The Ethics of Armed Conflict
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I have always resisted the argument that force is a last resort.

Michael Walzer (2004: 160)

The criterion of last resort underlines the primacy of peace over war in just war thinking.

A. J. Coates (1997: 189)

The cosmopolitan just cause principle introduced in the preceding chapter might appear to be overly permissive, and the cosmopolitan last resort principle introduced in this chapter might appear to be overly prohibitive. Hence, a chief purpose here is to explore how the two principles are interrelated. To counterbalance overemphasis of the idea of just cause, I am emphasising the idea of last resort.

As the block quotations display, there can be principled moral disagreement about the idea of last resort. Disputably, in Walzer’s words, ‘we can never reach lastness, or we can never know that we have reached it’ (2004: 88). Another main purpose is to defend the idea of last resort against such scepticism.

The idea of last resort is discussed both in this chapter and the next, ‘Last Resort and Noncombatant Immunity’. The first part of this chapter contains some introductory remarks. In the second part, a cosmopolitan last resort principle is formulated. In the third part, the principle is applied to some particular cases. In the fourth part, reasonableness standards are proposed. The fifth part appends some additional remarks.

I. PRELIMINARIES

According to Johnson, a last resort principle is ‘not found in classic statements of the just war idea’ (2005: 36). Arguably, however, an intimation of last resort is found in one of Vitoria’s rules of war:
First Canon: since princes have the authority to wage war, they should strive above all to avoid all provocations and causes of war. If it be possible, the prince should seek as much as lieth in him to live peaceably with all men, according to Paul’s words in Rom. 12: 18. (1991: 326–7)

But I am not studying the history of the idea of last resort. Instead, I am engaging in the project of rethinking, revising or supplementing received just war principles, among which is a last resort principle. With the aim of formulating a cosmopolitan last resort principle, I want to examine the criterion of ‘last resort’ in the High-level Panel Report.

A last resort principle was expressed succinctly by William V. O’Brien: ‘Every reasonable peaceful alternative should be exhausted’ (1981: 33). As Richard Regan underscored: ‘The key word is reasonable’ (1996: 64 [emphasis in original]). To illuminate this particular word, let me suggest a domestic analogy. In a criminal trial, there must be proof ‘beyond a reasonable doubt’ (ALI 1962: 1.12); and to decide whether a person has acted negligently, we have to ascertain how a ‘reasonable person’ would have acted (ALI 1962: 2.02). In domestic jurisprudence, the word ‘reasonable’ is also a key word.

Accordingly, let me raise a key question. What are the standards for determining whether it is no longer reasonable to attempt an alternative nonmilitary measure before resorting to the use of armed force? A main thesis is that we are able to determine that we have reached lastness by means of ‘reasonableness standards’.

Another key word is ‘peaceful’. Paradigmatically, what should be exhausted is every reasonable alternative that is peaceful. Whereas military actions can be highly destructive, alternative measures that are peaceful can be highly constructive. During the Cold War, there might have been an enormously destructive nuclear war. Fortunately, some peaceful alternative measures were attempted, including one that still promises to be strikingly constructive – namely, the negotiation and ratification of the Nuclear Non-Proliferation Treaty (NPT). By ratifying the NPT, states are committed to engage in ‘negotiations in good faith’ about ‘effective measures’ for bringing about ‘nuclear disarmament’ (NPT 1968: Article VI).

There is a crucial moral difference between a military action and an alternative measure that is peaceful. Regularly, when we perform military actions, we intentionally or knowingly kill or otherwise gravely violate basic human rights of other persons. According to the nonharm principle, we are morally obligated not to gravely violate basic human rights of other persons. In order to override the nonharm principle, we have the burden of proving that just war principles are satisfied.

By contrast and paradigmatically, when we attempt alternative measures
that are peaceful, we do not gravely violate basic human rights. The nonharm principle does not have to be overridden. This crucial moral difference helps to clarify why before using armed force, every reasonable peaceful alternative should be exhausted (Childress 1982: 75).

There are problems of intermediate cases. First, there is a ‘coercion problem’. In addition to peaceful measures, there are alternative measures that are coercive – notably, economic sanctions. By attempting a coercive nonmilitary measure, we might also gravely violate basic human rights of other persons – for instance, the human right to ‘food, clothing, housing and medical care’ (UDHR 1948: Article 25). Second, there is a ‘threat problem’. Should deterrent or compellent threats to use armed force be conceptualised as military actions or coercive nonmilitary measures? Third, there is a ‘concurrency problem’. While a military action is being performed, should we also attempt nonmilitary measures? For instance, should we negotiate while fighting? Later, I investigate how these three problems might be resolved.

II. A LAST RESORT PRINCIPLE

My purpose in this second part is to formulate and support a cosmopolitan last resort principle that is applicable by all sorts of responsible agents to all forms of armed conflict.

A. THE CRITERION OF LAST RESORT

To begin with, I want to examine the last resort criterion in the High-level Panel Report:

*Last resort.* Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed? (HLPR 2004: 67)

In accordance with moral universalism, it is presupposed that this criterion is applicable by all sorts of responsible agents to all forms of armed conflict.

Notice the presence of the word ‘reasonable’. Again, a key question should be raised. What are the standards for determining whether, in a particular case, there are no ‘reasonable grounds’? In short, what are the ‘reasonableness standards’? Notice also the absence of the word ‘peaceful’. Apparently, the term ‘non-military option’ encompasses both peaceful measures and coercive nonmilitary measures.

Correspondingly, I propose to formulate provisionally a cosmopolitan last resort principle as a conditional prohibition:
Last resort principle. It is morally obligatory not to perform a military action, if every reasonable nonmilitary measure has not been attempted.

Presumably, the last resort criterion incorporates a reasonableness standard of impracticality (or infeasibility) – roughly, that the nonmilitary measure ‘will not succeed’. By contrast, instead of complicating the last resort principle by incorporating reasonableness standards in it, I propose to formulate some reasonableness standards as principles subordinate to, or elucidatory of, it – namely, not only an impracticality standard, but also standards of disproportionality and awfulness. Additionally, there are the epistemic and specificity standards.

B. A COERCIVE RESORT PRINCIPLE

I am featuring moral ideals expressed in the UN Charter. In Chapters VI and VII, a conception of peaceful measures is clearly distinguished from a conception of coercive nonmilitary measures.

According to Chapter VI, the parties to a sufficiently dangerous dispute are required, ‘first of all’, to attempt to settle their dispute by ‘peaceful means’ – for instance, through ‘negotiation’ and ‘judicial settlement’ (Article 33). Significantly, the Security Council is empowered to ‘call upon the parties to settle their dispute by such means’ (Article 33). In brief, the Security Council is empowered by Chapter VI to explore peaceful measures.

The Security Council is also empowered by Chapter VII to explore coercive nonmilitary measures. Specifically, if the parties ‘fail to settle’ their dispute by peaceful measures (Article 39), the Security Council is empowered to authorise coercive measures ‘not involving the use of armed force’ to settle it – for instance, ‘complete or partial interruption of economic relations’ (Article 41).

In the UN Charter, these conceptions of peaceful measures and coercive nonmilitary measures are clearly distinguished from a conception of military actions. As a last resort, if coercive nonmilitary measures ‘would be inadequate or have proved to be inadequate’, the Security Council is empowered by Chapter VII to authorise military actions (Article 42).

Analogous to the aforementioned crucial moral difference between peaceful measures and military actions, there is a crucial moral difference between peaceful measures and coercive nonmilitary measures. Paradigmatically, when a coercive nonmilitary measure is attempted, the nonharm principle has to be overridden. Frequently, particular cases of such coercion involve grave violations of basic human rights. By contrast and paradigmatically, when a peaceful measure is attempted, the nonharm principle does not have to be overridden. The former crucial moral difference helps to clarify why before using armed force, every reasonable peaceful alternative should be
exhausted. Analogously, the latter crucial moral difference helps to clarify why before attempting a coercive nonmilitary measure, every reasonable peaceful alternative should be exhausted.

Therefore, analogous to the provisional last resort principle, I propose to formulate provisionally a principle concerning coercive nonmilitary measures:

**Coercive resort principle.** It is morally obligatory not to attempt a coercive nonmilitary measure, if every reasonable peaceful measure has not been attempted.

‘A feminist understanding of last resort’, Laura Sjoberg explained, ‘would require the inclusion of non-coercive strategies to obtain policy goals’ (2006: 81). Granted, a feminist approach to just war theory is somewhat different from my Kantian approach, but there are some concordances, as this coercive resort principle illustrates.3

Between military actions and coercive nonmilitary measures, there is not such a crucial moral difference, or so it would appear. Before using armed force, why should every reasonable coercive nonmilitary measure be exhausted? In some particular cases, economic sanctions might be considerably more destructive than targeted military actions. Later, I investigate how this ‘coercion problem’ might be resolved.

**C. THE COEQUALITY OF LAST RESORT AND JUST CAUSE**

The criterion of ‘seriousness of threat’ in the High-level Panel Report includes the phrase ‘to justify prima facie’, and the revised threat-seriousness criterion in the preceding chapter includes the phrase ‘to justify tentatively’. These phrases suggest that the threat-seriousness criterion ought to be satisfied first, as does the phrase ‘the threat in question’ in the last resort criterion. Nonetheless, I think that the last resort criterion ought to be satisfied, even when the threat-seriousness criterion is not satisfied.

According to Johnson, the just cause principle is a ‘deontological’ principle, whereas the last resort principle is a ‘prudential’ principle; and deontological principles have ‘priority’ over prudential principles (1999: 34, 41).

By contrast, I am formulating cosmopolitan just cause and last resort principles as coequal deontological principles. Neither has priority over the other.

In his article ‘Just cause for war’, McMahan argued that the requirement of just cause has priority over the requirement of necessity – that is, the requirement ‘that war be a necessary means of achieving the just cause’ (2005: 5). (I read his necessity requirement as a last resort requirement; the term ‘last resort’ does not occur in his article.) He claimed that ‘just cause has priority over the other valid requirements in this sense: the others cannot be satisfied, even in principle, unless just cause is satisfied’ (2005: 5). His
argument that just cause has priority over necessity was stated briefly: ‘The claim that war is necessary for something other than the achievement of a just cause has no justificatory force’ (2005: 5).

Instead of such a priority thesis, I am advocating a coequality thesis – namely, that the just cause principle and the other core just war principles are deontological principles coequally. None of them has priority over any of the others. Therefore, the last resort principle must be satisfied, even when the just cause principle is not satisfied. Because armed conflicts are so highly destructive, the chief function of just war principles should be to morally constrain uses of armed force. Even when agents responsible for a military action fail to satisfy the just cause principle, they are still morally constrained by the last resort principle. It is still morally obligatory for them not to use armed force to achieve a goal that is not a just goal, if they have not attempted every reasonable nonmilitary measure.

Let me sketch a controversial illustration. Presumably, China has as a goal ‘the fusing of Taiwan with the Chinese mainland’ (Kaplan 2010: 36). But China does not have a just cause for the use of armed force, or so I believe. Even when the just cause principle is disregarded, China is still morally constrained by the last resort principle. Before attacking Taiwan, China must negotiate with Taiwan about unification. Hopefully, the temporal process of negotiation between China and Taiwan and the time requisite for attempting every other reasonable nonmilitary measure would keep ‘Taiwan functionally independent until China became a more liberal society’ (Kaplan 2010: 37). Thus might the destructiveness of war be circumvented.

D. A COSMOPOLITAN LAST RESORT PRINCIPLE
In this section, the provisional last resort principle is revised, in order to make explicit that a just cause is not presupposed.

Admittedly, the just cause and last resort principles are interrelated. The idea of just cause should be understood teleologically, but so should the idea of last resort. According to the just cause principle, a military action must be performed as a means of achieving a just goal. Correlatively, the last resort principle morally requires that, before performing that military action as a means of achieving that just goal, every reasonable nonmilitary means of achieving that just goal must be attempted.

Accordingly, to fortify McMahan’s priority thesis, his necessity requirement – namely, ‘that war be a necessary means of achieving the just cause’ (2005: 5) – might be reconstructed as follows.

Necessity requirement. It is morally obligatory not to attempt to achieve a just goal by means of a military action, if it is reasonable to attempt to achieve that just goal by means of a nonmilitary measure.
By contrast, my conception of last resort is more inclusive. For it also morally requires that, before performing a military action as a means of achieving a goal that is not just, every reasonable nonmilitary means of achieving that goal that is not just must be attempted.

Therefore, in order to make explicit that a just cause is not presupposed, I propose to revise the provisional formulation of the cosmopolitan last resort principle as follows.

_Last resort principle._ It is morally obligatory not to attempt to achieve a goal by means of a military action, if it is reasonable to attempt to achieve that goal by means of a nonmilitary measure.

In accordance with moral universalism, it is presupposed that the principle is applicable by all sorts of responsible agents. It is morally obligatory for any responsible agent not to attempt to achieve a goal by means of a military action, if it is reasonable for that responsible agent to attempt to achieve that goal by means of a nonmilitary measure. Moreover, the principle is applicable to all forms of armed conflict. It is applicable to every military action, however large scale or small scale.

Additionally, let me propose an analogous revision of the principle about coercive nonmilitary measures:

_Coercive resort principle._ It is morally obligatory not to attempt to achieve a goal by means of a coercive nonmilitary measure, if it is reasonable to attempt to achieve that goal by means of a peaceful measure.

Goal or just goal? The necessity requirement is transformed into the last resort principle by deleting the word ‘just’. By juxtaposing these two principles, my purpose is to illuminate why there can be principled moral disagreement about whether just cause has priority over, or is coequal with, last resort.

The primary unit of moral evaluation is a planned course of actions. Similar to the concept of a ‘planned course of military actions’, there is the concept of a ‘planned course of nonmilitary actions’. The temporal process of attempting to achieve a goal by means of a nonmilitary measure is equivalent to, or explicable as, the temporal process of attempting to achieve it by means of a planned course of nonmilitary actions.

Accordingly, I propose to formulate the last resort principle more explicitly as follows.

_Last resort principle._ It is morally obligatory not to attempt to achieve a goal by means of a planned course of military actions, if it is reasonable
to attempt to achieve that goal by means of a planned course of nonmilitary actions.

E. JUST GOAL VERSUS RIGHT GOAL

In support of this last resort principle, I want to make some brief remarks about some moral terms. Among the goals that are not – in the technical sense of a just war theory – ‘just’, there are goals that are meaningfully called ‘good’ or ‘right’. Let me draw upon a work of literature for a domestic analogy. Concerning the cause for a trial by combat, Shakespeare used such words in Richard II: ‘the justice of his cause’ (I, iii, 50); ‘thy cause is right’ (I, iii, 55); ‘thy good cause’ (I, iii, 78).

Standardly, in moral philosophy, actions are morally evaluated as ‘right’ or ‘wrong’, and the consequences of actions are morally evaluated as ‘good’ or ‘bad’. Hence a goal that is a consequence of an action is morally evaluated as ‘good’ or ‘bad’. Also, by performing one action, we can have, as a goal, the performance of a second action. Hence a goal that is an action is morally evaluated as ‘right’ or ‘wrong’. For brevity, I am presupposing that the goals of actions are themselves (primarily) actions.

When there is not a cause that is – in the technical sense of a just war theory – ‘just’, there might still be a cause that is – in the standard terminology of a moral theory – ‘right’. To be more explicit, when the goal of a military action is not a just goal, it might still be a right goal of a nonmilitary measure. Disputably, democratising an authoritarian state is not a just goal of a military campaign. Nevertheless, democratising that authoritarian state might still be a right goal of a nonmilitary measure (QDDR 2010: 42). Suppose that the goal of a proposed armed humanitarian intervention is not a just goal, but also that it is a right goal of the nonmilitary measure of negotiation. Surely, it might be worthwhile or even imperative to attempt to achieve that right goal by means of negotiation. Crucially, the last resort principle morally requires that, before performing a military action as a means of achieving a goal that is right but not just, every reasonable nonmilitary means of achieving that goal must be attempted.

III. APPLICATIONS

A. MORAL COMPROMISE ABOUT ARMED HUMANITARIAN INTERVENTION IN DARFUR

The sporadic fighting that took place between [Sudanese] Government and [rebel] movement forces [in Darfur] during the last three months [of April to June 2011] caused instability in affected areas, as well as protection and humanitarian needs among communities . . . I once again reiterate to the belligerent parties that there is no military solution to the
Darfur conflict. The continued pursuit of their political objectives by military means merely prolongs the suffering of the people of Darfur and delays the arrival of peace.


In this section, I support the last resort principle by means of some moral judgements about the particular case of Darfur. The block quotation is an excerpt from a report by Secretary-General Ban to the Security Council that is dated 8 July 2011.

From the temporal standpoint of 8 July 2011, let us imagine (quite hypothetically) how the just cause and last resort principles might be applied prospectively to the conflict in Darfur by members of the Security Council. To illustrate the interrelated ideas of principled moral disagreement and principled moral compromise, let us suppose that members of the Security Council are divided into two groups: those who desire prompt armed humanitarian intervention (termed the ‘interventionists’) versus those who counsel continued negotiations (termed the ‘negotiationists’). (This supposition might be counterfactual, since the set of interventionists in the case of Darfur in the Security Council might, in fact, be identical to the null set.)

On the one hand, the negotiationists might argue as follows. Indeed, the people of Darfur continue to suffer. But the fighting between Sudanese Government forces and rebel movement forces during the last three months was only sporadic. Although there were grave violations of basic human rights, they were not sufficiently grave. In the fog of armed conflict, it would appear that fighting will continue to be sporadic. We do not have clear and convincing evidence that the present phase of sporadic fighting will escalate shortly to a phase of significantly more destructive fighting. Thus we cannot make the moral judgement that there will soon be sufficiently grave violations of basic human rights. Presently, there is not a just goal for prompt armed humanitarian intervention. Even if such intervention were a military solution to the Darfur conflict, it would not be a moral solution. Nevertheless, the goal of stopping grave violations of basic human rights in Darfur is a goal that is right. Concurring with the Secretary-General’s Report – which discusses, for instance, the African Union–United Nations Joint Mediation Team and the All Darfur Stakeholders Conference (Ban 2011: 1–2) – we believe that this right goal must be achieved by means of such nonmilitary measures as mediation and negotiation.

On the other hand, the interventionists might argue as follows. During the last three months, as the Secretary-General’s Report confirms, Sudanese Government aircraft deliberately attacked innocent civilians (Ban 2011:
4–6). For instance, on 15 May 2011, such ‘aircraft dropped four bombs at Labado [in Southern Darfur] . . . One civilian was killed and another was injured’ (Ban 2011: 5). Each and every innocent civilian in Darfur has the basic human right to life. There can be a just cause for a targeted military operation to stop the targeted killing of a single human being. Despite the fog of armed conflict, we have clear and convincing evidence that Sudanese Government aircraft will continue to carry out targeted aerial bombardments of innocent civilians. Therefore, we believe that there is a just cause for a targeted armed humanitarian intervention in Darfur – namely, the imposition of a no-fly zone. We appeal to a contemporary precedent: targeted armed humanitarian intervention by NATO aircraft in Libya. Presently, NATO aircraft are also providing close air support for Libyan rebel forces. As the Secretary-General’s Report admits, many of the rebel movement forces in Darfur ‘remain outside the peace process’ and continue ‘to pursue their objectives through military means’ (Ban 2011: 12–13). Similarly, we believe also that there is a just cause for close air support of rebel movement forces in Darfur.

Indeed, there is principled moral disagreement between the negotiationists and the interventionists about whether there is a just cause for armed humanitarian intervention in Darfur. Nevertheless, there might still be principled moral compromise between them regarding the alternative nonmilitary measures of negotiation and mediation.

For the negotiationists might respond as follows. It is dubious whether the goals of those rebel movement forces in Darfur amount to a just goal, so we do not think that there is a just cause for close air support. However, stopping the aerial bombardment of innocent civilians is a right goal, even though presently it is not a just goal. Nonetheless, the last resort principle morally requires that, before imposing a no-fly zone, negotiation and mediation must be attempted, so long as it is reasonable to do this.

Consequently, the interventionists might compromise as follows. In accordance with the last resort principle, we concur that, before armed humanitarian intervention, negotiation and mediation must be attempted, so long as it is reasonable to do this.

**B. REVOLUTION AND NONVIOLENCE**

At the Indian National Congress meeting on December 31 in Lahore, Gandhi introduced a motion declaring complete independence to be the goal of the Congress. Despite opposition, resolutions in favor of independence and endorsing a campaign of civil disobedience were passed on December 31, 1929 with Gandhi’s support.

Are the last resort and just cause principles together overly prohibitive? Because the last resort and just cause principles are applicable by all sorts of responsible agents to all forms of armed conflict, they are also applicable by agents responsible for insurgencies, rebellions and revolutions. Before starting an armed revolution, must revolutionary groups exhaust every reasonable nonmilitary measure? Disputably, democratizing an authoritarian state is not a just goal of armed humanitarian intervention; analogously, is it also not a just goal of armed revolution? From the temporal standpoint of 8 July 2011, do rebel movement forces in Darfur have a just cause for rebelling against the Sudanese Government? Before using armed force, must they exhaust every reasonable nonmilitary measure? From the temporal standpoint of 4 July 1776, is there a just cause for armed revolution by the British colonies in North America against the British Empire? Specifically, are the last resort and just cause principles overly prohibitive of armed revolutions?

From the temporal standpoint of 31 December 1929, is there a just cause for armed revolution by the Indian National Congress against the British Empire? Famously, Mohandas Gandhi supports nonviolent action. And so, as reported in the block quotation, the Indian National Congress endorses ‘a campaign of civil disobedience’. Does the last resort principle morally require that, before resorting to armed revolution against the British Empire, the Indian National Congress must perform reasonable nonviolent actions?

To generalise, does the concept of nonmilitary measure in the last resort principle encompass the idea of nonviolent action? Various specific methods of nonviolent action are divided by Gene Sharp, who is widely esteemed as a ‘great theoretician of nonviolent power’ (Ackerman and DuVall 2000: 9), into three broad categories – namely, nonviolent protest and persuasion, noncooperation and nonviolent intervention (Sharp 2005: 50).

By contrast, the peaceful measures listed in Chapter VI of the UN Charter are these:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. (Article 33)

Notably absent from this list of peaceful measures are such methods of nonviolent action as civil disobedience.

As the phrase ‘of their own choice’ indicates, the parties to such a dispute have to be in agreement about the use of such peaceful measures. Let us suppose that there are only two disputing parties. In order for one of the parties to perform the peaceful action of negotiating with the other party, there has to
be reciprocation; the latter has to perform the peaceful action of negotiating with the former. Similar remarks hold of the other peaceful measures. In short, these peaceful measures are ‘bilateral’. When there are more than two parties, the peaceful measures are ‘multilateral’. In other words, the peaceful measures listed in Chapter VI are ‘consensual measures’. To use one of these consensual measures, the parties to such a dispute have to interact sufficiently peacefully. Their actions have to be sufficiently concordant.

In an ordinary sense of the word ‘nonviolent’, all of the consensual measures listed in Chapter VI are nonviolent measures. For instance, to negotiate is to act nonviolently.

Paradigmatically, however, acts of civil disobedience are ‘unilateral’ or ‘nonconsensual’. Specifically, Sharp’s methods of nonviolent action – nonviolent protest and persuasion, noncooperation and nonviolent intervention – are ‘unilateral’ or ‘nonconsensual’. (Compare the difference between a bilateral nuclear arms reduction treaty and a unilateral nuclear freeze.) Again, let us suppose that there are only two disputing parties – the violent party and the nonviolent party. Typically, the two parties are in disagreement about nonviolence and armed force. Their actions could be entirely discordant. In order for the nonviolent party to perform actions of nonviolent protest and persuasion, there does not have to be reciprocation; the violent party may continue to be violent. Similarly, in order for the nonviolent party to perform an action of noncooperation, there does not have to be reciprocation; the violent party may continue to be violent. And in order for the nonviolent party to perform an action of nonviolent intervention, there does not have to be reciprocation; the violent party may continue to be violent.

Although consensual measures and these nonconsensual methods of nonviolent action are thus distinguishable, they are also interrelated. For instance, the nonviolent party may advocate negotiation to the violent party unilaterally, but negotiation itself is consensual. Correlative to a consensual measure is the nonviolent action of advocating it, which is unilateral.

Accordingly, I propose to regiment the term ‘nonviolent action’ as follows. A ‘nonviolent action’ is a ‘unilateral’ or ‘nonconsensual’ nonmilitary action. Notice that the coercive nonmilitary measures listed in Chapter VII of the UN Charter – roughly, economic sanctions and ‘the severance of diplomatic relations’ – are also unilateral. Economic sanctions are imposed unilaterally, and diplomatic relations are severed unilaterally. Interestingly, among Sharp’s particular methods of noncooperation are: ‘international trade embargo’ and ‘severance of diplomatic relations’ (2005: 58, 61). Although some methods of nonviolent action are peaceful – for instance, peaceful demonstrations – some are coercive.

In conclusion, my view is that the concept of ‘nonmilitary measure’ in the
last resort principle encompasses the idea of ‘(unilateral) nonviolent action’. The last resort principle morally requires that, before resorting to the use of armed force, every reasonable nonviolent action must be attempted.\(^4\)

Arguably, then, the last resort and just cause principles are not overly prohibitive of nonviolent revolutions. But the question remains: are they overly prohibitive of armed revolutions? For with the last resort principle as a premise, the following conclusion may be obtained by a subsumption argument. It is morally obligatory not to attempt to achieve the goal of democratising an authoritarian state by means of an armed revolution, if it is reasonable to attempt to achieve that goal by means of a nonviolent revolution.\(^5\)

Let me raise a comparable question. Are the last resort and just cause principles overly prohibitive of armed insurgency against foreign occupation? Frequently in writings about the issue of \textit{jus post bellum}, the ethics of occupation is discussed largely from the standpoint of the victorious party (Orend 2006: 163), but the standpoint of the defeated party also matters. For instance, with the last resort principle as a premise, the following conclusion may also be obtained by a subsumption argument. It is morally obligatory not to attempt to achieve the goal of expelling an occupying power by means of an armed insurgency, if it is reasonable to attempt to achieve that goal by means of nonviolent action.

When is attempting a nonviolent revolution or nonviolent insurgency not reasonable?

\textbf{C. NONVIOLENT ACTION VERSUS ARMED REVOLUTION IN LIBYA}

Few Americans have heard of Mr. [Gene] Sharp. But for decades, his practical writings on nonviolent revolution . . . have inspired dissidents around the world, including in Burma, Bosnia, Estonia and Zimbabwe, and now Tunisia and Egypt.

Sheryl Gay Stolberg, ‘Shy U.S. intellectual created playbook used in a revolution’ (2011)

Thousands of Libyan protesters defied threats of violence and arrest in several cities on Thursday [17 February 2011], mounting one of the sharpest challenges to Col. Muammar el-Qaddafi’s 40-year rule in a ‘day of rage’ modeled on the uprisings coursing through neighboring countries [of Tunisia and Egypt].

Jack Healy, ‘Popular rage is met with violence in mideast’ (2011)

From the temporal standpoint of 17 February 2011, is there a just cause for armed revolution in Libya? On this ‘day of rage’, Libyan protesters
demonstrate nonviolently. However, their demonstrations are ‘met with violence’ and ‘at least four people’ are killed (Healy 2011). Disputably, because so few people are killed, the basic human right to life is not violated sufficiently gravely.

The Libyan conflict quickly escalated. For example, from mid-March to mid-May 2011, ‘[m]ore than 1,000 people reportedly died in the assault on Misrata’ (PHR 2011: 7). From the temporal standpoint of mid-March to mid-May 2011, are the last resort and just cause principles overly prohibitive of armed revolution in Libya? When the basic human right to life is so gravely violated, is it reasonable for Libyan protesters to continue to attempt to achieve the goal of democratising Libya by means of nonviolent actions?

On 17 March 2011, the Security Council authorised armed humanitarian intervention in Libya. Subsequently, US and NATO aircraft provided close air support for Libyan rebel forces. From the temporal standpoint of mid-March to mid-May 2011, if it is questionable whether Libyan rebel forces have a just cause for armed revolution, then – in accordance with moral universalism – it should also be questionable whether there is a just cause for close air support by US and NATO aircraft of that armed revolution. And if it is questionable whether Libyan rebel forces have exhausted every reasonable nonmilitary measure before engaging in armed revolution, it should also be questionable whether the Security Council has exhausted every reasonable nonmilitary measure before authorising armed humanitarian intervention.

Frequently, moral questions about external intervention are intertwined with moral questions about internal conflict. In addition to illustrating the last resort principle, the case of Libya serves to illustrate why received just war principles should be generalised, so as to be applicable both to armed interventions and armed revolutions. Similarly, the cosmopolitan just cause and last resort principles are applicable both to counterinsurgencies and insurgencies, both to counterterrorism and terrorism and so forth.

But when is attempting a nonmilitary measure not reasonable?

IV. REASONABLENESS STANDARDS

A. A KEY QUESTION

Because armed conflicts are so highly destructive, the chief function of a cosmopolitan just war theory is to morally constrain uses of armed force. When we deliberate about whether to use armed force, we have to make the moral presumption that we must not. To override this moral presumption, we have the burden of proving that just war principles are satisfied.

Specifically, there is the burden of proving that the last resort principle is satisfied. To ascertain that the just cause principle is satisfied, we have to morally presume that there is not a just cause, and we have the burden of
proving that there is. By contrast, to ascertain that the last resort principle is satisfied, we have to morally presume that it is reasonable to attempt an alternative nonmilitary measure, and we have the burden of proving that it is not.

I want to emphasise that the key question here is not: when is attempting a nonmilitary measure reasonable? Instead, the key question is: when is attempting a nonmilitary measure not reasonable?

More explicitly, to ascertain that the last resort principle is satisfied, we have to morally presume that, instead of attempting to achieve a goal by means of a military action, it is reasonable to attempt to achieve it by means of a nonmilitary measure; and we have the burden of proving that it is not reasonable to attempt to achieve it by means of a nonmilitary measure.

On the one hand, suppose that we fail to satisfy this burden of proof. Our moral presumption becomes determinative: we have to decide that it is reasonable to attempt to achieve the goal by means of a nonmilitary measure. And therefore, we have to conclude that it is morally obligatory not to perform the military action. Thus, formulated as a conditional prohibition, the last resort principle functions clearly as a moral constraint.

On the other hand, suppose that we succeed in satisfying the burden of proving that it is not reasonable to attempt to achieve the goal by means of a nonmilitary measure. The last resort principle is a conditional prohibition. It is not a conditional permission. It does not say: ‘it is morally permissible to attempt to achieve a goal by means of a military action, if it is not reasonable to attempt to achieve that goal by means of a nonmilitary measure’. Therefore, we cannot conclude, even tentatively, that it is morally permissible to perform the military action. And there is still the burden of proving that the other core just war principles are satisfied. Because the last resort principle does not include such a moral permission, it functions clearly again as a moral constraint.

A main thesis is that we are able to ascertain that the last resort principle is satisfied by means of standards of reasonableness. By means of them, we are able to determine that it is not reasonable to attempt alternative nonmilitary measures before resorting to the use of armed force. The last resort principle is formulated briefly and simply. Instead of complicating it by incorporating various qualifications, I am proposing, as subordinate principles, some reasonableness standards, which are also formulated briefly and simply.

There are five reasonableness standards. The next section discusses epistemic and specificity standards. Standards of impracticality, disproportionality and awfulness are discussed in the following three sections. The impracticality, disproportionality and awfulness standards are applied disjunctively: for each particular alternative nonmilitary measure, it is sufficient to prove that one of these three subordinate principles is satisfied. The five
standards are not mechanical decision procedures. Acceptance of them by diverse responsible agents is compatible with principled moral disagreement about difficult cases.

B. CLARITY AND SPECIFICITY
First, there is the epistemic standard of clear and convincing evidence. The last resort principle is primarily applicable by particular responsible agents from particular temporal standpoints. From the temporal standpoint of the present, responsible agents apply the last resort principle prospectively to future nonmilitary measures. Prospective clarity stems from present evidence. To satisfy the burden of proving that it is not reasonable to attempt to achieve a particular goal by means of a particular nonmilitary measure, there has to be clear and convincing evidence.

Second, there is the specificity standard of sufficient detail. To satisfy the burden of proving that it is not reasonable to attempt to achieve a particular goal by means of a particular nonmilitary measure, we have to specify, by means of sufficient detail, the planned course of nonmilitary actions that together comprise that particular means of achieving that particular goal.

How much detail and what sort of detail would be sufficient? This question can be answered fully only on a case-by-case basis. The five reasonableness standards are interrelated, and the other standards presuppose relevant detail.

C. IMPRACTICALITY
Third, there is a standard of impracticality (or infeasibility). In the language of the last resort criterion in the High-level Panel Report, there have to be ‘reasonable grounds’ for determining that the nonmilitary measure ‘will not succeed’. Similarly, Childress contends that the last resort principle does not require ‘that all possible measures have to be attempted and exhausted if there is no reasonable expectation that they will be successful’ (1982: 75).

Accordingly, to ascertain that the last resort principle is satisfied, we have the burden of proving that the goal would not be achieved by means of a nonmilitary measure. Subordinate to the last resort principle, there is a standard concerning the impracticality of nonmilitary measures:

*Impracticality standard.* The planned course of nonmilitary actions would not achieve the goal.

This standard is interrelated with the epistemic standard. To satisfy the burden of proving that the goal would not be achieved by means of a particular nonmilitary measure, there has to be clear and convincing evidence. And both standards are interrelated with the specificity standard. To satisfy the burden of proving with clear and convincing evidence that the goal would
not be achieved by means of a particular nonmilitary measure, the particular planned course of nonmilitary action has to be sufficiently detailed.

D. DISPROPORTIONALITY

Fourth, there is a standard of disproportionality. Even when a particular nonmilitary measure would achieve the goal, it must not be disproportionate. Accordingly, let me suggest a major revision of the last resort criterion in the High-level Panel Report: has every nonmilitary measure for meeting the threat in question been explored, with reasonable grounds for believing either that it would not succeed or that it would not be proportionate?

Comparably, to ascertain that the last resort principle is satisfied, we have the burden of proving that the goal would be attempted by means of a nonmilitary measure that would be disproportionate. Subordinate to the last resort principle, there is a standard of disproportionality. Roughly, the benefits of a planned course of nonmilitary actions would be outweighed by the grievous harms. More precisely, I propose to formulate this standard as follows.

Disproportionality standard. Vitally beneficent actions in a planned course of nonmilitary actions would be outbalanced by grievously harmful actions.

In Chapter 8, ‘Proportionality and Authority’, the terms ‘vitally beneficent action’ and ‘outbalanced’ are explained. I record the disproportionality standard here for ease of reference.

E. AWFULNESS

Fifth, there is a standard of awfulness. According to Simon Caney, the last resort principle is grounded on ‘the assumption that war is the most awful option’ (2005: 202). Indeed, large-scale war is a terrible option – one that is correctly thought to be the most awful. However, sometimes a sufficiently limited or targeted use of armed force might not be the most awful option; sometimes an alternative nonmilitary measure might be more horrific – for example, the imposition of large-scale economic sanctions. Even when both the impracticality and disproportionality standards are not satisfied, a nonmilitary measure could still be substantially more awful than a sufficiently limited or targeted military action.

Accordingly, let me suggest another major revision of the last resort criterion in the High-level Panel Report: has every nonmilitary measure for meeting the threat in question been explored, with reasonable grounds for believing either that it would not succeed or that it would not be proportionate or that it would be substantially more awful?
Comparably, to ascertain that the last resort principle is satisfied, we have the burden of proving that attempting to achieve a goal by means of a nonmilitary measure would be substantially more awful than attempting to achieve it by means of military action. To supplement the impracticality and disproportionality standards, there is the following standard of comparative awfulness.

**Awfulness standard.** The planned course of nonmilitary actions would be substantially more awful.

How is the awfulness standard different from the disproportionality standard? Roughly, my answer is as follows. Even when the grievous harms of an alternative nonmilitary measure are outweighed by the benefits, those grievous harms might still be substantially more awful than the grievous harms of the military action. This question is answered more fully in Chapter 8, ‘Proportionality and Authority’.

What should be meant by the qualification ‘substantially’? To satisfy the just cause principle, a threatened harm has to be sufficiently serious. The concept of ‘seriousness’ is a scalar concept. Similarly, the concept of ‘substantialness’ is a scalar concept. Presumably, there is a threshold (or thresholds) above which a particular nonmilitary measure would prove substantially more awful and below which it would not.

In terms of the awfulness standard, let me briefly answer a stock question about nonviolent action: ‘Should the victims of brutal tyranny be expected to maintain a strictly nonviolent response?’ (Cortright 2006: 112) Presumably, the victims have a just goal for the use of armed force – roughly, stopping the brutal tyranny from gravely violating their basic human rights. Even if they cannot prove that this goal would not be achieved by means of nonviolent action, they might be able to prove that struggling against the brutal tyranny by means of nonviolent action would be substantially more awful than struggling against it by means of the use of armed force. Frequently, for example, it would be substantially more awful to suffer genocide than to target genocidaires.

**F. CONCLUDING REMARKS**

Remember that the impracticality, disproportionality and awfulness standards are applied disjunctively. To satisfy the last resort principle, it has to be proven that each alternative nonmilitary measure either would not achieve the goal or would be disproportionate or would be substantially more awful.

In conclusion, by means of the five reasonableness standards, we are able to ascertain that the last resort principle is satisfied. To satisfy that principle, we have to prove with clear and convincing evidence that each sufficiently
detailed planned course of nonmilitary actions either would not achieve the goal or would be disproportionate or would be substantially more awful.

V. FURTHER OBSERVATIONS

A. PEACEFUL NEGOTIATION VERSUS ARMED INTERVENTION IN DARFUR

Sudan, where prospects for peace had looked so promising for much of 2003, has become a potential horror story in 2004. The rapid onset of war in its western region of Darfur has created one of the world’s worst humanitarian crises – thousands dead and some 830,000 uprooted from homes.


In Darfur, where as many as 10,000 people or more, overwhelmingly civilians, continue to die each month, stronger measures are still needed to restore security and prevent further mass deaths.

International Crisis Group, 26 April 2005 (ICG 2005: 1)

In this section, I support the awfulness standard by means of some additional moral judgements concerning the particular case of Darfur. The general question illustrated here is roughly this: under some circumstances, would it be substantially more awful to continue negotiating than to intervene militarily?

The two block quotations are excerpted from ICG reports dated 25 March 2004 and 26 April 2005. The first quotation reports the onset of genocide in Darfur, and the second quotation reports the continuation of genocide there.

Again, let us imagine how the just cause and last resort principles might be applied prospectively by the Security Council. From the temporal standpoint of 25 March 2004, the negotiationists and the interventionists are in agreement that there is a just cause for armed humanitarian intervention to stop genocide in Darfur. In this ICG report, it is recommended that the Security Council pass a resolution that ‘calls for internationally facilitated political negotiations between government and rebels in Darfur, the initial aim of which would be an internationally monitored ceasefire’ (ICG 2004: iii). To satisfy the last resort principle, it has to be proven with clear and convincing evidence that such negotiations either would not stop the genocide or would be disproportionate or would be substantially more awful than armed intervention. From the temporal standpoint of 25 March 2004, the negotiationists and the interventionists also agree that there is not such clear and convincing evidence.

From the temporal standpoint of 26 April 2005, the negotiationists and
Last Resort

interventionists still agree that there is a just cause for armed humanitarian intervention to stop genocide in Darfur. But now they are in disagreement about the last resort principle. On 8 April 2004, a limited peace agreement was signed: the N’djamena Ceasefire Agreement (ICG 2005: 2). Presently, however, ‘efforts to achieve a political solution are stalled. The AU-led negotiations in Abuja have not resumed since the unsuccessful December 2004 round’ (ICG 2005: 3).

On the one hand, the negotiationists maintain that there is still not clear and convincing evidence that continuing such negotiations either would not stop the genocide or would be disproportionate or would be substantially more awful than armed intervention.

On the other hand, the interventionists reason as follows. We agree that there is not clear and convincing evidence that continuing such negotiations would not stop the genocide. Also, we agree about the disproportionality standard. Nonetheless, we disagree about the awfulness standard. In each of the months from April 2004 to April 2005, ‘as many as 10,000 people or more, overwhelmingly civilians’ died (ICG 2005: 1). Despite the fog of armed conflict, there is clear and convincing evidence that large numbers of innocent civilians will die in future months. Therefore, continuing to negotiate would be substantially more awful than a sufficiently targeted armed intervention.

Despite such principled moral disagreement, there might be principled moral compromise. For the negotiationists might respond as follows. A month ago, the Security Council demanded, in Resolution 1591 (2005), that the Sudanese Government ‘immediately cease conducting offensive military flights in and over the Darfur region’. The Sudanese Government has failed to comply with this demand, so we are now willing to support a resolution authorising a highly targeted armed intervention – namely, the imposition of a no-fly zone – but only if the resolution also mandates that negotiations must continue.

From the temporal standpoint of 26 April 2005, the negotiationists and the interventionists agree to authorise a no-fly zone. While this no-fly zone is being imposed, should negotiations continue? This question illustrates the concurrence problem. While a military action is being performed, should nonmilitary measures be attempted? This problem is considered in the next section, ‘The Concurrence Problem’.

By contrast, from the later temporal standpoint of 8 July 2011, the negotiationists and the interventionists agree that, before authorising a no-fly zone, reasonable negotiation and mediation must be attempted. A comparison of what is imagined about the case of Darfur in this section with what is imagined above in the section ‘Moral Compromise about Armed Humanitarian Intervention in Darfur’ illustrates why temporal standpoints matter.
Conceivably, from the earlier temporal standpoint of 25 March 2004, the negotiationists and interventionists might also agree about a different kind of measure – namely, that the Security Council should ‘threaten’ to impose a no-fly zone, in order to ‘deter’ the Sudanese Government from conducting offensive military flights (ICG 2006: 1).

Is the ‘deterrent threat’ to impose a no-fly zone a nonmilitary measure? In the next chapter (‘Last Resort and Noncombatant Immunity’), I explore such questions that interrelate the ideas of ‘coercive military threat’ and last resort.

B. THE CONCURRENCE PROBLEM

While we perform a military action, should we attempt a nonmilitary measure? For instance, while we fight, should we negotiate? It might be thought that the last resort principle is applicable only during prelude and resort phases, but this thought is incorrect. It is also applicable during conduct, halting and aftermath phases. The process of performing a military action is a temporal process, and so is the process of applying the last resort principle.

Let me provide a schematic case. During the resort phase, we apply the last resort principle: it is morally obligatory not to ‘start to perform’ a proposed military action as a means of attempting to achieve a particular goal, if it is reasonable to attempt to achieve that goal by means of a nonmilitary measure. At each critical juncture, during the conduct phase, we apply the last resort principle: it is morally obligatory not to ‘continue to perform’ that military action as a means of attempting to achieve that goal, if it is reasonable to attempt to achieve that goal by means of a nonmilitary measure.

Even if mental ‘inertia’ makes continuing easier than starting, these moral prohibitions are comparably stringent. During the resort phase, we have the burden of proving that the last resort principle is satisfied. Before we start to perform the proposed military action, we have to morally presume that it is reasonable to attempt a nonmilitary measure, and we have the burden of proving that it is not. For example, we have to prove by clear and convincing evidence that the nonmilitary measure of negotiation would be impractical (or disproportionate or substantially more awful). Comparably, during the conduct phase, at each critical juncture, we have the burden of proving that the last resort principle is still satisfied. While we continue to perform that military action, we have to morally presume that it is reasonable to attempt a nonmilitary measure, and we have the burden of proving that it is not. For example, we have to prove by clear and convincing evidence that the nonmilitary measure of negotiation would still be impractical (or disproportionate or substantially more awful).

Sometimes, during the conduct phase, the most effective way to obtain clear and convincing evidence that it is not reasonable to attempt to achieve a goal by negotiating is by actually engaging in the process of negotiating.
Sometimes, while we are fighting, we should also be negotiating. (Of course, there are other reasons for negotiating while fighting.)

C. NEITHER VICTORY NOR DEFEAT
Suppose that, during the conduct phase, at some critical juncture, we fail to satisfy the burden of proving that it is not reasonable to attempt to achieve our goal by negotiating. Our moral presumption becomes determinative: we have to decide that it is reasonable to attempt to achieve our goal by negotiating. And therefore, we have to conclude that it is morally obligatory to cease performing the military action. At that critical juncture, the conduct phase becomes a phase of halting.

Indeed, whenever there is armed conflict, there might be a process of escalation, but there might also be a process of de-escalation. Stereotypically, wars end in victory or defeat. However, there are various intermediate types of armed-conflict termination, including ceasefire, truce and armistice. A main thesis is that sometimes, during the conduct phase, when the last resort principle is no longer satisfied, it is morally obligatory to de-escalate unilaterally. (Comparable theses hold of the other core just war principles.) Sometimes, in order to realise a truce, a unilateral initiative – for example, cessation of deep strikes – is morally obligatory. Sometimes, a unilateral ceasefire is morally obligatory. Even if we scent victory, we must halt.

NOTES
1. Compare this chapter with the chapter ‘Last resort’ in Coates (1997). Most books on just war theory devote only a handful of pages to the subject of last resort.
2. A handbook that surveys a wide variety of peaceful measures is Webel and Galtung (2007).
3. For some comparisons of Kantian ethics and feminist ethics, see Lango (1998).
4. For a fuller discussion of this view, see Lango (2009a).