

## The Possibility to Intervene in Syria Relying on Just War Theory Assumptions

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### ABSTRACT

This research generates deeper understanding of just war theory principles pertaining to ethical and moral warfare with the objective of exploring the extent to which the theory could apply to the Syrian crisis. Legal and socio-political conceptual framework of going to war and intervention is presented since there are a set principles to consider war as legitimate featuring just cause, legitimate authority, right intention, last resort, and proportionality that includes reasonable hope of success. that The conflict nature defies the conventional moral principles and foundation of the just war theory. As such, the study concludes that there is still a window of opportunity to exert efforts in searching for a peaceful settlement of the crisis rather than looking for military intervention that could complicate the situation and endanger the country stability.

**Keywords:** International Law, Just Wars, Humanitarian Intervention, Syria Crisis.

### 1. Introduction

This study seeks to examine just war theory key concepts with respect to ethical and moral warfare in an attempt to explore the extent to which the theory core principles could apply to the Syrian ongoing crisis. Noticeably, the theory has concerned in presenting limited set of justification for going to war based on ethical grounds. Broadly conceived, the theory concerned with ethical principles of waging war called by its Latin name(*jus ad bellum*), ethical conduct of the war (*jus in bello*) and post-war stage of conflict (*jus post bellum*). The theory offers prominent insights into the value of the human security paradigm and therefore it concerns about "how the use of arms might be restrained, made more humane, and ultimately directed towards the aim of establishing lasting peace and justice" (Rigstad, 2007: 3). As someone noticed, the theory overall objective is using force in the service of order, justice and peace (Andreea, 2014: p.348). In other words, it provides moral account for military intervention and illustrates the legal and socio-political conceptual framework through which going to war could be justified. As John Howard noted, "the just-war tradition continues to be the ethical bedrock for a significant body of international law on the conduct of warfare, for national military manuals on the same subject, and even for the threat of prosecution for war crimes" (Yoder, 2001:xiv). Moreover the theory "offers the ethical guidance by which communities of conscience have been helped to make judgments about their participation in or objection to particular military endeavors" (Ibid: xiv).

### 2. Study Aims and Objectives

Fundamentally, we aimed at discussing the ethical and moral principles of war in general and its relevancy to the Syrian crisis in particular. The theory provides an objective account of the war morality which imposes ethical and practical considerations with respect to the use of military force. Moreover, the theory encompasses the highly debated issue of warfare and seeks to distinguish between justifiable and unjustifiable warfare based on ethical and moral considerations. In this broad sense, the theory has a wide array of ethical grounds regarding war and peace. Indeed, "Just and Unjust Wars proceeds from the assumption, and conviction, that neither the resort to war nor the conduct of war may escape moral judgment"(Hendrickson,1997: p.20).

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In approaching the study objective, some questions would be raised such as:

- Does existing threats as policy makers portray justify violations of privacy and territorial integrity of other countries?

- When intervention is deemed necessary to curb aggression, prevent atrocity as well as restore stability?

- Will the reasons of humanitarian interventions provide a just cause under just war theory?

Is involving in a war against Syrian regime deemed necessary and therefore could be justified and placed within just war theory? If the war resulted in huge civilian casualties, or created political power vacuums, do war theory conditions still apply in such scenario?

This study critically examines just war ethical framework using moral judgment in an attempt to construct a reasoning model through which the theory foundations and its applicability on the Syrian crisis can be examined. To do so, the authors have divided the study for two sections; the first one presents briefly the conceptualization of the theory core ideas regarding to just war and the second one discusses the just war applications on the Syrian crises.

### **3. Theoretical Framework**

Just war theory consists of set of ethical and moral principles relating to war and its contentious moral issues which long established in St. Augustine notions, Tomad'Aquino, Francisco de Vitoria, Hugo Grotius, and Vattel (Andreea, 2014: p.342). Just war theory has developed over the centuries since Augustine, who was the first Christian to address in a public way the issues of justification, goals and means of war (Gillis, 2007: 2). Perhaps the leading modern scholar of just war theory is Michael Walzer who approached the philosophical assumptions of the theory principles in his book, "Just and Unjust Wars," in which he contributes to understanding the traditional foundations of the theory and its relations with a variety of issues including preemptive war, and humanitarian intervention (Waltzer, 2006). Of particular importance recognizing that the theory provides not only mere moral values, but rather it encompasses practical guide on when and how to use military force. As Lee observes, "Just war theory has always been understood not as an abstract moral theory, but as a practical guide for political leaders and military personnel in their decisions about the employment of military violence" (Lee, 2007: p.3).

Remarkably, The just war tradition is constructed on two interrelated principles: first one stating that the resort to war is just in certain conditions and the second one revealing the existence of ethical norms that permit warfare to be implemented in a just way (see Andreea, 2014:343; Brough, Lango, & Linden, 2007, p. 243). Furthermore, Just war theory provides the principles through which legitimacy and permissibility could make meaningful 'normative dialogue'. It provides also the basis for justification of using force. (see Walzer 2006) Practically, Just war principles could be described as "just war *obligations*" as they balance the 'theoretical' right of states to wage war against fundamental moral and legal responsibilities that constitute together what might be called "permissibility" (Trosky, 2014: 33). The theory comprises the principle of *jus ad bellum* that represents certain criteria regarding the justice of war, and the *jus bello* that states justice in war (the warfare law). These ethical and moral elements constitute the foundations or platform on which just war could be justified. To put limitation on military actions the theory established what called "moral permissibility" of the war (Lee, 2007: 4).

However, Traditional just war theory has long-rooted rules in Catholic theologians of the third century and beyond. These rules are concentrate on proper authority, just cause, and right intention. It sets four pillars: 1- war decision came as a response to grave certain damage 2- all other tools to solve the problem have been approached and failed to produce outcomes. 3- There are expectations of success 4- the consequences of the war should not produce more dangers and grave situation (Cynthia, 2015: 126). Noticeably, Just war theory represents a sort of ethical principles that dealing with the war moral validity, and therefore the theory has seen as an outgrowth of traditional Greco-Roman and Christian thought. Augustine, who is a Christian theologian, emphasized the notion that war could be justified in certain cases that constitute real dangers to the security and when it deemed necessary to achieve peace. Thomas Aquinas also addressed the just war foundations and outlined the circumstances under which a war can be justified.

Interestingly, many principles that developed by the theory have been integrated into international laws governing conflict such as Geneva conventions and the UN charter (Emba, 2015; Gillis, 2007: 2). Furthermore, Walzer argues that war could be justified in certain cases and moral principles can be applied to war. Just war according to him is limited war that encompassed moral means and ends with the objective of status quo restoration rather than overrides the state sovereignty (Cynthia, 2015: 125). Walzer point of view is that intervention for the purpose of restoring the status quo is just.

The moral issues in just war theory are embedded into two categories; *jus ad bellum* that dealing with the justification of war, and *jus in bello* concerns justice in war in terms of how to conducting the battle once the war embarked upon. Also there is a another category emerged called *jus post bellum* concerns the aftermath of the war in terms of making a just peace and the responsibilities of war combatants after war has accomplished (Emba, 2015). To meet the requirements of *jus ad bellum* a war decision must serve a just cause and the war itself must be waged under a legitimate authority based on right intention. War decision encompasses a synthesis of last resort for maintaining peace and a high probability to achieve positive objectives rather than causing more harm and mounting casualties. The aforementioned categories for waging war should be fulfilled so that war could be regarded as just and consequently missing any pillar of the war condition makes war unjust (Emba, 2015).

Clearly, Just war theory contributes to provide ethical and moral foundations for waging war, and hence it sets forth five requirements, each of which must be met before using military force is justified as follow:

- 1- Just cause: The war must be decided in light of serious danger or to restore what was taken unjustly
- 2- The war must declare by legitimate authority (International law and through relying upon UN Charter; namely Security Council authorization). This authority allows Military force in self-defense case or by a decision of the UN Security Council.
- 3- Right intention: War decision must be taken on just objectives. As Augustine noted, just wars are waged based on goals of keeping peace or punishing evildoer's.
- 4- Last resort. All peaceful alternatives must have been exhausted or proved insufficient. This means that the parties must seek to compromise their disputes and resolve them through negotiation, mediation or applying certain sanctions before they decide to wage war.
- 5- Proportionality. The war positive outcome should outweigh harm and insecurity. The results should not lead towards state destruction or cause an all-out chaos. Consequently, and connected to this point the war should encompass probability of success that means reasonable hope and chance to achieve its goals. Therefore, military actions that lead to potential lose and increase the country vulnerability to extremists and destabilization would be unjust action and couldn't be justified (Lee, 2007: 4 see also Andreea, 2014, and Trosky, 2014; Kamm, 2004; Gillis, 2007).

There are a set principles of *jus ad bellum* comprises just cause, legitimate authority, right intention, last resort, and proportionality (this includes reasonable hope of success) and three principles of *Jus in bello*; discrimination, necessity or minimal force, and proportionality. Noticeably, the theory classical notions do not apply to most recent wars that were not conducted between regular armies deployed basically by states. This imposes sort of challenges to the theory foundations that probably would not apply to the Syrian case as the struggle materializes between regular army of the state and different forces including terrorist organizations and other factions inside Syria. However, the conflict style in the Syrian case defy the traditional moral principles and foundation of the just war theory (McMahan, 2012).

However, the changing character of the war is challenging the traditional set of principles about war theory that debated the moral attitudes relating to regular forces deployed by states and therefore the theory do not apply on the wars being conducted between state regular army and "rogue" forces that do not subject to any control of certain state. This applies on United States' wars in Vietnam, Afghanistan, and Iraq. Moreover, it is evident in the recent civil conflicts in Libya, Syria, and the continuing conflict between states and decentralized terrorist organizations such as Al Qaeda (McMahan, 2012).

The theory morality was incorporated into war decision making process resulted in constraints on when and how wars are fought. (Walzer, 2002: 933). In other words, it puts constraints on exercising power and using force in what might be called the "war responsibility politically and militarily". Overall, as Michael Walzer states: "decisions about when and how to fight require constant scrutiny, exactly as they always have" (Walzer 2002: 935). Simultaneously, the theory states that killing civilians is a crime and therefore any war that caused civilians casualties is considered unjust as it endangers the country stability and the well-being of the innocent people (Walzer, 2002: 934). As such, just war theory represents moral doctrine since it holds the leaders responsible for the well-being of innocent men and women, and yet it outlines things that are morally impermissible to do. However, as Michael Walzer emphasizes fighting itself cannot be morally impermissible because just war concept means a war that it is possible to fight but that war is a morally dubious and still complicated activity (Walzer, 2002: 935).

*Jus in bello* within the just war theory is meant the regulations of using violence and military force to achieve the objective of the military war. *Jus in bello* comprises principles pertaining to discrimination stating that the well-being of the innocent people must be preserved through making sure not to attack civilians. It also points out proportionality principle that means military forces have to contribute to achieve the war goals rather than causing serious damage or harm (Andreea, 2014: p.343).

#### **4. The Responsibility to Conduct a Just War**

Just war is subject to debate taking into account the sovereignty and humanitarian intervention. So, war is legitimate to conduct only if aggression occurred. According to Waltzer the state sovereignty and territorial integrity are of particular importance and therefore he states: "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" (Waltzer, 2006: p.62). Remarkably, national sovereignty constitutes a setback in front of Intervention that is often seen as "morally problematic" since the just cause for initiating war is limited to self-defense case and therefore, it is prohibited to initiate war because this behavior would be non-defensive (Lee, 2007: p.7). However, some scholars argue that humanitarian intervention could be justified in certain conditions when human rights are extremely violated, the victims support the intervention, and most important recognizing that the intervention promises to do more good than harm in an attempt to avoid causing humanitarian crisis (Lee, 2007: p.8). As a result, some believe that just war theory needs to be changed to accommodate humanitarian intervention. As some argue, "In *jus ad bellum*, just cause for nation-states has gradually become limited to defense against an actual or imminent unjust attack on one's own nation or another nation, with possible further just cause being intervention to stop genocide perpetrated by a government against its own citizens" (Kamm, 2004: p.651). As such, some scholars look at protecting innocent people from brutal regimes as part of just cause requirement (Gillis, 2007: 3).

In similar vein, some scholars believe that military intervention necessitates the international community to hold its legal obligations with respect to putting a plan to end the war and hold the aggressors accountable to set arrangements for post-war nation building in terms of re-establishing social, economic, and political order in addition to preserving security (Rozpedowski, 2015). Clearly, Post-conflict settlements and Rehabilitation are so important to the moral judgments of the warfare in terms of achieving human security and maintaining human rights in what is called *jus post bellum* principles that handle after war considerations (The responsibility to rebuild is part of the just war doctrine). As Williams argues, A just peace exists when the human rights of those involved in the war, on both sides, are more secure than they were before the war (Williams and Caldwell, 2006: 309-320).

To sum up, Although the theory concentrates on just causes in using force in the cases of self-defense but some scholars sought to expand just causes for the deployment of military forces beyond self-defense; that is to include humanitarian intervention that overrides traditional sovereignty with the purpose of providing armed protection for innocents abroad against certain grave harms. Yet, they have stated the right to wage preventive wars against threats from "rogue states" and terrorist organizations (Rigstad, 2007: p. 4).

## 5. Background to the Syrian Crisis

In light of the above discussion of just war theory and its requirements, it is perhaps useful to examine and reveal whether or not a future use of force against the Syrian regime is both legitimate and moral relying on just war assumptions. This examination concentrates on human rights violations in Syria as this constitutes a platform through which a resolution by United Nations Security Council to authorize military intervention could be discussed and contemplated thoroughly.

In the last six years, Syria has been suffering from brutal acts of violence between the regime forces and the Syrian free army, let alone the other militant groups. This accompanied by Kofi Annan, who was the international mediator on Syria, resignation in 2012 resulted in limited chances to resolve the crisis, politically and diplomatically. Annan himself described the situation as “mission impossible” (Al- Jazeera Network, 2012).

Till now, and because of continuing warfare, hundreds of thousands of Syrian civilians lost their lives, and many millions fled to neighboring states of Jordan; Iraq; Turkey; and Lebanon, besides seeking humanitarian asylum in Western countries in Europe; Australia; Canada; and the United States. As a result to the turmoil, Syria is plagued by violence; mass-killing; torture; displacement; and territorial fragmentation (O’Sullivan, 2012). Human Rights Watch and Amnesty International reports indicated that since the uprising 4.8 million Syrians fled externally, and more than 6.3 million Syrians displaced internally, meanwhile almost 13.5 million civilians are crucially in need of humanitarian aid (Congressional Research Service, 2017).

Understanding the Syrian crisis necessitates tracking the crisis development since the beginning till now. This serves two objectives; first, investigate the possibility and legitimacy of military intervention to protect innocent people of Syria, second, examine whether or not the Syrian regime considers a tyrant which requires immediate response from the international community to stop human rights violations. The Syrian uprising started in 2011, when the Syrian police arrested 6 school students. This incident sparked the situations in southern city of Dar’a and protests broke out demanding immediate release of the children. The refusal of government officials to respond to the masses drove the peaceful protests to demonstrate and call for a set of economic and political reforms, without any attempt to topple the existing regime. Police and army forces were attending in the demonstrations, and they started to open fire at demonstrators and random arrest took place. Consequent to these acts, protests became larger and started to spread locally. It has been reported that at least 15,000 Syrian civilians were killed by the Syrian security forces during confrontations between the demonstrators and the Assad’s regime forces (BBC news, 2012). Dramatically, Situations started to develop, as the opposition movement was shaped to include a political group forming the Syrian National Council, and the armed group that formed the Syrian free army. During the year of 2011, and because of ongoing violence in Syria, former U.S. president Barak Obama demanded Assad to step down. Meanwhile, Al Qaeda network located in Iraq deployed some of its fighters to initiate operations in Syria, forming a new military group, known as Jabhat al Nusra, which executed in December of 2011 its first suicide attacks against Syrian government buildings and properties, mainly in downtown Damascus (ibid: 5).

In 2012 situations in Syria became increasingly violent; in which the Syrian official armies and air-forces heavily targeted and stroke opposition targets. In February 2012, United Nations Human Rights Council reported that widespread, systematic, and gross human violations were conducted by the Syrian regime against unarmed civilians (Independent International Commission of Inquiry, 2012). Meanwhile, Al Nusra extremist group waged its attacks and announced the responsibility of almost 600 attacks in Syria, varying from suicide ambushes and self –explosive devices operations (Institute for the study of war, 2013). Armed insurgents groups and resulting from the weaknesses of the Syrian regime, began moving towards rural areas and was able to seize control over some Syrian territory. In July of 2012, the free Syrian army claimed its responsibility of the national security headquarters bombing, that killed several Syrian senior military officials, including the Minister of Defense General Daoud Rajiha (BBC News, 2012). Later the same year, former U.S. president Barak Obama declared that U.S. intelligence information confirmed the Assad’s chemical weapons capability and indicated that it has been used against the civilians, and he further stressed

that the usage of chemical weapons is a “red line” if not stopped then the consequences would be enormous (Congressional research service, 2017: 5).

Due to massive bloodshed in Syria, the international community started to increase its efforts to resolve the crisis through negotiations, and political resolutions. In June 2012, both the U.S. and Russia governments, signed the Geneva Communique’, that aimed at establishing a transnational governing body with executive power. The agreement indicated the ways in which future resolution would solely rely on negotiations between opposition and the Syrian government, without clarifying the Asad’s role in this process. Noteworthy, there is no agreement between the Syrian political opposition, which was characterized by various divisions and instability. However, in November of the same year, the Syrian National Council became part of a broader unity known as the National Coalition of Syrian revolutionary and opposition forces, which in fact established to confront the Islamist extremists grouping and military movements (Ibid: p.5).

A major development in the Syrian crisis arose by year 2013, as rebels were able to seize the city of Raqqah, which was the first city the Syrian government lost control. This also was combined with other opposition's victories around the Syrian territory. In response, the government forces aimed at securing areas in rural northeast and thus stopping any attempt by rebels to expand. Releasing the negative consequences of the opposition victories, both Iran and Lebanese Hezbollah supported the Syrian regime and the regime started to receive notable military and intelligence assistance, besides the Russian political stance. Contrary to this, all of the U.S.; Turkey; and some European and Arab Gulf states increased their support to Syrian Free Army (Ibid:5). On the 22nd of March, 2013, the Secretary-General Ban Ki-Moon notified the President of the Security Council of receiving a letter from the Syrian government in which it requested a specialized, neutral and independent mission to investigate the alleged use of chemical weapons in both KafrDa’il and Khan al-Asal in Aleppo governorate. The letter also indicated that the Secretary – General received a letter from France and U.K. in which both Governments requested immediate investigation to reveal the accuracy of alleged use of chemical weapons in the locations of Ataybah in the countryside of Damascus and Khan al-Asal in Aleppo governorate, as well as Homs on December 23<sup>rd</sup>, 2012 (United Nations security council, 2013). The U.S. administration in August of 2013 stressed that intelligence information confirmed that the Syrian regime conducted a large scale chemical weapons attacks against Ghouta in Damascus. Consequent to this, former U.S. president Barak Obama called for a congressional approval to use force to compel the Syrian regime (Barak Obama, 2013). Realizing the seriousness of the U.S. government stance towards the Syrian violations, and to prevent its military involvement, Russia started to negotiate with al-Asad to destroy its chemical weapons capabilities (Congressional research service, 2017: p.6).

In 2014 a major split and disagreement arose between Al Qaeda network and the Islamic State (IS). Al Qaeda rejected IS demands of Al Nusra Front recognition of the leadership of IS. As a result the opposition groups along with Al Nusra Front forced IS fighters to withdraw from areas located at the northern and western provinces of Syria. The result was IS having more control over central and northeast territories, and consequently declared the establishment of Islamic State in Iraq and Syria (ISIS) on June of the same year. This development inspired foreign fighters to join this militant group to help fighting inside Syria. The U.S. government became worry as the advances of the group inside Iraq might increase the threat against its interests in Iraq, and started to strike the group in both Iraq and Syria. The strategic objective of the U.S. strikes aimed at preventing ISIS operations, progress and influence in Iraq. In order to achieve the desired goal of encirclement of ISIS, the U.S. government started to communications with the Kurdish People’s Protection Unites (YPG) and formed a partnership, which in reality became a sort of campaign to confront ISIS. Later that year, a congressional resolution was issued to authorize the Obama’s administration to begin a program of aiding, training, and equipping of a selected Syrian forces bodies with the purpose of depriving ISIS from gaining advantages in Iraq (Ibid:6).

In 2015 the Russian intensive involvement became evident, as the Al-Assad’s regime suffered from weaknesses and started to lose control over important provinces. This materialized in the city of Idlib that fell under the opposition forces, mainly Al Qaeda. Homs also was captured by ISIS fighters. However, the U.S. government was observing such

developments and started to training Syrian moderate forces and providing them with necessary equipment's with the objectives of building a force capable to fighting ISIS; assure maximum protection for opposition- held areas; and paves the way for any future negotiated settlement of the Syrian crisis. Due to American clear involvement, Russia started to increase its assistance and support to the Syrian regime. This includes Russian military personnel, military equipment's, and also participating in strikes along with the Syrian air- force. In November, both the U.S. and Russia signed a memorandum to establish a safety- of – flight for all aircrafts that fly in the Syrian airspace (Ibid: p. 7).

The U.S. administration increased its efforts to reduce the violence in Syria, and thus started intensive diplomatic cooperation with Russia. This mutual agreement between the two countries aimed at implementing cessation of hostilities initiative between all actors involved in the crisis. This initiative failed as all sides rejected the mechanisms in which ceasefire method is conducted. Meanwhile, the U.S and allies were able to regain an area close to Turkish borders, which constitutes a gateway for foreign fighters. Russia as a response increased its forces and intensified its efforts with the Syrian regime, Hezbollah forces and Shiite militias to attack eastern Aleppo, causing thousands of death among civilians. Aleppo citizens who survived the heavy and random attacks were forced to flee the city. However, the Syrian regime regained Aleppo from opposition groups in December of 2016. At the beginning of 2017 both Turkey and Russia agreed upon ceasefire proposal to end the conflict relying on negotiations between all wrestling parties (Ibid: p. 7).

On 27<sup>th</sup> of January, 2017 elected U.S. president Donald Trump proposed safe zones in Syria. The aim of these zones according to Trump is to secure the Syrian refugees who flee the violence. He further condemned refugees polices of European states, in which it admitted millions of Syrian refugees to its countries. The creation of safe zones would mean more U.S. involvement in the Syrian matter, because the U.S might use land and air forces to secure those proposed zones. As such, Trump's foreign policy towards the Syrian conflict, strategically could mark "a major departure from Obama's caution approach" (CNBC News, 2017).

## **6. Applying Just War Theory Assumptions on the Syrian Crisis**

### **6.1 The cause must be just**

It has been argued that a war considers just in cases where evident proof of aggression is found (Wells, 1996). As such, in recent times the perception of just cause has been broadened to include cases where deemed necessary to intervene due to aggression behaviors and certain massacre conducted by a given state against its own population (Chambers, 2004). In his citing of Francisco de Vitoria's notion of just cause, Hugo Grotius stressed that the concept of just cause deals with legitimate wars in cases where harm had been imposed, and thus actions against aggressor is needed to discontinue gross violations of the laws of nature (Grotius, 2006). The same approach was adopted by the United Nations Universal Declaration of Human Rights in 1948, in which it developed the doctrine of just wars and legitimized intervention due to human rights violations. The declaration aimed at limiting violations and terror in the wake of Second World War (United Nations Declaration of Human Rights, 1948). Articles 3, 5, 9 of the declaration emphasized all mankind rights in life, security and liberty, meanwhile it stressed that they shall not be subject to brutal or humiliating treatment or punishment, such as torture or random arrest and detention (Ibid: 2-3).

Accordingly, humanitarian interventions are legitimate in cases where a given state is committing mass massacres against its own population. This behavior of the state would somehow suspend its sovereignty that rooted in people's waiver of their individual liberties and rights. Hence, disrespecting and violating the obligations of those rights by the state would impact its moral attitudes and therefore humanitarian intervention is justified against such states since its behavior endangers stability and would "shock the moral conscience of mankind" (Walzer, 1977).

The legitimacy of humanitarian intervention based on human rights violations was asserted further by the Declaration of the Statute of Rome, in which unlawful killing, torture, injuring, suffering, destructions of properties, and starving civilian populations are not justified by military necessity (Piotrowicz and Kayer, 2000). In light of the Statute of Rome, the International criminal Court came into enforcement in 2002. The statute of the court emphasized

its jurisdiction and identified four categories of crimes against humanity, as to include (Rome Statute of International Criminal Court, 1998):

1. Crimes of Genocide: according to the Statute "genocide" identified the acts committed by a given state against its own population with intentions to destroy national, religious, and ethnical groups.
2. Crimes against Humanity: which are committed to achieve either widespread or systematic attacks against population which include murder; extermination; deportation of civilians; enslavement; rape; imprisonment; torture; causing serious suffering or bodily or mental injury; and persecution against certain political, racial, national, ethnic, cultural, and religious groups.
3. Crimes of War: the prohibited acts are multination; murder; cruel treatment; torture; taking hostages; attacks against civilian assets and population; and attacks against educational, religious places. Those crimes are committed by a government against its own civilians aiming at formulating a policy or a plan to achieve massive or large scale destruction and cleansing.
4. Crimes of aggression: those crimes include planning; preparing; initiating or executing acts of aggression by a state through the use of force against either its own population or the sovereignty of other independent state.

Taking the above points into account, it can be argued that the Syrian regime has committed violations against the population human rights that attracted the attention of the international community. So, despite Assad's efforts to prohibit any international media from covering the uprisings; the Syrian civilians were able to broadcast the violations through social media websites and thus documented the brutal acts of the regime against the civilians. The Assad's feared the negative impacts of allowing foreign media outlets to cover the uprising and undoubtedly he was worry about the possibility of forming a world public opinion as it occurred during the uprisings in Egypt, Libya, and Tunisia which in turn was a main reason for toppling the official regimes in these given states. Conjugated with that, human rights organizations were not able to enter Syria due to governmental prevention measures, and therefore the possibility of exposing the Assad's illegitimate and asymmetric use of force and violence against the Syrian people was limited.

However, the Syrian's regime violations against human rights were documented by Human Rights Watch. It indicated in the latest report published in 2015 that 6,700 Syrian detainees died in Syrian government custody due to mistreatment and torture. Also, government and allies forces conducted attacks against the population causing the death toll to reach almost 250,000 people. As a result to the ongoing conflict nearly 640,000 people live under long-term siege in Syria, meanwhile the crises led to humanitarian suffering with an estimated 7.6 million Syrian people were forced to flee their own cities to other locations inside Syria. Besides, more than 4.2 million fled to neighboring states (Human Rights Watch Report, 2015). Human Rights Watch investigations revealed that the Syrian army and its allies air strikes using Barrel bombs had killed 6,163 people, among them 1,892 children in the period between February 2014 and January 2015.

A previous report released in 2011, identified 27 illegal detention centers which housed thousands of Syrian innocent civilians since the uprising first started. Those detainees were allegedly subject to more than 20 types of torture methods including the use of acid fire, sexual abuses and mock execution (O' Sullivan, 2012). The report emphasized in its summary that the findings showed without doubt the Syrian state policy of mistreatment and torture acts constitute a major crimes against humanity (Human Rights Report, 2011). In 2015, United Nation's Human Rights Council pointed out that there are no sign to end the Syrian intensified conflict, and stressed that the Syrian civilians have been the subject of war crimes and crimes against humanity, besides other serious breaches of international humanitarian law and Syrian people therefore are suffering from gross violations of their basic human rights. The council sums up its report through highlighting that those transgressions "are massive in extent and scope" (United Nation's Human Rights council, 2015).

In its extensive report released in 2015 concerning war crimes in Aleppo, Amnesty international emphasized that its investigations showed - without hesitation, that Aleppo civilians suffered major atrocities which indicated a central breach of International humanitarian law. These breaches include crimes against humanity which were conducted



through the employment of aerial bombardment campaign using explosive barrels against Aleppo population. The report concluded that these attacks caused huge numbers of casualties among civilians and massive destruction among civilian objects, and because of that it can be stressed out that "those actions carried out as part of government policy would constitute a crime against humanity" (Amnesty International, 2015).

The Syrian Government not only used traditional weapons against the Syrian civilians, but also chemical weapons in its effort to silent the masses and leave them hopeless to resist any more. On August 30<sup>th</sup>, 2016 United Nation's News Center indicated that the Syrian government air - force used chemical weapons against Syrian cities in three occasions. The Center asserted further that the report prepared by the Organization for Prohibition of Chemical Weapons and United Nations found that "after examining nine cases of previously- documented chemical use to establish who was responsible for using them.... The result indicated that there was sufficient evidence of three cases of toxic chemical weapons use in Syria between 2014 and 2015 (United Nation's News Center, 2016). An investigation conducted by the United Nations Mission to investigate allegations of the use of chemical weapons in Ghouta area showed beyond doubt that the Syrian regime air-forces deployed weaponized Sarin rockets on 21<sup>st</sup> of August, 2013 against Damascus residential areas, killing almost 1400 individuals, among them large numbers of children (Security Council Report, 2013).

Regardless of multiple proofs of human rights violations conducted by the Syrian Regime, the international community proved unable to end genocides, misplacement, and massacre against the Syrian people despite the harsh measure undertaken by the Arab league in which it suspended the Syrian membership; and various United Nation's diplomatic and economic sanctions, all failed to adjust the regime's gross crimes. As one argued, the brutal acts of the regime is increasing on daily basis, which in turn demand immediate external intervention relying on just cause. Paradoxically, just war theory itself is defined by its own limitations once the case is shaped to intervene, because gross human rights violations are in fact not enough to impart legality on humanitarian intervention (O'Sullivan, 2012). In his book entitled "On War", Aquinas indicated that just war might be unlawful even if the leader proved evil, since his motivations that drove him to act this way could be understood within attempts to protect the system from collapsing, and thus all alternatives and measures are legal and moral (Aquinas, 2002). Accordingly, it is the collective will responsibility to uncover the true intention of the leader, and to decide whether or not protecting the system is the true aim of evil acts of him, and thus determine their willingness to intervene due to human rights violations. Logically, it is not easy target to uncover the true intentions of the leaders, and thus could not intervene relying on predictions.

Contrary to the above discussed argument, one must argue that because of mass crimes, evil, and brutal acts of the Syrian regime, humanitarian intervention is both just and moral, as the Syrian regime lost its legitimacy. This legitimacy of the Assad's regime was given by the Syrian people at the first place with convictions that this regime would improve their living –standards, welfare, stability, security and natural rights. Evidence gathered and considered in this study provides significant proofs that Al Assad's has breached both international humanitarian law and Syrian civilian's constitutional rights, and these facts satisfy the necessary conditions for just cause. The above mentioned argument is supported by Assad's failure to protect innocent civilians from massive human rights violations, which include large-scale killing; torture, using of toxic chemical weapons, using explosive barrels; sexual violence, displacement, and fleeing. These collective crimes conducted by the regime constitute a failure to comply with its international law moral obligations. Thus, as one scholar argues, "Syrian Arab Republic is guilty of crimes against humanity" indicating that "according to just war theory this criminal act (crimes against humanity) can be identified as a 'just cause' for a just humanitarian intervention" (Rasouli, 2011).

## 6.2 A right authority must declare the decision to go to war

A component authority according to just war assumptions has the right to take the decision to wage war to restore peace and security both at domestic and international levels. United Nation's Security Council is the only legitimate body that can declare and authorizes the use of either economic or military actions. This right is outlined in Chapter 7

of the United Nation's Charter, Clauses 39-51, in which it indicated necessary and obligated military and economic measures to deal with threats to the peace, breaches of the peace, and acts of aggression (United Nation's Charter, 1945). On the one hand, the Charter provided the Security Council with the supreme duty to maintain international peace and security. On the other hand, the UN Security Council decides the actions to be taken as 'necessary to maintain or restore international peace and security.' Consequently, from both a moral and legal perspective, "the only 'legitimate authority' that can make a collective decision on humanitarian intervention is the UN Security Council" (Rasouli, 2011: 26-27). Therefore, Security Council resolution is needed to authorize and enforce needed measures against any state that proved breaching international law binding rule, bearing in mind the Veto right outlined in Article 27 of the Charter. Article 27 reads:

1. "Each member of the Security Council have one Vote;
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members; and
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decision under Chapter VI, and under paragraph 3 of Article 52, a party to dispute shall abstain from voting "(United Nations General Assembly, 1963).

Hence, for a draft resolution to become binding and enforced all five Permanent must vote for the resolution. Accordingly, any Veto means breakdown and failure to issue any decision related to maintaining desired peace and security. Clearly, from the beginning of the uprising in Syria, tensions arose between the Five Permanent members of the Security Council, and the debate was heated as to intervene in Syria due to Human Rights violations and thus restore peace and security, internally. However, both Russia and China cast their Vetoes and rejected any resolution that would authorize the use of military force to compel Al-Assad's regime to morally and legally respect the norms of humanitarian international law, as it was evident that the regime violated basic human rights and conducted crimes against humanity.

Russia and China employed their Veto right on four separate occasions in 2011, 2012, 2014 and 2016, respectively. the Russian government justified its Veto by stating that its efforts at the security Council aimed at defending the sovereignty of Syria, rather than "providing political cover for a dictatorship that was killing its own people" (Adams, 2015). Consequently, and because of the absence of positive votes to use force against the Syrian government, the voices became loud as to resolve the crisis diplomatically with core goal of ending mass murder; however, these efforts were inefficient and consequently collapsed.

It can be therefore argued that a United Nations Security Council approval to intervene is highly desirable. However, practically there is a setback that prevented such possibility of intervention for humanitarian reasons since the United States, France, and Great England could do nothing to persuade both Russia and China to agree upon issuing a resolution that would authorize the collective power to intervene in Syria. Clearly as discussed earlier, just war doctrine requires a component and legitimate authority to declare war, and with the absence of explicit United Nations approval it seems that humanitarian intervention in Syria not likely to happen any time soon, regardless of documented human rights violations carried out by the Syrian government. As such, the lack of United Nations Security Council explicit authorization for using force against the Syrian regime means that any intervening acts are classified as illegal based on just war second requirement of right authority.

### **6.3 groups going to war must do it with the proper intention**

For a war to be just the motivation should contain good intention, and therefore military action must not cause undesired suffering to the enemy state, and the amount of the action should only aim at achieving necessary just cause (karoubi, 2004:209 cited in Al-Qaralleh, 2012: p.130). The motivation for states going to war must not "involve the desire for revenge or punishment" (Ibid: 130), but the objective must be essentially protective shaped with just and peace aims (Ibid: 130). Hence, a legitimate just war is the one waged with intention to defeat aggressor and establish

peace, without harming, dominating, or intending to achieve either personal or national self-interests. As (Rasouli, 2011: p. 26) puts it, "humanitarian military intervention touches on the use of coercive action across state borders by a state, allies or groups of states aimed at preventing or ending massive and brutal violations of the basic human rights of populations other than its own citizens".

Examining the United Nations Charter leads to the same conclusion discussed above, as the Charter prohibits the employment of military force even if a given state violated human rights on a large scale. Article 2(4) explicitly forbids intervening on humanitarian grounds if the intention aims at occupying another state or harming the sovereignty of independent state (United Nations Charter, 1945). Accordingly, as one argued it is legal to intervene for humanitarian deeds, in cases where there is no evident intention for territorial conquest of political objectives (Rasouli, 2011: 27).

Moving toward the intention of Russia, mainly, leads the research to highlight the well-established bilateral historical relationship between Syria and Russia. This motivated Russia to reject any international collective efforts to intervene on grounds of humanitarian crises. Basically, the true motivations of Russia could subject to question and on equal level its policy towards the crisis could better explained by situating it within broader Russian normative long-standing stance of non-intervention policy. Noticeably, Russia and China, to certain extent, depend on authoritarian ruling systems, and thus both have worries that same measures of humanitarian intervention relying on just war and responsibility to protect principles might be applied on them any time in the future (O' Sullivan, 2012). Hence, casting Veto by the Russian government and concrete efforts to avoid any resolution authorizes the use of military force against Syria encompass Russian strong message that intended to get through to both United Nations and the West. As one demonstrated, "It instead accuses the West of attempting to engineer the deposition of governments who fail to conform to its geopolitical agenda under a guise of human rights promotion" (Ibid: p. 6).

In similar vein, the Russian position of not allowing any Western intervention particularly United States in Syria could be interpreted as a mechanism to protect Russian geo-political interests in Syria and maintain the country within its sphere of influence. It has been argued that "Marx theory of imperialism provides an excellent framework for understanding the current U.S. intervention policy" (Callinicos, 2002). Callinicos further pointed out those western great powers, during the history of imperialism, were motivated by compound mixture of economic and geopolitical objectives (ibid: 2002). Furthermore, Russian's rejection to any Security Council authorization to use military force against Syria reflects its accusations towards the West of attempting to form a coalition against governments that do not comply with its geopolitical objectives. In doing so, Western nations employ human rights violation as an excuse to justify intervention in any given state that conceived would achieve its geopolitical advantages. As one noted, "Western countries are seizing the opportunity to sneak their imperial ambitions into Syria" (O' Sullivan, 2012:6). Hence, previous points of view are skeptical on Western coalition intention to wage a just intervention.

Generally, it can be argued that the daily crimes being conducted in Syria require immediate involvement by international community to stop massacres against the Syrian unarmed civilians. Right intention, therefore can be found in international community that should be responsible to morally end the mass killing in Syria despite the lack of collective will consent. The study agrees deeply with one scholar in his discussion of the urgent need to intervene in Syria and the ability to bring criminals to the court of justice, when he emphasizes that:

"This ability can be abused, and indeed it was in the 2003 US-led invasion of Iraq, but in the case of Syria there is little evidence that those in [favor] of an intervention are motivated by anything other than the desire to protect the civilian population from the criminal acts of the Assad regime. It is for this reason that we can comfortably say that there is a right intention behind the desire for an intervention. What is strongly lacking, however, is political will and consensus, particularly in the UN, as the antagonism between the two Security Council blocs obstructs any agreement on a way forward in Syria" (Ibid: p.6-7).

#### **6.4 War must be undertaken only as a last resort**

One of the just war requirements is last resort principle. Previous and current literature on just war extensively shed

light on exhausting all peaceful avenues before declaring and waging wars. Hence, to consider a war justly undertaken, one might require that “all necessary paths for righting the wrong of aggression directed by the aggressive nation” (Al-Qaralleh, 2012). The objective aims of just war doctrine tradition, on the one hand presumes that moral abhorrence of war is a fundamental aspect, and on the other hand insists that peaceful resolution for conflicts is its paramount priority (Ibid: 132).

Just war tradition assumes that international community should have a collective will that would try to mitigate and eliminate state atrocity crimes that occurring within their jurisdiction, a peaceful means is the proper and the perfect instruments to do so.

In cases where peaceful measures are not efficient or sufficient to prevent or halt the atrocity crimes, the international community might resort to use actual military power, as a last resort, through authorized international institutions, namely UN Security Council.

Our earlier examination showed that all venues to resolve the Syrian crises have been exhausted, as multiple and series peace plans and diplomatic efforts have failed to stop systematic killing and torture. In the context of Syria, it became evident that the international community could not prevent or stop Syrian regime perpetrating atrocity crimes taking place within the Syrian jurisdiction. Consequently, it is rational to argue that “under just war tradition the international community can now use force to stop ongoing atrocity crimes, provided that this intervention is legitimate” (Public International Law & Policy Group, 2012). From the very beginning of the uprising in Syria, political conditions due to local factors, external regional players, and global actors, were characterized by the failure to find political solution, neither was the United Nations mediation able to sustain a common platform for all conflicting parties.

Both the Syrian regime and Free Syrian Army rejections to accept Kofi Annan’s six- point plan, submitted on March 16, 2012 to the UN Security Council (Aljazeera English, 2012), indicated that the Syrian crises got to the point of no return, as Annan himself washes hands of Syria through declaring the theme of “mission impossible”. The U.S. unwillingness to notably get involved in the Syrian matter during the former presidency of Barak Obama, along with the negative and silent role of Arab league, except for suspending the membership of Syria, all made the situation confused, frustrated, and disgust with a genuine lack of alternatives (O’Sullivan, 2012). Although, the West and some Arab states during the crisis supported moderate rebels, diplomatically and finically, however this is not enough to persuade Assad to step down, as he receives enormous support from Russia and Iran.

Hence, there is an urgent necessity to consider military intervention, given that the time is due to implies last resort, as there is nothing “stands between Assad and the complete oppression of both the opposition and innocent civilians” (Ibid:8). In 1859, John Stuart Mill once argued that rebels should die for the objective they after, and thus they are the one who can determine the outcome of their revolution (Mill, 1859). Consequently, it can be argued that human rights violations are not the only purpose for humanitarian intervention, but the second one lies in the way in which international community is morally obligated to assist rebels to overthrow the rogue regime. Similarly, we can approach the previous argument through another angle: Syrian opposition forces should be given the ideal chance to righting the wrong through winning the battle before one international authority justify military intervention. This can be achieved by means of everlasting support, either politically or militarily.

Regarding last resort criteria, one has argued that because the existing regime “is engaging in mass punitive measures, torture and murder against a defenseless opposition”, waging war by the component authority is “indeed a last resort and thus an intervention, even by an alliance of states, is not only justified but indeed lawful” (O’Sullivan: 8).

### **6.5 The goal of the war must be a likely emergent peace**

Producing appropriate conditions to maintain permanent peace, is the paramount objective of any war waged on grounds of just wars. Hence, those conditions must cease all dilemmas that have been the reason for aggression, brutal acts, and inhuman treatments which threatened the norms of a peaceful environment (Al- Qaralleh: 2012: p.134).

The six years conflict has left Syria totally destroyed. A study conducted by Assessment Capabilities Project

(ACAPS) in 2013 showed that the impact of the conflict on the Syrian economy has been severe, and that the ongoing heavy fighting between all parties has destroyed the country's infrastructure. Meanwhile, and as a result to daily military actions and insecurity, civilians became unemployed and the events are leaving them without income (ACAPS, 2013). The report further asserts that distribution and supply networks have been destroyed; currency depreciation has overweight purchasing power; and because of both Arabian and international economic sanctions both exports and imports radically declined. Also, Tourism yearly revenue has been disappeared because of the conflict.

All these impacts, combined with mass killing, torture, displacements, massacres, ill-treatment, imprisonment, fleeing outside the state, and psychological side effects, left Syria in serious turmoil. Accordingly, a fair argument would emphasize that a humanitarian intervention would at least end the bloodshed, and would stop the mass murder. A peaceful condition might be established in Syria in cases if Al Assad steps down, and the Syrian people come to an agreement that would include all parties and accordingly establish national reconciliation government. The disappearance of Al Assad along with national agreement between the entire Syrian population to truly relying on peaceful transfer of power through presidential elections, and democracy guarantee that Syria would be better off than now. All these measures could be achieved by collective international to find peaceful solutions to the crisis and contributing to rebuild Syria gradually.

One might oppose the above discussion of the possibility of bringing peace into Syria after overthrow the existing regime, and instead argue that Al Assad of Syria is undefeatable, given that he enjoys the support of Russia, China, Iran, and Hezbollah of Lebanon. Moreover, recent events in Syria confirmed the case, as Russia and Iran extensively participated in attacks against rebels, meanwhile both Russia and China, in four separate occasions, casted Vetoes that revoked any chance to authorize military actions against Syria. Also, some of Arab public opinion is in fact supportive to the regime and still insist that it is the best option for the Syrian people (O'Sullivan, 2012:8-9). As such, the long-term military strength of the existing regime is an indicator of substantive and sustainable military and paramilitary resources. This would means that the regime and allies could defeat any collaborators and severely punish them. Strategically speaking, airstrikes are not able to force a regime to leave, as land-armies are crucial to do so, because it is the only force that can seize and hold (Baylis, J and Wirtz, J and Gray, C, eds, 2010). Hence, as one argues "in order to protect the civilian population, the UN or a coalition of the willing would need boots on the ground and be willing to suffer far heavier losses than in Libya or Kosovo" (O'Sullivan, 2012). One can imagine the cost of irrational decision to invade Syria, as both civilians and invaded military would face the consequence of desperate fighting of the Syrian regime, especially with the continued threat to use chemical weapons against intervening forces. The opposing theme of humanitarian intervention in Syria concludes by asserting that "from the perspective of proportionality, an intervention is highly likely to intensify the conflict and increase the death toll" (O'Sullivan, 2012: 9).

However, the study favors the first argument, because the Syrian regime exceeded all the limits and caused unforgettable misery to the Syrian innocent people, meanwhile it breached all the norms and values of humanitarian international law, and thus no matter what the consequences of intervention are, the humanity must stick to moral and legal foundations once human are in danger.

## 7. Conclusion

As there are always a major gap between theory and practice, and one between realism and idealism, it is evident that just war idealism could not be put under execution. After almost 6 years of tragic situations in Syria, no one can present evidence that intervention is applicable relying on just war tradition, as it lack one, or two conditions for *jus ad bellum*, and every conclusion would have the same wording: it does not fulfill all five conditions.

Ironically, and regardless of how much the Syrian people suffered from extended crimes and ill- treatment committed every-since day one by the regime, there is nothing just war theory or responsibility to protect could offer unless Russia agrees to use force against Assad, as collective will is needed. Syria is not Iraq, the country with huge petroleum resources, that indeed attracted the U.S. imperialism ambitions, and made it eager to invade relying on

internal Congressional Approval not Security Council decision. Syria always has been an influence area of the Russian, and this explains the reason behind the regime radical behaviors against his own people. Hence, it is unacceptable to agree on mass-killing, but at the same time it is extremely hard to consider invasion option and therefore just war assumptions leave us hopeless, as we “abandon the weak to suffer what they must and allow the strong to do what they can” (Thucydides, cited in O’Sullivan: 9).

International community in whole wish for the fall of the Assad’s regime, and that explain the debate to military intervene in Syria. But because there are no international consensus among all five permanent members of the Security Council, the decision to use force still untouchable. One can argue that divisions in Syria became flammable, which might trigger more conflicts after the stepping of Assad, and thus spark the clashes between religious and ethnic groupings in Syria, meaning that any intervention will never guarantee the desired peaceful outcome. Accordingly, in cases if political, economic and diplomatic efforts failed to resolve the crisis, any future intervention must first pave the way for international post-conflict commitment to assure a large –scale agreement between all parties, and this should take place after eradicate extremists groups from the Syrian territory, namely ISIS and Al-Qaida and the multiple terrorist’s factions. Paramount peace is the main objective of any intervention policy, and thus international community should consider the experiences in all Lebanon, Libya, and Iraq as humanitarian intervention left them under civil war which is grounded on ethnic and religious and tribal cleansings. The case for those three given countries is that intervening countries abandon their efforts and thus left them by their own with no monopoly of power or a strong constitutional government that can maintain control through legislature, executive or judicial authorities. The conclusion of this abandonment was more anarchy and chaos, until now.

The study concludes by proposing that there is still a window of opportunity to convince the regime in Syria either to step down or accept, formally, a peaceful transition of power. This would require the international community to exert extensive efforts to bring all parties engaged in conflict in Syria to negotiations through which practical measures to end suffering and violence actions could be reached. These objectives should turn to become exigent priorities either on the regional or international agenda in dealing with Syrian crisis. This paramount exigency to put an end to the innocent people suffering is crucial since Just war principles could not be used as a platform to end the turmoil in Syria. Although some argues that the human rights violations in Syria necessitates international intervention under the humanitarian intervention doctrine, the reality informs that such military intervention to overthrow the regime still out of just war theory scope and therefore consensus of willing powers is needed to overcome the current situation in Syria.

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## إمكانية التدخل في سوريا بناءً على فرضيات نظرية الحرب العادلة

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### ملخص

تسعى الدراسة إلى تقديم فهم عميق لمبادئ نظرية الحرب العادلة المتعلقة بالصراع العرقي والأخلاقي ومدى انطباقها على الحرب السورية. وتم إبراز خوض الحرب والتدخل فيها ضمن إطار نظري يُعنى بالشرعية والبعد السياسي-الاجتماعي، حيث توجد مجموعة من المبادئ التي تحدد الأسباب الشرعية، السلطة الشرعية، الأهداف الحقيقي، الملاذ الأخير، والملائمة كعوامل أساسية لاحتمالية نجاح الحرب. من ناحية أخرى، فإن طبيعة الصراع تتحدى الالتزام بمبادئ الحرب العادلة الأخلاقية. وأظهرت نتائج الدراسة أنه من الممكن بذل الجهود لإيجاد فرصة لإنهاء الصراع في سوريا بطريقة سلمية بدلاً من اللجوء للتدخلات العسكرية والتي من المتوقع أن تؤدي إلى المزيد من التعقيد والتصعيد الذي يعرض أمن المنطقة للخطر.

**الكلمات الدالة:** القانون الدولي، الحرب العادلة، التدخل الإنساني، الحرب في سوريا.

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