

ARTICLE

From Treaties to Tweets: The (In)Formality of War Termination

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“Tell me how this ends.” — General David Petraeus on Iraq, 2003.¹

ABSTRACT

The phenomenon of never-ending wars – wars that peter out and recur, without any firm conclusion – has left scholars wondering about its root causes. Scattered explanations point to the erosion of sovereignty, an expanding law of war, technological advances, a strategic equilibrium that favors war over peace, and the ambiguity of constitutional and international legal definitions. We argue that the shift from peace settlements to informal unilateral declarations announcing the end of war—from treaties to tweets—has contributed to conflicts simmering with varying degrees of intensity. Building on international relations literature and nascent, but mostly law-of-war focused international legal scholarship, we analyze the increasingly informal nature of war termination and international law’s limited treatment of the end of war. We argue that an injection of formality in war termination would minimize prolonged, often low-threshold conflicts that blur the boundaries between war and peace and undermine the international order.

The United States’ hasty and traumatic withdrawal from Afghanistan in August 2021 officially ended two decades of military operations alongside coalition partners and a U.S.-backed Afghan government and its forces. The troops

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1. Rick Atkinson, *Iraq Will Be Petraeus’s Knot to Untie*, WASH. POST (Jan. 7, 2007), <https://perma.cc/ZDS9-XYGU>.

went home amidst chaos, including a suicide bombing, tragic views of Kabul's airport, and the Taliban once again assuming power. U.S. President Biden announced the end of the war but insisted on his country's "over-the-horizon" capabilities to strike al Qaeda or other non-state groups and militants even without boots on the ground.² In Syria, where foreign troops have remained long after the demise of the Islamic Caliphate,³ the most ordinary – and obvious – result of an end to conflict has not fully taken place: the retreat of international forces from the theater of hostilities.⁴ Although likely desirable from a security standpoint, maintaining a foreign military (rather than an invited or U.N.-authorized peace-keeper or observer) presence on Syrian territory was legally dubious at best and prolonged the state of war.⁵

The circumstances of how the wars in Afghanistan and Syria have, might, or have not come to an end, highlight a growing phenomenon: wars that wind down but do not formally end, leaving behind a mixed bag of war and peace elements for often lengthy periods of time, often punctuated by spats of violence. As a result, international law's attempt at carefully crafting and limiting the "state of war" – defined as "the state of nations among whom there is an interruption of all pacific relations, and a general contention by force, authorized by the sovereign"⁶ – has been hampered. The formerly separate constructs of war and peace have become blurred, setting the stage for never-ending wars (also known as forever wars), as violence peters out, recurs, and wanes again, with no firm conclusion in sight.⁷ It took two decades to bring the post-9/11 conflict in Afghanistan to an uncertain end. The United States is still fighting al Qaeda and its offshoots in multiple locations, even if at a lower intensity. Low-level conflicts flare up and simmer down again, such as the longstanding dispute between Armenia and Azerbaijan, which erupted into intense fighting over several weeks in the fall of 2020 and then again in September 2023. The conflict in Ukraine may have fit within a similar construct during the several years that war raged with varying levels of intensity after the Russian invasion of Crimea in 2014, with the situation further deteriorating after Russia's full-scale invasion and aggression in February 2022.

2. Joseph R. Biden, Jr., President of the U.S., Remarks: On the End of the War in Afghanistan (Aug. 31, 2021), <https://perma.cc/Z6UA-CSFD>.

3. *Why Does the US Still Have Forces in Syria*, AL JAZEERA (Aug. 24, 2022), <https://perma.cc/5WDU-4SHS>; Kenneth R. Rosen, *For Syria's Kurds, the Real Battle is Just Beginning*, NEWSWEEK (Apr. 5, 2019), <https://perma.cc/BYE3-WQ85>.

4. James Jeffrey, *The Case for Keeping U.S. Troops in Syria*, FOREIGN AFF. (Nov. 10, 2022), <https://perma.cc/F368-VBGA>.

5. Laurie R. Blank, *The Use of Force to Prevent Recurrence of Conflict: Where are the Limits of Self-Defense?*, 86 BROOKLYN L. REV. 1 (2021); Eric Schmitt, *U.S. Sending More Troops to Syria to Counter the Russians*, N.Y. TIMES (Oct. 26, 2020).

6. John Bouvier & Francis Rawle, BOUVIER'S LAW DICTIONARY AND CONCISE ENCYCLOPEDIA 3419 (1914).

7. Conflicts that progress toward conclusion without violence recurring are outside the scope of this article.

International law and international relations scholars have sought to explain why never-ending wars are so pervasive today. Theoretical explanations have been scattered, ranging from the erosion of sovereignty, an expanding law of war, technological advances, a strategic equilibrium that favors war over peace, and the ambiguity of constitutional and international legal definitions. The slow erosion of the traditional formality associated with war termination has contributed to the indeterminacy regarding the end of war, suggesting that re-infusing some formality into war termination could help to end prolonged, often low-threshold conflicts that blur the boundaries between war and peace and weaken international norms.

From a normative perspective, underscoring the importance of preserving the exceptional character of war is essential, as is a level of predictability regarding applicable legal frameworks and obligations. Norms, or the absence thereof, impact conflict and state (and nonstate) behavior. Although advocating a return to Versailles-style formal war-ending would be utopian—and even counterproductive if it constrains states' options to bring an end to violence—the shift from treaties to tweets has had a profound effect on international security. A return to greater formality may take a variety of forms, recognizing that neither the law of war nor increased formality can be the magic elixir that ends wars and resolves conflicts.⁸

Adversaries will continue fighting as long as making peace does not appear strategically more advantageous than waging war. For certain states, perhaps as a function of their military and strategic culture, managing low-intensity warfare is easier than managing peace. Still, re-introducing some formality in war termination could have tangible benefits for political stability and legal clarity. This analysis advances a multidisciplinary war studies agenda anchored in both international law and international relations, based in part on a greater dialogue well worth bolstering.⁹

Within the international relations arena, scholars have emphasized the need to understand “how ‘the end’ as a concept informs the understanding of war in international relations, in international law and in history.”¹⁰ Fazal's groundbreaking inquiry into the demise of peace treaties forms an important link between international relations and international law, arguing that informality in war termination can be attributed to the development of the law of war, which made the acknowledgment of a state of war politically and legally costly for states.¹¹

8. Laurie R. Blank & Daphné Richemond-Barak, *Ending Wars: The Law of War's Latest Source of Stress*, ARTICLES OF WAR (Nov. 12, 2020).

9. Anne-Marie Slaughter, Andrew S. Tulumello, & Stepan Wood, *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM. J. INT'L L. 367-97 (1998); Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. J. INT'L L. 487 (1997).

10. Chiara De Franco, Anders Engberg-Pedersen, & Martin Mennecke, *How do Wars End? A Multidisciplinary Enquiry*, 42 J. STRATEGIC STUD. 889 (2019).

11. Tanisha M. Fazal, *The Demise of Peace Treaties in Interstate War*, 67 INT'L ORG. 695-724 (2013).

International law, however, has been less forthcoming in its examination of the end of conflict than international law and just war philosophers, making this cross-fertilization especially welcome. International law provides little guidance on how conflicts end; indeed, it is not even clear which branch of international law is or should be concerned with the end of conflict.¹² Although some scholars have shaped novel normative frameworks to answer these challenging questions – such as the *jus post bello*,¹³ *jus ex bello*,¹⁴ or the broader and more holistic framework of transitional justice¹⁵ – the law of war often ends up as the default for filling the gap. Further elucidation of the rules governing the end of application of international humanitarian law therefore can be helpful because “clarity and predictability require that the end of a conflict should not be presumed lightly.”¹⁶ In addition, the end of a state’s participation in a conflict has significant legal implications.¹⁷

Although these avenues for further research are promising, the current lack of clarity not only reveals normative faults but also presents real and tangible implications for a variety of stakeholders, including civilians, political leaders, asylum seekers, courts, and humanitarian actors.¹⁸ The question of how conflicts end should therefore be of concern to all international lawyers. War termination should not be confined to the law of war or addressed, rather narrowly, via the peaceful settlement of disputes. Understanding how conflicts come to an end, patterns of termination across various types of conflicts, and factors that enable or impede sustainable peace are of critical importance to international law and the preservation of the international order in general. Building on international relations literature and expanding on nascent, but presently law-of-war-focused, international legal scholarship, this article explores the connection between the erosion of informality and changes affecting war and peace. In particular, it highlights three additional reasons for the growing informality in war termination: weak or nonexistent norms governing formality at the onset of war, the absence of a legal obligation to end war, and the rise and unique legal status of conflicts involving non-state actors.

12. Blank & Richemond-Barak, *supra* note 8.

13. Carsten Stahn, ‘*Jus ad bellum*’, ‘*jus in bello*’ . . . ‘*jus post bellum*’? – *Rethinking the Conception of the Law of Armed Force*, 17 EUR. J. INT’L L. 921 (2009).

14. Darrel Moellendorf, *Two Doctrines of Jus ex Bello*, 125 ETHICS 653 (Apr. 2015).

15. Ruti Teitel, *Rethinking Jus Post Bellum in an Age of Global Transitional Justice: Engaging with Michael Walzer and Larry May*, 24 EUR. J. INT’L L. 335, 339 (2013) (“‘post bellum’ seems too limited or inappropriate today because of the unstable or undetermined boundaries between conflict and post-conflict situations”).

16. Marco Milanovic, *The End of Application of International Humanitarian Law*, 96 INT’L REV. RED CROSS 163, 175 (2014).

17. See generally Paul Strauch & Beatrice Walton, *Jus Ex Bello and International Humanitarian Law: States’ Obligations When Withdrawing from Armed Conflict*, 102 INT’L REV. RED CROSS 923 (2020).

18. DUSTIN A. LEWIS, GABRIELLA BLUM, & NAZ K. MODIRZADEH, *INDEFINITE WAR: UNSETTLED INTERNATIONAL LAW ON THE END OF ARMED CONFLICT* (Harvard Law School Program on International Law & Armed Conflict, Feb. 2017).

Part I presents the growing need to bring wars to an end in the contemporary context and the limited tools available to international law to do so. Part II searches for the roots of formality in history and law and analyzes the reasons behind its gradual erosion. Finally, Part III advocates for a return to formality and suggests what forms such formality may take to help ensure that war termination remains a solemn and carefully administered matter to the extent possible.

I. ENDING WAR: A GROWING YET NEGLECTED CONCERN

Never-ending wars are characterized by an expansion of the geographical and temporal scope of war,¹⁹ the seemingly limitless authority to use lethal force against an ever-morphing enemy,²⁰ and the absence of any concrete resolution on the horizon.²¹ “Endless wars come with endless costs”²² and, regardless of the descriptor one uses, forever wars, endless wars, or never-ending wars have become seemingly permanent features of the international landscape.

Many conflicts, such as those between India and Pakistan or Armenia and Azerbaijan, have run alternately cold and hot for decades, interspersed with ceasefires and negotiated settlements. These conflicts are marked by separate periods of war and peace. For example, prior to the 2020 and 2023 rounds of fighting – and end of the conflict – in Nagorno-Karabakh, the Azeri-Armenian conflict had been “frozen” for more than a decade,²³ and even periodic outbreaks of violence since then manifested clear beginnings and endings.²⁴ The war in Syria²⁵ shows signs of becoming another type of “frozen” conflict and the conflict between Russia and Ukraine²⁶ could potentially end up that way as well.

In contrast, contemporary conflicts with non-state actors such as ISIS, al Qaeda, and other similar terrorist or insurgent groups seem either to have no identifiable end in sight or to continue even after what appear to be declarations of an end to the conflict.²⁷ Unlike the “frozen” or “on-and-off” conflicts above, there seems to be no respite from combat operations in such conflicts. Finding ways to

19. Harold Hongju Koh, Remarks at the Oxford Union: How to End the Forever War (May 7, 2013), <https://perma.cc/8V9H-5GVQ>.

20. Rosa Brooks, *The Real Reason the Limits of Drone Use are Murky; We Can't Decide What 'Terrorists' or 'Conflict' Mean*, ATLANTIC (Aug. 20, 2013).

21. Michael N. Schmitt, Presentation at the Duke Center on Law, Ethics and National Security: Targeting in the Age of Forever War (Feb. 27, 2015), <https://perma.cc/GM8B-HPKK>.

22. ROSA BROOKS, HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING: TALES FROM THE PENTAGON 18 (2016).

23. Stephen Sestanovich, *Has Russia Ended the War Between Armenia and Azerbaijan?*, COUNCIL ON FOREIGN RELS. (2020).

24. Aleksandra Jarosiewicz & Maciej Falkowski, *The Four-Day War in Nagorno-Karabakh*, CTR. FOR E. STUD. (June 4, 2016), <https://perma.cc/D28J-NZHJ>.

25. Katie Bo Williams, *In Syria, US Commanders Hold the Line — and Wait for Biden*, DEFENSE ONE (March 12, 2021).

26. Matthew Burrows & Robert Manning, *Three Possible Futures for a Frozen Conflict in Ukraine*, ATL. COUNCIL (May 26, 2022), <https://perma.cc/3S5Z-7VZS>.

27. Until the withdrawal of U.S. and multinational forces in August 2021, the conflict with the Taliban in Afghanistan was a prominent example of this type of “forever war” as well. See e.g., Rob Garver, “Forever War” in Afghanistan Comes to Abrupt, Tragic End, VOA NEWS (Aug. 17, 2021).

prevent, or at least minimize the occurrence of, never-ending wars should be a key concern of international law, not only to secure even the most tenuous peace but also to enhance the protection of civilians.

A. Wars That Do Not Seem to End

Scholars in both international relations and international law have taken notice of the rise of never-ending wars and tried to understand their causes. International relations and international law scholarship are also equally mindful that international armed conflicts and non-international armed conflicts do not necessarily follow the same patterns when it comes to termination. Yet the question of how wars end – and the comparison between international armed conflicts and non-international armed conflicts – has featured more prominently in international relations scholarship than in international law. This imbalance is unsurprising given the lack of attention international law devotes to determining the end of conflict and to the law applicable to it.

Explanations for the rise of forever wars fall into several categories, including the core interests and imperatives of the parties involved, the erosion of restraints on the use of force, and the nature of terrorist groups and their operations and goals. First, international relations scholars look at systemic underlying causes for conflict to persist. For example, some have approached the phenomenon of never-ending wars on a trust- or identity-based scale, asserting that communities may tend to perpetuate conflict because negotiation would amount to betraying the cause for which they fight.²⁸ Even when negotiation is attempted, the priority often lies in ending the violence rather than in mending societal wounds, leaving the seeds of future conflict in place.²⁹ Similarly, the security dilemma sometimes fosters identity-based conflicts. For example, in newly independent states within former empires, the presence of ethnic group members within the state of an opposing ethnic group can make war more likely.³⁰ Humanitarian interventions can introduce related concerns about the difficulty of ending wars initiated for such reasons, where leaving the country might mean a return to the violence that prompted the intervention in the first place.³¹

Second, some international law scholars fault the changes in normative understandings of sovereignty as unable to constrain the use of force.³² Weapons technology, cyber warfare, and the increased privatization of war have also contributed to the expansion of domestic authority – at least in the United States – and the

28. Elise Féron & Michel Hastings, *The New Hundred Years Wars*, 55 INT'L SOC. SCI. J. 489, 489–500 (2003).

29. *Id.*

30. See Barry Posen, *The Security Dilemma and Ethnic Conflict*, 35 SURVIVAL, no. 1, 1993, at 27, 32.

31. See Roland Paris, *The “Responsibility to Protect” and the Structural Problems of Preventive Humanitarian Intervention*, 21 INT'L PEACEKEEPING 569, 576-77 (2014).

32. See Rosa Brooks, *Be Careful What You Wish For: Changing Doctrines, Changing Technologies, and the Lower Cost of War*, 106 AM. SOC'Y INT'L L. PROC. 31 (2012).

perception that certain uses of force do not constitute war *per se*.³³ These interpretations arguably bolster the executive power to make unilateral decisions and pursue unfettered military entanglements.³⁴

Third, in conflict with terrorist groups, which typically qualify as non-international armed conflicts in international law, decisive military victory seems elusive and ephemeral.³⁵ Although in other types of conflicts, an opposing side's unwillingness or inability to continue fighting might have signaled a decisive victory, a terrorist group's disengagement from fighting may merely reflect a strategic choice to lie low until the environment for launching attacks improves. In the same vein, spectacular attacks can be a counterintuitive sign that a group is significantly weakened or even in existential danger. A terrorist group may "have an innate compulsion to act – for example, it may be driven to engage in terrorist attacks to maintain support, to shore up its organizational integrity, or even to foster its continued existence."³⁶ When a lack of overt attacks no longer signals the enemy is in decline and major attacks can instead mean that the group is weakened, identifying the end of conflict based on an adversary's actions becomes extremely difficult. In addition, terrorist groups morph, splinter, and reconfigure, such that determining if, let alone when, they have been defeated is exceedingly difficult:³⁷ "[i]n this war, no one seems to know what winning is."³⁸ Interestingly, the reluctance to negotiate with terrorists has made military victory once again relevant,³⁹ as the unilateral nature of war termination today reinforces.

B. Identifying the End of War: International Law's Limited Tools

In the current context, whether states would even recognize the end of war when it occurs is a fair question, particularly since it often can strangely resemble the start of war.⁴⁰ The Obama Administration offered at least two approaches for answering this question. One was the idea of a "tipping point" that would mark

33. For example, the Obama Administration thus argued that the use of drones and air strikes alone in Libya did "not constitute the kind of hostilities envisioned by the War Powers Resolution" as triggering the need for Congressional authorization or involvement. *Libya and War Powers: Hearing Before the S. Foreign Rels. Comm.*, 112th Cong. 7 (2011) (statement of Harold Hongju Koh, Legal Adviser, U.S. Dep't of State). See also Brooks, *supra* note 32.

34. See Laura Dickinson, *Not-War Everywhere: A Response to Rosa Brooks's How Everything Became War and the Military Became Everything*, 32 *TEMPLE INT'L & COMP. L. J.*, no. 1, 2018, at 17–23.

35. Ami Ayalon & Ayal Hayut-man, *Redefining Victory in Democracy's War on Terror*, *LAWFARE* (Feb. 18, 2020, 8:00 AM), <https://perma.cc/6H5N-PLGR>.

36. Audrey Kurth Cronin, *How al-Qaida Ends: The Decline and Demise of Terrorist Groups*, 31 *INT'L SECURITY* 7, 7 (Summer 2006).

37. Laurie R. Blank, *The Extent of Self-Defense Against Terrorist Groups: For How Long and How Far*, 47 *ISR. Y.B. HUM. RTS.* 265, 301 (2017).

38. Audrey Kurth Cronin, *The War on Terrorism: What Does it Mean to Win?*, 37 *J. STRATEGIC STUD.* 174, 191 (2014).

39. Lise M. Howard & Alexandra Stark, *How Civil Wars End*, *POL. VIOLENCE AT A GLANCE* (Feb. 9, 2018), <https://perma.cc/BWM9-HKAB>.

40. Bruno Cabanes & Guillaume Piketty, *Sortir de la Guerre: Jalons pour une Histoire en Chantier*, 3 *POLITIQUE, CULTURE, SOCIÉTÉ* 1 (2007).

the end of the conflict with al Qaeda, the time when “so many of the leaders and operatives of al Qaeda and its affiliates have been killed or captured, and the group is no longer able to attempt or launch a strategic attack against the United States.”⁴¹ The other tracks more closely with the notion of military victory, based on the stated goal of “degrad[ing] and destroy[ing] the operational capacity and supporting networks of terrorist organizations to the extent that they will have been effectively destroyed and will no longer be able to attempt or launch a strategic attack against the United States.”⁴²

How to apply these or other definitional frameworks remains, nonetheless, unclear. One scholar suggests wars should be deemed to end when they go from global to local,⁴³ for another, victory means “containing the threat at an acceptable level and at an acceptable cost.”⁴⁴ Although helpful, these tests are inherently more subjective and less straightforward than the formal treaties of the past. They are, in effect, more of a response to never-ending wars than an explanation or solution to them.⁴⁵

Although international relations scholarship has explored the issue of war termination at length – particularly with regard to civil wars – international law has held on to the rather limited factual test of “the end of active hostilities,” which remains the primary criteria signaling the end of the conflict, as discussed below.⁴⁶ An international law research agenda on the end of war, including how and when conflicts end, and delineating the obligations that cease, kick in, or per-dure once hostilities have ended, would make an important contribution.

II. TWEETS AND REPEATS: THE EROSION OF FORMALITY IN WAR TERMINATION

On December 19, 2018, U.S. President Donald Trump tweeted about “historic victories” over ISIS and the resulting withdrawal of U.S. troops.⁴⁷ This tweet, and

41. Jeh Charles Johnson, Gen. Couns., U.S. Dep’t of Def., *The Conflict Against al Qaeda and its Affiliates: How Will it End?* at Oxford Union, Oxford University (Nov. 30, 2012).

42. THE WHITE HOUSE, REPORT ON THE LEGAL AND POLICY FRAMEWORKS GUIDING THE UNITED STATES’ USE OF MILITARY FORCE AND RELATED NATIONAL SECURITY OPERATIONS 18 (2016), <https://perma.cc/DQE4-VKXS>. See also Johnson, *supra* note 41.

43. International Institute for Counter-Terrorism, *When Conflicts End and How: ISIS as a Case Study*, YOUTUBE, 18:25 (Oct. 23, 2019), <https://perma.cc/6KQ5-VVBV> (Daphné Richemond-Barak referencing Seth Jones’ idea).

44. *Id.* at 19:07 (Daphné Richemond-Barak referencing Brian Jenkins’ definition).

45. Elad Uzan, *How Do We End the Never-Ending Wars?*, BOS. REV. (Oct. 2, 2019), <https://perma.cc/BR82-6T7B>.

46. In *Prosecutor v. Tadić*, the International Criminal Tribunal for the Former Yugoslavia highlighted the importance of a more formal indicator of the end of conflict, including in non-international armed conflict, declaring that “[i]nternational humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.” *Prosecutor v. Tadić*, Case No. IT-94-1-I, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int’l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995). See also *Prosecutor v. Haradinaj*, Case No. IT-04-84-T, Judgment, ¶ 100 (Int’l Crim. Trib. for the Former Yugoslavia Apr. 3, 2008) (reiterating the *Tadić* emphasis on peace settlement as a marker of the end of conflict).

47. Donald J. Trump (@realDonaldTrump), X (Dec. 19, 2018, 3:10 PM), <https://perma.cc/LUC9-UVNZ> (“After historic victories against ISIS, it’s time to bring our great young people home!”).

his later tweets to the same effect, are emblematic of a growing and larger trend.⁴⁸ The use of tweets by presidents or prime ministers to signal the end of conflict and the conflicting messages subsequently emanating from the highest levels of government give the impression, however unjustified, that such serious matters are handled lightly – and more importantly, point to the erosion of formality in war termination. This section first provides historical context regarding how conflicts end and how that process has evolved over time. It then takes a closer look at three trends affecting war and the regulation of war that explain the progressive erosion of formality in war termination: the growing informality permeating the early stages of conflict, the absence of a legal requirement to end war, and the unique legal status and increasing occurrence of non-international armed conflicts.

A. *Ending War – Then and Now*

Between the 16th and 18th centuries, war was considered a formal business. It began with a formal declaration of war – communicated by sending a Herald, or messenger, to one’s foe, or tying a braided black horsetail at the Sultan’s palace – and ended in a formal settlement.⁴⁹

This period, on the whole, was an era of negotiated peace agreements, with crowns, territories, fortresses, colonies, economic privileges and the like assiduously traded about by statesmen like so many hogsheads of tobacco or boatloads of slaves.⁵⁰

In a classification that still resonates today,⁵¹ Gentili suggested that wars terminate by subjugation (one belligerent wins an outright victory over the other, and absorbs the loser into its territory), negotiated settlement, or the discontinuance of hostilities.⁵² In the case of negotiated settlement, which was the most common method of ending wars at the time, belligerents chose to negotiate terms that would be acceptable to all sides in exchange for (perhaps temporary) peace.⁵³ De Vattel noted that peace agreements focused on precluding further hostilities rather than resolving larger issues or judging the worth of one side or the other’s cause.⁵⁴ The third method of war termination – the discontinuance of hostilities –

48. See *infra* text accompanying notes 72-76.

49. FELIX BAUMGARTNER, DECLARING WAR IN EARLY MODERN EUROPE 30-31 (2011).

50. STEPHEN C. NEFF, WAR AND THE LAW OF NATIONS: A GENERAL HISTORY 116 (2005).

51. See generally Joakim Kreutz, *How and When Armed Conflicts End: Introducing the UCDP Conflict Termination Dataset*, 47 J. PEACE RSCH. 243 (2010) (the UCDP Conflict Termination dataset shows that conflicts do not exclusively end with decisive outcomes such as victory or peace agreement but more often under unclear circumstances where fighting simply ceases).

52. NEFF, *supra* note 50, at 116.

53. *Id.*

54. EMER DE VATTEL, THE LAW OF NATIONS, OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS 350 (1758).

meant the end of the war but did not consist of “peace-making in a true sense.”⁵⁵ In a prescient description, Gentili explained that some wars simply “peter out.”⁵⁶

International law has generally mirrored this basic framework. In the early stages of modern international law on war, peace treaties were used to end conflicts. Originally, an armistice marked a suspension in fighting, much like a truce or ceasefire, and did not constitute an end to the conflict. Beginning with the armistice of World War I, however, states began to see armistice as “a termination of hostilities, completely divesting the parties of the right to renew military operations,” and thus “put[ting] an end to the war.”⁵⁷ In addition, and much like Gentili’s framework, modern international law includes total defeat of one side – in extreme cases known as *deballatio*⁵⁸ – or the termination of hostilities as indicative of the end of conflict. Thus, the Fourth Geneva Convention declares that a conflict between two states ends upon the “general close of military operations,”⁵⁹ which is understood as an armistice, a capitulation, or the complete destruction of one side.⁶⁰ It is important to note, however, that this formulation marks the end of the application the law of war – but does not signal any political or strategic position on whether or how the conflict ought to end.

Fast forward to more contemporary times. When wars do end in the twenty-first century, war termination often feels anticlimactic and ephemeral. Consider the tweet described above that ostensibly declared the defeat of ISIS in December 2018. Four hours later, the Pentagon released a short statement clarifying that although ISIS-held territory had been liberated, the coalition campaign was not over.⁶¹ After multiple subsequent tweets about the defeat of ISIS and the end of that conflict in early 2019,⁶² a group of U.S. Senators sent a letter expressing concern over a potential withdrawal, to which the President wrote: “I agree 100%. All is being done.”⁶³ By suggesting that the withdrawal of U.S. troops would not take place as originally planned, a Sharpie scribble on that letter quickly undid the end of war tweet from just eleven weeks earlier, and all subsequent declarations to that effect.

55. NEFF, *supra* note 50, at 116.

56. NAN GOODMAN, *THE PURITAN COSMOPOLIS: THE LAW OF NATIONS AND THE EARLY AMERICAN IMAGINATION* 85 (2018).

57. Yoram Dinstein, *The Initiation, Suspension, and Termination of War*, 75 INT’L L. STUD. 131, 140 (2000).

58. *Id.* at 145.

59. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 6, 75, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

60. INT’L COMM. RED CROSS, COMMENTARY ON THE GENEVA CONVENTION (IV) RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 62 (1958).

61. Rebecca Kheel, *Trump Signals US Withdrawal from Syria*, HILL, (Dec. 19, 2018), <https://perma.cc/BZ99-W8EP>.

62. Ellen Mitchell, *16 times Trump said ISIS was defeated, or soon would be*, HILL (Mar. 23, 2019), <https://perma.cc/M7KZ-LRPQ>.

63. Anne Gearan & Karoun Demirjian, *Trump vowed to leave Syria in a tweet. Now, with a Sharpie, he agreed to stay*, WASH. POST. (Mar. 5, 2019), <https://perma.cc/KT6G-ZYCY>.

President Trump's tweets on the defeat of ISIS exemplify a broader trend. Iraqi Prime Minister Haider al-Maliki similarly tweeted his country's defeat of ISIS;⁶⁴ but nine months later, ISIS was still using caves in northern Iraq to conduct attacks.⁶⁵ In 2010, U.S. President Obama tweeted that the "American combat mission in Iraq has ended,"⁶⁶ but the last American troops left Iraq in 2011 – only to return in 2014 to fight ISIS.⁶⁷ U.S. troops also remained in Afghanistan long after President Obama's announcement of the end of combat operations,⁶⁸ finally withdrawing in August 2021.

These events are a far cry from the gathering of Germany and the Allied Nations in Versailles where the First World War formally ended with great fanfare, or the signing of the Japanese Instrument of Surrender on the *U.S.S. Missouri* to end World War II in the Pacific Theater in 1945. Whereas wars once ended with formal treaties signed by the belligerents or the formal surrender of the losing side to the victor, today wars often end unilaterally, informally, and sometimes indecisively.

Empirical evidence confirms this qualitative assessment of the growing trend toward informality in war termination. Most wars between 1800 and 1980 either concluded in explicit agreement or decisive victory.⁶⁹ Formal peace agreements thus remained the primary mechanism after the Cold War and into the early 2000s.⁷⁰ In a significant jump, however, 51% of contemporary conflicts (from 31.9% between 1946-1989 and 48.3% between 1990-2005) did not

64. Haider al-Abadi (@HaiderAlAbadi), X (Dec. 9, 2017, 3:44 AM), <https://perma.cc/GLY7-24K4> ("Our heroic armed forces have now secured the entire length of the Iraq-Syria border. We defeated Daesh through our unity and sacrifice for the nation. Long live Iraq and its people.").

65. Derek Henry Flood, *From Caliphate to Caves: The Islamic State's Asymmetric War in Northern Iraq*, 11 CTC SENTINEL 30 (2018), <https://perma.cc/M77H-TV3T>.

66. Barack Obama (@BarackObama), X (Aug. 31, 2011, 5:20 PM), <https://perma.cc/K9P7-GFSY> ("I made a pledge to the American people as a candidate for this office-and tonight the American combat mission in Iraq has ended.").

67. Jim Garamone, *DoD Authorizes War on Terror Award for Inherent Resolve Ops*, U.S. DEP'T OF DEF. (Oct. 31, 2014).

68. Kevin Liptak, *Obama Marks the End of Combat in Afghanistan*, CNN, (Dec. 28, 2014), <https://perma.cc/N736-UX7Q>; Barack Obama, U.S. President, Statement by the President on the End of the Combat Mission in Afghanistan (Dec. 28, 2014). The case of al-Warafi highlights the legal complications created by the disconnect between statements and facts on the ground. After President Obama's statement, Mukhtar Yahia Naji al Warafi, a detainee at Guantanamo, argued that he should be released because the conflict was over. The court held that the facts on the ground determine whether the conflict was still ongoing; the President's statement alone did not end the conflict or the application of the law of war. *Al Warafi v. Obama*, No. CV 09-2368 (RCL), 2015 WL 4600420, at 1 (D.D.C. July 30, 2015).

69. PAUL R. PILLAR, *NEGOTIATING PEACE: WAR TERMINATION AS A BARGAINING PROCESS* 16 (1983). Decisive victory is defined as "one side in an armed conflict is either defeated or eliminated, or otherwise succumbs through capitulation, surrender, or similar public announcement." Kreutz, *supra* note 51, at 244.

70. Kreutz, *supra* note 51; Hirota Ohmura, *Termination and Recurrence of Civil War: Which Outcomes Lead to Durable Peace after Civil War?*, 12 JAPANESE J. POL. SCI. 375 (2011).

end in negotiated settlement or decisive victory.⁷¹ This data only tells part of the story, however, omitting a critical slice of today's conflicts: it does not include in the quantitative analysis wars that simply *have not* ended, formally or otherwise, or wars that continue despite unilateral or informal declarations of war termination of the kind issued by President Trump and Prime Minister al-Maliki. This gap makes it difficult to mark the shift from formality to informality with precision. It has been a process rather than an acute transition.

B. Explaining the Erosion of Formality

How then can the process of erosion of formality in war termination or, in essence, the shift from treaties to tweets, be explained? An analysis of the evolution of international norms governing war and war termination provides some context to the progressive erosion of formality.

1. Declarations of War

First, international law ceased requiring formality in the initiation of war, that is, explicit declarations of war. Formal declarations of war had been the norm for centuries, and the Hague Convention (III) of 1907 codified this practice into law: "The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war."⁷² Soon thereafter, however, it became accepted that "[b]ehavior from which an intention to wage war can be inferred"⁷³ could create a state of war, even absent a formal declaration. An intention to declare war, which could be inferred from state behavior, became sufficient.⁷⁴ In other words, the legal requirement of formality at the beginning of a war, did not stick.

In response to states using the legal requirement of a declaration of war – whether formal or inferred – as an "excuse" to circumvent the law,⁷⁵ the drafters of the 1949 Geneva Conventions eliminated the formality requirement. Instead, the law today establishes the existence of an armed conflict by an objective determination of the facts on the ground, regardless of whether one or both states

71. Kreutz, *supra* note 51, at 246 (referring to the Uppsala Data Conflict Program's 2010 dataset – classifying termination into "victory," "peace agreement," "ceasefire," and "other," in which "other" is applied to cases in which conflict ceases without victory or agreement).

72. Hague Convention (III) on the Opening of Hostilities art. 1, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 263.

73. INGRID DETTER, *THE LAW OF WAR* 11 (2000).

74. *Id.*; see also Arnold D. McNair, *The Legal Meaning of War, and the Relation of War to Reprisals*, 11 TRANSACTIONS OF GROTIUS SOC'Y 29–51 (1925). *Contra* HANS Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* (2003).

75. For example, during World War II, Japan claimed that its operations in China and Manchuria were "police operations" and did not trigger the law of war. The International Military Tribunal for the Far East rejected this argument decisively. International Military Tribunal for the Far East, Nov. 4, 1948, at 490.

recognize the existence of the conflict.⁷⁶ Although an essential pillar of the law in foreclosing law avoidance, the decision to not require declarations of war also made formality less attainable at all stages of war: “wars that begin formally are more likely to conclude formally.”⁷⁷ No less, the political and legal costs of acknowledging a state of war have contributed to the “demise of peace treaties.”⁷⁸ One significant explanation for the erosion of formality in general around war therefore lies in the law’s transition away from such formality in the initiation of war.

2. Lack of Rules Governing War Termination

Second, formality requirements only ever applied to war declarations – not to war termination. Even when formal declarations of war were required, the law did not – and still does not – impose any obligations regarding how war termination takes place (nor does it obligate belligerents to put an end to war). It has remained silent on *how* wars ought to end – whether by peace treaty, armistice, victory, or other mechanism – and the level of formality that should accompany the end of war. The law provides some markers to identify *when* a conflict has ended. The Fourth Geneva Convention declares that the Convention ceases to apply after the “general close of military operations,” which the drafters understood to be “when the last shot has been fired.”⁷⁹ The legal obligation to repatriate prisoners of war following the “cessation of active hostilities” similarly indicates that the “cessation of active hostilities” is an accepted marker of the end of conflict. The law therefore focuses on whether changes on the ground warrant a change in the applicable law – and accordingly when the law of war ceases to apply. Whether and how belligerents are obligated to end conflicts, however, is not a law of war issue.

The law could have imposed formality, but it did not. Perhaps formality was not valued; perhaps it was not attainable. In hindsight, the lack of requirements for formality at the beginning *and* at the end of war appears to weaken the law’s ability to maintain the exceptional nature of war – and set the stage for never-ending wars.

3. The Unique Legal Status of Conflicts Involving Non-State Actors

A third explanation for the erosion of the formality of war termination lies in the rise and unique status of wars against non-state actors. Under international law, the traditional concept of war (and the ensuing legal obligations and formalities) did not encompass engagements with non-state entities.⁸⁰ Even when declarations of war were *de rigueur*, they did not need to be issued against non-state

76. INT’L COMM. RED CROSS, COMMENTARY TO GENEVA CONVENTION (III) RELATIVE TO THE TREATMENT OF PRISONERS OF WAR 23 (1960).

77. Fazal, *supra* note 11, at 715.

78. *Id.* at 703; *see also* DETTER, *supra* note 73, at 12.

79. Final Record of the Diplomatic Conference of Geneva of 1949, Vol. IIA, at 815.

80. *See* I L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 202 (H. Lauterpacht ed., 7th ed. 1948).

actors.⁸¹ Furthermore, it has long been understood that sovereign states have a monopoly on violence and declarations of war; any purported declarations of war by non-state groups simply have no effect in international law.⁸² Traditionally, the underlying assumption was therefore that different rules applied to state-to-state confrontations than those involving non-state actors. Even when international law eventually extended the application of the law of war to conflicts involving non-state groups,⁸³ this extension did not carry with it any of the traditional formalities relating to the initiation of conflict.⁸⁴

Today, conflicts with terrorist groups in particular rarely end by formal means, such as collective surrender or negotiations.⁸⁵ Subjugation is also less relevant in the context of wars involving non-state actors.⁸⁶ Although non-state armed groups do at times enter into formal, war-ending agreements with states – such as the 1998 agreement between the Philippines and the National Democratic Front of the Philippines,⁸⁷ the 1999 peace agreement between Sierra Leone and the Revolutionary United Front,⁸⁸ or the 2016 agreement between Colombia and the Revolutionary Armed Forces of Colombia (FARC)⁸⁹ – these agreements are the exception rather than the rule.

Formal settlements are perceived to afford terrorist groups or insurgents unwanted legitimacy. States frequently point to political considerations to explain their reluctance to negotiate with militants, which partly explains the post-9/11 trend to favor military victory over negotiated settlements in wars pitting states against non-state actors.⁹⁰ At times, however, this reluctance may contribute to the continuation of conflict. In effect, for example, the United States' formal

81. DE VATTEL, *supra* note 54, at 318.

82. 2 L. OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* § 94 (2d ed. 1912); *see also* Avril McDonald, *Declarations of War and Belligerent Parties: International Law Governing Hostilities Between States and Transnational Terrorist Networks*, 54 NETH. INT'L L. REV. 279, 298 (2007) (“It seems impossible for the declarations of war issued by Al Qaeda in 1996 and 1998 to have brought a state of war into being, since the obligation to declare war in the Third Hague Convention and to bring into existence a state of war merely by means of declaration belongs only to states”). Similarly, the Twitter declaration of war from Anonymous, the loosely affiliated group of hackers – @GroupAnon. “Make no mistake: #Anonymous is at war with #Daesh. We won’t stop opposing #IslamicState. We’re also better hackers. #OpISIS.” Anonymous (@GroupAnon), X, (Nov. 15, 2015, 10:14 AM), <https://perma.cc/72V9-P5GN>.

83. Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

84. OPPENHEIM, *supra* note 82; *see also* McDonald, *supra* note 82.

85. Audrey Kurth Cronin, *How Fighting Ends: Asymmetric Wars, Terrorism, and Suicide Bombing*, in *HOW FIGHTING ENDS: A HISTORY OF SURRENDER* 417 (Afflerbach, H. & Strachan, A., eds., 2012), at 433.

86. JOHN A. LYNN, *ANOTHER KIND OF WAR: THE NATURE AND HISTORY OF TERRORISM* 419 (2019).

87. Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 1998.

88. U.N. Security Council, Peace Agreement Between Gov’t of Sierra Leone and the Revolutionary United Front of Sierra Leone, U.N. Doc. S/1999/777 (July 12, 1999).

89. Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Nat’l Gov’t of Colom.-FARC-EP, Nov. 24, 2016.

90. Howard & Stark, *supra* note 39.

policy of not negotiating with terrorists often actually extends to “stay until we win and we can’t negotiate a way out of this.”⁹¹ Nonetheless, an initial reluctance to enter into a formal settlement may be overcome if engaging with armed groups “leads to concrete benefits.”⁹²

Putting aside the reluctance to enter into negotiation with terrorist groups, the decentralized structure of many terrorist organizations makes it difficult to identify which part of the organization possesses the right or legal authority to even reach a settlement.⁹³ Non-state actors in civil wars may also fail to reach negotiated settlements because neither side can make credible commitments without a third-party enforcer.⁹⁴ The fact that these actors rely on disruptive violence as their primary strategic advantage also disincentivizes any peace agreement that would require them to disarm, demobilize, or disengage.⁹⁵ Even if a settlement is reached, individual lone wolf actors or other non-state belligerents have the capability to jeopardize the peace, as the string of suicide bombings that derailed Israeli-Palestinian peace talks in the mid-1990s illustrates. The prospects for formal settlements in civil wars in general, and in conflicts involving terrorist organizations in particular, thus remain slim.

In effect, as traditional formalities regarding the onset of war lost their grip and the law remained silent on war termination, informality settled in. The prevalence of conflicts involving non-state actors, traditionally excluded from the norms governing war, further blurred the boundary between war and peace. The development of the law of war, too, contributed to the deemphasis on formality.⁹⁶ For all these reasons, the cry of 19th century international scholars to “separate the state of war” from peace has regained its relevance today.⁹⁷

III. RESTORING CLARITY AND STABILITY WITH A DOSE OF FORMALITY – AND WHAT THAT MEANS

The loss of formality in war has also brought a loss of exceptionality. From a condition out-of-the-ordinary, war has become the norm. Previously limited in temporal terms, the “state of war” has become indefinite, with an uncertain beginning and even more uncertain ending. A recognition of the value of, and perhaps a move back to, some formality could have a positive impact for geopolitical stability and legal clarity, and make it more difficult, and perhaps less likely, for wars to simply drag on.

First, re-introducing a level of formality in war termination would benefit international security and stability. Research shows that negotiated settlements offer

91. International Institute for Counter-Terrorism, *supra* note 43.

92. Anthea Roberts & Sandesh Sivakumaran, *Lawmaking by Nonstate Actors: Engaging Armed Groups in the Creation of Int’l Humanitarian Law*, 37 YALE J. INT’L L. 108, 137 (2012).

93. MARTHA CRENSHAW & GARY LAFREE, COUNTERING TERRORISM 2 (2017).

94. Barbara F. Walter, *The Critical Barrier to Civil War Settlement*, 51 INT’L ORG. 335, 336 (1997).

95. *Id.* at 339.

96. Fazal, *supra* note 11, at 696.

97. NEFF, *supra* note 50, at 178.

better chances of preserving peace: although 31% of civil wars ending in stalemate recur, only 22% of those ending in negotiated settlement devolve into renewed violence.⁹⁸ International wars ending in a *detailed* settlement are the least likely to recur.⁹⁹ Strong agreements – those that alter incentives by raising the cost of an attack either physically or politically, limit uncertainty by specifying compliance, or help prevent or manage accidents from spiraling back to war – reduce the risk of recurring conflict by 80% and produce the most stable peace.¹⁰⁰ Formal agreements also enable the parties to address justice and accountability as the war comes to an end.¹⁰¹ Gentili and Grotius would likely agree and add that negotiated settlements offer the greatest hope for long-lasting peace when they avoid assigning blame and designating a winner and a loser.¹⁰²

Second, more formality at the end of conflict would also enhance legal clarity. The exceptional authorities and obligations of the law of war apply only during wartime, making a clear delineation between war and peace essential, lest war become “a normal condition.”¹⁰³ One option for partially addressing this pitfall through legal means might have been temporal limitations for wars waged in self-defense in accordance with Article 51 of the U.N. Charter.¹⁰⁴ However, the international law of self-defense does not include any guidance regarding the temporal scope of the self-defense justification once triggered. A return to formality, regardless of how gradual and limited, would be a first step toward countering the appeal of informal, never-ending, and below-the-threshold warfare that weakens the foundations of the post-WWII normative order. It would also help in signaling to external actors, such as neutral parties or international bodies like the World Bank, that the fighting has ceased.

Formal mechanisms have the advantage of clarifying the legal regime applicable at a given time, even if it may take time for reality to fully align. Thus, international organizations, states, tribunals, commissions of inquiry, and other entities will look to legal and factual indicators regarding the end of conflict as useful markers to determine the nature of the situation. As one important example, a 2004 United Nations Security Council resolution declaring the end to the United States’ and United Kingdom’s occupation of Iraq helped achieve some legal clarity about the nature of the conflict, the obligations of the states involved, and the legal framework governing the relationship between those states.

98. Monica Duffy Toft, *Ending Civil Wars: A Case for Rebel Victory?*, 34 INT’L SEC. 7 (2010).

99. Virginia Page Fortna, *Scraps of Paper? Agreements and the Durability of Peace*, 57 INT’L ORG. 337, 339 (2003).

100. *Id.* at 366.

101. Paul Williams (@PaulWilliamsDC), X (Sept. 3, 2020, 2:37 PM), <https://perma.cc/45RB-64AN>. (“A peace now, justice later approach does not lead to durability. Look at Yemen and Sierra Leone, where amnesty clauses tipped states back into conflict. Parties need to create justice mechanisms, like hybrid tribunals and local truth, justice, and reconciliation bodies.”).

102. NEFF, *supra* note 50, at 116, 118.

103. Andrew J. Bacevich, *Ending Endless War: A Pragmatic Military Strategy*, FOREIGN AFF. (Aug. 3, 2016), <https://perma.cc/2BEM-ZJM9>; LAWRENCE FREEDMAN, *THE FUTURE OF WAR: A HISTORY* 28 (2017).

104. U.N. Charter art. 51.

Although the United States and coalition military presence continued for many years, the occupation (and, as a result, the application of the law of belligerent occupation) formally ended, and the continued U.S. military operations became part of the non-international armed conflict that arose in its aftermath. Similarly, when violence erupted after the 2016 peace agreement between the government of Colombia and the Revolutionary Armed Forces of Colombia (FARC), the finality and formality of the peace agreement helped to ensure the clear delineation between war and peace,¹⁰⁵ as well as the continuation of related conflicts between the government and smaller armed groups.¹⁰⁶ Any possible dissonance between the moment at which war ends from a legal standpoint and the actual end of fighting presents no real obstacle to a return of formality.

Although informality may serve the interests of states, particularly when addressing the challenges posed by violent non-state actors, formality as part of war termination can help to disrupt the cycle of never-ending wars. The end of war is a double-edged sword that may work to the benefit or detriment of the belligerents. As the Third Geneva Convention requires at the end of active hostilities, individuals are released who continue to pose a threat even though the hostilities have factually ended.¹⁰⁷ A negotiated end may also involve sitting down with a brutal enemy, deemed illegitimate and unworthy of such honors. Both of these results can spark domestic political opposition or critique. At the same time, however, continuing a never-ending conflict presents extraordinary costs as well, on a human, financial, geopolitical, and moral level. The fact that informality at times may better serve the interests of states should not detract from the distinct advantages that formality offers, particularly in limiting the phenomenon of never-ending wars.

There are various ways to infuse the war termination process with formality, and various degrees of formality. A peace agreement is the most obvious: formality lies in the warring, and ideally non-warring, parties sitting around the negotiating table and building legitimacy for peace.¹⁰⁸ Research shows that both the process leading to a settlement and the outcome can be endowed with formality to further a durable peace.¹⁰⁹ This type of formality usually also involves a national debate with a wide range of actors, from all branches of government and civil society – often resulting

105. See Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, *supra* note 89; Nicholas Casey & Federico Rios Escobar, *Colombia Struck a Peace Deal with Guerillas, but Many Return to Arms*, N.Y. TIMES (Sept. 18, 2018), <https://perma.cc/6XHX-CWRQ>.

106. The conflict between the government and the National Liberation Army (ELN) continued, with a negotiated six-month ceasefire finally entering into effect in August 2023. Genevieve Glatsky, *Colombia and Rebel Group Begin Cease-Fire After Decades of Conflict*, N.Y. TIMES (Aug. 3, 2023), <https://perma.cc/YG6W-74LW>.

107. Geneva Convention Relative to the Treatment of Prisoners of War art. 118, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

108. Desirée Nilsson, *Anchoring the Peace: Civil Society Actors in Peace Accords and Durable Peace*, 38 INT'L INTERACTIONS 243 (2012).

109. Fortna, *supra* note 99.

in more robust commitments.¹¹⁰ Finally, with the visibility of a signing ceremony seen by all, peace agreements are more difficult to abandon.

Certain elements of formality can be embraced, others not. As more of these elements accompany the end of war, the more likely the growing phenomenon of never-ending wars can be contained. Such elements may include statements to the effect that hostilities have ended – issued by a third party, a mediator that helped bring the parties to the negotiating table, or the International Committee of the Red Cross with the approval of the parties. The authority to wage war can be officially withdrawn by the legislative branch or other legally entrusted body. Criminal investigations and prosecutions may help to signal that the conflict has ended and a greater focus on justice has arrived. Statements can be made with regards to reparations, border security arrangements, or prisoner exchange deals even outside of a fully drafted and all-encompassing peace settlement.

Initiatives such as the creation of a truth commission or the creation of a reparation fund for victims of the conflict also formalize the end of the conflict, particularly in non-international armed conflicts where formal peace agreements are less likely, and thereby contribute to greater stability and legal clarity. Transnational justice scholarship has long advocated inclusive political processes that encompass “a range of international, transnational, national, and private settlements.”¹¹¹ Some of these certainly require a level of formality, government involvement, or transparency that would satisfy our call for more formality. Demobilization and reintegration arrangements (DDR), though ideally incorporated into settlement agreements, the deployment of U.N. peacekeepers, or the involvement of the U.N. Security Council (as in the case of Iraq) could all translate into, or contribute to, greater formality.

In sum, a return to a level of formality would give more weight, legitimacy, and solemnity to war termination. It would reaffirm the exceptional character of war and enhance legal clarity and stability. It would preserve the international order and the essential distinction between war and peace. Although no template for such a return to, or injection of, more formality exists, several avenues that, integrated alone or in combination with other elements at various stages of the peace-making process, would slow down the current march towards even greater informality in war termination.

CONCLUSION

Never-ending wars – wars that simmer or that peter out and recur, without any firm conclusion – have become a common feature of the international order, calling into question the post-WWII priority of limiting war and clearly delineating its scope. War termination has lost its ceremonial character, is rarely penned into a formal legal instrument, and fails to disincentivize a return to violence.

110. Charles Lipson, *Why are Some International Agreements Informal?*, 45 INT'L ORG. 495, 501 (1991).

111. Ruti Teitel, *Transitional Justice in a New Era*, 4 FORDHAM INT'L L. J. 893, 898-99 (2003).

What triggered the increasingly informal nature of war termination and how has such informality impacted protracted violence? The shift from treaties to tweets has contributed to never-ending wars, caused by international law's inability to impose formal requirements at the onset of war, its silence on war termination, and the rise and unique status of wars waged against non-state actors. This argument finds support in early legal conceptions of war termination and existing data on the end of conflicts. It complements the work of international relations scholars by exploring the erosion of formality in war termination and how it might result from norms – or the lack thereof. International law, by choosing not to regulate this aspect of conflicts, has influenced patterns of violence.

It is important to clarify that although the erosion of formality provides an explanatory logic for the spread of never-ending wars, it certainly does not provide the sole explanation behind this complex phenomenon. In addition, this multidisciplinary analysis is not limited to civil wars or non-international armed conflicts – a focus of international relations research – but draws insights related to war termination, the erosion of formality, and never-ending wars for all conflicts. As such, this analysis can serve as the starting point for further research examining how patterns of termination in international and non-international armed conflicts, respectively, have affected their protraction.

A return to some formality at the end of war would preserve war's character as an out-of-the-ordinary normative construct. War has mingled with peace to the point where the two have become almost indistinguishable.¹¹² Formality may not always guarantee the end of war, but it does play a critical role in preserving war's exceptional character, and therefore in ensuring peace. Even where formality fails to fulfill expectations – consider the situation in Colombia or the failed attempts at implementing ceasefires in Nagorno-Karabakh – it limits the violence to periodic spats. If violence recurs, it becomes more visible, identifiable, and costly. Valuing more formal markers in the transition from war to peace endows the end of war with greater legitimacy in the eyes of the parties to the conflict, results in extended periods of peace, and bears the seeds of an enduring peace. War itself may be inevitable,¹¹³ but a reintroduction of formality can help prevent it from being interminable.

Formality in war termination should therefore be favored over unilateral, impulsive, and easily revocable tweets. What would a return to formality look like in today's world? Besides a formal agreement between the parties, it could take the form of the advice of a trusted adviser convincing a policymaker to issue a formal statement once the hostilities are over. It could also mean the revocation by the legislature of the authority to use force against a well-identified enemy, the release of detainees – including as legally required – once conflict comes to an end, or the drafting of a memorandum of understanding addressing the aftermath of conflict, including avenues for justice, without necessarily resolving all the

112. NEFF, *supra* note 50, at 397.

113. Kenneth N. Waltz, *The Stability of a Bipolar World*, 93 DAEDALUS 881 (1964).

issues that led to the outbreak of violence. The form does not matter; making some formality a priority does. At the same time, this argument for added formality is not a call for a legal requirement for such formality, because such a requirement could backfire and, paradoxically, make wars harder to end.

Focusing attention on the need to put an end to the wars that states initiate will make an important contribution to the critical goal of keeping war as separate as possible from peace and reaffirming the exceptional and unique character of war. Doing so can help to reverse a seemingly intractable trend¹¹⁴ towards living in “undifferentiated legal and moral world at all times.”¹¹⁵ Understanding how conflicts come to an end, the patterns of termination across various types of conflicts, and which factors enable or impede sustainable peace, is of critical importance to international law and the preservation of the international order.

114. Naz K. Modirzadeh, *Cut These Words: Passion and International Law of War Scholarship*, 61 HARV. INT'L L. J., 1 (2019).

115. NEFF, *supra* note 50, at 397.