive approach only has moral merit to the extent it can have a deterrent effect, set conditions for change in the aggressor state, and at least partially vindicate the rights of the victims of aggression.<sup>72</sup> But as Orend also observes, the suffering measures like sanctions can create frequently sets the conditions for future war, undermining any deterrent effect they might have.<sup>73</sup> Thus, the retributive model would only be permissible under conditions where alternative, more constructive approaches are impossible.

The rehabilitative model seeks to establish a better state of peace by making the aggressor better off while still vindicating the victims' rights. It also includes all the features of the overlapping-consensus model but rejects the retributive model's punitive elements, preferring to invest any compensation back into reconstruction for the defeated aggressor. This model also includes additional aid for reconstruction where necessary. The cost to the aggressor is undergoing a regime change or at least a purge of those persons and organizations that facilitated the resort to war. This model also places obligations on the victor to develop a minimally just, inclusive government;

revise the education system to support democratic governance; and exit in an orderly fashion only once a democratic, inclusive government is in place. The rehabilitative model also requires a regime change, or at least reform, where leaders of the old regime are purged, and new leaders engage in the steps necessary for rehabilitation.<sup>74</sup>

Each model depends on the extent to which one belligerent can set the terms for conflict termination. Even where one belligerent is clearly winning, the losing side can still retain some bargaining power. While that victory is a function of eliminating the aggressor's ability to resist, coercing an enemy to accept terms is more a function of bargaining. As Kecskemeti points out, the weaker side rationally resists setting better settlement conditions. Thus, the stronger side must either destroy the weaker side's military capabilities or find terms both can accept. Even after suffering two atomic attacks, for example, Japan continued to resist until the Allies met the condition the emperor would continue to rule.<sup>75</sup>

Orend clearly has a moral preference for the rehabilitative model, as it promises greater stability and respect for human rights. Overlapping consensus logically follows as a second preference since it contains more features of the rehabilitative model than it does the retributive model. Orend discourages the retributive model but acknowledges the model is better than nothing if implemented as the only alternative to contain the aggressor rather than to exact revenge. All these models come with costs. Although the rehabilitative model represents a larger postwar commitment, overlapping consensus and, to a greater extent, the retributive model may require significant maintenance costs, especially if an aggressor challenges the model in the future, as Saddam Hussein did during the decade after the terms were set for the 1990 to 1991 Persian Gulf War.<sup>76</sup>

Although each model may come with similar costs after the fighting, getting to that point can be more costly for the rehabilitative model since it demands more from the aggressor. The defender can choose to pay that cost in combat or in the concessions it makes. Assuming the aggressing regime's priority is survival, the rehabilitative model gives little room for negotiation. That being the case, the other models can take on a higher moral priority depending on the destruction required to achieve them.

In fact, strict application of even the minimal terms of *jus post bellum* expressed in the overlapping-consensus model can set the conditions for a quagmire that may be difficult to undo. Quagmires happen when the cost of conflict is not worth the gain from winning, but the cost of withdrawal is higher than the cost of continuing to fight.<sup>77</sup> By imposing conditions associated

with accountability, demilitarization, and reparations, *jus post bellum* can increase the cost of withdrawal or capitulation above the threshold at which withdrawing or capitulating makes sense. Doing so obviously constrains possible options for peace.

Thus, *jus post bellum*'s application can be self-defeating. In the context of the Russia-Ukraine War, Putin has little interest in accepting any terms that reflect the conditions of even a minimally just settlement. Moreover, Ukraine cannot impose a retributive or rehabilitative settlement without significant US and NATO intervention.<sup>78</sup> These points raise the following questions: how much destruction is worth liberating how much of the remaining territories; should Ukraine's partners incentivize a settlement by withholding support; or, on the other hand, should those partners risk an expanded conflict and escalate in an attempt to bring about a rapid and more just end to the conflict?

Given the extra-systemic character of the Israel-Hamas War, the models for postwar settlements are more challenging to apply. First, little space exists for negotiation, given Hamas's stated goal of destroying the Israeli state and the horrific means Hamas employs.<sup>79</sup> Second, accountability issues will be challenging to settle. Israeli citizens have little reason to feel secure if Hamas leaders feel validated in believing the horror they imposed was somehow necessary to achieve their cause. So, absent Hamas leaders' death or detention, finding the right point at which to stop may be hard. Given the widespread perception the Israeli response has been disproportionate, to see how Hamas and Iran will leverage suffering to mobilize support and further isolate Israel is equally easy.<sup>80</sup>

Most recently, the Israeli government has offered a postwar plan where Hamas is no longer in control of Gaza, and an international coalition, led by the United States in partnership with European and regional partners, would be in place to rehabilitate the strip. For its part, the United States has argued for a "revitalized" Palestinian authority that would govern both the West Bank and Gaza. In response, Arab states, which arguably would need to be part of an enduring solution, have stated they want assurances any settlement includes the establishment of a Palestinian state.<sup>81</sup>

As so far articulated, current postwar plans include too few details to assess fully whether they satisfy the conditions of *jus post bellum*. But the plans do seem to hit many of the significant points. Current proposals provide for improved, rights-respecting governance and seem to forego punitive measures against Gazans, such as sanctions or compensation. They also specify details such as prisoner exchanges or war-crime trials.<sup>82</sup> Hamas's status as a terrorist organization suggests Israel must either provide captured Hamas fighters



with a fair trial or release them. The Israeli government should also address charges that Israeli forces employed indiscriminate and disproportionate means to meet the minimal *jus post bellum* conditions fully.

Assessing whether Israel can successfully negotiate or impose these terms is also difficult. Hamas could continue terrorist operations and Iran could employ its other proxies in the region to attack any occupying force. Iran would also likely continue, if not expand, its efforts to disrupt international commerce, as Iran is currently using the Houthis in Yemen to do.<sup>83</sup> These possible second-order consequences could affect the proportionality of the settlement, especially if Iran's actions escalate the conflict into a regional war.

If any of these second-order consequences happen, the moral blame would certainly accrue to Hamas and Iran. To the extent another actor sabotages an actor's efforts to realize the *jus post bellum* ideal, the fault is obviously with the sabotaging actor. But worth asking is whether such expected high costs give the Israelis and their international partners permission to fall short of the ideal, especially regarding any riskier elements associated with providing security and economic development. Although falling short of the ideal would effectively ensure a return to the status quo ante bellum, where Gazans were effectively isolated and dependent on international aid and assistance, an argument may be made regarding this outcome's permissibility if the alternative is risking a region-wide war.

If the purpose of a just war is to establish a better state of peace, its means are found in the just side establishing a monopoly of strength to impose its will.<sup>84</sup> Thus, what the just side can impose depends on how close to a monopoly it can get. Achieving such a monopoly is difficult enough in interstate conflict and is more so in extra-systemic conflicts, where military force alone is often insufficient to achieve the political objective. Given Hamas's ability to operate outside Gaza, as well as to continue gaining support from Iran, a monopoly may be elusive. So, whether Israel is obligated to apply a rehabilitative approach or is permitted to return to the status quo ante depends on the bargain it can strike with a Palestinian leadership that is capable of controlling Hamas.

There is, however, a difference between an obligation to settle and an obligation to cease fighting. *Jus post bellum* only covers the former. But as both the Ukrainian and Israeli experiences suggest, getting to a settlement may not be possible, much less a minimally just one. Thus, actors in war still need to consider the terms on which they may ethically cease fighting. On the surface, this is a simple question to answer. *Jus ad bellum* principles specify when an actor has permission to resort to war, but they do not obligate that resort. An actor is always free

to choose nonviolent means to resist aggression. So, the choice to end the fighting is not the same as choosing to end resistance. Thus, determining future fighting is disproportionate relative to what justice remains to be achieved should be sufficient grounds to obligate an actor to cease fighting.

Although that may be true as a matter of theory, putting the obligation into practice is difficult. The greater the aggression, the greater the political pressure to use force. Given sufficient pressure, permission will feel like an obligation. Because it feels like an obligation, ending the fighting before the just cause has been achieved will feel like surrender. Additionally, just as the losing side realigns its objectives to reflect the limited aims it believes it can achieve, the winning side may do the same when victory in full seems elusive. *Jus post bellum* says little about what to do in such situations.

### *Jus ex Bello*

At this point, that *jus ad bellum*, *jus in bello*, and *jus post bellum* are inadequate to account for all obligations, permissions, and prohibitions regarding war termination should be clear. As Fabre and Mollendorf point out, once a war begins, the right to wage the war can diminish for the just side and increase for the unjust side.<sup>85</sup> This point entails considering new facts about a war, as well as new kinds of facts. For example, the US invasion of Iraq in 2003 began as a preemptive war justified by the potential military threat Iraq's possible possession of weapons of mass destruction posed. Although those weapons never materialized, the war transformed into one justified by the good of preventing civil war and avoiding the subsequent humanitarian catastrophe.<sup>86</sup>

### Just Cause

*Jus ex bello* addresses whether a war should be terminated and on what terms. Like *jus ad bellum*, the first part considers cause, reasonable chance of success, and proportionality, but it does so differently. For war to sustain just cause, it must remedy an antebellum injustice, resolve an injustice brought about by the war, or avoid an injustice that would arise should fighting cease. Thus, unlike *jus ad bellum* cause, *jus ex bello* just cause is forward-looking. So, where *jus ad bellum* just cause is justified by a past aggression or humanitarian catastrophe, *jus ex bello* cause is justified by the likelihood of future unjust outcomes. For example, justifying continued fighting on the basis of preventing ethnic cleansing or civil war requires estimations of whether these events will occur or worsen should fighting cease.<sup>87</sup>

## Reasonable Chance of Success

When the cause changes, other conditions justifying war, such as a reasonable chance of success and proportionality, must also be reevaluated. Relative to a new cause, little additional information is available regarding how one should calculate the chances for success other than to point out such calculations are prone to similar biases as *jus ad bellum* reasonable chance of success. Given high enough stakes, even slim odds will seem persuasive. But as Fabre points out, even when actors determine a just cause is no longer attainable, something else of value might be. Even if an outcome falls short of full justice, more is always better than less.<sup>88</sup>

But this dynamic works in the other direction as well. Sometimes, the best one can hope for is to lose less rather than to gain something more. As Kecskemeti pointed out, the losing side is incentivized to fight for better terms, even if defeat is inevitable. So, better in this case can also mean less bad. Whether either of these best possible terms is attainable depends on the bargain one can strike with the enemy. Thus, reasonable chance of success calculations become less about assessing who will likely prevail and more about determining the maximin equilibrium discussed in part I, representing the most one can achieve and the least the other side would rationally accept. If the best possible equilibrium outcome represents a more just outcome than the cessation of hostilities, continuing the fight to achieve the outcome would be permitted, all things being equal. To the extent it does not, then a reasonable chance of success would require fighting to cease. Later, I will discuss possible exceptions.

Where calculations of a reasonable chance of success are best characterized as a maximin problem, in which actors seek to maximize their minimum gain, the best way to achieve success is to follow a mixed strategy that imposes costs on and incentivizes an opponent. This rational aspect of conflict underscores a moral point Mollendorf makes. As he argues, the condition of last resort no longer applies once a war has begun. But what does apply is what Mollendorf calls “the principle of the pursuit of diplomatic remedies.” This principle requires belligerents to seek actively, as a first resort, diplomatic alternatives to further violence.<sup>89</sup> Thus, in conjunction with military operations to impose costs, diplomatic efforts become an important means for a mixed-strategy approach.

Given both sides will maximize their outcomes by following a mixed strategy, the principle of cooperation demonstrates a prima facie obligation to pursue that strategy exists, as long as pursuing the strategy does not result in a morally impermissible outcome. The requirement for diplomatic engagement is also intuitively appealing. If acting ethically depends on the alternatives one has, then one is obligated to create the best alternatives. The implication is doing

so as part of a bargaining process requires considering the aggressor's interests in ways not required under *jus ad bellum*.

These points raise the question of what counts as a morally impermissible outcome. As discussed in part one, any just settlement is predicated on equilibrium. However, any equilibrium short of minimum *jus post bellum* conditions entails compromising with the unjust side. Thus, though compromise may be obligatory, not every compromise will be permissible. To illustrate, Avishai Margalit, in his critique of the 1938 Munich Agreement, cautions against "rotten compromises" that reflect a tolerance for "an inhuman regime, a regime of cruelty and humiliation, that is, a regime that does not treat humans as human."<sup>90</sup> The 1938 Munich Agreement was an agreement between Germany, the United Kingdom, France, and Italy that allowed German Chancellor Adolf Hitler to annex an ethnically German region of Czechoslovakia in exchange for his agreement not to make any more territorial claims in Europe.<sup>91</sup> What made the agreement rotten was not so much that Hitler did not keep it but rather that even if he had, the agreement arguably tolerated the genocidal practices of the Nazi regime.

This point again raises the concern regarding what to do when meeting *jus ex bello* conditions also means accepting injustice. This is a problem for both Ukraine and Israel. Although to characterize Russia under Putin as a "regime of cruelty and humiliation" may be a stretch, its disregard for Ukraine's sovereignty, as well as the numerous war crimes reportedly committed by Russian forces, suggest Russia is at least willing to humiliate and be cruel to its neighbors to keep them.<sup>92</sup> For Ukraine to see Russia this way seems reasonable, underscoring the importance of *jus in bello* conformity to successful conflict resolution. Vindicating all Ukraine's rights may not be possible, but vindicating the rights of those subject to inhumane treatment should be part of any compromise.

Israel's situation may be a little more complex, as it depends on whether one considers Hamas, as Gaza's governing party, a non-state or quasi-state actor. If the former, commitment problems probably limit room for compromise. As a non-state actor untethered to territory, Hamas can take significant losses and still rationally pursue the destruction of the Israeli state. If the latter, one can give greater weight to Hamas's claim its purpose in fighting, as previously stated, is to elevate the Palestinian cause to force some solution. The former represents a cruel and inhumane outcome, whereas the latter need not. Unfortunately, the fact much of Hamas's leadership resides outside Gaza, as well as public statements referenced earlier, suggest little reason to believe Hamas will be motivated by Gazan interests rather than its organizational ones.

As an ethical condition, a reasonable chance of success only matters where the end is morally permissible. So, though the *jus ex bello* application of this condition depends on some level of cooperation, not all levels of cooperation are permissible. I will discuss what ends are permissible in the forthcoming discussion on settlement. But to understand what counts as a just settlement under *jus ex bello*, one must first address issues regarding applying *jus ad bellum* proportionality, which I left unresolved earlier.

### Proportionality

As the previous discussion of *jus ad bellum* proportionality indicated, the logic of war termination can be ethically self-defeating. Strict adherence to the quota view can obscure morally relevant goods and harms that arise after the war has started. On the other hand, the prospective view risks setting the threshold higher the longer the war continues. What is needed is a better way to address the problem of sunk costs, which requires one to choose between foregoing a good to avoid harm or achieving the good but at potentially too high a price.

Mollendorf essentially endorses the quota view, but he argues that though any just cause will have its own “proportionality budget,” new causes that emerge after the war has begun may have their own. For example, in Mollendorf’s view, the proportionality budget for US operations in Iraq increased when the United States took on the cause of preventing, or at least mitigating, a civil war. Similarly, to the extent Russia’s ruthless occupation of Ukraine was not accounted for before the war, its consideration now should also raise the threshold. Both these examples assume the *jus ad bellum* assessment was correct. But new information after the fight has begun may lead one to conclude the cause represents higher stakes than initially thought.<sup>93</sup>

McMahan’s redemptive view is an attempt to split the difference. As previously discussed, this view suffered conceptually, as it allowed the cost of war to add to its value. As actors suffered more casualties, their threshold for proportionality similarly increased, essentially rendering proportionality irrelevant. In practice, however, the relationship is not so linear. For example, the United States frequently employs remote technologies to limit risk to its combatants. Doing so decreases the risk to US combatants more than the risk to enemy noncombatants. Where that decreased risk lowers the cost, the good of redeeming US casualties would likely not exceed the harm of the war’s continued destruction. Where no asymmetry of risk is present, then the conceptual problem remains. So, applying proportionality will be challenging in conflicts where risk is more or less equally distributed, or the stakes are high enough the proportionality quota is already high.

Even if one rejects the redemptive view as too permissive, other costs emerge once war begins that would not be counted as part of a *jus ad bellum* calculation. As Rodin points out, once hostilities commence, the stakes rise because the risk of defeat imposes its own costs. Even if an actor is not defeated, the cost of fighting is still difficult to account for in advance. If defeated, actors may incur additional reputational costs, making them more vulnerable. Aggressors' behavior after the war has begun can also raise the stakes. For example, Rodin argues if an aggressor, frustrated by the defender's resistance, decides to massacre civilians, then preventing future massacres increases the proportionality of continued fighting.<sup>94</sup>

Rodin's point here is not that concessions may not come with similar costs; instead, these costs count differently depending on when they are counted. Before the war, reputational costs were lower than after the war had begun. If one concedes without fighting, adversaries gain little information regarding why one was deterred from fighting. Although adversaries will make inferences regarding one's preferences and cost tolerance, if one chooses to fight and loses, then in addition to those inferences, adversaries also gain information regarding military capabilities, which fighting would likely deplete. Before the war, the potential for atrocity, for example, would count as harm, increasing the chances the war may be disproportionate. After the war, preventing atrocity counts as a good, lowering the threshold for continued fighting.

Rodin's solution is to apply a contingency that guards against underestimation. As he observes, the obligation to avoid unjust harm is greater than the obligation to realize permissible good; thus, a greater burden exists to avoid underestimation than to avoid overestimation. Drawing an analogy from financial accounting, Rodin argues actors should add a "moral contingency" to account for predictable emergent costs. Thus, given a value for the interest at stake, one subtracts known costs and a prudential estimate of unknown costs. If the outcome is greater than zero, the war would remain proportionate.<sup>95</sup>

Whether any of these approaches are usable in practice is questionable. Although Mollendorf and Rodin are correct that emerging costs and causes can alter the proportionality associated with a particular conflict, issues regarding assessment and commensurability are still covered during the *jus ad bellum* proportionality discussion. McMahan's approach has its appeal as well. If the stakes are higher when an actor chooses to fight rather than concede, tolerating greater costs makes sense. The difficulty here is proportionality is effectively irrelevant in cases where losses and stakes are high enough. Given the destruction a particular war causes has a physical limit,

imagining a situation where that cost does not exceed the value of the cause is not hard; in which case, proportionality will have little application.

But where the cost does exceed the value of the cause, proportionality will have application. As with *jus ad bellum* proportionality, *jus ex bello* proportionality assesses disproportionate outcomes better than proportionate ones. What differentiates *jus ex bello* from *jus ad bellum* proportionality is the calculation. Although the quota view is not necessarily wrong, the quota cannot simply depend on the *jus ad bellum* estimate. New causes after the fighting starts entail new quotas. Moreover, as McMahan points out, what are considered costs under *jus ad bellum* become something like investments under *jus ex bello*. Thus, though Rodin's analogy is apt, it seems to miss the point additional investments in a project can increase the project's value.

With investments, returns matter more than costs. For example, the value of a building—or any capital project—is a function of what a buyer is willing to pay, not simply the construction costs. Similarly, the value of a war is determined, in part, by the cost those affected are willing to pay. The harder one strives for something, the more valuable it tends to be. As one of many possible examples, athletes, who must invest more effort than anticipated to win, typically do not consider any subsequent victory diminished because achieving the victory costs more. The opposite tends to be true; the victory's value increases as a function of the extra effort, not despite it.

Although the value of the war may be determined by those who must pay the costs, the proportionality of the war is determined by the cost they impose on others to realize that return. As discussed, costs imposed on those taking part in an act of aggression matter, but only when imposing those costs undermines the prospects for a better state of peace. As long as an act of aggression is ongoing and capable, the number of aggressors a just defender may permissibly kill has few limits. Costs imposed on those not directly participating in the act of aggression or otherwise not liable count fully. The task is to establish the suitable *jus ex bello* threshold to determine when the limit of imposed costs has been exceeded, and the just belligerent must cease firing or settle.

### Cessations versus Settlement

As discussed, *jus ex bello* answers both questions about when to stop fighting and when to settle, and questions about when the higher standards of *jus ad bellum* and *just post bellum* are unavailable. The difference between cessation and settlement involves the difference between retaining the right to pursue the just cause by nonviolent means and concession. *Jus ex bello* also opens the possibility of renewing hostilities should *jus ad bellum* conditions

be met later. The latter requires revising the cause to something mutually agreeable and abiding by the settlement terms, which could preclude pursuing the original cause by any means, violent or nonviolent. As mentioned, Fabre has offered one such standard, where a just defender reaches a security level to which it can reasonably consent, where “reasonably” means not enduring continued gross rights violations.<sup>96</sup> Although settlement represents a more stable outcome than a ceasefire, which one should be preferred depends on the required compromise.

Although consenting to gross human rights violations is unreasonable, the demands of settling may set too high a bar to be useful. In assessing what that cost threshold should be, Blum and Luban examine war-termination decisions as risk-transfer decisions. States fight wars to reduce their risk of a violent attack by increasing that risk to the enemy, which includes combatants and noncombatants. How much risk states are morally permitted to transfer depends on the outcome they are entitled to achieve. States and the populations they represent prefer, obviously, to reduce their risk to zero. But where reducing that risk to zero requires transferring excessive risk to persons not liable to harm, or violates proportionality, a new standard is needed. Blum and Luban refer to this standard as “morally legitimate bearable risk.”<sup>97</sup>

States and the populations they represent would likely argue zero risk is the minimum morally legitimate exposure they should experience, where that risk results from another’s unjust act. When applied to war, Blum and Luban see an inconsistency. For example, they point out, in the United States, the risk of homicide is 1/8000, whereas the risk of being killed in a terrorist attack is 1/3.5 million. But the American public tolerates far more collateral harm when fighting terrorists than when fighting crime. As Blum and Luban observe, eliminating all crime would pose an “unbearable” burden on a society that values its liberties and freedoms.<sup>98</sup>

Blum and Luban’s point is not that counterterrorism operations would only be permitted to risk collateral harm after the risk of death from terrorist attacks equaled that of homicide. Societies have good reason to provide further weight to external threats than internal ones, especially since external attacks—terrorist or otherwise—can be significantly more disruptive than the aggregated number of domestic crimes. But requiring some commensurability between what risks a society will tolerate to deal with internal and external threats seems reasonable. Blum and Luban set the threshold of tolerable and intolerable risks by the degree to which civil life is not disrupted in a way incompatible with the fundamental notions of “liberty, freedom, and functioning government.”<sup>99</sup>



The standard “fundamental,” as used here, is context-specific. As Blum and Luban acknowledge, different communities have different notions of what counts as unbearable. Their solution is to apply a Rawlsian veil of ignorance where actors would determine “bearable” without knowing to which community they belong or other differentiating factors.<sup>100</sup> Full application of the thought experiment, which Blum and Luban do not undertake, would narrow the range of tolerable risk and consequently provide a more precise set of conditions for choosing between war and peace. The difficulty with applying the veil this way is actors could set too high a bar. When choosing between war and peace, knowing one’s actual peace may be closer to war than one prefers does not preclude a low tolerance for risk.

The just-all-things-considered threshold requires cessation of hostilities when the defender reaches a security level to which it can reasonably consent. This threshold suggests standards of liberty, freedom, and governance should be calibrated to local conditions—not determined by a global average as the veil experiment would be. Otherwise, one may set too high a standard for applying the principle to be useful. For example, Ukrainian citizens in Russian-occupied areas could reasonably consent to the constraints of Russian peacetime administration when the choice is war.

The difficulty with both the morally legitimate bearable risk and the just-all-things-considered standards is, depending on the context, they may not be compatible with *jus post bellum* requirements, especially ones associated with the morally preferred rehabilitative model. For example, Ukraine could restore its sovereignty completely. Still, Ukraine will likely not get the vindication of rights that comes with apology and accountability, which even the minimally just *jus post bellum* model requires. One can achieve the just-all-things-considered or morally legitimate bearable risk thresholds and not have achieved a better state of peace than the antebellum state of peace.

This point, however, may be more a criticism of *jus post bellum* than *jus ex bello* standards. Where victors cannot fully impose their will on the vanquished, a *jus ex bello* threshold for ceasefire and settlement needs to be established. A *jus ex bello* threshold suggests, where *jus post bellum* concerns itself with a better state of peace than before the war, *jus ex bello* should concern itself with a better state of peace than the war. Such a standard would entail that the suffering caused by continued fighting must be less than the injustice suffered as a result of a ceasefire. A ceasefire point could still represent a “rotten compromise.” As noted above, Ukrainian citizens may reasonably consent to a ceasefire to avoid the destruction of war, but that does not entail consent to being annexed. Consenting to a ceasefire just entails

foregoing violence in pursuit of political solutions. Conceding to annexation, especially given how Russia has handled it, is likely a “rotten compromise,” unless Ukraine is able to impose conditions that address Russian human rights abuses in occupied areas.

Accepting injustice and tolerating injustice are different, and in that difference is where the threshold for ceasefire or settlement lies. *Jus ex bello* requires compromise only when the *jus ad bellum* just cause is no longer attainable or when attaining it requires violating some other JWT principle. However, failing to resist evil is not the same as resisting evil unsuccessfully. *Jus ex bello* may require cessation of fighting, but that requirement does not further entail an obligation to end resistance. The requirement to cease fighting suggests violence in the pursuit of a just cause may no longer be permitted; in which case, continuing resistance by political, economic, or other nonviolent means may still be permissible, if not obligatory.

Still, to achieve an obligated end, a just belligerent may have to agree to at least some of an aggressor’s unjust demands. Given the current course of the conflicts in Ukraine and Palestine, Ukraine may have to accept some division of its territory, and Israel may have to accept some enduring role—or at least the existence—of Hamas. I will discuss later whether either is, in fact, the case. For now, that a difference exists between agreeing and accepting is worth noting. Agreeing to a ceasefire, for example, does not entail accepting a new status quo. Agreeing to a ceasefire only entails foregoing violence in the pursuit of one’s cause. Still, conditions should exist for any less-than-just settlements to be obligated.

As previously stated, any just cause must lead to a better state of peace. In the context of *jus ad bellum*, that state must improve the status quo ante bellum. In the context of *jus ex bello*, a better state of peace must be the best one can achieve relative to the alternative of war. Since peace here includes a vindication of rights, to judge alternatives under *jus ex bello* by the extent to which rights are maximized makes sense. However, as discussed, any solution will require incentivizing aggressor cooperation. To the extent those incentives legitimize aggression or lead to further rights violations, they should be avoided. To avoid legitimizing aggression, any settlement should make the aggressor worse off for having started the war. To incentivize aggression, any settlement will have to make the aggressor better off than it would be continuing the war.

To the extent continued fighting would make both defender and aggressor worse off, this standard for settlement could represent a Nash equilibrium. Much would depend on what is left to achieve for either side and the cost

of that achievement. For example, Ukraine's concession of the annexed territories to Russia could plausibly satisfy Moscow enough to settle. However, the settlement would not have been stable if Moscow had retained goals like installing a pro-Russian government in Kyiv. So, in addition to making the aggressor better off for ceasing hostilities but worse off for starting the war, the structure of a stable settlement must also make the aggressor worse off for renewing hostilities by making it better off for abiding by the settlement's terms.

This formulation somewhat differs from Fabre's just-all-things-considered standard for a peace settlement. Those conditions are met when an actor has vindicated enough rights that, when given the choice between continuing to fight and accepting the status quo, the actor could reasonably accept the status quo. The difficulty with the just-all-things-considered standard is it says little about the stability of that peace. Because the burden to cease firing lies only with the just belligerent, this standard does not consider the aggressor's calculations. The fact that the just side might be able to live with a settlement does not mean the unjust side is. So, without some conditions that deter conflict renewal, just-all-things-considered might not be just enough. Under these conditions, it matters what one continues to fight for. *Jus post bellum* conditions can provide categories of the costs and incentives one can impose to make an aggressor worse off for starting a war while better off for ending it. Requirements for demilitarization, compensation, and apology can all have *jus ex bello* analogs that account for the context in which *jus ex bello* applies.

For example, under *jus ex bello* conditions, neither side is incentivized to demilitarize. Unilaterally demilitarizing would likely provoke a renewal of hostilities, as it incentivizes the side that did not demilitarize to attack. Still, any *jus ex bello* settlement should include provisions applicable to all sides to posture military forces in ways that make offensive operations, even limited ones intended to intimidate, difficult and costly. Establishing a *jus ex bello* standard for compensation is more complicated. Absent the ability to impose the requirement, actors are unlikely to volunteer compensation absent some quid pro quo. Moreover, Fabre's just-all-things-considered standard suggests compensation may be eliminated entirely as a requirement. One could easily imagine a stable peace to which actors could reasonably consent that traded compensation for an increased share of the interest at stake. This way, *jus ex bello* compensation can serve as moral leverage to increase the chances of a stable settlement.

To dismiss an apology as a requirement may be more difficult. Without some acknowledgment of wrongdoing, conflict termination will more resemble a ceasefire than a settlement. However, as Jennifer Lind points out, acts of contrition may

be both unnecessary and undesirable. As she observes, after World War II, France and Germany reconciled well before the German government offered much in the way of apologizing for crimes committed during the war. Moreover, premature acts of contrition risk domestic political backlash, which could undermine moderate governments and empower factions that seek to rationalize an act of aggression as just. Lind also observes some recognition of wrong is necessary for reconciliation. But that recognition does not have to be active. For example, when aggressors deny past aggression or atrocities, they foment distrust and raise tensions with their adversaries. Simply by passively avoiding such denials, an aggressor may set the conditions for reconciliation without engaging in public contrition.<sup>101</sup>

This understanding of *jus ex bello* provides a more usable boundary set to determine what equilibria would be morally permissible. First, the forward-looking nature of *jus ex bello* just cause shifts the focus from resolving a past injustice to preventing a future one. Avoiding a rotten compromise entails finding ways to cooperate with aggressors, but conditions any settlement that makes aggressors better off for ceasing hostilities on making them worse off for having started the hostilities. The just belligerent would also be permitted to continue fighting to reduce the risk of renewed hostilities and set conditions for the return of civil life. Although doing so will not establish a perfect peace, it should establish a better one while vindicating the rights of the victims of aggression.

## Conclusion

Taking the JWT as a whole, a more complete view of the obligations associated with war termination emerges. Where continued fighting is disproportionate to the original cause, *jus ad bellum* would require fighting to cease; however, *jus ad bellum* specifies when to stop, not where. For its part, *jus in bello* governs how one should get to the ceasefire point, but the more one disregards it, the more difficult the trip. *Jus post bellum* provides an ideal point at which to stop, but one is not guaranteed to get there. In establishing the ideal stopping point, *jus post bellum* identifies the range of things one should consider when determining the best possible outcome. *Jus ex bello* governs the remaining space, specifying conditions for ceasefire and settlement.

In this view, the just-war ideal is that the just belligerent continues fighting until it can impose a rehabilitative settlement on an aggressor. Where that ideal is unattainable, the just belligerent should continue to fight until it can impose a minimally just settlement that includes cessation of hostilities,

adequate demilitarization to prevent renewal of hostilities, exchange of prisoners, compensation, and some kind of apology. When the less-than-ideal option is itself unattainable, the just belligerent is permitted to continue fighting for the most rights-maximizing outcome achievable.

At this point, success depends as much on cooperation as it does on imposing costs. One should cooperate in the range between rotten compromise and a stable enough peace, where the ideal settlement makes the aggressor better off for ending hostilities and abiding by the settlement terms, and worse off for using military force previously and in the future. Where that equilibrium is not attainable, a stable enough peace represents a residual risk to which the just belligerent could reasonably consent, given other risks the just belligerent otherwise tolerates.

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### Endnotes

1. John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), 128.
2. Peter Vandershraaf, *Bargaining Theory* (Cambridge, UK: Cambridge University Press, 2023), 2.
3. Robert Sugden, *The Economics of Rights, Co-Operation and Welfare* (New York: Blackwell Publishing, 1986), 172, quoted in Gary Goertz, *International Norms and Decision Making: A Punctured Equilibrium Model* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2023), 82.
4. Goertz, *International Norms*, 83–85.
5. Gregory G. Brunk, Donald Secrest, and Howard Tamashiro, *Understanding Attitudes about War: Modeling Moral Judgments* (Pittsburgh, PA: University of Pittsburgh Press, 1996), 28–29, 148, quoted in Goertz, *International Norms*, 116.
6. Goertz, *International Norms*, 116.
7. Valerie Morkevičius, “Power and Order: The Shared Logics of Realism and Just War Theory,” *International Studies Quarterly* 59, no. 1 (March 2015): 11.
8. Goertz, *International Norms*, 117.
9. Daniel Statman, “Ending War Short of Victory? A Contractarian View of Jus Ex Bello,” *Ethics* 125, no. 3 (April 2015): 732–33.
10. W. Michael Reisman and Chris T. Antoniou, eds., *The Laws of War: A Comprehensive Collection of Primary Documents on International Laws Governing Armed Conflict* (New York: Vintage Books, 1994), xxi.
11. Adam Roberts and Richard Guelff, eds., *Documents on the Laws of War*, 2nd ed. (Oxford, UK: Clarendon Press, 1989), 29–30.
12. Goertz, *International Norms*, 88.
13. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 5th ed. (New York: Basic Books, 2015), 323–25.
14. Statman, “Ending War,” 723.
15. David Copp, *Morality, Normativity, and Society* (Oxford, UK: Oxford University Press, 1995), 212; and Goertz, *International Norms*, 86–88, 121–22.
16. Gabriella Blum and David Luban, “Unsatisfying Wars: Degrees of Risk and the Jus Ex Bello,” *Ethics* 125, no. 3 (April 2015): 771.
17. Michael Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2004), 4.
18. Paul Christopher, *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 2nd ed. (Upper Saddle River, NJ: Prentice Hall, 1999), 82–88.
19. Christopher, *Ethics of War*, 85.
20. Francisco Suárez, “Disputation XIII, Section IV: What Is a Just Title for War, on the Basis of Natural Reason,” in *The Ethics of War: Classic and Contemporary Readings*, ed. Gregory M. Reichberg, Henrik Syse, and Endre Begby (Malden, MA: Wiley-Blackwell Publishing, 2006), 352–53.
21. Suárez, “Disputation XIII,” 352–53.
22. Hugo Grotius, “The Law of War and Peace,” in *Ethics of War*, ed. Reichberg, Syse, and Begby, 416.
23. John Baldoni, “Leadership Stagecraft: Churchill and Zelensky Stand Up for Freedom,” *Forbes* (website), December 22, 2022, <https://www.forbes.com/sites/johnbaldoni/2022/12/22/leadership-stagecraft-churchill-and-zelensky-stand-up-for-freedom/>.
24. Stephen Sestanovich, “Ukraine’s Counteroffensive: Will It Retake Crimea?,” Council on Foreign Relations (website), April 19, 2023, <https://www.cfr.org/in-brief/ukraines-counteroffensive-will-it-retake-crimea>.
25. Matthew Levitt, “The Hamas-Iran Relationship,” Washington Institute for Near East Policy (website), November 2023, <https://www.washingtoninstitute.org/policy-analysis/hamas-iran-relationship>.
26. Louis Casiano, “Hamas Leaders Admit No Interest in Governing Gaza, Want Permanent War with Israel,” *Fox News* (website), November 8, 2023, <https://www.foxnews.com/world/hamas-leaders-admit-interest-governing-gaza-want-permanent-war-israel-report>.

27. Eric Cortellessa, "After Hamas, Then What? Israel's Undefined Endgame in Gaza," *TIME* (website), October 20, 2023, <https://time.com/6326777/after-hamas-then-what-israels-endgame-in-gaza/>.
28. David Ucko, "Theories of Victory: Israel, Hamas, and the Meaning of Success in Irregular Warfare," Irregular Warfare Initiative (website), December 30, 2023, <https://irregularwarfare.org/articles/theories-of-victory-israel-hamas-and-the-meaning-of-victory-in-irregular-warfare/>.
29. Vladimir Socor, "Now You See It, Now You Don't: Putin Cheating on the Armistice Line in Ukraine," *Eurasia Daily Monitor* 12, no. 18 (January 2015).
30. "Hamas Official: We Will Repeat October 7 Attacks until Israel Is Annihilated," *Haaretz* (website), November 1, 2023, <https://www.haaretz.com/israel-news/2023-11-01/ty-article/hamas-official-we-will-repeat-october-7-attacks-until-israel-is-annihilated/0000018b-8b9d-db7e-af9b-ebdfbee90000>.
31. Jeff McMahan, *Killing in War* (Oxford, UK: Oxford University Press, 2009), 19.
32. Christine Gray, *International Law and the Use of Force* (Oxford, UK: Oxford University Press, 2008), 150.
33. David Rodin, "The War Trap: Dilemmas of Jus Terminatio," *Ethics* 125, no. 3 (April 2015): 684.
34. Jeff McMahan, "Proportionality and Time," *Ethics* 125 (April 2015): 696–97.
35. Brian Orend, *The Morality of War*, 2nd ed. (Toronto, CA: Broadview Press, 2013), 60.
36. Orend, *Morality of War*, 60.
37. Rodin, "War Trap," 680.
38. McMahan, *Killing in War*, 20–22.
39. McMahan, "Proportionality and Time," 702.
40. Rodin, "War Trap," 690–91.
41. Andrew L. Ross, "The Role of Nuclear Weapons in International Politics: A Strategic Perspective," Foreign Policy Research Institute (website), March 30, 2009, <https://www.fpri.org/article/2009/03/the-role-of-nuclear-weapons-in-international-politics-a-strategic-perspective/>.
42. Cécile Fabre, "War Exit," *Ethics* 125, no. 3 (April 2015): 646.
43. Darrel Moellendorf, "Two Doctrines of Jus ex Bello," *Ethics* 125, no. 3 (April 2015): 654.
44. McMahan, "Proportionality and Time," 714.
45. Rodin, "War Trap," 674–75.
46. Fabre, "War Exit," 635–38.
47. Rodin, "War Trap," 693.
48. Statman, "Ending War," 728.
49. McMahan, *Killing in War*, 20–22.
50. Aaron Boxerman, "What We Know about the Death Toll in Israel from the Hamas-Led Attacks," *New York Times* (website), November 12, 2023, <https://www.nytimes.com/2023/11/12/world/middleeast/israel-death-toll-hamas-attack.html>; and Greg Norman, "Israel Releases New Gaza Civilian Death Toll, Says Hamas' Numbers Are 'Fake and Fabricated,'" *Fox News* (website), May 14, 2024, <https://www.foxnews.com/world/israel-releases-new-gaza-civilian-death-toll-hamas-numbers-fake-fabricated>.
51. Jake Horton, Shayan Sardarizadeh, and Alan Durbin, "Gaza War: Why Is the UN Citing Lower Death Toll for Women and Children?," BBC (website), May 16, 2024, <https://www.bbc.com/news/world-middle-east-69014893>; and "As Israel's Aerial Bombardments Intensify, 'There Is No Safe Place in Gaza,' Humanitarian Affairs Chief Warns Security Council," United Nations (website), January 12, 2024, <https://press.un.org/en/2024/sc15564.doc.htm>.
52. "Here Are Some Key Facts about D-Day ahead of the 79th Anniversary of the World War II Invasion," PBS (website), June 5, 2023, <https://www.pbs.org/newshour/world/here-are-some-key-facts-about-d-day-ahead-of-the-79th-anniversary-of-the-world-war-ii-invasion>.
53. Chantal Da Silva, "Can Israel Defeat Hamas? Its Own Military Doesn't Seem to Think So, Clashing with Netanyahu," *NBC News* (website), June 20, 2024, <https://www.nbcnews.com/news/world/israel-military-spokesman-hamas-defeated-netanyahu-war-gaza-rcna157991>.
54. Shira Rubin and Joby Warrick, "Hamas Envisioned Deeper Attacks, Aiming to Provoke an Israeli War," *Washington Post* (website), updated November 13, 2023, <https://www.washingtonpost.com/national-security/2023/11/12/hamas-planning-terror-gaza-israel/>.

55. Walzer, *Just and Unjust Wars*, 154–58.
56. Walzer, *Just and Unjust Wars*, 250–67.
57. Walzer, *Just and Unjust Wars*, 258–59.
58. Orend, *Morality of War*, 154–57.
59. Robert Pszczel, “The Consequences of Russia’s Invasion of Ukraine for International Security – NATO and Beyond,” NATO Review (website), July 7, 2022, <https://www.nato.int/docu/review/articles/2022/07/07/the-consequences-of-russias-invasion-of-ukraine-for-international-security-nato-and-beyond/index.html>.
60. Thomas Grove and Carrie Keller-Lynn, “Israel, under Pressure to Scale Back Intensity of War, Pulls Thousands of Troops from Gaza,” *Wall Street Journal* (website), January 17, 2024, <https://www.wsj.com/world/middle-east/israel-under-pressure-to-scale-back-intensity-of-war-pulls-thousands-of-troops-from-gaza-33f17402>.
61. Jeremy Bowen, “What the ICC Arrest Warrants Mean for Israel and Hamas,” BBC (website), May 21, 2024, <https://www.bbc.com/news/articles/cw4490z75v3o>.
62. Immanuel Kant, “To Perpetual Peace: A Philosophical Sketch (1795),” in *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis, IN: Hackett Publishing, 1983), 109–10.
63. Alex Weisiger, *Logics of War: Explanations for Limited and Unlimited Conflicts* (Ithaca, NY: Cornell University Press, 2013), 27–28.
64. Peter Beaumont, “What Is a Human Shield and How Has Hamas Been Accused of Using Them?,” *Guardian* (website), October 30, 2023, <https://www.theguardian.com/world/2023/oct/30/human-shield-israel-claim-hamas-command-centre-under-hospital-palestinian-civilian-gaza-city>.
65. U.S. Department of State, *Report of the Independent Task Force on the Application of National Security Memorandum-20 to Israel* (Washington, DC: U.S. Department of State, April 18, 2024), 30–32.
66. Abigail Hauslohner, “Progressives Want to Cut Military Aid to Israel. Here Are the Options,” *Washington Post* (website), April 13, 2024, <https://www.washingtonpost.com/national-security/2024/04/13/democrats-military-aid-israel/>.
67. Jeffrey Gettleman, Anat Schwartz, and Adam Sella, “‘Screams without Words’: How Hamas Weaponized Sexual Violence on Oct. 7,” *New York Times* (website), December 28, 2023, <https://www.nytimes.com/2023/12/28/world/middleeast/oct-7-attacks-hamas-israel-sexual-violence.html>.
68. A. J. Coates, *The Ethics of War* (Manchester, UK: Manchester University Press, 2016), 28.
69. Brian Orend, *War and International Justice: A Kantian Perspective* (Waterloo, CA: Wilfrid Laurier University Press, 2000), 215–17, 249.
70. Orend, *War and International Justice*, 232–33.
71. Brian Orend, “Jus Post Bellum, Fractured Sovereignty, and the Limits of Postwar Rehabilitation,” in *The Ethics of War and Peace Revisited*, ed. Daniel R. Brunstetter and Jean-Vincent Holeindre (Washington, DC: Georgetown University Press, 2018), 272–73.
72. Orend, “Jus Post Bellum,” 273.
73. Orend, “Jus Post Bellum,” 275.
74. Orend, “Jus Post Bellum,” 276–79.
75. Marc Gallicchio, *Unconditional: The Japanese Surrender in World War II* (Oxford, UK: Oxford University Press, 2020), 68.
76. Orend, *Morality in War*, 212–17.
77. Jonah Schulhofer-Wohl, *Quagmire in Civil War* (Cambridge, UK: Cambridge University Press, 2020), 4.
78. Michael Bohnert, “Here’s What Ukraine Needs in Missiles, Shells, and Troops to Win. It’s Completely Doable,” RAND Corporation (website), May 2, 2024, <https://www.rand.org/pubs/commentary/2024/05/heres-what-ukraine-needs-in-missiles-shells-and-troops.html>.
79. Devorah Margolin and Matthew Levitt, “The Road to October 7: Hamas’ Long Game, Clarified,” *CTC Sentinel* 16, no. 10 (October/November 2023).



80. Sarang Shidore and Dan M. Ford, "Mapping It: Global South States Charging War Crimes in Gaza War," *Responsible Statecraft* (website), January 24, 2024, <https://responsiblestatecraft.org/global-south-israel-criminal-court/>.
81. Niamh Kennedy and Lauren Izso, "Israeli Defense Minister Outlines Plan for New Phase in Gaza War," *CNN* (website), January 4, 2024, [https://www.cnn.com/middleeast/live-news/israel-amas-war-gaza-news-01-04-24/h\\_2c1e8930d8eacab6c418b8ae1095ad](https://www.cnn.com/middleeast/live-news/israel-amas-war-gaza-news-01-04-24/h_2c1e8930d8eacab6c418b8ae1095ad).
82. Bernd Debusmann Jr. and Tom Bateman, "Biden Unveils Israeli Proposal to End Gaza War," *BBC* (website), June 1, 2024, <https://www.bbc.com/news/articles/cw8860gn1nwo>.
83. Ellen Knickmeyer, "From Houthis to Hezbollah, a Look at the Iran-Allied Groups Rallying to Arms around Middle East," *Associated Press* (website), January 29, 2024, <https://apnews.com/article/hamas-hezbollah-houthis-iran-militant-groups-745bfc36e23997ee3f0bc499a9f5c16d>.
84. Paul Kecskemeti, *Strategic Surrender: The Politics of Victory and Defeat* (Stanford, CA: Stanford University Press, 1958), 16.
85. Fabre, "War Exit," 633–34; and Darrel Mollendorf, "Jus ex Bello," *Journal of Political Philosophy* 16, no. 2 (June 2008): 125–27.
86. Orend, *Morality of War*, 196.
87. Mollendorf, "Jus ex Bello"; Moellendorf, "Two Doctrines," 657; and Fabre, "War Exit," 632.
88. Fabre, "War Exit," 634.
89. Mollendorf, "Jus ex Bello," 134.
90. Avishai Margalit, *On Compromise and Rotten Compromises* (Princeton, NJ: Princeton University Press, 2010), 2.
91. Holocaust Encyclopedia, s.v. "Munich Agreement," accessed June 23, 2024, <https://encyclopedia.ushmm.org/content/en/timeline-event/holocaust/1933-1938/munich-agreement>; and Debusmann and Bateman, "Biden Unveils."
92. "Castration, Gang-Rape, Forced Nudity: How Russia's Soldiers Terrorise Ukraine with Sexual Violence," *Telegraph* (website), November 28, 2022, <https://www.telegraph.co.uk/global-health/terror-and-security/how-russian-soldiers-terrorise-ukraine-sexual-violence/>.
93. Moellendorf, "Two Doctrines," 666–69.
94. Rodin, "War Trap," 679.
95. Rodin, "War Trap," 685.
96. Fabre, "War Exit," 638.
97. Blum and Luban, "Unsatisfying Wars," 755.
98. Blum and Luban, "Unsatisfying Wars," 760–66.
99. Blum and Luban, "Unsatisfying Wars," 766–67.
100. Blum and Luban, "Unsatisfying Wars," 767–68.
101. Jennifer Lind, "Apologies in International Politics," *Security Studies* 18, no. 3 (September 2009): 519–20.

## — Part Three —

# Conclusion: Finding the Ethically Best Bargain

## Ethics and Bargaining Theory

As discussed in part one, conflicts end in expulsion, withdrawal, negotiation, capitulation, or freezing. Since actors' capabilities and cost tolerances are uncertain to a degree, determining which outcome represents the better, if not best, state of peace entails establishing which outcome represents a Bayesian Nash equilibrium that is also a minimax solution. As also discussed in part one, one can do this informally by formulating possible equilibria, assigning probabilities based on original beliefs regarding actor preferences and new information obtained after fighting begins, and determining which outcomes maximize actor utilities. This is the process I will use here.

The conflict in Ukraine will likely freeze if neither actor chooses any of the options above. The options either actor could choose are withdrawal, capitulation, or negotiation. The likely outcomes of the interaction between those choices are Ukraine withdraws, Russia capitulates, or Ukraine and Russia negotiate a settlement. Less likely, but possible if Ukraine loses outside support, is Russia will wear down the Ukrainian military to the point Russia can impose a regime change. The United States and NATO also have to choose between 1) supporting continued fighting, 2) limiting support to encourage revision and settlement, or 3) increasing support to bring about a more rapid and more just end to the conflict.

The conflict between Israel and Hamas will likely follow a different path. If neither actor makes new choices, the conflict could continue indefinitely, even if the Israel Defense Force (IDF) can expel Hamas from Gaza. Since Hamas can operate even if it does not control Gaza, Hamas should be able to continue attacks, though they may not be on the same scale as the October 7 attack. Israel could choose to withdraw, which would either allow Hamas to remain in place or fragment governance if Hamas is not able to restore its ability to govern.

Because of external support in both conflicts, potential also exists for escalation into a wider conflict. In the case of the Russia-Ukraine War, Russia may attack NATO assets directly if defeat were likely. Putin could also employ tactical nuclear weapons, but doing so would remove any reasons NATO has not engaged directly, so this outcome is unlikely. Because Iran is actively employing its regional proxies

to pressure Israel and its supporters, the potential for regional escalation in the Israel-Hamas War is much higher. Managing regional escalation will affect the costs and benefits associated with any particular settlement.

The following discussion will examine the likely outcomes of each conflict to illustrate how the moral commitments described in part two should affect which outcomes Ukraine, Israel, and their supporters should pursue. The point here is to avoid getting into the details of a specific bargain. Each conflict is complex and ongoing, so what counts as a good, much less ethical, settlement now may not count as good or ethical later. Instead, the point here is to illustrate how this more comprehensive view of the ethics of war termination should inform decisions regarding which kind of settlement optimizes practical and ethical concerns.

## Ukraine

As mentioned earlier, Ukraine has three options: 1) continue to try to expel Russian forces until Ukraine liberates all occupied territory; 2) withdraw, effectively ceding occupied territory to the Russians; or 3) revise its military objectives short of complete liberation to make a negotiated settlement more likely. Trying to expel the Russians makes practical sense when cost tolerance remains high and a reasonable expectation exists the power distribution does or will favor Ukraine. Trying to expel the Russians makes ethical sense as long as the differential in the power distribution is sufficient to give Ukraine a reasonable chance of success. However, as discussed earlier, “reasonable” can be a low bar. So, in practice, requiring actors to have a plausible way forward that accounts for how they will realize success may make ethical sense. For example, continuing its incursion into Russian territory or renewing its offensive to retake its own may not succeed, meaning Ukraine’s better investment may be to assume a defensive posture, which could allow it to degrade Russian forces until the distribution of power shifts in its favor, allowing Ukraine to retake the offensive at a later time.<sup>1</sup>

As noted previously, Ukraine’s incursion into Kursk could increase opportunities for settlement as it gives something Ukraine can trade that is not its own territory. It could also, as some have speculated, precipitate a wild card event like Putin’s removal, that would also affect the space for bargaining. However, it is not yet clear if this bold move represents an Inchon, where, during the Korean War, General Douglas MacArthur launched a surprise invasion into North Korean-held territory that turned the tide of war or Gettysburg, where General Robert E. Lee hoped a significant victory would encourage those on the Union side opposed to the war, but instead lost

critical forces, making defeat inevitable. If the latter, then a frozen conflict or the status quo may be the best Ukraine can hope for.<sup>2</sup>

Whether continuing the incursion or renewing an offensive would be proportional would depend on the harms from future Russian operations as well as the additional suffering persons in the occupied territories will experience as a result. Given Russia's disposition to increase attacks on the civilian population and infrastructure as it gets more frustrated, any increases in the proportionality threshold may be offset by the additional suffering Russia's indiscriminate attacks may cause. Accounting for the suffering of persons in the occupied areas would need to consider both the actions of the occupying forces as well as the expected harm from a counterattack.

The option of continuing to try to expel Russian forces is less about bargaining than taking. It represents the just-war ideal of just defenders triumphing over unjust aggressors, where just defenders can impose their will to achieve a better peace. Thus, it would meet *jus ex bello* conditions regarding risk and civil security. For the option to constitute a Nash equilibrium, Russia would have to be no longer able to defend the annexed territories and be incentivized to give up its claims, though likely in exchange for some concession. Russia's ability to reconstitute and Ukraine's inability to impose regime change ensure Russia will retain some leverage even if its military forces in Ukraine are defeated. To the extent fighting continues, it could also constitute a subgame equilibrium, which may not be sustainable should conditions change. For example, continued fighting risks Ukraine depleting its military resources to the extent, should it fail, Ukraine will be in a worse position to defend itself from a renewed Russian offensive.

However, should Ukrainian forces succeed, continued fighting could yield a *jus post bellum* settlement that meets most minimally just conditions, which in this case would include Russia renouncing its claims publicly, compensating Ukraine for the destruction it caused, posturing its military so it cannot threaten Ukraine again, and apologizing. Whether Russia does so will depend on how much leverage Russia retains and what forms of these terms Ukraine is willing to accept. If, for example, Ukraine accepted partial compensation paid indirectly from frozen Russian assets and a tacit apology where Russia ceases to assert its territorial claims, minimal conditions may be attained. Whether Ukraine could ever fully impose such terms is doubtful, but Ukraine may have room to bargain over the specifics to make such a settlement more likely.

This point suggests Ukraine's partners could ethically enable a Ukrainian decision to continue fighting by providing additional capabilities or assistance, such as improved air-defense or targeting systems, that offset Russia's indiscriminate attacks. Russian targeting of the civilian population could also permit Ukraine's partners to counter Russian assets involved in indiscriminate attacks more directly without violating constraints on escalation. Preventing the Russians from fighting illegitimately does not preclude their continuing military operations that conform to international humanitarian law, so technically, at least from an ethical perspective, preventing direct attacks against civilians would not count as a direct intervention. Of course, the Russians might not see it this way, so depending on the expected reaction, any such intervention would also need to meet a standard of prudence.

Withdrawal makes practical sense when both sides' cost tolerance remains high, but the power distribution remains roughly the same. Under these conditions, neither side can fully achieve its remaining military objectives. Thus, the Russians would rationally take the opportunity to withdraw from fighting themselves, though likely on terms the Russians retain much or all the territory they have seized, if not claimed.<sup>3</sup> Ukraine's concession on this point would constitute a withdrawal on its part. Assuming the Russians retain control over the annexed territories, withdrawal may not meet the conditions for a better state of peace antebellum, as it could leave the Russians better off for starting the war and for ceasing hostilities, depending on how one counts the NATO expansion that occurred during the conflict as well as the cost of the fighting itself. One could increase the value of withdrawal by continuing nonmilitary means, like sanctions, to incentivize better terms in the present and deter aggression in the future.

Without better terms, this option could represent a rotten compromise. As discussed, Russia may not be an inherently brutal and inhumane regime in the way Nazi Germany was; however, Russia has been consistently brutal and inhumane to large numbers of Ukrainians. Much of Russia's brutality may be a function of the war, so opportunities may exist to bargain for better human rights conditions. Thus, for withdrawal to accomplish anything a frozen conflict would not, any settlement should be contingent on Russian guarantees, an enforcement mechanism that will respect fundamental rights, and a method of enforcing violations. At best, withdrawal represents a subgame equilibrium, which over time may erode, much like the situation did under the Minsk Agreements, as discussed earlier. To the extent it simply buys time for Russia to reconstitute to renew fighting, withdrawal would likely not represent an equilibrium.

To increase equilibrium stability, Ukraine's partners could play a role in establishing an enforcement mechanism for rights violations and responding to provocations that risk the renewal of hostilities. This way, withdrawal is better than a costly frozen conflict, where actors would rationally continue rearming to unfreeze it. Should increased stability not be possible, Ukraine will need continued security assistance to make withdrawal a durable solution. Thus, for Ukraine's partners, withdrawal is likely the riskiest option. Once fighting ends and suffering recedes from the headlines, resisting the pressure to normalize relations with Russia and accept a new status quo, a redrawn border, and an emboldened Russia will take extraordinary political will.

Settling makes practical sense where Ukraine's cost tolerance decreases, but the power distribution supports some level of offensive operations. Under this option, Ukraine and its partners would pursue a mixed strategy employing military, political, and economic means to minimize Russian gains and set negotiation conditions. To the extent Ukraine has sufficient military capability to prevent further Russian gains but not enough to expel Russian forces completely, settling may be the dominant strategy equilibrium. Under these circumstances, making Russia worse off for starting the conflict but better off for ending it optimizes Ukraine's outcomes regardless of what the Russians do. Continued resistance increases costs if Putin cannot retake the offensive, making the Russians even worse off. If the Russians settle on terms reflecting the status quo, then Ukraine is no worse off, and if the terms of settlement impose sufficient costs on Russia (or deny sufficient gains), Russia is still worse off for starting the war. For settling to be viable, the United States and NATO would likely have to continue, if not expand, military assistance. Additionally, the Ukrainian government could find ways to assimilate separatist concerns into its own. Even though most Ukrainians in the east do not support secession, addressing separatist concerns could undermine Moscow's utility in continuing to support separatist military operations.

In many ways, Russia is already worse off for having started the conflict. Rather than preventing NATO encroachment, the conflict accelerated it, as Finland and Sweden have joined.<sup>4</sup> Furthermore, the conflict incentivized NATO countries to provide Ukraine with security guarantees and a pledge to join NATO eventually.<sup>5</sup> Russia has suffered other costs as well. Although Russia's political and economic isolation is incomplete given China's, India's, and Türkiye's willingness to buy Russian oil and gas, Russia's loss of the European market and other sanctions shrunk Russia's gross domestic product by 2.1 percent in 2022.<sup>6</sup> Moreover, Russia's economy did grow by 3 percent in 2023, with much of the growth due to increased defense spending to support the war.<sup>7</sup> A second-order effect of Russia's isolation is the resulting brain drain

as capable Russians have fled the country. Even if Russia fully cooperates, Russia will not fully recover for some time.<sup>8</sup> If the Russians are indeed worse off, then determining if this option adequately reduces risk and restores civil security is all that remains.

To make risk reduction and civil security more likely, the United States, NATO, and Ukraine should continue to impose sanctions as well as take other measures to isolate Russia and constrain its ability to aggress again. Although sanctions have been inadequate to incentivize resolution, they have significantly diminished foreign investment and reduced imports, especially high-technology goods, for which Russia has few alternatives.<sup>9</sup> Should sanctions stay in place, frozen assets, limited foreign investment, and the subsequent brain drain these conditions have already started could diminish Russia's ability to compete and reconstitute its military forces.<sup>10</sup>

For any settlement to endure, some form of demilitarization, compensation, and apology will need to occur. Demilitarization would have to meet roughly the same standard as option three, but both militaries would likely need to posture in ways that prevent them from easily threatening the other. Ukraine will likely have to accept a lower standard for compensation and apology. But as discussed above, doing so may have an ethical rationale. So, as long as Russia does not continue to rationalize its invasion as just and is willing to take some steps that acknowledge the suffering it has imposed—such as repatriating deported Ukrainian citizens and compensating for damage to infrastructure—Russia may meet a standard of compensation and apology that allows for both parties to move on. Offers to reduce certain sanctions may incentivize Moscow to accept a higher standard. Whether that meets Ukrainian requirements will be up to Ukraine, but this model provides a plausible way to meet minimum *jus ex bello* settlement conditions.

To make the Russians better off if they stop fighting, on the other hand, the United States and NATO could consider addressing Russia's concerns regarding NATO expansion. In the past, NATO has refused to offer such guarantees on the principle of respecting state sovereignty. Compromising on this principle, however, may be reasonable given the costs of fighting and the urgency to resolve the conflict.<sup>11</sup> Given Finland's and Sweden's admission, NATO's concession would be symbolic. Moreover, this concession would not preclude security guarantees should Russians decide to aggress again. The fact that Russia's aggression has, in many ways, strengthened the alliance at which the aggression was directed should disincentivize future aggression.

NATO's recent pledge to provide Ukraine an "irreversible path" to NATO membership provides both barriers to settlement as well as opportunities. As NATO Secretary-General Jens Stoltenberg remarked, Ukraine's NATO membership is contingent on an end to the fighting.<sup>12</sup> That contingency, however, disincentivizes the Russians to settle since NATO encroachment is a reason Putin has given for the invasion, thus decreasing the bargaining space for settlement. To reduce that disincentive, as Polish President Andrzej Duda suggested, NATO should also put in place current security arrangements that improve Ukraine's ability to defend sustainably what it has and take back what it can without direct NATO involvement.<sup>13</sup> On the other hand, the pledge does provide additional leverage to optimize the space that remains. By holding out the possibilities of extending the timeline or pausing the process altogether, NATO may be able to obtain concessions it might not have otherwise.

Sanction relief is also a way to incentivize Russian concessions. Since the settlement falls short of the ideal under this option, however, such relief need not be complete. Since the *jus ex bello* settlement standard requires the resulting security situation to be bearable, sanctions against Russian military capabilities should stay in place. Other relief should be contingent on other concessions that meet the requirements for minimal justice. To the extent residue remains, some sanctions and political measures to isolate Russia should remain in place.

From a practical perspective, the durability of a settlement may be a function of formal recognition of Russia's territorial claims and the impact of that recognition on morally bearable risk. As long as Ukraine retains its claims, tension will remain that will incentivize further provocations, much like it did under the Minsk Agreements. Such a concession may also validate Putin's aggression. So, from an ethical perspective, Ukraine and its partners should resist recognizing Russia's territorial gains and continue to impose costs on Russia despite growing pressure to normalize relations as time passes, unless Ukraine can extract terms from the Russians, like accountability or compensation, that increase the value of the settlement to the Ukrainians while keeping the settlement within Russian interests. Under *jus ex bello*, a state of peace is acceptable to the extent it optimizes the justice possible, given continued fighting is no longer permissible or prudent.

Determining which option to pursue depends on how one assesses the likelihood Ukraine can achieve the goals each option specifies. Expelling represents the highest payoff, but is also the least likely absent an increase in military capability or Russian collapse. Withdrawal provides the lowest payoff but is the most probable since it represents the status quo. Settling splits the difference. As long as the revised objectives are achievable



and improve the status quo, settling provides more value than option two but less than option three.

The optimal choice depends on the specific probability values one assesses. For example, one can assign relative value in terms of ranking: the highest payoff is 3, the middle payoff is 2, and the lower payoff is 1. If likelihood varies widely, we might assign 90 percent to the highest, 60 percent to the middle, and 30 percent to the lowest. Multiplying value and probability, withdrawal has the highest score. If one thinks likelihood varies less, one might cluster probabilities around the middle, assigning 60 percent as the highest, 50 percent as the middle, and 40 percent as the lowest. In that case, continuing to fight to expel the Russians has the highest score and is the optimal choice. See tables 3-1 and 3-2.

**Table 3-1. Ukraine's optimal option given a wide range of probabilities**

| Option   | Payoff | Probability | Score |
|----------|--------|-------------|-------|
| Expel    | 3      | .1          | .3    |
| Withdraw | 1      | .9          | .6    |
| Settle   | 2      | .6          | 1.2   |

**Table 3-2. Ukraine's optimal option given a limited probability range**

| Option   | Payoff | Probability | Score |
|----------|--------|-------------|-------|
| Expel    | 3      | .4          | 1.2   |
| Withdraw | 1      | .6          | .6    |
| Settle   | 2      | .5          | 1     |

## Israel-Hamas War

Without a well-defined end state, assessing Israel's options is difficult. Israel's goals are clear enough: remove Hamas from power and dismantle its offensive capabilities. As discussed, Israel has no clear path to achieving these ends since military force is limited in what it can do. Hamas can operate where the IDF have difficulty reaching it, and even if the IDF did reach Hamas, attrition alone will not deliver the desired outcomes. Israel may be able to conduct more hostage rescue operations; however, Israel will not likely free all hostages this way. Tehran's support of Hamas, as well as its use of proxies to disrupt commercial shipping and pressure the IDF on Israel's border with Lebanon, make Hamas all the more resilient.

This point suggests any stable equilibrium should address Iran's destabilizing role. At least three options exist, which I will address briefly here before addressing Israel's options regarding Hamas and Gaza. The first option is to confront Iran directly either to impose sufficient costs or degrade its capabilities to the point Iran no longer poses a threat. Given Tehran's use of proxies allows it to distribute costs and retain the capability to retaliate, the first option may not be effective. So unless one can attack something Iran perceives as a vital interest, this option may not be successful. If pursuing the first option leads to an escalatory spiral no one can control, trying is in no one's interest.

The second and third options address Iran's ability to exploit the Palestinian cause to destabilize the region. If the trigger for the October 7 attack was the normalization of Arab-Israeli ties, then Israel and Arab states can agree to freezing or reversing the normalization process. The ethical concern here is, given Iran's authoritarian nature—and support for authoritarian causes—doing so could count as a “rotten compromise.” The third option would be to limit Tehran's ability to exploit the Israel-Hamas War for its own ends. For example, some Arab states are willing to support a peace deal contingent on a path to Palestinian statehood. Such a peace deal will likely mean Israel making compromises with Palestinians and Arab states it has not been willing to make in the past, but failure to find some accommodation will likely preclude a more stable peace than before the war.

Given this situation, Israel's options seem to be 1) expel Hamas, 2) withdraw from Gaza, restrict access, and improve defenses, or 3) maintain some presence in Gaza and pursue Hamas using law enforcement-type operations, escalating to military operations only when necessary. The last option does not terminate the conflict but, to the extent Israel can contain Hamas and avoid escalation, essentially freezes it. As with Ukraine, the first option has the highest payoff but arguably the highest cost and lowest probability of success. Expelling Hamas creates a governance vacuum that would need to be filled. Occupying Gaza would require Israel to take on administrative and security responsibilities that would be difficult enough, even if Israel was unopposed. For that reason, as previously discussed, Israel has sought support from the United States and others to develop a coalition to take on this responsibility.

Israel's rejection of the Egypt-Qatar ceasefire proposal underscores its central dilemma in coming up with settlement terms. Israel does not want to occupy Gaza, but if someone does not, Hamas will either retain control or, perhaps worse, free itself from the burden of governing and focus more on attacking Israel. The Israeli Minister of Defense, Yoav Gallant, described Hamas's rule over Gaza and Israeli occupation as the “two worst alternatives.”<sup>14</sup> Israel's war cabinet has outlined a plan that includes the return of hostages, an end to Hamas

rule, demilitarizing Gaza, and establishing international administration over the strip. Netanyahu has so far not accepted the plan, encouraging one cabinet member to threaten to resign.<sup>15</sup> Thus, this solution may not meet the risk-reduction threshold or the restoration of civil security that would apply to both Israeli and Palestinian civilians for any settlement to be considered just.

To move things forward, the United States has proposed a ceasefire that resembles the one proposed by Egypt and Qatar but extends the temporary ceasefire until a permanent settlement is in place. Even without a permanent settlement, the plan calls for establishing a non-Hamas government and three to five years of internationally funded reconstruction.<sup>16</sup> Although this plan would meet conditions demanded by both Israel and Hamas, its long-term success depends on Israel and Hamas trusting the other will not cheat. Hamas could do something similar to what al-Qaeda did when it rebranded as the Islamic State of Iraq and Syria, effectively creating the appearance of a new organization that would not be a party to the ceasefire. Shed of governance responsibilities, Hamas could more easily reconstitute and renew attacks. If, to prevent or respond to a reconstituted Hamas, Israel renews any operations, the settlement will unravel, and the situation will likely return to conflict. Still, to the extent a viable authority can fairly administer aid and prevent terrorist operations, implementing this option could represent a subgame Nash equilibrium whose stability would depend on Israel tolerating a continued, if diminished, Hamas presence in Gaza, and on Hamas seeing Gaza's reconstruction as more in its interests than its political goals relative to Israel. Again, these conditions would not adequately reduce risk for either Israelis or Palestinians and would likely limit the restoration of civil security.

Despite the cost of occupation, withdrawal probably has the lowest payoff depending on whether Gaza can avoid the kind of fragmentation discussed earlier and depending on how much Israel can improve its ability to disrupt Hamas's offensive operations. If it can, then it may be possible to meet Israel's security conditions necessary for a ceasefire, independently of concessions by Hamas. However, further isolating Gaza will only exacerbate the conditions that drive Palestinian resistance, increasing the likelihood of more attacks. Further isolating Gaza would also perpetuate, if not worsen, poverty conditions that could violate *jus post bellum* principles. Still, if Israel has no other option because of Palestinian resistance to alternatives to which Israel could reasonably consent, then this option may be the most viable, if not optimal.

The option of further isolating Gaza also has the highest probability of success since it simply represents a return to a more severe status quo. As such, it resembles a subgame equilibrium, if it resembles an equilibrium

at all. If the IDF can improve its ability to control Israel's borders, which is likely a less costly alternative than continued fighting in Gaza or occupation, reaching equilibrium is more likely. Improving border control also does not require Israel to address the military-political gap directly, reducing this option's complexity. However, while it may be successful in the short term, whether this option will be successful over the long term is unclear. Because improving the IDF's ability to control Israel's borders does not address any of the conditions that drive the conflict, this option all but ensures failures will occur in the long term, as either a reconstituted Hamas or another militant group learns to bypass those defenses. Still, to the extent improved defenses lessen the severity of future attacks, the option may remain viable.

Whether improving border control is proportionate depends on the extent to which military force is required as part of that defense and how its implementation affects the condition of the Palestinian people. Assuming Hamas retains some ability to continue some kinds of attacks, the IDF will arguably be entitled to respond. Given the IDF's response, even though proportionate itself, will likely cause collateral harm, that expected collateral harm would count toward the proportionality of this option. Given the open-ended nature of this option, assigning a quota may not help. However, one could accept each new attack raises the quota, and thus, a response that conforms to *jus in bello* proportionality would be permissible. A more significant concern is the effect on the Palestinian people. Although all options include the condition humanitarian aid to Gaza continues, without some political order, the aid will have a limited impact. Furthermore, to the extent isolation perpetuates poverty and other suffering, it risks being disproportionate on those grounds. These concerns would have to be addressed for this option to be viable.

Isolation makes sense where little to no room is present for negotiation or bargaining. Unlike expelling Hamas, this option assumes Hamas continues to exist in some form, engendering commitment problems that may not be resolvable. But limited space for negotiation does not entail any *jus ex bello* settlement obligations. For example, like Israelis, Palestinians are entitled to a just-all-things-considered peace under the conditions of morally legitimate bearable risk. So, at a minimum, Israel is obligated not to be the kind of threat to the Palestinian people Hamas poses to Israel. Israel would still be entitled to defend against any attacks, but a just-all-things-considered peace obligates both sides to consider the danger they pose to the other. Thus, efforts like pursuing Hamas leadership using methods that cause collateral harm would not be permitted.

Freezing the conflict splits the difference. Israel would maintain a sufficient presence to monitor and disrupt militant operations while some other entity acceptable to the Palestinian people provides governance. Operations that create collateral harm undermine stability efforts. So, to enable governance, the IDF would arguably have to apply a law-enforcement approach that entails a presumption of innocence, preserves the right to life, and preserves the right to a fair trial. For this approach to be successful, the use of force would be severely restricted. Because suspects are presumed innocent, the use of force should not be the first option unless the suspects are an apparent threat to others.<sup>17</sup> Exceptions may arise when militant activity reaches a level where law-enforcement methods are not an effective response. The feasibility of freezing the conflict also depends on any governing entity being one to which both Israelis and Palestinians could reasonably consent.

To assess this option's potential for success is difficult. Although a minimum, even temporary, IDF presence is likely more acceptable than a permanent one, the presence may still not be acceptable to militant groups and Palestinian civilians.<sup>18</sup> Thus, much of the success of freezing the conflict will depend on the ability of the IDF to defend its presence and operate securely. As Israeli scholars Asa Kasher and Amos Yadlin argue, applying the law-enforcement paradigm depends on public support, which arises from the fact the public believes the security forces are there to protect them.<sup>19</sup> Philosopher Daniel R. Brunstetter makes a similar point: law enforcement is only effective when the government has a monopoly on the use of force, has identified agents who have the authority to arrest, and has a court system to provide a fair trial and appropriate punishment.<sup>20</sup> Although those conditions exist in Israel, they may not be extendable to Palestine. To the extent Israel can contain Hamas, this may be the dominant strategy equilibrium since freezing the conflict represents the most either can achieve under the current circumstances. Should that change, this outcome would not remain an equilibrium.

To the extent the conditions for effective law enforcement do not exist, one could reframe freezing the conflict as a case of irregular warfare instead of law enforcement. This approach reflects the state of current IDF operations after it scaled down operations in early January in favor of a more focused approach aimed at Hamas's military leadership.<sup>21</sup> The IDF operations would resemble US counterinsurgency operations in Iraq and Afghanistan under this approach. Whether IDF operations would be more successful is impossible to answer. But to the extent Israeli success depends more on Israel's ability to disrupt future terrorist attacks than on establishing governance in Gaza, freezing the conflict may be a plausible way forward.

One concern would be the open-ended nature of the commitment. But as long as some entity was making concurrent efforts to restore governance and services to Gazans, freezing the conflict remains the most proportional option, especially if pursuing the option undermined Iran's position. Even if the situation continues as a counterinsurgency, it can still meet the proportionality requirement if the IDF tolerance for collateral harm is as close to law-enforcement standards as possible. The farther the IDF get from that standard, the less this option would count as war termination, much less as proportionate.

Hamas's interests are more complex. It wins by surviving, even if it loses formal control over the strip. As stated previously, giving up the burden of governing may even be an incentive.<sup>22</sup> Given this disparity, to see how a ceasefire, much less a settlement, at least with Hamas, is possible, is difficult. Although each of these options makes Hamas worse off for starting the war, the options may not make Hamas worse off enough to sustain a settlement. Given each side's commitment issues, even if an agreeable solution could be worked out, it may not last. No matter how minor, any breach would likely be interpreted as a serious threat leading to a breakdown. Absent a breakthrough, the only likely way forward entails some international intervention to address both sides' security concerns.

Should international intervention materialize, *jus post bellum* conditions such as accountability, compensation, and apology would still need to be addressed. Fortunately, some room for creative, if not ideal, solutions may exist. Accountability, for example, can come in several forms. Israel could try Hamas detainees in its courts, which would satisfy part of the requirement. Holding Hamas leaders in exile, much less Iran, accountable will be difficult, but if the international community imposed even mere reputational costs by publicly condemning Hamas and Iran, accountability requirements may be met.

Accountability does not only apply to Hamas. As noted earlier, there is the widespread perception Israeli forces have conducted disproportionate operations. To address this perception, the International Criminal Court is seeking arrest warrants for both sides and the International Court of Justice ruled in late January 2024 that Israel needed to do more to aid civilians, while inferring failure to do so could count as genocide.<sup>23</sup> Whatever one thinks of the merits of these rulings, some public accounting would also help establish stability, reinforce the laws of armed conflict, and bolster Israel's image as a legitimate and responsible state actor. Israel could also take the opportunity to make its case regarding Hamas's role in putting civilians at risk and work to build an international consensus on appropriate responses to the use of human shields.

If Hamas were displaced, the ability to impose a rehabilitative solution would preclude compensation as a requirement since, under this approach, local resources would be used to make the population better off than before the war. The need for an apology would also be mitigated if any new authority did not affirm the October 7 attack. Given the military-political gap and its uncertainty, assigning a value to each option is more difficult. Although easy enough to rank, assessing whether the options represent an equilibrium, much less a more stable peace, is more challenging. Assigning a more comprehensive range of probabilities to reflect this uncertainty makes sense. For example, withdrawal is the most probable option, since it represents the status quo. However, withdrawal provides the lowest payoff since it counts more as a ceasefire than a settlement. Freezing is likely more probable than expelling Hamas, depending on the likelihood of finding a willing and capable coalition to administer Gaza, but is less likely than withdrawal, which has the fewest contingencies.

So, assigning value based on rank order, expelling Hamas would be 3, withdrawal would be 1, and freezing would be 2. As with Ukraine, one can distribute probabilities evenly across a range or cluster them around a mean. Given the increased uncertainty in this scenario, lowering the range and the means makes sense. So, for example, we might assess withdrawal as the most probable option, at 60 percent, given the significant potential to escalate. Freezing, as the middle probability, would be 45 percent, and expulsion, as the least probable, would be 30 percent. Thus, expulsion's score would be .9, withdrawal would be .6, and freezing would be .9. Thus, as long as expulsion and freezing are feasible, they both represent permissible goals that would justify continued fighting.

Selecting a mean in this circumstance would reflect how wide one assessed the military-political gap to be. The more dependent outcomes are on changing the other's mind, the wider the gap. Given the disparity between Hamas and Israel, assigning a reasonably low mean makes sense. So, for this discussion, the mean will be 30 percent, so expulsion would be 10 percent, withdrawal would be 30 percent, and freezing would be 20 percent. So, expulsion's score would be .3, withdrawal would be .3, and freezing would be .4. In this case, when we assess each option as growing in the likelihood of success, then freezing appears to be the optimal one.

As with Ukraine, these values are approximations meant to capture informed intuitions rather than quantitative analysis. With better information, one can assess values more accurately. How the values impact the value of each option, as discussed above, is reflected in tables 3-3 and 3-4.

**Table 3-3. Israel's optimal option, given a wide range of probabilities**

| Option   | Payoff | Probability | Score |
|----------|--------|-------------|-------|
| Expel    | 3      | .3          | .9    |
| Withdraw | 1      | .6          | .6    |
| Freeze   | 2      | .45         | .9    |

**Table 3-4. Israel's optimal option given low probabilities**

| Option   | Payoff | Probability | Score |
|----------|--------|-------------|-------|
| Expel    | 3      | .1          | .3    |
| Withdraw | 1      | .3          | .3    |
| Freeze   | 2      | .2          | .4    |

## Conclusion

The point of this analysis has been twofold. First, the Russia-Ukraine War and the Israel-Hamas War expose shortcomings in the JWT's ability to assess possible outcomes and identify when the just belligerent should stop fighting and accept a ceasefire or seek a settlement. Without a clear standard, knowing when one has achieved the justice one can is difficult. Thus, the pressure to keep fighting continues to outweigh the harm it causes. Resolving the resulting confusion is possible by pursuing policy alternatives that provide security for the victim of aggression while making the aggressor worse off for the act of aggression but better off for ceasing hostilities. These conditions, of course, are not meant to be a complete account of *jus ex bello*, but they do address concerns regarding the establishment of, if not a better state of peace, the best state of peace one can establish.

Given the realities of these wars, the measures recommended above vindicate the rights of Ukraine, Israel, and the Palestinians, even if restoring the rights fully is not possible. Moreover, the recommended measures provide an alternative to fighting that leaves aggressors like Russia and Hamas in a position where their ability to continue to provoke their neighbors is significantly diminished. Whether these conditions can open up opportunities to transform the conflicts further over the midterm or the long term is difficult to say. But creating that possibility seems to add moral weight to the approaches recommended here. If nothing else, the *jus ex bello* framework recommended here focuses efforts by belligerents and the larger international community on creating conditions that



provide enough security that civil life can be restored, establishing an alternative to war that is better for all sides.

What this analysis has not done is recommend Ukraine cease its resistance or recommend NATO curtail its support. This analysis also has not recommended Israel seek accommodation with Hamas or Iran. Any of those outcomes would likely reflect a rotten compromise. So, as long as Ukrainian forces can make progress toward liberation and Israeli forces can kill or detain Hamas militants while keeping civilian harm to an acceptable minimum, they should do so. Moreover, as long as Ukrainians and Israelis are willing to pay the price of continued fighting, few moral arguments are available one could, much less should, bring to bear to convince them to stop.

As this analysis shows, whether Ukraine or Israel can achieve their maximal just goals is still being determined. If they cannot, compromise may be the most practical and ethical alternative to stalemate or losing. Although victims of aggression may be willing to endure heightened risk to secure a better peace, when fighting threatens to make those on whose behalf the fighting is conducted worse off, considering less just alternatives may be the most moral thing policymakers can do.

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## Endnotes

1. Emma Ashford and Kelly A. Grieco, "How Ukraine Can Win through Defense: A New Strategy Can Protect Kyiv and Stop Moscow from Winning," *Foreign Affairs* (website), January 10, 2024, <https://www.foreignaffairs.com/ukraine/how-ukraine-can-win-through-defense>.
2. C. Anthony Pfaff, "To End the War, Ukraine Needs Justice, Not Peace," *National Interest* (website), February 12, 2023, <https://nationalinterest.org/feature/end-war-ukraine-needs-justice-not-peace-206196>; Amy Knight, "Is Putin's Inner Circle Wobbling?" *Wall Street Journal* (website), August 19, 2024, [https://www.wsj.com/opinion/is-putins-inner-circle-wobbling-russia-critics-war-1eb59e51?mod=hp\\_opin\\_pos\\_2#cxrecs\\_s](https://www.wsj.com/opinion/is-putins-inner-circle-wobbling-russia-critics-war-1eb59e51?mod=hp_opin_pos_2#cxrecs_s); Russel F. Weigley, *The American Way of War: A History of United States Military Strategy and Policy* (Indianapolis: Indiana University Press, 1977), 385–87; and Jonathan Horn, *The Man Who Would Not Be Washington: Robert E. Lee's Civil War and His Decision That Changed American History* (New York: Scribner, 2015), 194–97.
3. Kristin Archick, Paul Belkin, and Andrew S. Bowen, *NATO Enlargement to Sweden and Finland*, Congressional Research Service (CRS) Report IN11949 (Washington, DC: CRS, updated March 22, 2024).
4. Phelan Chatterjee, "How Sweden and Finland Went from Neutral to NATO," BBC (website), July 11, 2023, <https://www.bbc.com/news/world-europe-61397478>.
5. Sean Seddon and Bernd Debusmann Jr., "NATO Vows 'Irreversible Path' to Ukraine Membership," BBC (website), July 11, 2024, <https://www.bbc.com/news/articles/c29d03574zdo>.
6. "Impact of Sanctions on the Russian Economy," European Council and Council of the EU (website), updated October 12, 2023, <https://www.consilium.europa.eu/en/infographics/impact-sanctions-russian-economy/>.
7. Ayesha Rascoe, "Russia's Economy Is Going Strong Despite Sanctions from the U.S. and Its Allies," NPR (website), December 17, 2023, <https://www.npr.org/2023/12/17/1219882734/russias-economy-is-going-strong-despite-sanctions-from-the-u-s-and-its-allies>.
8. Shruti Menon, "Ukraine Crisis: Who Is Buying Russian Oil and Gas?," BBC (website), May 23, 2023, <https://www.bbc.com/news/world-asia-india-60783874>.
9. Heli Simola, "What Effects Have Sanctions Had on the Russian Economy?," World Economic Forum (website), December 22, 2022, <https://www.weforum.org/agenda/2022/12/sanctions-russian-economy-effects/>.
10. Richard Disney, "What Is the Current State of the Russian Economy under Sanctions?," Economics Observatory (website), April 27, 2023, <https://www.economicsobservatory.com/what-is-the-current-state-of-the-russian-economy-under-sanctions>.
11. "Setting the Record Straight," NATO (website), updated January 12, 2024, [https://www.nato.int/cps/en/natohq/topics\\_111767.htm](https://www.nato.int/cps/en/natohq/topics_111767.htm).
12. Carla Babb, "NATO Calls Ukraine's Path to Membership 'Irreversible,'" Voice of America (website), July 10, 2024, <https://www.voanews.com/a/ukraine-s-path-to-nato-membership-irreversible-/7693500.html>.
13. Sharon Weinberger et al., "To Aid Ukraine in Fight against Russia, Allies Look to Security Model Like Israel's," *Wall Street Journal* (website), May 22, 2023, <https://www.wsj.com/amp/articles/to-aid-ukraine-in-fight-against-russia-allies-look-to-security-model-like-israels-8a05f0e5>.
14. Loveday Morris, Shira Rubin, and Hazem Balousha, "As Hamas Returns to the North, Israel's Gaza Endgame Is Nowhere in Sight," *Washington Post* (website), May 15, 2024, <https://www.washingtonpost.com/world/2024/05/15/israel-hamas-gaza-rafah-jabalya/>.
15. "Israel War Cabinet Member Calls for Postwar Plan or He Will Quit Government," Voice of America (website), May 18, 2024, <https://www.voanews.com/a/israel-war-cabinet-member-calls-for-postwar-plan-or-he-will-quit-government-/7617659.html>.
16. Karen DeYoung, "Biden Announces New Cease-Fire Plan for Gaza," *Washington Post* (website), May 31, 2024, <https://www.washingtonpost.com/national-security/2024/05/31/biden-israel-hamas-ceasefire-proposal/>.
17. Daniel R. Brunstetter, "The Purview of State-Sponsored Violence," in *The Ethics of War and Peace Revisited*, ed. Daniel R. Brunstetter and Jean-Vincent Holeindre (Washington, DC: Georgetown University Press, 2018), 223.
18. I owe this point to Dr. Michael Gross, e-mail message to author, April 28, 2024.

19. Asa Kasher and Amos Yadlin, "Military Ethics of Fighting Terror: An Israeli Perspective," *Journal of Military Ethics* 4, no. 1 (2005): 7.
20. Brunstetter, "State-Sponsored Violence," 227.
21. Shira Rubin, Steve Hendrix, and Lior Soroka, "As Some Israeli Troops Leave Gaza, a Long-Term Strategy Remains Elusive," *Washington Post* (website), updated January 23, 2024, <https://www.washingtonpost.com/world/2024/01/23/israel-military-gaza-strategy-hamas/>.
22. Matthew Levitt, "What Hamas Wants in Postwar Gaza," *Foreign Affairs* (website), May 10, 2024, <https://www.foreignaffairs.com/israel/what-hamas-wants-postwar-gaza>.
23. Stephanie van den Berg, Bassam Masoud, and Nidal Al-Mughrabi, "World Court Stops Short of Gaza Ceasefire Order for Israel," Reuters (website), January 27, 2024, <https://www.reuters.com/world/middle-east/israel-braces-world-court-ruling-focuses-attack-south-gaza-2024-01-26/>.

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