Stability in Syria: save lives or protect the sovereignty of the state

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Abstract

One of the chief international security issues of today is humanitarian military intervention. In light of this, some questions have been raised about when and how outsiders should get involved or if they are morally right at all to engage in humanitarian crises. In this paper Syria is the chosen case study because of its brutal crackdown and a massive human rights violation. The main purpose of this thesis is to understand the moral and legal criteria for launching a military intervention for humanitarian aid in Syria followed by a detailed analysis of its ethical, normative and legal issues. The main theoretical framework of this study is just war theory. This study utilizes the criteria of Jus ad bellum principles, namely ‘legitimate authority’, ‘just cause’ and ‘right intention’ in order to asses the extent to which Syria fits into the framework of just war theory. This paper also applies legal criteria such as the Charter of United Nations and international law for the purpose of legal examination. The most complex issue in this thesis is the fact that although legitimate authority has the moral responsibilities to protect civilians, but it often fails to uphold its responsibility mainly because of self-interest and the lack of right intention.

Keywords: humanitarian military intervention, Syria, just war theory, Jus ad bellum, legitimate authority, just cause, right intention

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Table of Contents

1. Introduction .......................................................................................................................... 1
   1.1 Aims and research question .............................................................................................. 3
   1.2 Material ............................................................................................................................ 5
   1.3 Method .............................................................................................................................. 7
   1.4 Delimitation ...................................................................................................................... 9
   1.5 Disposition ....................................................................................................................... 10
2. Theory .................................................................................................................................... 12
   2.1 Counter arguments ......................................................................................................... 17
   2.2 Response to Critics of Humanitarian Intervention ....................................................... 19
   2.3 Moral Criteria ................................................................................................................... 22
3. Legal Aspects of Humanitarian Intervention ................................................................. 26
4. Background Information ....................................................................................................... 29
5. The international Response to Events in Syria ............................................................... 31
   5.1 The Human Rights Watch Report ............................................................................... 34
   5.2 The United Nations Report ......................................................................................... 35
   5.3 Assumptions .................................................................................................................... 36
6. Analysis ................................................................................................................................ 38
7. Conclusion ............................................................................................................................. 43
References .................................................................................................................................. 45
1. Introduction

Massive human rights abuses are often the origins of war and humanitarian crises. Preventing conflicts, massive human rights abuses and reconstructing societies in their aftermath entails an approach that respects to the perspectives of both human rights activists and the autonomy of the states in question. Following the 1994 slaughter in Rwanda and the 1999 ethnic cleansing in Kosovo, the international community began to seriously examine how to respond efficiently when civilians human rights are obviously and steadily violated. The core of this examination was whether nations have full autonomy over their affairs or whether the international community has the right to interfere militarily in a nation for humanitarian commitments.¹

Recently, the demand for interventions of all kinds has grown and is set to grow further. In this sense, the debate about when and how outsiders should get involved or if they are morally right at all to engage has also grown, particularly, after the recent democratization movements in Middle East (Arab Spring). Without doubt, one of the chief international security issues of today is humanitarian military intervention. As an object analysis, humanitarian intervention lies at the intersection of the idealist and realist behaviors in the field of international relations.² Humanitarian military intervention touches on the treatment or use of military force across state borders by a state (or group of states) aimed at stopping or ending large-scale and grave violations of the basic human rights of civilians (other than its own citizens), without asking for the permission of the state within whose territory force is applied.³ Humanitarian intervention is now a challenging foreign policy issue since it presents a primary challenge to state sovereignty,

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² M Fixdal & D Smith, Humanitarian Intervention and Just War, Published by Mershan International Studies Review, P283
drastically influences the way humanitarian aid organizations and military organizations work and more importantly is a matter of life and death for thousands of people.

Humanitarian military intervention is frequently debated as an exception to the principle of non-intervention. According to the non-intervention principle, states are not allowed to practice their own authority, and obviously to use coercion, within the jurisdiction of other states. In light of this, the UN Charter firmly supports the non-intervention principle. Article 2(7) in the UN Charter permits a state to defend itself from attack but prohibits the use of armed force against the political independence or territorial integrity of other states.⁴ Taken literally, these stipulations forbid military intervention, including intervention for the purpose of the protection of human rights. And in general, humanitarian military intervention obtains inadequate advocacy in modern international law. However, there is a much older convention in which the use of coercion is valid not only in self-defense but also to penalize crimes and defend the innocent. This convention is in some tension with the UN Charter and international law. It deems that military intervention is permitted to apply standards of civilized behavior when sovereigns break those standards, and it finds expression nowadays in the widely held belief that states, acting collectively or unilaterally, are justified in applying respect for human rights. It has been argued that this long-lasting convention best clarifies the moral root of humanitarian military intervention.⁵

In this paper, Syria is the chosen case study because of its brutal crackdown and a massive human rights violation. Demonstrations against President Assad's government began in March 2011 and have continued across Syria. Protesters claim that the government has responded brutally to peaceful demonstrations. After nine months of

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anti-government protest it has been estimated that more than 5000 people, including children, have been killed and thousands of political activists have been imprisoned.\textsuperscript{6}

In light of recent events in Syria, the United Nations Security Council, the European Union, the Arab League and other multilateral organizations have frequently condemned the human rights violations in Syria and asked the Syrian government to both end the use of force against civilians and to comply with their obligations under international law. On the other hand, the continued Syrian brutal crackdown on peaceful protesters shows that President Assad is determined to hold on to power regardless of the price paid by his people. Moreover, following the end of the NATO intervention in Libya and the reluctance of the Syrian government to respect human rights and comply with their obligations under international law, the debates regarding military intervention in Syria began to examine whether the international community should intervene. It is for these reasons that Syria has been chosen as the case study of this paper, since it aims to focus on the moral and legal arguments of a justified humanitarian intervention. The current political turbulence in Syria has provided all of the necessary and sufficient rooms to evaluate whether these constitute the criteria for a justified humanitarian intervention.

\textbf{1.1 Aims and research question}

Since debates over state sovereignty and the non-intervention principle have challenged the principle of humanitarian intervention the main aim of this study is to defend current international law and the principle of the responsibility to protect within the framework of just war theory. This paper focuses only on Syria, whose security forces, according to a UN report, have recently committed ‘crimes against humanity’ in their crackdown on

anti-government protesters. This study aims to understand (through an up-to-date examination of) the moral and legal criteria for launching military intervention for humanitarian aid in Syria followed by a detailed analysis of its ethical, normative and legal issues. In order to do so, the paper draws on the concept of just war theory to argue that the formation of causes, along with a reasonable prospect of accomplishment are the most important considerations for humanitarian intervention.

Just war theory is important to this study because of its flexibility to hostile situations. Unlike any other fixed ideology, just war theory is a set of critical ethical reflections towards an issue (conflict), which are flexible depending on different circumstances such as massive human rights violations, genocide, self defense, punishment an act of aggression and so on. This study first tries to find these different circumstances and then to apply them into the just war theory framework to assess whether the use of force to stop massive human rights violations in Syria is just or unjust from both moral and legal perspectives.

It is important to mention that the main focus of this paper is only on the nine months of protests and this is simply because the protests in Syria are an ongoing event. This paper does not aim to predict the future of this development. Moreover, this study does not intend to examine whether military intervention should take place in Syria, but rather makes an attempt to focus on the bloody nine months of protest, to realize the extent to which military response against Syria could be justified. Consequently, the result of this study will assist an understanding of the conditions where the values and principles of human rights may be of a higher significance than state sovereignty. In light of this, the research question is:

*To what extent could a humanitarian military intervention in Syria be justified during the bloody nine-months (from March 2011 to December 2011) of anti-government protest?*

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1.2 Material

This study will draw upon news articles to a large extent and this is simply because the events in Syria are a relatively recent phenomenon. Therefore, reliable news agencies can provide valuable insight into the recent incidents in Syria. Academic books, scholarly journals and official speeches will also be utilized in order to have a better understanding of the subject matter. Moreover, reports from Human Rights Watch and UN Human Rights Council can assist this thesis to realize both the situation and the international community’s response to events in Syria.

Since the main theoretical framework of this study is ‘just war theory’, this paper relies heavily on its theoretical framework to assess and analyze the debates over humanitarian military intervention in Syria from moral points of view. The book ‘just and unjust wars’ by Michael Walzer can provide an insight into the both subject matter and the theory itself. This is simply because Walzer, in this book, is concerned with the actual judgments and justifications of not only conflicts, but also with respect for human rights, state sovereignty and international law. The theory itself “deals with the justification of how and why wars are fought. The justification can be either theoretical or historical. The theoretical aspect is concerned with ethically justifying war and the forms that warfare may or may not take.” Walzer is one of the more well known just war theorists, whose arguments can be found in many scholarly journals and books. He suggests that the arguments we make about waging war are most fully understood as efforts to acknowledge and respect the rights of individuals (associated men and women). Another factor that makes this book applicable to this study is Walzer’s moral arguments based upon the principles of ‘just war theory’. In order to conduct its analysis, this study is highly dependent on these principles to understand what exactly constitutes a just humanitarian intervention.

Having ‘just war’ theory as the main theoretical framework assists this study in its analysis of the debates over humanitarian military intervention. Following the NATO military response to Libya, the debates about sovereignty, human rights and intervention have once more drawn attention. The questions that have generated these debates are the central arguments of this study. In light of this, the book ‘Just Intervention’, edited by Anthony F.Lang JR, makes an attempt to find answers to some of these fundamental questions from an ethical point of view. For example some of these questions include: What ethical weight should we give to sovereignty and sovereign borders? Should sovereignty stop outsiders from interfering in the internal affairs of a state? Do humanitarian crises validate the use of force? Is it possible to use military force for actions other than declaring war? Do states ever intervene for primarily humanitarian purposes? Is it fair to argue that humanitarian intervention is always in the national interest of outsiders? Should we murder to save lives? And more essentially should military intervention occur to save lives or to protect rights?10 Therefore, this paper utilizes the book ‘Just Intervention’ to provide some moral answers to these and related questions.

Apart from the philosophical and ethical arguments for humanitarian military intervention this study also needs to represent the legality and the political issues of such a phenomenon. The book ‘Humanitarian Intervention; Ethical, legal and political dilemmas’ is an outstanding collection of articles and essays which can assist this study to challenge the international legal position and the political complex of humanitarian intervention. Humanitarian military intervention can be justified not only from a moral point of view, but also from the legal and political perspectives. It has been argued that the main legal issue of humanitarian intervention can be found in the United Nations Charter. On the one hand, the United Nations admits the significance of state sovereignty by claiming, "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any

state." On the other hand, this principle does not restrict the use of force in case of a threat to peace, violation of peace, or acts of aggression against humanity. Therefore, this book is useful for this study because it challenges the principle of responsibility to protect against the principle of state sovereignty under the international law.

1.3 Method

This paper utilizes a qualitative case study method in order to acquire a greater knowledge of the reasons for humanitarian military intervention as well as the events in Syria. Unlike the aims of naturalism, which make an attempt to generalize concepts, this study puts its main focus on studying a specific case (Syria) within its own environment (context). Using a qualitative case study is an appropriate method for this paper because this approach accelerates the exploration of a phenomenon within its environment through using a mixture of data sources. This approach also guarantees that the subject of this paper is not studied through one lens, but rather a mixture of lenses (moral and legal), which allows for multiple sides of the phenomenon to be shown and understood. It has been argued that a case study design should be considered when the limitations are not clear between the phenomenon (humanitarian intervention) and context (events in Syria).

More specifically, this paper employs ‘fitting’ or theory-confirming case studies in order to investigate the extent to which Syria fits into the framework of just war theory. This type of case study tends to provide a descriptive framework based on existing conceptual schemes. In other words, this approach serves to demonstrate the explanatory power of just war theory. In a ‘fitting’ exercise, a case (Syria) needs to be chosen as an empirical

13 P Baxter and S Jack, Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers, Mac Master University, Vol 13, December 2008, PP544
14 P Baxter and S Jack, P545
venue for a particular theoretical framework (just war theory).\textsuperscript{15} Through this approach, this study begins by identifying the intentions and motives involved in the theory (just war theory) to understand the action (humanitarian intervention). And this is simply because in socially defined situations both intentions and motives are a matter of rules of right and rational conduct.\textsuperscript{16} Moreover, since this paper has found a particular case (massive human rights violations in Syria) that fits or demonstrates a particular general suggestion or claim (just intervention), it could have some scholarly promises. “Consequently it might be worthwhile to pursue the claim and perhaps develop into a full-fledged theory.”\textsuperscript{17}

Another fact that makes this approach applicable to this study is because the qualitative case study method is based on a constructivist model. Constructivists argue that truth is relative and it is dependent on one’s perspective.\textsuperscript{18} In other words, people may look at the same thing and perceive it differently.\textsuperscript{19} Due to this fact, “this paradigm recognizes the importance of the subjective human creation of meaning, but does not reject outright some notion of objectivity.”\textsuperscript{20} Therefore, the constructivist approach is applicable to this study because the degree of certainty in this method, like just war theory (just or unjust), is highly dependent on different contexts. In other words, since just war theory is a flexible theoretical framework, it requires a flexible method as well. In light of this, it is important to keep in mind that just war theory requires to be studied case by case, but not in general. Moreover, analyzing situations, based on the constructivist model, is to demonstrate according to which principles a broad topic may form groups of concepts, objects or theoretical choices.\textsuperscript{21} Therefore, this study does not promise to deliver the objective knowledge about a just humanitarian intervention, but rather makes an attempt to picture the extent to which only Syria can fit into the framework of just war theory.

\textsuperscript{15} J W Moses and T Knutsen, pp .133
\textsuperscript{16} M Hollis and S Smith, ‘Understanding’ in Explaining and Understanding International Relations, Oxford University Press, United Kingdom, 1990, pp 83-84
\textsuperscript{17} J W Moses and T Knutsen, pp .134
\textsuperscript{18} P Baxter and S Jack, P545
\textsuperscript{19} J W Moses and T Knutsen, p 10
\textsuperscript{20} P Baxter and S Jack, P545
One of the usual risks linked with the qualitative case study method is that “there is a tendency for researchers to attempt to answer a question that is too broad or a topic that has too many objectives for one study.”\textsuperscript{22} In order to deal with this issue, some experts have implied that putting restrictions on an event or on a research question may avoid this explosion from happening. Experts have suggested that in order to ensure that the study will remain reasonable in scope, researchers should bind a case through putting boundaries on time, place, activity, context and definitions.\textsuperscript{23} In light of this, this study has narrowed its research question on the concept of humanitarian intervention by focusing on only nine months of events in Syria. However, this paper hopes that this reading presents a better understanding of the case under examination and can be successively used as an instrument for other studies with different reasons including generalization.

1.4 Delimitation

This study does not characterize a specific form of knowledge. The constructivist model, like just war theory, does not define the state of knowledge at a specified moment in time. In light of this, the constructivist model does not prepare a list of what from that moment can be confirmed to be objective and be expected to assume the position of absolutely gained knowledge. In addition this study also does not draw up a list of what has been accepted without either adequate proof or of what has been recognized as a common belief or a belief demanded by the force of imagination.\textsuperscript{24} Since not every violation of human rights can justify foreign military intervention this study does not guarantee to provide the objective knowledge about humanitarian intervention.

\textsuperscript{22} P Baxter and S Jack, P546
\textsuperscript{23} P Baxter and S Jack, P546-547
\textsuperscript{24} M Foucult, P181
Just war theory, as discussed before, is not a fixed doctrine, but rather a set of critical reflections towards an issue (usually conflict), which can be highly dependent on different circumstances. The degree of certainty (just or unjust), therefore, can be so tricky when evaluating a case within this theoretical framework. In order to deal with this issue and to get a reasonable result, this paper must relies on various reports and news which have been published by international organizations such as the United Nations, the Arab League, Human Rights Watch and so on. Since the events in Syria are continuously moving forward this paper has some boundaries regarding its timeframe. In this sense this study has set out a time limit (from March 2011 to December 2011) on these events in order to avoid any sorts of prediction and calculation in the aftermath of the current developments in Syria. The second practical limitation is regarding obtaining accurate data on the death toll, numbers of injured civilians and political prisoners. Obtaining accurate information regarding the situation in Syria is a difficult task and this is simply because, on the one hand, these numbers and figures keep growing and, on the other hand, Syrian authorities have made an enormous effort to prevent these figures from being disclosed. Therefore, in order to measure the degree of violence in Syria this paper must utilize the latest available data and rely on different selection of reports for an overview of the situation.

Another limitation is the relative lack of academic studies in this field of investigation due to its recent occurrence. Thanks to wide usage of other materials and the Internet this shortage will be compensated for using other sources of information such news reports and discussions. Due to all of the above-mentioned facts, it is important to mention that this paper would not examine whether a military intervention should take place in Syria nor what the international community should do in response to these events in the future, but rather it aims to look at the moral and legal justifications for humanitarian intervention according to the events of the specified nine months period.

1.5 Disposition

This thesis is divided into six parts. In the next chapter this thesis examines the concept of just war theory by presenting the theory itself, counter arguments, response to its critics and the moral criteria for a just humanitarian intervention. In the third chapter, this paper looks at the legal aspects of humanitarian intervention along with its for and against arguments. Chapter four explores the political and economical background of Syria in order to understand the reasons behind the uprisings. The fifth chapter is about the international response, and the reports that have been published by UN and Human Rights Watch regarding the humanitarian crisis in Syria. In order to get a better understanding of these responses, this chapter also makes an attempt to cover the important events during those specific nine months (from March 2011 to December 2011) in Syria. Chapter six carries out the discussion of this paper from both a moral and legal perspectives. Finally the last chapter wraps up the main points of this study.
2. Theory

Before looking at the concept of just war theory, this chapter will begin with an overview and some definitions of the concept of war itself. War has been one of the most studied subjects since mankind began to document the actions of individuals and groups. War is considered to be a social phenomenon and has been defined as "a fight between human societies, in primitive conditions between savage tribes, in the civilized world between states." War is in a direct relation with the act of aggression. The term aggression usually refers to a wide variety of behaviors in social life, but in politics this term usually refers to the crime of war. Human beings are familiar with crime because of their knowledge of the concepts of peace-with-rights, which is a main condition of freedom, and security that can survive only in the absence of aggression. One of the crimes the aggressors commit is to oblige people to risk their lives for the sake of their rights. In this sense, people are confronted with a situation where they have to choose only one out of the two choices (lives or rights). In such a situation, the responses from citizens to that choice differ, sometimes choosing to fight and sometimes to surrender. According to Walzer this is highly dependent on the ethical and material situations of the their state and militia.

To begin with the theory, just war theory is the term for a varied literature on the ethics of conflict, hostile situations and warfare that presents measures or criteria for deciding whether a conflict is just and whether it is fought by just means. The tradition of just war accordingly discusses moral responsibilities on the subject of violence and the use of

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27 J V ELBE, p665
28 M Walzer, p53
mortal force. However, it is important to remember that the main purpose of just war theory is not to argue against war as such, but to enclose both the possibility of war and its behavior with moral restrictions and conditions. In general, just war theorists begin their argument with a commitment to an interpretation of human beings as individuals who are continuously “conflicted and torn and whose human relationships are characterized by love and kindness as well as selfishness and cruelty, human solidarity and human plurality.” According to just war theorists, these are the endless features of the human condition that are displayed in a variety of plural ways in various cultures.

According to most philosophers, just war theory has a long history in religion. “Christian thought about justifying reasons for war and limits on the conduct of war can be described either as a presentation of just war theory or as an integral part of just war tradition.” It is claimed that the origins of just war theory are laid in the Catholic tradition, which can be traced back to the literature of Thomas Aquinas and St. Augustine. It has been argued that it was St. Augustine who merged Christian and Roman tradition and opened a middle road by strongly supporting Christian involvement in war. However, at the same time, he strongly argued that war should be just. According to him, war can be justly waged for punishing the act of aggression. He also argued that, thorough the use of force, one must defeat a nation or a city which is reluctant to punish an immoral actions of its inhabitants, or which declines to reconstruct what it has unfairly taken. However, he explained that actors should never declare war out of a desire for power or revenge. He claimed that war should only function as the means for earning a long-lasting peace. Augustine’s doctrines have remained the origins of the Catholic teaching on war and peace up to the present-day.

During the twelfth century another well-known theologian, Thomas Aquinas, has also

29 M Fixdal & D Smith, P285-286
31 J B Elshtain, PP 1-2
participated in the discussion of just war. Aquinas’ arguments are based upon three conditions for a war to be just. These three conditions are usually known as the foundations of the concepts of just war theory. First, according to him, the war must be waged and managed only by the legitimate authority of a state or sovereign. According to Aquinas, the first condition is called ‘right authority’. As he claimed this authority originated from God, who was considered to deliver legitimacy and moral authorization for its implementation. The second condition is the existence of a ‘just cause’. This condition simply means that the warriors and everyone being attacked must justly deserve it. According to him, a just cause does not incorporate pride, avenge or greed, but rather it deals with self-defense, protection, and the prevention of a worse evil. The last condition, as he stated, is the ‘right intention’. He argued that war must have the intention to promote good, or obstruct evil and in light of this law and order must always be fixed.\textsuperscript{34} Undoubtedly, these doctrines have developed over time. Historical incidents such as the First and the Second world wars, terrorist attacks and massive human rights violations have forced political scholars begin to reconceptualize the traditional concepts of just war.

Furthermore, Christianity is not the only religion that has been concerned with just war and the use of force. In contemporary society the term \textit{Jihad}, meaning Muslim holy war, is an influential symbol demonstrating not only fundamental violence but also the clash of Western and Islamic societies.\textsuperscript{35} The holy war in Islam refers to war in the path of god. “Islamic texts on warfare actually focus on the concepts of just war, typologies of conflicts, treatment of the vanquished, division of spoils, and the upholding of Islamic law, given the travel and exchange between Muslim and non-Muslim territories.”\textsuperscript{36} It is fair to argue that Islamic rules of warfare are much more complex compared to those of Christianity. It has been widely argued that some Western scholars could probably find the Islamic judgments on war to be inconsistent. Scholars argue that, sometimes it is

\begin{footnotesize}
\begin{enumerate}
\item A Nussbaum, PP 456-457
\item Y H. Aboul-Enein and Sh Zuhur, in ‘Islamic ruling on warfare’, The Strategic Studies Institute, Oct 2004, P2
\end{enumerate}
\end{footnotesize}
unclear for some readers to understand whether these rules promote peace or war.\textsuperscript{37}

Apart from the theological philosophers who are usually known as the formulators of the just war concept there are also secular philosophers who argue both for and against just war theory. In other words there are legal, secular and military scholars who have contributed to the debates on the concept of just war. Although some scholars, in the modern era, still argue for a religious just war ethics but most of moral arguments are today based on secular and moral philosophy.\textsuperscript{38}

Just war theory makes an attempt to conceive how the use of arms might be reserved, made more humane, and ultimately directed towards the aim of establishing lasting peace and justice.\textsuperscript{39} In light of this, just war theorists simply decline to make a distinction between politics and morality. In other words, they argue that just war theory separates politics from morality, but at the same time it is awkward for just war theory to treat them in isolation from one another. It has been argued that one of the main advantages of just war theory is that the ethical and the political arguments in this tradition address issues from different perspectives. The tradition of just war and political realism hold opposing hypotheses about the human situation. Just war theory, unlike the competing principle of state-centered strategic realism, maintain that one must avoid developing an unbridgeable gulf between international and domestic politics.\textsuperscript{40}

As Elshtain argues, just war is the theory of comparative justice employed to considerations of conflict and intervention. Moving toward humanitarian military intervention through a just war lens implies that such actions (military interventions), or their possibility, must be subjected to extreme examination and cannot be played out only by appealing to solicitude or to doing the 'right thing.' Just war theory recognizes the

\textsuperscript{37} M Pettygrove, p36  
\textsuperscript{38} M Fixdal & D Smith, P 286  
\textsuperscript{39} M Rigstad, Viewed on 8\textsuperscript{th} of December 2011, http://www.justwartheory.com/  
\textsuperscript{40} J B Elshtain, P3
calamity of situations in which there may be a 'right thing' to do on some certain standard of fairness, but no sensible or decent way to do it.\textsuperscript{41}

More on intervention, Walzer argues that humanitarian intervention comes close to those criminal regimes and armies that are involved in massacres and this is because they are guilty of crimes against humanity.\textsuperscript{42} Under Article 7 of the Rome Statute of the International Criminal Court, when some obvious crimes such as murder, torture and unlawful imprisonment are perpetrated as part of an extensive or systematic assault against the population and the offenders realize that their behavior is part of this assault, such crimes constitute crimes against humanity.\textsuperscript{43} Crimes against humanity have five features: first and foremost, there must have been an assault; second, the assault must have been led against the population; third, the assault must be extensive and systematic; fourth, the actions of the offender must form part of the assault; and finally, the offender must be aware that there is an assault directed against the population.\textsuperscript{44}

Walzer has argued that the use of force is always evaluated twice, first on the subject of the motivations (humanitarian aids in the case of Syria for example) that actors have for fighting, secondly on the subject of the means they adopt to fight. The first type of evaluation is adjectival in character: for example a particular conflict is either judged to be just or unjust. This type of evaluation requires us to make judgments about aggression and self-defense (\textit{Jus ad bellum}).\textsuperscript{45} In light of the \textit{Jus ad bellum} principle, Hutchings argues that legitimate reasons for going to war require significant danger such as being attacked or massive human rights violations.\textsuperscript{46}

The second type of evaluation is adverbial: when the conflict is being fought either justly or unjustly. This type of evaluation is about the observance or violation of the customary

\textsuperscript{41} J B Elshtain, PP1-2
\textsuperscript{42} M Walzer, Just and Unjust Wars, P106
\textsuperscript{44} United Nations Human Rights Council Report, P19
\textsuperscript{45} M Walzer, P21
\textsuperscript{46} K Hutchings, Global Ethics: An Introduction, Polity Press, Cambridge, 2010, P139
and positive rules of engagement (*Jus in bello*).\(^{47}\) This principle limits the conducts and means of combatants in hostile situations. In view of this, Crawford argues that those who conduct military strikes should obey the *Jus in bello* principle of just war theory in order to avoid harming noncombatants and avoid disproportionate damage.\(^{48}\)

### 2.1 Counter arguments

There are many objections towards just war theory and these “objections are not mutually exclusive and can be found in the writings of Realist, Liberals, Feminists, Post-colonial theorists and others, though these different theories afford different weight to each of the objections.”\(^{49}\) This paper makes an attempt to present some of these crucial counter arguments from different perspectives, to then answer their main points in order to defend the definitions of just war theory used in this thesis.

Unlike just war thinkers, ‘realpolitik’ thinkers claim that the main strategy of just war is pure national self-interest.\(^{50}\) Realpolitik, according to the Oxford dictionary, is “a system of politics or principles based on practical rather than moral or ideological considerations.”\(^{51}\) Realpolitik thinkers are prominent because of their counter arguments against the tradition of the just war doctrine. The basic argument is that states never intervene for primarily humanitarian purposes. According to this argument, states always invade for self-interest. Machiavelli and Hobbes are known as the pioneers of realpolitik thought. Machiavelli argued that human beings are dissembling, backstabbing, untrustworthy and ungrateful. Hobbes, like Machiavelli, claimed that men are obliged to strike violently. In general, he defines humankind, as the awful imaginable power that

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\(^{47}\) M Walzer, P21

\(^{48}\) K Hutchings, 139


\(^{50}\) J B Elshtain, P 3

each one has to kill the other.  

Realists argue that states nearly always have a variety of motives for waging war or intervening, but they are rarely willing to sacrifice their own soldiers overseas unless they have self-interested motives for doing so. This simply means that a sincere just war is unimportant for realists because it does not benefit the national interest. Other critics argue that just war points to the idea that strong states intervene only when it is beneficial to do so and probably policies of military intervention are conducted through the calculation of national interest rather than out of concern for what suits the victims in whose name the humanitarian intervention is presumably being conducted. Realists also argue that states do not have the moral right to kill their own soldiers because of other nations suffering. This simply means that individuals are exclusively responsible for their own states and that the affairs of the states are entirely their own concern. Through the above arguments, it is not difficult to understand that advocates of realism do not believe in prescribing moral concepts to state behavior.

Moreover, critics of just war theory argue that giving states a moral permit to wage war or to intervene unlocks the door to possible human rights abuse. In addition, they claim that just war theorists, by making an attempt to morally justify waging war or intervention, are confronted with the problem of how dire a humanitarian disaster has to become before force can be used to stop a humanitarian tragedy from emerging in the first place. This objection has been identified by pluralists, who argue that there is a problem concerning “how to reach a consensus on what moral principles should underpin it.” It is interesting to note that pluralism is very sensitive to human rights issues but that its advocates argue that waging war for humanitarian purposes should not be allowed “in the face of disagreement about what constitutes extreme human rights violations. The concern is that in the absence of consensus on what principle should govern a right of humanitarian intervention, the most powerful states would be free to impose their own

52 J B Elshtain, P3  
53 A Bellamy and N Wheeler, P 526  
54 A Bellamy and N Wheeler, P526  
55 A Bellamy and N Wheeler, PP 526-527
culturally determined moral values on weaker members of international society.”

Another set of criticisms can be found in the liberal point of view. Liberals claim that states are founded by the informed agreement of their inhabitants. In light of this, John Stuart Mill, a prominent liberal thinker, argued that only a domestic struggle for freedom could establish democracy and that human rights cannot take root if foreigners enforce them. If the interveners make an attempt to impose democracy, they will either find that they become involved in a never-ending obligation or that human rights abuses reignite after they depart. He also argued that only oppressed civilians should and could overthrow oppressive rulers.

As mentioned before, it has been argued that theologians and jurists have invented the doctrines of just war theories in order to provide a canon applicable to a variety of specific conditions. These doctrines undoubtedly have their origins in an ethical understanding of hostile situations. However, it has been argued that just war theory can be problematic because when the concepts of theory are implemented into the practice of politics and diplomacy their moral content is substituted by definitions, which are simply convenient. If this is the case, the concept of just war theory could be the offensive starting point for an attempt to come to grips with the applicable ethical issues.

2.2 Response to Critics of Humanitarian Intervention

It is argued in this thesis that it is a mistake to distinguish morality from the political theories. One of the main fundamental claims by realists, which is based upon realpolitik thinking, is that ethical decisions have no place in debates of foreign policy and
international relations. They argue that the idea of humanitarian intervention points to the idea that strong states intervene only when it is beneficial to do so and that policies of military intervention are conducted through calculation of national interest rather than concerning what suits the victims in whose name the humanitarian intervention is presumably being conducted. In light of this, this thesis argues that realism is contradictory since makes an attempt to appreciate a firm ethical ideal to domestic governmental life, but not at the international level. This uncertainty about the possibility of international ethical norms in the realist approach is based on false empirical assumptions since no one can constantly support ethical boundaries on individual action, but at the same time denying such boundaries on the actions of nations. In this sense, this paper argues that just war theory is strong enough to challenge this realist skepticism. In the following paragraphs, some of these arguments will be presented in order to both defend the requirements of Jus ad bellum and prove the presence of ethical norms at the international level.

According to just war theory, human beings uphold solidarity with both small and large communities. Human beings, as members of communities, uphold solidarity with family, tribes, civil society and states. At the same time, human beings may introduce themselves into broader or more universalistic opportunities to pursue and uphold their mutual humanity through international institutions and organizations such as the UN and multilateral organizations. In light of this, the emergence of the international organization simply demonstrates that states can and do have ethical norms at the international level. For example, the advent of international humanitarian organizations and the legalization of international human rights obligations are in response to humanitarian crises and natural disasters that have occurred in the last few decades. Undoubtedly, massive human rights violations, crimes against humanity and civil wars are not excluded from humanitarian crises. Since the establishment of the international humanitarian organizations such as UNICEF, the International Red Cross and many others, they have

60 D Luban, P 526
61 Charles R. Beitz, P 15
62 J B Elshtain, PP 3-4
provided safety, food and shelters in many humanitarian crises. Therefore, not only can ethical norms be established at the international level, but also states can assist each other without considering their national interest (self-interest). This is simply because ethical requirements on action can have other explanations than the rational self-interest of the state. For instance, membership in institutions can be ethically essential even when agreement with the appropriate rules in any specific situation does not promote the state’s own interest.63

Moreover, a separation of politics from morality leads to another problem, which is a misinterpretation of the intention of humanitarian intervention.64 The term ‘intervention’ itself has a different meaning from the term ‘humanitarian intervention’. Although philosophers and political scholars have different explanations and definitions for each one of these two terms, they usually differentiate them from one another. The term ‘just war’, however, could be referred to humanitarian intervention in some political contexts. In this view one might ask whether discussions about definitions matter or if it is really important how we interpret humanitarian intervention or intervention? This thesis argues that it is very important, particularly in regards to an assessment of these actions.65

How the practice of military action is evaluated affects the comprehension of the motive behind the action. For example, in domestic law unintentional murder and intentional killing have two very separate meanings. Although both forms of murder cause the loss of one person at the hands of one agent, the punishments and ethical assessments a society executes on that agent in these two forms of murder (unintentional and intentional) are contingent on how the actions are defined. Likewise, if a government defines its dispatching of aircrafts and tanks to strike against another country as a declaration of a war, it will be assessed in another way than if it describes that act as the beginning of humanitarian intervention.66 In light of this, this paper argues that the main intention of just war theory is to save lives rather than imposing democracy or cultural

63 Charles R. Beitz, P 64
64 M Fixdal & D Smith, P 285-286
65 A F.lang Jr, P 3-4
66 Just Intervention P 3-4
values.

Although humanitarian intervention and just war are often an occasion for forcible regime change, but the ‘right intention’ behind this transformation is to save lives and punish the act of aggression. In this view, Walzer argues that the intervening forces can minimize the forcible imposition of foreign ideas and ideologies, because they do not have a mandate for cultural transformation, but rather a political conversion.\(^\text{67}\) This paper is not stating that the reason that states engage in humanitarian crises is always for humanitarian purposes nor that states always act based on their moral duties, it is however in agreement with just war thinkers who argue that ethical norms have a place in foreign policy.

2.3 Moral Criteria

According to Walzer, both *Jus ad bellum* and *Jus in bello* principles are logically independent. More importantly, it is possible for a just war to be fought unjustly and for an unjust war to be fought in strict harmony with moral obligations. Walzer argues that committing aggression is a crime, but aggressive war is a rule-governed activity. He also claims that it is right to resist aggression, but the resistance is constrained by moral and legal restraint.\(^\text{68}\) Therefore, according to just war theory the ethical truth of a conflict is divided in two parts. Since this paper aims to discuss the ethical issues of humanitarian intervention, and consider the possibilities for the UN to intervene in hostile situations I put more focus on the principle of *Jus ad bellum.*

Undoubtedly, not every violation of human rights can justify humanitarian intervention. Accordingly, just war emphases the importance of sovereignty and the principle of non-intervention, with a limited number of exceptions. Among these exceptions is the right to

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\(^{67}\) M Walzer, P xi

\(^{68}\) N C Crawford, ‘The Slippery Slope to Preventive War’ in Ethics and International Affairs: A Reader, J H Rosenthal and C Barry (eds), Georgetown University Press, Baltimore, 2009, P41
the use of force (humanitarian military intervention) by outsiders to put an end to massive human rights violations. According to Walzer, humanitarian intervention is only justified when there are extreme conditions such as genocide and crimes against humanity.\textsuperscript{69}

Therefore, in order to participate in a just humanitarian military intervention, states must meet the criteria of the \textit{Jus ad bellum} principle. These morally justified criteria are generally summarized as the \textit{Jus ad bellum} principles, namely ‘legitimate authority’, ‘just cause’ and ‘rightful intention’. It is important to mention that the principle of \textit{Jus ad bellum} is not limited only with the above mentioned norms, but since these criteria are considered as the center of \textit{Jus ad bellum} this study is concerned only with the ‘legitimate authority’, ‘just cause’ and ‘right intention’. As described earlier, although these moral criteria have their roots in Aquinas’ arguments, but they have developed over time and they are still considered as the main criteria of the \textit{Jus ad bellum} principles. These criteria elaborate situations under which military force can be used justly.\textsuperscript{70} The \textit{Jus ad bellum} is adjectival in character and requires moral and ethical judgments to be made about going to war. In just war theory, each one of these criterions makes an attempt to provide an ethical and philosophical explanation of waging war through a comprehensive examination of normative ethics and human values. Since this paper utilizes ‘legitimate authority’, ‘just cause’ and ‘right intention’ to its analyses, it is crucial to elaborate each selected criterion separately.

The first criterion of the \textit{jus ad bellum} is the existence of a ‘legitimate authority’. This simply means that decisions to declare war should be the responsibility of a legitimate authority and no one else. According to this principle those who are in authority should protect and defend the common good from criminals. Unlike the twelfth century, today the legitimacy of supreme authority is based on some certain personnel and institutions, which are constrained by national and international law. Not only these laws and obligations are in response to will of the people and states, but they also hold authorities

accountable and responsible for their behavior. Today, it is widely accepted that humanitarian intervention is a matter of collective action under the UN support, not action commenced by nations acting on their own authority. It is, therefore, the international law that makes the decision of humanitarian intervention.

The second criterion for a humanitarian intervention to be just is a ‘just cause’. “Just cause specifies the ends for which it is permissible to engage in war, or that it is permissible to pursue by means of war.” According to this principle one only could attack attackers. This simply means that without first suffering loss and injury no war can ever be justified. In other words, one can argue that just war does not have an offensive nature, but rather a defensive one. An unjust war has an offensive nature, as its root is in the act of aggression. Critics of humanitarian intervention argue that the international law and just war theory have accepted only one just cause, which is self defense against aggression, but many other scholars believe that just cause may ultimately cover the defense of other states against intervention, acts of aggression, protecting victims of massive human rights violations, genocide and many other forms of crimes against humanity. The principle of ‘just cause’ is in a direct relation with state legitimacy. In light of this, civilians consider the legitimacy of states only when states can affect their welfare, safety and social rights. Therefore, states must fulfill some certain ethical requirements to be considered legitimate. If states and authorities fail to fulfill these certain ethical requirements (protecting and defending common good) they will simply loose their legitimacy and will be blamed for their misconduct. The idea of governmental legitimacy is essential to almost all of political science since it relates to how power can be used in ways that people deliberately consent. Political legitimacy is a main element of both the operation and structure of states. In this view, it has been widely accepted that the absence of political legitimacy has profound consequences on the way

71 V KOLÍN, P 12
72 T Nardin. P 21
73 V KOLÍN, P 13
75 J McMahan, P 4
76 V KOLÍN, P 13
77 Charles R. Beitz, P 15
that governments behave toward civilians.\textsuperscript{78} These consequences can be referred to sectarian violence, civil war, massive human rights violation and crimes against humanity. Governments that are in need of legitimacy allocate more funds to upholding their security forces and less to efficient governance. Consequently, states lose support and become vulnerable to being overthrow.\textsuperscript{79}

Having legitimate authority and a just cause are not enough to guarantee that a war is just. The last requirement is the principle of ‘right intention’. This condition is about the motive behind the action. It requires attackers to have rightful purposes, such as the advancement of a common good, securing peace, the prevention of evil and punishing criminals. One of the main purposes of including rightful intention into moral requirements of the \textit{jus ad bellum} is to bound war objectives in order to confirm the ‘just cause’. It is important to bear in mind that the right intention is not about the presence of motive, but rather the legitimacy of the motive itself. In other words, the question is whether the motive is dominant or whether is appropriate to a just cause.\textsuperscript{80} Since both ‘just cause’ and ‘right intention’ put so much emphasis on aims and goals, it is easy to misinterpret them. The main difference between ‘just cause’ and ‘right intention’ is that where a ‘just cause’ is concerned with the fundamental reasons for going to war, the ‘right intention’ emphasizes the goals by which they are supposed to be accomplished. It is also important to note that the criterion of ‘right intention’ is considered to be a problematic element in the contemporary study of just war. This is simply because it is very challenging to recognize that if the ‘legitimate authority’ has the ‘right intention’ and acts based on its ethical obligations or whether its intention is based on the self interest.

\textsuperscript{78} B GILLEY, in “The meaning and measure of state legitimacy: Results for 72 countries”, European Journal of Political Research, 2\textsuperscript{nd} of MAY 2006, Vol 45, P 499
\textsuperscript{79} B GILLEY, P 499
\textsuperscript{80} V KOLÍN, P 14
3. Legal Aspects of Humanitarian Intervention

Recognizing the failures to adequately respond to past humanitarian situations in Somalia, Kosovo and Rwanda amongst others, the international community has begun to debate the dilemma of humanitarian intervention. Humanitarian military intervention touches on the use of coercive action across state borders by a state, allies or groups of states aimed at preventing or ending massive and brutal violations of the basic human rights of populations other than its own citizens, without the request for the authorization of the government within whose territory force is applied. It has been argued that unilateral humanitarian intervention must be founded on the authority deliberated by the UN Charter. Another set of arguments however, believes that unilateral humanitarian intervention could originate from customary international law. Therefore the question that could be posed is: does international law authorize humanitarian intervention in a territory, even against the requests of the regime of that state, to stop massive killing or suffering amongst the civilian?

On the on hand, according to UN Charter Article 2(4), a state, allies or group of states are obliged to respect the sovereignty of other states and the principle of non-intervention. On the other hand, according to the principle of the responsibility to protect, which is a customary international law and was documented in the UN 2005 World Summit, the

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81 R O.Keohane, P1
83 Charter of the United Nations,
international community also has a duty to use suitable political and humanitarian tools to safeguard civilians from war crimes, genocide, ethnic cleansing and crime against humanity. According to this principle, each government has a responsibility to do so, but if a government is clearly failing to secure its citizens from these harms, the international community must be ready to take collective action, including the use of force, through the UN Security Council to protect civilians.  

This inconsistency in UN mandates is a heated issue between both states and political intellectuals. Some scholars base their arguments on the norm of sovereignty and the principle of non-intervention. This side of argument highlights the UN Charter Article 2(4) and argues that humanitarian intervention is against international law as the Article forbids the use of force against a sovereign state. The UN Charter Article 2(4) stipulates “all members shall refrain in the international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations”. The usual implication of Article 2(4) is obvious: the use of coercive action in another sovereign state is basically not legalized.

However, the UN Charter presents two exceptions to the Article 2(4) prohibition of use of force. The first exception is that the Security Council might permit the use of coercive action openly thorough a UN resolution adopted under Chapter VII. The second exception to the Article 2(4) prohibition is the right of self-defense. “This right is contingent upon an armed attack on the state asserting the right, and limited to acts taken in self-defense that are both necessary and proportionate.”

In addition, it has been argued that the UN Charter does not outlaw the use of force when an actor(s) violate(s) human rights on a gross and large-scale. The UN Charter Article 2(4) forbids humanitarian intervention only when it aims at the territorial takeover or

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84 Responsibility to protect, an Introduction to responsibility to protect, viewed 17th of December 2011, http://www.responsibilitytoprotect.org/index.php/about-rtop
85 R O.KEOHANE, P181
86 R O.KEOHANE, P181
political independence of states. Therefore, military intervention for humanitarian purposes can be legally justified when it does not have the intention for territorial conquest or political subjection. Furthermore, it has been claimed that there is immunity even in the framework of the article, which stipulates that ‘this principle shall not prejudice the application of enforcement measures under the Chapter.’

Moreover, the UN Charter provided the Security Council with the paramount duty for the protection of international peace and security. Under the UN Charter Chapter VII, the Security Council has the ‘legitimate authority’ to consider war decisions as a representative of the society of states. According to the UN Charter Chapter VII the Security Council has the right to authorize military intervention under two conditions. First, if the UN Security Council concludes the presence of any danger to the peace, violation of the peace, or act of aggression; and second, the UN Security Council decides the actions to be taken as ‘necessary to maintain or restore international peace and security.’ Therefore, from both a moral and legal perspective, the only ‘legitimate authority’ that can make a collective decision on humanitarian intervention is the UN Security Council.

88 V KOLÍN, P 14
89 Charter of the United Nations,
4. Background Information

In order to get a better idea about both the state and the reasons behind the events in Syria this chapter will begin with describing Syria’s political and economical background. The population of Syria is actually estimated to be 22 million, with 74 percent Sunni Muslims, 10 percent Alawites, about 10 percent Christians and the rest belonging to ethnic minorities. The president’s family belongs to the Alawite religious community, which is also the majority in the government’s key positions including the Republican Guard, the officer corps of the armed forces and the Fourth Division. Today the Syrian constitution and the Arab Ba’ath party give broad powers to the president and lead the society and state. “The Ba'ath Party emphasizes socialism and secular Arabism. Although Ba'ath Party doctrine seeks to build pan-Arab rather than ethnic identity, ethnic, religious, and regional allegiances remain important in Syria.” The president is also the Secretary-General of the Ba'ath Party as well as the leader of the National Progressive Front, which is a union of 10 political parties approved by the government.

Each period of presidency in Syria is seven years. Since independence, the Assad government, (Hafiz Al-Assad and Bashar Al-Assad) held power longer than any other Syrian government. Hafiz Al-Assad, the former President, confirmed his presidency thorough five rounds of unchallenged presidential elections. The current President Bashar Al-Assad, who is the son of the former president, also confirmed his presidency thorough two rounds of unopposed presidential elections; in July 2000 and in May 2007. In Syria, the toleration of political opposition to the president and his government is zero. Basically it is the president and his assistants, especially those in the army and security services, who eventually make the most fundamental decisions in both economic and

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92 SYRIA PROFILE.
political life. According to the current constitution the president has the right to legislate laws, amend the constitution, declare amnesty, declare a state of emergency and war, appoint ministers, appoint civil servants and military personal. Syria, today, is formally a republic state, but in reality has a totalitarian government that exhibits only the appearance of a democratic system. Citizens superficially vote for both the president and members of parliament, but in reality people do not have the right to modify or change their government. 93

Another reason behind the uprisings in Syria is the economy. Syria is considered to be a middle-income country, which is highly dependent on the income that comes from oil, agriculture and tourism. 94 Today the political economy of Syria faces an exclusive series of interrelated issues that cannot be singled out simply by prescribing regular textbook economic strategies. It has been argued that the formula to solving Syria’s economic issues is to address problems of legal, administrative and institutional reform. Despite all the efforts made by the government over the last decade the regime is still confronted with a number of interconnected political and economic difficulties. 95 Some of these difficulties include: “a large and poorly performing public sector; declining rates of oil production; widening non-oil deficit; wide-scale corruption; weak financial and capital markets; and high rates of unemployment tied to a high population growth rate.” 96
5. The international Response to Events in Syria

The ripple effect of the recent democratization movements in the Middle East, or the so-called ‘Arab spring’, did not leave Syria untouched. The removal of President Mubarak in Egypt and President Bin Ali in Tunisia inspired other Arab nations, particularly Libya and Syria, to take to the streets and demand their social and political rights. In Libya the demonstration for overthrowing President Kaddafi ended with NATO intervention after a massive and brutal slaughter of civilians. In Syria, demonstrations against President Assad's government began in mid-March 2011 and have continued across the country.97 Both demonstrators and UN reports claim that the government has responded brutally to these protests. Some people believe that the ‘Arab spring’ in Syria is now turning into an Arab winter since “the regime has not been able to suppress the protests, and the protesters have not been able to topple the regime.”98 Some political scholars believe that President Assad, like Kaddafi, is defiant and determined to fight to the end. In order to get a better vision insight into the recent incidents in Syria, this chapter begins with an overview of nine months events in Syria and the international response during this period.

The protests against the regime of Bashar al-Assad first started after demonstrations in one of the southern cities, Deraa, in mid March 2011 and have continued across the country ever since. In the early phases, demonstrators were asking for political reform and an end to corruption, but as protests were encountered with tanks and bullets, the demonstrations switched to, asking for the fall of the regime. In mid April, after a month of bloody protest, President Assad ordered to lift nearly five decades of emergency law in response to the massive protests that left large numbers of people dead. From 1963 until 2011, Syria has been under a state of emergency. It has been more than 48 years since

97 United Nations Human Rights Council Report, P 8
martial law was imposed on the civilian population in Syria. The regime imposed martial law in 1963 under the pretext of being at a state of war with Israel and by permanent threats posed by terrorist groups and individuals.\(^9\) Martial law is supposed to be a “temporary rule by military authorities, imposed on a civilian population especially in time of war or when civil authority has broken”\(^10\), but in Syria this law has been in effect for almost 48 years. This rule also authorizes the questioning of any citizen and the investigation of all individual communication, as well as authorized supervision of the content of reports, newspaper and all other media before publication.\(^11\)

“After lifting the emergency law, Assad warned that demonstrations would no longer be tolerated, and he directed his security forces to fire on protesters who gathered across the country after Friday prayers on April 22.”\(^12\) At the end of May, the US decided to impose a new round of one-sided sanctions on Syria's intelligence agency and two relatives of the president. In the following month, as the conflict continued between protesters and the security forces, nearly 12000 people fled to neighboring countries after the security forces took control over the city of Jisr al-Shughour.\(^13\)

In early August, the UN Security Council, in a statement, condemned the brutal crackdown against pro-democracy protestors for the first time and asked Syrian authorities for an instant end to all violence, fully respect human rights and comply with their obligations under international law.\(^14\) Following the UN statement, President Barack Obama and the European Union called on President Assad to step down.\(^15\) Right after these statements, President Assad warned the international community against any military intervention in Syria, saying: "Any action against Syria will have greater

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99 SYRIA PROFILE
101 SYRIA PROFILE
102 M Bazzi, P 4-6
105 Syria uprising: Key events
consequences [on those who carry it out], greater than they can tolerate.” After his deep concern for intervention protesters and human right activists started to ask NATO for assistance and protecting citizens from the brutal repression by the government.

In early September, the European Union imposed a round of sanctions on importing crude oil from Syria. In the following month, Russia and China vetoed a European-drafted UN Security Council resolution that had strongly condemned the Syrian regime for their violent suppression against demonstrators. In mid October, the Arab League made an attempt to bring Syria’s government and opposition groups to the negotiating table to find a peaceful solution. For the second time in late October President Assad, in an interview with the Sunday Telegraph, warned the international community by saying “Western action against his country would cause an ‘earthquake’ that would ‘burn’ the whole region.” Only a day after his interview Anders Fogh Rasmussen, the NATO secretary general, stated that NATO had no intention whatsoever to either spearhead a no-fly zone or intervene in Syria.

As described earlier, a report published by the UN Independent International Commission of Inquiry on the Syrian Arab Republic in November 2011, found that crimes against humanity, mass killing, rape, sexual violence or other forms of torture and inhuman acts similar to imprisonment, enforced disappearances of persons and other severe deprivation

108 Syria uprising: Key events
110 Syria uprising: Key events
of liberty had taken place in different cities of Syria since March 2011. According to another UN report “more than 5,000 people have now died since the start of the public uprising in Syria.”

Regarding to the UN report, ABC news conducted an interview, in early December 2011, with President Assad about how he responded to the opposition groups during the last months. ABC News was the first American news agency allowed to interview President Assad since the demonstrations began in March 2011. In this interview President Assad denied any idea that he had commanded or that he was behind the brutal suppression of civilians. He also denied receiving or seeing any reports from the UN and dismissed their condemnation with the question, “Who said the United Nations is a credible institution?" Later on, he laughed off a question about whether he feels any guilt for thousands of deaths and said “I did my best to protect the people, I cannot feel guilty when you do your best. You feel sorry for the lives that have been lost. But you don't feel guilty when you don't kill people.

5.1 The Human Rights Watch Report

The latest Human Rights Watch (HRW) report about the situation in Syria, published on 11th of November 2011, states that the nature and scale of violations committed by the Syrian security forces imply that crimes against humanity could have been perpetrated. The report states that Syrian security forces have killed, injured and maimed large numbers of civilians and children. Thousands of civilians, including children, have been subjected to torture, arbitrary arrest and hundreds of deaths in custody. This report is

114 UN news Center, As Syrian death toll tops 5,000, UN human rights chief warns about key city
116 R Goldman,
based on 114 interviews as well as the examination of 29 interviews videotaped by Syrian activists, who escaped to neighboring countries in order to save their lives. The HRW report was published after reviewing dozens of footage, recorded by witnesses, which verified their accounts and have been available on YouTube and other public broadcasters. According to the report, Human Rights Watch staffs have gathered evidence of security forces opening fire on demonstrators, torture, disappearances, and arbitrary detentions, of all, which indicate the continuation of an extensive and systematic murder and attacks against the resident population.117

5.2 The United Nations Report

At the end of November, the UN Independent International Commission of Inquiry on Syria published its long-awaited report about the deteriorating situation in Syria. According to this report, from September to November 2011 the commission had many meetings with members of all regional organizations, the League of Arab States, non-governmental organizations, human rights defenders, the Organization of Islamic Cooperation, journalists and experts. During this period the appointed commission has interviewed more than 200 victims and witnesses of human rights violations, including citizens and defectors from the security and the military forces. The commission has also gathered a number of significant evidence that implies that these massive violations of human rights have been perpetrated by Syrian security and military forces from the very beginning of the demonstrations in March. According to the report, this proof indicates that the Syrian Arab Republic has committed crimes against humanity in different cities across Syria.118 “The commission documents patterns of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of

children’s rights.”\textsuperscript{119} In general, these documents show that the grade of violence from the Syrian regime towards its population has been a breach in international law.

In this report the commission have reported many cases of extreme use of force and extrajudicial executions. Both survivors and defectors from military told the commission that military forces shot at unarmed protestors without warning. According to defectors from security forces they had received direct orders from commanding officers to open fire at civilians without giving notice. Some of these defectors witnessed the slaughter of their comrades who declined to execute orders to fire at unarmed protesters. According to these defectors, in some of large military scale operations soldiers were given orders to directly target at housing areas, but some of these soldiers decided to shoot in the air to prevent resident casualties. These soldiers got shot by commanding officers or other security forces from behind. One of these defectors confessed that his army group has used machine guns and other heavy weapons aimed at unarmed protestors who were calling for freedom and marching with their children.\textsuperscript{120}

5.3 Assumptions

There are many assumptions and hypotheses toward the reasons behind the recent developments in Syria. One could argue that one of the reasons behind the failure to topple the Syrian regime is because President Bashar Al-Assad has a larger general support than other Middle Eastern leaders, who have been overthrown in the recent revolutions, such as Egyptian President Hosni Mubarak and Tunisian leader Zine el-Abidine Ben Ali. One could also speculate whether President Assad has learnt lessons from the recent revolutions in the region. Therefore, he acts upon the experiences that he has acquired from Tunisia, Egypt and Libya. On the one hand, he would have witnessed the initial reactions to the demonstrations in Egypt and Tunisia and may have reasoned that by not acting forcefully, the leaders there looked fragile and motivated the

\textsuperscript{119} United Nations Human Rights Council Report, P 1
\textsuperscript{120} United Nations Human Rights Council Report, P 10-11
demonstrators to extend their demands. On the other hand, others argue that, following the NATO mission in Libya along with its engagements in Afghanistan, Pakistan and Iraq no outside power, particularly a Western Country, is willing to militarily intervene in Syria.¹²¹

The next chapter aims to leave all of these and other assumptions behind and assess the situation in Syria along with the concept of humanitarian intervention from both a moral and a legal point of view.

¹²¹ M Bazzi, in 'Dark Days for Syria', Nation, Vol 292, Issue 20, Academic Search Elite, P 4-6
6. Analysis

There can be many criteria when it comes to evaluating the use of force, such as the political or economical context, but since the main theoretical framework of this paper is just war theory, it is concerned only with identifying the main criteria of the *Jus ad bellum* principle. As described earlier, these criteria are ‘legitimate authority’, ‘just cause’ and ‘rightful intention’. Moreover, since legal and political conditions are also relevant to the assessment of humanitarian intervention, it is appropriate to apply legal criteria such as the Charter of UN, international agreements and international covenants. This chapter begins with identifying the above-mentioned elements in order to assess the extent to which Syria fits into the framework of just war theory.

After the UN Human Rights Council published its first report on Syria, President Assad, claimed that the UN is not a “credible institution.”122 Regarding this statement, it is important to mention that not only the Syrian Arab Republic has an ambassador at the UN General Assembly but that Syria was also a ‘Founding Member’ of the UN in June 1945.123 In 1945, representatives of 50 nations, including Syria, gathered in San Francisco at the United Nations Conference on International Organization to draft the United Nations Charter.124 Moreover, the Syrian Arab Republic is a signatory to almost all foremost international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Right (ICESCR), the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict (CRC), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the

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122 R Goldman,
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).\textsuperscript{125}

Therefore, this thesis argues that not only the Syrian Arab Republic is constrained by international laws and obligations, but also Syria has confirmed the credibility of the UN by having an ambassador at the UN General Assembly. Not only these treaties and obligations are in response to will of the civilians in Syria, but they also hold Syrian government accountable and responsible for their behavior. In light of this, Syria, like any other member states, has confirmed the presence of a ‘legitimate authority’ from both a moral and a legal perspective. The UN Charter offered the Security Council with the chief duty for the protection of international peace and security. Under the UN Charter Chapter VII, Syria has confirmed that the UN Security Council has the ‘legitimate authority’ to consider war decisions as a representative of the society of states. According to the UN Charter Chapter VII the Security Council has the right to authorize military intervention if it determines the presence of a threat to the peace, breach of the peace, or act of aggression.\textsuperscript{126}

In order to identify a ‘just cause’, which is the second requirement of the \textit{Jus ad bellum} principles, one must be able to demonstrate that some evil, crime, or wrong has been perpetrated by one agent for which the humanitarian intervention is the appropriate response by the ‘legitimate authority’.\textsuperscript{127} As described earlier, the principle of ‘just cause’ is in a direct relation with the legitimacy of the state (Syria). In light of this, Syrian people consider the legitimacy of President Assad only when he can affect their welfare, safety and social rights. Therefore, it is fair to claim that the legitimacy of the Syria is questionable from both domestic and international perspective. As described above, President Assad has stated that he did his best to protect civilians,\textsuperscript{128} but the evidence that has been gathered by both the UN and Human Rights Watch indicate that not only President Assad has failed to protect innocent civilians from mass killing, massive human rights violation, torture and sexual violence, but also that his authoritative regime has

\textsuperscript{125} United Nations Human Rights Council Report, P 7
\textsuperscript{126} Charter of the United Nations
\textsuperscript{127} V KOLÍN, P 13
\textsuperscript{128} R Goldman,
failed to comply with its moral obligation under international law. Moreover, the UN Human Rights Council has verified that crimes against humanity had taken place in different cities of Syria since March 2011. In light of this, this thesis argues that Syrian Arab Republic is guilty of crimes against humanity. According to just war theory this criminal act (crimes against humanity) can be identified as a ‘just cause’ for a just humanitarian intervention.

As described earlier, Russia and China cast a double veto to block the European-drafted UN Security Council resolution condemning Syria for its brutal crackdown on demonstrators. Although this paper does not aim to calculate the intentions behind the decisions of Russia and China, but it is worthwhile to mention that Russia has long-standing military, political and commercial ties to Syria. According to the Moscow Times, “Russian investments in Syria in 2009 were valued at $19.4 billion, mainly in arms deals, infrastructure development, energy, and tourism.”129 Moreover, it is important to notice that Russia controls a maintenance site and a naval supply close to the city of Tartous, in Syria.130 In light of this, one can argue that one of the reasons that Russia is reluctant towards the humanitarian situations in Syria is because of self-interest. It has been argued that both Russia and China have different reasons for this specific decision, but since the main concern of this thesis is the legal and ethical issues of humanitarian intervention, this paper does not aim to investigate further intentions behind the decision of Russia and China.

The principle of ‘right intention’ is always considered to be a problematic element of the Jus ad bellum principles. This is because it is difficult to claim that the intention that states (Russia and China) have to engage in humanitarian crises is always for humanitarian purposes or that the members of the UN Security Council always act based

130 N Blanford and F Weir, in “ Why Russia is blocking international action against Syria”, Christian Science Monitor, Published on 19th of September 2011, Available from: Academic Search Elite, Ipswich, Viewed in 26th of December 2011
on their moral duties. Moreover, this difficulty is not limited only in this particular case, but rather in general. As mentioned before, the principle of ‘right intention’ requires the ‘legitimate authority’ (the UN Security Council) to have rightful purposes, such as the advancement of a common good, securing peace, the prevention of evil and punishing criminals. Nevertheless, this thesis argues that although some members of UN Security Council may not consider ethical requirements on their actions, but since the UN Security Council is the only ‘legitimate authority’, all members of the Security Council should approve and participate in decision-making process. In other words, any humanitarian intervention outside of the UN Security Council mandate is not justified according to the _Jus ad bellum_ principles. Thus, no humanitarian military intervention in Syria could ever be justified without meeting the criteria of _Jus ad bellum_ principle during the nine months of bloody protests.

This thesis argues that since ethical norms can and do exist at the international level, the members of UN Security Council should uphold solidarity with others who are suffering from humanitarian crisis regardless of their national self-interest. Moreover, the lack of ‘right intention’ in the UN Security Council indicates that the international law does not play a pivotal role when it comes to the question of ethical and legal obligations. All signatories of the UN Charter make a promise both to protect their own populations and to fulfill their international responsibilities to their fellow nation-states. Therefore, membership in the UN is not only about the verification of sovereign position or a protection against interfering in a state's domestic jurisdiction, but also the right to make judgments and take action against threats to human security.\footnote{A Slaughter, in “Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform”, The American Journal of International Law, Vol. 99, No. 3, Jul 2005, P. 620}

Finally, this analysis claims that Syrian Arab Republic has failed to fulfill its ethical requirements at both the individual and international level. The individual level refers to protection and defense of both civilians and a common good, while the international level refers to of all Syria’s international legal obligations. Perhaps the term ‘authoritarian
regime’ is best suited to describe the nature of the current political structure in Syria. The regime's brutal response to the initial demonstrations was typical of a dictator government that has consolidated power through mass detention, collective punishment, and the persecution of human right activists and intellectuals for the past 48 years.
7. Conclusion

This paper concludes that separating ethical norms from politics is a mistake. Therefore, in order to gain the appropriate understanding of the subject of humanitarian intervention, one must be able to recognize the presence of ethical norms at the international level. Moreover, political actors can turn into immoral, egocentricity agents once they separate moral norms from politics. Because of this fact, individuals have introduced themselves into international institutions in order to pursue and uphold their mutual humanity at the international level.

This study, through its analysis, identified the two elements of the *Jus ad bellum* principle namely ‘legitimate authority’ and ‘just Cause’. This study recognized that the UN Security Council is the only ‘legitimate authority’ that has the right to call for a just humanitarian intervention in Syria from both an ethical and a legal point of view. This study also made an attempt to gather and analyze all the reliable evidence to confirm that the humanitarian situation in Syria as a definite ‘just cause’ from both a moral and a legal perspective. However, The element of ‘right intention’ is missing since the ‘legitimate authority’ (Russia and China in this case) is reluctant towards the humanitarian situations in Syria. ‘Right intention’ also implied that the current international law does not play a crucial role when it comes to the question of moral and legal obligations. Therefore, no humanitarian military intervention in Syria could ever be justified during nine months of protests.

This study did not draw up a list of what has been accepted without either adequate proof or of what has been recognized as a common belief. This is simply because not every cause, authority and intention can justify humanitarian military intervention. This paper made an attempt to put its main focus on studying a specific case (Syria) within its own context. More specifically, this paper tried to investigate the extent to which only Syria fits into the framework of just war theory. Therefore, the result of this study did not deliver the objective knowledge about a just humanitarian intervention. However, this
thesis hopes that this study distribute a better understanding of the case under investigation and can be used as an implement for other analyses with different intentions including generalization.
References


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