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The 2011 Humanitarian Intervention in Libya: From Just Intervention to Just Peace?

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A research report submitted in partial fulfilment of the requirements for the degree of Master of Arts in Political Studies to the Faculty of Humanities at the University of the Witwatersrand, Johannesburg.



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Declaration

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Abstract

This research report analyses the 2011 humanitarian intervention in Libya and seeks to establish whether or not it was morally justified and if it led to a better state of peace (a *just peace*). It analyses the intervention through the prism of *just war theory* and the *responsibility to protect* (R2P) doctrine. *Just war theory* and the R2P doctrine provide moral guiding principles that must be met to justify the *resort* to war, its *conduct* and *termination*. These principles are outlined in *just war theory* as *jus ad bellum*, *jus in bello*, and *jus post bellum*. The report highlights the origin and evolution of *just war theory* vis-à-vis to the practice of humanitarian intervention. Humanitarian intervention has long been prohibited by established international law which, nevertheless, provides for the protection of fundamental human rights. Ingrained in international law are the Westphalian principles of *state sovereignty* and *non-interference that* have created a tension between the rights of the states and those of individuals. While international law explicitly states that countries have the right to individual or collective self-defence, it implicitly advocates for humanitarian intervention where a state is unable or unwilling to protect its people. The study, therefore, adopts the notion of *sovereignty as responsibility* as revived by R2P. It holds that every state ultimately derives its rights from those of individuals: the former forfeits its rights when and if it violates those of the latter. In such a case, a state loses its sovereign standing and becomes liable to humanitarian intervention. The decline in *interstate* conflicts and the rise of *intrastate* conflicts since the end of the Cold War reignited the debate around the legality and legitimacy of humanitarian intervention because no universally accepted enabling framework has hitherto existed. But in 2001, the International Commission on Intervention and State Sovereignty (ICISS) published the R2P report that serves as a generally accepted framework for humanitarian intervention today, following its unanimous endorsement by states at the UN World Summit in 2005. This study, however, that while the ICISS R2P is *broad* and encompasses the responsibilities to *react*, *prevent*, and *rebuild*, the UN R2P is *narrow* and lacks the post-war reconstruction element. But this is not new: the *jus post bellum* element of *just war theory* has historically received little attention in the literature, which has affected its practice. A similar trend is developing with the R2P and the case of Libya is illustrative of that. The study's application of *just war theory* and R2P propositions to the Libyan situation establishes that the intervention was morally justified for it prevented the massacre of Libyans by the Qaddafi regime but did not lead to a better state of peace mainly because it was not followed up with post-intervention reconstruction. Failure to consider post-intervention reconstruction in Libya, however, does no damage to the practice of humanitarian intervention. Rather, it serves as a lesson from which to learn and indicates *that jus post bellum* is integral to just war theory just as the *responsibility to rebuild* is to R2P in theory and practice.

Keywords: Libya, Muammar Qaddafi, Humanitarian Intervention, Just War Theory, Responsibility to Protect, Responsibility to Rebuild.

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Abbreviations and Acronyms

AU	–	African Union
AI	–	Amnesty International
BRICS	–	Brazil, Russia, India, China, and South Africa
DDR	–	Disarmament, Demobilisation and Reintegration
DDE	–	Doctrine of Double Effect
HRW	–	Human Rights Watch
ICC	–	International Criminal Court
ICISS	–	International Commission on Intervention and State Sovereignty
IS	–	Islamic State
IHL	–	International Humanitarian Law
IMF	–	International Monetary Fund
MENA	–	Middle East and North Africa
MNCs	–	Multinational Corporations
NATO	–	North Atlantic Treaty Organisation
NTC	–	National Transitional Council
POWs	–	Prisoners of War
R2P	–	Responsibility to Protect
RCC	–	Revolutionary Command Council
UAE	–	United Arab Emirates
UNAMIR	–	United Nations Assistance Mission for Rwanda
UNGA	–	United Nations General Assembly
UNSC	–	United Nations Security Council
US	–	United States (of America)
WB	–	World Bank
WMD	–	Weapons of Mass Destruction
WWI	–	World War One
WWII	–	World War Two

CHAPTER ONE:

INTRODUCTION

1.1 Study Background

The Cold War period (1947-1991) was characterised by the ideological confrontation between the East and the West. Throughout this period, scholars and analysts of international relations focused their attention on interstate conflicts that emanated from this confrontation. However, the end of the Cold War saw an increase in *intrastate* conflicts, "which do not fit into the traditional classification"[1]. The end of the Cold War generated optimism in some quarters, that conflict would come to an end. However, the post-Cold War political activism within states often "degenerated into violent conflicts in Africa and elsewhere"[2]. Political activism was given great impetus by the project of universalising Western liberal democracy after the collapse of communism. Political activism and the need to spread Western liberal democracy came at a huge price: various groups struggled for power and, in the process, committed egregious human rights violations. In such situations, Antonio Cassese argues, "human rights are subversive and destined to foster tension and conflict among states."[3] With the end of the Cold War, however, conflicts have become asymmetrical and more common *within* states**.**

Between 1990 and 2005, Chuka Enuka notes, only a few active conflicts were fought *between* states: for instance, Eritrea-Ethiopia (1998-2000), India-Pakistan (1990-1992 and 1996-2003), and Iraq-Kuwait (1991).[4] By contrast, conflicts *within* states stood at 172 during the same period.[5] A salient characteristic of these new kinds of war has been unprecedented civilian casualties as more and more populations started falling victim to violent conflict. Traditionally,

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[1] Kabia, D.J.M. (2013). *Humanitarian Intervention and Conflict Resolution in West Africa: From ECOMOG to ECOMIL*. Ashgate Publishing, Ltd., p. 14.

[2] Aboagye, F.B. and Bah, A.M.S. (2005). A Tortuous Road to Peace: The Dynamics of Regional, UN and International Humanitarian Interventions in Liberia. Institute for Security Studies, p. 21.

[3] Cassese cited in Hehir, A. (2010). *Humanitarian Intervention: An Introduction*. Palgrave Macmillan, p.4.

[4] Enuka, C. (2012). Post-Cold War Conflicts: Imperative for Armed Humanitarian Intervention. *Global Journal of Human Social Science*, Vol. 12, No. 1, p. 19.

[5] *Ibid.*

combatants constituted the highest percentage of casualties, for instance, during WWI. As a result, the rise in intrastate conflicts in the post-Cold War era has seen nearly 70 percent of the victims being civilians, commonly considered "non-combatants".[6] The post-Cold War intrastate conflicts[7] highlighted above led to a renewed interest in the theory and practice of humanitarian intervention which, for the purpose of this study, is taken to mean:

> *Coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among inhabitants*.[8]

The 1990s conflicts resulted in gross human rights violations and large-scale civilian casualties because of defective, delayed or no international response at all. Seybolt writes that, following the 1991 Iraq-Kuwait war, the northern Iraq Kurds and southern Iraq Shi'ites rebelled against Saddam Hussein's regime, with the encouragement of the US. Hussein swiftly moved to crush the rebellion to regain territories the Kurds had captured.[9] His response with substantial army support resulted in the killing of between 20, 000 and 30, 000 Kurds and the displacement of two million Kurds and 100, 000 Shi'ites.[10] Trauma, injury and diseases triggered a humanitarian crisis in Iraq but Western powers were reluctant to intervene. It was not until Turkey exerted pressure on the great powers that Resolution 688 collectively sanctioning the protection of human rights in a member to promote international peace and security was passed.[11] But the

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[6] Aboagye and Bah, *A Tortuous Road to Peace*, p.21

[7] Northern Iraq (1991), Bosnia and Herzegovina (1992-1995), Somalia (1992-1993), Rwanda (1994), Haiti (1994), Albania (1997), Sierra Leone (1997-2000), Kosovo (1998-99), and East Timor (1999). *See* Welsh, J.M. (2003). *Humanitarian Intervention and International Relations.* Oxford University Press, p.81.

[8] Roberts cited in Weiss, T. (2007). *Humanitarian Intervention: Ideas in Action.* Cambridge: Polity Press, p.5.

[9] Seybolt, T.B. (2007). *Humanitarian Military Intervention: The Conditions for Success and Failure*. Oxford University Press, p. 47.

[10] *Ibid*; Weiss, *Humanitarian Intervention: Ideas in Action,* p. 35.

[11] Wheeler, N.J. (2000). *Saving Strangers: Humanitarian Intervention in International Society Humanitarian Intervention in International Society*. Oxford University Press, p. 1; Seybolt, *Humanitarian Military Intervention*, p. 49.

biggest quagmire was the international community's failure to prevent or even halt a hundred-day genocide that left as many as 800, 000 Rwandan Tutsis and moderate Hutus dead in 1994. The warning of an impending massacre before president Habyarimana's plane was downed, in which he and Burundian president died, went unheeded. The world body went as far as downsizing the military personnel it had deployed under the United Nations Assistance Mission for Rwanda (UNAMIR) with a mandate for reconstituting Rwanda's new government following the civil war.[12] The Kosovo conflict (1998-99) emerged as a result of earlier Yugoslavia conflicts, in particular, the Serbian government's rescission of Kosovo's political autonomy and the apartheid-type practices that privileged the latter's minorities at the detriment of Kosovar Albanians. In response to their marginalisation, Kosovar Albanians led a nonviolent resistance against the Serbian government. But when the peaceful resistance proved ineffective, they resorted to armed rebellion in 1998. To quell this rebellion, the Serbian government resorted to campaigns of indiscriminate violence, massacres, and ethnic cleansing, leaving thousands of civilians dead.[13]

The North Atlantic Treaty Organisation (NATO) launched a military campaign without authorisation by the United Nations Security Council (UNSC) to halt further bloodshed against Kosovars. An overwhelming number of the United Nations General Assembly (UNGA) member-states later rejected a resolution condemning the campaign in Kosovo. The intervention was thus markedly described as "illegal but legitimate"[14]. Although the intervention lacked an explicit legal authorisation from the UNSC, it prevented a mass atrocity.

Humanitarian intervention is not a new phenomenon. It finds its historical basis in the nineteenth-century British intervention in support of the Greek revolt against the Ottoman Empire in the 1820s.[15] However, prior to this, the 1648 Peace Treaty of Westphalia had already set up international principles of "state sovereignty" and its complementary "non-intervention", which prohibited humanitarian intervention. Following years of interstate conflicts, the

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[12] Lepard, B.D. (2010). *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*. Penn State Press, pp. 14-16.

[13] Bellamy, A.J. (2012). *Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity*. Oxford University Press, p. 317.

[14] Meggle, G., (2004) Ethics of Humanitarian Interventions. Walter de Gruyter, p.158.

[15] Hang Y.J. and Cerna, L. (2013). *Global Challenges: Peace and War*. Martinus Nijhoff Publishers, p.69; Bellamy, *Massacres and Morality*, pp. 53-55.

international community codified principles to give sovereign states autonomy and greater control over their territories and to prohibit interference in their domestic affairs. Article 51 of the UN Charter confines the right to use force to cases of individual and collective self-defense against armed aggression. In support of this, Article 2 (7) of the Charter provides that "nothing shall authorise the United Nations to intervene in matters within domestic jurisdiction" of a sovereign state. For these reasons, "it was widely accepted during the cold war that the use of force to save victims of gross human rights abuses was a violation of the Charter."[16] Nevertheless, the core mandate of the UN has been, and still is, to maintain international peace and security. While upholding the principles of state sovereignty and non-intervention, the world body commits itself to championing human rights for maintenance of peace and security.

But intervening in the internal affairs of other states to protect human rights has long been controversial. Military intervention, as Nicholas Wheeler notes, might be "the only means of enforcing the global humanitarian norms that evolved in the wake of the Holocaust."[17] This fundamentally challenges conventional wisdom around the meaning of principles of state sovereignty, non-intervention, and non-use of force. The 1990s intrastate conflicts proved how flagrant human rights' violations can become. This also exposed the international community's inconsistent responses to crises, which gave great impetus to the theory and practice of humanitarian intervention. At the close of the so-called 'golden era' of humanitarian intervention in 1999, former UN Secretary-General Kofi Annan delivered a speech in which he beseechingly asked:

> *If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?*[18]

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16 Wheeler, *Saving Strangers*, p. 1.

17 *Ibid.*

18 Rotberg, R.I. (2010). *Mass Atrocity Crimes: Preventing Future Outrages*. Brookings Institution Press, p.92.

In effect, Annan called on the international community to reconcile state sovereignty with universal human rights. In 2001, he reiterated that "the sovereignty of states must no longer be used as a shield for gross violations of human rights."[19] The literature on the tension between state sovereignty and its offshoot non-intervention principle and the need to protect fundamental human rights is quite extensive.[20] Fernando Tesón aptly elucidates the moral dilemma caused by this tension: it is "either we intervene to end massacres and so we are liable to violate the prohibition of war and respect for sovereignty, or we do not intervene, which means we tolerate the violation of the prohibition of gross human rights abuses."[21] The political sovereignty of states and the personal sovereignty of individuals or "two concepts of sovereignty", as Annan referred to them, were often in fundamental conflict.[22]

From a normative viewpoint, the pro-intervention scholars do not perceive state sovereignty as a sacrosanct feature of the nation-state. As Rodin argues, the sacredness of sovereignty is contingent on the nation-state's responsibility to respect and protect human rights of its people.[23] Kurt Mills contends, in concurrence, that "the sovereignty of states is legitimate only to the extent that they protect the human rights of individuals."[24] Annan's clarion call and the growing need to disentangle the sovereignty-human rights dilemma came to fruition. In 2000, the government of Canada founded the International Commission on Intervention and State Sovereignty (ICISS), which released a report titled the *Responsibility to Protect* (R2P) the

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19 Evans, G. (2004). The Responsibility to Protect: Rethinking Humanitarian Intervention. *American Society of International Law,* 98 78–89, p. 79.

20 Roberts, A., (1993). Humanitarian War: Military Intervention and Human Rights. *International Affairs (Royal Institute of International Affairs*), 69, 429–449; Reisman, W.M. (1990). Sovereignty and Human Rights in Contemporary International Law. *The American Journal of International Law,* 84,866–876; Ayoob, M. (2002). Humanitarian Intervention and State Sovereignty. *The International Journal of Human Rights*, 6, 81–102; Atack, I. (2002). Ethical Objections to Humanitarian Intervention. *Security Dialogue*, 33, 279–292; Luban, D. (1980). Just War and Human Rights. *Philosophy & Public Affairs*, 9: 2, 160–181.

21 Tesón F. cited in Badescu, C.G. (2010). *Humanitarian Intervention and the Responsibility to Protect: Security and human rights*. Routledge, p. 19.

22 Rodin, D. 'Rethinking responsibility to protect: The case human sovereignty' in Scheid, D.E. (2014). *The Ethics of Armed Humanitarian Intervention* Cambridge University Press, p. 244.

23 Rodin, *Rethinking Responsibility to Protect*, p. 244.

24 Mills cited in Janzekovic, J. (2006). *The Use of Force in Humanitarian Intervention: Morality and Practicalities*. Ashgate Publishing, Ltd.

following year.[25] The R2P report asserts that state sovereignty entails a dual responsibility. On the one hand, states have an *external* responsibility to respect one another's sovereign independence. And, on the other hand, they have an *internal* responsibility to respect and uphold the dignity and fundamental human rights of everyone within their borders.[26] This redefinition of sovereignty as responsibility marks a shift away from the traditional conception of sovereignty as authority and control of the over its territory and people. The R2P doctrine backs humanitarian intervention where, when, and if a state is unable or unwilling to protect its people against gross human rights violations. Such violations include genocide, crimes against humanity, war crimes, and ethnic cleansing (hereinafter 'mass atrocities').

The R2P doctrine has gained significant international acceptance since the release of the report. For instance, the UN World Summit unanimously supported the doctrine in 2005, later reaffirmed by Security Council resolutions [27] and Secretary-General Ban Ki-Moon's 2009 report.[28] Humanitarian intervention has long been criticised by some as a new tool by which powerful states interfere in internal affairs of weak states for narrow, imperialist interests. For example, two years after the release of the R2P report, the United States (US) invaded Iraq under the pretext that the latter possessed weapons of mass destruction (WMD) and that its leader, Hussein, had ties with terror groups. Failure on these two fronts saw proponents of the 2003 US invasion of Iraq change their language to humanitarianism.

As it were, proponents of the 2003 invasion thought Hussein's 'genocidal' level mistreatment of his own people, his use of chemical weapons against Kurds in the late 1980s and his massacre of southern Shi'ites in the early 1990s 'justified' such an invasion in retrospect.[29] But the exercise could not, arguably, suffice because "the invasion was not initially justified as a humanitarian intervention, but rather as an act of pre-emptive self-defense"[30]and speaks to the

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25 ICISS (2001). The Responsibility to Protect Report. *International Development Centre* Available at: http://responsibilitytoprotect.org/ICISS%20Report.pdf, [accessed: 24/10/ 2015].

26 Evans, *Rethinking Humanitarian Intervention*, p. 83.

27 Resolutions 1674 (2006) and 1894 (2009) were both aimed at protecting civilians in armed conflict.

28 Bellamy, A.J., and Williams, P.D., (2011). The New Politics of Protection? Côte d'Ivoire, Libya and the Responsibility to Protect. *International Affairs*, 87:4, 825–850, p. 827; O'Bannon, B. R. (2015). *Reassessing the Responsibility to Protect: Conceptual and Operational Challenges.* Routledge.

29 Evans, *Rethinking Humanitarian Intervention*, p. 78.

30 Heinze, E. (2009). *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention*. SUNY Press., p. 28.

issue of consequentialism. The US's retrospective invocation of crimes – atrocious as they may have been – and the discontent with Hussein's tyrannical regime as humanitarian reasons for the intervention were not convincing. This study, however, focuses on the 2011 NATO humanitarian intervention in Libya, which was carried out after the R2P doctrine was invoked. The outbreak of Arab Spring uprisings late in 2010 led to the nonviolent overthrow of long-standing rules of presidents Zine al-Abidine Ben Ali in Tunisia and Hosni Mubarak in Egypt. As a result, similar protests gained momentum across the Middle East and North Africa. In Libya, the people rose against Colonel Muammar Qaddafi's 42-year rule. The anti-government protesters had organised an official protest day (that is, the 'day of rage') for February 17, 2011. The protest action aimed to show Libyans' discontent with inequality, high rate of unemployment, and limits of political freedom under Qaddafi's rule.

Prior to the 'day of rage,' however, crowds had gathered outside the police headquarters in Benghazi, the second largest city in Libya, to protest the arrest of Fathi Terbil, a lawyer and human rights advocate. Clashes broke out between protesters and the pro-Qaddafi forces in the lead up to the day of rage. By the time the day of rage began, protests had already escalated to violent conflict in Benghazi as the Qaddafi forces turned to use live ammunition on protesters.[31] Protests engulfed other major cities like Tripoli, Misrata, and Tobruk, with rebels gaining control of these and other key territories. Having lost control of strategic cities to rebels who – together with the government defectors – established an armed opposition group under the Transitional National Council (NTC), Qaddafi resorted to brute force to wrest back control.[32]

His violent crackdown on protesters marked a stark contrast to the events in Tunisia and Egypt. This, unsurprisingly, compelled the UN Security Council to pass Resolution 1970(2011) which, *inter alia*, underlined the Libyan regime's responsibility to protect its people, imposed an arms embargo on the country, and ordered travel bans and asset freezes on Qaddafi, his family and aides.[33] The situation in Libya was also referred to the International Criminal Court (ICC)

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[31] Scheid, D. E. (2014). *The Ethics of Armed Humanitarian Intervention*. Cambridge: Cambridge University Press, p. 19.

[32] Bellamy and Williams, *The new politics of protection?* p. 838.

[33] UN (2011a) *Resolution 1970(2011) S/RES/1970 (2011) of 26 February*. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1970(2011)[Accessed: 24/10/2015].

for possible prosecution of Qaddafi and his son, Saif al-Islam. Despite these measures, the Qaddafi regime attempted to recapture strategically important cities by mounting an onslaught on rebels, sparing no civilians caught in the crossfire. By 15 March 2011, the Qaddafi forces had regained "all but one of the major rebel-held cities, including Zawiya, Bani Walid, Ras Lanuf, Brega, Ajdabiya and most of Misurata."[34] Benghazi had remained the last rebel stronghold, but Qaddafi threatened to use ruthless violence to regain control of the territory. In a televised speech, Qaddafi urged his supporters to attack protesters and rebels whom he referred to as 'rats' and 'cockroaches'. Bellamy and Williams rightly observe that Qaddafi's remarks "bore direct echoes of the 1994 Rwandan genocide."[35]

Fearful of an imminent mass atrocity in Benghazi, the UN Security Council passed Resolution 1973(2011)[36] which condemned the Qaddafi regime's noncompliance with resolution 1970; reiterated the government's responsibility to protect its people; demanded a ceasefire and an immediate end to all hostilities; called on the international community to take 'all necessary measures' short of foreign occupation to protect civilians and civilian populated areas; and imposed a no-fly zone over the country. The 'all necessary means' invoked the R2P doctrine that paved the way for a humanitarian intervention to 'protect civilians and civilian-populated areas'. But, from just war and R2P perspectives, was this particular humanitarian intervention against the Qaddafi regime morally justified?

1.2 Problem Statement

By virtue of its use of military force, humanitarian intervention is tantamount to war and thus requires justification when embarked on. The just war theory, at the heart of this study, deals with justification for why and how wars are fought. The theory outlines the criteria, as adopted by the R2P, applicable to situations of war: *jus ad bellum* (justice of resort to war) and *jus in bello*

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[34] Hehir, A. and Murray, R. (2013). *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*. Palgrave Macmillan, p. 196.

[35] Bellamy and Williams, *The New Politics of Protection?* p.838.

[36] *BBC News* (2011d) Libya UN Resolution 1973: Text analysed [online]. Available at: http://www.bbc.com/news/world-africa-12782972 [accessed 5/08/2015]; Resolution 1973 (2011) S/RES/1973 (2011) of 17 March. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1973(2011) [accessed: 24/10/2015].

(justice in the conduct of war). These categories outline a set of criteria that must be met for any war to be considered morally just: *just cause*, *right authority*, *right intention*, *last resort*, *proportional means*, and *reasonable prospects for success*.[37] Traditionally, as already highlighted, wars initiated and fought in individual or collective self-defense enjoyed legal grounding in the form of principles such as sovereignty and non-intervention. With these principles entrenched, no explicit legal framework for the practice of humanitarian intervention was formed and this practice remains highly contested to date.

The just war theory's longstanding moral argument is that the use of military force is permissible to prevent or halt egregious human rights violations. This argument was reinforced by the conditionality (predating the R2P) that a country which fails to respect or uphold human rights automatically forfeits its claim to the principle of sovereignty. Moreover, the right to non-interference in one's affairs falls away and external powers are permitted to intervene in the interest of maintaining international peace and security. The R2P's insistence on this conditionality has gained a lot of traction. For this reason, as Bellamy and Williams write, the growing political consensus and modest steps toward institutionalisation of the responsibility to protect norm helped guide responses to conflicts in Ivory Coast and Libya in 2011.[38] It is fitting at this juncture to acknowledge that *state sovereignty* yields to *personal sovereignty* when and if a state is unable or unwilling to protect the fundamental human rights of its people from gross, systematic violations. However, new interventionism brought about by the R2P doctrine, like the traditional humanitarian intervention, is not without its own challenges: will today's humanitarian intervention be less contested than those of the 'golden decade' (1990-2000)? And, was Libya testimony to that?

From a moral point of view, intervening for humanitarian motives faces two main criticisms: First, how bad should a humanitarian crisis be before military force can be used? Though ambiguous, Michael Walzer's answer to this question is that military force can be used when it is a response to acts "that shock the moral conscience of mankind."[39] No doubt, this is a wholesale description that encapsulates mass atrocities. The difficulty here is that the

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37 ICISS, *The Responsibility to Protect*, p. 32.

38 Bellamy and Williams, *The New Politics of Protection*? p.827.

39 Walzer, M. (1977). *Just and Unjust Wars: A Moral Argument with Historical Illustrations* Basic Books, p.107.

international community cannot stand idly by while acts that shock the conscience of mankind are ongoing and/or are imminent. Some view this as a bar set too high and vague as to what exactly constitutes such acts. The second, related criticism is that "granting states a moral permit to intervene opens the door to potential abuse: the use of humanitarian arguments to justify wars that are anything but."[40] Some critics do not see any major difference between traditional humanitarian interventionism and new humanitarian interventionism predicated on R2P. For these sceptics, the R2P's use of moral language is "nothing other than a mere expedient of the great powers to impose their interests and values on the weakest states."[41] Thus opponents of the R2P doctrine, primarily from the global South, argue that it is a 'Trojan Horse', serving merely to cloak (neo-)imperial interests of great powers (e.g. the 2003 US invasion of Iraq).[42]

Libya was touted as the 'first case' of the UN Security Council's explicit authorisation of a military intervention – at the invocation of R2P – without the consent of a 'functioning' government to protect fundamental human rights. The Qaddafi regime's crackdown on civilians and the threat to cleanse Libya "inch by inch, house by house, home by home, alleyway by alleyway, and person by person, until the cleansed of dirt and scum"[43] necessitated a swift and calculated international response to prevent a massacre. A multi-state coalition composed of British, French, and American forces began a military campaign in Libya on 19 March 2011. The campaign was later handed to the NATO alliance forces to effect Resolution 1973.

However, the mission – aimed at 'protecting civilians and civilian populated areas' – culminated in the overthrow and killing Qaddafi in October 2011 and, at the time of this writing, the prospects for a *just peace* remain elusive more than five years after the intervention.

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[40] Bellamy, A.J and Wheeler, N.J, 'Humanitarian Intervention in World Politics' in Baylis, J. *et al.* (2013). *The Globalization of World Politics: An Introduction to International Relations*. Oxford University Press, p. 481.

[41] Focarelli, C. (2008). The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine. *Journal of Conflict and Security Law*, 13:2, 191–213, p. 202.

[42] Chomsky, N. (2008). Humanitarian Imperialism: The New Doctrine of Imperial Right. *Monthly Review* 60, No.4; Bellamy, A.J. (2005). Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq. *Ethics & International Affairs*, 19:2, 31–54.

[43] Hilsum, L. (2012). *Sandstorm: Libya in the Time of Revolution*. Faber & Faber.

1.3 Research Questions

Some Western states heralded the NATO operation as a "humanitarian success for having averted a bloodbath in Libya's second largest city, Benghazi, and helping replace the dictatorial Qaddafi regime with a transitional council pledged to democracy."[44] Moreover, some experts now cite the Libyan case as a model for future humanitarian intervention through the R2P norm. Others, particularly non-Western states, condemned the overthrow and killing of Qaddafi which generated controversy over the interpretation of Resolution 1973. For instance, the BRICS nations (Brazil, Russia, India, China and South Africa) decried the 'abuse' of the resolution by NATO forces. These nations believed that the resolution was a "pretext for pursuing regime change and that it was stretched to cover activities not authorised by the resolution, such as attacks against government and media facilities."[45]

Holst and Fink postulate that, from a legal perspective, Resolution 1973 may not have had the purpose of regime change in Libya and may have genuinely been based on humanitarian grounds.[46] Nevertheless, humanitarian intervention certainly opened the door for regime change. Holst and Fink, however, fail to recognise the pre-intervention regime change rhetoric of the would-be interveners. Before the military intervention, great powers publicly remarked that Qaddafi 'must go' because he had 'lost legitimacy'.[47] It was not until Resolution 1973-sanctioned intervention was in full swing that France, Britain, and America jointly issued a formal statement, in which they "openly suggested that the objective of the operation in Libya

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[44] Kuperman, A.J, 'NATO's Intervention in Libya: A Humanitarian Success?' in Hehir, A. (2012). *The Responsibility to Protect: Rhetoric, Reality and the Future of Humanitarian Intervention* Palgrave Macmillan, p.191.

[45] Newman, E. 'The Responsibility to Protect, multilateralism and international legitimacy' in Thakur, R. and Maley, W. (2015). *Theorising the Responsibility to Protect*. Cambridge University Press, p.133.

[46] Holst, F.A. and Fink, M.D. 'A legal view on NATO's campaign in Libya' in Engelbrekt, K., Mohlin, M. and Wagnsson, C. (2013). *The NATO Intervention in Libya: Lessons Learned from the Campaign*. Routledge, p.73.

[47] France's Sarkozy says Gaddafi must go. *Reuters*, 25 February 2011. Available: http://goo.gl/1spTos; David Cameron: 'Gaddafi must go now.' *BBC News*, 28 February 2011. Available at: http://goo.gl/pnjmcp; The President on Libya: 'The Violence Must Stop; Muammar Gaddafi Has Lost the Legitimacy to Lead and He Must Leave', *WhiteHouse.gov,* 3 March 2011. Available: https://goo.gl/e7iTao [All accessed on 06/12/2015].

was regime change."[48] Any settlement with Qaddafi remaining in power, the statement read, would have 'betrayed' the Libyan people's desire for freedom and democracy.[49] It is against this backdrop that the sincerity of moral and humanitarian concerns over Libya becomes questionable in some quarters. The question of (in)sincerity matters because it brings to the fore the primary justifications for war: in this case, it pertains to the question of whether the states intervene for the right intention of, for instance, saving human lives or for evil motives such as national interests (more on *right intention* in chapter three).

This study analyses the Libyan humanitarian intervention from a moral perspective. To determine the moral rightness or wrongness of the intervention, the study employs just war theory and the R2P doctrine, outlining the criteria which must be satisfied for any war to be considered just. To this end, the study will answer the primary question: *was the 2011 humanitarian intervention in Libya morally justified*? The study will then attempt to analyse the prospect of just peace after the war as recommended by *jus post bellum* (justice after war) and the *responsibility to rebuild* (*R2Rebuild*) to address the secondary question: *did the intervention in Libya lead to a just peace – a better state of peace than the antebellum?*

1.4 Hypothesis

The military intervention against the Qaddafi regime that committed killings and threatened a massacre in Benghazi was morally justified but could have led to a better state of peace (or *just peace*) had interveners considered not only the *jus ad bellum* and *jus in bello* principles but also the *jus post bellum*.

1.5 Research Methodology

The methodology of this research primarily focuses on desk research and a case study. It is engaged in normative political philosophy and primarily philosophical than empirical. However, it assumes applied philosophy in which theory is applied to the Libyan case using secondary empirical areas studies literature as well as philosophical literature. The normative approach to political theory here – the just war theory – is concerned with what can and what cannot be

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[48] Newman, *The Responsibility to Protect, multilateralism and international legitimacy*, p. 133.

[49] Ibid; *BBC News* (2011c). Libya letter by Obama, Cameron and Sarkozy. Available at: http://www.bbc.com/news/world-africa-13090646 [accessed: 08/12/2015].

deductively justified given certain moral principles, empirical data and constraining moral intuitions. The study is involved in the moral justification of war using the just war theory while weighing its propositions against those of pacifists and realists. This moral justification exercise belongs to the analytic political philosophy which, among other things, argues that theories and ideas ought to be addressed and applied appropriately and not to be abused to serve, for example, the interests of the powerful states in initiating and fighting wars when it best serves them. Moreover, analytic political philosophy holds that theories must be addressed in a systematic manner in order to assess the plausibility of their assumptions, deductions, and empirical claims.

Normative theories can influence the real world political behaviours and their arguments can help clarify choices in situations of moral, empirical and predictive uncertainty. It is, therefore, pertinent to adopt this approach in inquiring into and analysing the moral justification permissibility of the 2011 NATO intervention in Libya. The main theoretical premise of just war theory is nuanced: war is permissible only in individual or collective self-defence against armed aggression and in response to real or apprehended threat of mass atrocities by a state against its own people; and war is not permissible where there is less serious need, such as in cases of typical political oppression or tyranny. Just war theory's persuasive assumptions are taken to better explicate ethics of war and peace and prescribe calculated action in dire situations.

Just war theory's dominant rival theories (*pacifism* and *realism*) also advance arguments worth taking into account. Pacifists, on the one hand, appeal to morality insofar as war and peace are concerned. However, their main assumption is that war – whether it disturbs the peace or is fought to achieve it – is *always* morally wrong. They argue that there is always some better way to approach the problem than warfare, which inherently involves killing. The basic premise of pacifism, therefore, does not only denounce war in individual self-defence or collective self-defence against armed aggression but also opposes military intervention in a state that massacres or threatens to massacre its own people. Realists, on the other hand, reject the applicability of morals in international relations. States, they argue, do not act on the basis of moral concerns. Rather, national interests dictate states' actions as they seek to survive in self-help, anarchic international system. Because states act for selfish reasons, the prospects of altruistic action (for instance, humanitarian intervention) are greatly diminished in their interactions. In essence, realists argue that states would most likely engage in humanitarian intervention where, when, and if their strategic or national interests are at stake. What informed the choice of just war

theory for this study is that, unlike the two foregoing rival schools of thought, the theory stands at an intermediary position: it permits war in case of self-defence and a recourse to military use of force in situations gross human rights violations and prohibits it in less severe situations such as oppressive, tyrannical rule. This is a single case study which is analysed through the prism of just war and R2P criteria. The criteria advance these perspectives serve guiding principles for analysing of secondary empirical data on the case. It is expected that the data will provide ample insight into what justified the Libyan intervention in the first place and whether it was conducted justly, with the prospects of a better state of peace. The Libyan intervention is treated as a critical case in this study. In a critical case, as Alan Bryman (2012) writes, "the researcher has a well-developed theory, and a case is chosen on the grounds that it will allow a better understanding of circumstances in which the hypothesis will or will not hold."[50] Robert Yin writes that "a single case, meeting all of the conditions for testing the theory, can confirm, challenge, or extend the theory."[51]. On the basis of evidence gathered and analysed, Yin elaborates, "a single case can then be used to determine whether a theory's propositions are correct or whether some alternative set of explanation might be more relevant."[52]

What is critical about the Libyan case is that it was the first time the UN Security Council had to authorise a military intervention against the will of a 'functioning' government for purposes of protecting human rights. In addition, some have dubbed Libya a test case for the R2P doctrine.[53] It is thus relevant to analyse the underlying motivation for the Libyan intervention, its execution, and conclusion by NATO from just war and R2P perspectives. But the single case study approach is often criticised for lacking rigour, objectivity and the generalizability of results. It is indeed problematic to use a single case in testing a hypothesis or theory. It is appropriate, therefore, to analyse the empirical data on the Libyan case from the just war perspective to demonstrate its strength over alternative justifications (pacifism and realism) for intervention. Case researchers, Yin writes, utilise analytic generalisation, as opposed to statistical generalisation. Such a generalisation is cast in relation to existing literature, not only

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[50] Bryman, A. (2012). *Social Research Methods*. Oxford University Press, p.70.

[51] Yin, R.K. (2009). Case *Study Research: Design and Methods*. SAGE Publications, p.47.

[52] *Ibid*.

[53] Hehir and Murray, *Libya, the Responsibility to Protect,* p.100; Navari, C. (2013). *Ethical Reasoning in International Affairs: Arguments from the Middle Ground*. Palgrave Macmillan, p.145.

with the case's findings. Secondary *data collection* for this study concentrated on academic textbooks, peer-reviewed journals, policy briefs and research publications, digital and online media content. Primarily, academic textbooks and peer-reviewed journals cover themes such as Libya's modern history, humanitarian intervention, just war theory, and to some extent R2P. Recent research publications and digital/print media sources are used to shed light on intervention in Libya and how it was undertaken and concluded. *Data analysis* was conducted in a manner that sought to achieve reliability and validity of results as multiple sources of data were subject to qualitative analysis. The empirical data on the Libyan intervention case was subject to the processes of synthesis and triangulation. Also, theory triangulation – the weighing in on and juxtaposing normative arguments of the just war theory against realism and pacifism – adds some rigour to the study by highlighting theoretical propositions in light of the empirical data on the case under study.

1.6 Significance of Study

This study will contribute to the existing literature on just war theory through analysing the three categories of *jus ad bellum*, *jus in bello*, and *jus post bellum*, as well as humanitarian intervention and the responsibility to protect. In particular, the study will not only make a contribution to just war theory's first two categories (*jus ad bellum* and *jus in bello*) and R2P but also emphasise the importance of the often overlooked *jus post bellum* and the *responsibility to rebuild* criteria, dedicated to matters of justice after war. As such, evidence on the Libyan case under study will not only help determine whether the intervention was morally justified in its resort and the manner in which it was conducted, but also determine if it was concluded in a better state of peace. From this exercise, the study will confirm if the hypothesis holds or not and offer recommendations for future cases of humanitarian intervention and application of the R2P doctrine.

1.7 Scope and Structure of Study

After giving an overview of the modern history of Libya (under Qaddafi), the study looks into the events leading up to the humanitarian intervention of 2011. In so doing, the study looks at justification of the intervention in terms of just war theory's propositions of *jus ad bellum* and *jus in bello* as well as the R2P doctrine. *Jus post bellum* and *R2Rebuild*, integral components of just war theory and R2P are analysed vis-à-vis the case of intervention Libya. In essence, the study is limited to the period between the events that led to the intervention and its aftermath.

Chapter Two, literature review, outlines of Libya's modern history under Muammar Qaddafi's rule (1967-2011) as the point of departure. This will serve as a contextualisation of the study in the face the Arab Spring which brought about changes of governments, notably in Tunisia and Egypt, but a civil war in Libya. Qaddafi's resolve to violently quell the revolution – particularly in Benghazi, its epicentre – led to an intervention by the international community to protect human rights. The chapter will assess the recent discourses on just war theory and humanitarian intervention and the emergence of R2P. Humanitarian intervention is a type of war which demands rigorous justification. The just war theory, on which R2P heavily draws, proposes criteria for determining whether, when, and how interventions to protect human rights can and should be undertaken. Attention is thus given to the current debate on just war theory and R2P vis-à-vis humanitarian intervention.

Chapter Three, theoretical framework, examines core theories – just war, pacifism, and realism – this study employs. The chapter engages in an in-depth analysis of the just war theory, as the primary school of thought in this study. This theory argues that some wars are just while others are unjust. War can only be considered morally just, the theory argues, only if it satisfies six principles of jus ad bellum and jus in bello: it must be fought for a *just cause*, sanctioned by a *right authority*, with the *right intention*, as a *last resort*, with *proportional means* and *reasonable prospects for success*. These criteria are at the heart of R2P and must be satisfied if an intervention is to be morally defensible. But rival theories are at odds with the idea of just war. Pacifism opposes war because it involves killing while realism views nation-states as self-regarding actors motivated not by moral interests but by national interests in their international relations

Chapter Four, humanitarian intervention in Libya, applies the just war theory and R2P criteria to the case of Libya under study. In particular, the six injunctions are thoroughly applied to the Libyan case using empirical data. A judgment is made as to whether the intervention was morally justified, based both the reason(s) for its resort and the manner in which it was conducted.

Chapter Five, just peace and post-intervention Libya, draws on the literature on *jus post bellum* and the post-intervention Libya to make a judgement on whether the intervention led to a better state of peace. The chapter assesses integral, albeit often neglected, elements of just war theory and R2P – *jus post bellum* and *R2Rebuild*. These two elements deal directly with issues of

justice after the war, with the aim of achieving a just peace. The chapter, therefore, outlines a proposed framework for *just peace* presented by Brian Orend. It emphasises the importance of justice after the war and argues that although morally just, the NATO intervention in Libya did not necessarily result in a better state of peace or a just peace. I, therefore, argue that the lack of just peace can be ascribed to the international community's failure to devise a post-intervention strategy,

Chapter Six, conclusion, is a brief roundup of the findings of this study. It draws conclusions on Libyan case and offers some recommendations for future applications of just war theory and R2P for humanitarian intervention purposes.

CHAPTER TWO:

LITERATURE REVIEW

This chapter surveys the relevant scholarship on themes at the heart of this study in the context of the 2011 humanitarian intervention in Libya. As a point of departure, the chapter offers a short but detailed background overview of Libya's modern history (from Qaddafi's ascendancy to power in 1967 to his fall in 2011). The making of the modern Libya was distinct for it revolved around the personality of Qaddafi although he deemed it a direct democracy. The 2011 Arab Spring uprisings exposed deep-rooted discontent among Libyans who rose up against Qaddafi's longstanding repressive rule. The NATO intervention and its aftermath can be understood partly from this distinct political history and Qaddafi's clinging onto power in the face of the revolution. The chapter further looks into the current debates on humanitarian intervention, a practice that has long been at odds with codified principles of state sovereignty and non-intervention: this practice is based on the just war theory which seeks to morally justify and limit wars in varied cases and posits a *responsibility to protect* specifically designed for humanitarian intervention.

2.1 Libya's Modern History

Much of the literature on Libya's modern history – from the overthrow of King Idris in 1969 – revolves around Qaddafi and his 42-year-old reign.[54] Libya is a North African country in the Maghreb region. It is covered by large portions of deserts, and bordered by Tunisia, Algeria, Egypt, Sudan, Niger, Chad and the Mediterranean Sea. The founding of the Libyan state dates back to the Greeks, Phoenicians, and Romans who occupied and 'built' the country, to Ottoman rule, and to Italian colonisation in the 1910s.[55] Libya is comprised of three historical but still present-day regions – Tripolitania, Cyrenaica, and Fezzan – over which foreign powers have

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[54] Wright, J. (2012). *A History of Libya.* Hurst Publishers; Vandewalle, D. (2012). *A History of Modern Libya.* Cambridge University Press; Vandewalle, D. J. (2008). *Libya since 1969: Qadhafi's revolution revisited.* Palgrave Macmillan; Ahmida, A. A. (2011). *Making of Modern Libya, The State Formation, Colonization, and Resistance.* Second Edition SUNY Press.

[55] Nanjira, D. D. (2010). *African Foreign Policy and Diplomacy from Antiquity to the 21st Century.* ABC-CLIO, pp. 206-207.

exerted control. Italy had unified these regions into its colonial project between 1912 and 1934.[56] Italian colonisation was, however, fiercely resisted by Libyans and King Idris al-Sanusi was one of the pro-independence figures. Italian control over Libya persisted until its defeat in WWII. Following Italy's downfall, France assumed control over Fezzan while Great Britain administered Tripolitania and Cyrenaica as two separate units.[57] Libya later came under UN trusteeship after a resolution calling for the country's independence by 1952. As a fervent pro-independence activist, King Idris became the leader of the newly founded United Kingdom of Libya in 1950. Libya passed a western-inspired constitution the following year, marking Libya's official independence. King Idris later renamed the country the 'Kingdom of Libya'. Although King Idris spearheaded calls for independence, he pursued policies focused on economic growth and maintained relations with foreign powers, particularly the US, throughout the 1950s.

The discovery of vast oil reserves in Libya in 1959 prompted a rapid economic change which resulted in social conflict between King Idris's leadership and the people of Libya. But King Idris went as far as suppressing the opposition, censoring the media and banning political parties while he maintained tribal and political ties that guaranteed his political survival and economic gains. It came as no surprise when Libyans "complained about the unequal distribution of revenues from oil and trade."[58]

In *A History of Modern Libya,* Dirk Vandewalle notes that King Idris had lost legitimacy outside the Cyrenaica, a region where he had inculcated the Sanusiyya order, which was a nationalist movement that mounted a resistance against Italian colonisation. Internally, the movement focused on Cyrenaica instead of creating a sense of national identity with Tripolitania and Fezzan.[59] Libyans regarded his leadership as highly corrupt, too conservative, and saw him as a hardliner in inter-Arab politics and thus antithetical to Arab nationalism that basically sought to unite Arab nations under a single political, economic, social identity.[60] A group of young pan-Arabist leaders who called themselves the Revolutionary Command Council (RCC), led by the 27-year-old Qaddafi, staged a bloodless coup d'état that ousted King Idris in 1969. The monarchy

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[56] *Ibid*., p. 207.

[57] Schnelzer, N. (2015). *Libya in the Arab Spring: The Constitutional Discourse since the Fall of Gaddafi*. Springer, pp. 31-32.

[58] *Ibid*., p. 33.

[59] Vandewalle, *A History of Modern Libya*, p. 43.

[60] *Ibid*., p. 76.

was overthrown for apparently legitimate reasons: its reliance on foreign aid was too much; appointments of individuals to government positions were based not on merit but on personal or family ties; women were fundamentally marginalised from the economy and the federal system conferred too much power onto provincial authorities. This exacerbated incidences of patronage along tribal or political lines and family ties. Even after the federal system was done away with in 1963, the kingdom did little to set up administrative and political institutions and structures.[61] Moreover, foreign powers that had 'built' the kingdom - and had continued to offer it aid since independence - were in the forefront of the exploration of its oil fields. Following the discovery of oil fields in the Sirt Basin, Libya permitted multinational oil corporations to operate under flexible conditions.

The production and value of oil increased throughout the period of the monarchy. For example, barrels produced per day increased from 20,000 in 1960 to nearly 3 million in 1969.[62] Therefore, King Iris thought it necessary to implement more stringent conditions for oil production and trade, and to unify the country. Libya abandoned the federal system, not only in order to ameliorate or eliminate the impact of patronage politics at the helm of the regime and self-serving interests in independent provinces, but also to integrate the economy for the benefit of all. Hence the constitutional amendments of 1963 transferred control of provincial political administration and economic matters to a centralised government. Despite the change to a unitary system, family, political, and tribal backgrounds still determined access to resources. The government thus remained unresponsive to Arab nationalism but sympathetic to western interests.

The literature suggests that the foregoing were factors underlying the overthrow of King Idris which turned Libya from a monarchy into a republic in September 1969. In *A History of Libya*, John Wright pertinently points out that the extensive extant literature on post-monarchy Libya revolves around Qaddafi and his style of rule.[63] No doubt, Qaddafi's "personality, ideas, deeds, [and] directives"[64] shaped the political system and trajectory of the new Libyan Arab Republic. Qaddafi emerged out of the ranks of young revolutionary officers to lead Libya for four

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61 *Ibid.*, pp. 51- 53.
62 *Ibid.*, p.62.
63 Wright, *A History of Libya*, p. 199.
64 *Ibid.*

decades of authoritarian rule marked by the ebb and flow of relations with the West. Horace Campbell divides Qaddafi's rule into four epochs: the RCC takeover and the elusive revolution, 1969-1977; the rise of a state-of-the-masses and confrontation with the western states, 1977-1988; the period of sanctions and isolation of the pariah state of Libya, 1988-2001; and rapprochement between Libya and the West, and the ultimate fall of Qaddafi's regime, 2001-2011.[65] The *first period*, 1969-1977, saw the rise of Qaddafi's RCC and the adoption of radical reform initiatives supplanting most of King Idris's 'anachronistic' policies that had 'excluded' ordinary Libyans. Qaddafi held Gamal Abdel Nasser, a pre-eminent Arab nationalist who came to power in Egypt through a military coup in 1952, in high regard. Upon Nasser's passing in 1970, Qaddafi vowed to spearhead the Libyan revolution in a Pan-Arab world that shared anti-western sentiments. Qaddafi was determined to extend Nasser's Pan-Arab foreign policy to Libya and the Arab world.[66]

In keeping with Pan-Arabism, the regime moved to nationalise foreign oil companies and banks. In 1971 Qaddafi nationalised the British Petroleum Company when negotiations for new trade terms stalled and after Iran had occupied the Persian Gulf Islands with British complicity, prompting Libya's withdrawal of all its reserves from British banks.[67] During King Idris's rule, Libya gained a considerable portion of its revenue from military bases the US and Britain had established at Wheelus Field.[68] But the Qaddafi regime closed down these bases and expelled all foreign troops from the country.[69] Vandewalle notes that abundant oil wealth, unrestricted by foreign powers, resulted in political freedom and economic prosperity. The absence of foreign interference saw oil revenues quadrupled between 1972 and 1974 to $6 billion.[70] Throughout this period, the regime managed to substantially improve the lives of virtually all Libyans through welfare services. The *second period*, 1977-1988, started just a couple of years after Qaddafi

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[65] Campbell, H. (2013). *NATO's Failure in Libya: Lessons for Africa*. African Books Collective, p. 23.

[66] Krasno, J. and LaPides, S. (2015). *Personality, Political Leadership, and Decision Making: A Global Perspective*. ABC-CLIO, p. 22.

[67] Senauth, F. (2013). *The Making and The Revolution of Libya*. Xlibris Corporation, p. 33; John, R. B. S. (2013). *Libya and the United States, Two Centuries of Strife*. University of Pennsylvania Press.

[68] John, R. B. S. (2015). *Libya: Continuity and Change*. Routledge, p. 41.

[69] Vandewalle, D. 'Libya's Revolution in Perspective', in Vandewalle, D. (ed.) (2011). *Libya since 1969: Qadhafi's Revolution Revisited*. Palgrave Macmillan, p 11.

[70] Wright, *A History of Libya*, p. 206-207.

published his *Green Book*[71]*,* which became the Libyan revolution's *de facto* constitution. Qaddafi renamed the country the Socialist People's Libyan Arab Jamahiriya in 1977, which marked the next phase of the revolution. The *Jamahiriya* means the 'people's power' or the 'state of the masses', coined by Qaddafi in his *Green Book*.[72] At the heart of the Jamahiriya was the 'Third Universal Theory' – supposedly alternative ideology to capitalism and communism. With this ideology, Libya would do away with the 'failures' of western liberal democracy. When Qaddafi ascended to power, the capitalist bloc thought he would become their ally and rid the region of Soviet influence and communism. But Qaddafi maintained an ideology that would see him in a longstanding confrontation with the West.[73] He was adamant that his own version of popular democracy – in which decision-making processes purportedly rest with ordinary people's congresses and social leadership committees – would prevail. However, as a 'leader and guide of the revolution of Libya', Qaddafi remained predominantly in control of its political and economic affairs.[74] He thought the Arabic-speaking countries were superior and attempted but failed to unify the Arab region under a single banner of 'Arab nationalism', with the aim to eliminate capitalism and communism.

This was also the epoch during which Libya engaged in military escapades: it was involved in a conflict with Chad and a war with Egypt.[75] But, as Vandewalle points out, its major confrontation was particularly with the US that had accused Qaddafi of, *inter alia*, sponsoring terrorism and attempting to produce weapons of mass destruction (WMD).[76] The Jamahiriya harboured radical Palestinian sects in the wake of the 1972 Munich Olympics massacre and the killing of US Ambassador to Sudan, Cleo Noel Jr. The confrontation between the US and Libya reached its height when the Reagan Administration ceased its diplomatic relations with the Jamahiriya, which was seen as posing a threat to America's national security, and its foreign policy and regional stability. The April 1986 bombing of La Belle discotheque, an entertainment

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[71] Qaddafi, M. (1975). *The Green Book: The Solution to the Problem of Democracy, the Solution to the Economic Problem, the Social Basis of the Third Universal Theory*. Ithaca Press.

[72] Wright, *A History of Libya*, p. 207.

[73] John, *Libya and the United States,* p. 31.

[74] Senauth, *The Making and The Revolution of Libya*, p. 25.

[75] *Ibid*.

[76] Vandewalle, *A History of Modern Libya*, p. 130.

venue frequented by US soldiers, in West Berlin was also ascribed to Libya. During the same month, the US launched 'retaliatory' bomb attacks in Benghazi and Tripoli. The US also suspected Qaddafi's-regime of involvement in the explosion of Pam Am flight 103 over Lockerbie in 1988. As a result, the regime was gradually subjected to political, diplomatic, and economic isolation.[77] Qaddafi's desire to produce or acquire WMD and missiles "capable of reaching targets in Israel and Europe" created serious discomfort among states.[78] It remains uncertain, however, as to whether Libya has the technical capability to enrich uranium to weapons-grade levels. That said, China and Pakistan allegedly provided Libya with the technical know-how to produce chemical weapons. Indeed, according to Oakes, between 1980 and 1990, Libya had prepared 23 tonnes of mustard gas in the facility at Rabta and thousands of unfilled chemical weapons munitions and related devices were kept in storage.[79]

The *third period*, i.e., the 1988-2001 sanctions' years, followed the tumultuous years of confrontation with Libya listed as a state sponsor of terrorism by the US. The US cut off diplomatic relations with Libya as it accused it of being directly and indirectly involved in terrorism and of harbouring terrorists. America also imposed sanctions on Libya, including an embargo on crude oil and refined petroleum products from the country. By 1986, the US had imposed wide-ranging, comprehensive trade bans on Libya. From a multilateral standpoint, the UN also imposed economic sanctions on Libya over its involvement in the Lockerbie bombing.[80] Owing to western and multilateral sanctions, Libya's revenue from oil exports drastically plummeted from $21 billion per annum to $5 billion per annum between 1982 and 1986.[81] Libya was effectively isolated as the pariah of the world. Isolation prompted Libya to realign its foreign policy to warm up and (re)establish relations with the international community in general and the US in particular. However, the ebb and flow of conflict or cooperation between Libya and the West persisted until Qaddafi's demise.

The *fourth period*, 2001-2011, marked the thaw in relations between Libya and the West. Qaddafi turned in the Lockerbie bombing suspects for trial, prompting the UN to lift its

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[77] *Ibid*., p.138.
[78] Oakes, J. (2011) *Libya: The History of Gaddafi's Pariah State*. The History Press, p. 147.
[79] *Ibid*; Wright, *A History of Libya*, p. 214.
[80] Vandewalle, *A History of Modern Libya*, p.150.
[81] *Ibid*., p. 115.

multilateral economic sanctions on Libya in 1999. Qaddafi denounced al-Qaeda's September 11 attacks on the World Trade Centre (WTC) and endorsed the US invasion of Afghanistan as justified self-defence against terrorism. Qaddafi's foreign policy positions varied dramatically in scope and nature over time. The US suspended its sanctions and eventually removed Libya from the list of sponsors of terrorism in the wake of Libya's cooperation and the Lockerbie trial.

Britain and other European powers have always favoured cordial relations with Libya, their important oil trading partner. As relations became friendlier, Qaddafi gave up his WMD programme in 2003. The following year Washington lifted most of its economic sanctions and its travel ban on Libya.[82] And, the former British Prime Minister, Tony Blair and other US congressional delegation members visited Libya. Eventually, the US re-established diplomatic ties with Libya and European states resumed trade and other forms of engagement, all of which reintegrated Libya into the international community. Nevertheless, the better part of Qaddafi's four-decade rule had been domestically tumultuous and internationally confrontational. The Arab Spring uprisings and the revolution in Libya finally exposed the extent of the discontent with his authoritarianism: this discontent had been dormant for years, both in the Middle East and in North Africa (MENA).

2.2 The Arab Spring and the Libyan Revolution

The Arab Spring is a relatively recent phenomenon led by citizens against longstanding authoritarianism and its 'failures' in the MENA region. At the time of this writing, five years have passed since the popular uprisings erupted. In the *Roots of the Arab Spring*, Dafna Rand reflects on the peculiar endurance of authoritarianism in the region.[83] Between 1970 and 1990 most of the developing world witnessed democratisation, while the MENA region lagged behind in terms of political freedom and civil liberties. The trajectory of regional and domestic politics in these authoritarian regimes remained uncertain while other regions progressed both politically and economically. However, these authoritarian regimes had managed to survive political opposition

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[82] *Ibid*., p. 182.

[83] Rand, D. H. (2013). *Roots of the Arab Spring: Contested Authority and Political Change in the Middle East*. University of Pennsylvania Press, p. vii.

and crises for decades. But their survival depended on political, economic and social reform strategies that subdued opposition by co-opting fierce advocates of democratisation. Rand asserts that scholars and policymakers – intentionally or unintentionally – overlooked the dynamics of authoritarian regimes in MENA.[84] Instead, they dedicated their time to analyses of the deficiencies of moves towards political freedoms and democracy in the top echelons of the regimes. In particular, their focus on the regimes' institutional, economic and electoral strategies – employed to suppress opposition – led to the neglect other potential sources of political change. These scholars and policymakers, Rand further asserts, thought that MENA was stagnant and thus ignored "the political orientations, attitudes, and changing views of the region's citizens."[85] Bias toward the elite diminished attention placed on the youth, workers, and contemporary (online) social movements as drivers of (political) change. In short, they disregarded the "potential of individuals and non-traditional actors to mobilise"[86] against their regimes.

Rand also notes that, following the 9/11 attacks, the Bush administration pursued a *Freedom Agenda* policy in the MENA region. This policy was anchored around 'democratising' the regimes as a complementary strategy to the global war on terrorism (GWOT). But the policy suffered a huge blow in the wake of the controversial US invasion of Iraq in 2003. Policymakers mainly focused on the institutional and political changes through national elections, ignoring the dynamics of revolutionary movements alluded to above.

A combination of three factors, according to Rand, provided the catalyst for the Arab Spring uprisings. First, increased freedom of expression beyond state control made citizens realise their potential influence. Second, the autocrats' top-down, undemocratic practices manifested themselves in restrictive policies that frustrated their citizens. And, third, economic liberalisation reforms – reforms that had promised would shift away from King Idris's patronage politics – stalled while political leaders continued to engage in self-serving relations.[87] In the *Arab Spring, Libyan Winter*, Vijay Prashad cites the Egyptian case pertinent to Rand's three drivers of change. The Anwar Sadat regime tried to rescind the bread subsidy: this threatened the practice

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[84] *Ibid.*
[85] *Ibid.*, p. ix.
[86] *Ibid.*
[87] *Ibid.*, p. xi.

of subsidisation or the "democracy of bread", a phrase coined by Larbi Sadiki, thus leading to a revolt in 1977.[88] But the Sadat regime responded with force, killing about 160 people, to quell the revolution. The reduction of subsidies was part of the reforms in the region "against the economic policies that favoured national development" [89] but backfired as food prices skyrocketed, resulting in widespread protests.

According to Julia Smith similar conditions had occurred in Tunisia.[90] The regimes had shifted subsidies back and forth in the wake of fierce opposition and revolts. But a common difficulty has been the liberalisation of economies benefiting the ruling clique at the expense of the masses. This was made possible by autocrats' close cooperation with, and sometimes pressure from, the International Monetary Fund (IMF), the World Bank, the Banks (WB), the bond markets, and multinational corporations (MNCs).[91]

Prashad poses a question that scholars have pondered since the 1950s: when will the Arab states be able to sustain their populations rather than feed the financial houses of foreign powers as well as fill pockets of the dictators and monarchs? When Mubarak came to power, he inherited Sadat's policies and in 2008 Egyptians rose over the price of bread, but the protest was swiftly quashed. With oil revenue still benefiting the elite few, the issue of bread spilled over to other matters such as inequality and unemployment as protest broke out in el-Mahalla during the same year. In the face of opposition augmented by students, workers, and the unemployed, the Mubarak regime yielded to protesters. But when the 2008 global economic meltdown and the 2010 food crisis occurred, the price of wheat skyrocketed, with dire consequences for the 'democracy of bread' in Egypt, Tunisia and elsewhere.[92] The cumulative historical, political and economic tensions among communities came closer to answering Prashad's aforementioned question. Late in 2010, the lingering discontent among citizens in Egypt and Tunisia and elsewhere in the region came to be exposed. A Tunisian fruit and vegetable street vendor,

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[88] Prashad, V. (2012). *Arab spring, Libyan winter* Oakland, CA: AK Press, p. 10.

[89] *Ibid.*

[90] Smith, J.C., 'From Sidi Bou Zid to Sidi Bou Said: A Longue Durée Approach to the Tunisian Revolutions', in Lesch, D. & Haas, M. (2012). *The Arab Spring: Change and Resistance in the Middle East*. Westview Press, pp. 13-16.

[91] *Ibid*; Prashad, *Arab spring, Libyan winter*, p. 10.

[92] *Ibid.*

Mohamed Bouazizi's self-immolation in December 2010 triggered a wave of protests against entrenched authoritarian regimes across the MENA region. Bouazizi self-immolated in protest against the confiscation of his produce and the humiliation he had suffered at the hands of the police. There has been a prevailing consensus among scholars of the Arab Spring that Bouazizi's horrific death marked a tipping point in the manifestation of discontent over authoritarianism. In *The Arab Uprisings Explained*, Marc Lynch writes that Bouazizi's self-immolation has reshaped regional politics and scholarship.[93] A shift in regional politics, one can argue, stemmed from the unprecedented popular uprisings that captured the attention of scholars, policymakers, and analysts alike.

Citizens across the MENA region took matters into their own hands to effect political change. Bouazizi's suicide ignited protests that reached Tunis, the capital city of Tunisia, by December 27, 2010. James Gelvin notes that President Zine al-Abidine Ben Ali attempted, without success, to pacify protesters by promising them jobs and parliamentary elections.[94] Ben Ali had been in power for 23 years. By January 14, 2011, protesters, politicians, and military leaders had had enough of Ben Ali's dictatorship. The army refused to quash protests and Ben Ali fled the country, leaving a caretaker government in power.[95] Ben Ali resigned a month after he had fled to Saudi Arabia amidst protests over unemployment and corruption. A week and a half after Ben Ali's downfall, Egyptians took to Tahrir Square in Cairo to protest President Mubarak's longstanding rule. As happened in Tunisia, as Gelvin points out, "the security forces and goons-for-hire failed to dislodge the protesters, and the army announced it would not fire at them."[96]

From Tahrir Square, protests engulfed many parts of Egypt. After eighteen days of protest action, the army openly sided with anti-government protesters and overthrew Mubarak, who had ruled the country for thirty long years.[97] The relatively peaceful processes of regime change in Tunisia and Egypt inspired the Arab world countries – amongst them, Bahrain, Yemen,

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93 Lynch, M. (2014). *The Arab Uprisings Explained: New Contentious Politics in the Middle East*. Columbia University Press, p. 2.

94 Gelvin, J. L. (2012). *The Arab Uprisings: What Everyone Needs to Know*. Oxford University Press, p. 27.

95 *Ibid.*

96 *Ibid.*, p. 28.

97 *Ibid.*

and Libya – to rise up against their leaders. Just days after Mubarak's overthrow, Libyans rose against Qaddafi's 42-year rule. Libya [98] was distinctive in that when revolutionaries and citizens led this uprising, forces loyal to Qaddafi reacted with brutal force, triggering a civil war. As Prashad puts it: Libya "was not fated for an easy Arab Spring… [because it] did not deliver the uplifting narrative of Tunisia or Egypt."[99]

When the people, as collective, took to the streets against Ben Ali in Tunisia and Mubarak in Egypt, the military did not respond.[100] But when protesters gathered outside the Benghazi police headquarters on February 15, 2011, demanding the release of Fathi Terbil, security forces exhibited loyalty to Qaddafi by suppressing the protest, shooting and injuring many protesters who clashed with them. As the February 17 'day of rage' approached, protests had already become violent and widespread across major cities, including Benghazi and Tripoli. Some protesters vandalised government property, and the Qaddafi forces responded with live ammunition and arrests.[101]

Rebels took control of key cities – from Tripoli to Benghazi – but Qaddafi was not ready to relinquish power like his counterparts. He thus mounted a crackdown on rebels and citizens until the UNSC passed Resolution 1970 condemning the Qaddafi regime's violent crackdown on anti-government protesters and reminding it of its responsibility to protect its people. Qaddafi showed determination to recapture major cities that had been lost to rebels. Some of his loyalists had defected to the NTC to support the rebels. The "unrelenting violence and political intransigence of the Qaddafi regime, combined with the limited impact of Resolution 1970"[102] endangered civilians and civilian populated areas.

By March 15, 2011, the regime had regained all the major rebel-controlled cities except Benghazi. The Qaddafi regime's noncompliance with Resolution 1970 compelled the UNSC to pass Resolution 1973 after Qaddafi threatened to cleanse Libya and Benghazi in particular, house-

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98 Garland, L (2012). *2011 Libyan Civil War*. New Delhi: White Word Publications, pp 3-4.

99 Prashad, *Arab Spring, Libyan Winter*, p.6.

100 *Ibid.*

101 Gelvin, *The Arab Uprisings*, pp. 100-101.

102 Adams, S. (2012). *Libya and the Responsibility to Protect Global Centre for the Responsibility to Protect*, p. 6.

by-house in a televised tirade speech.[103] Alarmingly, Qaddafi threatened to chase down and exterminate the "rats" and "cockroaches," the language reminiscent of the incitement of hate and violence that preceded the 1994 Rwandan genocide. Resolution 1973's core mandate was to stop the killing of civilians at the hands of Qaddafi's forces and to 'prevent another Rwanda'.

In line with the R2P norm, the resolution reiterated the Qaddafi regime's responsibility to protect its people. Due to the Qaddafi regime's noncompliance following the prior reprimands, the resolution charged the international community with the responsibility of protecting civilians and civilian-populated areas in Libya. The operation was made possible by the "all necessary means" proviso and a "no-fly zone" imposed over Libya. Humanitarian intervention was effectively initiated through the invocation of R2P. Britain, France, and the US were the first to begin a military campaign as mandated by Resolution 1973. The operation was later handed over to the NATO alliance forces to effect the no-fly zone and protect civilians and civilian areas.

2.3 Humanitarian Intervention

The literature on humanitarian intervention is extensive and the concept itself is complex and cannot be reduced to a single definition. The concept of humanitarian intervention has generated a lot of controversy and confusion among experts and ordinary people. It can be defined in several forms but is often conceived of in two ways. First, it can be seen as the use of military force to stop or prevent egregious human rights' violations in a state that is unable or unwilling to take up this responsibility. Second, an intervention may be carried out by humanitarian aid or relief organisations to provide, for instance, food parcels, health care, and shelter for victims of natural or manmade disasters. Humanitarian intervention is, as Eric Heinze writes, "a term popularly used to designate a wide range of activities related to both armed conflict and alleviating human suffering in other countries."[104] For our purposes, the study, as indicated in the first chapter, takes humanitarian intervention to mean the use of military force by one state (or a group of states) in another state, without the prior consent of latter state's leaders, to halt

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[103] *The New York Times* (2011). Qaddafi's Grip on the Capital Tightens as Revolt Grows. Available at: http://tinyurl.com/j56jgmu [accessed: 14/01/2016].

[104] Heinze, *Waging Humanitarian War*, p. 7.

or avert widespread violations of fundamental human rights. The post-Cold War consensus among scholars – for instance, Hehir,[105] Orford,[106] and Kabia[107] – is that humanitarian intervention has received renewed attention and interest both in academia and practice. The relationship between state sovereignty and human rights has been antagonistic since the advent of the Westphalian nation-state, and even more so during the Cold War period, which was dominated by inter-state confrontations. The tension between international norms became more apparent after the end of the Cold War as the nature and frequency of conflict shifted from interstate to intrastate. According to Hehir, some heralded the end of the Cold War as the "dawn of a more progressive and humanitarian era."[108] The pro-interventionists considered the end of the Cold War a prelude to the "golden era of humanitarian intervention"[109].

Hehir cites the UNSC's response to Iraq's 1991 invasion of Kuwait and the subsequent *Operation Provide Comfort*[110] as signs of a new proactive disposition. The operation sought to protect the Kurds from persecution and displacement and to offer them humanitarian aid following Iraq's invasion of Kuwait. It thus spawned optimism about the practice of humanitarian intervention. However, Hehir points out that this period of optimism was short-lived following inadequate responses to, or inaction in the face of, humanitarian crises in the Balkans, Somalia, and Rwanda, to name but a few.[111] Inconsistent and lack of responses to such crises have generated a wide literature on the theory and practice of humanitarian intervention. Much of the debate, as argued in chapter one, has been about the tension between state sovereignty and human rights. The lack of general consensus on this front was compounded by – and perhaps contributed to – the absence of an explicit universal framework for the notion of humanitarian intervention (with only implicit endorsement by the UN) as suggested by the 1990s scholarship.

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105 Hehir, A. (2008). *Humanitarian Intervention After Kosovo: Iraq, Darfur and the Record of Global Civil Society*. Palgrave Macmillan, p. 2.

106 Orford, A. (2003). *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*. Cambridge University Press, p. 2.

107 Kabia, *Humanitarian intervention and Conflict Resolution in West Africa*, p. 3.

108 Hehir, *Humanitarian Intervention After Kosovo*, p. 2.

109 Bellamy and Wheeler, *Humanitarian Intervention in World Politics*, p. 484.

110 Resolution 688 mandated the UN, led by the Bush Administration, to establish safe havens and impose no-fly zones in the face of risky health conditions for Kurds fleeing the country and political repression at the hands of the Hussein regime.

111 Hehir, *Humanitarian Intervention After Kosovo*, p. 2.

Traditional state sovereignty has dominated the international system since its codification in the mid-1940s. It has, hitherto, remained the primary legal and political instrument with which military interventions, whether unjustified or genuinely altruistic, have been challenged. Although the principle of state sovereignty – together with its corollary non-intervention – remains an obstacle to humanitarian intervention, the 1990s humanitarian crises brought about a major shift in this thinking. The international community had clamoured for the rethinking and redefinition of state sovereignty in the wake of humanitarian crises. But scholars have always recognised the limitations of the principle of state sovereignty. In his now famous *A Few Words On Non-Intervention*, John Stuart Mill writes about both the sacred sovereign independence and nationality of states and the possible exceptions to the general rule of non-intervention.[112]

Michael Doyle has thrown new light on Mill's work: In *The Question of Intervention,* he outlines four *indirect* and two *direct* arguments for non-intervention.[113] First, his *indirect* arguments include the following: an intervention is prohibited by international law (e.g. Article 2 (7) of the UN Charter); an intervention would be objectionable if it is likely to cause more harm than good or if it constitutes a moral hazard; an intervention that starts well can become corrupted and therefore objectionable; and outsiders will struggle to understand the internal affairs of a state and should not intervene.

Second, the "two most powerful arguments against intervention are based directly on considerations of self-determination and individual harm."[114] In other words, an intervention aimed at imposing liberal democracy – exemplified by the *Freedom Agenda* policy in the MENA region – will be neither authentic nor do any good to the people of the receiving state. As Doyle argues, imposing a 'democratic' system in a country *by force* cannot be *self-determining*. Democracy and freedom can be achieved through local ownership of popular uprisings or national elections. Citizens will have a choice over the content of their political sovereignty and determine their own destiny. Non-intervention is, however, not without exceptions. For example, Doyle, as with Mill, notes that non-intervention may be overridden in cases involving

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[112] Mill, J.S. (1859). A Few Words on Non-intervention. *Fraser's Magazine*.

[113] Doyle, M. (2015). *The Question of Intervention: John Stuart Mill & the Responsibility to Protect*. Yale University Press, pp. 21-26.

[114] *Ibid.*, p. 26.

the rescuing of nationals abroad and/or protecting civilians of a foreign state. However, rescue is contentious as it focuses exclusively on protecting human rights of the intervening state's own citizens, with a taint of 'imperial pretension'.[115]

The consensus among scholars is that state sovereignty is not sacred or insurmountable as it traditionally has been thought to be, according to Francis Deng et al. in *Sovereignty as Responsibility*.[116] Although political sovereignty is important, it yields to personal sovereignty when grave human rights' violations occur. What has been lacking is a consensus on the meaning of sovereignty in the context of modern international society characterised mainly by intrastate and asymmetrical warfare. This disagreement also demonstrates the lack of a comprehensive framework that can provide guidelines for justified humanitarian intervention.

2.4 Just War Theory and the Responsibility to Protect

Just war is a centuries-old tradition which argues that the resort to war, and its conduct and termination, are regulated by a set of rules and norms. It provides a list of criteria that, if satisfied, will make war appear morally just.[117] The literature suggests that just war theory is faced with historical and contemporary challenges that theorists and scholars alike continue to grapple with. These are challenges that have to do with wars fought not in self-defence or against aggression, as we will see. In *The Morality of War*, Brian Orend provides a lucid overview of the historical development of the just war theory.[118] The moral judgment of warfare finds its genesis in antiquity. For Orend, James Turner Johnson's "observation – that just war theory is, in its origins, a synthesis of Greco-Roman and Christian values – rings true."[119] Aristotle, a Greek philosopher, who had learned from Plato, is credited with coining the term just war. He believed, for example, that "it is morally justified to go to war to prevent one's community from being attacked and enslaved by another."[120] Thus self-defence has always been the most obvious *just cause* for

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115 *Ibid.*, p. 55.

116 Deng, F.M., (1996). *Sovereignty as Responsibility: Conflict Management in Africa*. Brookings Institution Press, p. 10.

117 Orend, B. (2008). 'War' in Edward N. Zalta (ed.) (2008). *The Stanford Encyclopaedia of Philosophy*. Available at: http://plato.stanford.edu/archives/fall2008/entries/war/ [accessed 28/12/2015].

118 Orend, B. (2013). *The Morality of War*. Broad View Press, pp. 9-29.

119 *Ibid.*, p. 10.

120 *Ibid.*, p. 11.

waging war. However, Aristotle endorsed the controversial wars of imperial expansion and enslavement, such as those between Greeks and Persians. Marcus Cicero supported wars of self-determination but was also not immune to endorsing those of (empire) expansion. Cicero developed the rules of *proper authority* and *public declaration*. As Romans frequently found themselves at war, they developed the rule of *last resort* by extending prior (political and diplomatic) warnings before waging war. Failure to comply on the part of the receiving party resulted in the declaration of war.

Orend emphasises a synthesis of Greco-Roman and Christian values because the latter were not the sole contributors to the development of the just war theory as the literature has always suggested. Saint Augustine was, in fact, not the first Christian thinker to contribute to the just war theory. Ambrose, on whom Augustine draws, contributed to the rules that apply to soldiers' conduct in war (*jus in bello*). Moreover, Ambrose argues in support of Greco-Roman rules for resorting to war (*jus ad bellum*) "by saying that wars approved by God were also just."[121] Augustine's writing occurred during the triumph of Christianity in the Roman Empire. Christianity implied love and non-violence, and Roman leaders appealed to its armed forces to maintain the Empire and to discipline 'the heathen barbarians', according to Orend.[122] Here the dilemma faced by Christian leaders is that they are ordained to show love and compassion for people, while at the same time duty-bound to ensure that these people are protected (with the use of force if needs be).

The just war tradition became less theological and more secular as more thinkers added to and improved its propositions. Thomas Aquinas introduced the rule of *proportionality*, which governs both *jus ad bellum* and *jus in bello* (hereinafter referred to as *proportionality #1* with regard to the former and *proportionality #2* with regard to the latter). *Proportionality #1* holds that means (e.g., resources – financial or personnel) of war should be balanced or commensurate to the grievance and *proportionality #2* holds that the amount of (military) force deployed should be proportionate to the objective on the ground – disproportionate and indiscriminate means such as weapons of mass destruction should not be employed. These principles just war theory have evolved with time.

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121 *Ibid.*, p. 12.
122 *Ibid.*

Francisco de Vitoria insisted on the secularism of the just war theory as he recognised that even non-Christian communities had rights protected by the theory. Vitoria endorsed wars of self-defence and other-defence (humanitarian intervention), but not those of pre-emption and aggression, which lack 'a wrong received'.[123] Hugo Grotius, a Dutch scholar and jurist, was among the first to introduce the laws of armed conflict. Grotius's work stood astride of morality and law: he founded international law and reinterpreted just war theory's *jus ad bellum* and *jus in bello* principles.[124] The very point of law, Orend observes of Grotius, is to realise the ideals of morality.[125] The Treaty of Westphalia (1648) ended the Thirty Years' War in Europe just a few years after Grotius's death. The principles of state sovereignty and non-intervention would endure until the late 1990s. Just causes for war were confined to individual self-defence, collective self-defence, and (somewhat contentiously) pre-emptive attacks.[126] This effectively meant war as punishment was objectionable, and humanitarian intervention prohibited, according to Orend.[127]

The just war principles were gradually codified into International Humanitarian Law (IHL) or laws of armed conflict. Among others, for example, the 1899-1907 Hague Conventions, the 1949 Geneva Conventions, the 1945 UN Charter, and the 1948 Universal Declaration of Human Rights have buttressed the secularisation of the just war theory, although resulting in negative and positive consequences. The Hague and Geneva conventions provided historical rules that primarily deal with the conduct of war. They have been subject to ethical inquiry as the nature and frequency of warfare has altered. The 1945 UN Charter formalised the 1648 Westphalian principle of state sovereignty (and its corollary non-intervention norm). Following the Holocaust, the international community adopted the 1948 *Universal Declaration of Human Rights*. Michael Walzer's *Just and Unjust Wars*, a modern classic, is perhaps the most comprehensive (and thought-provoking) text on the morality of war.[128] Walzer offers a modern,

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123 *Ibid*., p.16.

124 Lee, *Intervention, Terrorism, and Torture*, p. 27.

125 Orend, *The Morality of War*, p. 18.

126 Tuck, R., 'Grotius, Hobbes, and Pufendorf on Humanitarian Intervention', in Recchia, S. and Welsh, J.M. (eds.) (2013). *Just and Unjust Military Intervention: European Thinkers from Vitoria to Mill.* Cambridge University Press.

127 Orend, *The Morality of War*, p. 19.

128 Bellamy and Williams, *The New Politics of Protection?* p. 827.

secular perspective of the just war theory with 'historical illustrations'. He argues that the rights of political communities (i.e., states) to territorial integrity and political sovereignty derive, and take force, from individual rights.[129] These rights basically rest on the consent of the people, who – over an extended period of time – develop a common life through shared experiences and cooperative activity. There exists a social contract which binds the state to protect individuals against external aggression and to respect their lives and liberty within the independent community. Walzer's argument draws on a Lockean perspective which holds that "to be legitimate (i.e., to have the right to rule), a government must respect the natural rights of all citizens to life, liberty, and property."[130] The moral standing of a state, as Walzer contends, rests on the reality of the common life it safeguards - and the extent to which the sacrifices related thereto are accepted and held to be worthwhile. To safeguard the common life of citizens, "most states do stand guard over the community of their citizens..."[131] and can permissibly engage in defensive wars against, for instance, external aggressor(s).

Walzer suggests that territorial integrity and political sovereignty can be defended similarly to defences for personal life and liberty. The people have a right not to be invaded and can defend their country in the same way men and women can defend their homes.[132] In short, Walzer's perspective that states derive their rights from those of individuals is an attempt at addressing the already highlighted dilemma: upholding state sovereignty (via the principle of non-intervention) and protecting human rights (via the practice of humanitarian intervention). The international order can be seen as an equivalent of the domestic order. Our main perceptions and judgements of aggression, Walzer argues, are the products of analogical reasoning.[133] This is the domestic analogy on which the theory of aggression and its legalist paradigm rest. The legalist paradigm does not reflect the arguments of the lawyers, but both the legal and moral debates are its point of departure.[134] Walzer summarizes six propositions of the legalist paradigm as follows: (1) there exists an international society of independent states; (2) this international society has a law that establishes the rights of its members – above all, their rights of territorial

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129 Walzer, *Just and Unjust Wars*, p.53.
130 Orend, *The Morality of War*, p. 20.
131 Walzer, *Just and Unjust Wars*, p. 54.
132 *Ibid.*, p. 55.
133 *Ibid.*, p. 58.
134 *Ibid.*, p. 60.

integrity and political sovereignty; (3) any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act; (4) aggression justifies two kinds of violent response: a war of self-defence by the victim and a war of law enforcement by the victim and any other member of the international society; (5) nothing but aggression can justify war; and (6) once the aggressor state has been militarily repulsed, it can be punished.[135] Nicholas Rengger writes in *Just War and International Order* that:

> *A combination of the domestic analogy and the legalist paradigm leads Walzer to adopt a strict principle of non-intervention which nevertheless can be vitiated in circumstances where the ban on boundary crossings... does not serve the purposes for which it was established.*[136]

These 'purposes' are to protect not only state sovereignty from external aggression but also human rights from internal aggression. As such, Walzer admits that the legalist paradigm (in the form presented above) "consistently reflects the conventions of law and order..." deriving not only from the legal but also the moral discourse.[137] At the onset of this section, I have mentioned that the literature shows that theorists and scholars are grappling with historical as well as contemporary challenges of the just war theory, resulting from the constantly shifting international system. It is for this reason that Walzer argues that the legalist paradigm is 'insufficient' to deal with the intricate realities of the international system, where the legal and moral precepts are neither static nor inviolable. Hence he makes the case for several revisions or exceptions to the legalist paradigm propositions. Vitoria suggested that all just causes be subsumed under the one category: 'a wrong received'. But Walzer's first exception to this rule is that a military action in response to a probable and immediate threat of war can be justified. There should be reasonable belief that failure to act pre-emptively would jeopardise the

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[135] *Ibid.*, pp. 61-63.

[136] Rengger, N. (2013). *Just War and International Order: The Uncivil Condition in World Politics*. Cambridge University Press, p. 110.

[137] Walzer, *Just and Unjust Wars*, p. 61.

territorial integrity and political sovereignty of the state under threat. The distinction between legitimate and illegitimate pre-emptive strikes, Walzer argues, "is not going to be drawn at the point of *imminent attack* but at the point of *sufficient threat* [emphasis added]."[138] What constitutes sufficient threat includes the following: a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk. The Israeli first strike on Egypt, where Egypt posed sufficient threat to the former, during the Six Day War of 1967, is a good example of such a pre-emptive strike. Wars for secession, counter-intervention, and human rights protection are three more exceptions to the legalist paradigm concerning involvement in domestic affairs of another state.

According to Walzer, John Stuart Mill argues that states have the right to self-determination, that is, "to become free by their own efforts" if they can, without foreign interference. Non-intervention, in buttressing the legalist paradigm, guarantees states that "their success will not be impeded or their failure prevented by the intrusions of an alien power."[139] States, whether or not their internal political arrangements are free, should be treated as self-determining. The ban on boundary crossing is not absolute because ambiguous political community-government relationships exist within the already arbitrary borders. J.S. Mill's self-determination argument is less clear as to when a community is, in fact, self-determining and thus qualifies for non-intervention.[140] States can thus be invaded and wars justly launched to assist secessionist (national liberation) movements. But a secessionist movement must truly "represent a distinct community… [that] has rallied its own people and made some headway in the 'arduous struggle' for freedom."[141] The onus rests with the intervening powers to prove that "the liberty or prospective liberty of citizens [in quest of secession] is best served if foreigners offer them only moral support."[142] Civil wars are more frequent than the traditional state-to-state war. Though their implications for the internal dynamics and stability of the state are dire,

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138 *Ibid.*, p. 81.
139 *Ibid.*, p. 88.
140 *Ibid.*, p. 89.
141 *Ibid.*, p. 93.
142 *Ibid.*, p. 91.

civil wars are more than just local disturbances – they have regional implications. Walzer endorses intervention to help an established government defeat a (nascent) revolutionary or secessionist movement that does not represent a wider majority of the population: the government is, in this instance, the official representative or guarantor of *communal autonomy*.[143]

Intervention, Kimberly Hudson concurs, is permitted to assist the government, but not a nascent rebel group.[144] Such a rebel group must gain a measure of success and control over territory and its population (via self-help) to be considered "equal in status" in relation to the central government. Once both sides are "equal in status", neutrality is required: foreigners are neither permitted to carry on (or start) assisting the government nor are they allowed to support or start supporting the rebels.[145] Counter-intervention is only permissible to aid the government if an alien power is (already) assisting a secessionist movement. Therefore "counter-intervention is morally possible only on behalf of a government (or a movement, party etc.) that has passed the self-help test [emphasis added]."[146]If a foreign power is aiding the government and a rebel movement has met the self-help test, a counter-intervention would be permissible to assist the rebels. Such a counter-intervention should be aimed *only* at restoring "the balance to what it would have been without the initial, unjust, intervention."[147]

Walzer's fourth exception to the legalist paradigm is when there is humanitarian intervention. Unlike wars of secession and counter-intervention, the appeal to self-determination in the Millian sense of self-help is not attractive as a solution to gross human rights' violations (e.g., enslavement, massacre, genocide, or ethnic cleansing) committed by the dominant party within a state. A state that turns savagely upon its own people, Walzer argues, forfeits its existence as a (sovereign) political community to which the idea of self-determination might apply. In the event of mass human rights' violations, the test of self-help does not apply.

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[143] *Ibid.*, p. 96.

[144] Hudson, K. (2009). *Justice, Intervention, and Force in International Relations: Reassessing Just War Theory in the 21st Century*. Routledge, p. 13.

[145] *Ibid.*

[146] Walzer, *Just and Unjust Wars*, p 99.

[147] Hudson, *Reassessing Just War Theory,* p. 14.

According to Hudson, the victims' inability to help themselves and the horrors of grave human rights' violations at the hands of the government, allow foreign powers to intervene.[148] Walzer, though an advocate of humanitarian intervention, argues that examples of 'humanitarian' motive are very rare. What he has encountered throughout his work is only a mix of cases in which the humanitarian motive is one among several. Saving the lives of strangers, it appears to Walzer, has never been the only reason states send soldiers into other states.[149] In domestic decision-making, the lives of foreigners matter little or at least not more than those of citizens. Humanitarian intervention is, at best, partly humanitarian and leaves room for scepticism and further inquiry.

One of Walzer's paradigmatic cases of humanitarian intervention was the 1971 Indian intervention in East Pakistan (now Bangladesh).[150] When the Bangladeshis led an uprising for political independence and democracy, the Pakistani Army violently quelled the revolution. The army subsequently perpetrated indiscriminate killing of Bengali civilians, attempted to exterminate Hindus, and committed arbitrary arrests, torture, and rape.[151] India's varied motives converged on a single course of action: humanitarian intervention, at the request of the Bengalis. Both strategic and moral considerations motivated India's intervention. As Heinze writes, the intervention in East Pakistan had humanitarian justifications, invoked in tandem with self-defence justifications.[152] For instance, it halted a massacre and potential regional instability that could have ensued from the massive refugee outflow and internal displacement. It is clear that views expressed above revolve predominantly around just causes *for* war.

The means adopted *in* war meanly relate to *jus in bello* principles enshrined in International Law and international Humanitarian Law (IHL). The principles pertain to, first, who and what may or may not be considered a legitimate target of military attack (*discrimination/non-combatant immunity*) and, second, limits placed on the extent of force to be employed to eliminate threat (*proportionality #2*) – with a particular aim of limiting the effects

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[148] *Ibid.*, p. 15.
[149] Walzer, *Just and Unjust Wars*, p. 101.
[150] *Ibid.*, p. 105.
[151] Heinze, *Waging Humanitarian War*, p. 79.
[152] *Ibid.*, p. 76.

of war. According to the literature, the principle of discrimination/non-combatant immunity seeks to protect civilians not involved in combat and not legitimate targets of attack. Only those actively engaged in warfare are considered legitimate targets.

A distinction there should always be made between combatants and non-combatants. But the literature on *jus in bello* insists, Walzer[153] and Frowe and Lang[154] write, that the doctrine of *moral equality of combatants* applies. This doctrine argues that, irrespective of whether one side fights for an *unjust cause* or not, all combatants (just and unjust) are considered moral equals and must fight justly. However, others are critical of the view that combatants fight as moral equals. Jeff McMahan, for example, argues that unjust combatants who fight for an unjust cause are not justified and should not be excused from attack – only just combatants fighting for a *just cause* are justified to kill.[155] As highlighted above the principle of proportionality pertains to the means committed to an act and the quantum of force allowed in conducting or achieving the objective of that act (these are talked to in the next chapter). It could be argued therefore that the two traditional categories of *the just war theory – jus ad bellum* and *jus in bello* – have dominated the literature on the ethics of war and peace. This owes, to a great extent, to Walzer's assertion in his seminal work, *Just and Unjust Wars*, that:

> *The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt*.[156]

Fixdal and Smith write that, as a general rule, these two parts must be satisfied for war, or humanitarian intervention in our case, to be considered just.[157] Theorists have thus paid little attention to the third part, *jus post bellum*, of the just war theory. However, for complete

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[153] Walzer, *Just and Unjust Wars*, pp. 34-47.
[154] Frowe, H. and Lang, G. (2014). *How We Fight: Ethics in War*. Oxford University Press: Oxford.
[155] McMahan, J. (2004). 'The Ethics of Killing in War'. *Ethics*, 114:4, 693-733.
[156] Walzer, *Just and Unjust Wars*, p. 21.
[157] Fixdal, M. and Smith, D., (1998). 'Humanitarian Intervention and Just War'. *Mershon International Studies Review*, 42, 283–312, p.290-305.

application of the theory, some scholars like Larry May,[158] Brian Orend,[159] and Eric Patterson,[160] are inquiring into the importance of this part, and the possibility of developing principles that can regulate wars' endings and post-war settlements. May argues, in *After War Ends*, that "the object of a just war is the achievement of a just and lasting peace."[161] Orend echoes the same sentiment in *The Morality of War,* in which he suggests a working framework for *jus post bellum* (justice after war) – more on this in *chapter five*. Similarly, *Beyond War's Ethics*[162] also adds new insights to the literature on the justice of peace after war. The significance of *jus post bellum* is as old as the just war theory itself. According to May, Francisco Suarez argued that:

> *One may deny that war is opposed to an honourable peace but one cannot deny that war is opposed to an unjust peace, for war is more truly a means of attaining peace that is real and secure.*[163]

As such, wars of self-defence and for the defence of innocent others are just because they have just peace as their object. Humanitarian intervention has been a contested norm and practice in its classic sense. The emergence of the R2P doctrine and its insistence on sovereignty as responsibility, it seems, has brought about a semblance of international consensus on the practice of humanitarian intervention. Although R2P is by far the most comprehensive framework for humanitarian intervention since, for example, the Geneva Conventions which focuses on *in bello*, its reception has not been completely positive. Siddharth Mallavarapu, like Chomsky, contends that R2P only serves the neo-colonial interests of powerful states: he "concur[s] with the view that R2P has not been able to circumvent in any fashion the more generic 'paternalism' of the powerful that has long characterised the dominant framings of contemporary international

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[158] May, L. (2012). *After War Ends: A Philosophical Perspective*. Cambridge University Press.
[159] Orend, B. (2013). *The Morality of War*. Broad View Press.
[160] Patterson, E. (ed.) (2012). *Ethics Beyond War's End*. Georgetown University Press.
[161] May, *After War Ends*, p.10.
[162] See *footnote* 160.
[163] *Ibid.*

relations practice".[164] Therefore, R2P represents *old wine in a new bottle*: it is cosmetic in its effort to remedy both the legacy and perils of humanitarian intervention. In *The Responsibility to Protect: A Defence*, Alex Bellamy argues in defence of R2P, claiming that it is "the best chance in our time to build an international community that is less tolerant of mass atrocities and more predisposed to preventing them."[165] R2P, Bellamy further asserts, has achieved what other projects aimed at eliminating genocide and mass atrocities have not been able to do, i.e. ensure a genuine and resilient international consensus.

Bellamy refers to the 2005 unanimous endorsement of the doctrine, its reaffirmation in UNSC resolutions and the Secretary-General's report. The R2P in its broad (ICISS) sense consists of three action-guiding categories of responsibilities, i.e. to *prevent*, *react*, and *rebuild*. The *responsibility to prevent* (*R2Prevent*) entails proactive measures taken "to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk."[166] The *responsibility to react* (*R2React* or military intervention) takes effect in:

> *Situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international crimes prosecution, and in extreme cases military intervention.*[167]

The *responsibility to rebuild* (*R2Rebuild*) aims to provide, especially after a military intervention, assistance with recovery, reconstruction, and reconciliation to address the underlying causes of harm the intervention was designed to halt or avert.[168] R2P in the 2005 World Summit Outcome Document revolves around the second category, *R2React*, which is split up into three pillars of responsibility. First, states have a responsibility to protect their populations from mass atrocities. Second, the international community has the responsibility to encourage and assist states in

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164 Mallavarapu, S., 'Colonialism and the Responsibility to Protect', in Thakur, R and Maley, W. (eds.) (2015). *Theorising the Responsibility to Protect.* Cambridge University Press, p. 306.

165 Bellamy, A. (2014). *The Responsibility to Protect: A Defense*. Oxford University Press, p. 1.

166 ICISS, *The Responsibility to Protect*, p. xi.

167 *Ibid.*

168 *Ibid.*

meeting that responsibility. And, third, a manifest failure of states to protect their populations opens the door for timely and decisive collective international action in accordance with the UN Charter. Cristina Gabriela Badescu argues that the unanimous adoption of this modified, 'weaker' R2P by the international community was a "result of a compromise to obtain the consent of the concerned states."[169] The Secretary-General's 2009 report also emphasises the "narrow but deep" R2P (predicated on *R2React*). Confining R2P to four mass atrocity crimes and violations agreed upon at the 2005 UN Summit begs the question whether R2P that does not fully prioritise its integral parts – *R2Prevent* and *R2Rebuild* – is deep enough. Although the UN Charter provides tools and measures to prevent, deter, and respond to serious violations of human rights,[170] the narrow R2P it has adopted may be too restrictive to ensure imperative preventive action (but some might argue otherwise).

The *narrow* R2P runs the risk of creating a situation that requires immediate military intervention, which might be ill-conceived at times. But it should be noted that the UN (though nothing is explicitly mentioned in its 2005 World Summit Outcome Document) has long championed preventive measures, now envisaged by the *R2Prevent,* in its endeavour to maintain international peace and security. This is to say that the recourse to military intervention – as a last resort – should be preceded by non-coercive measures that prove to have failed to avert an imminent massacre or a 'conscience shocking' event.[171]

Only when there is little or no time to appeal to non-coercive measures in the face of a massacre – or where a massacre is ongoing – can immediate military intervention take effect. While sufficient attention is paid *to R2Prevent* and *R2React* elements, little is said about *R2Rebuild*. The *South African Institute of International Affairs (SAIIA)* hosted an event on "The Responsibility to Protect: Ten Years On" in December 2015. As the keynote speaker, Gareth Evans mentioned that the ICISS laid the ground for consensus on the R2P doctrine with:

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[169] Badescu, *Humanitarian Intervention and the Responsibility to Protect*, p. 6.

[170] Luck, E. C. (2008) The United Nations and the Responsibility to Protect. *The Stanley Foundation*, Policy Analysis Brief.

[171] ICISS, *The Responsibility to Protect*, p. xiii.

> *The substantive focus of debate away from single-minded preoccupation with coercive military to a much more nuanced spectrum of preventive, reactive and rebuilding strategies.*[172]

Interestingly, Evans underlined the significance of 'R2P as a Preventive Framework', i.e., the first category of the broad R2P as articulated in the ICISS report. He argued, first, that long before any atrocity crime has occurred or has been threatened, but when ethnic, religious, economic or other grievances etc., manifest themselves, preventive measures should be in place to nip these triggers of catastrophe in the bud. Second, the accumulation of warnings (like hate propaganda) should be countered by more rapid and focused preventive action if catastrophe is to be averted. Third, and more interestingly, there is a crucial need to rebuild the society in a way which structurally addresses all the underlying causal factors so as to ensure that the whole ugly cycle (of conflict) does not recur.

The literature on just war theory has focused on the first two parts – *jus ad bellum* and *jus in bello*.[173] The nascent R2P, therefore, appears to be destined for a similar fate, with no attention given to the justice in the termination of war or to the root causes of war. For this reason, the study emphasises the importance of *just post bellum* and *R2Rebuild*. War has three phases: beginning, middle, and end. For a complete *just war theory*, Orend argues, we simply must *discuss* justice during the termination phase of war.[174] Failure to do so opens the door to a sharp, potentially devastating objection from contending schools of thought – *realism* and *pacifism* – analysed in the next chapter.

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[172] Evans, G. (2015), 'The Responsibility to Protect: Ten Years On'. A speech delivered at the *South African Institute of International Affairs*. Available at: https://t.co/kCmQn1ypBT [accessed: 23/10/2015].

[173] Orend, *The Morality of War*, p. 185.

[174] *Ibid.*

CHAPTER THREE:

THEORETICAL FRAMEWORK

War is perhaps an inevitable part of human existence. Is war ever morally just? Or is it entirely driven by and premised on *realpolitik* calculations and interests – as opposed to *moral* considerations? And, is it abhorrent or desirable to start and fight wars in order to protect human rights and achieve a better state of peace? This chapter analyses the three significant perspectives – *pacifism*, *realism*, and *just war theory* – applicable to the ethics of war and peace in real world situations. In particular, it serves as a defence of the *just war theory* that attempts to explicate the moral permissibility of and limits placed on initiating, fighting, and ending wars.

3.1 Pacifism

Pacifism comes in different forms, but much of the thinking revolves around the thesis that all waging of war is *always* morally wrong.[175] This pacifist objection to war in all its forms has been termed 'anti-warism' by the oft-cited Jenny Teichman.[176] Pacifists believe that moral judgement is applicable in international affairs: however, they do not agree on its applicability to warfare. Their conviction is that war is never morally permissible. According to Orend, a pacifist does not only object to violence but killing in general and mass killing in particular.[177] Pacifists share with just war theorists the idea that morality applies to international affairs, but are hardnosed in arguing that there are no moral grounds which can justify resorting to war.

Orend identifies three types of pacifism: a *virtue* form of pacifism, a *consequentialist* form of pacifism, and a *deontological* form of pacifism.[178] The kernel of *virtue pacifism* is that warfare and war-fighting are not praiseworthy because they involve violence, killing, and bloodshed. These are not, in any shape or form, virtuous activities: rather, they are directly at odds with the ideal life (i.e. a fully realised and excellent human life) – the life on which virtue ethics rests. War, virtue pacifists would have it, cannot be a gateway to any sane person's idea of

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[175] Dower, N. (2013). *The Ethics of War and Peace*. Polity Press: United Kingdom, p. 117; Orend, *The Morality of War*, p. 273.

[176] Teichman, J., (1986). *Pacifism and the Just War: A Study in Applied Philosophy: A Philosophical Examination*. Basil Blackwell.

[177] Orend, *The Morality of War*, p. 273.

[178] *Ibid*., pp. 275-292.

a flourishing or excellent life. Moreover, they would refuse to fight a war in spite of the danger because it is, as Orend writes, a destroyer opposed to creativity and life, and thus inconsistent with love. The idea here is suggestive of peace being a virtue in itself – an inextricable part of human existence – and therefore one we must always orient ourselves toward.

The ethical key to *consequentialist pacifism* is whether the world ends up better than it would have been had there been no action at all. As put by Heinze, "the moral rightness of human action is judged according to the consequences it brings about in terms of value or good."[179] The notion here, Orend notes, is that the right thing to do is to perform only that action which is going to bring about the best contribution to the world's overall well-being. This speaks to utilitarianism, made popular by Jeremy Bentham and J.S Mill, which is often said to be a good example of consequentialism. In fact, in *On War: A Dialogue*, Orend calls this the main kind of consequentialism.[180] Utilitarians, he argues, think that the main thing each of us should do with our lives is to do what we can to make the world a better, happier, more pleasant, and less miserable place. This is, ostensibly, a morally plausible pacifist argument. War makes the world a worse place: its human and financial implications for warring parties always leave much to be desired. Consequentialism is thus engaged in a precarious business of trying to predict the costs and benefits of available options. What follows the cost-benefit analysis is a mandate to act in accordance with the option that yields benefits (i.e. pleasure, happiness, or welfare) to the overall world. To consequential pacifists, war is good for absolutely nothing if its outcome proves to be antithetical to the world's overall welfare (or ideal life).[181]

Deontological pacifism, a duty-based ethics doctrine*,* holds that it is incumbent upon a pacifist never to aggress, use force, or support or engage in war against another.[182] Deontological pacifism, as Nagel Dower writes, holds that "apart from the general consequences of fighting, it is wrong to fight in wars *per se* irrespective of consequences."[183] Hence the label 'deontological',

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[179] Heinze, *Waging Humanitarian War*, p.4.

[180] Orend, B. (2008). *On War: A Dialogue*. New York: Rowman & Littlefield Publishers, Inc., p. 143.

[181] Orend, *The Morality of War*, p. 280.

[182] Moseley, A. 'Pacifism'. *Internet Encyclopedia of Philosophy: A Peer-Reviewed Academic Resource*. Available at: www.ieputm.edu/pacifism/ [accessed: 10/01/2015].

[183] Dower, *The Ethics of War and Peace*, p. 13.

which refers to the idea of obligation or duty not based on virtue or consequences. Ideas such as having an obligation, a responsibility, or a duty are the most uniquely moral ones and the essence of ethics. The injunction that one has to carry out an obligation or a duty as may be permitted or demanded constitutes the general rule of morality, like 'thou shall not lie,' as Orend pens.

The core argument of deontological pacifism is, as Orend emphasises, that "*the very activity of war-fighting violates a foremost duty of morality*."[184] Waging war as a means to an end is, in and of itself, unjust. The just cause or 'justice' for which the war is fought cannot, according to deontological pacifists, redeem the injustice of the means (fighting) employed. Deontological pacifists believe that there are alternatives which are highly superior in terms of international dispute prevention and resolution. For example, diplomacy, economic sanctions or organised campaigns of non-violence are preferred non-coercive solutions to both extreme and non-extreme situations.

3.2 Realism

Realism is one of the predominant schools of thought in the study of international relations. Thucydides, Niccolo Machiavelli, and Thomas Hobbes are often cited as classical forefathers of political realism. Colin Elman notes that Thucydides' history of *The Peloponnesian War* illustrates realism's scepticism when it comes to the restraining effects of morality.[185] In a speech attributed to the Athenians in the *Melian Dialogue*, Thucydides notes, as we all know, that "right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must."[186] The growth of Athenian power led to a shift in the balance-of-power and caused fear in Sparta, thereby making war inevitable. The seeds of power politics were sown in this period of antiquity. Realism is disposed to hold a pessimistic view of human nature, which made realist thinkers like Machiavelli "argue for strong and efficient rulers for whom power and security are the major concerns."[187] These rulers, unlike individuals, are not bound by individual morality. They hold that "any action that can be regarded as important for the survival of the state carries with it a built-in justification."[188] In other words, anything the

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[184] Orend, *The Morality of War*, p. 283.
[185] Elman, C., 'Realism', in Griffiths, M. (ed.) (2007). *International Relations Theory for the Twenty First Century: An Introduction*. Routledge, p. 11.
[186] *Ibid*.
[187] *Ibid*., p. 12.
[188] *Ibid*.

rulers deem central to the survival of their states is pursued, without appeal to moral principles, regardless of implications for others. Hobbes's notion of a 'state of nature' in which the absence of overriding authority (modelled on the state-inhabitant relationship) allows human appetites to be pursued without restraint comes to mind. In such an anarchical international system, human beings are constantly at war, with life being concomitantly 'solitary, poor, nasty, brutish, and short'.[189] Realists are sceptical about the applicability of moral concepts between states and in international affairs. David Fisher puts it this way: realism holds that "relations between states, in general, and warlike relations, in particular, are governed not by morality but by *realpolitik*."[190]

Morality, realists are convinced, is of no importance to states' relations and warlike actions because states are predominantly influenced by the anarchic nature of the international system and must act according to their national or strategic interests. For realists, states ought to resort to war only if it makes sense in terms of self-regarding interests. Once initiated, war ought to be fought for the purpose of emerging victorious. If adherence to just war principles and international law hinders the prospects of a state, it should stick steadfastly to the realist disposition of protecting its fundamental interests (power, national interests, and security).[191] According to Walzer, realism "imposes no moral requirements" on states, either in war or more broadly in international affairs. A realist critique of just war theory is that the latter claims to limit war's destructiveness and to regulate the conduct of war while concealing 'the awful truth'.

This alleged truth is that war exposes the just war theorist's naked fearfulness, self-concern, drive, and the inclination to murder other human beings. What this suggests is that just war theorists, or even states, appeal to moral reasoning as a smokescreen for their realist-leaning interests. Realists do not shy away from asserting such "truth" or reality, as it were. Walzer, Orend, and Fisher refer to the *Melian Dialogue*, briefly highlighted above, as a classical example of realism.[192] *The Peloponnesian War* between Athens and Sparta spanned twenty-seven years, culminating in the defeat and crushing of the former and its democracy. Athens sought to

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[189] *Ibid.*, p. 13.

[190] Fisher, *Morality and War*, p.11.

[191] Orend, *The Morality of War*, p. 251.

[192] Walzer, *Just and Unjust Wars*, p. 5; Orend, *The Morality of War*, p. 252; Fisher, *Morality and War*, p. 11.

consolidate its power by usurping eastern Mediterranean islands that were not part of its Empire. Melos, the former colony of Sparta, was one such island. Athens had invited, without success, Melos to become its subject. The Athenians invited the Melians to a dialogue before resorting to military action in order to annex Melos. The dialogue took place on arbitrary terms set by Athenian generals. Moral justifications were put aside because "the standard of justice depends on the power to compel"[193]: the strong do what they can and the weak suffer what they must, as the saying already alluded to goes. But the Melians refused to succumb to pressure and insisted on remaining neutral and independent. Subsequently, they were invaded and crushed by the Athenians. To just war theorists, this amounted to classic aggression deserving of a repulsing response and punishment, while it is normal and not an abhorrent encroachment in the eyes of realists.

Orend distinguishes between *descriptive* realism and *prescriptive* realism. *Descriptive* (or factual) realism argues that states are the dominant actors in an international arena devoid of an overriding international authority. This arena is thus characterised by anarchy whereby "states simply don't care about morality and justice; [rather,] they care about their own interests."[194] The UN is neither a perfect nor reliable enough organisation for states to appeal to for purposes of security, peace, and even justice. It is an organisation whose Security Council is still dominated by the five veto-wielding permanent member-states (the US, China, France, Russia, and Britain). The organisation is, therefore, far from having the kind of unfettered authority over its "subjects" that nation-states have over theirs. The lack of a reliable, overriding international authority thus leaves states in constant insecurity and fearfulness, and with the will to maximise their power and national interests to survive vis-à-vis each other.

Hans Morgenthau, one of the prominent modern realists, argues that "we cannot speak meaningfully of state behaviour in terms of moral concepts and judgements."[195] Moral concepts – unlike power, interests, and security – are literally inapplicable to international relations and warfare. So, to realists, a 'category mistake' results when (moral) rules which make sense *interpersonally* fail to make sense *internationally*. In other words, moral concepts that apply in

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193 Fisher, *Morality and War*, p. 12.
194 Orend, *The Morality of War*, p. 253.
195 *Ibid.*

relationships or conflict between individuals (within national borders) do not do so between states (at an international level). States, realists argue, are not like big persons: the rules and principles which apply to persons cannot be expected to apply to states. Unlike the domestic arena, the international arena is not actually a place in which free choice – including morally responsible choice – prevails.[196] States have no choice, whatsoever, but to act on the basis of *necessity*: hence they need to act on the basis of maximising power and safeguarding interests in order to survive in an anarchic state of nature. To realists, war is an entirely predictable, even inevitable, reality of the interstate system. Just war theory's attempt to restrain warfare, they argue, is merely wishful thinking and at odds with the reality of the world.

Prescriptive (or normative) realism rests upon the notion that "states *should* only care about maximising what they take to be their own enlightened national interest."[197] Orend makes a distinction between two types of prescriptive realism: *prudential* prescriptive realism and *moral* prescriptive realism. First, states ought, *prudentially*, to act in their best national interests in international affairs. A realist foreign policy predicated on selfish national interests and the assertion of strategic power is considered 'smart' and advantageous. Though moral considerations can be relevant in international affairs, states should invariably act in a realist fashion even if it is not strictly about necessity. Thus, states need not be too moral; rather, they should behave prudently to do better for their own people. More universally, states should do away with morality in their international relations "because everyone would thereby be better off."[198] If each state is prudentially fixated on its own interests, the world would be much more peaceful.

Moral beliefs at an international level, realists argue, create disagreements because people exceedingly care about their own vision of justice and usually stand by their convictions at all odds. Hitler's belief, for instance, that it was just for Nazi Germany to conquer Europe because of its supposed racial superiority was one of the main triggers for WWII. Since war is a costly and risky business, it should, essentially, be resorted to only when a state's interests are genuinely at stake or severely threatened. Once the war has started, it should be conducted with

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[196] *Ibid.*, p. 254.
[197] *Ibid.*, p. 257.
[198] *Ibid.*, p. 258.

prudence and with a view – irrespective of whether or not just war rules are observed (albeit there is no question of such observance here) – to safeguarding or expanding a country's national interests to ensure its own survival or dominance.

Secondly, the moral prescriptive realism view holds that, *morally*, states ought to be motivated by national interests in their international relations. Morality itself, Orend observes, demands prudence on the (anarchic) international stage.[199] Moral prescriptive realism is grounded in *universal* and *particularist* notions. From a *universal* (or impersonal) perspective, "states ought to be animated internationally only in terms of self-interested prudence," not morality.[200] Why? Realists would argue that because moral animation engenders an international arena fraught with intolerance, arrogance, and disrespect between autonomous people committed to a divergent set of moral values. In terms of the *particularist* (or nationalist) perspective, global moral duties simply do not exist. Realists contend that moral norms alter or change along national borders; therefore, they alter radically on the international level. So, it is smart for states to adhere only to norms of prudence internationally.

Realists also believe that a 'legitimate' national government acts as trustee or advocate for the people, and its overriding duty is to protect the well-being of its people. Since individual identity is linked to national membership and shared experiences, values and customs, a moral community imbued with mutual recognition and regard emerges. Such mutuality is not present on the international stage because of the lack of genuine shared culture and even the congruity of moral values. Realists would, therefore, be quick to discard Walzer's domestic analogy, which argues that states are like a society of individuals, and therefore relations between individuals and relations between states are similar. Morally prescriptive realism, whether universal or particularist, advises that it is *not* only prudent but entirely moral to initiate a war based on carefully calculated national interests. Once involved in the conduct of war, the best a state can do, morally, is to quickly win the war with as little human and financial cost to itself as possible. In a nutshell:

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199 Orend, *War and International Justice*, p. 138.

200 Orend, *The Morality of War*, p. 263.

> *The primary obligation of a national government is to the interests of the national society it represents, its military security, the integrity of its political life, and well-being of its people.*[201]

Foreign policies informed by morality create an insecure, threatening situation as a result of the clash of incongruent moral ideals between states. Prudential tactics and moral commitments may converge toward the achievement (or protection) of national interests. Therefore, a state acts morally and prudentially (and, of course, selfishly!) to realise its national interests. So, the view holds that what is important for a state is that it acts in a manner that honours its social contract with citizens.

3.3 Just War Theory

The first section of this chapter demonstrated that pacifism's basic argument against the moral permissibility of war is that it involves the use of force, which inevitably leads to the killing of human beings. Therefore, pacifists hold that war – whether fought in self-defence or in defence of the other – is morally wrong and should never be embarked on. The second section presented realism's scepticism about the applicability of moral concepts to international relations and warfare. According to realists, moral concepts should neither prescribe nor circumscribe a national government's actions. Here a state ought to, prudentially, behave in a manner that maximises or safeguards its power, security and overall national interests. "Norms", according to Bellamy, "might cloak the exercise of power in moral language but they cannot constrain"[202] the proclivity of nation-states toward self-regarding actions or inactions.

Moral concepts take, at best, the backseat in international relations and wartime situations, in which a state envisages absolute victory or whatever outcome is deemed desirable and in the best interests of its people. Just war theory, it is often pointed out, assumes a middle position between pacifism and realism. It justifies the use of military force in extreme situations and constraints on such use of force in non-extreme situations. The position occupied by just war theory is a precarious one in which a balance must be struck or there is a risk of moving the

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[201] Orend, *War and International Justice*, p. 139.

[202] Bellamy, *Massacres and Morality*, p. 40.

theory too close to, or collapsing into, either pacifism or realism.[203] Just war theory permits limited war: it consists of a set of rules and norms that control military violence, and permits or restricts its exercise. This position is perhaps what makes just war theory relevant, and undeniably dominant, in the ethics of war and peace. The moral reality of war, as alluded to in the previous chapter, is divided into two parts: *jus ad bellum* and *jus in bello*. Brian Orend also advocates for a third part, *jus post bellum* (the focus of chapter five), which has only recently "come into the prominence it deserves."[204] I now turn to the first two parts of just war theory.

3.3.1Jus Ad Bellum

Jus ad bellum is concerned with the justice of war or, more specifically, the moral constraints placed on any attempt to resort to war. Walzer contextualises jus ad bellum in his *theory of aggression* articulated by the legalist paradigm, as presented in the previous chapter. Walzer's revisions to the legalist paradigm speak, primarily, to the just causes for war. Just cause is but one of the main conditions that must be satisfied if war is ever going to be considered morally just. Before delving into all the conditions under jus ad bellum, it is imperative to mention what Walzer means by the 'crime of war'. War is a brutish part of human experience. However, it is "hell whenever men are forced to fight, whenever the limit of consent is breached."[205]

Men should engage in armed struggle only when they are willing to. So, a state is in breach of the limit of consent if, for instance, it conscripts and forces men to fight on behalf of the nation. So, men go to war either under constraint or as a matter of conscience. The 'crime of war', therefore, is when people (including non-combatants) are forced to fight irrespective of whether or not their state is guilty (or innocent) of aggression. States or political leaders are responsible for the 'tyranny of war' – a war in which the people, and particularly those from a nation that is not guilty of aggression, are forced to fight a war. A just war is one in which decision makers do not initiate the crime of war (aggression) but initiate a war of self-defence.

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[203] Lee, S. (2007). *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory* Springer, p. 4.

[204] Orend, *The Morality of War*, p. 185.

[205] Walzer, *Just and Unjust Wars*, p. 28.

The *just war theory* is traditionally comprised of the following *jus ad bellum* conditions regulating the *resort to* war: The **just cause** is the first which is perhaps the most important criterion of just war theory. According to Rengger, Vitoria argues that there is a single just cause for starting a war, namely, a 'wrong received'[206]. But the reason for resorting to war must itself constitute a genuinely just reason. A wrong received normally refers to aggression which may be resisted and repulsed. Every state has a right, as enshrined in international law, to defend itself against aggression. Collective self-defence, on behalf of the aggressed state, is also legally and morally permissible.

Modern just war theorists, like Walzer, include highly contested just causes: these include pre-emptive strikes, where there is not only an imminent but also a sufficient threat, and failure to launch the first attack would seriously risk compromising a state's territorial integrity and political independence.[207] Aggression, Jean Bethke Elshtain writes, may be committed against a nation or a people incapable of defending themselves against a determined adversary.[208] Insofar as the latter goes, St. Augustine's notion of saving the innocent who are in no position to defend themselves against certain harm, or even against humanitarian intervention, has been recognised as a justifiable cause.[209] But what degree of humanitarian threat or crisis qualifies as a just cause, sufficiently grave to warrant a military action?

According to Walzer, humanitarian intervention is justified when in response to "acts that shock the moral conscience of mankind."[210] However, James Pattison argues that Walzer "sets the bar too high for humanitarian intervention," and it is unclear as to what precisely constitutes acts that shock the moral conscience of mankind.[211] For this reason, Hudson, as cited in Margaret DeGuzman,[212] critically contends that the (actual) number of victims is irrelevant to

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[206] Rengger, *Just War and International Order*, p. 74.

[207] *Ibid.*, p. 85.

[208] Elshtain, J.B. (2001), 'Just War and Humanitarian Intervention', *The National Humanities Center*, Vol. 8, No.2, p. 8.

[209] *Ibid.*

[210] Walzer, *Just and Unjust Wars*, p.107.

[211] Pattison, J. (2011). The Ethics of Humanitarian Intervention in Libya. *Ethics & International Affairs*, 25, No. 3 271-277, p. 272; Hudson, *Reassessing Just War Theory*, p. 59.

[212] DeGuzman, M.M. (2014), 'When Are International Crimes Just Cause for War? *Virginia Journal of International Law*, Vol. 55:1.

the just cause threshold judgement. According to DeGuzman, Hudson also believes Walzer's bar is set too high "because it excludes many of the crimes listed in the ICC statute,"[213] all of which – by their nature shock the conscience of humanity. I would argue that for war to be less permissible, such conscience-shocking acts should, logically, be confined to mass atrocities like genocide, war crimes, crimes against humanity, ethnic cleansing and, as Walzer would include, official enslavement. However, it is difficult to tell what – in a numerical sense – really constitutes genocide. In addition, it is uncertain as to what, at the very minimum, can shock the moral conscience of mankind. Pattison makes an argument, with which I categorically agree, that a morally defensible just cause is the one presented by the ICISS. It suggests that there should be:

> *Circumstances of actual or apprehended (a) large-scale loss of life, with or without genocidal intent, which is the product of deliberate action or neglect, or (b) large-scale ethnic cleansing, whether carried out by killing, forced expulsion, or acts of terror or rape.*[214]

The **right intention**, drawing on Augustine, argues that war must only be fought for the sake of the just cause or a just peace. War, in other words, must be initiated to correct the wrong that occasioned the war in the first place. The right intention, as Walzer and Heinze independently note, brings about a convergence of moral and amoral motives for resorting to (and conducting) war, as the 1971 Indian intervention situation in East Pakistan has shown.[215] Elshtain also concurs that:

> *Human motives and actions are invariably mixed, and war, when it occurs, is as likely to be an expression of justifiable outrage at injustice as an ineluctable bursting forth of our innate brutishness.*[216]

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[213] *Ibid.*, p.92.

[214] Pattison, *The Ethics of Humanitarian Intervention*, p. 272; Evans, G. (2009), *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*. Brooking Institution Press.

[215] Walzer, *Just and Unjust Wars*, p. 105; Heinze, *Waging Humanitarian War*, p. 76.

[216] Elshtain, *Just War and Humanitarian Intervention*, p. 5.

The aphorism "might makes right" does not always hold true. The might never makes right argues a just war theorist, but may sometimes, on balance, serve what is right.[217] Mixed motives will always be there; as such, states should not be driven by self-interest to the extent of undermining the justice of their cause. Admittedly, intentions and motives always mix but the distinction between the two has been better elucidated by Tesón[218] and Glaser[219] with reference to the 2003 US invasion of Iraq.

"Intention", Tesón argues, "covers the contemplated act, what the [intervener] wills to do."[220] State A, for example, sees a State B in a humanitarian crisis, decides to intervene to rescue State B's people and successfully does so. In addition to having the intention rescuing State's B's people, State A must commit to it. The act of rescuing should be willed and its consequences must also be willed: failure to rescue, because of lack of effort or resources input, could render one's act not an act of rescue (and we could say it cannot be justified as such). According to Tesón, there exist a direct link between willing to rescue, committing to rescue, and actually rescuing people.[221]

Motive, by contrast, is a *further* goal the intervener wishes to accomplish in addition to the main goal (intended act). Tesón gives a good example that State A intervenes in State B with an ulterior motive of appearing as a responsible state, militarily capable or hegemonic (in addition to, first, rescuing the people in dire need of humanitarian rescue).[222] The humanitarian act of rescuing people was good although the non-altruistic motive can be considered bad. What is noteworthy here is that "the intention is more important than motive in evaluating action."[223] According to Glaser, this suggests that motives are irrelevant but "an analysis of the *intentions* of interventionists is important to any advance judgement of whether an intervention should be supported – precisely because these serve as better predictors of what is likely to transpire."[224] It

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[217] *Ibid.*
[218] Tesón, F.R. (2005) Ending Tyranny in Iraq. *Ethics & International Affairs*, 19, 1–20.
[219] Glaser, D. (2010), Can the doctrine of just military intervention survive Iraq? *Journal of Global Ethic,* 6:3, 287–304.
[220] Tesón, *Ending Tyranny in Iraq*, p. 5.
[221] *Ibid.*
[222] *Ibid.*
[223] *Ibid.*
[224] Glaser, *Can the doctrine of just military intervention survive Iraq?* p.291.

is in line with this distinction that the ICISS report recognises the main purpose of the intervention as the intention to halt or avert large-scale human suffering. An intervention with a humanitarian intent can ideally (but not exclusively) be carried out (a) as a multilateral, as opposed to unilateral, action, (b) commenced with local support of the receiving state's citizens, and (c) with the regional support of the intervention.

The **right authority**, a notion from the just war tradition, counsels that a state's resorting to war should be authorised by the appropriate authority or leader. For example, this would be a head of state, in line with a political community's constitution, and a public declaration to its citizens and the enemy state or states. The new kinds of war or asymmetric wars have seen the UNSC emerge as the primary legitimate body to authorise the resort to war. The UN is viewed, albeit not without contestations, as the legitimate body to have the final say on matters of warfare. A proper legal authorisation is, in the eyes of UN member-states, a *necessary* condition for a morally justified war.[225] The UN – or the UNSC in particular – is an imperfect organisation, whose composition has long been seen as anachronistic, unrepresentative, and unresponsive to challenges of the new international order. Fisher writes that the UNSC is an imperfect instrument "fashioned by humans who may not be impelled to behave by the highest ethical motives."[226] This is a realist disposition that speaks to the fact that the UNSC is comprised of great (veto-wielding) powers with varied national interests.

Such varied interests are usually divergent and thus invariably influence the veto-wielding powers' voting patterns on matters of peace and security, including humanitarian intervention. What if the UNSC dawdles or remains idle in the face of another Rwanda? Or dilly-dallies even after a unilateral action devoid of proper authorisation has saved lives in Kosovo? The ICISS report "admits the possibility of justifiable action outside the Security Council as a last resort." [227] Thus the international community has two feasible institutional alternatives. First, the UNGA, through its "Uniting for Peace" procedure, can authorise military action. And, second, regional or sub-regional organisations under Chapter VIII of the UN Charter, with prior

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[225] Pattison, J. (2010), *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford University Press, p. 43.

[226] Fisher, *Morality and War*, p. 68.

[227] Pattison, *Who Should Intervene?* p. 43.

authorisation by the UNSC, may take up the role.[228] Nevertheless, "there is no better or more appropriate body than the [UNSC] to authorise military intervention for human protection purposes."[229] If the UNSC proves unable or unwilling to act in the event of a dire situation, and a state assumes the initiative and successfully halts or averts gross human rights violations, the UN system's credibility and legitimacy would be seriously dented.

Proportionality #1 suggests that means employed must not fall short, nor exceed the minimum required to right the wrong that occasioned the war. The benefits of a war must outweigh its harms.[230] "If the amount of good that might come from a war is clearly going to be overwhelmed by the bad," Nick Fotion argues, "then the principle will not countenance going to war."[231] This condition is grounded in consequentialism. Fisher is of the view that this principle embarrasses anti-consequentialist just war theorists. Walzer, he notes, has little to say about the principle other than discarding it as:

> *A hard criterion to apply for there is no ready way to establish an independent or stable view of the values against which the destruction of the war is to be measured.*[232]

In simple terms, it is difficult, before waging war, to weigh the benefits of war against its costs due to uncertainty and the unpredictability of war itself. But Fisher thinks the application of *proportionality #1* is not as difficult as Walzer suggests because the just war tradition makes it clear that "the good against which the harm is to be measured is that specified in the just cause."[233] So when there is certainty that the costs of inaction are likely to be greater, or when the benefits of action are likely to outweigh those of inaction, resorting to war is deemed morally

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[228] Evans, G & Sahnoun, M. (2002), The Responsibility to Protect *Foreign Affairs*, Vol. 81, No. 6, pp. 99-110, p. 107.

[229] ICISS, *The Responsibility to Protect*, p. xii.

[230] Lango, J.L., 'Generalizing and Temporalizing Just War Principles: Illustrated by the Principle of Just Cause,' in Brough, M.W. *et al.* (eds.) (2007), *Rethinking the Just War Tradition*. State University of New York Press, p. 89.

[231] Fotion, N., 'Proportionality', in Coppieters, B. and Fotion, N. (eds.) (2008), *Moral Constraints of War: Principles and Cases*. Lexington Books, p. 127.

[232] Fisher, *A Last Hurrah*, p. 21.

[233] *Ibid*.

permissible. The **reasonable probability of success** is a cautionary note overreach, interconnected with *proportionality #1*, to be pondered prior to intervention. Interveners must, according to Elshtain, be certain before intervening – even in a just cause – that they have a reasonable chance of success.[234] We do not want to barge in and make a bad situation worse. According to John Mattox:

> *Unless the cause that compels military action is of such importance as to merit defence even in the face of seemingly overwhelming odds, a war that presents little or no hope of serving as a vehicle for obtaining satisfaction for just grievances is not morally justifiable.*[235]

In terms of R2P, there should be a reasonable chance of success to halt or avert the suffering which has justified the intervention, and the consequences of action should outweigh those of inaction.[236] **Last resort** is the condition that war should be preceded by peaceful or non-coercive methods of conflict resolution. The just war tradition has always sought to limit the decision to resort to war and this condition aims specifically to buttress this moral limit. So, in its contemporary form, just war theory maintains that war should not be undertaken until all other peaceful and reasonable means of resolving it have been tried.[237] The methods of dispute resolution, therefore, precede resorting to war. The R2P report points to such methods as diplomacy, (economic) sanctions, and peacekeeping missions. Walzer is, however, sceptical about the last resort criterion. He argues, in *Arguing About War*, that last resort would make war morally impossible. For we, in exploring and trying our 'peaceful' means, can never reach 'lastness', or can never know that we have reached it.[238] Walzer's criticism of the last resort criterion seems too permissive of the decision to resort to war. It can be argued that it is always morally defensible to try – and if needs be, exhaust – all peaceful methods before resorting to

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234 Elshtain, Just War and Humanitarian Intervention, p. 8.

235 Mattox, J.M. (2006) *Saint Augustine and the Theory of Just War*. Continuum, p. 10.

236 ICISS, *The Responsibility to Protect*, p. XII.

237 Elshtain, J.B., (1992), *Just War Theory*. United Kingdom: New York University Press, p.100; Raymond, G.A., 'The Greco-Roman Roots of the Western Just War Tradition', in Hensel, H. (2010), *The Prism of Just War: Asian and Western Perspectives on the Legitimate Use of Military Force*. Ashgate, p. 12.

238 Walzer, M. (2004), *Arguing About War*. Yale University Press, p. 88.

war unless, as the R2P report argues, there is little or no time to apply these means to halt or avert actual or apprehended large-scale loss of life or ethnic cleansing. We cannot always put every non-military alternative to trial when it is unlikely to vindicate our just cause. This principle of last resort should also be considered vis-à-vis the probability of success and the cost-benefit analysis. If the chances of peaceful means to vindicate the just cause are low or non-existent and their costs outweigh their benefits, they should not be tried. Sometimes situations, such as ongoing massacre or imminent and sufficient threat of massacre, require nothing less than swift and immediate military response.

3.3.2 Jus In Bello

Michael Walzer presents *jus in bello*, justice in the conduct of war, as "the war convention". The convention speaks to the adherence of combatants – both fighting for a just or an unjust cause – to the rules of law in the conduct of war. It comprises of Walzer refers to as:

> *The set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgement of military conduct.*[239]

The war convention includes a large number of conventions, mainly set forth in international law in general and IHL in particular. These are usually codified as international agreements such as The Hague and Geneva Conventions governing the conduct of war.[240] But the just war theorists have focused on two conditions that belligerents must observe in the conduct of war.

Discrimination/Non-combatant immunity: once the belligerents enter the battle zone, they must make a clear distinction between combatants and non-combatants, with the former normally constituting the only legitimate targets of military attack. Non-combatants have, traditionally, included wounded soldiers, prisoners of war (PoWs), clergymen, women and children not in the military and the aged as well as the infirm – all of whom are presumed not to

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239 Walzer, *Just and Unjust Wars*, p. 44.

240 Lee, S.P. (2011), *Ethics and War: An Introduction*. Cambridge University Press, p. 159.

be engaged in the war effort.[241] These non-combatants, Walzer notes, are men and women with "a moral standing independent of and resistant to the exigencies of war."[242] Just war theory's non-combatant immunity condition prohibits intentional killing of non-combatants but accommodates unforeseen – and of course unintended – harm to them. An individual cannot be justly attacked unless he has, through his own action, surrendered or forfeited his human rights (including his right not to be attacked). A combatant, conscripted or serving out of patriotism, forfeits some of his human rights and is liable to morally justified attack or killing. Civilian dwellings and other public settings are immune from military attack, too. Targeting military facilities at the heart of civilian-populated areas is sometimes permissible, even with collateral damage, because the target is legitimate. This exception is, according to just war theorists, articulated by the "doctrine of double effect" (DDE).

The DDE permits civilian casualties if (a) the act is good, which means that it is legitimate; (b) the direct effect is morally acceptable, i.e., the destruction of military facilities or the killing of enemy combatants; (c) the actor's intention is the acceptable effect, i.e., the attack on or killing of civilians is not the actor's end, nor is it a means to that end, and (d) the good effect is proportionately greater than the evil effect.[243] Since "non-combatants are often endangered not because anyone sets out to attack them,"[244] but because of, for example, being within the vicinity of military action, their harm or killing may not be morally objectionable.

Proportionality #2: The means used in the conduct of a war must be proportional to the ends pursued. That is, the means employed should not result in the destruction that goes beyond what is required to achieve the military goal. Numerous conventions have codified this *in bello* criterion, which serves to prohibit disproportional and indiscriminate means and methods of warfare that cause unnecessary suffering not only to combatants but to non-combatants as well. Holst and Fink argue that "even if an attack is limited to military objectives, planners and operators must take into account the risk of incidental harm to the civilian

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241 Mattox, *Saint Augustine and the Theory of Just War*, p. 11.
242 Walzer, *Just and Unjust Wars*, p. 135.
243 *Ibid.*, p. 153.
244 Walzer, *Just and Unjust Wars*, p. 151.

population."[245] That said, *proportionality #2* does not suggest that all civilian casualties are prohibited or that such casualties breach this principle. Rather, it suggests that:

> *Incidental loss of civilian life, injury to civilians, or harm to civilian property must not be excessive in relation to the concrete and direct military advantage anticipated.*[246]

Thus, collateral damage that is not excessive is not morally impermissible. What is legally and morally impermissible is the use of disproportional force, or indiscriminate weapons like nuclear, chemical and biological missiles.

Taken together, these just war principles regulate the *resort to* war and the *conduct of* war from a moral standpoint in an approach that no other alternative theory (either pacifism or realism) possibly can measure up to. Just war theory's core premise proves rigorous in a sense that its set of rules to permit war when and if there is reasonable need (e.g., in case of self-defence and other-defence) and restrain it when and if there is little or no reasonable need (e.g. in case of a usually repressive or undemocratic regime). The theory is, thus, neither pessimistic or restrictive, nor optimistic or permissive. The next two sections, *against pacifism* and *against realism,* attempt to prove why *just war theory* is sturdier in explicating the ethics of war and peace in international relations.

3.4 Against Pacifism

Michael Orend provides three types of arguments against pacifism, each directed at one of its variants: virtue pacifism, consequentialist pacifism, and deontological pacifism.[247] *Virtue pacifism*, like any other doctrine, is not without its problems which make just war theory superior in explaining issues around warfare. Orend, drawing on Walzer, argues that pacifists are excessively utopian – their commitments are unrealistic.[248] The brutish war committed through aggression is vehemently opposed by pacifists but might sometimes call for more vice

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[245] Holst and Fink, *A legal view on NATO's campaign in Libya*, p. 81.

[246] *Ibid.*

[247] Orend, *The Morality of War*, pp. 244-265.

[248] Orend, *The Morality of War*, p. 276; Walzer, *Just and Unjust Wars*, p. 77; Orend, B., 'War and Terrorism' in Moellendorf, D., Widdows, H. (2015), *The Routledge Handbook of Global Ethics*. New York: Routledge, p.100.

than virtue. Rewarding aggression would create self-perpetuating occurrence that is not, in any shape or form, part of a sane person's flourishing and excellent life. Just war theorists would argue that it is a virtue to defend one's citizens against aggression. Action aimed at achieving justice is, in itself, also a virtue.

Pacifists favour non-violent resistance to international aggression. To view non-violent tactics, i.e. civil disobedience and international diplomatic and economic sanctions, as universally reliable is 'unworldly,' according to John Rawls.[249] If an aggressor state cleanses its own citizens, non-violent tactics would sometimes not suffice to uphold pacifist virtues of nonviolence and no killing. Only military action, not inaction or prolonged non-violent tactics, holds the realistic prospects of actually defending values in the face of, e.g., genocide or ethnic cleansing. So, just war theory is "committed to an effective yet principled use of defensive armed force in the face of aggression," which ineluctably disrupts the excellent, flourishing life imagined by pacifists.

Consequentialist pacifism, which favours only the good outcome of an action, acknowledges the explicit costs of war action (i.e., both in terms of human and financial costs). It thus fails to recognise what is implicit in inaction: failure to defend one's political sovereignty and territorial integrity, which may be rewarding to aggressors. Tolerating and rewarding interstate aggression would create a grossly unjust, unstable, and malfunctioning international system. Inaction in Rwanda in 1994 led to massive loss of life. Pacifism seems more plausible and principled at the individual level than at state level, in which inaction endangers many people. The state should, therefore, act in protection of human rights and, if needs be, with armed military force. Historically, consequential pacifism would have opposed WWII. But this war prevented Nazi Germany from conquering and ruling Europe, Mussolini from spreading his "New Roman Empire" beyond Ethiopia, and Imperial Japan from subduing East Asia. This did not, according to Orend, create pacifists' wonderful world, but it prevented the creation of a truly unjust and terrible world. This paved the way for democratisation, international law, and respect for human rights.[250] Consequential pacifism's injunction against killing does not rest on a firm principle. Pacifists do not only see the idea of killing and warfare as *usually* bad but as *always*

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249 Orend, *The Morality of War*, p. 277.

250 *Ibid.*

wrong. As such, consequentialism puts them on a slippery slope because it is "open to the claim that, under these conditions... and given these possible alternatives, killing and/or war seem(s) permissible."[251] A consequential pacifist would not permit warfare against and the killing of, for example, 3,000 people of an aggressor state to save 9,000 lives of the aggressed state. It can be argued, then, that consequentialism – a notion on which pacifism is grounded – might *sometimes* recommend warfare and killing. In so doing, pacifism loses its meaning and engages in just war reasoning.

Deontological pacifism argues that the foremost duty in terms of morality (i.e., the duty not to kill) is violated by war-fighting because it inevitably involves the killing of other human beings and therefore war should not be resorted to in the first place. To Orend, this does not seem like an overriding injunction under *very* threatening situations. If a terrorist is credibly threatening to kill many innocent civilians – i.e., threatening to brazenly violate the very moral duty not to kill other human beings – he may justly be killed. Similarly, if A, without any justification, violently attacks B and thus poses a severe threat to his life, B may retaliate against A in self-defence and with lethal force, if necessary. In another scenario, a third party, C, may intervene and use lethal force to protect a weak and defenceless B against A's wrongful and violent aggression.

It should be mentioned that since A forfeits his human right not to be attacked (or even killed) by B in self-defence, the right to attack A extends to C if B is unable to defend himself. However, C's intent should only be to protect B and with force proportional to the threat posed by A. Once A is subdued and no longer poses a threat, his rights are restored and he may not be attacked any further. He may, however, be punished through jail sentencing, fines or rehabilitation. Thus, the threat or violation of the moral duty not to attack and kill other human beings would not recur. The real foremost duty of morality which is violated by war-fighting, deontological pacifists argue, is not the duty not to kill aggressors, but rather the duty not to kill the innocent, non-aggressive civilians.[252] Moreover, discrimination and noncombatant immunity can never be satisfied. Modern military technology and the proximity of legitimate and illegitimate targets in the battlefield make the killing of innocents inevitable. The killing of

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251 Orend, *The Morality of War*, p. 282.

252 *Ibid.*, p. 289.

innocent, non-aggressive civilians is, to a deontological pacifist, *always* unjust: war can never be fought justly because it inherently involves killing. The demand is that war, whether for a just cause of self-defence or defence of the other, should be fought with just means. But such means do not exist because innocent, non-aggressive civilians are always in harm's way and killed; for this reason, war is never justified.

Just war theorists appeal to the DDE in response to this criticism. In essence, the DDE seeks to reconcile "the absolute prohibition against attacking non-combatants with the legitimate conduct of military activity."[253] For just war theorists, to accept the absolute ban on the attack and killing of civilians is to outlaw warfare altogether. Since just war theory does not endorse complete civilian immunity, "civilians have a right that 'due care' be taken"[254] in the conduct of war. According to Orend, due care means belligerents must adhere to the *jus in bello* rules and, if unintended and indirect civilian casualties occur, they are justifiable provided *jus ad bellum* was satisfied. Some causes of war, like resisting aggression, are morally just. So, to just war theorists, this is enough to permit the unintended and indirect killing of innocent civilians. In contrast, deontological pacifism argues that since killing in the conduct of war is an inevitable reality, the cause does not matter (and war is always bad).

But Orend emphasises the importance of the cause, which affects our evaluation of fair conduct. [255] It would suffice to argue that (a) the duty not to kill another human being in the face of serious self- or other-defence seems questionable: we cannot stand idly by when aggressors violate our rights merely because engaging in war will always result in innocent civilians becoming casualties; (b) just war theory does not break the duty not to violate rights by permitting wars in response to aggression – an aggressor forfeits his rights not to be attacked and any right to personal security; and (c), the theory does not violate the duty not to kill innocent civilians, as the DDE suggests, because the duty here is never to kill innocent civilians without just cause, intentionally and directly.

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[253] Walzer, *Just and Unjust Wars*, p. 152.

[254] *Ibid*., p. 156.

[255] Orend, *The Morality of War*, p. 291.

3.5 Against Realism

The idea forwarded by descriptive realism that morality is inapplicable to international affairs is ambiguous and false, according to Orend. Among every state's interests are its moral and political ideals. For instance, America joined WWI to pacify Europe, not because of its territory or threats made, but for the purpose of making the world safe for democracy. However, mixing moral talk with international affairs, Orend argues, cannot be an inapplicable category mistake.[256] The moral standing of states or political communities, Walzer's domestic analogy reminds us, derives from those individuals they represent. Contrary to what realists believe, coherent ethical thought about international relations and warfare enjoys a long history of existence. Just war theory, dating centuries back, is a good example of that.

According to Walzer, contrary to the realist argument, morality is applicable to warfare in particular. Realists' military strategy, like morality, is characterised by a language of justification.[257] For example, both sides suggest firm, action-guiding rules such as one does *not directly attack civilians* (in morality) and one does *not launch a frontal attack on a protected position* (in strategy). Another criticism by Orend is that states are given more leeway to pursue alternative courses of action than realism's 'necessity' suggests. As such, they are free to act both in terms of moral commitments and national interests. In essence, prescriptive realism does not really grasp the nature of moral discourse, specifically in relation to warfare.

Behind *intentional human activity* and *deliberate decisions* taken by realists, whether or not in their best interests, lies the moral discourse. Such activity and decisions can be subject to moral scrutiny, according to Orend. Worth noting is Walzer's view that descriptive realism oriented self-serving and self-preserving states would not last long. Constant mutual distrust and 'malign' intent would discourage collective partnerships, which would otherwise flourish as the commitment to convergent moral precepts inspires common life and coexistence.

Moral prescriptive realism is rightly criticised by just war theorists like Orend for presenting "moral cover and justification for the dominance of the most powerful and privileged states."[258] This is so because it grounds pure national self-regard in morality. The *universal*

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[256] *Ibid.*, p. 255.
[257] Walzer, *Just and Unjust Wars*, p. 13.
[258] Orend, *The Morality of War*, p. 264.

notion of moral realism claims that applying morality to international affairs makes states arrogant and intolerant. Since the world is made up of diverse moral ideals, states ought not to root their international relations in (presumably non-international) morality.

A just war theorist like Orend would object to this argument for it categorically denies "the existence of any [globally] shared moral values between admittedly diverse ethical traditions."[259] But the endorsement of human rights, undeniably grounded in ethics, by almost every state defeats the realist assumption that moral values drive states into arrogant and intolerant behaviour. It thus seems wrongheaded to maintain that a human rights-based foreign policy (including complementary war-like actions) breeds and perpetuates hubris and intolerance.

The *particularist* notion holds that a legitimate national government, as a trustee or agent, has an overriding moral duty to protect the interests of its people. From a democratic and self-deterministic perspective, this is compelling. But do national governments act morally when they prioritise "the interests and well-being of their own citizens over those of foreigners, especially in wartime?"[260] Human rights notions create rules and principles of justice (e.g., international law) that bind states on the international level. Such rights, from a Rawlsian point of view, speak to political reasonableness and just conduct in our contemporary world. Just war theory serves the moral purpose of states in wartime. Beyond the respect for human rights – i.e., concerning such matters as taxation, government subsidies, social services etc. – states may not treat foreigners on a par with their own citizens. It is imperative that foreigners are treated on a par with citizens in respect of inalienable human rights. That moral duties alter radically from national to international level is also questionable. Nation-states do not share homogenous cultures but are comprised of multinational groups. Orend argues that, with self-identity established at the household level, one does not expect moral duties to alter once they exit the apartment door. Moral values may indeed differ but members of families are encouraged not to be (and most of the time are not) hostile to each other. This behaviour can be replicated both at the multinational state and the international system level.

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259 *Ibid.*

260 *Ibid.*, p. 265.

CHAPTER FOUR:

THE INTERVENTION IN LIBYA – JUST OR UNJUST?

The mixed results following either a humanitarian intervention or the lack thereof have sparked constant debate around the justice of this practice and its efficacy. Humanitarian intervention has seen its rise and fall since the early 1990s. In 1994, the international community failed to intervene in Rwanda to stop the massacre of about 800, 000 Rwandan Tutsis and moderate Hutus. In 1999, a unilateral intervention that was not authorised by the UNSC averted the extermination of Kosovar Albanians by the Serbs. And, in 2003, the US invaded Iraq under the pretext that it possessed WMD but the failure to discover such weapons saw the US change its language to humanitarianism rooted in its *Freedom Agenda* policy.

In light of these different cases, this chapter analyses the moral justification for NATO's 2011 military intervention in Libya through the application of just war principles, with reference to available empirical evidence. The first section looks into *jus ad bellum* detailing the moral justness of motives, among other principles, for the intervention in Libya. The second section delves into *jus in bello* principles that pertain to the conduct of warfare. This analysis will culminate in the answering of the study's primary question: was the 2011 humanitarian intervention in Libya morally justified?

4.1 Libyan Intervention & Jus Ad Bellum

Just cause is considered the most crucial element of the just war tradition. According to this principle, the resort to war must be based on reasonably justifiable reason(s). Resolution 1973 (2011) called upon the international community to take "all necessary measures" to protect civilians and civilian-populated areas under the threat of attack by Qaddafi's regime. To that effect, the international community effectively invoked the R2P doctrine and initiated a humanitarian intervention.[261] But was the cause genuinely just to warrant a military intervention

[261] It is important to bear in mind that this intervention marked the first time that the UNSC had to explicitly sanction a military action without the consent of a 'functioning' government for humanitarian purposes. See Williams, P. D. (2011), 'The Road to Humanitarian War in Libya', *Global Responsibility to Protect*, No. 3, p. 249.

in Libya? The intervention was undertaken amidst an onslaught on rebels and civilians by the Qaddafi forces and after the regime exhibited disregard for, and noncompliance with, Resolution 1970 that emphasised, among other things, the responsibility of the regime to protect its own people. Prior to the adoption of Resolution 1970, mixed civilian casualty estimates were made public: The *Human Rights Watch* (HRW) estimated the death toll at 233 by February 20[262] and on February 25, Navi Pillay, then UN High Commissioner for Human Rights, announced that thousands had been killed.[263] These estimates prompted the passing of Resolution 1970 with which the Qaddafi regime would not comply. But Pattison notes that before the military intervention was authorised, an estimated 1, 000 to 10, 000 had already been killed.[264] Qaddafi had lost control of strategic cities to rebels and regime defectors and mounted an onslaught on opponents.

Determined to wrest back strategic cities, particularly Benghazi, Qaddafi threatened ruthless violence against protesters, raising fears over the safety of non-combatants. According to the *New York Times*, Qaddafi had vowed, in a televised speech, to cleanse Libya house-by-house and home-by-home.[265] In what the media described as vitriolic diatribe inciting violence and attitudes reminiscent of the pre-1994 genocide developments in Rwanda, Qaddafi urged his loyalists to eliminate opponents whom he labelled 'rats' and 'cockroaches' conspiring against his rule.[266] Therefore, Qaddafi mounted an onslaught on opponents despite measures taking under Resolution 1970 and, alarmingly, threatened a massacre in Benghazi. The UNSC was, therefore, left with no choice but to authorise Resolution 1973 to launch a military intervention in the country.

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[262] Human Rights Watch, (2011) Libya: Governments Should Demand End to Unlawful Killings. Available at: https://www.hrw.org/news/2011/02/20/libya-governments-should-demand-end-unlawful-killingswww.bbc.com/news/world-middle-east-12568416 [accessed: 13 /01/2016].

[263] *BBC News* (2011b). Libya crackdown 'escalates' with thousands feared dead. Available at: http://tinyurl.com/j6b97ej [accessed: 13/01/2016].

[264] Pattison, *The Ethics of Humanitarian Intervention in Libya,* p. 272.

[265] *The New York Times,* (2011), Qaddafi's Grip on the Capital Tightens as Revolt Grows. Available at: http://tinyurl.com/j56jgmu [accessed: 14/01/2016].

[266] *The Telegraph,* (2011), Muammar Gaddafi in his own words Available at: http://tinyurl.com/bneckkn [accessed: 14/01/2016].

The just cause principle is, in terms of the number of civilian casualties, quite contentious. Walzer, writing in the *New Republic*, was sceptical about the just cause in relation to the Libyan intervention.[267] He argues that a military attack of the Libyan kind is "defensible only in the most extreme cases." [268] Pattison points out that this is "reminiscent of his claim in *Just and Unjust Wars* that intervention is permissible only with respect to acts that shock the moral conscience of mankind." [269] Walzer's ambiguous just cause is not, according to Pattison, as morally permissible as the one proposed by the ICISS, which deals with actual or apprehended large-scale loss of life and large-scale ethnic cleansing alluded to in the preceding chapter. The situation in Benghazi degenerated into a humanitarian crisis thereby serving as a firm just cause for humanitarian intervention.

Though the just cause criterion for *humanitarian intervention* was undoubtedly satisfied, the situation did not seem to warrant a *regime change* – a highly contentious issue between proponents and opponents of the Libyan intervention and the practice in general. To opponents, the intervention in Libya may have been initiated with a clear humanitarian goal in mind but culminated in a morally indefensible (and inexplicable!) regime change. Noam Chomsky, for example, argued that there was a "second intervention" in Libya. He lambasted great powers (the US, Britain, and France) for hijacking NATO's explicit humanitarian operation in order to carry out a regime change-driven 'second intervention'.[270]

Chomsky contends that great powers' "second intervention had nothing to do with protecting civilians..., but rather was about participating in a rebel uprising for regime change."[271] In the preface to *Just and Unjust Wars*, Walzer asks: "Is 'regime change' a just cause for war?"[272] He takes two cases, Nazi Germany and Iraq 2003, to suggest when a regime change may or may not be a just cause for war, and argues elsewhere that "regime change is not

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[267] Walzer, M, The *New Republic*, (2011), The Case Against Our Attack on Libya. Available at: http://tinyurl.com/jyrx48q [accessed: 14/01/2016].

[268] *Ibid.*

[269] Pattison, *The Ethics of Humanitarian Intervention in Libya*, p. 272.

[270] Van der Linden, H. (2011), Barack Obama as Just War Theorist: The Libyan Intervention. *Butler University*. Available at: http://digitalcommons.butler.edu/facsch_papers/234 [accessed: 14/01/2016], p. 3.

[271] *Ibid.*

[272] Walzer, *Just and Unjust Wars*, p. ix.

commonly accepted as a justification for war."[273] However, Walzer believes that regime change "can sometimes be the *consequence* of a just war."[274] For instance, when the defeated rulers are moral monsters, like the Nazis in WWII, their return to or further grip on power is inconceivable. Humanitarian intervention, too, can legitimately result in the installation of a new regime. Safe zones created a relatively peaceful climate for the Kurds in the North of Iraq and made humanitarian intervention unnecessary. So, though Saddam's Iraq was brutally repressive and morally repugnant, it was not engaged in mass murder or ethnic cleansing. The US invasion of Iraq simply had no just cause, even the pre-emption argument was not convincing given that Iraq's alleged WMD posed no imminent or reasonably serious threat to the US or the world. Chomsky's "second intervention" treats regime change as a second, independent (and perhaps predetermined) unjust cause, not as an unintended consequence of a just (humanitarian) cause. The killing of civilians and the threat of massacre were sufficient just cause to warrant NATO's military intervention. Nevertheless, mixed motives are always present and require a careful appraisal.

The principle of **right intention** is designed to stop political leaders from cheating by proclaiming a just cause while being motivated by self-interest.[275] War should be initiated in pursuit of an objective just cause and not for other ulterior or hidden motive(s). Fisher argues that the Libyan intervention situation – while certainly marked by mixed motives – showed "no convincing evidence that extraneous factors were the dominant motivating factors." [276] Moreover, coalition forces "seemed to have been primarily driven by a desire to put an end to the atrocities on the ground by Qaddafi and his forces."[277] Barack Obama, Nicholas Sarkozy and David Cameron clamoured for Qaddafi to go even before signing a joint statement formalising their demand during the actual intervention.[278] The three had stated that any political settlement with Qaddafi remaining in power would have betrayed the Libyan people and their uprising.

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[273] Walzer, *Arguing About War*, p. 148.

[274] *Ibid*.

[275] Fisher, D., 'Libya: A Last Hurrah or Model for the Future' in Whetham, D., Strawser, B.J., (2015) *Responsibilities to Protect: Perspectives in Theory and Practice*. Hotei Publishing, p. 20.

[276] *Ibid*.

[277] *Ibid*.

[278] Newman, *The Responsibility to Protect, multilateralism and international legitimacy*, p. 133.

Former US Secretary of the State, Hillary Clinton, had also delivered a speech at the UN Human Rights Council in which she stated that "it is time for Qaddafi to go – now, without further violence or delay."[279]

Beyond the foregoing rhetoric that Qaddafi must go was the issue of Libya's oil reserves that the West and European states largely rely on. According to Prashad, "Libya's oil reserves are prized for their quantity (largest reserves in Africa) and quality (proximity to Europe and easy to process)."[280] Oil production stood at 1.6 million barrels per day before the outbreak of conflict but dropped significantly after it had started. Qaddafi "proved to be a problematic partner for international oil companies, frequently raising fees and taxes and making other demands."[281] In addition, he had called for a return to the "gold standard" as a substitute for the US dollar as an international currency. Qaddafi's plan was to make the "gold dinar" a single currency for the African continent to facilitate a true sharing of wealth. "Such a plan," Guy Martin notes, "constituted a serious threat to the international monetary system, specifically to the role of the US dollar as the international currency of choice."[282]

Five years after the Libyan intervention, Clinton was embroiled in the email scandal over Libyan military campaign at the time of this writing. One of the declassified emails revealed the "true motive[s] for Libyan intervention" to be the threat of the gold dinar and the need to access Libya's oil reserves, among other things.[283] The negative reaction of Western and European powers to Libya's political and economic trajectory was thus not difficult to fathom. Qaddafi's idea of introducing the gold dinar in Africa had the potential to not only rival the American dollar and the euro but could possibly have replaced them as well.

Some raised concerns that Libya could revert to sponsoring terrorism due to the renewed hostility with the West. There were fears that since Qaddafi had threatened to massacre his

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[279] Quinn, A., *Reuters*, Clinton Says Gaddafi Must Go.
Available at: www.reuters.com/article/idUSTRE71Q1JA20110228 [accessed: 16/01/2016].

[280] Prashad, *Arab Spring, Libyan Winter*, p. 239.

[281] *Ibid*.

[282] Martin, G. (2012), *African Political Thought*. Palgrave Macmillan, p. 119.

[283] Hoff, B. (2016), Hillary Emails Reveal True Motive for Libyan Intervention. *Foreign Policy Journal*. Available at: www.foreignpolicyjournal.com/2016/01/06/new-hillary-emails-reveal-true-motive-for-libya-intervention/ [accessed: 13/01/2016].

people he might use his 'residual' chemical weapons on them or the West. These were dominant realist motives that underlay the Libyan intervention. For instance, Chomsky even went so far as to "conclude that the real American motive [was] to create a Libyan regime friendly to Western oil interests."[284] Others argued that Qaddafi was directly targeted when airstrikes hit his compound in Tripoli.[285] NATO warplanes, it was widely reported, attacked Qaddafi's convoy while trying to flee Sirte on 20 October 2011. The convoy dispersed and Qaddafi as well as some of his aides tried to hide in a drainage pipe but were captured. He was tortured and ultimately killed by the NTC rebel forces.[286] HRW found that dozens of pro-Qaddafi forces were not spared following the execution of the Libyan leader.[287] But from a just war theorist's point of view:

> *The international action against Libya was not about bombing for democracy, sending messages to [a nuclear] Iran, implementing regime change, keeping oil prices low, or pursuing narrow interests.*[288]

These may have been consequences of such a military action aimed predominately at protecting civilians. A legal and legitimate humanitarian intervention is the one that is unequivocally sanctioned by the **right authority**. Ten member states of the UNSC voted in support of – while five abstained from and none voted against – Resolution 1973 that authorised a no-fly zone over Libya and a military intervention to protect civilians. Countries that voted in favour of the resolution included Bosnia, Colombia, Gabon, Lebanon, Nigeria, South Africa, and permanent members *Britain*, *France*, and the *US*. Those that abstained were Brazil, Germany, and India, as

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[284] Chomsky cited in Van der Linden, *The Libyan Intervention*, p. 2.

[285] Tisdall, S, *The Guardian*, (2011), Is Gaddafi Himself a Target? Available at: www.theguardian.com/world/2011/mar/21/gaddafi-target-analysis [accessed: 24/01/2016].

[286] Woodcock, A, *Independent*, (2011) Muammar Gaddafi has been killed, says Libyan PM. Available at: www.independent.co.uk/news/world/africa/muammar-gaddafi-has-been-killed-says-libyan-pm-2373368.html [accessed: 26/01/2016].

[287] Human Rights Watch, (2012), Libya: New Proof of Mass Killings at Gaddafi Death Site. Available at: www.hrw.org/news/2012/10/17/libya-new-proof-mass-killings-gaddafi-death-site [accessed: 23/01/2016].

[288] Weiss, T. (2011) RtoP Alive and Well after Libya *Ethics & International Affairs*, 25, No. 3, pp. 287-292, p. 291.

well as permanent members, *China* and *Russia*.[289] The permanent five or P-5 (italicised above) continue to determine the trajectory of world peace and security, each wielding the decisive veto power. From a realist point of view, the first three permanent members mentioned have historically been interventionist. By contrast, the latter two have had foreign policies anchored in non-intervention, the respect for territorial integrity and sovereign equality. We have, however, recently witnessed the Russian expansion in Ukraine and intervention in Syria. In essence, a realist argument that voting at the UNSC is usually influenced by national interests, cannot be ignored. What is important here, however, is that the operation in Libya was widely supported, both regionally and internationally. For instance, the AU, the Arab League, and the Organisation of the Islamic Conference all condemned the Qaddafi regime.

The UNGA voted for Libya's suspension from the Human Rights Council.[290] There was also a strong European commitment to protect Libyan civilians, with critical (but 'leading from behind') American engagement during the initial phase of the air campaign. The diplomatic support of the Arab League and coalition participation by Jordan, Qatar, and the United Arab Emirates (UAE) added the necessary regional legitimacy.[291]This is buttressed by Van der Linden who argues that "the community of nations supported the Resolution [1973] and so the principle of legitimate authority was satisfied."[292] It should be noted that, although legal and legitimate, the intervention in Libya exposed the discord between the African Union (AU) "roadmap" for the crisis and the NATO military campaign – an uncharted research subject. This study, however, seeks to contribute not only to the literature on the NATO humanitarian intervention in Libya but also on the interlinked – and often neglected – question of post-conflict reconstruction.

Before a military action is given a go-ahead, interveners should ponder the principle of **proportionality #1**, which provides that a military action should be undertaken only if its

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[289] UN (2011b) "Security Council Approves 'No-Fly Zone' over Libya, Authorising 'All Necessary Measures' to Protect Civilians, by Vote of 10 Favour with 5 Abstentions," Available at: www.un.org./press/en/2011/sc10200.doc.htm [accessed: 16/01/2016].

[290] Hoffmann, J., Nollkaemper and A., Swerissen, I. (2012), *Responsibility to Protect: From Principle to Practice*. Amsterdam: Amsterdam University Press, p.245.

[291] Engelbrekt, Mohlin and Wagnsson, *The NATO Intervention in Libya: Lessons Learned from the Campaign*, pp. xiv, 48 and 53.

[292] Van der Linden, *The Libyan Intervention*, p. 3.

benefits are likely going to outweigh the costs, taking into account the *reasonable probability of success* condition. This principle requires a weighing up of the probable consequences of a military action and is thus unapologetically consequentialist.[293] However, just war theorists can (and do) appeal to the just cause criterion. In the case of Libya, there was an imminent and sufficient threat of massacre and the intervening powers had the proper means to avert it. It can be assumed that reasonable judgement is likely to have been made with benefits of action outweighing the costs that might have resulted from inaction. Whether or not the intervention in Libya prevented another Rwanda is unclear, but we cannot rely on pacifists' consequential reasoning in the face of a massacre. As put by Fisher:

> *The NATO intervention did prevent the feared civilian massacres in Benghazi and elsewhere, which was the good to be achieved by military action as specified in the just cause.*[294]

Moreover, Qaddafi's threats were not mere idle bluster given that the historical record shows that he had summarily executed 1270 prisoners in Abu Salim prison in 1996. These prisoners' family members and relatives, as alluded to at the onset of this study, contested the arbitrary detention of their legal representative (Fathi Terbil) and thus triggering widespread protests and the Libyan revolution. So, in this case, the principle of *proportionality #1* was undoubtedly also satisfied.

Linked to the foregoing principle, would-be interveners should also be expected to seriously consider their campaign's **reasonable probability of success** before embarking on it. They should ascertain that action to be undertaken has a reasonable chance of realising the just cause, with *proportionality #1* taken into account. The Libyan intervention, it appears, had a reasonable chance of success: it was for a reasonably just cause authorised by a multilateral body in the form of the UN and was carried out by NATO. The NATO allies command respect in terms of military superiority essential in responding to humanitarian crises. These allies committed resources proportional to the threat in Libya. Therefore, having ascertained the gravity of

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[293] Fisher, *A Last Hurrah*, p. 21.
[294] *Ibid.*

violence mounted by the Qaddafi regime, and particularly the threat of a massacre in Benghazi, the benefits of action certainly outweighed the costs of inaction. So with the financial wherewithal and military might in sight, the NATO allies definitely had a reasonable chance of success in averting an imminent massacre in Libya.

Just war theory, however, counsels that military force ought to be a **last resort**. According to Pattison, the imminent attack by the Qaddafi forces on Benghazi meant that the requirement of last resort was met because there were no other alternatives that would have averted a massacre.[295] Since war involves killing and destruction, it should be undertaken only as a last resort. Brockmeier *et al.* note that in the lead-up to the intervention in Libya, one of the questions that dominated the discourse was (and still is): "[h]ad all possible political and diplomatic means been exhausted, and did force therefore represent a last-resort measure to protect civilians in Libya?"[296] Advocates of military intervention argued that all other alternatives had evidently failed to halt Qaddafi's use of force against civilians and that there was an impending massacre. It quickly became apparent that some NATO partners – Britain, France, and the US – "put pressure on other states in the council to support the resolution [1973]."[297] They cogently used the language of "do you want to wake up tomorrow and there is no Benghazi?" and "we do not want to witness another Srebrenica or Rwanda".[298]

BRICS countries plus Germany and Portugal, on the other hand, opposed the military campaign. They insisted that "what was primarily needed were serious negotiation efforts for a ceasefire [between the Qaddafi regime and the rebel forces]."[299] Resolution 1973, they argued, explicitly emphasised the "need to intensify efforts to find a solution to the crisis".[300] In addition, Resolution 1973 provided for the Secretary-General's envoy to Libya and the AU to facilitate a political dialogue between belligerents. Though opposed to military action, countries that favoured a greater effort with political negotiations were affected by the threat to civilians in Benghazi. Hence, China and Russia abstained from voting on, instead of vetoing, Resolution 1973.

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[295] Pattison, *The Ethics of Humanitarian Intervention*, p. 273.

[296] Brockmeier, S., Stuenkel, O., and Tourinho, M. (2016), The Impact of the Libya Intervention Debates on Norms of Protection. *Global Society,* 30:1, 113-133, p. 118.

[297] *Ibid*., p. 119.

[298] *Ibid.*

[299] *Ibid*.

[300] *Ibid.*

Their abstentions, according to Brockmeier *et al.*, reflected ambiguous feelings about the resolution; they did not vote 'yes' because they were not really convinced that all other (peaceful) measures were being tried. Yet they did not vote 'no' because inaction might have resulted in large-scale killing in Benghazi. Qaddafi's noncompliance with resolution 1970 and a threat of massacre were thus sufficient for the last-resort criterion to take effect. Overall, the *jus ad bellum* principles were thus all met in this case.

4.2 Libyan Intervention & Jus In Bello

The scale of the operation and, in particular, the several sorties flown and the multiplicity of targets attacked generated a lot of criticism. The questions of how much force is morally permissible (*proportionality #2*) and who may be a morally legitimate target (*discrimination/non-combatant immunity*) have proven to be highly contested issues in the conventions of war.

The *jus in bello* principle of **discrimination/non-combatant immunity**, which draws on International Humanitarian Law, holds that war is to be fought between combatants and only combatants and military objects/facilities are legitimate targets of attack. Non-combatants and civilian objects/property are not legitimate targets and should thus not be deliberately targeted by belligerents. A study by Amnesty International (AI), *The Battle for Libya*, revealed that both the Qaddafi regime and the rebel/NATO forces violated IHL.[301] During the protests, the Qaddafi regime shelled, killed and maimed some of the innocent non-combatants. For instance, the government used indiscriminate weapons like Grad rockets and cluster munitions in Misrata against residential areas.[302]

After the intervention had started, the Qaddafi regime accused NATO forces of deliberately targeting civilians. NATO, however, confirmed to AI that it complied with IHL.[303] When a projectile struck several homes in Tripoli on 19 June 2011, casualties occurred but NATO

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[301] *Amnesty International,* (2011). The Battle for Libya: Killings, Disappearances, and Torture. Available at: www.amnesty.nl/battleforlibya [accessed: 17/01/2016], pp. 34-56.

[302] *Ibid.*, p. 44.

[303] *Ibid.*, p. 55.

suggested that the airstrike had hit an unintended target due to 'malfunction'.[304] Another attack occurred in Surman (west of Tripoli) on 20 June 2011, on a civilian compound home (apparently belonging to Qaddafi's aides), killing two innocent children and their mother. This time, NATO stated that its precision attack was aimed at a facility identified through rigorous and prolonged intelligence analysis, which revealed the facility as "directly involved in coordinating systematic attacks on the Libyan people".[305] In addition, NATO destroyed some television transmission dishes, with the explanation that they were part of the mechanisms used by the Qaddafi regime to systematically oppress and threaten civilians and to incite violence against them. These incidents illustrate that *collateral* deaths of non-combatants, indirect destruction of civilian objects, and (in)direct attacks on dual-use objects by interveners are not necessarily considered immoral or objectionable.

The Qaddafi regime caused collateral damage as well. Kuperman argues that – contrary to widespread reports – the Qaddafi forces were cautious enough to avoid using violent force against innocent civilians from the onset of the protests. It was not until protesters escalated violence toward government facilities, police stations, and military barracks that Qaddafi started responding brutally. Alarmingly, protesters were also "arming themselves with weapons found at [abandoned military] locations." [306] In terms of the non-combatant immunity rule, these protesters forfeited some of their rights and made themselves legitimate targets and liable to military attack. It is for this reason that the Qaddafi regime "admitted firing live ammunition at those who, it said, were involved in violent actions."[307] Even a former high-level Libyan military commander had confirmed to the UN Commission of Inquiry that "only after demonstrators acquired arms did Qaddafi forces begin using live ammunition."[308]

In addition, although the government turned brutal against armed rebels, it never deliberately targeted civilians or resorted to indiscriminate force. The NATO targeting policy, in

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[304] *Ibid.*

[305] *Ibid.*

[306] Kuperman, A.J. (2013), A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign. *International Security*, Vol. 38, No. 1, pp. 105-136, p. 109.

[307] *Ibid.*, p. 110.

[308] *Ibid.*

principle, generally appeared to exclude "economic objects" such as oil refineries and water reservoirs. The policy attempted to distinguish combatants from non-combatants, and civilian objects from military objects (or command-and-control nodes). But NATO did attack some civilian objects that by their very use could become legitimate military targets, such as residential buildings used as command-and-control centres, without necessarily breaching the non-combatant immunity principle.[309] Though thinkers like Grotius place great emphasis on civilian immunity, they note that "the rule against attack on civilians is not absolute."[310]

The principle of **proportionality #2** relates to *non-combatant immunity* when it comes to the non-use of disproportional and indiscriminate force. The NATO campaign relied on high-tech, precision weaponry but civilian casualties were inevitable. A report by the Human Rights Council found that NATO's precision campaign demonstrated a determination to avoid civilian casualties.[311] However, the Commission of Inquiry confirmed some civilian casualties, with human targets showing no evidence of military utility (i.e., no sign of being legitimate targets or posing threat). Nevertheless, correspondence between NATO and the Commission suggests that attacks on civilians were not deliberate.[312] This is permissible as Holst and Fink also argue:

> *IHL does not require a zero casualty rate with regard to civilians; however, situations such as the one in Libya, in which the mandate is specifically the protection of civilians, civilian casualties are extremely sensitive for the internal coherency, legitimacy and international acceptance of the mission.*[313]

The R2P mandate in Libya specified the protection of civilians and civilian-populated areas. But "civilian loss," Holst and Fink contend, was "thus less acceptable, if at all". Such a mandate would put constraints on the use of force and might affect *proportionality #2* considerations. Holst and

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[309] Holst, and Fink, *A legal view on NATO's campaign in Libya*, pp. 78-79.

[310] McKeogh, C. (2002), *Innocent Civilians: The Morality of Killing in War*. Palgrave Macmillan, p. 116.

[311] Davis, I. (2012), The UN Human Rights Council's Report on Civilian Casualties in Libya. NATO Watch Briefing Paper No. 21. Available at: www.natowatch.org/sites/default/files/NATO_Watch_Briefing_Paper_No.21_-_UN_Human_Rights_report_on_Libya.pdf [accessed: 26/01/2016].

[312] Holst and Fink, *A legal view on NATO's campaign in Libya*, p. 81.

[313] *Ibid.*

Fink acknowledge that an R2P mandate usually blurs the line between *ad bellum* and *in bello*. However, the blurred line, I argue, should not lead us to repudiate an intervention in response to an imminently catastrophic situation of Libya's kind or restrain the action of vindicating or realising the just cause (of preventing egregious harm). Though the blurred line does exist, there is a link between the independent *ad bellum* and *in bello*. Achieving the just cause may require the consideration of proportionality *#2*, but one must always expect fewer (*not* zero) civilian casualties and less destruction of civilian objects, with the universal good of the action outweighing its evil of course. McMahan does make this point: "*jus in bello* requirement of proportionality [...] cannot be satisfied in the absence of a just cause."[314] There is a connection between *jus ad bellum* and *jus in bello*. War is not permissible if its bad effects are likely to be out of proportion to the good. If the good effects that can contribute to the justification for war are those specified by the just cause, then only such good can count in the proportionality calculation for an individual *act of war*, which is *constitutive* of the war.

The lack of a just cause would suggest that there are *no* goods that an act of war could produce that could appropriately weigh against the bad effects. Therefore, no act of war by an unjust combatant can satisfy *proportionality #2*. But even if unjust combatants do wrong by fighting (for an unjust cause), it would be desirable and morally good if they acted with restraint and obeyed the rules of engagement.[315] I would thus argue that the same applies to just combatants, fighting for a just cause. They, too, should adhere to *proportionality #2* but fight to vindicate their just cause. Holst and Fink's "less acceptable, if at all" argument should not be taken to constitute a complete ban on collateral damage by both sides. R2P mandated the international community to launch a military action to protect civilians in Libya but to refrain from targeting them deliberately in the process. The mandate *never* specified that there must be zero incidental civilian casualties. This *in bello* principle of proportionality was thus also satisfied.

In conclusion, the cause to protect the Libyan people from Qaddafi's further onslaught and an impending massacre was undeniably just. Though mixed motives were obviously present, the dominant intention of NATO allies was to protect civilians by halting an onslaught and

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[314] McMahan, J. (2004), 'The Ethics of Killing in War'. *Ethics,* 114:4, 693-733, p. 709.
[315] *Ibid.*

averting a possible massacre. The capture and killing of Qaddafi on 20 October 2011 in Sirte and the subsequent "regime change" were consequences of the just cause action, which did not undermine the overall benefits when weighed against the costs that may have resulted from what David Mellow calls the "do-nothing" policy.[316] The intervention was given legal basis through the UNSC's authorisation and necessary legitimacy by remarkable local, regional, and international support. There was a reasonable probability of success given that the intervention was multilateral, with sufficient resources and the capacity to halt an onslaught and avert a massacre. In addition, the military action in Libya satisfied the last-resort condition because political and diplomatic measures, including Resolution 1970 warnings, were tried but ultimately proved insufficient to respond to the dire situation that required swift (and well-calculated) action.

NATO's precision attacks appear to have, for the better part, avoided the killing of civilians and the destruction of civilian objects. The DDE endorses collateral (i.e., unintended and indirect) civilian casualties and civilian objects' destruction, which were not morally objectionable in Libya. NATO employed sorties, high-end technology, and precision firepower to attack legitimate targets, including dual-use and military objects. Belligerents did not use indiscriminate weapons, such as WMD, against one another. Civilian deaths and civilian property destruction were marginal and acceptable. So, with *ad bellum* and *in bello* findings considered, this chapter firmly concludes that the 2011 humanitarian intervention was morally justified. This, however, raises a subsequent, connected question: did this *just intervention* lead to a *just peace* in Libya? The next chapter analyses the third category of the just war theory, i.e. *jus post bellum*, in view of the case under study.

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[316] Mellow, D, 'Iraq: A Morally Justified Resort to War', in Rodin, D. (ed.), (2007) *War, Torture, & Terrorism: Ethics and War in the 21st Century.* Blackwell Publishing, p. 62.

CHAPTER FIVE:

JUST PEACE AND POST-INTERVENTION LIBYA

Theorists advocating for the inclusion and development of a *jus post bellum* framework often make reference to B.H. Liddell Hart's now famous words: "the object in war is a better state of peace."[317] The traditional scholars have focused much on the *jus ad bellum* and *jus in bello* elements and have devoted little or no attention to *jus post bellum* principle that deals with the termination wars.[318] This chapter analyses the arguments raised for and against *jus post bellum* and outlines some of the proposed general guidelines as suggested by Brian Orend and the ICISS report. Subsequently, the chapter juxtaposes the proposed *jus post bellum* guidelines against the Libyan intervention episode to determine what the hurdles to a better state of peace are and whether this objective was achieved.

5.1 Jus Post Bellum

In its most literal sense, *jus post bellum* means the *just end of war*. Eric Patterson points out that *jus post bellum* has, hitherto, been neglected in the conceptualisation and development of just war theory. Classical thinkers have paid next to no attention to *jus post bellum*. Although St. Augustine advised that wars should end with a "secure peace," much of his work explored "questions about the resort to violence and whether the Christian, as an individual, could morally participate in war."[319] Similarly, Aquinas, Vitoria, and Suarez also focused their attention primarily on *jus ad bellum* and *jus in bello* elements, with little said about *jus post bellum*. According to Patterson, Vitoria argued – for instance – that policies such as systematic rape, pillage, and torture were unjust toward the vanquished and cannot bring about a *just peace*. War has three parts. For this reason, Suarez famously acknowledged that:

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[317] Patterson, O., 'Jus Post Bellum and International Conflict: Order, Justice, and Reconciliation', in Brough *et al.*, *Rethinking the Just War Tradition*, p. 35; Orend, *The Morality of War*, p. 185.

[318] Patterson, *Jus Post Bellum*, p. 35.

[319] Ibid., p. 36.

> *Three periods must be distinguished with respect to every war: its inception; its prosecution before victory is gained; and the period after victory.*[320]

These scholars have merely addressed the morality of specific policies instead of stipulating or constructing injunctions of *just post bellum* framework. It is not surprising, therefore, that contemporary just war theorists have also paid scant attention to *jus post bellum*. But the most recent scholars – from Michael Walzer to Brian Orend to Eric Patterson etc. – look set to give great impetus to the development of a *jus post bellum* framework. Like Suarez, Orend writes that war has three phases: the beginning, the middle, and the end. And if we want a comprehensive just war theory, he further writes, we must *discuss* justice in terms of the termination of the war. Neglecting *jus post bellum*, Orend cautions, risks exposing just war theorists to criticism by realists and pacifists. For example, they can argue that just war theory does not address the war in a thorough and systematic fashion (i.e. from beginning to end). Moreover, they could also argue that it does not care about the underlying or structural causes of war. So Orend rightly argues elsewhere that *jus post bellum* is necessary for:

> *A complete and accurate account of the justice of war: we have not finished with our moral labour once we have considered jus ad bellum and jus in bello conditions.*[321]

But some, like Pattison, question the moral import of *jus post bellum* for just war theory and its role in the justification of war.[322] That said, war tends to recur if not terminated justly. Failure on the part of just war theorists to develop and drive *jus post bellum* principles has contributed to the unjust wars and their recurrence. The lack of such guiding principles prolongs fighting (where war is ongoing) simply because belligerents have no rules to appeal to in terminating the war. *Jus post bellum* places much of the post-war culpability on political leaders, as opposed to the military, for violations of the laws of armed conflict. However, in some cases, like the direct occupation of a devastated and unstable society, it may be required that the military personnel

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[320] Ibid.

[321] Orend, B. (2000), 'Jus Post Bellum'. *Journal of Social Philosophy*, 31: 1, 117-137, p 117.

[322] Pattison, J. (2015) 'Jus Post Bellum and the Responsibility to Rebuild'. *British Journal of Political Science,* 45:03, 635–661.

account for human and material damage, be tried in war tribunals, and/or be punished if found guilty of war crimes. For the just endings of wars, Orend suggests that a brand-new Geneva Convention be developed. The reasons for the new convention are as follows: first, one must acknowledge that international laws regulating the resort *to* war and the conduct *of* war are many and established. For a complete analysis of war's impacts, such laws – and just war theory in particular – must include laws for regulating the state of justice *after* the war. Secondly, there would need to be complete, concrete, and codified rules of armed conflict to keep the international community *focused*.

Thirdly, with the assumption that the winner's war was just, the convention would need to provide clear post-war regulations to guide the behaviour of both (former) belligerents. And lastly, the convention would have to prevent the resurgence of conflict because unjustly ended wars "sow the seeds for future bloodshed."[323] According to Orend, some think that America's failure to oust Hussein from power following Iraq's invasion of Kuwait in 1991 prolonged a serious struggle that eventually led to the second war, and subsequent regime change, in 2003.[324] This implies that the second war would not have occurred had Hussein been ousted, as a punishment, for invading Kuwait.

Orend contrasts two models for a new *jus post bellum* Geneva Convention: *retribution* and *rehabilitation*. The former, he argues, is archaic, while the latter has made a strong showing for itself following WWII. Assuming that the just side defeated the unjust side, Orend describes the retribution model's "basic aspects of a decent post-war peace" as follows:

- A *public peace treaty* – a treaty written down – and a publicly proclaimed agreement specifying the terms of war's termination – should unambiguously be addressed to belligerents.
- There must be an *exchange of Prisoners of War (PoWs)* between both sides.

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[323] Orend, B., 'Justice After War: Towards a New Geneva Convention,' in Patterson, E. (ed.) (2012), *Ethics Beyond War's End*. Georgetown University Press, p. 175; Orend, *The Morality of War*, p. 185.

[324] *Ibid*.

- An accompanying *apology from the aggressor* is also advised for the acknowledgement of wrongdoing. It should be noted, however, that although Germany profusely offered apologies particularly for the Holocaust, it was still subject to paying reparations.
- *War crimes trials*, such as those at Nuremberg and Tokyo post-WWII – in which soldiers (who violated *in bello* rules) and senior Nazis leaders (who violated *ad bellum* rules) were charged – are encouraged for the realisation of justice after war.
- There is a need for the *aggressor state to give up any gains,* e.g.~~,~~ territory that it may have seized during its aggression.
- The *aggressor must be demilitarised* to avoid the recurrence of aggression. Once an aggressor has broken international trust, it cannot be trusted again as unlikely to commit another aggression.
- It is not enough for the defeated aggressor to merely relinquish unjust gains and some weapons. So, *an aggressor must suffer further losses*. In other words, the aggressor must be made worse off than it was prior to the war because justice requires such retribution. As in the domestic analogy, a criminal is not simply let loose without a fine or serving jail time after committing a crime. Punishment will deter an aggressor (or any other party) from future acts of aggression. So, in addition to demilitarisation, reparations, and sanctions – equivalents of fines – are further methods of rendering the aggressor worse off. Reparations are backward-looking, whereas sanctions are forward-looking. Therefore, sanctions aim at hurting and restricting the aggressor's economic growth so that it lacks the wherewithal to commit aggression in the future.

The retribution model, although persuasive, is not ideal for post-war settlement because it is, according to Orend, significantly flawed. In a similar vein, Walzer writes, from the classical just war theory perspective, that "justice after war is the same as justice before the war."[325] Therefore, returning to *status quo ante* (i.e. restoration of the state of affairs before the war) is not enough; just winners should strive for a *just peace*, not just any peace. Aggression committed and the

[325] Walzer, M., 'The Aftermath of War: Reflections on Jus Post Bellum,' in Patterson, E. (ed.) (2012), *Ethics Beyond War's End*. Georgetown University Press, p.36.

humanitarian damage caused cannot be reversed, so restoration should be accompanied by compensation to the surviving victims and the reconstruction of their cities.[326] But Orend argues that a retributive policy – concentrated on reparations and sanctions – engenders long-drawn-out enmity between (former) belligerents, which could become intergenerational. He critically observes that the track record of sanctions in particular (e.g., in the post-WWI Germany and post-1991 Iraq) has been anything but positive. Blanket sanctions generally impact negatively on the well-being of civilians rather than the perpetrators of aggression.

Orend argues that sanctions violate the *in bello* principle of discrimination and noncombatant immunity. He thus does not favour the retribution model because it does not confront the existence and actions of the bad regime that caused the war. Instead, he favours the rehabilitation model which, by contrast, attempts to dismantle and reconstruct bad regimes into minimally just societies. The termination of WWI and the First Gulf War are instances of unjust (or revengeful) settlements. When the Treaty of Versailles that officially ended WWI was signed, many belligerents – except the US – had already been reduced to rubble. The terms of the treaty permitted European powers to penalise Germany for invading Belgium and triggering the war in the first place. Germany was demilitarised, its unjust gains overturned, and some parts of its territory occupied. Moreover, it was subject to reparations that would have continued into the 1980s. But the German economy was quickly crippled, eventually leading to civil unrest. Since Germans ascribed their country's economic woes to the democratic system, they turned to radical (nondemocratic) parties that promised them alternative solutions. As a result, Adolf Hitler ascended to power as a dictator, immediately halting the payment of reparations and cancelling all elections. He thus rebuilt Germany, stabilised its economy, and promised to wrest back all the lost territory. In pursuit of these, Hitler sparked off another war – WWII.

Similarly, the terms of the treaty ending the First Gulf War were punitive and paved the way for a subsequent war. Hussein was compelled to relinquish control over Kuwait, officially apologise for the aggression, and release all PoWs. Hussein's regime was not deposed and nobody was put on trial for war crimes. There was, however, heavy demilitarisation and the imposition of no-fly zones over Iraqi territories to protect the Kurds and the Shi'ites. Between 1991 and 1998, the UN-sponsored weapons inspections in Iraq and discovered tonnes of illegal weapons,

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[326] *Ibid*.

including WMD, which were dismantled. But Hussein expelled the inspectors in 1998 and, after the 9/11 attacks, there were suspicions that he was plotting to furnish al-Qaeda with some of his WMD to undertake another terrorist attack on the US. Like Germany, Iraq was subject to the payment of reparations and far-reaching sanctions imposed on its economy, particularly affecting oil and gas resources. These measures, and specifically the sanctions, overwhelmed innocent Iraqi civilians but did little to hurt or deter Hussein and aides. Orend argues that, in fact, there is ample evidence that the sanctions only consolidated Hussein's regime because the increasingly impoverished Iraqis lived on his handouts in return for supporting him.

Instead of the flawed retribution model, Orend recommends the rehabilitation model, which rejects sanctions and reparations primarily because their implications can be indiscriminate. This rehabilitation model favours investing in and rebuilding the defeated aggressor state. It also endorses regime change, if it is going to bring about "a new, better, nonaggressive, and even progressive member of the international community."[327] Such a regime, according to Walzer, will be minimally non-murderous.[328] Moreover, acts of aggression would not be inherent in the nature of the new regime. Aggression was arguably inherent in Nazi Germany and a post-war settlement with Hitler in power was inconceivable – he had to be deposed. Similarly, the Hutu regime in Rwanda would have justly been overthrown for it showed signs of perpetuating the mass killing of Tutsis.

When such a murderous regime is overthrown, there may be a required extended period of military occupation. But, as Walzer puts it, on whom do the *jus post bellum* obligations fall?[329] He makes an interesting observation that "people who do good in the world have more obligations than people who don't do anything."[330] For instance, the 1974 left-wing regime in Cambodia was systematically murdering its own people. Vietnam intervened and successfully stopped a massacre. China and other states did nothing to assist in this regard, and the Vietnamese were bound to keep on saving lives in Cambodia. Walzer recognises that a positive multilateral *ad bellum* would mean a positive collective *post bellum* reconstruction. Sometimes

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327 Orend, *The Morality of War*, p. 184.
328 Walzer, *The Aftermath of War*, p. 39.
329 *Ibid.*
330 *Ibid.*, p. 40

unilateral *ad bellum* action may not be the best response, but rather the *only* possible response to a dire humanitarian crisis. Such an intervening state will be responsible for the political and social reconstruction of the invaded country. But, ideally, a concerted multilateral *post bellum* reconstruction exercise is desirable. Though desirable, it is not always possible as the history of trusteeships under the League of Nations (now the UN) has shown.[331] Multilateral action authorised by the UN is desirable, although the organisation remains an imperfect organisation to undertake intervention and rehabilitation processes. Orend argues that the rehabilitation model has been tried before, for example, in West Germany and Japan after WWII. Britain, America, France, and Russia partitioned Germany into Western and Eastern halves. Within the Soviet sphere, police-state communism was introduced, while within the Western section concerted efforts were made to establish free-market, rights-respecting democracies. The US-led reconstruction of Japan bore similarities to efforts in West Germany.

Notably, in undertaking rehabilitative processes, both West Germany and Japan undertook political purging. In Germany, this particularly came to be known as *de-Nazification* – the process of purging Nazis, and abolishing aspects representing and venerating Nazism. A similar process, de-Ba'athification, took place in Iraq after the US-led invasion in 2003. In Germany, some of the ex-Nazis were also subject to trials, while others were jailed and prohibited from political participation. Allied partners disbanded the militaries of both countries and replaced them with their own, and later established a direct military rule.

The period of military rule paved the way for the drafting of constitutions, bills, charters of human rights, and democratic elections, as well as American-inspired checks and balances. Tyrannical governments in Germany and Japan were checked, police forces were reconstituted and the rule of law established. Thus, independent branches of government – the judiciary, executive, and legislature – became the order of the day. Education was also overhauled in this rehabilitative process. More importantly, Americans – through, e.g., the Marshall Plan –invested heavily in restoring and stimulating the economies of Germany and Japan. These became by far the most remarkable post-war rehabilitation cases, with free-market economies that remain politically stable and with decent democracies. Although these undertakings by Americans were costly, they brought about lasting political and economic stability.

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[331] *Ibid.*, p.42

With retributive and rehabilitative models and cases in mind, Orend – in favour of the latter model – proposes a general approach in which a *jus post bellum* Geneva Convention ought to be structured. The post-war justice should bring about what he says might be called 'a minimally just regime' for any defeated aggressor.[332] A minimally just (or non-murderous) regime is the one that satisfies three general principles, viz. being peaceful, non-outlaw, and nonaggressive: it should be run by a government considered legitimate in the eyes of locals and internationals; and a society is shaped that does what it can to fulfil the human rights of its people. Orend provides a recipe the victor could use in handling the defeated aggressor so as to establish a *minimally just society*, as follows:

- Adhere diligently to the laws of war during the regime take-down and occupation.
- Purge much of the old regime, and prosecute its war criminals.
- Disarm and demilitarise the society.
- Provide effective military and police security for the whole country.
- Work with a cross section of locals on a new, rights-respecting constitution that features checks and balances.
- Allow other, non-state associations (civil society) to flourish.
- Forgo compensation and sanctions in favour of investing in and rebuilding the economy.
- If necessary, revamp educational curricula to purge past propaganda and cement new values.
- Ensure that the benefits of the new order will be *concrete* and widely, not narrowly, distributed.
- Follow an orderly, not-too-hasty exit strategy when the new regime can stand on its own two feet.

Orend emphasises that this recipe for post-war reconstruction is only a *general* blueprint. He states that some components will need to be accentuated over others. This 10-point recipe can, therefore, be applied on a case-by-case basis. However, it does not suggest that aggressors and

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[332] *Ibid*., p. 187.

dictatorships, from the Soviet Union to Nazi Germany to Hussein's Iraq etc., did not share some characteristics. Most of these regimes shared affinities like ascending to power through violence, clinging to power by violence, generally lacking the rule of law, being dominated by the military, and marred by human rights abuses. So, it is possible to argue that this general recipe can be applicable in rehabilitating such regimes to help them transform at least into minimally just societies.

In fact, there have been successful replacements of rogue, aggressive and outlaw regimes. In Hussein's Iraq and the Taliban's Afghanistan political purging took place, and new constitutions were written with local participation. The civil society then flourished compared to its pre-war state. In essence, the states have worked toward becoming minimally just regimes. But Orend notes that they face *five major obstacles* on their way to prompt and successful post-war reconstruction. First, the *weight of history* or the historical record of the regime impinges on its future. As Orend writes, from a psychological point of view, "the single greatest predictor of the future behaviour is past behaviour."[333] Secondly, despite passing new constitutions through elections, both states have been bedevilled by *internal divisions*, which bring into question the possibility of attaining post-occupation stability.

The threefold division between the Kurds (North), Sunnis (Middle) and Shi'ites (South) is an example of hard-to-reconcile differences. Thirdly, each of these groups has its external allies that bring about *external interference* which threatens to sway or sabotage the US-led reconstruction. The fourth is the issue of *insecurity* created by, among others, the massive availability and circulation of weapons and the gradual reappearance of the Taliban in Afghanistan. In Iraq, the rivalry between the three groups had put the country on the brink of civil war, but the Bush administration augmented its troop presence to successfully quell group-on-group violence. The fifth obstacle is the *economy*. Orend asks, would the average Afghan or Iraqi say they are more prosperous than prior to the war? Fortunately, the victors did not pursue the policy of revenge in these two cases. Iraq has a better chance of success, given its oil and gas resources and the large workforce. However, the implications of the First Gulf War sanctions are still felt, as evidenced by the high unemployment rate. Afghanistan is, by contrast, impoverished

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[333] Orend, *The Morality of War*, p. 190.

with high illiteracy and a poor workforce and cannot be said to be better off than it was before the war.

5.2 Responsibility to Rebuild

The ICISS conceives R2P to entail the responsibilities to *prevent*, *react*, and *rebuild*.[334] The latter, *R2Rebuild*, is often neglected like the just war theory jus post bellum category. What *R2Rebuild* seeks to do, according to the ICISS report, is:

> *To provide, particularly after a military intervention, full assistance with recovery, reconstruction, and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert*.[335]

The R2P doctrine articulated in the 2005 World Summit Outcome Document, predicated on the *responsibilities to prevent* and *react* but devoid of the *rebuild* element, is narrow and unquestionably incomplete. In the post-conflict phase, *R2Rebuild* "ensure[s] that the conditions that prompted the military intervention do not repeat themselves."[336]

Wheeler suggests that we should regard the short- and long-term humanitarian outcomes as issues of *rescue* and *protection*. *Rescue* refers to "the success of intervention in ending the supreme humanitarian emergency," while *protection* is "defined in terms of how far intervention addresses the underlying political causes that produced the human rights abuses."[337] According to Walzer, the main aim of intervening is simply to halt the killing, and leaders ought to prove that they are driven by humanitarian motives.

They should not be driven by imperial ambition, whereby there is a short-term rescue mission based on the "in and quickly out" rule.[338] With due consideration to the principles of political sovereignty and territorial integrity, some post-intervention situations may require

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[334] ICISS, *The Responsibility to Protect*, p. 17.
[335] Evans, *Ending Mass Atrocity Once and For All*, p. 148.
[336] Pattison, *Who Should Intervene?* p.13.
[337] Wheeler, *Saving Strangers*, p. 37.
[338] Walzer, 'Arguing for Humanitarian Intervention', in Mills, N. and Brunner, K. (eds.) (2002), *The New Killing Fields: Massacre and the Politics of Intervention*. Basic Books.

occupation until such time that a new or minimally just regime is able to stand on its own, and left for locals to further shape. This is so because justice demands that a just war ends at the right point:

> *Neither too early, such that the violated [human] rights fail to be vindicated; nor too late, such that continuance of the war itself constitutes the violation of other rights [e.g., to sovereignty].*[339]

In a nutshell, the ICISS report outlines three related post-intervention obligations, which can be subsumed into Orend's general recipe, for interveners. The first is to provide *security* by preventing civilians and former belligerents from committing vengeful attacks, including "reverse ethnic cleansing" after the war. This would also be made possible by post-war disarmament, demobilisation, and reintegration (DDR) processes of local forces from both (former) adversarial sides.[340] The second relates to *justice and reconciliation* which can be achieved through the (re)establishment of local judicial systems, by fostering local opportunities for reconciliation and by guaranteeing the legal rights of returners (i.e., people who had been forced to flee their homes).[341] Lastly, economic growth and development must be allowed to flourish since it does not only have positive implications for DDR, security, law and order but also for the overall recovery and development of the receiving state. Any coercive economic measures imposed on the country concerned should be lifted to allow progress, with the smooth transfer of development responsibility and implementation to the local leadership.[342]

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[339] Orend, B. (2000), *War and International Justice: A Kantian Perspective*. Wilfrid Laurier University Press, p. 225.

[340] ICISS, *The Responsibility to Protect*, p. 41.

[341] Bellamy, A.J. (2013), *Responsibility to Protect*: *The Global Effort to End Mass Atrocities*. John Wiley and Sons.

[342] ICISS, *The Responsibility to Protect*, p. 43.

5.3 The Aftermath of Intervention in Libya: A Just Peace?

NATO ended its seven-month long military campaign in Libya on 31 October 2011, just a few days after the overthrow and killing of Qaddafi. Libya has had a tumultuous history since independence in 1951. The monarchy and the Qaddafi regime created disconcerting social, political and economic legacies that would impact on the country's reconstruction after Qaddafi's fall.[343] The US and its NATO allies, I argue, knew or ought to have known better about Libya's distinctive history and the implications of Qaddafi's overthrow for post-war reconstruction and democratisation. The international community had recognised the NTC as the legitimate representative of the Libyan people. The council had laid down guidelines in its Constitutional Declaration of August 2011 for the national elections of 7 July 2012. The Libyan people and the international community hailed the first democratic elections since the early 1960s as a major achievement.[344] Libya's first democratic elections and the NTC's smooth handover of power to the elected General National Congress (GNC) raised hopes for political change, according to *The Economist*.[345] But an important question, raised by Vandewalle, was:

> *Whether this first attempt at national political institutionalisation would prove resilient and inclusive enough to rein in the divisive forces the country faced: tribalism and regionalism; federalism in eastern Libya; different forms of Islamism; and the country's militias*.[346]

Owing mainly to Libya's peculiar history, there has been much ambivalence and uncertainty about its reconstruction process. Both political disenfranchisement during the monarchy and the Qaddafi reign left a legacy of distrust in national institutions. There was also much interpersonal and mutual distrust, and an absence of personal initiative. According to Vandewalle, Qaddafi's

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[343] Vandewalle, D., 'Libya's Uncertain Revolution', in Cole, P. and McQuinn, B. (2015). *The Libyan Revolution and its Aftermath*, Oxford University Press, p. 20.

[344] *Ibid*., p. 24.

[345] *The Economist* (2015), That it should come to this: The Four-year Descent from Arab Spring to Factional Chaos. Available at: http://www.economist.com/news/briefing/21638123-four-year-descent-arab-spring-factional-chaos-it-should-come [accessed: 14/01/2016].

[346] Vandewalle, *Libya's Uncertain Revolution*, p. 24.

own extensive security organisations and the patronage system immobilised Libya politically, socially and economically, and thus compounded matters.[347] So, the NTC presided over the enigmatic regime of Qaddafi as it tried to develop institutional and policy coherence during the revolution and towards transition.

Libya lacked (and still lacks) the necessary political and administrative institutions that the monarchy and the Qaddafi regime had hardly bothered to establish and nurture. "The only encompassing 'institution' in Libya was Qaddafi himself and his clutch of advisors."[348] His only institutions – the Revolutionary Committees, security organisations, and brigades – disappeared following his overthrow and killing. The overthrow of Qaddafi left a security vacuum which was filled by a multiplicity of militias, empowered both by their role in the revolution and by the massive amount of post-Qaddafi period weapons left unattended.[349] The *lack of security* and mutual distrust among those that participated in the revolution characterised post-war Libya and were manifested in skirmishes. Vandewalle observes that:

> *Those who fought the revolution – the 'thuwwar', or revolutionaries – refused to disarm until they felt they trusted those representing the state, while those in charge of the state argued that the continued presence of the revolutionaries prevented them from [re]building the state.*[350]

Post-revolutionary Libya came to be bifurcated into two camps – the revolutionary sector and a sector that aimed to (re)establish institutions to the detriment of the *thuwwar*. Chivvis and Martini write that insecurity has had negative repercussions across the spectrum. It has undermined the efforts to build functional political and administrative institutions due, partly, to minimal international involvement. The lack of security stems primarily from the failure of

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[347] *Ibid.*
[348] *Ibid.*
[349] *Ibid.*
[350] *Ibid.*, p. 22.

the international community to disarm and demobilise rebel militias after the war.[351] Both international advisors and Libya's political leaders, Chivvis and Martini observe, recognised the importance of rebel disarmament from the outset, but neither has been able to follow through.[352]

Jesse Franzblau writes, in *The Nation*, that France was the first nation to provide arms, ammunition, and tanks to the Libyan rebels.[353] Qatar also provided weapons, including modern French-manufactured anti-tank missiles, and the UAE – with the approval of the US – shipped materiel to Libya. An investigation by the UN found that Qatar and the UAE violated Resolution 1970's arms embargo. The US, Britain, France, and Qatar made available special operations forces that allegedly provided the rebels with training and tactical support. The popular uprising by Libya's plethora of insurgent militias was aided by the foreign involvement in Qaddafi's overthrow. But the intervening forces failed to ensure that a proper DDR programme was implemented after the war. Instead, interveners left Libya a heavily militarised country in the hands of transnational, non-state armed actors that have invariably battled for control of strategic cities and resources.[354]

The lack of security has greatly undermined an already *difficult state-building process* in Libya.[355] Vandewalle points out that "in some revolutions the institutions and social structures left by previous governments and regimes can be adapted into new state building elements."[356] But in Libya, where state institutions had been ignored, neglected or outright destroyed for decades, a deep post-revolution reconstruction process is needed to endow the flimsy state with the legitimacy required to function. Yet the intervening states and other actors "have done little to implement or promote an effective transitional policy in Libya."[357] The international

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[351] Chivvis, C.S. & Martini, J. (2014) *Libya After Qaddafi: Lessons and Implications for the Future*. The RAND Corporation, p. X.

[352] *Ibid.*

[353] Franzblau, J., *The Nation*, (2014), Libya: A Dramatic Strategic Failure. Available at: http://www.thenation.com/article/Libya-dramatic-strategic-failure [accessed: 13/02/2016].

[354] *Ibid*.

[355] Chivvis and Martini, *Libya After Qaddafi*, p. X.

[356] Vandewalle, *Libya's Uncertain Revolution*, p. 17.

[357] Okyere, F. (2013), 'The Legacy of UN Military Intervention and State-building in Libya', *KAIPTC Policy Brief*, p. 1.

community has taken an unusually limited approach to post-war reconstruction in the country. Chivvis and Martini note that:

> *Libya's civil war differed from those in Bosnia, Kosovo, Syria, and other cases where ethnic or sectarian fighting had pitted citizens against each other in a fury of violence.*[358]

This should have made post-war reconstruction easier given the enthusiasm and jubilation that followed the popular revolution which saw Qaddafi's fall. The international strategy for handling post-war conflict in Libya also differed from NATO's prior military interventions in one important way: no peacekeeping or stabilisation missions were deployed after the war. Rather, a small, feeble UN Support Mission in Libya (UNSMIL) was mandated to coordinate international post-conflict stabilisation support. Though elections were a laudable step toward rescuing Libya from its enigmatic immobility, party platforms were hardly articulated, if at all, and revolved around personalities rather than representing clear presentations of political views. According to Vandewalle, it was unrealistic to expect Libya's first democratic elections to lead to democracy given "its lack of institutions and historical references that could underpin it."[359] Since the creation of truly national political institutions inevitably takes years to achieve, a comprehensive and well-coordinated support system should be forthcoming in Libya – but, alas, it is greatly lacking. Building a national identity has also been a challenge for the GNC and the transitional executive administration.

The GNC's internal strife and the threat posed by revolutionaries exposed how engrained Qaddafi's system of patronage had been. The long drawn-out federalism-decentralisation debate resurfaced during the 2011 conflict. Libyans in the east had resented the privilege and patronage Qaddafi had bestowed on those in Tripoli. Eastern Libyans voiced a strong and palpably shared feeling that Libya is free and indivisible, but "debates over autonomy for Cyrenaica and special privileges for different provinces continued soon after the NTC's move to Tripoli."[360] Some easterners had grown disillusioned with the NTC and the GNC, whose administrators met the

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[358] Chivvis & Martini, *Libya After Qaddafi*, p. 1.
[359] Vandewalle, *Libya's Uncertain Revolution*, p. 25.
[360] *Ibid.*

demands for decentralisation with periodic handouts and subventions and announcements of their intention to relocate the government to Benghazi. But the relationship between Tripolitania and Cyrenaica deteriorated over the federalism-decentralisation debate.

Owing partly to the foregoing debate, politically inexperienced Islamist and revolutionary groups seeking high-profile positions had forced the passage of "political isolation law" that excluded many Libyans, particularly those who had served under the Qaddafi regime, from participating in or occupying government positions.[361] But the circumstances under which the law was passed were less than ideal: Tripoli was effectively taken over by armed supporters of the isolation law, and militias had besieged numerous ministry buildings.[362] This law effectively removed and barred the personnel that had served under the Qaddafi regime from participating in the country's political, economic, educational and security institutions. It thus represented "a purely punitive instrument, without any conciliatory measures that have proved instrumental in reconstructing several other states after civil wars."[363] It can be argued that, from Orend's perspective, the *political isolation law* passed to purge a vanquished old regime (I would call this *de-Qaddafisation*) was evidently more retributive than rehabilitative. It exacerbated existing rifts in society and, more worryingly, reduced the available pool of experienced officials for (re)deployment in government.

Transitional justice remains critical as an alternative to vigilante justice or acts of revenge against real and perceived perpetrators of violence during the Libyan revolution. Historically, Qaddafi's state machinery perpetrated alleged crimes and human rights' abuses such as summary executions, widespread disappearances, and torture, through the use of political courts and prisons for political opponents. The execution of 1,200 prisoners at Abu Slim prison remains the most notorious atrocity. To date, many of these crimes have not seen the light of day in the courts of law because the justice system remains feeble, if not non-existent.

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[361] Chivvis and Martini, *Libya After Qaddafi*, p. X.

[362] *Foreign Policy* (2013), Isolation Law Harms Libya's Democratic Transition. Available at: www.foreignpolicy.com/2013/05/08/isolation-law-harms-libyas-democratic-transition/ [accessed: 20/01/2016].

[363] Vandewalle, *Libya's Uncertain Revolution*, p. 26.

The 2011 revolution, Marieke Wierda writes, occasioned a new wave of legal violations by Qaddafi forces.[364] The Qaddafi regime, as noted in previous chapters, indiscriminately used live ammunition, landmines and cluster munitions on protesters. Some PoWs were extra-judicially executed, while alleged incidents of mass rape used as a weapon of war were widely reported. Revolutionaries were not blameless because some meted out retributive justice, including the killing of Qaddafi, his son Mu'tasim and aides.[365]

Since then, there have been violent incidents of reprisal between the revolutionaries and forces loyal to Qaddafi. Libya thus faces a dilemma created by historical and recent human rights violations in a state that has not enjoyed a stable judicial system for decades because of political meddling. Wierda notes that the NTC's handover of power to the GNC set up institutions such as the directly elected transitional legislature, and appointed government officials, diplomats, and members of other national institutions but not members of the judiciary.[366] Ever since the outbreak of the revolution in 2011, Libya has been hit by *economic challenges*, owing mainly to the decline in oil production and exports. Prior to the war, the country produced oil in excess of 1.6 billion barrels per day, but by the end of 2013, this had fallen to between 150, 000 and 160, 000 barrels per day. [367] In line with Resolutions 1970 and 1973, Western and European countries imposed targeted sanctions on Qaddafi, his family, and some members of his government. Immediately after the end of NATO's intervention, these actors lifted most of their sanctions. Although they have not resorted to coercive measures to punish the vanquished side, there have been no efforts to invest or 'pour money' into Libya as counselled by Orend's rehabilitative model.

A combination of shaky state-building, economic challenges, and disparities between the weak local justice system and the ineffective international mechanisms for comprehensive transitional justice compounded insecurity problems in Libya and, frankly, across the entire MENA region. The arrest and detention of Saif al-Islam Qaddafi by Libya's interim authorities

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[364] Wierda, M., 'Confronting Qadhafi's Legacy: Transitional Justice in Libya', in Cole & McQuinn, *The Libyan Revolution and its Aftermath*, p. 155.

[365] *Ibid*., p. 156.

[366] *Ibid*.

[367] Okyere, *The Legacy of UN Military Intervention and State-building in Libya*, p.3.

led to a jurisdictional dispute over his trial between the Libyan authorities and the ICC.[368] This has been a microcosm of retributive justice on the part of the victors since Libya's weak local judicial system could not (and still cannot) deliver fair war crime trials compared perhaps to the ICC. To the dismay of many Libyans and the international community, the period of transition has been murky at best. The swearing-in of Ali Zeidan as the Prime Minister of the GNC in 2012 was followed by a host of pitfalls. In 2013, amidst the volatile security situation, Zeidan was kidnapped but later freed.[369] Mass protests broke out after the GNC refused to disband when, on 7 February 2014, its mandate expired. The refusal to dissolve the GNC was justified on the ground that more time was needed to draft the constitution that would have laid a foundation for elections and signalled an end to transitional rule. But this was highly contested, with opponents accusing the GNC of unjustifiably clinging to power.

Since then, accusations and counter-accusations have exacerbated a hostile political atmosphere that does not bode well for the transition.[370] In March 2014, the GNC ousted Zeidan over allegations of embezzlement and replaced him with Ahmed Maiteeq, who tendered his resignation after the Supreme Court ruled that his appointment was invalid. Amid this tumultuous period, ex-General Khalifa Haftar – formerly exiled in America for 20 years – declared "war on eastern Libya's Islamist militias and on politicians he accused of backing them."[371] On 25 June 2014, Libya held its second democratic elections of a new parliament. However, the turnout was very dismal compared to the previous elections, as *The Economist* writes.[372] This signalled Libyans' growing disillusionment with their country's troubled

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[368] Vandewalle, Libya's Uncertain Revolution, p. 69.

[369] Stephen, C. and Watt, N., *The Guardian* (2013), Libyan Prime Minister Ali Zeidan Calls for Calm After Kidnapping. Available at: www.theguardian.com/world/2013/oct/10/libyan-prime-minister-ali-zeidan-freed-kidnap [accessed: 20/01/2016].

[370] Eljarh, M., *Foreign Policy* (2014), February Is a Make-or-Break Month for Libya. Available at: www.foreignpolicy.com/2014/02/06/february-is-a-or-break-month-for-libya [accessed: 20/01/2016].

[371] *The Economist*, (2014), Dismal Democrats: Few Libyans Put Much Faith in this Week's General Elections. Available at: www.economist.com/news/middle-east-and-africa/21605948-few-libyans-put-much-faith-weeks-general-election-dismal-democrats [accessed: 20/01/2016].

[372] *Ibid*.

experiment in democracy. Islamist candidates were soundly defeated by secularists. According to *Aljazeera*:

> *Fighting soon broke out at Tripoli's international airport between the newly formed Libya Dawn coalition, led by fighters in Misrata and their Islamist-leaning allies on one side, and Haftar and his coalition, including the Zintan forces, who had controlled the lucrative site since 2011.*[373]

The Libyan Dawn took over Tripoli, destroyed its international airport and terrorised the residents. Eventually, the newly elected democratic parliament was compelled to exit Tripoli to find bases in the eastern city of Tobruk. The Islamist-leaning parties reconvened the previous parliament, the GNC, to rival the internationally recognised Tripoli-based parliament. It cannot be denied that since the emergence of two governments and the resurgence of civil war (in 2014), terrorism has returned to Libya. The Islamic State (IS), also known as Daesh, has beset neighbouring Syria and Iraq and has capitalised on the security vacuum created by divisions in Libya to gain a foothold. Recent attacks on two oil terminals in eastern Libya,[374] the threat of similar attacks, as well as the control of oil fields by IS for revenue generation are all causes for serious concern. Chivvis and Martini rightly argue that:

> *The United States and its allies have both moral and strategic interests in ensuring that Libya does not collapse back into civil war or become a safe haven for al-Qaeda or other jihadist groups within striking distance of Europe.*[375]

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[373] *Aljazeera*, (2015), Libya: A Tale of Two Governments. Available at: www.aljazeera.com/news/2015/04/libya-tale-governments-150404075631141.html [accessed: 21/01/2016].

[374] *The Wall Street Journal*, (2016) Islamic State Attacks Libyan Oil Terminals Available at: www.wsj.com/articles/islamic-state-attacks-libyan-oil-refineries-1451914036 [accessed: 21/01/2016].

[375] Chivvis and Martini, Libya After Qaddafi, p. XI.

Unfortunately, they are guilty of dithering and abdicating their responsibility to rebuild Libya following the 2011 intervention. The country has thus backslid into a civil war that has opened a power vacuum IS and other extremist groups are happy to exploit. It is worth mentioning that Qaddafi had warned of the rise of terror groups like al-Qaeda and IS. For example, Qaddafi warned the West of Islamist terrorism during the 2011 revolution.[376] In 2016, transcripts of telephone conversations between Qaddafi and Tony Blair, the former British Prime Minister, revealed that, indeed, Qaddafi had warned of jihadist attacks on Europe and the West "if his regime was allowed to collapse."[377]

It would not be far-fetched to argue that terrorist organisations are at the doorstep of Europe following two attacks in France: The Paris attacks in which 130 people died in November 2015 and the Charlie Hebdo shooting that left 12 dead in January of the same year. There is an interesting question that has emerged in the media about the post-2011 intervention Libya: "Is Libya better [off] without Qaddafi?"[378] In our case, this question can be restated in two ways: first, did the intervention in Libya cause more harm than good? Or, second, did the intervention in Libya lead to a just peace? Fetouri writes that most Libyans would have liked to see Qaddafi tried in a court of law to answer for all the suffering he had caused since the beginning of his reign.[379] However, it is unclear whether the local judiciary could have tried Qaddafi. Though the ICC had issued a warrant of arrest against him, it is even more uncertain whether he could have been tried, let alone arrested on the African soil, for his nefarious deeds.

According to Fetouri, one former rebel stated that the situation in Libya "is not promising, and many of us regret what happened because we never expected it to be this bad."[380] The lack of a central government and the rise of terrorism have led many to compare the state of their country and, indeed, their lives under the Qaddafi regime with the current

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[376] *Al Arabiya News* (2011). Gaddafi Warns West of Islamist Terrorism. Available at: www.alarabiya.net/articles/2011/03/06/140350.html [accessed: 21/01/2016].

[377] Mendick, R. *The Telegraph*, (2016), Colonel Gaddafi Warned Tony Blair of Islamist Attacks on Europe, Phone Conversations Reveal. Available at: www.telegraph.co.uk/news/politics/tony-blair/12086505/Tony-Blairs-phone-conversations-with-Colonel-Gaddafi-revealed.html [accessed: 21/01/2016].

[378] Fetouri, M., *Al-Monitor* (2015), Four Years After Gadhafi, Is Libya Better Off? Available at: www.al-monitor.com/pulse/originals/2015/10/libya-gaddafi-death-four-years-better-worse-hrw-bayada-city.html [accessed: 22/01/2016].

[379] *Ibid*.

[380] *Ibid*.

government(s) or the lack thereof. People now lack basic services and the prices of food are exorbitant, with few subsidies – all of which were well subsidised by the Qaddafi regime through its primarily oil-funded social security and health programmes. This is partly so because the production of oil has dropped since the onset of instability. Moreover, there was the emergence of a multiplicity of (non-state) actors that control strategic areas for their own benefits. It would suffice to conclude that, in light of these post-intervention pitfalls and challenges encountered locally and internationally, the intervention in Libya did not lead to a better state of peace or a just *peace*. In fact, some might reasonably argue that the situation now is worse than the *status quo ante* and that another intervention might be prompted, particularly given the metastasizing terrorism escalating across the MENA region and toward Europe.

CHAPTER SIX:

6.1 Summary & Conclusions

The 2011 humanitarian intervention in Libya satisfied all the *jus ad bellum* and *jus in bello conditions*. The primary cause of ending the onslaught and preventing a massacre was convincingly just. It cannot be denied that mixed motives played a role, but the primary humanitarian motive prevailed. The benefits of this intervention outweighed the costs of what could have ensued had the international community remained idle as it gained both legality and legitimacy from the international community and regional and local actors. Multilateralism ensured that resources of different actors were concentrated for a successful campaign, with minimal cost to civilians. This was a last-resort action considering that non-coercive measures were tried but failed in the face of a massacre. The intervention was thus morally just. It, however, did not lead to a better state of peace or a just peace. While just war theory and the responsibility to protect emphasise the prevention of and reaction to serious acts and threats of human rights' violations, these theories do not to cast moral judgements concerning the war based on consequential arguments and unpleasant post-war state of affairs. Interveners should, however, ponder the post-war situations when contemplating war. This is why we have *ad bellum* and *in bello* principles such as the *probability of success,* as well as *proportionality #1* and *proportionality #2*. Post-war reconstruction's main aim is to ensure that war does not recur, and therein lies the moral responsibility to prevent any relapse into war. Righting the wrong that occasions the war is an integral and most important part of preventing wars before they (re)emerge. Structural reconstruction is even more important because it addresses both the short- and long-term grievances. From the evidence presented in this study, I, therefore, conclude that the intervention in Libya was just but did not lead to a just peace because the international community failed to follow it up with reconstruction.

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