THE YALE LAW JOURNAL

KRISTER RASMUSSEN

# Lawful Ends to Unlawful Wars: Coercion and Voidness in Peacemaking

**ABSTRACT.** Recent calls for a negotiated settlement to Russia's war on Ukraine neglect whether such a settlement would be lawful. Yet under a settled principle of international law, a coerced treaty is void. This principle, a corollary of the U.N. Charter's bedrock prohibition on the unlawful use of force, was developed precisely to rule out treaties making concessions to an aggressor in exchange for peace. This Note examines the neglected prohibition on coerced treaties, argues that various proposals for peace in Ukraine are actually unlawful, and concludes by suggesting how the war could lawfully end.

**AUTHOR.** I am deeply grateful to Professor Oona Hathaway for her supervision, dialogue, and encouragement throughout this Note's development. Thomas Poston, Tilly Brooks, Zachary Brown, and Gabriel Klapholz provided valuable comments and support when this work was still in its earliest stages. I also thank the editors of the *Yale Law Journal*, especially Jan-Phillip Graf, Jeremy Thomas, Nellie Conover-Crockett, Matt Beattie-Callahan, and Ako Ndefo-Haven, for thoughtful feedback and diligent work during the publication process. Most of all, I thank my wife, whose gifts and devotion for the field of international law set the standard to which I aspire here.

## NOTE CONTENTS

## INTRODUCTION

Russia's invasion of Ukraine has left more than a million dead or wounded.[1] But after almost four years of war, neither side appears close to a decisive victory. All major parties seem to agree that the conflict must end in some sort of negotiated settlement, though they dispute the possible peace terms bitterly.[2] Few, however, have raised the question of whether a negotiated peace could even be lawful. That is a perilous oversight.

Under Article 52 of the Vienna Convention on the Law of Treaties (VCLT), "[a] treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."[3] Any peace treaty by which Russia won concessions from Ukraine would fall under the shadow of coercion and, thus, voidness. The prohibition on coerced agreements is derived from the broader prohibition on the threat or use of force between states, which is the foundational principle of the international order established after the World Wars.[4] The question of peace between Ukraine and Russia, therefore, reveals a tension that goes to the heart of international law—the pull in one direction toward making peace today and the pull in the other toward holding fast to rules aiming to preserve peace tomorrow.

---

1. Helene Cooper, *Troop Casualties in Ukraine War Near 1.4 Million, Study Finds*, N.Y. TIMES (June 3, 2025), https://www.nytimes.com/2025/06/03/us/politics/russia-ukraine-troop-casualties.html [https://perma.cc/2WFW-TU3V].

2. *See* Dasha Litvinova & Barry Hatton, *Putin Says He Hopes to Meet Trump as the White House Presses for a Peace Deal on Ukraine*, PBS NEWS (Aug. 7, 2025), https://www.pbs.org/newshour/world/putin-says-he-hopes-to-meet-trump-as-the-white-house-presses-for-a-peace-deal-on-ukraine [https://perma.cc/9FJF-AWYA]; Charles Maynes & Joanna Kakissis, *Ukraine Proposes Zelenskyy, Putin, Trump and Erdogan Meet This Summer*, NAT'L PUB. RADIO (July 23, 2025), https://www.npr.org/2025/07/23/nx-s1-5477282/russia-ukraine-peace-talks-istanbul-trump-zelenskyy-putin [https://perma.cc/8CN9-H872]; Vladimir Soldatkin, Tom Balmforth & Huseyin Hayatsever, *Russia Sets Out Punitive Terms at Peace Talks with Ukraine*, REUTERS (June 3, 2025), https://www.reuters.com/world/europe/russia-ukraine-talk-about-peace-are-still-far-apart-2025-06-02 [https://perma.cc/8JY4-4GKV]; Tetyana Vysotska & Valentyna Romanenko, *Von der Leyen Discusses Peace Deal with Zelenskyy in Phone Call*, UKRAINSKA PRAVDA (Aug. 7, 2025), https://www.pravda.com.ua/eng/news/2025/08/7/7525169 [https://perma.cc/Z856-4PKA].

3. Vienna Convention on the Law of Treaties art. 52, May 23, 1969, 1155 U.N.T.S. 331, 344 [hereinafter VCLT].

4. *See* U.N. Charter art. 2, ¶ 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."); *see also id.* art. 1, ¶ 1 (recalling that the U.N.'s fundamental purpose is "[t]o maintain international peace and security").

This tension is a growing pain for a relatively young legal system. Until 1945, war was generally treated as a legitimate tool for states to pursue their interests.[5] In that world, binding treaties concluded under the threat of force were unexceptional, even a necessity: how else would victors secure their gains on the battlefield and victims cut their losses? That logic changed after the two World Wars, when the international community, in establishing the United Nations, outlawed the use of interstate force except under the most exceptional circumstances. Under the new norm of international law now codified as Article 52 of the Vienna Convention on the Law of Treaties, a treaty procured by the threat or use of unlawful force would be as invalid as the threat or use of unlawful force itself, and therefore void ab initio (void at conclusion).[6] By making coerced treaties void rather than merely voidable, the prohibition was designed not only to protect the consent of coerced parties but also to avert interstate conflict by reducing the incentive for states to wage war on each other.[7]

But the prohibition on coerced peace agreements complicates cases where the prohibition on war fails. A peace treaty is, by definition, concluded in the shadow of conflict, and the failure to conclude a peace treaty means that hostilities will continue, at least formally. But if the threat of force hangs over *all* peace treaties, then it might seem that *any* peace treaty is at risk of voidness by reason of coercion. A conceptual tension emerges: if the concessional peace agreements common in premodern international law may today be invalidated as coercive, then ending an unlawful war without abandoning the legal frameworks that secure peace in general is not so simple.

This Note considers how international law's prohibition on coerced agreements rightly applies to peace treaties—both in the abstract and in the case of the ongoing Russo-Ukrainian War. In Part I, the Note articulates and analyzes Article 52's prohibition on coerced treaties, marshaling the prohibition's history, text, and structure to argue that the Article invalidates treaties that transfer territory from a victim state to an aggressor. Part I also emphasizes that Article 52 is central to upholding modern international law's foundational prohibition on the threat or use of force between states. To that end, Part II makes an empirical

5. *See* W. Michael Reisman, *Article 2(4): The Use of Force in Contemporary International Law*, 78 AM. SOC'Y INT'L L. PROCS. 74, 74 (1984) ("Under traditional international law, war was a licit instrument both for vindicating international rights and for changing them. Under this regime, each state enjoyed a . . . right to resort, at its discretion, to war or lesser forms of coercion."); OONA A. HATHAWAY & SCOTT J. SHAPIRO, THE INTERNATIONALISTS, at xv-xvi (2017).

6. VCLT, *supra* note 3, art. 52, 1155 U.N.T.S. at 344.

7. The incidence of interstate war has indeed declined since 1945, especially in the form of conflict leading to territorial aggrandizement. *See* HATHAWAY & SHAPIRO, *supra* note 5, at 312-20 (showing the precipitous decline in interstate conquest post-1945); John Mueller, *War Has Almost Ceased to Exist: An Assessment*, 124 POL. SCI. Q. 297, 300-01 (2009).

study of post-1945 peace treaties, showing that they overwhelmingly conform to the Article 52 prohibition and contending that robust enforcement of that prohibition is critical to the fragile international stability that has largely prevailed since the World Wars. Part III addresses the concern that the prohibition in Article 52 makes peace more difficult or even impossible once war has broken out, arguing that the prohibition should be upheld in spite of that fear. In Part IV, the Note assesses the possibilities for a negotiated peace in the Russo-Ukrainian War, concluding that while several major proposals for concessional peace agreements now in circulation violate international law, plans under which a lasting ceasefire or Security Council approval preceded a peace agreement are more likely to be lawful. Finally, Part V discusses how these legal conclusions might affect the implementation and enforcement of a voidness finding, arguing that states should take coordinated action to reject any coerced treaty.

## I. THE MEANING OF THE PROHIBITION ON COERCED TREATIES

Article 52 of the Vienna Convention reflects and implements modern international law's essential nonaggression principles. This Part examines the history and text of the provision to make those connections clear. I begin by surveying the history of the prohibition, showing how closely it relates to international law's fundamental prohibition on the threat or use of force codified as Article 2(4) of the U.N. Charter. I then parse the four key components of the prohibition's terms, one by one, to articulate their meaning and key application: that concessions unlawfully made by treaty to an aggressor state are of no effect and must not be recognized by the international community. The Part concludes by discussing a procedural ambiguity in Article 52 — whether an authoritative adjudication is required before the duty of nonrecognition applies to a void treaty. Historical evidence and Article 52's own terms show that the provision decisively rejects treaties imposed by an aggressor state on a victim. The prohibition gives force to a central norm of international law: states may not profit from threatening or using force against one another.

### *A. Situating the Prohibition*

Article 52 grew out of modern international law's foundational prohibition on interstate force. The Article — and the norm it codifies — crystallized in the aftermath of the World Wars, as states sought to prevent future bloodshed. This context clarifies the motivations behind Article 52, drawing out the prohibition's meaning and revealing its connections to the foundations of modern international law.

In premodern international law (that is, international law prior to the First World War), coercion did not affect the validity of treaties—including peace treaties. On the contrary, that coerced peace treaties were binding was taken to be a matter of obvious necessity. As the eighteenth-century jurist Jean-Jacques Burlamaqui put it, a state unable to count on its enemy to abide by the terms of a peace agreement would have no reason to negotiate at all, so both sides would have no hope of a "solid peace" other than to seek the "total and entire destruction of [the] enemy."[8] Peace treaties were thus seen as indispensable to victors and victims alike. The former needed to translate battlefield advantage into lasting legal gains, while the latter needed to be confident that they could avoid further losses by making concessions. The upshot was that weaker powers could be bound by obligations to which they never would have consented without coercion.

The apparent injustice of this arrangement did not escape notice. No less an authority than Hugo Grotius suggested that the advantages a state gained through an unjust war might be suspect.[9] But, he quickly added, this infirmity was more moral than legal and certainly did not suffice to call the validity of the underlying agreement into doubt.[10] On the contrary, Grotius contended that any war was presumptively lawful so long as the war was declared and waged by a legitimate sovereign. Accordingly, there could be no practical question as to the lawfulness of the resulting peace treaty.[11] The distinction between just and unjust uses of force had little significance in a world that recognized war as the legitimate court of final appeal for disputes of international law.

The history of international relations in Europe is littered with coerced peace treaties, which were an essential part of early modern empire building. Many such treaties exacted concessions that are staggering by modern standards but were seen as lawful at the time.[12] Nor was this sort of behavior limited to the

8. Jean-Jacques Burlamaqui, The Principles of Natural and Politic Law 527 (Petter Korkman ed., Thomas Nugent trans., Liberty Fund 2006) (1763); *see also* 8 Samuel Pufendorf, Of the Law of Nature and Nations 854 (Basil Kennett trans., Walthoe & Co. 1729) (1672) (denying that peace treaties may be annulled by "an Exception of Fear").

9. *See* 3 Hugo Grotius, The Rights of War and Peace 1545 (Richard Tuck ed., Liberty Fund 2005) (1625) ("Neither does it from hence follow, that he who has extorted such a Thing in an unjust War, may with a safe Conscience, keep what he has got, or compel the other Party to stand to his Covenants . . . .").

10. *See id.* at 1543-45.

11. 2 Grotius, *supra* note 9, at 893-94; *see also* Hathaway & Shapiro, *supra* note 5, at 23-25 (discussing Grotius's "Might is Right" principle).

12. Consider, for example, the Partitions of Poland, by which Austria, Prussia, and Russia absorbed the entirety of the Polish-Lithuanian Commonwealth, a polity twice the size of California. The Partitions shocked contemporary observers, but their legality was not in question.

European continent. Coercive peace treaties played an integral role in the construction of global empires, as European powers routinely acquired territorial concessions and legal, political, and economic privileges from non-European powers through "unequal treaties" concluded under threat of invasion.[13] In China, for example, European colonial powers repeatedly used this "gunboat diplomacy" to exact legal, political, and economic privileges from the beleaguered Qing empire, as well as direct sovereignty over more than a hundred "treaty ports" along the Chinese coast.[14] These treaties were considered perfectly lawful despite their inequality—indeed, such treaties had been common in state practice since Grotius's time.[15]

That world is past. The experience of two world wars remade the international legal order: the threat or use of force, once legitimate tools for settling international disputes, were outlawed definitively.[16] Article 52, adopted in 1969, codified the modern prohibition on coerced treaties.[17] But Article 52 did not itself invent or newly establish the rule invalidating coerced treaties. Rather, its enactment represents the culmination of a preexisting rule of customary international law that began to emerge sometime between the establishment of the League of Nations and the ratification of the U.N. Charter.[18]

The emergence of the prohibition on coerced treaties began with the 1928 Paris Peace Pact. The Pact, which outlawed force in resolving international disputes,[19] was a runaway success ultimately ratified by sixty-two countries[20] and

*See* 1 NORMAN DAVIES, GOD'S PLAYGROUND: A HISTORY OF POLAND 393-94, 403-06 (2005).

13. *See, e.g.*, ROBERT NIELD, CHINA'S FOREIGN PLACES: THE FOREIGN PRESENCE IN CHINA IN THE TREATY PORT ERA, 1840-1943, at 2-9 (2015).

14. *Id.*

15. *See* Inge Van Hulle, *Grotius, Informal Empire, and the Conclusion of Unequal Treaties*, 37 GROTIANA 43, 47-48 (2016); HATHAWAY & SHAPIRO, *supra* note 5, at 312-20; Oona A. Hathaway, William S. Holste, Scott. J. Shapiro, Jacqueline Van De Velde & Lisa Wang Lachowicz, *War Manifestos*, 85 U. CHI. L. REV. 1139, 1141-42 (2018) (discussing the many bases on which states lawfully went to war in the premodern period).

16. *See* HATHAWAY & SHAPIRO, *supra* note 5, at xvii.

17. VCLT, *supra* note 3, art. 52, 1155 U.N.T.S. at 344.

18. *See* PAUL REUTER, INTRODUCTION TO THE LAW OF TREATIES 183 (José Mico & Peter Haggenmacher trans., Routledge 2011); *see also* YORAM DINSTEIN, WAR, AGGRESSION, AND SELF-DEFENSE 39 (5th ed. 2011) ("Article 52 reflects customary international law as it stands today."). The International Court of Justice (ICJ) has also affirmed the customary-law status of the prohibition. *See* Fisheries Jurisdiction (Ger. v. Ice.), Judgment, 1973 I.C.J. 49,¶ 24 (Feb. 2).

19. General Treaty for Renunciation of War as an Instrument of National Policy art. 1, Aug. 27, 1928, 94 L.N.T.S. 57, 63.

20. *See* HATHAWAY & SHAPIRO, *supra* note 5, at 124-29.

was the first step towards the establishment of the nonaggression norm now codified as Article 2(4) of the U.N. Charter. The Pact had transformative implications for international law, not least for the validity of coerced treaties. Even before the Pact, renowned international lawyer Hersch Lauterpacht predicted that "the lack of analogy of treaties and contracts so far as it is occasioned by the admissibility of duress cannot survive in an organised community of nations."[21] After the Pact, that was no longer simple prediction but an apparently irresistible conclusion of law.[22] After all, if State *X* cannot use force against State *Y* lawfully, any agreement between the two that State *Y* concluded only out of fear of State *X*'s use of force must be called into doubt.

The test case for this legal theory arrived in 1931. In September of that year, the Japanese Empire unlawfully occupied Manchuria and forced the overmatched Republic of China to cede the region, which became the Japanese puppet state of Manchukuo.[23] The invasion horrified the international community. However, bound by the Pact of Paris not to use unilateral force and unable to organize a collective intervention, the League of Nations and unaffiliated powers seemed caught without a means to respond. Casting about for some legal response, the United States adopted what is known today as the Stimson Doctrine of nonrecognition. Announcing that it would not recognize any change in legal rights brought about by means contrary to the Paris Peace Pact, the United States did not acknowledge the legal existence of Manchukuo.[24] The Assembly of the League of Nations endorsed the Stimson Doctrine's nonrecognition principle as an affirmative duty of member states, declaring that it was "incumbent upon the Members . . . not to recognise any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris."[25] This was the first time a body speaking for the international community declared that the prohibition on the use of force also compels

21. Hersch Lauterpacht, Private Law Sources and Analogies of International Law 166 (1927).

22. *Cf.* 1 Hersch Lauterpacht, International Law 354 (E. Lauterpacht ed., 1970) ("The defeated State, confronted with the threat of occupation or annihilation by the victor, cannot validly give its consent to the treaty terminating the war."); H. Lauterpacht (Special Rapporteur on the Law of Treaties), *Law of Treaties*, at 151, U.N. Doc. A/CN.4/63 (Mar. 24, 1953) [hereinafter Lauterpacht, *Law of Treaties*] (advocating for states to have the right to ask the ICJ to declare, in adversarial proceedings, the invalidity of a treaty imposed by force).

23. *See* Hathaway & Shapiro, *supra* note 5, at 153-57.

24. *See id.* at 166-67.

25. League of Nations Assembly, 4th plen. mtg. at 87, League of Nations Official Journal, Special Supp. No. 101 (Mar. 11, 1932).

the nonrecognition of treaties concluded through prohibited force.[26] The prohibition on coerced treaties, the Stimson Doctrine, and the duty of nonrecognition were therefore coeval. All three norms emerged primarily in response to the same evil: the transfer of territory by international agreements concluded under duress. As applied to such agreements, each of the three norms comes to mean much the same thing: these agreements are unlawful, and that unlawfulness is revealed and enforced by the international community's obligation not to recognize the agreements' effects.

The development of the norm that became Article 52 accelerated after the Second World War — the prelude to which was punctuated by dramatic interstate coercion. The notorious Munich Agreement of September 1938 required Czechoslovakia to cede its Sudetenland region to the Third Reich with the anxious blessing of the British and French; the German military had already seized much of the territory, and there was no question of resistance.[27] Only months earlier, the Reich had similarly annexed Austria, concluding the negotiations with German troops already inside the country.[28]

International law learned two painful lessons from these episodes. First, if negotiations conducted under threat were binding, powerful actors could easily use international law to launder military advantage into legal gains without formal hostilities. Second, the ultimate futility of such negotiations became brutally clear — Munich and its aftermath cast serious doubt on the old view that a coerced treaty, while unpleasant, offered an escape hatch through which a weaker power could avoid bloodshed.

After the Second World War, then, little question remained that coerced treaties, especially those that exchanged territory, had to be prohibited if the core norms of the new world order were to hold.[29] The debate shifted to the scope of

---

**26.** Forerunners to the nonrecognition principle had been percolating in international law since the nineteenth century. *See* Robert Langer, Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice 34-35 (1947).

**27.** *See* Quincy Wright, *The Munich Settlement and International Law*, 33 Am. J. Int'l L. 12, 28-32 (1939).

**28.** *See* Evan Burr Bukey, Hitler's Austria: Popular Sentiment in the Nazi Era, 1938-1945, at 16, 25-39 (2000).

**29.** *Cf.* Ingrid Brunk & Monica Hakimi, *Russia, Ukraine, and the Future World Order*, 116 Am. J. Int'l L. 687, 689 (2022) (calling "the prohibition of forcible annexations of foreign territory" the "norm at the core of the UN Charter system"). Of course, this norm was neither immediately nor inviolately adopted by the victorious states of the United Nations. Notably, even as the Soviet Union was advocating an expansive prohibition on coerced treaties, it was occupying and annexing the Baltic states and the vast swaths of Poland it had seized in the Molotov-Ribbentrop Pact. *See* Huey Louis Kostanick, *Soviet Territorial Annexations in Eastern Europe*, 13 Y.B. Ass'n Pac. Coast Geographers 14, 14-16 (1951).

that prohibition.[30] Successive United Nations Special Rapporteurs on the Law of Treaties gave conflicting answers to the problem.[31] In his 1953 report to the International Law Commission (ILC), Special Rapporteur Hersch Lauterpacht argued that the international community as a whole should be empowered to invalidate any coerced treaties.[32] Lauterpacht's successors, Sir Gerald Fitzmaurice[33] and Sir Humphrey Waldock,[34] favored more constrained articulations that would have made coerced treaties voidable only by the coerced state. The ILC sided with Lauterpacht in its final recommendations, under which a treaty secured by threat or use of force would be void ab initio, albeit with some dispute over how to establish that voidness in practice.[35]

In 1968 and 1969, representatives of 103 countries met at the United Nations Conference on the Law of Treaties (UNCLOT) to turn the ILC's draft articles into what became the Vienna Convention.[36] The ILC's proposed framing of the prohibition on coerced treaties drew disagreement as states' representatives recognized the prohibition's potentially transformative power. The negotiators were divided over the scope of the term "force," whether the provision would apply retroactively or only to treaties enacted subsequently, and the mechanism for adjudication.[37] However, after extensive debates, the representatives settled on the phrasing of Article 52 as it exists today.

Article 52 must be read against the backdrop of the early twentieth-century revolution in international law—the shift from a world in which interstate force was legitimate to the modern world in which force is unlawful and cannot impose legal duties. And that key context must be mapped onto the Article's terms, which may appear open-ended but—as the next Section shows—can be carefully parsed.

---

30. For additional treatment of the negotiating history of Article 52, see Stuart S. Malawer, *A New Concept of Consent and World Public Order*, 4 VAND. J. TRANSNAT'L L. 1, 7-16 (1972).

31. *See* VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY 942-43 (Oliver Dörr & Kirsten Schmalenbach eds., 2d ed. 2018) [hereinafter VCLT COMMENTARY].

32. Lauterpacht, *Law of Treaties*, *supra* note 22, at 149.

33. G.G. Fitzmaurice (Special Rapporteur on the Law of Treaties), *Law of Treaties*, at 26, 28, 38, U.N. Doc. A/CN.4/115 (Mar. 18, 1958).

34. Humphrey Waldock (Special Rapporteur on the Law of Treaties), *Second Report on the Law of Treaties*, at 51-52, U.N. Doc. A/CN.4/156 (June 5, 1963).

35. *See* VCLT COMMENTARY, *supra* note 31, at 943.

36. *See generally* U.N. Conference on the Law of Treaties, *Summary Records of the Plenary Meetings and of the Meetings of the Committee of the Whole*, U.N. Doc. A/CONF.39/11 (1969) (reporting on the conference).

37. *Cf.* VCLT COMMENTARY, *supra* note 31, at 943-44 ("[T]he debate on ILC Draft Art 49 evolved around three issues: the scope of the term 'force[,]' . . . retroactivity of the envisaged provision[,] . . . and the procedure in which the nullity plea should be notified to competent UN organs . . . .").

### *B. Parsing the Prohibition*

Article 52 turns on four operative terms: *force* ("the threat or use of force"), *unlawfulness* ("in violation . . . of international law"), *causation* ("procured by") and, of course, *voidness* ("[a] treaty is void").[38] These terms are vague, and their practical implications are far from obvious. Despite the open texture of Article 52's language and the possibility of edge cases, carefully parsing the four key terms of the provision makes its core meaning clear: Article 52 unequivocally condemns as void coerced peace treaties that make concessions to an aggressor state and implies that such treaties may not be recognized by any state. Indeed, the provision's parameters and exceptions clarify its focus on disincentivizing coercive force, underscoring that Article 52 could invalidate a concessional peace agreement in Ukraine.

#### *1. "The Threat or Use of Force"*

This discussion starts at the heart of Article 52, by defining the "threat or use of force" that can void a treaty when applied unlawfully. The discussion will then articulate the conditions for unlawfulness and causation before finally explaining the meaning of voidness under the Article.

In the context of Article 52, "force" is to be understood narrowly, referring to the force of arms. In drafting Article 52, UNCLOT considered and rejected a more expansive construction of "force" that would also have covered economic and political coercion.[39] Representatives from the Soviet bloc and the Global South favored an amended version of the Article incorporating the more expansive definition, which the industrialized democracies largely opposed. In the end, the Conference arrived at a compromise, accompanying a narrower articulation of Article 52 with a nonbinding declaration condemning the threat or pressure of any sort intended to procure the conclusion of a treaty.[40] As a result, Article 52 defines "the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations" by reference to Article 2(4) of the U.N. Charter, confining the prohibition to *armed* coercion.[41]

---

38. *See* VCLT, *supra* note 3, art. 52, 1155 U.N.T.S. at 344 ("A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.").

39. U.N. Conference on the Law of Treaties, *supra* note 36, at 269-80.

40. *See* Richard D. Kearney & Robert E. Dalton, *The Treaty on Treaties*, 64 AM. J. INT'L L. 495, 532-35 (1970).

41. *See* VCLT COMMENTARY, *supra* note 31, at 943-44, 949-51.

Mirroring Article 2(4), Article 52 covers the *threat* of force as well as its actual use. Both threat and use of force are relevant here because both are implicated in peace treaties: force has usually been used in the conflict the treaty aims to end, while there is an implicit threat of further force if peace is not secured. International Court of Justice (ICJ) case law establishes that some level of declared ability and willingness to use force nonetheless falls below the threshold for an unlawful threat under Charter Article 2(4).[42] Per the canonical statement of law, a threat of force is unlawful under Article 2(4) if the force that is threatened would itself be unlawful under the circumstances.[43] Thus, threats made in a self-defensive response to aggression may be lawful.[44]

### 2. *"In Violation of . . . International Law"*

Only *unlawful* force or threats thereof trigger Article 52. As observed above, the Article relies on the U.N. Charter to define the boundaries of unlawfulness. Thus, when Article 52 invokes "the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations," it should be understood to refer to the Charter's Article 2(4).[45] Article 2(4) sweepingly prohibits the use of force. The only exceptions it contemplates—and thus the only cases in which a treaty procured by force will not necessarily be void under Article 52—are (a) uses of force authorized by the Security Council under Chapter VII of the Charter[46] and (b) self-defense.[47] Article 52's position within a larger body of international law thus demonstrates the prohibition's importance for upholding the fundamental norms of international law, while simultaneously calibrating Article 52's scope of application to accord with the larger body of norms.

Since Article 52 mirrors the scope of lawful force under the U.N. Charter, the boundaries of lawful force under the Charter affect the boundaries of the

---

**42.** *See, e.g.*, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 48 (July 8) (holding that a state's ability and willingness to use nuclear weapons as part of a policy of deterrence may, but need not, violate Article 2(4)).

**43.** *Id.* ¶ 47.

**44.** *See* James A. Green & Francis Grimal, *The Threat of Force as an Action in Self-Defense Under International Law*, 44 VAND. J. TRANSNAT'L L. 285, 309 (2011) ("[I]t is evident that the Court has viewed the threat of force, irrespective of its status as a prima facie breach of Article 2(4), as lawful in certain circumstances.").

**45.** *See* U.N. Charter art. 2, ¶ 4 ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.").

**46.** *Id.* arts. 39-50.

**47.** *Id.* art. 51.

prohibition. Under the Charter, aggression is strictly outlawed, but every state retains some right of self-defense in response to an "armed attack"[48] as long as that self-defense satisfies the principles of necessity and proportionality.[49] The right to self-defense means that some force may not fall within Article 52's scope.[50]

---

48. *Id.*

49. *See, e.g.*, Geoffrey S. Corn, *The Essential Link Between Proportionality and Necessity in the Exercise of Self-Defense*, *in* NECESSITY AND PROPORTIONALITY IN INTERNATIONAL PEACE AND SECURITY LAW 79, 81 (Claus Kreß & Robert Lawless eds., 2020) ("Self-defense in both the domestic and international domain is often defined by focusing on requisite elements, specifically the elements of necessity and proportionality.").

50. Article 52, especially read in historical context, is clearly aimed at invalidating treaties imposed by an aggressor state on its victim. See, for instance, *supra* notes 23-26 and accompanying text, discussing the Manchurian episode. This purpose is clearly consistent with an exception for self-defense. A more difficult question is whether *only* treaties that profit an aggressor can be invalidated under Article 52. There are numerous scholars who suggest as much. *See, e.g.*, DINSTEIN, *supra* note 18, at 40 ("Article 52 invalidates solely those treaties of peace, which are imposed by an aggressor State on the victim of aggression."); Serena Forlati, *Coercion as a Ground Affecting the Validity of Peace Treaties*, *in* THE LAW OF TREATIES BEYOND THE VIENNA CONVENTION 320, 321 (Enzo Cannizzaro ed., 2011) ("[P]eace treaties imposed by the victim of an aggression, or after recourse to force is decided by the Security Council in the exercise of its powers under Chapter VII, do not fall within the scope of Article 52."). Aggressor-imposed treaties are, after all, precisely the cases in response to which Article 52 developed.

    Meanwhile, VCLT Article 75 provides explicitly that treaty obligations may be imposed coercively on an aggressor state yet remain binding. VCLT, *supra* note 3, art. 75, 1155 U.N.T.S. at 350. But Article 75 applies only to obligations "which may arise for an aggressor State in consequence of measures taken in conformity with the Charter . . . with reference to that State's aggression." *Id.* This would logically exclude obligations imposed on an aggressor state in consequence of measures *not* taken in conformity with the Charter, such as the use of force that exceeds the boundaries of lawful self-defense. *See also* MARK E. VILLIGER, COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES 915 (2009) (explaining that Article 75 "[leaves] open whether . . . one or more treaty obligations are being imposed on the aggressor State without it being a party"). Article 52, moreover, makes no textual reference to whether the actor is a victim or aggressor. Therefore, even nonaggressor states must abide by the requirements of the Charter in conducting their defense, or else risk the invalidity of the peace terms they secure.

    The practical implications of this proviso are foggy, however, largely because it implicates areas of doctrine that remain contentious. For example, whether a state acting in self-defense may conclude an agreement annexing territory from its aggressor implicates questions at the heart of the debate over Israel's purported annexation of the Golan Heights. *See* Eliav Lieblich, *The Golan Heights and the Perils of "Defensive Annexation,"* JUST SEC. (Apr. 4, 2019), https://www.justsecurity.org/63491/the-golan-heights-and-the-perils-of-defensive-annexation [https://perma.cc/Z8YL-N7UV] (arguing that Israel's annexation of the Golan Heights, even if claimed to be for security, violates longstanding international legal norms prohibiting the acquisition of territory by force and risks setting dangerous precedents). Such annexation appears to run afoul of a freestanding norm against forcible acquisition of territory

Likewise, force licensed by the Security Council under Chapter VII of the U.N. Charter is lawful.[51] Thus, a peace treaty procured by force duly authorized in advance by the Council would not be void under Article 52, even if the same use of force and resulting treaty would have been unlawful in the absence of Council authorization.

A thornier question is whether the Security Council can validate a coerced treaty after the fact by (in effect) authorizing the use of force ex post. Although controversial,[52] the best interpretation of the Charter and state practice shows

---

independent of the right of self-defense. *See* Ingrid Brunk & Monica Hakimi, *The Prohibition of Annexations and the Foundations of Modern International Law*, 118 Am. J. Int'l L. 417, 453 (2024).

There is continued debate over the supposed right of "anticipatory self-defense," too. *Cf.* Daniel Bethlehem, *Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors*, 106 Am. J. Int'l L. 770, 775-77 (2012) (proposing a set of practical principles to guide states in exercising their right of self-defense in such scenarios, emphasizing necessity, proportionality, and a redefined understanding of imminence). And the validity of such a right bears on whether, for instance, a state may invade a threatening neighbor and bind the neighbor to neutrality or demilitarization in a subsequent peace agreement, which was one of Russia's stated justifications for invading Ukraine. *See* Michael N. Schmitt, *Russia's "Special Military Operation" and the (Claimed) Right of Self-Defense*, Articles War (Feb. 28, 2022), https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense [https://perma.cc/C9E5-CR8D] (suggesting that Russia's invocation of Article 51 to justify its "special military operation" in Ukraine is legally unfounded as no armed attack occurred).

**51.** *See* U.N. Charter arts. 39-51.

**52.** This question connects to a larger controversy over the proper role and authority of the Security Council. The Charter clearly grants the Security Council immense and apparently unreviewable power. *See* Jose E. Alvarez, *Judging the Security Council*, 90 Am. J. Int'l L. 1, 14-21 (1996). But there are plenty of scholars who have argued that the Council must nonetheless be subject to demanding rule-of-law norms, perhaps through judicial review by the ICJ. *See, e.g.*, Jennifer Trahan, Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes 142 (2020) (arguing that Security Council vetoes are subordinate to the principles of *jus cogens* and subject to ICJ review in cases where they conflict with nonderogable principles of international law). On the other hand, to call for a showdown between the United Nations's judicial organ and its primary enforcement body courts a catastrophe in which Council states ignore the World Court or move to withdraw from the Charter system altogether. *See* Alvarez, *supra*, at 1-4 (collecting contending positions on the issue); *cf.* W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 Am. J. Int'l L. 83, 92-94 (1993) (suggesting the stakes of this sort of "constitutional crisis" in the Charter system).

At any rate, whether retroactive authorization is within the Security Council's power is a separate question from whether it is a good thing. One might reasonably fear that the mechanism could encourage states to use force with the expectation that they can present their actions as a fait accompli and secure Council authorization afterwards. This is a risk—one that must be balanced against the risk of crisis or collapse in the U.N. system that could arise should the ICJ or another U.N. organ defy the Council. One's view on how the risks should be balanced will presumably track whether one thinks of the U.N.'s basic mission as the prudent maintenance of international peace in a nuclear age or the defense of international rule-

that this is a power the Security Council does possess and has implicitly exercised multiple times in the past, typically by directing states to adhere to the terms of an agreement apparently procured by unlawful force. Scholars have argued, for instance, that the Security Council's Resolution 1203 rendered the NATO intervention in Kosovo lawful retroactively,[53] and that the ICJ looked to the Security Council's approval in recognizing an arguably coerced peace plan between Uganda and the Democratic Republic of Congo as lawful.[54] Similarly, the Council appears to have exercised its retroactive authorization power with respect to the doomed Minsk Agreements of 2014 and 2015. Concluded after a period of hybrid warfare through which Russia seized Crimea and parts of the Donbas, the Minsk Agreements laid out a peace plan under which Ukraine's majority-Russophone eastern regions would demilitarize in exchange for concessions of greater autonomy from Kyiv.[55] Though arguably procured by unlawful interstate force, the Agreements were approved as a peace plan by the Security Council.[56]

Any power of retroactive authorization is not unlimited. Despite its immense authority, the Security Council is still a creature of treaty law. As such, it is unable to take or validate actions in violation of *jus cogens*, the handful of peremptory norms that constitute international law's most fundamental rules.[57] *Jus cogens* rules take precedence over all other international-law norms, including treaty

---

of-law norms against abuses of power. If there is a right answer here, it is beyond the ambitions of this Note.

53. *See, e.g.*, VCLT COMMENTARY, *supra* note 31, at 957-58; GREGORY H. FOX, HUMANITARIAN OCCUPATION 183 (2008); ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 318 (2d ed. 2007); *see also* Forlati, *supra* note 50, at 327-29 (examining controversies over the Security Council's actions with respect to Kosovo). *But see* Enrico Milano, *Security Council Action in the Balkans: Reviewing the Legality of Kosovo's Territorial Status*, 14 EUR. J. INT'L L. 999, 1015-18 (2003) (arguing that a treaty that is void ab initio cannot be validated by ex post Security Council endorsement).

54. *See* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, ¶¶ 104–05 (Dec. 19); Felix Herbert, *Territorial Concessions to the Aggressor: (In-)Validity of a Prospective Peace Treaty Between Russia and Ukraine?*, VERFASSUNGSBLOG (Jan. 6, 2025), https://verfassungsblog.de/territorial-concessions-to-the-aggressor [https://perma.cc/8YHB-H3FS].

55. *See* Lidia Powirska, *Through the Ashes of the Minsk Agreements*, EPICENTER (May 18, 2022), https://epicenter.wcfia.harvard.edu/blog/through-ashes-minsk-agreements [https://perma.cc/YB3C-MUUT] (discussing the Agreements' contents and their failure); *Full Text of the Minsk Agreement*, FIN. TIMES (Feb. 12, 2015), https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de [https://perma.cc/QFU5-X2A6].

56. *See* S.C. Res. 2202, ¶ 1 (Feb. 17, 2015) (endorsing the terms of the Minsk II Agreement).

57. *Jus cogens* (or "peremptory") norms of international law are those rules that are recognized as universally and overridingly binding, whether or not a state has endorsed them by treaty or otherwise. Major examples include the prohibition on the use of force, the prohibition on genocide, and the principle of racial nondiscrimination. *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 510-11 (7th ed. 2008).

law. One rule of *jus cogens*, of course, is the Article 2(4) prohibition on the use of force: the use of force violates *jus cogens* unless it falls within one of Article 2(4)'s exceptions, namely self-defense or authorization by the Security Council.[58] The exceptions to Article 2(4) are why Security Council authorization can save what would otherwise amount to a violation of *jus cogens*. But there are other, free-standing norms of *jus cogens* that are not conditional on Council authorization, such as the prohibitions on genocide, racial nondiscrimination,[59] and forcible annexations of territory.[60] A treaty whose contents violate these norms is void per se.[61] Even assuming the Council has the power to validate use of force ex post and save a coerced agreement from invalidity on *that* basis, it cannot thereby save the agreement from invalidity on the independent ground of conflict with a distinct norm of *jus cogens*.[62]

Even acknowledging the exceptions for self-defense and Security Council validation, the prohibition on coerced treaties remains broad and largely uncompromising as to the conduct that it rules out. It tracks the similarly broad and uncompromising prohibition — Article 2(4) of the U.N. Charter — of the threat or use of force. That prohibition has been called the fundamental norm of the international legal order, and for good reason. Article 52 is therefore woven into the most basic fabric of international law.

### *3. "Procured by"*

Even where force is used unlawfully, it will not void a treaty if the use of force merely coincides with the execution of a treaty that would have been concluded anyway. For voidness to result, Article 52 requires that the treaty be "*procured by*" the unlawful threat or use of force — that is, there must be a causal nexus. This requirement protects against abuse of the Article's mechanism by assuring that the force was not insignificant, incidental, or too remote with respect to the

---

**58.** *See id.*; *see also* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Merits, Judgment, 1986 I.C.J. 14, ¶ 190 (June 27) (observing the *jus cogens* character of the Article 2(4) rule).

**59.** *See* BROWNLIE, *supra* note 57, at 511.

**60.** *See* Brunk & Hakimi, *supra* note 50, at 442-43 (distinguishing the prohibition on forcible annexation from the Article 2(4) prohibition on the interstate use of force and arguing that the former is a freestanding norm of *jus cogens*).

**61.** *See* VCLT, *supra* note 3, art. 53, 1155 U.N.T.S. at 344 ("A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.").

**62.** *Cf.* Florian Kriener & Anne Peters, *Legal Limits for UNSC Action on Peace in Ukraine*, EJIL: TALK! (Apr. 8, 2025), https://www.ejiltalk.org/legal-limits-for-unsc-action-on-peace-in-ukraine [https://perma.cc/U4GK-6KVD] (arguing that Security Council validation powers cannot license a violation of *jus cogens*).

conclusion of the treaty.[63] Of course, law recognizes multiple standards for causation. Precedent and common sense indicate that the standard applicable to Article 52 is higher than cause-in-fact ("but-for" causation) and more like the standard of proximate cause in domestic law. This standard raises the possibility that de-escalatory measures—like ceasefires—might in principle save a subsequent and otherwise suspect treaty from triggering Article 52.

The Vienna Convention does not supply a causal standard for interpreting Article 52. I argue that the best reference for the applicable standard is given by the ILC's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), which explicitly endorse a more demanding standard than but-for causation.[64] Under this standard, "causality in fact is a necessary but not a sufficient condition," as "[t]here is a further element, associated with the exclusion of injury that is too 'remote' or 'consequential.'"[65] Supplying criteria for this exclusion, the ARSIWA commentary points to "directness," "foreseeability," "proximity," "whether State organs deliberately caused the harm," or whether the harm caused was of the kind the rule's purpose was to avert.[66] The result is something akin to the proximate-cause standard in Anglo-American law.[67]

Though the ARSIWA are not binding in interpreting Article 52, they are nonetheless a useful benchmark for principles of causation in state responsibility. The ICJ has repeatedly applied a similar standard in considering questions of state responsibility, typically in cases where the ICJ must determine the extent of a state's obligations to make reparations for injuries supposedly caused by its

63. *See* VILLIGER, *supra* note 50, at 645 ("This condition . . . requires a direct causal relationship between coercion and the conclusion of the treaty, *i.e.*, the treaty would not have been concluded if there had not been a threat or use of force.").

64. Int'l L. Comm'n, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, art. 31, cmt. 10, Rep. of the Int'l Law Comm'n on the Work of Its Fifty-Third Session, at 92-93, U.N. Doc. A/56/10 (2001) [hereinafter Draft Articles on State Responsibility].

65. *Id.*

66. *Id.* (internal quotation marks omitted).

67. *See* Patrick W. Pearsall, *Causation and the Draft Articles on State Responsibility*, 37 ICSID REV. 192, 201 (2022) (describing the Draft Articles' standard as a "concept of proximate cause"); *see also, e.g.*, Guido Calabresi, *Concerning Cause and the Law of Torts: An Essay for Harry Kalven, Jr.*, 43 U. CHI. L. REV. 69, 70-73 (1975) (discussing proximate cause as a "functional concept" by which an adjudicator may impose or not impose liability depending on various ways in which an act is or is not saliently "proximate" in causal relation to a given harm); W. PAGE KEETON, DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, PROSSER AND KEETON ON THE LAW OF TORTS 272-80 (5th ed. 1984) (describing various judicial tests for proximate cause, including determining whether the defendant's conduct was the "nearest" cause of the damage, whether that conduct was a "substantial factor" in producing the damage, and whether the defendant was the "last human wrongdoer").

unlawful conduct.[68] The same reasoning is apt for the causal aspect of Article 52, which concerns the injurious conduct of a coercing state toward a coerced state. In those cases, the ICJ has held that the offending state is responsible only if there is "a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the [victim state], consisting of all damage of any type, material or moral."[69] Although the "causal nexus required may vary depending on the primary rule violated and the nature and extent of injury,"[70] this is nonetheless a higher standard than cause-in-fact.[71]

Because the applicable standard is more than cause-in-fact and considers factors like directness or proximity, then as the unlawful use or threat of force recedes, it becomes more plausible that any commitments a state might make will issue from its free and uncoerced consent, rather than being "procured by" unlawful coercion. The upshot of this attenuation effect in the peace-treaty context is that de-escalation—like periods of ceasefire or the withdrawal of troops—might alleviate Article 52 concerns by attenuating the causal relevance of the threat or use of force, altering the level of coercion under which a treaty is concluded.[72]

---

**68.** *See, e.g.*, Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Reparations, Judgment, 2022 I.C.J. 13, ¶ 84 (Feb. 9); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶ 462 (Feb. 26); Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), Reparations, Judgment, 2012 I.C.J. 324, ¶ 14 (June 19); Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Reparations, Judgment, 2018 I.C.J. 15, ¶ 32 (Feb. 2).

**69.** *Crime of Genocide*, 2007 I.C.J. at 234, ¶ 462.

**70.** *Armed Activities*, 2022 I.C.J. at 48, ¶ 93.

**71.** Indeed, in *Armed Activities on the Territory of the Congo*, the ICJ explicitly considered, but did not adopt, a contention "that a causal nexus can be established simply by the fact that the damage would not have occurred 'but for' [the violator state's] violation." *Id.* at 47, ¶ 91.

**72.** In *Fisheries Jurisdiction*, one of the few instances in which the ICJ authoritatively discussed Article 52, the court gestured toward something like this causal-attenuation effect. Although it affirmed the validity of the norm Article 52 expresses, it insisted on the importance of demonstrating this causal relationship, holding that the state claiming coercion in that case had not adduced sufficient evidence to support its claim of duress. Fisheries Jurisdiction (Ger. v. Ice.), Judgment, 1973 I.C.J. 49, ¶ 24 (Feb. 2).

One corollary of the evidentiary requirements the ICJ mentioned in *Fisheries Jurisdiction* is that, as the threat or use of force withdraws into the distance, it may become more difficult to find that it procured the conclusion of a treaty. In the *Fisheries Jurisdiction* case, that attenuation effect appears to result from the evidentiary standards imposed by the ICJ. I argue, however, that this attenuation effect is not only due to those standards but is, in fact, inherent to Article 52 because it is implied by the applicable standard for causation, which should be understood as one akin to proximate cause in domestic law rather than simple cause-in-fact. *Cf.* 1 Restatement (Third) of Foreign Rels. L. § 207 cmt. e (A.L.I. 1987) ("There is no

A hypothetical may illustrate the attenuation effect. Suppose State *X* invades State *Y*, hoping to conquer a long-contested border region. The war does not go as planned and reaches a bloody stalemate. State *X* controls only a portion of the contested region, while State *Y* has taken control of some of State *X*'s territory, too, so that the balance of power appears even. The states declare an armistice and withdraw to their respective borders. Much later, the disputed boundary is formally adjudicated, and both sides commit to various measures to address longstanding political and economic grievances relating to the region and its population. Importantly, State *X* obtains some long-desired concessions in the treaty. Is the treaty void?

If mere factual causation were the applicable standard, then the settlement has clearly been procured by State *X*'s unlawful force. Without the violence of its aggression, the two states would not eventually have come to the negotiating table. Yet, assuming neither side was actively threatening to resume hostilities when the treaty negotiations began, it seems likely that there was not a "direct and certain causal nexus" between the settlement and the unlawful threat or use of force. One can very well imagine a situation in which the legally predominant cause for the treaty is instead the parties' recognition, under substantially fair negotiating conditions, of their opportunity for mutual benefit. It should therefore avoid triggering the Article 52 prohibition.[73]

Article 52's causation standard gives the provision essential flexibility, so that the prohibition on coerced agreements is strong but not brittle. The prohibition is not incapable in practice of accounting for the realities of international law in which the question of causation is often fraught. That flexibility promotes the prohibition's peace-preserving function.

#### *4. "A Treaty Is Void"*

When a treaty's conclusion satisfies Article 52 conditions for force or threat, unlawfulness, and causation, the result is that that treaty "is void." The nature of voidness in treaty law, however, bears some explanation. A void treaty is of no legal effect, a nullity, and therefore not to be recognized by any state. The

well-developed jurisprudence of causation in international law, but international law generally applies concepts of causation, including proximate cause, not unlike those in the law of the United States and other developed states.").

73. As in the domestic law of duress, however, much will depend on whether the parties truly negotiated as equals, in good faith, without fear of reprisal, and so on. *See* RESTATEMENT (SECOND) OF CONTS. §§ 175-176 (A.L.I. 1981) (explaining that duress exists where "a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative" and that an "improper threat" may be constituted by threats of (a) crime or tort, (b) criminal prosecution, (c) bad-faith civil process, or (d) breach of duty of good faith and fair dealing).

voidness of a coerced treaty reflects the duress suffered by the victim state. But beyond that, by marshaling nonrecognition by other states, the prohibition serves a prophylactic function, acting as a collectively enforced deterrent against conduct that violates international law's fundamental norms against coercion.

Article 52 declares that a coerced treaty is void, not merely voidable.[74] The Vienna Convention itself is explicit about this. Article 69(1) clarifies, "The provisions of a void treaty have no legal force."[75] The distinction between voidness and voidability is significant: a *voidable* treaty would be valid unless the coerced party took action to invalidate it. But a *void* treaty is an "absolute nullity" from the moment it is concluded.[76] Furthermore, the voidness of a coerced treaty is total. Article 44(5) of the VCLT provides that, in cases of voidness, "no separation of the provisions of the treaty is permitted."[77] A coerced treaty is therefore void in its entirety. A void treaty, having "no legal force," is not enforceable before any tribunal, nor do states have any legal reason to recognize it.[78]

In fact, in the case of coerced treaties, states could be obliged not to recognize the treaty. One prominent modern outgrowth of the Stimson Doctrine of nonrecognition is expressed by ARSIWA Article 41(2), which provides, "No State shall recognize as lawful a situation created by a *serious breach* within the meaning of article 40, nor render aid or assistance in maintaining that situation."[79] Article 40 of the ARSIWA, meanwhile, provides that "[a] *breach* of [an obligation arising under a peremptory norm of general international law] is *serious* if it involves a gross or systematic failure by the responsible State to fulfil the obligation."[80] The norm underlying Article 52—the prohibition on the use or threat of force—is international law's paradigmatic peremptory norm.[81] While some threats or uses of force may not violate that prohibition, a peace treaty concluded as the result of aggression in violation of Article 52 would surely constitute a "gross" failure of the aggressor state to fulfill its duty to refrain from that sort of force.

---

74. *Cf.* 1 Timothy Murray, Corbin on Contracts §§ 1.6-1.7 (rev. ed. 2025) (distinguishing voidable from void contracts).

75. VCLT, *supra* note 3, art. 69, cl. 1, 1155 U.N.T.S. at 348.

76. *See* Ian Sinclair, The Vienna Convention on the Law of Treaties 160-61 (2d ed. 1984).

77. VCLT, *supra* note 3, art. 44, 1155 U.N.T.S. at 343.

78. As will be discussed, however, certain procedural requirements may complicate this apparently categorical voidness. *See infra* Section I.C.

79. Draft Articles on State Responsibility, *supra* note 64, art. 41(2), at 114 (emphasis added).

80. *Id.* art. 40(2), at 112 (emphasis added).

81. Indeed, it is thus described in the Draft Articles' commentary. *See id.* at 112 nn.640-41 & 644 (citing aggression and unlawful use of force as examples of a peremptory norms).

Third-party states could thus be obligated not to recognize the terms of the resulting (void) treaty.[82]

In addition to affirming the rights of the coerced state,[83] the voidness imposed by Article 52 acts as a sanction by the international community for the unlawful coercion.[84] Hersch Lauterpacht, well before the prohibition on coerced treaties emerged, predicted that international law would one day mirror contract law's prohibition on coercion.[85] But Article 52's prohibition goes further than what Lauterpacht expected.[86] Again, the Article's terms make clear that coerced treaties are *void*, not merely voidable by the victim of duress, as is the case in practically every regime of domestic private law.[87] The contrast is instructive. In addition to protecting states that fall victim to coercion,[88] Article 52 also serves a prophylactic function, protecting the international community generally. If

---

**82.** With historical perspective, this conclusion seems obvious, given the connection between the doctrine of nonrecognition and the prohibition on coerced treaties that has existed since the Manchurian Crisis. *See supra* Section I.A. The ICJ has recognized a duty of nonrecognition in a case involving other forms of unlawful territorial encroachment. *See* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 159 (July 9) ("[T]he Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory . . . .").

**83.** *See* VCLT COMMENTARY, *supra* note 31, at 938; Christos L. Rozakis, *The Law on Invalidity of Treaties*, 16 ARCHIV DES VÖLKERRECHTS 150, 167 (1974).

**84.** *See* REUTER, *supra* note 18, at 180-81; DINSTEIN, *supra* note 18, at 40; SINCLAIR, *supra* note 76, at 180; Forlati, *supra* note 50, at 320-21.

**85.** LAUTERPACHT, *supra* note 21, at 166.

**86.** Lauterpacht himself later advocated this prophylactic function while serving as Special Rapporteur on Treaties. *See* Lauterpacht, *Law of Treaties*, *supra* note 22, at 151 ("According to the article as drafted[,] treaties imposed by force or threat of force are void. They are a nullity. They are not merely voidable . . . . The attitude of acquiescence or apparent acquiescence on the part of the coerced party is irrelevant." (footnote omitted)).

**87.** *See, e.g.*, RESTATEMENT (SECOND) OF CONTS. § 175 (A.L.I. 1981) (explaining that duress makes a contract voidable under American law); HEIN KÖTZ, EUROPEAN CONTRACT LAW 185 (Gill Mertens & Tony Weir trans., 2d ed. 2017) (explaining that duress makes a contract voidable in English and all continental European legal systems); Graham Glover, *The Test for Duress in the South African Law of Contract*, 123 S. AFR. L.J. 98, 98-99 (2006) (explaining that, despite its seldom use, duress makes a contract voidable in South African law); INVALIDITY 127, 142, 165, 177-78, 460-61 (Mindy Chen-Wishart, Hiroo Sono & Stefan Vogenauer eds., 2022) (explaining that coercion makes a contract voidable under Indian, Indonesian, Japanese, and Vietnamese law). *But see* INVALIDITY, *supra*, at 50 (explaining that, under Chinese law, duress leaves certain kinds of contracts void, not merely voidable); Khaled Abou El Fadl, *Law of Duress in Islamic Law and Common Law: A Comparative Study*, 30 ISLAMIC STUD. 305, 319-20 (1991) (explaining that there is disagreement among Islamic jurists over whether duress leaves contracts void or voidable).

**88.** In fact, to the extent that it restricts the bargaining options available to such states, it may actually interfere with their interests. *See infra* Section I.C.

coerced treaties are invalid, states cannot profit through such treaties. This disincentivizes coercion *before the fact* and thereby advances the international community's interest in minimizing unlawful conduct.[89]

The entirely void nature of a treaty that is void under Article 52 raises another critical question: does Article 52 create a legal catch-22 in which a peace treaty cannot communicate any legal duties—not even a duty to stop the fighting—unless concluded under peaceful conditions? Not quite. To the extent that a treaty's terms restate or clarify preexisting independent legal duties, the treaty's voidness does not affect those duties.[90] Such independent duties include refraining from the unlawful use of force and reparation for any harm caused by the violation of the prohibition on force.[91] In other words, the duty to make peace and withdraw is binding, whether it is integrated into a peace treaty or not. This matters for two reasons. First, a violation of the duty to make peace and withdraw warrants appropriate intervention by the international community, and this warrant persists regardless of any purported agreements between the victim and the aggressor states. Second, an aggressor state cannot use treaties to circumvent its fundamental obligations nor to launder unlawful gains into lawful holdings.[92] In effect, it is only the treaty's coercively obtained concessions that are null. In other words, although international law sets limits on what sorts of peace are lawful, it does not make peace impossible but in fact facilitates it.[93] Here again we see that Article 52's purpose and effect are closely tied to international law's broader antiforce principles.

---

**89.** In this sense, Article 52 is directly analogous to—and in the context of peace treaties overlaps with—the Stimson Doctrine of nonrecognition of conquered territory. *See supra* notes 22-26 and accompanying text.

**90.** *See* VCLT, *supra* note 3, art. 43, 1155 U.N.T.S. at 342 ("The invalidity . . . of a treaty . . . as a result of the application of the present Convention . . . shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty."); *see also* DINSTEIN, *supra* note 18, at 41 ("The answer, as furnished by Article 43 of the Vienna Convention, is that the invalidity of a treaty does not impair duties embodied therein, if these are independently binding on the Parties by virtue of general international law.").

**91.** *See* Draft Articles on State Responsibility, *supra* note 64, arts. 30-31, at 88-94.

**92.** This mirrors the domestic-law rule that one cannot contract around criminal prohibitions.

**93.** Of course, those limits mean that peace may nonetheless be more difficult to achieve in practice. If the prohibition makes coercive agreements untenable and the aggressor is only willing to accept coercive agreements, the victim state may be left without anything lawful it can offer. In this respect, it seems that enforcing the prohibition on coerced treaties vigorously may prolong conflicts that might otherwise have settled with a coerced, concessional treaty. That is an anxiety that animated the premodern acceptance of such treaties, *see supra* note 9 and accompanying text, and it is a problem to which I will return, *see infra* Part III.

### *C. Adjudicating the Prohibition*

The Vienna Convention is clear, then, that a coerced treaty is void and thus must not be recognized by any state. But it is not entirely clear how—or by whom—a violation of Article 52 is determined in the first place. Whether judicial procedures are needed to establish the voidness has been controversial since the VCLT's drafting process.[94] At one extreme, one could imagine an arrangement in which each state is responsible for deciding whether a "situation, treaty or agreement"[95] is unlawful. At the other extreme would be an arrangement in which a single authoritative body—like the International Court of Justice—is responsible for determining the lawfulness of a disputed agreement. In that scenario, states would be responsible for waiting for the institution's judgment and abiding by it once it is rendered. I will call these "individualist" and "institutionalist" alternatives, respectively.[96] On the one hand, the Convention specifies procedures for challenging a treaty's validity[97] and declares that a treaty's validity can only be challenged by the mechanisms of the VCLT.[98] But Article 52 is clear that a coerced treaty is void ab initio, and the Convention is clear that a void treaty has "no legal force."[99] That suggests that no additional procedures are required—the coerced treaty falls dead-born from the negotiating table, a nullity.[100]

This procedural question has immense practical stakes. If no additional procedures are required (that is, if the individualist position is correct), states can decline unilaterally to recognize the implications of a treaty they judge as invalid. Indeed, assuming a duty of nonrecognition applies in the case of coerced treaties, they could even be required to do so. If, however, an authoritative determination

---

**94.** *See* Omar M. Dajani, *Contractualism in the Law of Treaties*, 34 MICH. J. INT'L L. 1, 52-55 (2012); Herbert W. Briggs, *Procedures for Establishing the Invalidity or Termination of Treaties Under the International Law Commission's 1966 Draft Articles of the Law of Treaties*, 61 AM. J. INT'L L. 976, 977-79 (1967).

**95.** This is a reference to the League's terminology. *See* League of Nations Assembly, *supra* note 25, at 87.

**96.** This distinction mirrors a taxonomy well known in constitutional law. *Cf.* SANFORD LEVINSON, CONSTITUTIONAL FAITH 27-30, 37 (2011) (describing constitutional Protestants, who leave each individual actor responsible for reaching her own determination on constitutional questions, and constitutional Catholics, who reserve authoritative determination for the "magisterium" of the Supreme Court).

**97.** VCLT, *supra* note 3, arts. 65-66, 1155 U.N.T.S. at 347-48.

**98.** *Id.* art. 42(1), 1155 U.N.T.S. at 342.

**99.** *Id.* arts. 52, 69(1), 1155 U.N.T.S. at 344, 348.

**100.** *See id.* arts. 2, 51-52, 1155 U.N.T.S. at 333, 344.

is required (that is, if the institutionalist position is correct), states may act as if the treaty is valid until its voidness is confirmed.

A qualified version of the institutionalist view is correct. The legal question is close, but the weight of the arguments suggests that this is the best reading of Article 52. In addition, states have strong prudential reasons to wait for conclusive institutional adjudication before denouncing a treaty as coerced and thus void.[101] Nonetheless, the institutional role is limited. Procedural requirements must not have the effect of frustrating Article 52's clear substantive requirement that coerced treaties are void, and any reading that would compel such a conclusion should be met with great skepticism.

Substantial evidence weighs against the strongest version of the "individualist" view. Article 42(1) of the Vienna Convention provides that the "validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the . . . Convention."[102] In case of a dispute over the coerced treaty's validity, Article 66 of the Vienna Convention provides a settlement procedure involving the establishment of a "Conciliation Commission" that provides a nonbinding recommendation.[103] This settlement procedure applies unless the treaty also conflicts with a norm of *jus cogens*, in which case the ICJ has compulsory jurisdiction.[104] This judicial procedure for cases involving conflicts between treaties and *jus cogens* norms is notable because the Convention also provides that such treaties will be "void,"[105] in terms just as categorical as those of Article 52. If an adjudication procedure is required there, why not in cases under Article 52? Furthermore, the drafting history of Article 52 attests that its drafters were concerned with the risk of "unilateralism"—that is, states using the Article as a license to get out of inconvenient treaty commitments by disingenuously declaring that the treaty had been coerced.[106] It may be notable that an earlier draft allowed any state to submit a treaty for ICJ review as to the question of voidness for coercion.[107] The final version of the Article is silent on third-

101. I will return to this argument in Part V's discussion of how the international community might respond to the voidness of a coerced peace treaty in Ukraine.

102. VCLT, *supra* note 3, art. 42(1), 1155 U.N.T.S. at 342.

103. *Id.* art. 66(b), 1155 U.N.T.S. at 348.

104. *Id.* art. 66(a), 1155 U.N.T.S. at 348. For a discussion of *jus cogens* rules, see *supra* notes 57-62 and accompanying text.

105. VCLT, *supra* note 3, arts. 53, 64, 1155 U.N.T.S. at 344, 347.

106. *See* Rozakis, *supra* note 83, at 168-69; Dajani, *supra* note 94, at 52-56.

107. That draft, for which Special Rapporteur Lauterpacht provided an extensive commentary, would have made coerced treaties "invalid if so declared by the International Court of Justice at the request of any State." *See* Lauterpacht, *Law of Treaties*, *supra* note 22, at 93.

party standing, and the invalidation procedures the VCLT provides in Articles 65 and 66 only contemplate their initiation by a party to the treaty.[108]

Of course, this language is permissive rather than mandatory and bears only on the VCLT's invalidation procedure, not the larger question of whether coerced treaties may or must be treated as void whenever the question is presented.[109] Furthermore, the Convention's invalidation procedure applies to various bases of invalidity, not just coercion of a state.[110] All the same, Articles 65 and 66 have been read to mean that "only the coerced party can raise an objection of coercion."[111] To read the provisions this way follows standard interpretive practice for express power-conferring rules: where such a rule explicitly confers power on one class of actors and not another, the typical inference is that the power is not permitted to the latter class.

Additionally, what little the ICJ has said on the matter supports the "institutionalist" position. In considering other cases of states' duties and prerogatives in response to internationally unlawful conduct, the ICJ has been clear that a declaration by a competent U.N. body (such as the Security Council) is binding on member states once issued.[112] That does not necessarily mean, however, that such a declaration is required before member states can formulate and act on their own judgments of unlawfulness.[113] Nonetheless, the ICJ has indicated that once a competent U.N. body has made a binding pronouncement on the

**108.** *See* VCLT, *supra* note 3, art. 66(a), 1155 U.N.T.S. at 348.

**109.** To say that these procedures are mandatory in any case of voidness for coercion begs the question at issue, namely, whether formal invalidation proceedings are in fact necessary before a treaty that is void under Article 52 may or must be treated as a nullity. The contrary position would be to say that "application of the . . . Convention," at least in the case of an Article 52 violation procured by aggression, simply means that the prohibition, grounded in the peremptory prohibition on the use of force and codified in Article 52, takes effect peremptorily.

**110.** *See* VCLT, *supra* note 3, arts. 46-51, 1155 U.N.T.S. at 343-44.

**111.** Gregory H. Fox, *A Legal Framework for a Russia-Ukraine Peace Agreement*, EJIL: TALK! (Dec. 19, 2024), https://www.ejiltalk.org/a-legal-framework-for-a-russia-ukraine-peace-agreement [https://perma.cc/93NK-JF35].

**112.** *See* Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, ¶¶ 109-19 (June 21).

**113.** Member states regularly formulate and act on their own judgments that a situation is unlawful without waiting for a U.N. body to qualify it as such. Numerous states imposed sanctions on Russia in response to the unlawful 2022 invasion of Ukraine even though Russia's veto blocked condemnation in the Security Council. *See* Don S. De Amicis & David P. Stewart, *Sanctions on Steroids: The Ukraine-/Russia-Related Sanctions*, 48 N.C. J. INT'L L. 379, 380-82 (2023).

unlawfulness of a situation, it is for that body to determine what acts are appropriate in response, at least in the first instance.[114]

Nonetheless, all this evidence is not dispositive. As discussed above, "void," by its legal definition and by the Convention's terms, suggests that no party need seek a judicial determination for the treaty to be null.[115] That the VCLT ultimately adopted the language of "voidness" over that of the prior draft strengthens the prohibition. The prior draft included a judicial process for invalidation, which third states could initiate.[116] The final text of the Article may reflect a desire to move away from a traditional, imperfect-consent view of invalidation and toward a novel and stricter view of invalidity consonant with the prophylactic function Lauterpacht advocated.[117] Certainly, such views were aired at the Vienna Conference (although so too were many contrary views).[118] Furthermore, it is relevant that while Articles 51 and 52 of the Convention state flatly that coerced treaties "are void," other provisions of the Convention's Section 2, which deals with the grounds for invalidity of treaties, use softer language that ties more obviously to the invalidation procedures of Articles 65 and 66. Articles 48

---

**114.** *See Advisory Opinion on South West Africa*, 1971 I.C.J. at 51-53, ¶¶ 119-20 ("The member States of the United Nations are . . . under obligation to recognize the illegality and invalidity of [a situation qualified as illegal by the Security Council]. . . . The precise determination of the acts permitted or allowed—what measures are available and practicable, which of them should be selected, what scope they should be given and by whom they should be applied—is a matter which lies within the competence of the appropriate political organs of the United Nations acting within their authority under the Charter. Thus it is for the Security Council to determine any further measures consequent upon the decisions already taken by it on the [situation qualified as illegal]."); *cf.* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 159-60 (July 9) (prescribing measures to be taken by U.N. member states in response to a situation qualified as illegal by the ICJ in an advisory opinion).

**115.** *Cf.* Alexander Orakhelashvili, Peremptory Norms in International Law 142-43 (2006) (explaining that under the VCLT's invalidity provisions, any state can invoke the voidness of a treaty conflicting with *jus cogens*); Jerzy Sztucki, Jus Cogens and the Vienna Convention on the Law of Treaties: A Critical Appraisal 137-38 (1974) (examining the concept of *jus cogens* in international law and its treatment in the VCLT).

**116.** *But see* Rozakis, *supra* note 83, at 156-57, 166-68 (rejecting the use of analogies to the domestic void/voidable distinction).

**117.** *See supra* note 89 and accompanying text.

**118.** *See, e.g.*, U.N. Conference on the Law of Treaties, *Draft Articles on the Law of Treaties with Commentaries*, 1st Sess., 54th mtg. at 310, U.N. Doc. A/CONF39/C.1/54 (May 6, 1968) [hereinafter Vienna Conference 1] (statement by Isr. Rep. Rosenne) (agreeing that "the development of normative rules of modern international law was not contingent upon the simultaneous development of its procedural rules"); *id.*, 1st Sess., 68th mtg. at 406-07, U.N. Doc. A/CONF39/C.1/SR.68 (May 14, 1968) (statement of Cuban Rep. Alvarez Tabio) (arguing that nullity under what became VCLT Article 52 "operated *ipso jure* without any formal declaration to that effect").

to 50 provide that a state *may*, but need not, invoke bases for invalidity.[119] In contrast, Articles 51 and 52 (dealing with coercion) apply the distinct and uncompromising language also found in Article 53's prohibition on agreements that violate *jus cogens* norms.[120]

Whatever one makes of these textual arguments, there is an overridingly strong structural argument that the procedural framework of the Convention cannot render the substance of Article 52 nugatory.[121] The conciliation procedure set out in the Annex to the Vienna Convention is explicitly nonbinding, having "no other character than that of recommendations submitted for the consideration of the parties in order to facilitate an amicable settlement of the dispute."[122] If this mechanism were required to establish the voidness of a coerced treaty, then a state that coerced another into a treaty could simply decline to proceed with the process.[123] Since the VCLT does not provide for compulsory ICJ jurisdiction in such cases, that would be the end of the dispute, in effect granting the coercing state a veto over a treaty's voidness.[124] If establishing voidness required an authoritative judgment and the allegedly coercive state could veto the only process for obtaining such a judgment, then Article 52 would be very weak medicine, especially if third-party states have no standing to initiate the process. Such a reading is hard to square with the origins and clear purpose of the prohibition.

An appealing framework for balancing these competing individualist and institutionalist tendencies is as follows. States should in practice be *permitted* to decline to recognize the effects of an allegedly unlawful coerced treaty before there has been an authoritative adjudication of the treaty's unlawfulness. Any *duty* of nonrecognition, however, should functionally attach only once an authoritative adjudication has been obtained following a formal challenge to the treaty's validity. Strictly speaking, because an unlawfully coerced treaty is void ab initio, one might say that there is a duty of nonrecognition from the very start. But states cannot practically be held accountable to this duty where reasonable doubt exists as to whether the treaty is in fact void for coercion. Eliminating such doubt

119. VCLT, *supra* note 3, arts. 48-50, 1155 U.N.T.S. at 344.

120. *Id.* arts. 51-53, 1155 U.N.T.S. at 344.

121. Something like this argument is made by Fox, *supra* note 111, who argues that "viewing the treaty as void only upon [the coerced state's] initiative seems at odds with fundamental principles . . . . How can a peace agreement ratifying . . . an illegal act and coerced through that illegal act nonetheless have legal validity?"

122. VCLT, *supra* note 3, 1155 U.N.T.S. at 353.

123. *Cf.* SINCLAIR, *supra* note 76, at 233 (observing that the possibility of conciliation's failure presents an "obvious gap in the Convention regime").

124. *But see* Dajani, *supra* note 94, at 48-56, 61-63, 72 (arguing that the lack of a compulsory-jurisdiction provision as to VCLT Article 52 is evidence of the nonmandatoriness in practice of the Article's prohibition).

and coordinating an effective enforcement response account for why it is prudentially useful to obtain an authoritative judgment of a treaty's invalidity. The importance of obtaining an authoritative judgment should lead the ICJ not to refuse jurisdiction in an Article 52 dispute on the basis of an excessively strict application of its standing requirements.[125]

* * *

This Part's examination of the text and history of Article 52 reveals that despite certain questions of implementation procedure, the central application of the Article is straightforward and strict. The prohibition on coerced treaties aims to invalidate concessionary treaties imposed by an aggressor on a victim state, and thereby to protect the international community as a whole by eliminating the incentives for aggression. Article 52 expresses and supports modern international law's foundational prohibition on unauthorized state-on-state threat or use of force. The prohibition on coerced treaties is therefore essential to maintaining the integrity of the modern international order.

## II. STATE PRACTICE SINCE THE EMERGENCE OF THE PROHIBITION

State practice reveals that Article 52's clear ban on coercive peace treaties has been overwhelmingly respected. To contextualize the foregoing legal analysis and highlight how exceptional the present situation in Ukraine is, this Part surveys the universe of interstate peace agreements since 1945, the year the U.N. Charter entered into force, and therefore the earliest date when the principle codified in Article 52 began to crystallize.[126] A striking result emerges. Part I described the sort of peace treaty the prohibition on coerced agreements was developed to outlaw: a treaty procured by unlawful force that formalizes concessions, particularly territorial concessions, from a victim to an aggressor. The empirical investigation in this Part reveals that from 1945 until the outbreak of the Russo-Ukrainian conflict, no such peace treaty has been concluded. Territorial concessions resulting from post-1945 interstate conflict have tended to be merely de facto (rather than de jure), favorable to the victim rather than the aggressor, or both. The same pattern holds for nonterritorial concessions. This result underscores the aberrance of Moscow's demands in the Ukraine conflict and illustrates Article 52's implications for potential ends to that conflict.

125. *Cf. infra* Section V.B.2 (discussing the ICJ's review of coerced treaties).

126. *See supra* Section I.A.

### *A. Methodology*

The dataset used in this analysis covers fifty-five observations associated with forty-one discrete conflicts.[127] The earliest observations draw from the peace treaties ending the Second World War, while the most recent date to 2023. Before describing the results of the study in detail, I first lay out the methodology.

Much of the underlying dataset is extracted from the Correlates of War dataset,[128] filtered for conflicts concluded during or after 1945. That dataset also supplied the dates and parties of each conflict. However, that dataset is incomplete in two respects: first, it terminates in 2007, and second, even during the coverage period, it excludes a number of interstate conflicts that produced relevant peace agreements, such as the 1963-64 Sand War between Morocco and Algeria or the 1974-75 Shatt al-Arab conflict between Iraq and Iran.[129] Where the data failed to capture a relevant conflict, I supplemented it with other peace agreements that I uncovered during this research project.[130]

For each interstate conflict in my data,[131] I manually determined whether the conflict produced a peace agreement that fits my definition. This involved a two-

---

**127.** This dataset and my analysis is publicly available at the *Yale Law Journal*'s Dataverse page. *See* Krister Rasmussen, *Lawful Ends to Unlawful Wars Dataset: Coercion and Voidness in Peacemaking Dataset*, DATAVERSE (2025), https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/EBTYRJ [https://perma.cc/TY5E-HWFH].

**128.** *See generally* MEREDITH REID SARKEES & FRANK WHELON WAYMAN, RESORT TO WAR: 1816-2007 (2010) (collecting a comprehensive dataset of wars between 1816 and 2007).

**129.** These omissions may be because the Correlates of War definition of "war" is more demanding than the interstate use of force that is relevant for this investigation.

**130.** This research added twenty-two conflicts to the dataset. Ad hoc correction like this inevitably runs the risk of overlooking additional relevant peace agreements. But that vulnerability would only be aggravated by not supplementing the data with cases left out of the Correlates of War dataset.

**131.** In some cases, sets of states repeatedly engaged in discrete periods of conflict over many years without necessarily concluding formal peace agreements after each discrete period. Following common usage, the Correlates of War dataset gives discrete names to each of these periods of conflict. A good example is the set of conflicts between Israel and Egypt—referred to in the Correlates of War dataset as the "Arab Israeli War," "Sinai War," "Six-Day War," "War of Attrition," and "Yom Kippur War." These conflicts did not each produce unique peace agreements but rather flared up repeatedly before culminating in the Camp David Accords. In such cases, I have associated the ultimate peace agreement with the first rather than the last "discrete" conflict, reasoning that the peace agreement should be understood to end the overall conflict period and not just the most recent flare-up. Similarly, there are examples of conflict that the Correlates of War dataset has subdivided: it divides the Vietnam War, for instance, into multiple "phases." My dataset collates these into a single conflict.

part search. First, I determined whether the conflict corresponded to any treaty available in the United Nations Treaty Series (UNTS).[132] Where no treaty was found in the UNTS repository, I searched secondary sources. Where a peace treaty existed, I included it in the dataset, and where none was found, I excluded the conflict. For each peace agreement that matched my operating definition, I manually assembled categorical data, drawing on a combination of primary[133] and secondary sources.

A few salient variables demand explicit definition: (1) the meaning of "peace treaty"; (2) whether a state, in initiating the conflict, was recognized as having done so in violation of Article 2(4)'s prohibition on the use of force; (3) whether a resulting treaty made concessions — of territory, political or military changes, or otherwise — and, if so, whether these concessions favored the aggressor or the victim; and (4) whether any territorial concessions were de jure or de facto.

First, for purposes of this investigation, I define a "peace treaty" (or "peace agreement") as a formal written agreement between states concluded by duly empowered representatives that purports to bind the states to ending a conflict between them.[134] This must be a treaty that commits *states* to ending an *interstate*

---

These decisions matter only at the level of nomenclature. To associate these treaties with other conflicts would change neither the number of observations in the dataset nor any of my relevant conclusions, since the basic unit of observation in this data is the peace agreement, not the conflict itself.

**132.** *See generally United Nations Treaty Series Online*, UNITED NATIONS, https://treaties.un.org/pages/AdvanceSearch.aspx?tab=UNTS&clang=_en [https://perma.cc/4S4Q-2TYU] (collecting all international agreements registered with the U.N. Secretariat).

**133.** Typically, these were the terms of the treaties themselves and records of relevant U.N. proceedings.

**134.** I have adopted this definition so as to construe "peace treaty" in line with the broad definition given in Article 2 of the Vienna Convention. *See* VCLT, *supra* note 3, art. 2(1)(a), 1155 U.N.T.S at 333 ("'Treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.").

My definition accommodates treaties that simply bind states to a cessation of hostilities without committing them to resolving the underlying issues of the conflict. I count these agreements as peace treaties because the inclusive definition more closely tracks the Vienna Convention's definition of "treaty," which is relevant to this work's construction of VCLT Article 52. A peace treaty, under my definition, need not succeed in ending the conflict de facto, and indeed not all do. Nor does the definition require a formally declared state of war, since VCLT Article 52 is not limited to cases of expressly declared war — it applies to all cases of unlawful use or threat of force.

I note these points because some commentators would not consider such agreements to be peace treaties. *See, e.g.*, Tanisha M. Fazal, *The Demise of Peace Treaties in Interstate War*, 67 INT'L ORG. 695, 708-09 (2013). However, to remove them from the dataset would not change the headline results of this analysis.

*conflict* in which the *same states have been involved*.[135] The resulting dataset contains fifty-five agreements satisfying this definition, although these agreements vary substantially in content.

Second, for each observation, I sought to identify whether the conflict was initiated in violation of the prohibition on the use of force and, if so, which state was the perpetrator. In some cases, this is straightforward. For example, it is clear that Japan unlawfully initiated its war with the United States in 1941. But in many other cases, the determination is more difficult. Although Article 2(4)'s prohibition is broad, many international disputes are never examined by an impartial arbiter, so an authoritative declaration of unlawfulness is unavailable. In other cases—wars of independence, for instance—it is unclear which side violated the prohibition on interstate use of force. For these reasons, I was unable to determine the unlawfulness of every observation, but analyzed each through a two-step process, looking first to judgments by authoritative bodies and second to broader circumstances.

I conservatively identified as unlawful just those uses of force that were deemed unlawful by an authoritative body such as the ICJ, the Security Council, the U.N. General Assembly, or another adjudicative body empowered by all parties to the conflict. This accounts for twenty-two of the fifty-five observations. Where authoritative identification is available, the data reflect which state was the aggressor and which state was the victim.

In twenty-four more cases, the use of force was plausibly unlawful but not authoritatively recognized as such. Absent an authoritative condemnation of unlawfulness, this judgment is my own and is based on two key questions. One: was State *X* the first to use force in the conflict against another state outside of State *X*'s internationally recognized borders? Two: was that force credibly used in defense of State *X*'s internationally recognized territory? If the answers to these questions were respectively "yes" and "no," I concluded that State *X* plausibly used force unlawfully.

135. This definition therefore excludes agreements signed between individual states and nonstate groups, which, though a common kind of peace agreement, are not treaties in the technical sense. It also excludes agreements not concluded explicitly by the governments of the states that were party to the conflict, like the armistice that concluded the Korean War, which was concluded between representatives of the belligerent states' armed forces. It further excludes agreements (like those concluded between the United States and Iraq and Afghanistan) between a state *A* and a successor regime in a state *B*, even where state *A* was in conflict with the predecessor regime in state *B*.

Third, for each peace agreement, I record information on four sorts of concessions: political,[136] military,[137] financial,[138] and territorial.[139] Wherever the prior assessment of lawfulness permits, I have indicated whether these concessions favored the aggressor or the victim, or whether their effects were mixed.

Fourth, I distinguish between de facto and de jure transfers of territory. A de facto transfer of territory means a change in the state exercising effective control over territory. A de jure transfer recognizes the passing of sovereignty over a region from one state to another or assigns sovereignty over a contested region to one state, whether by the terms of the treaty itself or pursuant to the work of a boundary adjudication the treaty authorizes.

Although this empirical study is illustrative in ways that a doctrinal analysis cannot be, it is subject to certain limitations. First, it restricts the dataset to post-WWII peace agreements, as the set of earlier peace agreements is too large to be tractable. Additionally, the pattern observed here may be influenced by the background decline in the number of attempted and successful wars of conquest,[140] which likely was driven by factors in addition to the prohibitions on the use of force and coerced treaties. For these reasons, the empirical study offered here is not intended to be interpreted causally or predictively. It is presented only as a descriptive survey of the landscape of postwar peace treaties. Nonetheless, the study gives an overview of state practice that is, to my knowledge, more complete than any other published examination of the prohibition on coerced treaties.

---

**136.** By "political" concessions, I mean treaty terms that commit a state to specific changes in its domestic affairs, typically through commitments to adopt certain legal reforms, such as in the Moscow Protocol of 1968. *See Document No. 119: The Moscow Protocol, August 26, 1968*, NAT'L SEC. ARCHIVE, https://nsarchive.gwu.edu/sites/default/files/pages/doc_119.pdf [https://perma.cc/V7HA-R25R].

**137.** By "military" concessions, I mean lasting commitments constraining a state's military beyond changes in battlefield conduct. Representative examples include substantial disarmament commitments (such as in the post-World War II treaties), promises to prevent the organizing of terrorist or mercenary elements on domestic territory (such as in the agreement ending the Soviet presence in Afghanistan), and open-ended cooperation with U.N. peacekeepers (such as in the agreements concluding the Balkan Wars).

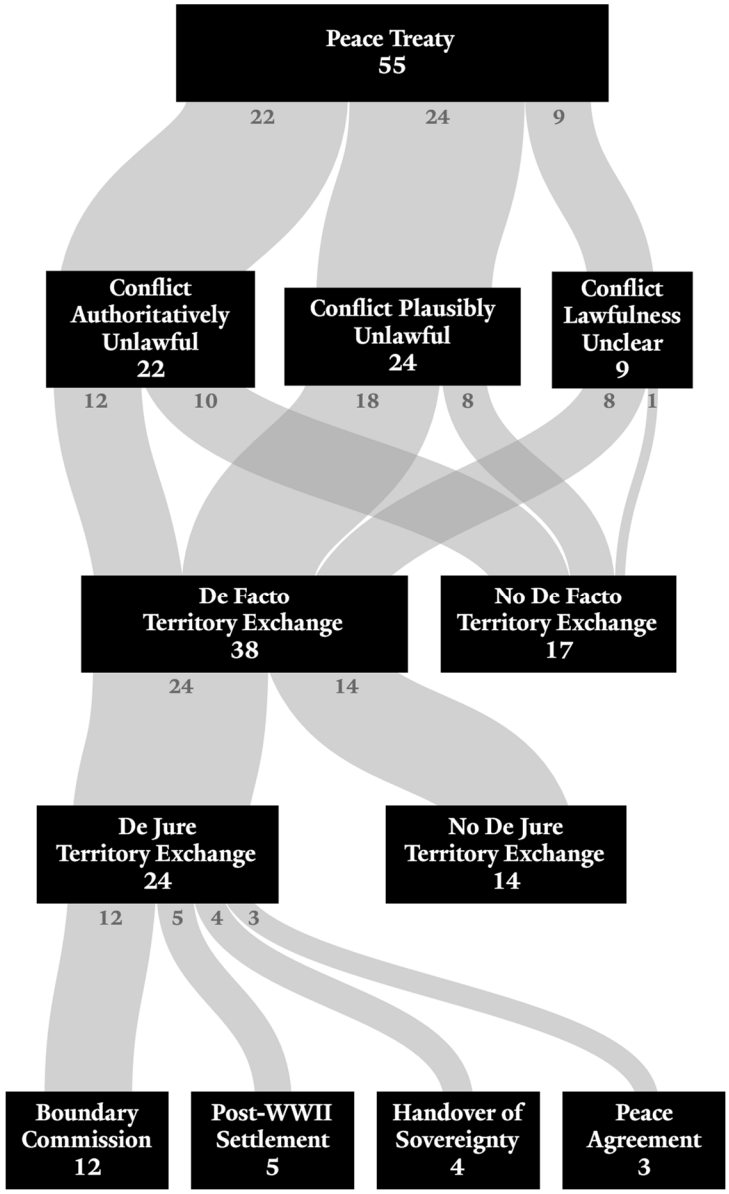
**138.** By "financial" concessions, I mean commitments to compensate another state for damages connected to the conflict, whether in the form of enumerated reparations (as in the treaties concluding the Second World War) or claims commissions.

**139.** I consider a treaty to have made a concession or transfer of territory wherever control of territory changes from the beginning of the conflict to the conclusion of the observed agreement.

**140.** *See* Fazal, *supra* note 134, at 708; Joseph O'Mahoney, *The Ripple Effects of the Illegitimacy of War*, 68 INT'L STUD. Q. art. no. sqae082, at 2-3 (2024).

*B. Territorial Transfer in Modern Peace Agreements*

**FIGURE 1. SANKEY DIAGRAM DEPICTING CLASSIFICATION OF CONFLICTS IN DATASET**



These data show a clear trend in international law away from de jure territory transfers, especially transfers wrought directly by a peace treaty. Although it is common for modern peace agreements to result in transfers of territory, these transfers are often de facto, unlike in the premodern international system. Of the fifty-five peace agreements, thirty-eight were associated with de facto transfers of territory, and twenty-four were associated with de jure territory transfers.[141] All observed de jure transfers were also de facto transfers, but the reverse is not true: in fourteen cases, territory was exchanged de facto but not de jure.

In de jure transfers of territory, the transition of sovereignty normally results from adjudication of a contested boundary, rather than from treaty provisions that transfer the territory in question. Of the twenty-four peace treaties that marked de jure transfers of territory, twelve did so pursuant to the work of a boundary commission or subsequent adjudication that the treaty established. Of the other twelve treaties, five were post-Second World War settlements in which the borders of Axis states were redrawn. And of the seven remaining treaties, four involved the handover of sovereignty to a newly independent state. Thus, *in just three* of the twenty-four de jure territory-transfer cases, territory was exchanged between existing states pursuant to a peace agreement, and none of these cases teaches straightforward lessons.[142]

---

**141.** Seventeen agreements involved no change in territorial control or simply restored the preconflict borders. *See supra* Figure 1.

**142.** The first was the 1958 Treaty of Angra de Cintra between Franco's Spain and the newly independent Morocco, which ceded a parcel of territory surrounding the Spanish enclave of Ifni to Morocco. *See* Carlson Anyangwe, Contemporary Wars and Conflicts over Land and Water in Africa 214 (2022). Morocco obtained this disputed territory under a claim of right—it maintained that this territory should have been handed over once the state had achieved its postcolonial independence, as the 1956 joint Spanish-Moroccan declaration on Morocco's independence recognized both Morocco's independence and its "territorial unity." *See* Jamie Trinidad, *An Evaluation of Morocco's Claims to Spain's Remaining Territories in Africa*, 61 Int'l & Compar. L.Q. 961, 965 (2012).

The second was the New York Agreement of 1962, concluded between Indonesia and the Netherlands with American mediation. *See* Agreement (with Annex) Concerning West New Guinea (West Irian), Indon.-Neth., Sep. 21, 1962, 437 U.N.T.S. 273. Although the Dutch claimed the Indonesians had used force unlawfully, the Indonesians' claim—similar to the Spain-Morocco case—was that the Dutch had unlawfully remained in occupation of territory that should have been handed over as part of the decolonization process. The U.N. General Assembly noted the agreement without any hint of condemnation, which tells against the Dutch claim of unlawful force. *See* G.A. Res. 1752 (XVII), at 70 (Sep. 21, 1962).

The third was Iraq's 1990 concession to Iranian territorial claims at stake in the Iran-Iraq War. Iraq acquiesced unexpectedly to ensure that it could focus on its war with Kuwait. *See* Philip Shenon, *Standoff in the Gulf; Peace with Iran Stuns Many Iraqis*, N.Y. Times (Dec. 16, 1990), https://www.nytimes.com/1990/12/16/world/standoff-in-the-gulf-peace-with-iran-stuns-many-iraqis.html [https://perma.cc/3TXQ-FR5B]. Iran and Iraq had ceased hostilities

While premodern peace agreements often allocated territorial rights, it is now common for peace agreements to skirt the question of sovereignty over a disputed region entirely. Instead, they simply commit the parties to a lasting cessation of hostilities under which no side will violate the ceasefire line. The conflict between India and Pakistan over the disputed region of Kashmir is a good example: periodic episodes of conflict in this region have produced two formal agreements[143] and one quasi agreement,[144] but never a clear resolution of the underlying issue of sovereignty. Instead, a ceasefire line delimited under U.N. supervision in 1949[145] remains the de facto boundary between the two countries, even as both states maintain their de jure claims to the region.[146]

So, the paradigmatic treaty to which Article 52 responded—a coerced peace treaty by which a victim state cedes territory to an aggressor—is no longer the sort of case the world sees with any regularity.[147] Today, territorial transfers are

two years earlier by complying with the terms of a U.N.-mandated ceasefire. *See* S.C. Res. 598, ¶ 1 (July 20, 1987).

143. Namely, the Karachi Agreement of 1949 and the Simla Agreement of 1972. Agreement Between Military Representatives of India and Pakistan Regarding the Establishment of a Cease-Fire Line in the State of Jammu and Kashmir, India-Pak., July 29, 1949, 81 U.N.T.S. 273 [hereinafter Karachi Agreement]; Agreement on Bilateral Relations Between the Government of India and the Government of Pakistan, India-Pak., July 2, 1972, 11 I.L.M. 954 [hereinafter Simla Agreement].

144. Namely, the Washington Accord of 1999. *See* Joint Statement with Prime Minister Nawaz Sharif of Pakistan, 35 WEEKLY COMP. PRES. DOC. 1278 (July 4, 1999); Strobe Talbott, *The Day a Nuclear Conflict Was Averted*, YALEGLOBAL ONLINE (Sep. 13, 2004), https://archive-yaleglobal.yale.edu/content/day-nuclear-conflict-was-averted [https://perma.cc/WT8S-2MDC].

145. *See* Karachi Agreement, *supra* note 143, 81 U.N.T.S. at 276.

146. *See* Ctr. for Preventive Action, *Conflict Between India and Pakistan*, COUNCIL ON FOREIGN RELS. (May 12, 2025), https://www.cfr.org/global-conflict-tracker/conflict/conflict-between-india-and-pakistan [https://perma.cc/3U6K-29TU].

147. Indeed, of all the cases observed, there are only three in which it is even arguable that territory was transferred de jure from a victim state to an aggressor. In the first of those cases, there is no indication that any authoritative international body objected to the conflict or to the territorial transfer, and in the latter two of those cases a U.N. body presented with the issue declined to contest the lawfulness of the underlying use of force.

The first two examples were the Ifni dispute settled by the Treaty of Angra de Cintra and the West Irian dispute settled by the New York Agreement. *See supra* note 142. The third example was the border mediation between Eritrea and Ethiopia that proceeded from the Algiers Agreement of 2000. The Agreement established a neutral U.N. commission to adjudicate the issues at stake in the war of 1998-2000. *See* Agreement Between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia, Eri.-Eth., art. 4, Dec. 12, 2000, 40 I.L.M. 259. The commission awarded both states portions of the disputed territories, even as it ultimately determined that Eritrea unlawfully attacked Ethiopia in 1998. *See Eritrea Broke Law in Border War*, BBC NEWS (Dec. 21, 2005), https://news.bbc.co.uk/

mostly de facto, favor the victim, or both. In contrast, before the emergence of the prohibition on coerced treaties, peace agreements that transferred territory de jure from victims to victors were ubiquitous.[148] The difference is night and day.

### *C. Other Concessions in Modern Peace Agreements*

Modern peace agreements rarely include nonterritorial concessions. Of the formal interstate agreements identified, most do not include extensive commitments beyond the cessation of hostilities. War reparations, once extremely common, entirely disappeared after the treaties concluding the Second World War.[149] In their place, we observe the emergence of claims commissions, which aim to adjudicate neutrally the financial rights and duties of each side of a conflict.[150] Similarly, while premodern peace treaties commonly included nonterritorial concessions like changes in military operations[151] or internal

2/hi/africa/4548754.stm [https://perma.cc/J5EC-MUWR]. The Algiers Agreement differs from the territorial-transfer examples discussed in note 142, *supra*, since any territorial transfer here was pursuant to the decision of a neutral commission rather than the direct stipulation of the peace agreement.

**148.** *See* HATHAWAY & SHAPIRO, *supra* note 5, at 11.

**149.** No agreement in my dataset arising out of a post-Second World War conflict includes a provision fixing a sum payable for war reparations.

**150.** Representative agreements include the Camp David Accords, by which Israel and Egypt agreed "to establish a claims commission for the mutual settlement of all financial claims," Treaty of Peace Between the Arab Republic of Egypt and the State of Israel, Egypt-Isr., art. VIII, Mar. 26, 1979, 1136 U.N.T.S. 115, 118; and the Israel-Jordan peace treaty, which similarly established a claims commission for settling financial claims arising out of the states' prior conflict, Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, Isr.-Jordan, art. 24, Oct. 26, 1994, 2042 U.N.T.S. 351, 402.

**151.** By military concessions, I mean lasting commitments beyond changes in battlefield conduct. Representative examples include:

- substantial disarmament commitments, like the Treaty of Peace with Roumania, Feb. 10, 1947, T.I.A.S. No. 1649, 42 U.N.T.S. 3, 42, which restricted the size of the defeated party's military;
- promises to prevent the organizing of terrorist or mercenary elements on domestic territory, like the Agreements on the Settlement of the Situation Relating to Afghanistan, U.N. Doc. S/19835, annex I, at 4-5 (Apr. 26, 1988), which stated a commitment between Afghanistan and Pakistan, guaranteed by the United States and the U.S.S.R., to prevent the organization of armed groups on each other's territory; and
- open-ended cooperation with peacekeeping initiatives, like General Framework Agreement for Peace in Bosnia and Herzegovina art. VI, U.N. Doc. S/1995/999, annex, at 17 (Nov. 30, 1995), which provided for the deployment of an international implementation force on the territory of the contracting states, with those states' cooperation.

politics,[152] such terms are uncommon after 1945. Where they appear, they overwhelmingly benefit the victim of the unlawful conflict, not the aggressor.[153] Such a shift may reflect that Article 52 is less likely to apply to a treaty with fewer commitments: the fewer conditions to which a state is bound, the less the state has to object to as being imposed coercively.[154]

The Russo-Ukrainian conflict threatens to break this trend. Russia not only aims to secure formal concessions of territory and compliance from Ukraine in any peace deal, but arguably already did so in the Minsk Agreements of 2014 and 2015, which figure in the dataset. These agreements, negotiated with Franco-German mediation and ratified by the Security Council, committed Russia and its paramilitary allies in the Donbas to a ceasefire in exchange for commitments from Ukraine to demilitarize its eastern regions and change its constitution to

---

**152.** By political concessions, I mean specific changes in the domestic affairs of a state party, typically through commitments to adopt various domestic policies. These include provisions in the Moscow Protocol or the Minsk Agreements, which committed signatory states to implementing certain laws or undertaking certain constitutional reforms. *See infra* note 153.

**153.** Of the twenty-four peace treaties that included military or governmental commitments, I identified only four where the nonterritorial concessions in a peace agreement arguably favored the apparent perpetrator.

The first such case was the Moscow Protocol, forced on the Czechoslovak government following the Soviet invasion of 1968. Although the Protocol was condemned by the international community, little could be done institutionally because of the Soviet veto on the Security Council. *See* Communiqué on Soviet-Czechoslovak Talks, Aug. 27, 1968, 7 I.L.M. 1309, 1309-11; Communiqué on Soviet-Czechoslovak Talks, Oct. 4, 1968, 7 I.L.M. 1329, 1329-30; Czechoslovakia and Soviet Union Sign Treaty on Soviet Troops, Oct. 16, 1968, 7 I.L.M. 1331, 1331-33; Richard M. Goodman, *The Invasion of Czechoslovakia: 1968*, 4 INT'L LAW. 42, 43-44 (1969).

The second such case was the Luanda Agreement of 2002, whose authorization of a temporary peacekeeping role for Ugandan troops in a region of the Democratic Republic of Congo was upheld as valid and consensual by the ICJ despite the ICJ concluding that Uganda had used force and intruded on DRC territory unlawfully during the preceding conflict. *See* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. 168, 212-13 (Dec. 19).

The third and fourth such cases were the Minsk Protocol (2014) and Minsk II Agreement (2015) concluded between Ukraine and Russia. *See Protocol on the Results of Consultations of the Trilateral Contact Group, Signed in Minsk, 5 September 2014*, ORG. FOR SEC. & COOP. EUR. (Sep. 5, 2014), https://www.osce.org/home/123257 [https://perma.cc/M2UP-MNC9]; *Package of Measures for the Implementation of the Minsk Agreements*, ORG. FOR SEC. & COOP. EUR. (Feb. 12, 2015), https://www.osce.org/cio/140156 [https://perma.cc/HZ82-D6V6]; *see also* Permanent Rep. of Ukr. to the U.N., Letter dated Feb. 24, 2015 from the Permanent Rep. of Ukraine to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2015/135, annex I (Feb. 25, 2015) (providing the English-language submission of the Minsk II Agreement submitted to the Security Council).

**154.** The limiting case would be a "naked truce" agreement—a treaty committing the parties only to the cessation of hostilities. *See infra* Section IV.B.3.

give greater autonomy to the Russian-speaking minority there.[155] Despite multiple rounds of negotiations, both sides violated the Minsk framework repeatedly. The Agreements eventually collapsed, their concessions proving both too much for Ukraine to tolerate and too little to forestall Russian aggression for good.[156] All the same, because they made concessions to Russia as a result of an armed conflict that Russia initiated and abetted, these agreements can be seen as concessional peace treaties of the kind that are very rare post-1945.[157]

### *D. Patterns and Takeaways*

The top-line result of this empirical study is that in the postwar era, peace treaties practically never make de jure concessions from the victim to the aggressor. These observations go a long way toward accounting for another result: no peace agreement since 1945 has yet been invalidated under Article 52 by an international body, nor has any state party to an agreement in the dataset sought to have the agreement officially invalidated.

This is not to say that the prohibition on coerced treaties is silent in practice. It has figured repeatedly in national and international legal considerations. Domestic courts in Europe have cited Article 52 as invalidating coerced treaties.[158] During the period of liberalization under Gorbachev, the U.S.S.R. repudiated as unlawful the Moscow Protocol that it had forced upon the Czechoslovak Socialist Republic in 1968.[159] The Department of Justice advised President Reagan's Attorney General that the 1981 Iran hostage agreements were probably void for coercion under Article 52. President Reagan chose to comply with the agreements anyway—a useful example of how a coerced state may nonetheless opt to abide

---

**155.** *See* Kristian Åtland, *War, Diplomacy, and More War: Why Did the Minsk Agreements Fail?*, INT'L POL. 10-12 (Nov. 15, 2024), https://link.springer.com/article/10.1057/s41311-024-00637-x [https://perma.cc/JBF5-NZRA].

**156.** *Id.* at 12-13.

**157.** Their validity would therefore be in question, were it not for their endorsement by the Security Council. *See supra* Section II.B.

**158.** *See, e.g.*, Amato Narodni Podnik v. Julius Keilwerth Musikinstrumentenfabrik, 24 I.L.R. 435, 437 (Dist. Ct. of the Hague 1956). For a discussion of other, similar Dutch cases, see Benedetto Conforti & Angelo Labella, *Invalidity and Termination of Treaties: The Role of National Courts*, 1 EUR. J. INT'L L. 44, 51 (1990). The Supreme Court of Bavaria, in dicta, raised the subject of the invalidity of the 1938 Munich Agreement on grounds of coercion in *Land Registry of Waldsassen v. Towns of Eger (Cheb) & Waldsassen*, 44 I.L.R. 50, 55 (Sup. Ct. of Bavaria 1965). The court did not decide the matter, but the invalidity of the treaty was later acknowledged by the German state.

**159.** *See* Forlati, *supra* note 50, at 324.

by a void treaty's terms if it is in the victim's interests.[160] More recently, Article 52 has been invoked before the ICJ by the League of Arab States (in contesting the Oslo Accords' provision for Israeli presence in the West Bank)[161] and by Nicaragua (in contesting the validity of a treaty with Colombia).[162] Neither contention has been successful, although Judge Bennouna, dissenting in the Nicaraguan case, argued that the ICJ should have taken up the issue more squarely.[163]

Nonetheless, the world has never seen a case in which a victim or third-party state invoked the prohibition against coerced treaties to call a peace treaty into question soon after its conclusion. In determining how to respond to the conqueror's peace Russia seeks in Ukraine, international law faces a question of first impression. That means that in charting a course, international lawyers must turn to questions of what should be without past guidance.

## III. ARTICLE 52'S CENTRAL NORMATIVE TENSION

Article 52's prohibition on coerced treaties enforces modern international law's prohibition on the use and threat of force, but also raises a key theoretical tension. Since the framework of modern international law was constructed expressly to prevent interstate conflict, there is something uncomfortable about the idea that that framework could stand in the way of peace. It is particularly troubling to think that international law could make it more difficult, or even impossible, to secure a lawful peace in an unlawful war. As I argue, however, the problems posed by this normative tension are not as severe as they appear, and the reasons for adhering strictly to the prohibition on coerced treaties are strong in all but the most extreme cases.

---

160. *See* Review of Domestic and International Legal Implications of Implementing the Agreement with Iran, 4A Op. O.L.C. 314 (Jan. 29, 1981); Whether the Agreement with Iran Can Be Treated as Void in Part, 4A Op. O.L.C. 330 (Feb. 5, 1981); *see also* Hans Smit, Professor, Columbia L. Sch., Conference on the Settlement with Iran Held at the University of Miami School of Law (Mar. 6-7, 1981), *in Validity of the Settlement Under International Law*, 13 U. MIA. INTER-AM. L. REV. 46, 48-49 (1981) (expressing "concern[] about the possible precedential effects of the United States, without any condition or qualification, honoring these [void] Agreements").

161. *See* Written Comments of the League of Arab States at 9-10, Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, I.C.J. No. 186 (Oct. 25, 2023), https://www.icj-cij.org/sites/default/files/case-related/186/186-20231025-wri-08-00-en.pdf [https://perma.cc/5VLP-9MR2].

162. *See* Memorial of the Government of Nicaragua, Territorial and Maritime Dispute (Nicar. v. Colom.), ¶ 2.123 (Apr. 28, 2003), https://www.icj-cij.org/sites/default/files/case-related/124/13870.pdf [https://perma.cc/XP68-KS8L].

163. Territorial and Maritime Dispute (Nicar. v. Colom.), Judgment, 2007 I.C.J. 923, 924-25 (Dec. 13) (Bennouna, J., dissenting).

### *A. Framing the Objection*

The bedrock principle of the modern international legal order is that the interstate use of force is prohibited except under tightly circumscribed exceptions.[164] The purpose of that prohibition was to secure international peace, because the world had learned time and again that the costs of tolerating interstate violence were too great. Article 52 extends this prohibition into the law of international agreements, deterring unlawful use of force by imposing legal barriers to coercive agreements.[165] Assuming the barriers hold, they reduce the incentives of going to war, since a potential aggressor has less to gain if it cannot secure international recognition of conquests in a coerced peace treaty.[166] But if a peace treaty is void even when concluded with the apparent consent of all parties, that might make peace more difficult to attain in situations where states engage in unlawful conflict despite the prohibition on the use of force. One can imagine that an aggressor state, knowing that any gains it secures in a peace treaty could fall under the shadow of international nonrecognition, would be incentivized to extract more substantial and harmful concessions from its victim or even decline to negotiate peace at all.[167] The prohibition may hinder rather than aid the cause of peace in such a case, even if the prohibition's overall effects are positive. There is thus an apparent tension between the general case (in which the norm incentivizes and secures compliance) and the specific case (in which the norm, having failed to maintain peace, also hinders peacemaking).[168]

Faced with what seems like a tension between international rule-of-law norms and the prospect of an immediate end to bloodshed, one might reasonably object: if international law, as expressed in Article 52, stands in the way of peace, shouldn't we give up on international law and not on peace? There are two ways to frame this objection. First, there is a broad version, which responds

---

**164.** *See supra* note 49 and accompanying text.

**165.** *Cf.* H. Lauterpacht, *Report by Mr. H. Lauterpacht, Special Rapporteur*, [1953] 2 Y.B. Int'l L. Comm'n 149, U.N. Doc. A/CN.4/63 (explaining that there is benefit in creating a general principle of law for nations in and of itself).

**166.** *Cf.* Hathaway & Shapiro, *supra* note 5, at 315-19, 341-42 (arguing that international nonrecognition of conquered territory reduced incentives to engage in wars of conquest and thus reduced their incidence).

**167.** This is essentially the concern raised by premodern theorists like Burlamaqui: that, if coerced peace agreements could not bind, both sides would have no hope of a "solid peace" other than to seek the "total and entire destruction of [the] enemy." *See* Burlamaqui, *supra* note 8, at 527.

**168.** The prohibition thus has costs and benefits which, though positive in the aggregate, might be felt unequally. One scholar suggested that weaker states lose out more than middle and great powers. *See* Daniel Schwartz, *The Justice of Peace Treaties*, 20 J. Pol. Phil. 273, 281-83 (2012).

to the tension by questioning the content of the rule prohibiting coerced treaties. The broad objection contends that, since international law is supposed to secure international peace, any reading of Article 52 that stands in the way of peace must be mistaken. Second, there is a narrow version, which questions the rule's application. This version acknowledges the rule's validity in general, but suggests that it is worth making an exception when the importance of peace outweighs the importance of law. Both versions deserve a response.

### *B. Answering the Objection*

The broad and narrow objections to Article 52's force fail to account for the provision's role in preventing conflicts from breaking out. By placing what a potential aggressor state might seek out of the bounds of what it could legally obtain through a peace treaty, Article 52 facilitates peace. Furthermore, even where the deterrent effect has failed — as it has in the case of Russia's war on Ukraine — history teaches that conceding land to a would-be extorter is no way to stop an aggressor state's march towards power.

The broad objection, which contends that the prohibition on coercive treaties should always bend to more immediate peace, does not recognize Article 52's peace-forcing function. In principle, nothing stops international law from restricting the range of legitimate peace-treaty options. Across subject matters, it is normal and acceptable for a rule of law to exclude some options that might be preferable in a given case, even as the rule promotes better outcomes across the whole range of cases. Historical experiences at Munich and elsewhere suggest that responding to coercion with concessions does not reliably prevent more coercion.[169] Those experiences informed the international community's formulation of anticoercion norms following the Second World War. The expectation was that if anticoercion norms (including Article 52) took the option of appeasement off the table altogether, states would be less likely to use force coercively. The evidence of state practice since 1945 suggests this was a sensible bet.[170] Article 52's barriers to peace treaties may directly promote peace *before* conflicts break out, powerfully responding to the broad objection to the provision.

The broad version of the objection would be more compelling if the prohibition on coerced treaties made it impossible to achieve peace lawfully, rather than just narrowing the range of lawful possibilities for peace treaties. But this is not the case. An aggressor remains under a continuing obligation to cease its aggression and make amends. Violating this obligation entitles the international

**169.** *See supra* notes 27-30 and accompanying text.

**170.** As catalogued previously, coercion and conquest have been uncommon since 1945. *See supra* Sections II.B-D.

community to respond, including through sanctions and even military intervention. Whether a narrowed range of lawful options makes peace more difficult to attain in practical terms is a valid question, but it is separate from what international law requires.

The thrust of the narrow objection to Article 52 is that, in some circumstances, peace is so important that international law should bend to its needs. This argument turns on whether strict adherence to Article 52 does in fact maximally promote peace, or whether it would be more beneficial to make exceptions. I argue that we have good reasons to presume that the long-run benefits outweigh the costs.

To make an exception to international law in Ukraine would undermine nations' interests in lasting ways for at least three reasons. First, making an exception to conclude a concessionary peace agreement is liable to be ineffective or even counterproductive. It is not hard to see that conceding to extortion might simply encourage the extorter to come back for more. For instance, even if Russia and Ukraine concluded a concessional peace agreement, there is no guarantee that these concessions would bring a lasting peace. It might instead perpetuate the underlying rivalry, only with Ukraine weakened and Russia emboldened. We need not speculate about how this might play out. The approach was tried in the Minsk Agreements of 2014 and 2015, which not only failed to resolve the conflict but also left Russia with greater influence in the contested regions and time to prepare a full-scale attack.[171] By contrast, ceasefire agreements that do not resolve the territorial dispute formally—such as those that have "frozen" the conflict between India and Pakistan over Kashmir—at least have the virtue of not empowering an aggressor. Even if it is fair to object that a Kashmir-style resolution leaves a conflict formally unresolved, the history of appeasement from Munich to the present shows that a formal resolution hardly guarantees a substantial peace.[172] Nothing indicates that appeasement is a more effective strategy today than it was at the time of Munich. Quite the opposite: the abject failure of the Minsk Agreements suggests that a package of concessions will not secure a lasting peace. The prohibition on coerced treaties emerged in response to precisely the sort of situation the Russian invasion of Ukraine presents. An exception should not be made in this core application case.

Second, allowing rules to be broken in one case encourages more violations in the future. The purpose of international law is to resolve coordination problems among nations with competing and potentially contradictory interests. Nations disagree about how best to promote their own interests and the general global interest. And, importantly, they tend to disagree in ways that

**171.** *See* Åtland, *supra* note 155, at 17.

**172.** *See id.*; *supra* notes 27-31 and accompanying text.

systematically prioritize their positions over others. That disagreement often produces conflict, which does not serve the collective interest. Rules play their coordinating role more effectively when they are perceived to be strictly binding, and less effectively if a rulebreaker can force their way into an exception.[173] Furthermore, the deterrent effect of rules backed by penalties is greater under conditions of uncertainty. If no state has successfully violated the prohibition on aggressive conquest for many years, it becomes unclear to each state how difficult it would be to violate the prohibition and get away with it. Assuming states are risk averse, uncertainty reinforces the deterrent effect of the rule and its penalties. Russia, if it succeeds in violating the rule, would prove that success is possible and thereby undermine the rule's deterrence for all states.

Third, participation in a rule-following culture shapes nations' perceptions of what their interests are and how those interests may be served.[174] As Andrew Hurrell puts it, "[S]tates follow specific rules, even when inconvenient, because they have a longer-term interest in the maintenance of law-impregnated international community."[175] Conversely, making exceptions undoes that shaping of understandings and encourages nations to return to a narrower conception of interests in which each nation is more likely to understand its interests as rivalrous with those of its peers. And that, again, encourages rule breaking.

## IV. THE CASE OF UKRAINE

Russia has waged a years-long war of aggression on Ukraine with the aim of coercing concessions of land and obedience. The war is precisely the sort of case for which Article 52 was designed. This Part applies the previous Parts' conclusions to the conflict, examining whether prominent proposals for a negotiated peace agreement in the Russo-Ukrainian War could be valid under Article 52. It concludes that proposals involving concessions from Ukraine to Russia in exchange for peace would be invalid as coerced treaties, showing what Article 52 means in practice.

---

**173.** *Cf.* Oona Hathaway & Scott J. Shapiro, *What Realists Don't Understand About Law*, FOREIGN POL'Y (Oct. 9, 2017, 1:05 PM ET), https://foreignpolicy.com/2017/10/09/what-realists-dont-understand-about-law [https://perma.cc/5GWF-SD6L] ("At its most powerful, law changes the incentives [of nations] themselves.").

**174.** *See* Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2633-34 (1997).

**175.** Andrew Hurrell, *International Society and the Study of Regimes: A Reflective Approach*, *in* REGIME THEORY AND INTERNATIONAL RELATIONS 49, 59 (Volker Rittberger ed., 1993).

### *A. Russia's War on Ukraine*

On February 24, 2022, Russia invaded Ukraine, seeking to seize its capital, decapitate the state, and install a Russian client regime.[176] This invasion intensified a hybrid war Russia has waged against Ukraine since 2014, when Russian troops seized Crimea and Russian-backed separatists in the eastern regions of Ukraine attempted to secede.[177] The invasion diminished the hopes that the concessions made in the Minsk Agreements could avert broader conflict. Despite remarkable success in halting the advance of a more powerful adversary, Ukraine has been unable to dislodge Russian forces from its territory.[178] Meanwhile, the war's casualties already number over a million soldiers and tens of thousands of civilians.[179]

The invasion has been one of the greatest challenges that international law has faced since 1945. But it also represents just the sort of situation the United Nations was established to handle. The machinery of postwar international law has sprung into action. The U.N. General Assembly condemned the Russian invasion as unlawful and demanded Russia's withdrawal.[180] Ukraine's resistance to the Russian invasion has been recognized widely as lawful self-defense.[181] Much attention has been devoted to how international law can respond to the war. This Note examines how international law affects possibilities for peace, and this Part directly connects international law to real-world peace proposals in the Russo-Ukrainian War.

### *B. Assessing Proposals for a Negotiated Peace*

Almost as soon as the war began, calls were heard for a negotiated settlement to the conflict — one under which Russia would agree to cease its assault, perhaps in exchange for concessions from Ukraine. At the time of publication, such a settlement appears the most likely possibility by which the war might end, even as negotiations have repeatedly foundered on the very question of what might

---

**176.** *See* Ctr. for Preventive Action, *War in Ukraine*, Council on Foreign Rels. (Sep. 15, 2025), https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine [https://perma.cc/M3VZ-GEDL].

**177.** *Id.*

**178.** *Id.*

**179.** Cooper, *supra* note 1; Krzysztof Janowski, *Civilian Deaths in Ukraine War Top 10,000, UN Says*, U.N. OHCHR (Nov. 21, 2023), https://ukraine.un.org/en/253322-civilian-deaths-ukraine-war-top-10000-un-says [https://perma.cc/TX2N-298H].

**180.** G.A. Res. ES/11-1, ¶ 3 (Mar. 2, 2022).

**181.** *See* Kevin Jon Heller & Lena Trabucco, *The Legality of Weapons Transfers to Ukraine Under International Law*, 13 J. Int'l Humanitarian Legal Stud. 251, 254-55 (2022).

be conceded. But only some proposals are lawful. Russia has consistently made expansive demands, chiefly including the formal cession of Ukrainian territory, legally binding neutrality commitments, and internal reforms favoring Russian interests within Ukraine.[182] Aside from the Russians' own demands, the most prominent calls for Ukrainian concessions have come from the Trump Administration, which has at times appeared to favor concessions from Ukraine—including concessions of territory—to end the war.[183] And suggestions that Ukraine could make sacrifices to achieve a negotiated peace with Russia were quietly entertained prior to the second Trump Administration, even within the Ukrainian government[184] and Ukraine's most steadfast base of international support.[185] And voices from outside the West, particularly from the Global South, have consistently advocated for a compromise solution.[186]

Considerations of international law have been conspicuously absent from such discussions, especially given the international community's resolute insistence on the illegality of Russia's invasion.[187] This is an unfortunate lacuna for two reasons. First, to the extent that international law affects states' strategic behavior, it should affect the considerations that decision-makers have in mind when planning for the conflict's end. Second, because this war is an attack not only on Ukraine but also on the international-law frameworks that serve global peace, it is vital that the war end lawfully.

---

**182.** *Compare* Kateryna Shkarlat, *Renunciation of Territories and Neutrality: Media Reveals Full Text of Russia's Memorandum*, RBC UKR. (June 2, 2025), https://newsukraine.rbc.ua/news/renunciation-of-territories-and-neutrality-1748889923.html [https://perma.cc/JFE7-4HPM] (listing demands made during summer 2025 Istanbul talks), *with* Anton Troianovski, Adam Entous & Michael Schwirtz, *Ukraine-Russia Peace Is as Elusive as Ever. But in 2022 They Were Talking*, N.Y. TIMES (June 15, 2024), https://www.nytimes.com/interactive/2024/06/15/world/europe/ukraine-russia-ceasefire-deal.html [https://perma.cc/AD87-URXY] (listing similar demands made during February-April 2022 talks).

**183.** *See* Steven Erlanger, *Hegseth Says Return to Ukraine's Pre-2014 Borders Is "Unrealistic,"* N.Y. TIMES (Feb. 12, 2025), https://www.nytimes.com/2025/02/12/world/europe/ukraine-war-hegseth-nato.html [https://perma.cc/73R3-ZFRG]; Trevor Hunnicutt & Steve Holland, *Trump Says Ukraine, Russia Will Have to Swap Some Land for Peace*, REUTERS (Aug. 11, 2025), https://www.reuters.com/world/europe/trump-says-ukraine-russia-will-have-swap-some-land-peace-2025-08-11 [https://perma.cc/E66C-WVAA].

**184.** Troianovski et al., *supra* note 182.

**185.** *See, e.g.*, Courtney Kube, Carol E. Lee & Kristen Welker, *U.S., European Officials Broach Topic of Peace Negotiations with Ukraine, Sources Say*, NBC NEWS (Nov. 3, 2023, 7:47 PM EDT), https://www.nbcnews.com/news/world/us-european-officials-broach-topic-peace-negotiations-ukraine-sources-rcna123628 [https://perma.cc/8JV5-HN7K].

**186.** *See* Richard Gowan, *The Global South and the Ukraine War at the UN*, INT'L CRISIS GRP. (Mar. 9, 2023), https://www.crisisgroup.org/global-ukraine/global-south-and-ukraine-war-un [https://perma.cc/E83Q-4334].

**187.** *See* G.A. Res. ES/11-1, ¶ 3 (Mar. 2, 2022).

This Section does not attempt to canvass all the specific peace agreements proposed over the course of the war, none of which have succeeded at the time of writing. Instead, it distills stylized peace arrangements that represent the legally salient characteristics of the most common stances that Ukraine, Russia, the United States, and European governments have advocated. Four families of proposal appear: (1) deals that would make formal concessions of land from Ukraine to Russia in exchange for peace; (2) deals that would commit Ukraine to pro-Russian changes in its internal politics or international posture; (3) deals that would leave some Ukrainian territory practically, but not formally, under Russian control, pending a later resolution; and (4) deals under which Russia would withdraw and remedy its international-law violations.

### *1. "Land for Peace"*

At one extreme, the war might end in a conqueror's peace, like those common in premodern conflicts. Under the terms of this hypothetical deal, Russia would promise to end hostilities and withdraw to the new border in exchange for Ukraine ceding some portion of its territory.[188] Ukraine would receive nothing other than an end to the bloodshed.

This is presumably the solution that the Russian government prefers. Russia has consistently demanded concessions of territory in exchange for peace and has already purported to annex several Ukrainian regions that it only partly controls.[189] But a number of American voices, too — including President Trump and Vice President Vance — have at times suggested that a land-for-peace deal will be required to end the war.[190]

---

**188.** *See* Laris Karklis & Erin Cunningham, *Three Maps That Explain Russia's Annexations and Losses in Ukraine*, WASH. POST (Sep. 30, 2022), https://www.washingtonpost.com/world/2022/09/30/map-ukraine-regions-annexation-russia [https://perma.cc/A282-8VCH].

**189.** *See* Dmitry Antonov, *Russia Says Its Demands Are Unchanged: Full Ukrainian Withdrawal from Regions that Moscow Claims*, REUTERS (Aug. 13, 2025, 7:19 AM EDT), https://www.reuters.com/world/europe/russia-says-its-demands-are-unchanged-full-ukrainian-withdrawal-regions-that-2025-08-13 [https://perma.cc/XYH7-F9RN].

**190.** Steven Erlanger, *After Meeting Putin, Trump Reverts to Land Swaps for Peace in Ukraine*, N.Y. TIMES (Aug. 16, 2025), https://www.nytimes.com/2025/08/16/world/europe/trump-putin-ukraine-land-swap.html [https://perma.cc/EHP8-YXBJ]; Isaac Arnsdorf, Josh Dawsey & Michael Birnbaum, *Inside Donald Trump's Secret, Long-Shot Plan to End the War in Ukraine*, WASH. POST (Apr. 7, 2024), https://www.washingtonpost.com/politics/2024/04/05/trump-ukraine-secret-plan [https://perma.cc/MH99-J6A3]; Sam Levine, *Republican Senator Says Ukraine May Have to Cede Land to Russia to End War*, GUARDIAN (Dec. 11, 2023, 6:00 AM EST), https://www.theguardian.com/us-news/2023/dec/11/republican-senator-jd-vance-ukraine-cede-land-russia-war-invasion [https://perma.cc/LV6U-WMMQ].

And yet a land-for-peace agreement is contrary to international law. It should be clear from this Note's explanations in Part I that land-for-peace treaties—whether concluded to end a conflict, as in Manchuria, or to avert one, as at Munich—are precisely the agreements that Article 52 was developed to abolish. Any agreement in which Ukraine traded land for an end to further violence would be invalid under Article 52. A land-for-peace agreement would be one procured by both the *use* of force (obviously, Ukraine would never make such concessions had the war not been waged and would, by stipulation, be making the concessions in exchange for an end to ongoing warfare) and the *threat* of further force (land-for-peace is equivalent to an ultimatum—"no land, no peace"). Satisfying the conditions of Article 52, such an agreement is void.[191] And if the agreement is void, the international community would be obliged not to recognize any territorial changes the agreement purported to make, just as was true following the Chinese cession of Manchuria.[192]

### 2. *"Demilitarization and De-Nazification" and "Neutrality for Peace"*

A more limited solution might offer Russia some of what it wants—but no land—in exchange for Russia's withdrawal from Ukraine. President Putin's government has regularly described Russia's goals in the language of "denazification,"[193] "[d]emilitarization," securing the "safety of people living in those regions that have already become Russian," and ensuring Ukraine's future neutrality.[194] These goals might materialize along the lines proposed in the

191. Other scholars of international law have reached this same conclusion in similarly categorical terms. *See, e.g.*, Maksym Vishchyk & Jeremy Pizzi, *Compromises on Territory, Legal Order, and World Peace: The Fate of International Law Lies on Ukraine's Borders*, JUST SEC. (Oct. 6, 2023), https://www.justsecurity.org/89216/compromises-on-territory-legal-order-and-world-peace-the-fate-of-international-law-lies-on-ukraines-borders [https://perma.cc/33A5-HVAS]; Michael N. Schmitt, *Ukraine Symposium - Territorial Acquisition and Armed Conflict*, ARTICLES WAR (Aug. 29, 2023), https://lieber.westpoint.edu/territorial-acquisition-armed-conflict [https://perma.cc/PE54-MZND].

192. *See supra* notes 23-26 and accompanying text.

193. These demands are predicated on the spurious theory, consistently advanced by Russia, that Ukraine's government is controlled by Nazis. *See* Charlie Smart, *How the Russian Media Spread False Claims About Ukrainian Nazis*, N.Y. TIMES (July 2, 2022), https://www.nytimes.com/interactive/2022/07/02/world/europe/ukraine-nazis-russia-media.html [https://perma.cc/6UGH-7434]. Some Western commentators have suggested taking these demands seriously as the basis for a potential negotiated peace. *See* George Beebe & Anatol Lieven, *The Diplomatic Path to a Secure Ukraine* 34 (Quincy Inst. for Responsible Statecraft, Quincy Paper No. 16, 2024).

194. *See, e.g.*, Andrew Osborn, *Kremlin Says Goals of Russia's "Special Military Operation" in Ukraine Remain Unchanged*, REUTERS (Feb. 7, 2024), https://www.reuters.com/world/europe/

abortive draft peace treaty drawn up by Russian and Ukrainian negotiators in the early phases of the war.[195] Under such an agreement, Russia would return some or all of the occupied territory in exchange for substantial military and political concessions from Ukraine. Russia's demands for "demilitarization" would include shrinking Ukraine's military permanently and committing never to join NATO or permit foreign military assets in Ukraine. As for Russian demands for "denazification," these could include political concessions such as Ukraine adopting Russian as an official language, cracking down on pro-Western political parties, and granting political autonomy to the eastern regions.

Although Ukraine would concede no territory under this scenario, it too would be unlawful. Again, this hypothetical involves commitments by Ukraine to restructure its domestic affairs, military, and diplomacy according to Russian wishes. Ukraine would not have taken these measures absent Russia's coercion. Indeed, President Putin invaded because he believed there was no other way to avert Ukraine's pursuit of contrary goals. It is therefore easy to conclude that a peace agreement binding Ukraine to neutrality, demilitarization, Russophile internal policies, or similar commitments is also invalid under Article 52.

### *3. The "Kashmir Option"*

A third option is a clean ceasefire without any further substantive territorial, military, or political terms: Russia and Ukraine would commit themselves to permanently withdrawing their troops to a ceasefire line. Neither would alter their position on the legal situation—both would maintain their claims to Crimea and the four eastern regions—but they would promise not to alter the situation on the ground by force. This would resemble the twentieth-century ceasefire agreements implemented between India and Pakistan in Kashmir (hence, the "Kashmir Option").[196] Under a variant of this possibility, Ukraine might cease contesting Russia's occupation of the eastern oblasts on the condition that

kremlin-says-goals-russias-special-military-operation-ukraine-remain-unchanged-2024-02-07 [https://perma.cc/3EJE-72DT].

**195.** George Beebe & Anatol Lieven, *Coming to Terms: Adapted from "The Diplomatic Path to a Secure Ukraine*," HARPER'S MAG. (May 2024), https://harpers.org/archive/2024/05/coming-to-terms-the-diplomatic-path-to-a-secure-ukraine-george-beebe-anatol-lieven [https://perma.cc/ZA24-DZWV]; *cf.* Max Colchester, Thomas Grove & James Marson, *Document from 2022 Reveals Putin's Punishing Terms for Peace*, WALL ST. J. (Mar. 1, 2024, 2:45 PM ET), https://www.wsj.com/world/russia-ukraine-peace-deal-2022-document-6e12e093 [https://perma.cc/9Z24-WQ4E] (describing Russia's April 2022 draft peace treaty, which included exacting terms including Ukraine's permanent neutrality and a Russia-controlled Crimean Peninsula).

**196.** *See generally* Karachi Agreement, *supra* note 143 (implementing a ceasefire without resolving underlying territorial and political disputes); Simla Agreement, *supra* note 143 (similar).

Russia accept the accession of the Ukrainian rump state to NATO. Admiral James Stavridis, former Supreme Allied Commander of NATO, is one high-profile proponent of this kind of solution, comparing it favorably to the resolution reached at the end of the Korean War.[197] Other recent proposals have excluded NATO accession but included some sort of formal security guarantees backed by Western military presence in Ukraine.[198]

This possibility, unlike the prior suggestions, is likely lawful—at least in part.[199] That is because the proposal centers on the cessation of active hostilities, which is a freestanding legal obligation, rather than attempting to establish new obligations by coercion. This approach's implementation in Kashmir and other conflict settings around the world is also strong evidence for its lawfulness, as it reflects an implicit consensus among states that these ceasefire agreements do not themselves pose legal issues under Article 52.[200]

---

**197.** *See* James Stavridis, *South Korea's Lessons for Ukraine's Reconstruction*, BLOOMBERG (Nov. 11, 2023, 12:00 AM EST), https://www.bloomberg.com/opinion/articles/2023-11-11/south-korea-s-lessons-for-ukraine-s-reconstruction [https://perma.cc/CJ3W-BP8Y]. Admiral Stavridis is somewhat ambiguous on whether the proposed agreement should entail only a de facto concession of territory or full de jure concessions. The latter would be void for the same reasons as the land-for-peace case. One might hear an objection that this case is more complicated because it involves mutual concessions, but Russia was never in a position to grant or deny Ukraine the prerogative to join NATO.

**198.** *See* Andrea Shalal & Max Hunder, *US Would Help Assure Ukraine's Security in a Peace Deal, Trump Tells Zelenskiy*, REUTERS (Aug. 19, 2025, 2:55 AM EDT), https://www.reuters.com/business/aerospace-defense/us-would-help-assure-ukraines-security-peace-deal-trump-tells-zelenskiy-2025-08-19 [https://perma.cc/W2TF-2W3Z]; Philippe Ricard & Cédric Vallet, *Allies Debate Ukraine Security Guarantees After Washington Meetings*, LE MONDE (Aug. 20, 2025, 11:26 AM), https://www.lemonde.fr/en/international/article/2025/08/20/allies-debate-ukraine-security-guarantees-after-washington-meetings_6744544_4.html [https://perma.cc/84GA-AAU9]. *But see* Paul Kirby, *Putin Rejects Western Security in Ukraine, Warning Troops Would Be Target*, BBC NEWS (Sep. 5, 2025), https://www.bbc.com/news/articles/czxwl15w2qko [https://perma.cc/UK78-5GS9] (explaining that Russia opposes such guarantees).

**199.** Other legal scholars have come to a similar conclusion. *See* Kirsten Schmalenbach & Alexander Prantl, *How to End an Illegal War?*, VÖLKERRECHTSBLOG (Apr. 21, 2022), https://voelkerrechtsblog.org/how-to-end-an-illegal-war [https://perma.cc/8NCM-3UMH] ("In other words, the general obligation to cease the unlawful use of force persists beyond the treaty's nullity and forms the legal basis for an armistice and the withdrawal of troops.").

**200.** Such ceasefire resolutions have often lasted years or even decades without a final, formal settlement. In addition to Kashmir, another example is the ceasefire that led to the division of the island of Cyprus. *See* S.C. Res. 353 (July 20, 1974); Michele Kambas, *Decades After Division Cypriots Still Hope for Unity*, REUTERS (July 18, 2024, 4:07 AM EDT), https://www.reuters.com/world/europe/decades-after-division-cypriots-still-hope-unity-2024-07-18 [https://perma.cc/S4GA-KGVV]. Similarly, an armistice agreement between North and South Korean forces has endured to this day, without a formal settlement to the territorial dispute that has kept the two sides in tension since the 1950s. *See* Bong-geun Jun, *70 Years After the*

One point bears careful note here, however. That the Kashmir Option would be lawful does not mean that *Russia's continued presence* in Ukrainian territory would be. As a matter of international law, Russia remains obligated to withdraw fully from Ukraine and make reparations. No agreement between an aggressor and its victim can erase the unlawfulness of the aggression itself. The point of the Kashmir Option is that the aggressor and victim may lawfully agree to cease further hostilities, leaving aspects of the war for resolution in later negotiations. The promise of the Kashmir Option is that an enduring ceasefire prior to those negotiations could leave the belligerents better able to reach an appropriate long-term resolution. Even if that resolution were never to materialize, a ceasefire that froze the territorial issues would be preferable, from the perspective of international law, to an unlawful annexation or subjugation achieved through a coerced treaty.

#### *4. Ukrainian Victory*

Finally, one could imagine a peace agreement in which Russia agreed to return all territory to Ukrainian control and committed to political reforms or demilitarization. This outcome corresponds to Ukraine's stated war goals.[201] A treaty under which Russia withdrew from Ukraine in exchange for an end to the conflict would be lawful. Although the treaty would have been procured by force, the force exercised would be that of lawful self-defense. Therefore, the treaty would not conflict with the prohibition expressed under Article 52, which applies only to treaties procured by force "in violation of international law."[202] Similarly, it would be lawful for a victorious Ukraine to extract concessions that would be unlawful if extracted by Russia, such as commitments to demilitarize or to make reparations. This is for the same reason: because those concessions would have been brought about by lawful self-defense, they would not trigger Article 52, so long as Ukraine had abided by international law in conducting its defense.[203]

* * *

*Armistice, the Korean Peninsula Still Struggles for Peace*, U.S. INST. PEACE (Sep. 11, 2023), https://www.usip.org/publications/2023/09/70-years-after-armistice-korean-peninsula-still-struggles-peace [https://perma.cc/REF4-W4LM].

201. *See* Isabelle Khurshudyan, *With No Way Out of a Worsening War, Zelensky's Options Look Bad or Worse*, WASH. POST (Apr. 6, 2024), https://www.washingtonpost.com/world/2024/04/06/ukraine-war-zelensky-options [https://perma.cc/3H4H-HLDN] ("Zelensky has said Ukraine will accept nothing less than the return of all its territory, including land that Russia has controlled since 2014.").

202. *See supra* Section I.B.2.

203. *Cf. supra* notes 57-62 and accompanying text (describing *jus cogens* norms that would constrain Ukraine's exercise of self-defense).

This Part has examined some of the most prominent proposals for a negotiated end to Russia's war on Ukraine, concluding that peace proposals that would require Ukraine to give up territory or autonomy in exchange for peace would be unlawful and void. This potential collision with international law has been neglected in much of the diplomatic and public discourse around the end to the war. That is a problem. Pursuing an unlawful peace risks further damage to international stability and the failure of a negotiated peace program. The neglect of Article 52 is also unnecessary. As this Part has suggested and the next Part will explore further, the international community still has means by which to secure a lawful end to the conflict in Ukraine.

## V. TOWARD A LAWFUL END TO AN UNLAWFUL WAR

Part IV argued that certain proposals for a negotiated peace in Ukraine would be unlawful. Even so, it appears increasingly plausible that the war may lead to a peace agreement that raises Article 52 concerns. But there remain pathways for moving toward peace while maintaining the rule of law. This Part sets out and begins to answer the two main questions hanging over those pathways. First, drawing on the legal analysis developed earlier in the Note, I argue that the legal status of any peace agreement may be improved by an extended ceasefire prior to a peace deal, or by cooperation with the Security Council. Such measures may be especially important for assuring the lawfulness of an otherwise questionable agreement. Second, I recognize that, despite the availability of lawful pathways, the war may end in an unlawful peace agreement. I therefore sketch how the international community could respond to such a treaty, and what its conclusion might mean for international law.

### *A. A Lawful Peace*

A Ukrainian victory or a clean ceasefire are the best and second-best options for peace, in both moral and legal terms. But even if those are out of reach, international law does not leave Ukraine and its allies with no pathways by which to end the war. This Section identifies how the conflict might still be ended in compliance with Article 52. Some peace agreements that would be unlawful if concluded in a bilateral exchange for peace could be legally supportable if reached through proper procedures. In particular, a peace treaty that followed an extended de-escalation period or was approved by the Security Council might bring a lawful end to the conflict.

To adhere to international law undoubtedly rules out some possibilities for ending the Russo-Ukrainian conflict, as Part IV argued. And since a decisive

Ukrainian victory appears out of reach at the moment of writing,[204] something like the Kashmir Option represents the likeliest way the Russo-Ukrainian conflict might end lawfully, at least in the near future.[205] But the continuing peril of the conflict in Kashmir[206] shows the downsides of this option: a conflict postponed but not resolved may later explode without warning. And so, one might object, we might better disregard the requirements of international law to reach a more conclusive settlement.

I have already given a general response to this logic in Part III.[207] The response applies squarely to the case of Ukraine. First, the problem animating the conflict would not be resolved by making de jure concessions to Russia. Even if Ukraine agreed formally to cede its eastern regions and Crimea to Russia in exchange for peace, the unlawfulness of this agreement would leave the issue open, and a future Ukrainian government could rightfully contest the agreement and thereby revive the conflict.[208] More troublingly, Russia, having seized these prizes in violation of international law, would be encouraged to gamble on further aggression against Ukraine or other states.[209] For these reasons and for the

---

**204.** *See* Siobhán O'Grady, David L. Stern, Serhii Korolchuk & Anastacia Galouchka, *Land for Peace? Ukrainians Weigh Frozen Front Line to Placate Russia*, WASH. POST (Aug. 23, 2025, 4:14 AM EDT), https://www.washingtonpost.com/world/2025/08/23/ukraine-donetsk-land-peace-deal [https://perma.cc/P69D-8TLR].

**205.** *Cf.* William A. Galston, *Ukraine May Have to Accept a Cease-Fire*, WALL ST. J. (Jan. 2, 2024, 12:55 PM ET), https://www.wsj.com/opinion/ukraine-may-have-to-accept-a-cease-fire-putin-orban-congress-aid-89f9932a? [https://perma.cc/G3M9-2UZ4] (arguing that declining military capacity and concerns over sustained Western support may force Ukraine to seek a ceasefire along current lines to pursue reconstruction and/or EU or NATO integration).

**206.** India and Pakistan narrowly avoided a brutal reignition of the Kashmir conflict only a few months before this piece was published. *See* Christopher Clary, *Four Days in May: The India-Pakistan Crisis of 2025*, STIMSON CTR. (May 28, 2025), https://www.stimson.org/2025/four-days-in-may-the-india-pakistan-crisis-of-2025 [https://perma.cc/S4BZ-7U36]. For a history of the Kashmir conflict, see Ctr. for Preventive Action, *supra* note 146.

**207.** *See supra* notes 171-175.

**208.** Maksym Vishchyk and Jeremy Pizzi have suggested as much. *See* Vishchyk & Pizzi, *supra* note 191.

**209.** So might other powers. Many have suggested that a Russian victory in Ukraine will encourage China to invade Taiwan, for instance. *See, e.g.*, Luke Coffey, *A Ukrainian Victory Is Critically Important for Deterring Conflict in Taiwan*, HUDSON INST. (Sep. 13, 2023), https://www.hudson.org/security-alliances/ukrainian-victory-critically-important-deterring-conflict-taiwan-luke-coffey [https://perma.cc/3HUK-7RYW]; Irene Entringer García Blanes, Ian Harman, Susan Peterson & Michael J. Tierney, *Does Ukraine Offer Lessons for Taiwan?*, FOREIGN POL'Y (Feb. 6, 2024, 5:30 PM), https://foreignpolicy.com/2024/02/06/russia-ukraine-taiwan-china-invasion-poll-us-experts-academics [https://perma.cc/PB7Q-NJXV]; Reid Standish, *China Sees Invasion of Ukraine as 'Test Case' for Its Own Designs, Taiwan Warns*, RADIO FREE EUR. (May 30, 2023, 6:05 PM CET), https://www.rferl.org/a/china-invasion-ukraine-test-

reasons discussed above,[210] it would be irresponsible not to uphold international law in this case. And even assuming that the only feasible peace agreements must include some concessions from Ukraine—which is not clear—two lawful possibilities remain, facilitated by either a ceasefire or Security Council action.

First, an extended ceasefire prior to a peace treaty could render an otherwise problematic peace treaty more acceptable. As discussed above, Article 52 incorporates something like a proximate-cause requirement; as the threat or use of force recedes, it is less clear that a given treaty has been "procured" unlawfully.[211] At the limit, the attenuation could make lawful some concessions that would have been clearly unlawful if signed under the immediate threat or use of force. This attenuation effect will depend on various factors connected to the relationship between the treaty and the underlying violation, including the length and stability of a prior ceasefire, whether the aggressor withdraws its troops, whether there is a threat that violence might resume, and the contents of the peace treaty itself.

An example may illustrate why causal attenuation should matter for a treaty's invalidity.[212] Suppose that (1) Russia and Ukraine concluded a *decades-long* ceasefire; (2) the future Russian and Ukrainian governments were genuinely amicable and had taken military and political steps to make clear that there was no threat of a return to conflict; (3) the states concluded a final peace agreement under which both countries agreed to concessions; and (4) the agreement promised a mutually beneficial return to normal relations. Then, the underlying threat and use of force would not have "procured" the peace agreement under the applicable causation standard, as would be necessary to trigger Article 52. Of course, this example is at one extreme of the continuum. But the point is that there *is* a continuum. Spending time at peace and taking de-escalatory steps can attenuate the relationship between the treaty and the unlawful use of force, such that Article 52 might not be triggered.

It is difficult to opine about what agreements might be reached, when, and whether such agreements could be rendered lawful through a cessation of hostilities prior to negotiations. The legal questions at stake are difficult to assess in the abstract because they are so tightly entangled with issues of fact. A few points can be made, though. First, in the face of Russia's egregious use and threat of force, the de-escalation required for true attenuation would be substantial.

case-taiwan-designs/32435629.html [https://perma.cc/38J9-UXG9]. A regrettably underexamined possibility, no less troubling and in my view more probable, is that expansionist powers in the developing world will be similarly emboldened to attack their neighbors. This would fuel international warfare among populations that are already vulnerable.

210. *See supra* Section III.B.

211. *See supra* Section I.B.3.

212. *See supra* notes 72-73 and accompanying text (describing a similar example in the abstract).

Second, because the attenuation effect is about the relationship between the ultimate treaty and the underlying violation, the legality of the treaty depends on its contents. A peace treaty that lopsidedly favors Russia or includes dramatic concessions—especially formal territorial concessions—will suggest, almost per se,[213] the effect of unlawful coercion.[214] A treaty that includes mutually beneficial terms, or terms arrived at under impartial adjudication and backed by third-party security guarantees, would more plausibly result from Ukraine's free choice. Finally, whatever the nature of the final peace deal, the legal value of a ceasefire for breaking the causal link between conflict and a peace agreement is a serious reason to end hostilities as soon as possible. At the time of writing, President Trump continues to waver on whether the belligerents should move directly to a peace agreement or establish a ceasefire first.[215] This Note's analysis shows why a ceasefire is legally as well as morally preferable.[216] All of the arguments for the legal usefulness of a ceasefire apply in reverse to show why

---

213. Ukraine's constitution expressly forbids the cession of national territory, except as authorized by a referendum. CONSTITUTION OF UKRAINE art. 2 ("The territory of Ukraine within its present border is indivisible and inviolable."); *id.* art. 73 ("Issues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum."); *id.* art. 133 (enumerating the constituent regions of Ukraine); *see also Yehor Cherniev: Territorial Concessions to Russia Are Not an Issue on Which a Compromise Can Be Found*, VERKHOVNA RADA UKR. (Aug. 15, 2025), https://www.rada.gov.ua/en/news/News/264935.html [https://perma.cc/63EZ-4EYG] ("I don't see any possibility that the Verkhovna Rada will have 300 votes for such changes. Besides, these changes cannot be made to the Constitution while martial law is in effect. Even technically, this is impossible."); Volodymyr Zelenskyy, President of Ukr., Statement by the President of Ukraine at the Joint Press Point with the President of the European Commission (Aug. 17, 2025), https://www.president.gov.ua/en/news/zayava-prezidenta-ukrayini-pid-chas-spilnogo-z-prezidentkoyu-99597 [https://perma.cc/39LJ-M3VG] ("[T]he Constitution of Ukraine makes it impossible to give up territory or trade land."). No amount of attenuation could negate the concern that an unconstitutional concession must have been procured by unlawful pressure applied to the Ukrainian state.

214. Not to mention the freestanding concern that territorial concessions are independently barred as a violation of *jus cogens*. *See supra* notes 59-62 and accompanying text.

215. *See* Freddie Clayton, *Trump Promises 'Peace Agreement' in Ukraine After Putin Summit, Reversing Calls for a Ceasefire*, NBC NEWS (Aug. 16, 2025, 8:16 AM EDT), https://www.nbcnews.com/news/us-news/trump-promises-peace-agreement-ukraine-putin-summit-reversing-calls-ce-rcna225344 [https://perma.cc/YVV8-L9JY]; Jim Tankersley, *Why Zelensky and European Leaders Are Still Pushing for a Cease-Fire in Ukraine*, N.Y. TIMES (Aug. 19, 2025), https://www.nytimes.com/2025/08/19/us/ukraine-russia-war-ceasefire-trump-europe.html [https://perma.cc/YF9Q-5TF3].

216. The best argument for a ceasefire, of course, is that it would curtail the bloodshed and give reprieve to a brutalized region. Beyond the moral imperatives, a ceasefire could provide a strategic benefit to Ukraine, allowing it to regroup and strengthening its negotiating position. *See* Paul B. Stares, *How a Ceasefire Agreement Can Bolster Ukraine's Security—and NATO's, Too*, COUNCIL ON FOREIGN RELS. (Aug. 12, 2025, 4:50 PM EST), https://www.cfr.org/article/how-ceasefire-agreement-can-bolster-ukraines-security-and-natos-too [https://perma.cc/CCD7-GPYA].

proposals to move directly to a peace agreement without any prior cessation of hostilities deepen the agreement's legal jeopardy.

Aside from the attenuation effect, the second possibility involves Security Council authorization, as discussed in Part I.[217] In some cases, an otherwise unlawful concessionary peace agreement between Russia and Ukraine could be validated by the approval of the Security Council, rendering it lawful. But as set out above, the Security Council could not validate an agreement whose substance violated peremptory norms of international law. In practice, this might mean that internal concessions of the sort discussed in Section IV.B.2 — political reforms or neutrality commitments for Ukraine, coupled with de facto but not de jure changes in the line of territorial control — could be validated by the Security Council. But concessions that are independently violative of norms of *jus cogens* — most prominently, formal cessions of territory — would still be invalid.

To secure approval from the Council would, of course, require a negotiation process that included a wider circle of parties than just Russia and Ukraine. This could have two useful effects. First, to involve Ukraine's supporters in the negotiating process would strengthen Ukraine's bargaining position, increase the likelihood of a favorable deal, and reduce the likelihood that Ukraine would be forced into the worst sorts of concessions. Second, having powerful third-party countries on board in the negotiating and implementing process could provide guarantors of the peace against future violations.

The ceasefire and ratification theories could even be implemented jointly: the Security Council could endorse a phased peace plan that incorporates initial commitments to a ceasefire and withdrawal of troops, accompanied by commitments to later negotiations on other issues at stake in the war.[218]

It must be granted that even if these possibilities are lawful, they could still be problematic to the extent that they permit Russia to profit from its aggression, undermining the spirit of international law's foundational prohibition. By effectively rewarding Russian aggression, such possibilities might increase the likelihood of similar future conduct, whether by Russia or other states. Even so, if the alternative is a baldly unlawful conqueror's peace, then these lesser evils may best serve what must be regarded as our two chief goals: ending the killing and upholding the international rule of law.

---

**217.** *See supra* notes 53-56 and accompanying text.

**218.** There is precedent for a similar kind of plan. *See* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 168, ¶ 100 (Feb. 3); *see also* Forlati, *supra* note 50, at 325-26 (discussing the case of *Armed Activities on the Territory of the Congo* and the ICJ's hesitance to interfere with Security Council action).

### *B. Enforcing Article 52*

It may be that any lawful peace, even the imperfect kinds just sketched, will prove unattainable. I therefore consider the possibility that the war will end with an unlawful coerced agreement and assess how international law could be enforced against such an agreement. As the war grinds on, Russia continues to gain ground, albeit at great cost. At the time of writing, the balance of power in the field appears to be shifting slowly in Russia's favor.[219] Ukraine's position could worsen quickly, especially if the United States cuts off military aid for good.[220] And the Trump Administration has signaled that it may expect Ukraine to make concessions, perhaps including the formal cession of territory, in order to get a deal done.[221] Whether through military or diplomatic pressure, Ukraine may be forced into surrender.

The war may end, in other words, with a concessionary treaty that would be procured by the unlawful use of force and therefore be void. But this classification, standing alone, is not much. What happens if an agreement is "void?" A void agreement is unenforceable in court, but in international law, courts are not the only game in town. States have interpretive and enforcement authority, too. The questions of who decides what is void and how those parties enforce their decision are important for coordinating any international response to an unlawful peace agreement. Here, the questions raised in Section I.C have real-world stakes. The weak "institutionalist" position—which *permits* states to decline to recognize an allegedly unlawful treaty before an authoritative adjudication, but does not impose a *duty* of nonrecognition until after such adjudication—makes practical sense. A purely individualist reading of Article 52 could lead to a fragmented response to a dubious peace treaty, so the international community is better off seeking authoritative judgment of any such treaty.

---

**219.** *See Ukraine in Maps: Tracking the War with Russia*, BBC NEWS (Sep. 24, 2025), https://www.bbc.com/news/articles/colok4389g20 [https://perma.cc/6TDW-GKG2]; *Russian Offensive Campaign Assessment, September 18, 2025*, INST. STUDY WAR (Sep. 18, 2025), https://understandingwar.org/research/russia-ukraine/russian-offensive-campaign-assessment-september-18-2025 [https://perma.cc/D98M-XJFB]; Paul Kirby, *Ukraine Admits Russia Has Entered Key Region of Dnipropetrovsk*, BBC NEWS (Aug. 27, 2025), https://www.bbc.com/news/articles/c17n1p24yv90 [https://perma.cc/KG7S-B77N].

**220.** *See* Iselin Brady, Daniel Byman, Riley McCabe & Alexander Palmer, *Can Ukraine Fight Without U.S. Aid? Seven Questions to Ask*, CTR. STRATEGIC & INT'L STUD. (May 19, 2025), https://www.csis.org/analysis/can-ukraine-fight-without-us-aid-seven-questions-ask [https://perma.cc/ME94-U9XU].

**221.** Paul Sonne & Michael Schwirtz, *Putin's Proposal for Land Deal, Made to Trump, Shifts Pressure to Zelensky*, N.Y. TIMES (Aug. 18, 2025), https://www.nytimes.com/2025/08/18/world/europe/putin-trump-zelensky-ukraine.html [https://perma.cc/QSJ9-SQCQ].

### 1. *Avoiding Fragmentation*

It is difficult to predict how the international community would respond to an unlawful treaty between Russia and Ukraine, possibly leading to a fragmented response. For example, imagine a situation in which Ukraine and Russia reach an agreement that grants independence to the eastern oblasts as Russian aligned statelets or even cedes the region directly to Russia. Under those circumstances, Western powers might be disinclined to recognize the treaty, while powers in the Global South could be more willing to recognize the treaty. The result would be a world in which both Russia and Ukraine are recognized as rightful sovereigns over the contested territory. This would be precisely the sort of problematic fragmentation that fueled concerns over "unilateralism" during the drafting of Article 52.[222] As well as this "spatial" fragmentation among states, one might also see "temporal" fragmentation as successive governments in the same state change position over whether to recognize the treaty's effects. Such shifts are a predictable result of the tensions discussed above: an earlier government might set aside its duty of nonrecognition and recognize the results of an unlawful treaty because peace is better served by making an exception, but a successor government could reverse course and denounce the treaty, especially if required to do so by international law. This possibility is particularly acute in the case of the United States or EU governments, whose recognition may be decisive for a Russo-Ukrainian peace treaty's long-term viability.

Fragmentation poses several risks. The most obvious is that a fragmented international response is likely to be less effective. From the perspective of the Russian government, an outcome in which ninety-nine percent of the world's states refuse to recognize Russian title to conquered territory is far less attractive than one in which only half of states do. Fragmentation may also have significant snowball effects: states will find it less appealing to be the first to recognize a questionably legal occupation of territory than to be the tenth or the twentieth to do so. Finally, fragmentation threatens unpredictability and danger in international relations. Disagreement over the borders and sovereigns that each state recognizes could drive global powers into effectively parallel international universes, laying the groundwork for future conflict.[223]

These concerns point to a useful conclusion. Regardless of whether unilateral nonrecognition is legally appropriate before an international tribunal has

---

**222.** *See supra* note 106 and accompanying text.

**223.** Suppose, for example, that State *X* considers Region *Z* a formal part of its territory, but the region's government is controlled by separatists who declare independence. If State *Y* recognizes Region *Z*'s rebellious provincial government as an independent state and sells Region *Z* arms used in attacks on State *X*'s military, what was previously an internal dispute becomes an international one.

weighed in,[224] it would be strategically unwise for powers opposed to a coerced peace treaty simply to denounce it unilaterally. A response characterized by unilateral denunciation is liable to fragment and be perceived as politicized. This is especially true for Western states, given global perceptions that the West, particularly the United States, is inconsistent or hypocritical on questions of international law.[225] Instead, the most effective way to respond to the fragmentation problem would be to express provisional reservations about the treaty, that is, to withhold recognition pending an authoritative determination of the treaty's invalidity from the ICJ, which has a better claim to neutrality and authority on questions of international law.

### 2. *Reaching an Authoritative Judgment of Invalidity*

If a peace treaty ending the Russo-Ukrainian War were truly invalid, then all states and courts faced with the question would be licensed—and perhaps obliged—to decline recognition. But the ICJ occupies a uniquely independent and authoritative position in international law, such that its judgment could resolve an international split on validity and circumvent the risk of fragmentation.

Predicting the ICJ's ruling in a hypothetical case is a fairly straightforward question. As this Note has argued, the legal case against a coerced peace treaty is strong. The question would be one of explosive political stakes—but the ICJ has already shown some willingness to take a stand on the questions at issue in Russia's invasion,[226] which, after all, represents one of the most flagrant violations of international law since 1945. A treaty that sealed Russian conquest would be an even more flagrant violation. Were the ICJ in a position to do so, it would have a strong basis for invalidating a land-for-peace treaty as void under Article 52.

Yet a hypothetical ICJ case also raises two more difficult questions. The first is how the treaty would come before the ICJ at all; the second is how a judgment of invalidity would make a difference. First, if Ukraine had accepted a coerced peace treaty in the first place, Ukraine presumably would be unwilling to challenge the treaty, since that would risk renewed conflict. And even if Ukraine did challenge the treaty, it would have to grapple with the procedural difficulties of

---

**224**. *See supra* note 82 and accompanying text.

**225**. *See, e.g.*, Oliver Stuenkel, *Why the Global South Is Accusing America of Hypocrisy*, FOREIGN POL'Y (Nov. 2, 2023, 11:29 AM), https://foreignpolicy.com/2023/11/02/israel-palestine-hamas-gaza-war-russia-ukraine-occupation-west-hypocrisy [https://perma.cc/L2KK-MGEM].

**226**. *See, e.g.*, Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. 211, ¶ 86 (Mar. 16).

the VCLT's conciliation mechanism identified previously.[227] So the question would turn on the procedural position of third parties. The final draft of Article 52 removed language that would have granted third-party states standing to challenge coerced treaties before the ICJ explicitly.[228] But could a third-party challenge still be brought?

Third parties may be able to challenge a coerced treaty as a violation of an obligation *erga omnes partes* under the Vienna Convention. This approach is ambitious but not without precedent. The ICJ has repeatedly exercised jurisdiction in cases brought by third parties in response to violations of obligations *erga omnes partes*.[229] And Article 66(a) of the VCLT provides for mandatory ICJ jurisdiction over disputes concerning treaties that conflict with peremptory norms of international law (*jus cogens*).[230] The prohibition on coerced treaties likely represents a peremptory norm of international law, whether of its own force or as a derivative of the broader prohibition on the use of force.[231] That broader prohibition also seems to have an *erga omnes* character,[232] at least as applied in the hypothetical case of a coerced peace treaty. And the prohibition on aggression, of course, is the paradigmatic *erga omnes* obligation.[233] Moreover, the specific prohibition on treaties procured by unlawful threat or use of force plausibly establishes an obligation *erga omnes partes* within the framework of the Vienna Convention.

Oona A. Hathaway, Alaa Hachem, and Justin Cole point to two key requirements for third-party standing in *erga omnes* cases. First, the treaty under which the case is brought must provide for mandatory jurisdiction over disputes arising from the treaty. Second, the alleged violations must be "the concern of all States parties to the treaty."[234] These conditions are likely satisfied here. Hathaway, Hachem, and Cole further argue that "it is possible to determine whether a

---

**227.** *See supra* notes 121-124 and accompanying text.

**228.** *See supra* notes 107-108 and accompanying text.

**229.** *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Judgment, 2022 I.C.J. 477, ¶ 107 (July 22); Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Order, 2024 I.C.J. 3, ¶¶ 33-34 (Jan. 26).

**230.** VCLT, *supra* note 3, arts. 53, 64, 66(a), 1155 U.N.T.S. at 344-45, 348.

**231.** *See* Orakhelashvili, *supra* note 115, at 133 ("It is generally accepted that the voidness of treaties procured by force under Article 52 is an aspect of *jus cogens* . . . .").

**232.** *Cf.* Michael Byers, *Conceptualizing the Relationship Between* Jus Cogens *and* Erga Omnes *Rules*, 66 Nordic J. Int'l L. 211, 236 (1997) ("[*J*]*us cogens* rules necessarily apply *erga omnes*.").

**233.** *See* Barcelona Traction, Light, & Power Co., Ltd. (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶ 34 (Feb. 5).

**234.** Alaa Hachem, Oona A. Hathaway & Justin Cole, *A New Tool for Enforcing Human Rights:* Erga Omnes Partes *Standing*, 62 Colum. J. Transnat'l L. 259, 287 (2024).

common interest [that could ground an obligation *erga omnes partes*] exists by analyzing the treaty's object and purpose."[235] In this instance, the VCLT's preamble articulates the Convention's purposes in terms of "developing peaceful cooperation among nations," recognizing the "principles of free consent and of good faith," and "[a]ffirming that disputes concerning treaties . . . should be settled by peaceful means."[236] Thus, there is a strong argument that Article 52's prohibition on coerced treaties expresses a common interest that establishes an obligation *erga omnes partes*.

However, an additional barrier remains for *erga omnes partes* standing. The ICJ has stated that "the mere fact that rights and obligations *erga omnes* or peremptory norms . . . are at issue in a dispute cannot in itself constitute an exception to the principle that [the ICJ's] jurisdiction always depends on the consent of the parties."[237] That spells trouble here. Although both Russia and Ukraine are parties to the Vienna Convention, as are numerous states that have supported Ukraine during the war,[238] both Russia and Ukraine have entered reservations[239] requiring specific consent of all parties in each case submitted to the ICJ under VCLT Article 66(a).[240] Assuming Russia and Ukraine would not waive them, these reservations would make any direct third-party challenge to the validity of a coerced treaty impossible, unless the ICJ changes its doctrine on jurisdiction[241] or invalidates the Russian and Ukrainian reservations.[242]

---

**235.** *Id.* at 290.

**236.** VCLT, *supra* note 3, pmbl., 1155 U.N.T.S. at 332.

**237.** Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), 2006 I.C.J. 6, ¶ 125 (Feb. 3).

**238.** *See Status of Treaties: Vienna Convention on the Law of Treaties*, U.N. Treaty Collection 1-2 (2025), https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXIII/XXIII-1.en.pdf [https://perma.cc/V2P2-PRKX].

**239.** Treaty reservations are "unilateral statement[s], however phrased or named . . . whereby [a State] purports to exclude or to modify the legal effect of certain provisions of [a] treaty [to which the State otherwise subscribes] in their application to that State." VCLT, *supra* note 3, art. 2(1)(d), 1155 U.N.T.S. at 333. *See generally* Edward T. Swaine, *Reserving*, 31 Yale J. Int'l L. 307 (2006) (exploring the law of treaty reservations).

**240.** *Status of Treaties*, *supra* note 238, at 6 (showing the reservations made by Russian and Ukraine in the section on Declarations and Reservations).

**241.** For instance, by holding that jurisdictional rules should give way when they would prevent the ICJ from passing upon *jus cogens* violations.

**242.** For instance, by following the International Law Commission's view that states cannot escape the operation of a norm of *jus cogens* by means of a treaty reservation. *See* Int'l L. Comm'n, Rep. on the Work of Its Sixty-Third Session, at 43, U.N. Doc. A/66/10 (2011) ("A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.").

Nevertheless, if nonparty states sought to have the ICJ rule that the treaty was invalid as a violation of *jus cogens*, but the Russian and Ukrainian reservations barred direct challenges to the treaty, the question could be brought before the World Court indirectly.[243] Suppose, for example, that Ukraine cedes territory to Russia in an unlawful peace agreement. Suppose also that Russia and a third state concluded an agreement selling grain from the ceded Ukrainian regions to the third state's government.[244] The validity of Russian title to the territory and produce of the conquered regions, and thus of the trade agreement, would depend on the validity of the Russo-Ukrainian peace agreement. The trade agreement between Russia and the third state might therefore be challenged by a fourth state under the *erga omnes* theory. If the third state did not enter a reservation to VCLT Article 66(a), as many have not, it could be subject to mandatory ICJ jurisdiction. In adjudicating the validity of the trade agreement, the ICJ would have occasion to assess the validity of the underlying coerced peace agreement.[245]

An ICJ judgment declaring a coerced treaty invalid would not by itself reverse the agreement. Much less would it repair the damage the war has caused. But it would accomplish three things. First, an ICJ judgment would show that the international rule of law was not extinguished by the war. In invading Ukraine, the Russian leadership sought to do more than just expand their sphere of influence—they wanted to revise the rules of an international order they see as rotten and an impediment to the reconstruction of their historic sphere of

**243.** I am grateful to Professor Oona A. Hathaway for suggesting this inventive approach.

**244.** *See* Haid, *Wheat and War: How Sanctions Are Driving Russia-Syria Cooperation*, CHATHAM HOUSE (Mar. 29, 2023), https://www.chathamhouse.org/2023/03/wheat-and-war-how-sanctions-are-driving-russia-syria-cooperation [https://perma.cc/KN2D-JUVZ].

**245.** An indirect challenge might have to clear other hurdles in order to come before the ICJ. For example, Jan-Phillip Graf has suggested in commentary on a parallel context that cases predicated on violations of obligations *erga omnes* should have to satisfy a necessary-party requirement drawn from the ICJ's judgment in the well-known *Monetary Gold* case. Jan-Phillip Graf, *Erga Omnes Partes Standing and Procedural Issues in South Africa v. Israel*, EJIL: TALK! (Feb. 1, 2024), https://www.ejiltalk.org/erga-omnes-partes-standing-and-procedural-issues-in-south-africa-v-israel [https://perma.cc/DN84-PP9X]; *see also* Monetary Gold Removed from Rome in 1943 (It. v. Fr., U.K. & U.S.), Preliminary Question, 1954 I.C.J. 19, 32 (June 15) (arguing that where a third-party state's legal interests would "form the very subject-matter of [an ICJ] decision" and that state has not consented to the proceeding by, for instance, requesting to intervene, the ICJ, whose jurisdiction rests on consent, lacks jurisdiction in that case for want of a necessary party). Were a *Monetary Gold*-style necessary-party requirement to apply here, Ukraine would at least need to intervene in the indirect challenge—which would introduce its own challenges, both procedural and substantive (for example, what if Ukraine argued against the treaty's voidness, as it might have incentive to do?).

influence.[246] Following through on the requirements of international law, even where it is difficult, would at least deny President Putin some of his war aims. Second, it would offer the basis for a continued and coordinated international response. An authoritative judgment from the ICJ is the best hope of avoiding international fragmentation. Third, it would establish precedent demonstrating that the prohibition on coerced treaties is not a dead letter and that international law will not remain passive in the face of aggressive conquest. Other states inclined to acts of aggression would be less likely to take the plunge if Russia's aggression were challenged. The weight of that precedent, however, depends on whether the international community can enforce it adequately.

### *C. Possibilities and Limits for Enforcement*

The possibility that a peace agreement in the Russo-Ukrainian War could be held to be unlawful raises one final question. How could such a determination be enforced?

The answer is easier as to a land-for-peace agreement. Setting aside the procedural "who decides" questions addressed above,[247] the basic enforcement mechanism would be the same one deployed against the Japanese invasion of Manchuria: international nonrecognition of Russian sovereignty in the relevant territory. This approach has the added virtue of making it more difficult and less appealing for Russia and third-party states to treat conquered regions as normal Russian territory. The threat of nonrecognition would cast a cloud on Russia's title.

But the question of enforcement is more difficult as to agreements, like "demilitarization and denazification," that would make commitments regarding Ukraine's internal or diplomatic affairs. Such agreements have the virtue of not giving up Ukrainian control over its territory, thus respecting the core norm of the U.N. system,[248] but they would still be unlawful. Yet it is not easy to see how the international community could use the enforcement mechanism of nonrecognition here. If Ukraine accepted Russian demands for demilitarization and internal political reforms, it is unclear what it would mean in practice for the world to decline to recognize these terms. And if Ukraine accepted those demands, its government would likely be inclined to abide by them going forward, even if the

**246**. *Cf.* Max Bergmann, Tina Dolbaia & Nicholas Fenton, *Russia's Adaptation Game: Deciphering the Kremlin's "Humanitarian Policy,"* Ctr. for Strategic & Int'l Stud. (Dec. 14, 2022), https://www.csis.org/analysis/russias-adaptation-game-deciphering-kremlins-humanitarian-policy [https://perma.cc/7KCJ-GVVG] (interpreting Moscow's foreign-policy decisions through its pronounced concept of the "Russian World").

**247**. *See supra* Section I.C.

**248**. *See* Brunk & Hakimi, *supra* note 29, at 689.

agreement were void.[249] For this reason, internal concessions raise additional enforcement questions.

Of course, nonrecognition is not the only enforcement mechanism. Countermeasures and sanctions, for instance, can be used in response to nonterritorial concessions imposed on Ukraine. Although much of the heaviest weaponry in the West's arsenal of sanctions has already been deployed against Russia,[250] even more punishing measures remain available and are already under consideration, including "secondary sanctions" that would aim to cut off Russia's export-dependent economy from global markets.[251] Countermeasures are available only as a forward-looking tool aimed at securing compliance,[252] and not as a punishment, so some elaboration would be necessary to justify their ex post implementation in response to an unlawful treaty with Ukraine, since the unlawful conduct here would appear to have already concluded. One possible theory for countermeasures could be that even after the conclusion of the treaty, Russia would be engaged in unlawful conduct by failing to mitigate avoidable damage caused by its unlawful invasion, including by denouncing the unlawful treaty to which it was party.[253]

In other words, enforcement tools are available. But the same tools were available, and have been used, in response to Russia's repeated assaults on Ukraine in the past. They failed. The war may end in an unlawful agreement, perhaps even one that has apparent buy-in from powerful states other than Russia and Ukraine. If that happens, the world will once again face the sobering lesson that the tools available to uphold international law are not enough to

---

**249.** The situation would then be similar to the position of the Reagan Administration in 1981: confident simultaneously that the Iran hostage agreements were void for coercion and that it was wisest to abide by them anyway. *See supra* note 160 and accompanying text.

**250.** *See* Elena Chachko & J. Benton Heath, *A Watershed Moment for Sanctions? Russia, Ukraine, and the Economic Battlefield*, 116 AJIL UNBOUND 135, 135-36 (2022).

**251.** *See* Andrea Palasciano, *EU Considers Secondary Sanctions to Hit Russia's War Effort*, BLOOMBERG (Aug. 27, 2025, 1:00 PM EDT), https://www.bloomberg.com/news/articles/2025-08-27/eu-considers-secondary-sanctions-to-hit-russia-s-war-effort [https://perma.cc/7CR3-HCRR]; Jennifer Rankin, *Trump Says He Is Ready to Impose New Sanctions on Russia. What Might Happen Now?*, GUARDIAN (Sep. 8, 2025, 1:44 PM EDT), https://www.theguardian.com/world/2025/sep/08/trump-says-he-is-ready-to-impose-new-sanctions-on-russia-what-does-this-mean-for-putins-war-in-ukraine [https://perma.cc/JF58-U5AN].

**252.** Draft Articles on State Responsibility, *supra* note 64, arts. 22, 49, at 75, 129.

**253.** This would accord with James Crawford's account of the relationship between the responsibility to mitigate unlawful harms and the conditions for countermeasures. *See* James Crawford, *Counter-Measures as Interim Measures*, 5 EUR. J. INT'L L. 65, 68 (1994) ("[T]he purpose of counter-measures should be regarded as met if (a) an expeditious procedure for determining the legality of the conduct in question is triggered; and (b) the . . . target State is doing all it reasonably can do to avoid or mitigate the damage.").

ensure that all states follow all of the law, all of the time.[254] For Russia to successfully impose a conqueror's peace would not be the first time this century that a great power has violated international law. But it would be a uniquely serious violation, the first breach of international law's most fundamental prohibition since 1945.[255] This could aggravate the threat of other states following suit. Once one state has succeeded in a war of imperial aggression, others may follow. The grave risks of such wars in a nuclear-armed world should be clear.

Even so, Russian victory in Ukraine would not necessarily mean the end of the Charter system, much less the end of international law. Both have proven flexible and resilient in the face of past crises. After all, Russia has sought unlawfully to subjugate its neighbors before and seen its efforts fail. The Soviet Union invaded and annexed the Baltic states of Estonia, Latvia, and Lithuania in 1940 and controlled those states de facto until 1991.[256] But much of the world decried the invasions as unlawful and did not formally recognize the Baltics' annexation.[257] For purposes of international law, the Baltic states retained their statehood de jure, while their governments in exile preserved certain state organs and functions.[258] And when the Iron Curtain fell, these states resumed their place in the community of nations. Although nonrecognition of an unlawful annexation did not prevent the de facto occupation, it avoided acquiescence in the crime and laid the foundations for the lawful order to be restored someday. The unpredictable pace of international justice is cause for hope as well as regret.

## CONCLUSION

This Note's work has been threefold. First, it set out VCLT Article 52's prohibition on coerced treaties, explained what we know about that prohibition in principle and in practice, and pointed to possible answers to the prohibition's remaining ambiguities. Second, it argued that despite apparent reasons to deviate from the prohibition on coerced treaties, the global community should hold fast to the requirements of international law, even if they appear to rule out a quick and compromising peace deal. Third, it applied the prohibition on coercive treaties to the question of peace in Ukraine, showing that any peace agreement

254. The lesson would not be a new one, of course. Louis Henkin is well known for his quip that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time." LOUIS HENKIN, HOW NATIONS BEHAVE 47 (2d ed. 1979). In other words, some nations sometimes break the law—sometimes at great cost.

255. *See supra* Part II.

256. *See* LAURI MÄLKSOO, ILLEGAL ANNEXATION AND STATE CONTINUITY: THE CASE OF THE INCORPORATION OF THE BALTIC STATES BY THE USSR 45, 71-76 (2d ed. 2022).

257. *Id.* at 45, 100-05.

258. *Id.* at 121-31.

other than a Ukrainian victory or a clean ceasefire will require substantial prior de-escalation or coordination with the Security Council. The prohibition on coerced treaties means that any agreement making concessions to Russia in exchange for peace would be void. The international community should act accordingly, pursuing only those negotiated solutions that are lawful and rejecting any unlawful peace treaty that may be concluded.

These conclusions are qualified by uncertainty as to how they will be made binding. The world may discover that its tools for enforcing international law are inadequate to guarantee full compliance, especially faced with a powerful actor determined to violate fundamental rules. Nonetheless, considerations of international-law norms are vital to any discussion of a negotiated peace. Their neglect in the present debate over the Russo-Ukrainian conflict is regrettable.

These considerations are important, first, because principles of international law might affect the options available to parties involved in the conflict as they try to end the war. Russia's rational strategy may change if it believes that international law *might* someday affect the validity of a peace treaty with Ukraine. And if the best that can be done lawfully today is a stalemate settlement that will not resolve the issues for the long run, this may change parties' calculation as they come to the negotiating table. Furthermore, it is critical that this unlawful war be ended lawfully. The wrongfulness of Russia's war on Ukraine is not limited to the suffering it inflicts on human beings, monstrous though that suffering is. By violating the prohibition on aggressive force that is at the foundation of the postwar global order, the Russian invasion constitutes a double wrong against the global community. An instantaneous wrong, because aggression violates a duty owed to every other state. And a cascading wrong, because by threatening to renormalize wars of conquest, the invasion undermines the fundamental principle on which the world's relatively peaceful order since 1945 rests. That principle, announced with the Pact of Paris and consummated with the establishment of the United Nations, is that the international community will no longer permit any state to subjugate or dismember another by force of arms. This Note has shown the connection between that grounding principle and the prohibition on coerced treaties expressed in Article 52. To neglect that connection in ending a war today would deepen the wrong the war has perpetrated. To uphold international law, however, would prove the continued vigor of the system that is our last best hope of global peace.