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***Jus Post Bellum* and the Russian-Ukrainian War: Ethical and Practical Challenges**

1 Introduction

Since the anti-Vietnam War movement in the 1960s and early 70s, just war theory has seen a remarkable revival in contemporary political philosophy and ethics, especially in the English-speaking world.¹ A key feature of this debate has been what one may call the proliferation of *jus* frameworks. Traditionally, just war theory has operated with two main regulatory frameworks, governing the initiation of armed conflict (*jus ad bellum*) and its conduct (*jus in bello*), respectively. Since the early 2000s, at least three more frameworks have been added. These are *jus ad vim* (a framework that regulates uses of military force that fall below the threshold for war), *jus ex bello* (a framework that regulates exit from war), and *jus post bellum*. It would be impossible to survey all three in this chapter. Instead, we concentrate on *jus post bellum*, which, as the name implies, is concerned with the establishment of a just peace or, more generally, just postwar relations.

Our concerns in this chapter are theoretical and practical at the same time. From a theoretical perspective, we explore some of the underlying assumptions of *jus post bellum*. While much of contemporary political philosophy in the analytical tradition aspires to timeless universality, we show that prominent accounts of *jus post bellum* are often based on highly contingent historical assumptions and experiences, mostly relating to a US-dominated international order post-WW2. This, we hasten to add, does not necessarily invalidate the ideas behind *jus post bellum*. However, it does raise important questions about the framework's ethical and practical limitations. From a practical perspective, the (at the time of writing) ongoing war between Russia and Ukraine (abbreviated as RUW hereinafter) illustrates how *jus post bellum* is embedded within specific historical experiences that are not always fully transferrable into other contexts. Hence, RUW provides useful impulses for the debate on *jus post bellum*.

To explore the theoretical and practical interplay between *jus post bellum* and RUW, this chapter proceeds as follows. In the second part of the chapter, drawing on the influential work of Brian Orend (2000) and Gary J. Bass (2004), we

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outline some key features of the theoretical debate on *jus post bellum* and demonstrate how these are partly based on contingent historical experiences that do not necessarily obtain in RUW. In the third part, we speculate about potential outcomes for RUW and examine how these relate to *jus post bellum* and *vice versa*. In the fourth and final part of the chapter, we use the insights from the previous parts to offer a brief sketch for a future research agenda for *jus post bellum*.

Before we begin, two caveats are in order. First, by way of clarification, when we use the term Russian-Ukrainian War (RUW), we mean the period of warfare that commenced with the Russian invasion of Ukrainian state territory in February 2022. Of course, this neither exhausts territorial, political, and military disputes between Russia and Ukraine nor Russian direct and indirect action to undermine Ukrainian territorial integrity. In the 21st century, Russian efforts in this area culminated in the annexation of Crimea, as well as the creation of the so-called People's Republics of Donetsk and Luhansk in 2014. Important though these events are, they are not the main subject of this chapter. Nonetheless, as we shall show later, they may provide hints as to why peace in RUW may be hard to achieve.

Second, we are, regrettably, no clairvoyants. No one knows how RUW or any other war is going to end. Almost two hundred years ago in his seminal *On War*, Carl von Clausewitz observed that wars are unpredictable (Beyerchen 1993). He had a point. Wars are messy, complex, and often involve sheer luck. Even so, in many conflicts, there are several outcomes that *could* occur. It is neither intellectually indulgent nor futile to reflect on them. Which outcome really *does* occur, of course, is another question. In this chapter, we remain agnostic on this issue. Admittedly, though, Clausewitz's point about unpredictability affects a key assumption about RUW that was central to an earlier draft of this chapter. If, as the saying (attributed to British PM Harold Wilson) goes, 'a week is a long time in politics', a couple of months can be an eternity in war (or not). Below, we indicate how we adapted our argument to reflect developments in RUW since the summer of 2024.

2 The philosophical debate on *Jus Post Bellum* and the Russia-Ukraine War

Wars, just war theorists have tended to assume, have a beginning (governed by *jus ad bellum*), a middle (governed by *jus in bello*), and an end (governed by *jus post bellum*). Two critical issues emerge from this tripartite sequencing of conflict. First, in the literature, this tripartite structure has mostly (and often implicitly) been applied to what is taken to be the paradigm case of a just war, namely, a

war of self-defense against an aggressor. Naturally, this raises questions over non-self-defensive wars, as well as techniques of warfare not necessarily classifiable as traditional instances of aggression, such as the Russian technique of hybrid warfare (which is a concentrated effort to undermine another state's domestic order and international standing).

Second, it is not unreasonable to argue that the famous just cause requirement contained in *jus ad bellum* already specifies the aims of a war and thus sets out its endpoint. Whichever outcome reflects these aims, therefore, constitutes a just postwar order – or at least contains its normative seeds. That said, there are, we believe, good reasons to insist on a separate framework to govern postwar relations. There could be cases where both parties to a conflict have morally legitimate aims, even if these fall slightly below the threshold for a just cause. Or the reverse can also be true: neither belligerent pursues just aims. Moreover, there can be instances where belligerents sue for peace before a just cause has been fulfilled. Further, it is not entirely inconceivable that just wars could sometimes give rise to bad outcomes, especially if a just belligerent overreaches in their pursuit of their cause. Conversely, and controversially, there could theoretically be cases where a normatively sound order arises from a war that was either unjust or whose conduct featured serious violations of *jus in bello*.

But arguably, the most compelling reason for adding *jus post bellum* to the established frameworks of *jus ad bellum* and *jus in bello* is the simple and intuitive observation that, in Brian Orend's words, 'might is not right' (Orend 2000, 217). In other words, the material fact of victory – even if it realizes a just cause – does not mean that the individual rights of the citizens of the vanquished belligerent simply melt into the air (*ibid.*, 225). Rather, rights constrain what a victorious party may permissibly do to its vanquished opponent. Note that, in addition to individual rights, there is another important consideration. *Jus ad bellum* and *jus in bello* each feature a proportionality criterion. This means that the harms caused by, respectively, the initiation and conduct of war must not outweigh or exceed the potential good achieved via the resort to arms. Similarly, *jus post bellum* rightly demands that the construction of just postwar relations must not cause more harm than good, either. What this means in practice, of course, remains to be seen.

The above arguments regarding the importance of individual rights and proportionality are reflected in Orend's influential treatment of *jus post bellum*, underpinning three important claims. First, reflecting the centrality of the paradigm case of self-defensive war against aggression for *jus post bellum*, once the victim of aggression has defended its rights against the aggressor, the continuation of war is impermissible (*ibid.*, 225). The point is to reestablish the territorial and political integrity of the victim of aggression, not to inflict excessive punishment for

the crime of aggression (ibid., 226). Second, it is impermissible for the victorious party to undermine the aggressor's ability to guarantee basic human rights of its members and uphold the rule of law (ibid., 228). Because of this, Orend rightly argues, demands for reparation must not be excessive or otherwise disproportionate to the damage caused by war (ibid., 227). Third, Orend stresses that the aggressor's political regime and constitution should be remodeled so as to be more 'peaceable, orderly, and pro-human rights'. This may also include the prosecution of those responsible for the crime of aggression or war crimes. Noting that this places significant burdens on the victorious party, Orend describes such restructuring efforts as a form of 'political therapy' (ibid., 229). Not surprisingly, he cites the reconstruction of (West) Germany post-WW2 as the main – and perhaps also most successful – example in this regard.

Similar ideas can be found in Gary J. Bass' important work on *jus post bellum*, in which the reconstruction of Nazi Germany plays a key role, too (Bass 2004). Bass, it is fair to point out, appears more hesitant than Orend in defending the political reconstruction of aggressors. In the case of the Gulf War, for instance, the US was justified, Bass opines, to leave Saddam Hussein's Baath Party regime in power. Hussein's aggression against Kuwait had been 'rolled back', hence the aims of the war had been fulfilled and no 'regime change' was needed, notwithstanding Hussein's atrocious human rights record and repeated campaigns against the Kurdish minority located in Northern Iraq (ibid., 394). Nevertheless, Bass concedes that victorious states are justified to shape their adversaries' internal constitution so as to prevent the outbreak of another unjust war in the future (ibid., 396). He describes this as a minimalist account of reconstruction. That being said, it is not quite clear what such minimalist reconstruction entails. It seems, on the one hand, to fall short of Orend's political therapy. On the other hand, even minimal reconstruction can be quite demanding. This is because it can take sustained and far-reaching efforts to make a regime less prone to engage aggression in the future.

A somewhat clearer exception to Bass' initial hesitancy regarding political reconstruction pertains to genocidal regimes. In such cases, Bass not only argues for a permission to reconstruct the target state but a duty to do so (ibid., 400). Nevertheless, there are limits to this duty in the sense that the reconstruction must not destroy the political community it engages with. For example, at the end of WW2, the Allies, in Bass' view (echoing Churchill), were right to reject the Morgenthau Plan and accept the continued existence of a German nation, though its political institutions had to be fundamentally changed (ibid., 395–396).

Clearly, there is more to be said about *jus post bellum*. However, the above sketch of core ideas in the debate is revealing, for three reasons. First, as we indicated earlier, the paradigm case of self-defense against aggression remains cen-

tral to Orend and Bass' respective theories, though, from the 1990s onward, interventionist wars, including the War on Terror, also gain in prominence. More generally, *jus post bellum* makes assumptions about the underlying type of war as well as its character. If either the type of war or its character changes, it will affect how one theorizes *jus post bellum*. Second, it is evident that the debate on *jus post bellum* has been shaped by particular historical events and experiences, most notably WW2 and the reconstruction of (West) Germany in its aftermath, as well as the challenges posed by the stabilization of post-atrocity societies in the 1990s and those societies affected by the War on Terror post 9/11. But the insights from these conflicts are not necessarily easily transferable to conflicts that do not fit the same mold. Third, and directly related to the preceding point, *jus post bellum* explicitly and implicitly relies on assumptions about order in the international sphere. Bass and Orend, for instance, tend to cite historical cases involving the United States. The implicit assumption seems to be that the United States – sometimes in alliance with other states – is capable of reshaping post-conflict societies. Or to put it more neutrally, the assumption is that there is a strong hegemon capable of engaging in reconstruction. As a result, either a decline in American power or the absence of a strong hegemon in an increasingly multipolar world will affect the kind of prescription that can be dished out for 'political therapy'.

This takes us to the main topic of the chapter, RUW. This conflict, we contend, illustrates some of the challenges faced by *jus post bellum* in a changing world order. At first sight, RUW seems a promising candidate for existing theories of *jus post bellum*. This is because it largely falls into the paradigm case of a war of self-defense against an aggressor. Russia is the aggressor; Ukraine is the victim of aggression. Other states have elected to either provide military support to the aggressor or victim. But this is not the whole story. There is clear evidence of massacres of Ukrainian civilians (for example, in Bucha), the deliberate infliction of harm on Ukrainian civilians, the forcible abduction and transfer of Ukrainian children from Ukrainian territory into Russian state territory, and the routine mistreatment of prisoners of war (POW). This has prompted, in 2023, the International Criminal Court to issue an arrest warrant for the Russian President Vladimir Putin, as well as, in 2024, other members of Russia's military elite. From an ideational perspective, atrocities and criminal behavior come as no surprise. This is because the Russian worldview underlying and motivating RUW denies that Ukraine constitutes a politically and culturally distinct political community with rights to territorial integrity and self-determination (Düben 2020).

In *Just and Unjust Wars*, Michael Walzer famously entertains the idea that wars that are unjust at the *ad bellum* level can still be fought justly within *in bello* restraints (Walzer 2015, 34–50). Whatever one may think about this claim (and many philosophers disagree with it), it is clear that the Russians are pursuing

their military objectives with scant attention to *in bello* restrictions on the use of force. RUW, therefore, is an *unjust* war (of aggression) fought with *unjust* means. Consequently, there is a strong case for some interference in Russia's domestic order in order to prevent aggression and mass atrocities in the future – not only against Ukraine but also other post-Soviet Republics. It is debatable whether Russia is classifiable, on Bass' account of *jus post bellum*, as a genocidal state. We do not want to enter into this debate here. However, the charges brought by the International Criminal Court are sufficiently serious to lend succor to the case for (some) political therapy. And not only that: there is also a strong case, as we are sure Orend and Bass would agree, for reparations to be paid from Russia to Ukraine, as well as the prosecution of Russian officials, via the International Criminal Court or some other mechanism, for atrocities carried out during the war.

Even so, we argue that RUW has two main features that pose problems for existing accounts of *jus post bellum*, revealing their historical contingency. The first feature is that, for the majority of the war, fighting and other military activity has been restricted to the territory of the victim, Ukraine. Unlike in WW2, where Allied Forces directly attacked German and Japanese state territory, respectively, Ukrainian forces have primarily sought to confront Russian forces on the battlefield in Ukraine. The reason for this idiosyncrasy has primarily to do with the role of nuclear deterrence. Since the beginning of the war in February 2022, President Putin has repeatedly engaged in 'nuclear saber rattling'. In other words, President Putin has made several nuclear threats. Notwithstanding the end of the Cold War more than thirty years ago, Russia remains the world's largest Nuclear Weapons State. Direct attacks on Russian territory, Ukraine's allies have feared, would poke the Russian nuclear bear, leading to a potentially catastrophic escalation of the conflict. As a result of this territorial restriction, the destructive consequences of RUW and their associated economic and human costs are predominantly borne by Ukrainians, rather than Russians.

Such a restrictive territorial demarcation of armed conflict does not feature in the main accounts of *jus post bellum*, thus raising questions over their applicability to RUW. Ultimately, in order to reconfigure the aggressor as a more peaceful political unit, another party – be it the victim or an allied hegemon – will need to access to the aggressor's territory. Unlike in Germany post-WW2, where (West) German territory was occupied by the Allies, such access does not exist in the case of Russia.

But admittedly, the territorial dynamics of RUW, central to our initial presentation of the material at a workshop in Berlin in February 2024, appear to have changed. Serving as an illustration of Clausewitz's aforementioned observation on the unpredictability of war, President Putin's nuclear threats seem to have lost some of their potency. In August 2024, Ukraine launched its invasion of the Russian region of Kursk. Shortly thereafter, the US administration under out-

going President Joe Biden, together with some allied states, such as the United Kingdom, gave Ukraine permission to use US-supplied long-range weaponry against targets deep inside Russian state territory. This policy seems to apply to targets that either serve as launch sites for Russian missile attacks against Ukraine or are otherwise vital for Russian military supplies. The question, then, is whether these developments undermine our claim that the territorial dynamics of RUW challenge existing theories of *jus post bellum*. We do not think so. At the time of writing, the purpose of the Kursk offensive is to force President Putin to divert military resources from Ukraine to Russia, thereby enabling Ukrainian forces to regain Ukrainian territory previously held by Russian forces. It is unlikely that Ukraine is militarily capable of and politically interested in a permanent occupation of the Kursk region. Similarly, Ukraine's targeting of Russian assets located in Russian territory is likely to remain fairly limited. It pales in comparison to the levels of destruction President Putin has unleashed on Ukraine. Hence, for the foreseeable future, the majority of military activity and fighting will occur in Ukrainian state territory.

The second feature of RUW that challenges existing accounts of *jus post bellum* is that (again) for the foreseeable future, Russia's internal political arrangements, as well as the wider worldview of its elites, are likely to remain stable. That is to say, regardless of any termination of hostilities between Russia and Ukraine, the aggressor, Russia, is likely to retain its internal constitution as well as international status *ante bellum*. Russia is going to remain an authoritarian (and arguably kleptocratic) state. Whether or not President Putin is removed from power is a matter for Russian elites, with the Russian people serving, as so often in their long and brutal history, as bystanders. Moreover, the Russian view a) that Ukraine (like other post-Soviet Republics) does not constitute an independent national entity, and b) that Moscow has the prerogative to impose its preferred order on what it consider to be its neighborhood, is also likely to go unchallenged. From a more international perspective, Russia will remain a permanent member of the United Nations Security Council, retaining its veto powers. Russia's status as a powerful Nuclear Weapons State is also assured. Also, there will remain several states allied to Russia, willing to support the Russian state materially.

It goes without saying, then, that the above seems to rule out Bass' cautious and restrictive case for political rehabilitation, not to mention Orend's political therapy. The above factors also limit the capacity to extract reparations from Russia for the damage its forces caused in Ukraine, as well as legal efforts to hold those behind RUW and the atrocities committed in its course to account.

Taken together, the related features of territorial constraint, regime stability, and international status lead to a wider point about possible outcomes for RUW. As we saw above, reflecting the paradigm case of just war, existing accounts of

jus post bellum appear to assume that the victim (and their allies) prevails over the aggressor, or is at least able to decisively secure their territorial integrity and independence; otherwise, many of the above considerations about reparations, reconstruction, and political rehabilitation become redundant. The potential outcomes for RUW, however, look less straightforward. In particular, there can be outcomes in which neither side decisively wins or loses. Such outcomes not only challenge the winner-loser binary that appears baked into *jus post bellum*; they also raise questions over the tripartite temporal sequencing of war into beginning, middle, and end. In order to show what is at stake, we outline some potential scenarios for the end of RUW in the next part of this chapter.

3 The Russia-Ukraine War: Four Potential Outcomes

In this part of the chapter, we outline four potential outcomes for RUW in its current stage. In doing so, we use three criteria from *jus post bellum* to assess each of the scenarios (bar one): 1) transitional justice; 2) reparations; and 3) reconstruction. Before that, however, we want to raise a general concern. There is a deep and fundamental material asymmetry between the two belligerents. Russia is a nuclear weapons state with P5 status that commands the second largest army in the world. Despite heavy US-backed sanctions, Russia has access to parts of the international community that is willing to support its efforts. In addition to our aforementioned observations about territorial demarcation and regime stability, this not only positively impacts Russia's ability to negotiate an exit from the conflict but also shape a *post-bellum* scenario in its favor. Because of this, it is already apparent that a simple loser (aggressor) – winner (victim) dynamic does not apply here.

3.1 Scenario 1: Russia occupies all of Ukrainian territory and installs a new government in Kyiv

From a Russian perspective, this is the preferred scenario, closely corresponding to Russian war aims. The government under Ukrainian President Volodymyr Zelensky would be removed and replaced with a pro-Russian puppet government. There might be a sham referendum process similar to the referendums held in the People's Republics of Donetsk and Luhansk. But it almost goes without saying that such a government would not rest on the consent of the governed, the Ukrai-

nian people. Further, as we indicated earlier, any surrender in war needs to be normatively restricted via an appeal to individual rights, as well as proportionality. Such normative restrictions do not apply in Scenario 1 due to the Kremlin's denial that Ukraine exists as a culturally and politically independent and distinctive entity. Given Russia's track record, a Russian victory would be accompanied by an extensive cleansing of the Ukrainian state apparatus, with more atrocities to follow. As a result, considerations of *jus post bellum* are irrelevant to Scenario 1. Regardless of one's underpinning theory of the ethics of war, Ukrainians would be morally justified in resisting the occupier and overthrowing the new government. Contrary to Hobbes' claim that the vanquished should bend their knee to their new ruler, they would have, in Lockean terms, a right to revolution. That is, a right to overthrow a government that neither rests on their consent nor is likely to respect their moral rights.

3.2 Scenario 2: The frontline does not change, and Ukraine has to sign a 'cease-fire treaty', losing the currently occupied territories

Compared to Scenario 1, Scenario 2 is less extreme but remains highly disadvantageous to the victim of aggression, Ukraine. It does not represent an outright defeat for Ukraine. Rather, it represents an outcome that falls slightly below the threshold for defeat. Conversely, it does not cross the threshold for outright victory, either. For Russia neither manages to control all of Ukrainian territory nor replace the government in Kyiv. Still, Russian troops manage to permanently occupy territory gained since the invasion of 2022. In Scenario 1, we argued that the Ukrainians would retain a right to resist the occupier. Therefore, considerations of *jus post bellum* do not apply. On the one hand, the same might apply to Scenario 2. If so, the Ukrainians would retain the right to use military force to retake any territory lost since 2022. On the other hand, it is likely that Scenario 2 could only come about via some kind of ceasefire treaty. In such a treaty, a resurgent Russia is likely to demand of Ukraine not to engage in any military attempt to recover territories lost as a result of the invasion in 2022.

If Scenario 2 neither represents outright victory for Russia nor an outcome to which one could apply *jus post bellum*, how should it be conceptualized? We argue that Scenario 2 is best thought of as an uneasy *modus vivendi*, that is, a practical agreement that enables the two parties to coexist. The *modus vivendi* has instrumental value only. Its purpose is to prevent a renewed outbreak of hostilities, not to secure postwar relations that could be described as just. That said, the standard critique of *modus vivendi* also applies here. Inevitably, the stronger

party is able to shape the *modus vivendi* in its favor. In Scenario 2, then, it is to be feared that Russia will not only gain new territories but also get a military and economic breathing space to regain strength before the next attack. This happened after the occupation of Crimea and Donbas, and if Russian aggression remains unpunished, its government is likely to continue its policy of annexation and territorial conquest, taking the territory of Ukraine piece by piece. After all, as we have stressed throughout this chapter, Russia has never fully accepted that Ukraine is an independent sovereign state. As one can see, there are worrisome questions about the stability and longevity of a *modus vivendi*. After the war is before the war – or so one might argue.

Despite this grim outlook, it is not entirely impossible to apply the *jus post bellum*-related criteria pertaining to transitional justice, reparations, and reconstruction to Scenario 2.

Transitional justice

The Russian occupation of new Ukrainian territories will add to the domestic popularity of the Russian regime, thus reinforcing our hypothesis of regime stability. This will leave almost no chances for the prosecution of war crimes. As a result, the process of transitional justice will be substantially limited to the prosecution of the Russian POWs and Ukrainian collaborators located in the remaining Ukrainian territory. Rather worryingly, these individuals are likely to face particularly strict sentences in the absence of an opportunity to prosecute Russian elites. Moreover, the Ukrainian security system will become overwhelmed by the threat of renewed Russian aggression, which might create a witch-hunt for alleged agents of the Kremlin. Any reconciliation process with Russia will be obstructed by growing antagonism towards Russia.

In Scenario 2, the Ukrainian judicial system will have to bring justice to its citizens on its own, perhaps with some limited assistance from international institutions. In particular, compensation for the loss of life, health, or property will have to be handled domestically. The Ukrainian parliament, for example, has already passed a law on compensation for damage and destruction of property as a result of hostilities (Shulyak 2022). It has determined that the State Agency for Reconstruction and Infrastructure Development of Ukraine, as well as some international financial assistance, is the main source for compensation. However, due to economic and financial constraints, this will only partially address demands for compensation.

Finally, Ukrainian citizens abandoned in the occupied territories will not have access to justice and will be subjected to the will of the occupying forces. Hence, it will be impossible to bring judicial redress for grave violations of human rights in the lost territories.

Reparations

The question of Russian reparations for damage in Ukraine will be determined based on the cease-fire treaty. But one should not hold one's breath. In Scenario 2, Ukraine will have little bargaining space to hold Russia liable for reparations, due to the factors outlined above.

Reconstruction

In Scenario 2, the political reconstruction process in Ukraine will heavily depend on international support. But rather depressingly, the capacities of Ukraine's allies might be constrained due to the rise of new security threats in Europe and other regions, requiring European governments, in particular, to invest more in their own military capacities than in Ukrainian reconstruction. Moreover, the chance of confrontation with Russia will prevent NATO from inviting Ukraine to join the Alliance, while integration into the European Union is also less likely. Considering the possibility of political instability among the member states as a result of the rise of Russian (and other) security threats, the process risks being halted for the foreseeable future. Without or with a limited prospect of EU integration and with an unstable political situation due to the loss of significant amounts of territory, democratic reform processes in Ukraine are also threatened.

3.3 Scenario 3: Ukrainian victory with de-occupation of all the territories within 1991 borders

Scenario 3 is the exact opposite of Scenario 1. Hence, it is most closely aligned with the classic dynamics of a victorious victim and a vanquished aggressor found in the literature on *jus post bellum*. Note that, in Scenario 3, Russia's actions in (and possibly before) 2014 also become relevant, as the outcome will not just see withdrawal from Ukrainian territory held by Russian forces since the invasion in 2022; it will also see withdrawal from Ukrainian territory captured before that. It goes without saying that, from the perspective of *jus post bellum*, this is the most normatively attractive outcome.

Transitional Justice

In Scenario 3, the issue of transitional justice has two main components. The first component has to do with the conduct of Russian forces in the course of RUW. As we already indicated above, committing atrocities is central to Russian military tactics. These are predominantly aimed at breaking the local population's will to fight by destroying the infrastructure of the opponent, thereby paralyzing the

state. As is well known, these tactics were used not only in Ukraine but also in Chechnya and Syria, demonstrating that they reflect an intentionally designed pattern that must not be left unprosecuted. If Ukraine succeeds in regaining control over its territories, it is highly likely to encourage international institutions to prosecute senior Russian officials responsible for war crimes.

As we indicated above, the process of prosecuting those responsible for *in bello* violations, as well as the crime of aggression itself, has already been initiated by the International Criminal Court. But it is also noteworthy that Ukraine has been working on addressing the legal challenges posed by Russian actions since 2014. Ukraine has also coordinated its response with the International Court of Justice (Marchuk 2019), the International Criminal Court (ICC) (Marchuk et al. 2021), the European Court of Human Rights (Milanovic 2022), and the Arbitral Tribunal of the United Nations Convention on the Law of the Sea (Schatz 2018). In 2019, Ukraine established a specialized War Crimes Unit to develop the capacities of Ukrainian courts to prosecute war crimes (Jordash 2020).

Still, even in light of Ukrainian victory, one wonders how likely such prosecutions are going to be. If those to be prosecuted are located in Ukrainian state territory (that is, within 1991 borders), they are likely to be either tried in Ukrainian courts or extradited to the International Criminal Court so justice can be served. If, by contrast, perpetrators are located in Russian state territory, the situation becomes more complicated. In such cases, the main question is how Scenario 3 relates to the thesis of Russian regime stability that we developed in the previous part of the chapter. It is possible to argue that a Russian defeat giving rise to Scenario 3 would be so comprehensive that neither President Putin nor the military and administrative elites around him can survive. The system collapses. Perhaps Russia's new rulers either prosecute those responsible for RUW via domestic courts or cooperate with international efforts to do so. But if the regime proves more resilient and remains in place, there will be no legal reckoning. To be sure, there might be a political reckoning in the sense that those responsible for defeat are, in Stalinist fashion, 'cleansed' from the Russian military and state apparatus. But a regime that routinely uses scorched earth tactics to break civilians will not prosecute those responsible for implementing said tactics. Hence, even on the most normatively favorable outcome for Ukraine, there are clear limits to existing accounts of *jus post bellum*, at least insofar as criminal prosecutions are concerned.

In addition to the established issue of war crimes trials, transitional justice, in Scenario 3, has a second component that does not (to our knowledge) feature at all in the literature on *jus post bellum*: During the transition process, Ukraine will need to determine who should be considered a legal resident of the de-occupied territories. Following the USSR's practice of forced relocations, Russia started transferring citizens to the occupied territories of Ukraine (Peter 2022). The change in the demographic composition of Crimea and Donbas after the occu-

pation in 2014 demonstrates the effects of that policy (Peter 2022). Almost 50,000 Ukrainians and Crimean Tatars had to leave the Crimean Peninsula, while the estimates of the number of Russians who moved to Crimea vary from 200,000 to 1 million (Hurska 2021). In the Donbas, 1.6 million residents had to move to other regions of Ukraine, and another million found refuge abroad (United Nations 2016). As part of establishing a just postwar order, it will be necessary to create the conditions for residents who were forced to leave their homes to return while determining the status of individuals who immigrated after the occupation. For example, the permanent representative of the President of Ukraine in Crimea, Tamila Tasheva, stated that Russian citizens who moved to relevant territories without officially crossing the Ukrainian border control would face forced deportation since they violated the Ukrainian migration policies (Amasov 2022). Whatever one may make of this policy proposal, it indicates just how complex the territorial reintegration of Ukraine will be, even under the most favorable conditions.

Reparations

Existing accounts of *jus post bellum* assume that the vanquished aggressor pays reparations to the victorious victim, subject to proportionality conditions. The latter, as we said earlier, are deemed necessary in order not to bankrupt the aggressor. In the context of RUW, UN Resolution ES-11/5, which obliges Russia to pay war reparations to Ukraine and establish the mechanisms for its implementation, was adopted in November 2022 (United Nations 2022). Quite tellingly, though, it does not detail *how* to enforce the resolution. Part of the reparations sum, estimated to reach \$700 billion, can be covered by redirecting frozen Russian assets towards Ukraine, amounting to around \$300 billion (Fratsyvir 2023). However, enforcement of other common reparation mechanisms, such as financial payments and infrastructure rebuilding, will require finding persuasive bargaining leverage. Ukraine and the international community will need to find ways to exert diplomatic pressure on Russia – for example, by promising the lifting of sanctions in exchange for Russian payments to Ukraine. Alternatively, members of the international community will need to top up the fund for reparations themselves.

Ukraine and its partners are developing mechanisms that will facilitate the reparations process. The Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (RD4U) was established in accordance with the UN General Assembly Resolution ES-11/5. The Council of Europe will collect records on the damage and losses caused by the war that will later serve as evidence for future claims for reparation.

Despite this positive outlook, even Scenario 3 defies normative expectations of traditional accounts of *jus post bellum*. As we saw above, an ‘aggressor pays’ princi-

ple (subject to proportionality) remains hard to realize, notwithstanding its normative appropriateness and attractiveness. To be blunt, this means that someone other than the aggressor will have to foot considerable parts of the bill for the reconstruction of Ukraine. This is not as unprecedented as it might seem. The US rebuilt West Germany (as well as other parts of Western Europe) via the Marshall Fund. Nonetheless, this raises questions about the obligations of third parties.

Political Reconstruction

As we said above, in the case of RUW, there is unlikely to be any political reconstruction of Russia. This is a matter for Russian elites. The prospect of a comprehensive political reconstruction of Ukraine not just as a territorially integrated political unit but also as a strong democratic regime is most likely in Scenario 3. Still, Ukraine will need to be vigilant over the potential for new attacks from Russia. To prevent renewed aggression and retain Ukraine's character as a democratic state, alliances become crucial. In June 2022, the EU granted Ukraine the status of the candidate state as proof of its support (European Council 2022). Then, in December 2023, the EU agreed to open potential membership negotiations with Ukraine, which brings the country closer to the possibility of full integration into an already existing alliance – indeed union – of democratic states (Dickinson 2023).

3.4 Scenario 4: Freezing the conflict

Scenario 4, Ukraine regains control only over the territories temporarily occupied during the full-scale invasion, but the war returns to the frozen stage.

While not a comprehensive win for Ukraine compared to Scenario 3, Scenario 4 rolls back Russian territorial gains since February 2022. But the wider conflict between Russia and Ukraine returns to its frozen stage. This means that territories annexed or occupied before February 2022 will remain under direct Russian control or that of pro-Kremlin forces. This would require Ukraine to continue to protect the frontline of the refrozen conflict. Under such circumstances, polarization in Ukrainian society and antagonism to Russia are likely to remain strong. Nonetheless, we argue that some elements of *jus post bellum* can be applied to Scenario 4.

Transitional justice

With only a partial defeat, Russia's political leaders will be very likely to remain in power. As a result, the scope for prosecutions of war criminals in international courts will be limited, though, as in Scenario 3, some prosecutions may take place in Ukrainian courts. But rather worryingly, in order to compensate for this lack

of justice, there could be overreach from Ukrainian courts in other respects. The reintegration process of the Kharkiv and Kherson regions into Ukraine after the successful counteroffensive operations in the Fall of 2022 serves as a cautionary tale. The process involved the criminal prosecutions of collaborators who helped the Russian military during the occupation of the two regions. Some cases tried by Ukrainian courts lacked a proper investigation due to the overwhelming number of filed cases (Schlegel 2023). The fact of ‘rough justice’ is likely to be further amplified by the continuing security threat posed by the frozen frontline.

In March 2022, Ukraine adopted the law defining criminal liability for collaboration (Ukraine 2022). However, the UN Human Rights Monitoring Mission recommended to review that law based on the practice of its implementation (United Nations 2023). It argued that some prosecutions were not in line with international humanitarian law and the realities of living under the occupation. During the occupation of Crimea and Donbas, Ukraine defined collaboration in a way so the residents of the occupied territories would not be alienated from the Ukrainian government (Dettmer 2023). That said, after the start of the full-scale occupation, those concerns were overshadowed by the brutality of Russian aggression. In Scenario 4, a return to a more balanced judicial redress of collaboration when Russia still remains in control of parts of Ukrainian territory will require substantial political will and acceptance from Ukrainian society. The chances for such a process look much slimmer than in Scenario 3: people who have remained in the territories temporarily occupied by Russia might face a higher degree of animosity in a polarized society.

Reparations

The issue of reparations will depend on the peace agreement and the provisions negotiated by the Ukrainian side in the document. Since, in Scenario 4, Russia does not lose the war completely, its political elites are even more likely than in other scenarios to oppose *any* reparations whatsoever. The issue of frozen Russian assets will probably become an important negotiation topic, as relatively stable Russian elites will strive to retain those funds.

Political Reconstruction

The reconstruction of Ukraine in Scenario 4 will also substantially depend on the provisions of a peace treaty between Russia and Ukraine. However, with parts of Ukrainian territory remaining occupied, and without further Euro-Atlantic integration, reconstruction is unlikely to be as successful as in Scenario 3. Ukrainian membership of NATO will remain out of the question. EU integration may con-

tinue together with the required democratic reforms in Ukraine but will not extend to Crimea and Donbas.

This concludes our survey of potential outcome scenarios for RUW. There are four takeaway points. First, it is not useful to think of potential outcomes for RUW – or many other wars – in entirely binary terms, that is, as either a loss for the aggressor and a victory for the victim (and their Allies) or *vice versa*. Hence, the historical example of Nazi Germany and the end of WW2 is a poor guide to RUW and potentially many other conflicts. Second, quite strikingly, even according to the most favorable scenario for Ukraine, Scenario 3, there remain considerable obstacles to the application of *jus post bellum* to RUW, as currently envisaged in the philosophical literature. This is because Russia remains a powerful Nuclear Weapons State and a P5 UN Security Council member, capable of building and maintaining international alliances. Whether, in Scenario 3, Russia's domestic constitution would change in the aftermath of a defeat in Ukraine also remains doubtful. Third, even in the most normatively attractive scenarios, Scenarios 3 and 4, Ukraine's allies will play a major role in the reconstruction of Ukraine, as financial assistance from the aggressor will remain limited, not to mention reparations. Fourth and finally, with the exception of Scenario 3, all remaining scenarios raise questions about the tripartite temporal sequencing of conflict into a beginning, a middle, and an end. A frozen conflict, as envisaged in Scenarios 2 and 4, may be a precursor to a new conflict. As we said above, after the war is before the war.

Notwithstanding the challenges RUW poses for *jus post bellum*, an engagement with this conflict also has the potential to give the somewhat stagnant debate surrounding *jus post bellum* new impulses. In particular, it has the capacity to separate *jus ad bellum* from some of its historical reference points and make it more suitable for the conflicts of the 21st century. We briefly discuss future directions for the debate on *jus post bellum* in the next and final part of this chapter.

4 *Jus Post Bellum* in a Changing World Order

RUW has provided interesting insights into the challenges facing *jus post bellum*. The first of these concerns is the scope of *jus post bellum*. What constitutes a *post-war* order? The historical precedent of Nazi Germany's unconditional surrender is attractive, precisely because it provides a definitive endpoint for war and the beginning of a new order. In this sense, it is quite telling that some Germans refer to this as the *Stunde Null* (literally: hour zero), indicating a complete reset of (West) German politics after the moral catastrophe and political horrors of the Third Reich. (There are issues with this description of events, of course – for in-

stance, people with careers in the Nazi regime were granted positions in the new administrative apparatus of the West German state.) Further, the United States' entry into WW2 established a new superpower and strong hegemon, capable of imposing and maintaining its preferred vision of postwar order. But there are many conflicts, including RUW, whose ending is messier. It is not clear whether there is an endpoint, even if some type of peace agreement is signed. Nor is there necessarily a hegemon to enforce such an agreement. For example, even if, as per Scenario 3, there was a *formal* peace agreement between Russia and Ukraine that rolled back some of Russia's territorial gains since 2022, it is likely that Russia would continue to undermine Ukraine's domestic political order by staging (hybrid) attacks from territories annexed in 2014.

The messy endings of many wars, as well as the possibility of frozen conflicts, might mean that the scope of *jus post bellum* is fairly limited. One response to this problem is to reconfigure *jus post bellum* so it can deal with these ambiguities. Another option is to explore, as we have done above, the conceptual and normative relationship between a *modus vivendi* and *jus post bellum*. As we said in relation to Scenario 2, a *modus vivendi* is normatively less demanding than *jus post bellum*. Its main purpose is to put in place arrangements that prevent the 'un-freezing' of a frozen conflict, rather than bring about a thawing of relations between enemies. Perhaps, in an imperfect world, this is all one can sometimes hope for. But as we also indicated above, the problem with a *modus vivendi* is that it can be shaped by powerful parties in their favor, which is especially problematic if the powerful party is, like Russia, the aggressor. Being slightly more normatively ambitious than a *modus vivendi*, one could also envisage a new *jus* framework that deals with political orders that fall outside the scope of *jus post bellum*. We leave it open here whether yet another *jus* framework is needed. Either way, it is clear that demarcating the scope of *jus post bellum* is challenging.

In addition to the issue of scope, RUW raises wider questions about the mechanisms for a stable postwar order. On the one hand, it is likely that in most of the scenarios outlined in the previous part of the chapter (but especially Scenario 3), Russia will demand that Ukraine remains neutral. From a philosophical perspective, there are not many treatments of neutrality in conflict. The best known is Michael Walzer's in *Just and Unjust Wars*. In a nutshell, though he recognizes certain circumstances where neutrality becomes morally untenable, Walzer's point is that a state's neutrality is morally justified via an appeal to its need to protect the rights of its members (Walzer 2015, 233–249). This does not quite apply in the same way to RUW. Here, the point is that Russia thinks that Ukrainian neutrality would be necessary to meet Russian security concerns, not Ukrainian ones. Whether this position is an honest one or merely a smokescreen for further attacks on Ukraine is debatable.

On the other hand, in the most favorable scenario for Ukraine, Scenario 3, the lasting reconstitution of Ukraine as a territorially demarcated unit will involve the country's integration into an alliance. Certainly, from a Ukrainian perspective, this is preferable to a form of bogus neutrality. The topic of alliances is complex, so some brief thoughts need to suffice. Alliances can have a restraining function, as well as a protective one. Here, the case of West Germany really does illustrate the point. The integration of West Germany into NATO in 1955 (after it had officially ceased to be an occupied country) and the European Economic Community (EEC), the precursor of today's European Union, in 1957 served as a method to restrain German nationalism and militarism, preventing renewed German aggression against neighboring European states. At the same time, it also provided security assurances to West Germany in case the Cold War would have turned into a hot war. In RUW, it is not necessary to restrain Ukraine. Rather, membership in an alliance would be used to bolster its security just as ex-members of the Warsaw Pact and post-Soviet Republics joined the European Union as well as NATO.

For *jus post bellum*, the general takeaway point from the tension between Ukrainian neutrality or alliance membership is that postwar relations, even in paradigm cases of self-defense against aggression, are rarely restricted to the actual belligerents. They also have repercussions for third parties and their relationship with the victim and aggressor, respectively. In RUW, the case for integrating Ukraine into an alliance of friendly states is already strong, given the support the country has received from Western states. Likewise, there may be other conflicts where alliances become crucial to securing a lasting peace. That said, under some circumstances, neutrality may not be an unattractive option, either. When neutrality would be normatively preferable to alliance membership (and *vice versa*) requires further clarification.

Our final observation follows directly from the previous point about alliances. Alliances not only restrain or protect their members; they also allow for burden-sharing. Insofar as the reconstruction of Ukraine is concerned these burdens are immense. If our above scenarios are correct, reparations from Russia are unlikely to be forthcoming. Put bluntly, someone else has to pick up the tab. As we indicated above, the Marshall Plan provides a precedent. From a philosophical perspective, there is an interesting synergy between the ethics of reconstruction as part of *jus post bellum* and the debate on Global justice. Those in favor of moral cosmopolitanism would argue that there are extensive (individual) duties to assist Ukrainians in rebuilding their country, regardless of membership in specific political associations. But in reality, there are likely to be a variety of morally relevant reasons for supporting reconstruction. Some reflect universal duties to assist the vulnerable in protecting their basic rights; others will reflect hard-

nosed security concerns. How these are to be balanced against each other remains to be seen.

To sum up, there remains quite some scope for philosophical contributions to the debate on *jus post bellum*. As the old adage goes, it is easy to get into war, it is far harder to get out of it. And if the above is anything to go by, it is even harder to establish a lasting peace. Interestingly, there is plenty of opportunity to connect the debate on *jus post bellum* with other relevant debates in political philosophy as well as international relations. This should hopefully generate accounts of *jus post bellum* that respond to the demands of a changing world order, with new historical reference points, including RUW.

5 Conclusion

In this chapter, we engaged with the debate on *jus post bellum* by applying it to the Russian-Ukrainian War. The latter war falls into the paradigm category of a just war against an aggressor, which informs the dominant accounts of *jus post bellum*, as well as contemporary just war theory more broadly. However, unlike some prominent paradigm cases, the Russia-Ukraine War, we contended, has two main idiosyncrasies, namely, territorial restriction and regime stability in the aggressor state, Russia. This challenges some of the key assumptions in the rather Anglo-centric accounts of *jus post bellum* found in the philosophical literature. Importantly, it undermines the related ideas, commonly found in the literature, of a clear temporal sequencing of war into three distinct phases (beginning–middle–end), as well as a clear binary outcome involving a winner (victim) and a loser (aggressor). We then explored our more theoretical observations in greater detail by developing several potential outcome scenarios for the Russia-Ukraine War. These scenarios revealed crucial conceptual and normative issues that those with an interest in *jus post bellum* need to tackle. Three stand out: 1) the scope of *jus post bellum*, 2) the ethical case for (or against) alliances in securing peace, and 3) the fair distribution of the burdens of reconstruction. All three issues illustrate that an engagement with the conflicts of our current era can provide crucial impulses for the debate on *jus post bellum*. Conversely, our engagement with *jus post bellum* has also thrown the normative and practical challenges posed by the Russia-Ukraine War into sharper relief.

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