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**EVOLUTION OF THE CONCEPT OF LEGITIMATE AUTHORITY
WITHIN THE JUST WAR TRADITION**

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Abbreviations

ASEAN	Association of Southeast Asian Nations
ICISS	International Commission on Intervention and State Sovereignty
JWT	Just war tradition / theory
NATO	North Atlantic Treaty Organization
OAU	Organization of African Unity
R2P	Responsibility to Protect
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council resolution
US / USA	United States of America

Introduction

Until this day there exists no universal, morally and politically adequate agreement on when it is permissible for a state to resort to war; neither within the international law, nor within authoritative religious teaching. The end of the Cold War and the demise of its ideological underpinning evoked a need for reassessment of the approaches that serve as framework for moral analysis of war and of violent inter-state acts. In contrast to the previous bipolar arrangement of the world politics, the new era has been characterized by more visions of justice.

One of the many answers to this dilemma might hold the just war tradition. This tradition originates in the very beginnings of the Western philosophy. As Phillips (1984:3) explains, “just war thinkers do not deny the necessities of states to act in their interests and the right of states to use force in the pursuit of those interests. But they will argue that there are, for reasons which will become clear subsequently, inherent or built-in restraints on the use of force. These restraints are, of course, moral and prudential, not natural“.

The just war tradition is divided into two, or newly sometimes in three parts: the original two, *jus ad bellum* (laying down the conditions under which one may resort to war) and *jus in bello* (defining how to fight in war itself); and the more recent one, described as *jus post bellum*, drawing the rights and duties of the belligerent parties towards each other once the fighting is over. Judging by the principles of *jus ad bellum*, a war can be just if – and only if – the harm inevitably caused is outweighed by the overall good the war brings about, while simultaneously being waged by a legitimate authority for a just cause and to just ends.

A question might be raised, why the just war theory? What relevance and meaning does this tradition hold for wars and international relations in general in the twenty first century? Johnson in his article (1973) introduced a point of view of Henry Meyrowitz, a French analyst who complained that justice has been lost from the contemporary international law and from the *jus ad bellum* especially. In his opinion, international law does not really consider the justice or injustice of the claims of the disputing countries, but instead it is the *order of use of force* which represents the decisive factor in the question of which country is right – “first resort to force is always denied; second use always is permitted“ (a principle which, as Meyrowitz argues, appeared for the first time in the Kellogg-Briand Pact, and then again in the United Nations Charter). The first case is usually being called an aggression, the latter one (self) defense. Should this be true, the whole reality of the use of force would surely be

inadequate, both morally and politically. The considerations of justice are an important piece of puzzle when evaluating international environment and inter-state relations. Deliberations on justice of resorting to war therefore certainly need to be addressed in a more profound way.

It is the aim of this work to devote attention to and thoroughly analyze one of the historical attributes of the decision process on justice of a war, the legitimate authority principle. This thesis aims to elaborate on the legitimate authority from the standpoint of the just war tradition (for another point of view than that of the just war theory, see e.g. Robert F. Ladenson's *Legitimate Authority*).

1. Research question

Mankind must put an end to war, or war will put an end to mankind.

John F. Kennedy, Speech to UN General Assembly, Sept. 25, 1961

Since the Second World War, the United Nations Organization (UN) has been generally believed to embody the sole legitimate entity representing the international community. On the other hand, the position of the UN has been significantly eroded when it failed to effectively act in cases such as Somalia, Rwanda or Bosnia. Should such a situation arise once again (and we can be quite certain it will), should those nation states which recognize the moral necessity for action be inevitably obliged to waste time trying to convince such an organization to grant them its blessing? Based on the deliberations over the primacy of the authority or the moral justification, this thesis is concerned with the following question:

How has the concept of the legitimate authority within the just war tradition evolved over time, and what significance does it hold for the contemporary international community?

The requirement of legitimate authority has been less prominent in the contemporary literature on the just war theory (JWT), after being central to both medieval and early modern interpretations of the tradition. It specifies (as we shall see later, to greater or lesser extent) who can decide whether a war is just, and who can actually act on the basis of such judgment. As a matter of fact, these two stipulations do not necessarily always coincide. Basically anyone can reach a judgment whether a war is just or unjust, whereas only some actors can justly resort to war. And as Fabre (2008) also notes, rarely has any of the philosophers or political thinkers held that no one except the legitimate war-waging authorities can judge

whether a particular war is just. And so the principle of the legitimate authority presupposes not the right to express a judgment about a war, but the right to resort to war.

Along with Holmes (1975), I believe that the purpose of the just war tradition is not to justify wars but to judge them – and this work is intended to help with that very objective. Quoting Phillips, “it is not part of just-war thinking to advocate the actual prosecution of some war or to provide an ad hoc justification of some past conflict” (1984: xi).

Therefore the aim is to provide an overview of the evolution of the legitimate authority principle on which (among others) a war can be judged.

2. The just war theory

Just war is a way of thinking that refuses to separate politics from ethics.

(Elshtain, 2001)

The just war theory is a doctrine of military ethics with a tradition spanning from Plato's discussion on the rules of war in *The Republic* and Augustine's deliberations in the *Two Cities*, although most of the key work establishing the tradition was done between Ambrose (c. 340–397) and Augustine (354–430), and the works of late scholastics like Vitoria (c. 1483–1546) and Suarez (1548–1617) and natural lawyers such as Grotius (1583–1645) - so approximately between the fifth and the seventeenth century. Therefore there is a wide agreement on the principles which delineate the just war. Without ethical, moral and legal constraints on the initiation of war (*jus ad bellum*) and its subsequent conduct (*jus in bello*), war would be reduced to a mere application of brute force, basically undistinguishable from mass murder and similar actions.

In the course of its development, the tradition has been influenced by the fact that the involved actors have strived for their actions to be considered legitimate within the existing international order. Just war theorists (they were mostly theologians, philosophers and jurists who created the just war tradition) have aimed to provide a “qualified moral permission to war” (Ilesanmi, 2000), understanding war as one of the instruments of justice between states or communities. They have deemed it possible to distinguish permissible bellicose acts from those that infringe on the legal and moral order. However, the just war tradition does not condemn killing *per se*, but a particular type of killing instead – as Davis (cited in Ilesanmi, 2000) sums it up, “murder is wicked, a species of injustice; but peace, violence, unjury, killing and war... are generically neither just nor unjust”.

Even though the word “just“ might be implying justification of war (and/or of armed violence), the just war tradition is instead concerned with the lesser evil – it “acknowledges that war always has evil consequences, principally the deaths of non-combatants, but that there are some wrongs that are worse than the wrong of war itself“ (Bellamy, 2006: 3). Elshtain (2001) therefore characterizes the modern just war tradition as a theory of “comparative justice applied to considerations of war and intervention”.

The notion of “justice“ and “injustice“ as a conceptual pair does not convey an objective character of war. Quite the opposite – these two represent a subjective attitude (moral or ethical) with an inherent potential to move people to either support or oppose the war in question. However, considering the legal principles only, just war and legitimate war are the same. First, the decision to go into war must be made by a legitimate authority and based on valid legal procedures (both the domestic and international authorities must obey corresponding legal procedures). Second, the international law (and the Charter of the United Nations in particular) restricts the right to resort to war or threat to use force. The UN Security Council is then endowed with the responsibility to maintain international peace and security (Zuo, 2007).

Of course, the just war tradition is only one among the various competing traditions of thought about the relationship between politics and war in the West (the three basic positions assume that first, war is never legitimate; second, anything goes in war; and third, that some moral requirements exist, concerning when, why and how one can wage a war; see Rengger, 2002). One could argue whether the just war tradition, because of its Christian theological origin, could represent a moral framework embraced by all cultural areas in today’s world. This issue will be dealt with later on, but for more opinions see for example Bellamy (2006:4 onward).

In short, it can be said that the roles the just war theory can fulfill are threefold: first, it provides a way to legitimize recourse to force. Second, it is a way of evaluating of such an action. And third, it allows for inhibition of actions which cannot be legitimized.

2.1. Just war theory or just war tradition?

As explained by Calhoun (2001), most of the contemporary theorists refer to the field of their interest as “just war theory“ – among these particularly Michael Walzer (*Just and Unjust Wars*, 1977), Phillips (*War and Justice*, 1984), O’Brien (*Just War Theory*, in *Ethics: Personal*

and Social Responsibility in Diverse World, 1995), Regan (*Just War: Principles and Cases*, 1996) and Christopher (*The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 1999). Under the *just war theory* Calhoun understands a schema according to which: first, some wars are just; second, some wars are unjust; third, in order to be waged justly, a war must satisfy all the *jus ad bellum* criteria; and four, such a war can retain its just character as long as the *jus in bello* requirements are observed.

In any case, until quite recently, the just war usually used to be described as “tradition” rather than a “theory”, perhaps because of a certain lack of coherence and streamlined developmental path. Rengger (2002) talks about “legalization” of the *tradition* and the attempts to turn it into a just war *theory*. Despite this fact, or maybe because of this, I am mostly using the term tradition in this text.

A similar dilemma might apply to the name *just war* itself. The original term *bellum justum* is usually translated as *just war*, the term commonly used nowadays. However, doubts have been raised whether or not this name, *the just war*, might be misleading. For example, Phillips argues that this could mean that war is somehow implicitly endowed with moral substance – whereas traditionally war has always been considered evil because it inevitably involves physically attacking another person. He hence suggests that it might be *less misleading* to speak of “justified war” instead of “just war”.

2.2. Jus ad bellum

As it has been already mentioned, the just war tradition subsumes two major categories – *jus ad bellum* and *jus in bello*, the first being concerned with justification before the outbreak of war, the latter one with the conduct thereof.

James Turner Johnson (in Rengger, 2002), for example, argues that the *jus ad bellum* has over the time consolidated around a set of seven principles – in rough of order of priority:

Just cause

Legitimate authority to act

Right intention

Proportionality of ends

Last resort

Reasonable hope of success

Aim of peace.

And within this group, it would be the just cause, together with the legitimate authority, right intention and last resort condition which constitute the very basics that have predominated in the development of the just war theory and its historical application. Before going any further, I believe it is necessary to have a look at what these conditions mean in particular.

2.2.1. Just cause

The criteria fulfilling the just cause condition (as it is generally agreed on) are (a) defense of the innocent against wrongful attack (in other words, resisting an armed aggression); (b) reclamation of persons, property, or other things of value that were wrongly (unjustly) taken; and (c) punishment of fundamentally „evil“ acts against humanity (vindication against an offense).

From Immanuel Kant's perspective, all free nations have the right to initiate a war. They are allowed to exercise this right in order to create such social conditions which would enable the pursuit of universal legal institutions in the civil society. However, what remains is for the nation to ask its members to fight against another nation (or nations) – and this is the very situation when the „good reason“ and „just cause“ come into play to justify the consequences caused by war.

In line with the UN Charter, the only causes for which a war can be waged nowadays are represented by “threats to peace” and “acts of aggression” (Chapter VII, Art. 51). In this case, the decisive interpretation in the moment of conflict falls within the realm of responsibility of either the UN Security Council or the leader of the particular nation itself:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security (United Nations, 1945).

The just war tradition does not state what the definitive and absolute answer to the question of just cause is – it is left to the consideration of a legitimate authority.

2.2.2. Competent authority

Regarding the authority principle, it can be simply stated at this place that there is a single criterion – the military action must be launched and controlled by a duly authorized representative of a sovereign political authority. Negatively expressed, the authority condition

is aimed at preventing various paramilitary non-state actors from launching violent actions of warlike character.

Eventually, it is a prerogative of the legitimate authority alone to interpret all the other requirements upon a just war. As Calhoun (2001) explains, it is exactly this authority's declaration which becomes "for all and intents and purposes, the necessary and sufficient condition to the waging of war in the real world". That is the reason why it is of crucial importance to occupy ourselves with this condition and this concept in general.

2.2.3. Right intention

The right intention can again be expressed in both negative and positive manner. In the negative sense, it refers to a military action marked by the absence of (a) territorial acquisition, (b) intimidation or coercion, or (c) cruelty, hate, or vengeance. The positive definition refers to a military action possessing either peacekeeping or justice-building efforts.

2.2.4. Last resort

Simply put, the last resort principle states that measures other than military approach must be employed first and in a sufficient amount. On the other hand, this does not mean that "all possible (non-military) measures have to be attempted and exhausted if there is no reasonable expectation that they will be successful" (Lango, 2005). As Phillips (1984:14-15) explicitly points out:

It is a mistake to suppose that "last" necessarily designates the final move in a chronological series of actions. We have to understand that there is a suppressed hypothetical in this restraint, namely, if time and other relevant conditions permit, other means short of force might be tried, but we are not to be locked into a series of steps beginning with the most pacific means and gradually escalating in the direction of force. If we could ideally arrange matters of fact, that would be the scenario, but failing that, sometimes force be our first step.

There would be no time for going through a series of steps (from the most pacifist means on) in such cases. However, criteria for such a decision are not found in *bellum justum* – clearly because the tradition itself is based on pre-existing moral principles and values, as well as on the presumption of rationality.

Contemporary theorists sometimes suggest that this condition should not (or cannot) be understood literally – and that it is the commander in chief himself who is responsible to decide that the use of force is the last resort in any particular case.

2.2.5. Reasonable hope of success and overall proportionality of good

Reasonable hope of success excludes futile attempts or such cases where a disproportionate amount of military measures would be required. This condition is connected to the last one, the overall proportionality of good, which requires that the anticipated benefits and moral profit must exceed the anticipated harm and moral cost inflicted (therefore maximizing profits and minimizing harm). In the words of John Rawls, “the aim of war is a just peace, and therefore the means employed must not destroy the possibility of peace or encourage contempt for human life that puts the safety of us ourselves and of mankind in jeopardy” (in Zuo, 1973). On the other hand, there is the question of “which ‘price’ in human life may a leader ‘pay’ for what he deems to be a worthy cause?” (Calhoun, 2001).

Even though the *jus ad bellum* requirements just described above are independent, Calhoun (2001) argues that in practice, they are ultimately all linked to the legitimate authority, whose declaration then becomes both the necessary and sufficient condition.

These conditions aim to impose limitation on the free access to use of force but sometimes they are not as crucial as in other times. As claimed by Max Weber, one of three key characteristics of a statesman (i.e. of the person or a body legitimately assuming the authority) is responsibility. Enthusiasm is not a legitimate reason to launch a war. It is necessary to make use of professional responsibility as well when one is deciding to wage war and how and with what means to lead one (Weber: *Wissenschaft als Beruf & Politik*; in Zuo, 1973). The true and only goal of war should be peace, as already Grotius believed.

2.3. Jus in bello

Jus in bello, delineating the conditions of just conduct in the war itself, represents the second area of the just war theory. Unlike the *jus ad bellum*, *jus in bello* coalesced around two central principles: proportionality and non-combatant immunity. The character of *jus in bello* subsumes Phillips (1984:12-13) in the following points:

I. Proportionality

The quantity of force employed or threatened by must always be morally proportionate to the end which is sought in war.

II. Discrimination

Force must never be applied in such a way as to make noncombatants and innocent persons intentional objects of attack. The only appropriate targets in war are combatants.

Moreover, many theorists have recognized another area of interest, called the principle of *double effect*. In short, it says that in a situation where the use of force can be foreseen to have actual or probable multiple effects, some of which might very well be evil, culpability does not attach to the agent if the following conditions are met:

- a. The action must carry the intention to produce morally good consequences.
- b. The evil effects are not intended as ends in themselves or as means to other ends, good or evil.
- c. The permission of collateral evil must be justified by considerations of proportionate moral weight.

2.4. The concept of the legitimate authority

In Phillips' explanation (1984:16), the provision of a legitimate authority was originally developed to avoid private warfare. The basis for such fears was twofold: on one side, the sovereign was assumed to be representing the divine will, and on the other side there existed certain apprehension that such kind of war could possibly turn into an act of mere revenge. War was not to become an action one resorts to for trivial reasons, because killing has always been understood as wrong. Therefore only the legitimate authority has been entitled to use the force –in caution. As Phillips notes further in his text, the crucial criterion of legitimacy is that the particular sovereign was not only technically *capable*, but also *willing* to protect those for whom he assumed the political responsibility.

Another argument for restricting the right to wage war is the fact that wars have mostly been fought in defense of sovereignty and/or territorial integrity, i.e. for the communal and state interests. The decision whether these interests have been threatened (and therefore to be defended by resorting to war) belongs to the public judgment. And since the public is represented by an agent – the sovereign – it is him who is entrusted with defending those interests, and therefore is entitled to act.

Sometimes this part of *jus ad bellum* is accompanied by the requirement of a public declaration (from the legitimate authority). Why was this point important? As Calhoun (2001) explains, this act was originally supposed to provide the other state with the option to avoid the inevitable devastation which follows a war and prolonged military campaigns. The enemy would be warned before being actually attacked in order to verify that the disputed issue is not just a result of a breakdown in communication between the two countries, as well as get the opportunity to capitulate and circumvent the impending attack.

In the medieval era (until about the fourteenth century), the right to wage war was perceived as gifted – not only to the sovereign, but also to any prince who was able to afford, raise and maintain (at least temporarily) an army.

Since the era of modern European states, the legitimate authority bestows the right to wage war on states and coalitions of states. In terms of the Westphalian system, only sovereign political organizations have had the power to enforce laws within their own territory. With the colonial wars of the (mainly) twentieth century, the status of a lawful belligerent has been bestowed on many subjects engaged in liberation wars, fought typically against oppressive, foreign, and usually European rulers. But as Fabre (2008) argues, this process has not weakened the principle justifying states' right to resort to war in order to defend their territorial integrity and political sovereignty, but by broadening its scope, it has actually strengthened it. The logic behind this opinion is that the colonial wars, in which the fighting national movements did not assume state sovereignty, should be considered a kind of an interstate war. However, the current criterion of legitimate authority is strongly biased "in favor of the status quo, and places independent, non-state actors at a considerable disadvantage" (Howard in Ilesanmi, 2000). To a certain level, the legitimate authority might be viewed also as fundamental to maintaining civil and international order.

The legitimate authority principle is of crucial importance for the *jus in bello* as well, not just *jus ad bellum*. The combatants (usually uniformed soldiers) acting as agents of a legitimate authority can kill with impunity in a war precisely because they do so on behalf and at the behest of their sovereign (Fabre, 2008). Even if the war is deemed unjust based on some other of the requirements of *jus ad bellum*, it is enough that the soldiers committing the act of killing belong to the army of a legitimate authority.

This thesis does not intend to elaborate on legitimate authority as articulated in positive law. Instead, my aim is to contribute to the just war theory and focus on the legitimate authority principle's evolution.

2.5. Definition of war

First of all, there is an agreement that the just war theory can be applied only to events which qualify as a *war*. This is a quite straightforward and clear assumption. However, there is not just a single one, universal and endorsed-by-all definition of war. For example, a lone assassin cannot wage war. In such a case Lackey (1989:30) speaks about a controlled use of force, undertaken by persons organized in a functioning chain of command.

In the traditional sense, we could consider the definition of Karl von Clausewitz, who believed that war is “nothing but the continuation of policy by other means“. The question is whether the JWT applies only to wars in the Clausewitzian sense? In agreement with Bellamy (2006:5) I would argue that it is not so. In my opinion, the tradition can be applied to various forms of armed conflict and political violence, not necessarily fulfilling all of the criteria of „war“ as understood nowadays.

Alternatively, the Oxford English dictionary defines war as “hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties in the same nation or state; the employment of armed forces against a foreign power, or against an opposing party in the state“.

A deeper insight into the variety of wars can offer for example the COW (Correlates of War) project called Typology of War. Its aim was to find the patterns and signs differentiating wars from other kinds of violence. The end result is a typology of wars, which was later re-evaluated to be better applicable to the post-Cold war reality. For more information see e.g. Sarkees, Wayman, Singer (2003).

When using the term war in this text, I am not strictly adhering to the any single definition. However, I believe that the issue of statehood is central to the warfare and that the conflict must be armed, actual, intentional and widespread. I will proceed from this point of view.

3. Methodology

The first part of this thesis maps the evolution of thinking about the legitimate authority within the just war tradition. However, it is virtually impossible to elaborate on the authority concept without the wider context of the tradition itself, without the historical events defining its meaning, and without regard to its relative relationship to the other conditions of *jus ad bellum*.

Therefore, I will first outline how has the just war thinking developed into an acknowledged theory as we know it today. Then I will focus on the concept of the legitimate authority itself. In order to stress the major points and developments, I am going to consider the authors who (in my opinion) represent the pillars of the discipline in the course of history. I chose the following four:

1. St. Augustine
2. Thomas Aquinas
3. Francisco de Vitoria
4. Michael Walzer

With every philosopher and theorist considered, first I aim to delineate origins of his particular thought and theory; basically, what background does he come from, what tradition does he belong to, and in whose footsteps he follows. This should also make clear how his theory fits into the just war tradition as a whole and where this author differs from the mainstream of the tradition.

In the main part of each of the particular chapters, I will focus on the central point of the analysis, the particular author's concept of the legitimate authority within the just war tradition, i.e. which entity wields the authority, how important this condition is for the just war theory in the author's opinion etc. It will become apparent that often I found that the theologians and thinkers actually engaged in the legitimate authority theorizing much less than I would like them to, but this fact in turn provides some important answers as well.

Finally, I intend to elaborate on the importance of the theorist for his contemporaries or for the next generations of (just war) thinkers (or both).

The second major aim is to provide a basis for an evaluation of contemporary implication of the authority concept and related dilemmas posed by our international system. Therefore the last part of this thesis will be dealing not only with the general challenges to authority that the contemporary international community faces, but especially with the importance of the just war theory in combating terrorism, in handling the problems of humanitarian interventions and with the concept of the Responsibility to protect.

3.1. Research method

The research method most suitable for this thesis is the document analysis. Being actually the most frequently used data collection technique among political scientists, this method allows

for observations to be made using various written records, documents, manuscripts etc. This way, I will be able to sum up the main points of each source both in order to answer the given research question and to return to the source for further reference.

According to Zhang and Wildermuth, qualitative analysis of content is one of the “most extensively employed analytical tools” in qualitative research. One specific way (with regard to this thesis) to define this kind of analysis is as “any qualitative data reduction and sense-making effort that takes a volume of qualitative material and attempts to identify core consistencies and meanings (Patton as cited by Zhang, Wildermuth, 2009). The point of this method is to allow for the understanding of (social) reality “in a subjective but scientific manner”.

Qualitative content analysis is used to condense data into particular categories or themes by the process of inference and interpretation. The work itself consists of inductive procedure and “careful examination and constant comparison” (Zhang, Wildermuth) and the final goal lies in the identification of those important themes and/or categories arising from the original material.

In my opinion, this thesis fulfills those preconditions in order to successfully employ this research method and to come to desired conclusions.

3.2. Limitations

In this work I was limited by two quite contradicting problems. On one side, the sheer volume of works one needs to study and analyze in order to obtain the necessary information is rather overwhelming, especially considering the works of Augustine or Aquinas. Even though both of these, and many other theologians and philosophers devoted their studies (or a part thereof) to the just war tradition, the legitimate authority was rarely the central point of their theory. Therefore although it might seem that the information provided in this analysis is a bit insufficient at times, it is the most I was able to extract.

On the other hand, while the subject of the just war and legitimate authority is an interesting one, and without doubts deserves a more extensive work, the scope of this thesis is limited and does not allow for that. Therefore, I believe and hope that such work will be done in the future.

4. Evolution of the just war as a theory¹

A general misconception assumes that the just war theory arose from a Christian tradition of St. Augustine and Thomas Aquinas. This assumption fails to acknowledge the indebtedness of these authors to the earlier antics authors. Second problem of this assumption is represented by the profound differences between Augustine and Aquinas.

By the time of Renaissance and Reformation, the just war tradition, nearly complete in its outline, ceased to be a part of a specifically Christian intellectual history and became part of the newly evolved international law instead (Gaffney, 2011:46). In the time following the Renaissance until about the nineteenth century, the just war theory was (together with the general post-Reformation Catholic moral and political thought) mired in a rut and considerable stagnation.

Works of the various Christian thinkers justifying and limiting the waging of wars can be understood either as a presentation of the just war theory itself, or as an integral part of this tradition. In any case, the just war theory has been built on the foundations of a long historical development. Both the tradition and the theory have been traditionally represented as a Christian approach to the problem and exercise of violence. Many times over the course of history, there have been cases of armed violence for which a religious blessing had been demanded (when not given outright) in the Western history of crusaders, conquistadors, kings, knights and princes.

Even though it is the Roman Catholicism which is usually most identified with the just war doctrine, this theory is not confined to the church thinkers only. The tradition is rooted in the teaching of Cicero and Greek philosophy, as well as in the legal and moral theory of natural law (Langan, 1984). It is almost impossible to identify any particular approach or definition which could be described as *the* just war theory – therefore any presentation of this matter (including this one) inevitably needs to be to a certain point selective.

However, it is important to keep in mind that the classic just war doctrine is a product of Christendom, with all its ideological limits. These limits are theological on one side (Christian

¹ An excellent book dedicated to the history and evolution of the just war tradition is Alex Bellamy's *Just Wars* from 2006. In my own introduction to this matter I will freely follow his lead. For more information and deeper insights I highly suggest this book for further reading, as well as other Bellamy's books and articles.

doctrine of the West) and geographical on the other (throughout its evolution, it was confined within the boundaries of Europe). Johnson (1973:12) argues that as the tradition developed within the Christendom as a whole, it adopted the values of the community – not only the *Christian* ideology, but that of *Christendom*. Johnson argues that it is exactly because of this development that the just war tradition has had the relevance and adequacy (both moral and political) it has till these days. The just war doctrine thus represented – as long as the ideological community of Christendom in Europe endured - the “community law“ and actually did manage to limit the arising conflicts. With the demise of theological and philosophical unity of the Christendom, as well as with the gradual erosion of its homogeneous boundaries, the former role of the just war tradition as a community law began to fade. Nowadays, the international law has been fulfilling the role of community law in the modern world (while again, as a product of the “civilized“ Western countries, the contemporary international law is rooted in the just war tradition).

In the following section, I will outline the development of the tradition, with certain focus given to the consideration of legitimate authority. However, it is important to ground this principle in the wider context of the just war tradition of the particular period, therefore the more detailed evaluation will follow in the later chapters.

4.1. Ancient Greece

Bellamy (2006: 15-29) dates the first efforts on limiting war to the times of Greek city-states between 700 and 450 BC; these efforts included formal declaration of wars, respect for truces and fighting only during the campaigning season (summer). The aim of such limits was above all the shared interest in preservation of the Hellenic society – and sure enough, the erosion of these traditions eventually damaged the Greek civilization.

According to Plato, the only reason to wage war was for the sake of peace. In *The Republic*, Plato offered some thoughts on how wars should be conducted. His ideas were further developed by Aristotle, who for the first time formulated ideas about just warfare and even used the term “just cause“. Among the five reasons given by Aristotle for initiating war were (1) self-defense, (2) vengeance on those who caused someone an injury, (3) help to allies, (4) gain of glory or resources for the polis, and (5) maintaining authority over subjects unable to rule themselves. When discussing slavery in *Politics*, Aristotle admits that sometimes an acquisition of slaves might be a primary purpose of war and therefore some “wars may not be

just in their origin“ (Gaffrey, 2011:47). This part is considered to represent the first appearance of the term “just war“.

4.2. The Roman Empire

Elaborating further on the work of Greek philosophers, the Roman philosopher Cicero argued that the key role of state was to maintain a balance between order and law, and thus enable the pursuit of justice. In order to diminish the threat of a potential civil war, Cicero insisted that wars should be formally declared by proper authorities and fought only by soldiers on active duty for the state.

An important development represented the promulgation of *ius gentium* (law of peoples) which – perhaps for the first time – suggested that *universal* legal restraints on war waging were possible (Bellamy, 2006:18).

4.2.1. Early Christians and St. Augustine

Two issues the early Christian thinkers had to deal with were the interpretation of the scripture and figuring out how to relate their beliefs with the way of Roman government. Until the mid-third century, Christian leaders and prominent thinkers argued against Christian service in the military. In these times, Christians were basically a sectarian community refusing to serve Rome; primarily because of their expectation of Christ’s imminent return. Moreover, there was a pervasive tendency towards pacifism among the Church leaders. However, since 173 AD Christians however increasingly served in the military and began to play a role in the state apparatus. The new generation of thinkers was therefore confronted with another kind of issues and so whether Christians could use force to protect the (Roman) empire, its faith and its laws.

St. Augustine of Hippo (more on his theological approach later in a separate chapter) is credited with the first development of the just war theory (Bellamy, 2006:25), even though there is no coherent ethics of war to be found within his works. Instead, various references to war and military service are scattered throughout his writings and various comments in the form of responses to specific questions (such as the letters to Boniface). Augustine’s works are defined by the time he lived in, the circumstances of imperial decline and of the rapid spread of Christianity. According to Bellamy, we can distinguish two key insights on the ethics of war in Augustine’s work on warfare.

First, it is the necessity of *right intention* (the wrong intentions are hatred, envy, greed, and the will to dominate, whereas the right intentions are love and effort to maintain peace and justice – or what Augustine calls the “inward disposition”). Augustine believed that a truly just ruler would not decide to initiate a war in order to “expand his kingdom, enslave people or steal plunder“, instead, he would “fight only just wars to uphold justice and maintain the peace“ (Bellamy, 2006: 28). Such wars were wars from necessity, not of choice.

Second - the point that is of special interest for this thesis - Augustine believed that wars must be declared by appropriate authorities. As Bellamy (2006: 28 – 29) argues, it was rather simple to identify a legitimate authority in Augustine’s time; it was whoever held the power in Rome. Nevertheless, the matters changed with the fall of the Roman Empire when the emerging feudalism and its complex and often overlapping authority structures caused a great deal of sovereignty issues to arise.

4.3. The Middle Ages

Bellamy identified three main currents which shaped the development of the just war tradition in the early Middle Ages – the canon law (concerned with the circumstances legitimizing waging of war), the chivalric tradition (concerned with the conduct of knights both in fight and elsewhere) and the scholastic tradition (which later influenced Aquinas and his writings). The most significant of these, the canon law, was tightly connected with the matters of the Church, individuals under its jurisdiction, and its interests, including also the matter of wills, offences against God, and wars. Some attempts at regulating violence emerged, such as the peace movements called Peace of God and Truce of God, but they did not prove to have a big impact on the actual conduct of hostilities.

In 1140, an important contribution to the just war tradition emerged (Bellamy, 2006:32) in the form of Gratian of Bologna’s *Decretum*, which also dealt with the question of right authority. Like Augustine, Gratian believed that only those soldiers fighting on the orders of a legitimate authority could justly participate in the killing of enemies. However, as mentioned above, it was much more difficult to identify such a legitimate authority by then. Two major problems were whether it was legitimate for the Church to initiate (and participate in) war, and which secular authorities could legitimately wage war. The *Decretum* did not provide an explicit answer to the latter question, but there was a clear line of thought that “a war be declared beforehand suggested that only those with the material power to make such a declaration could wage a just war“ (Bellamy, 2006:33). In this case, the emperor, kings, princes, barons

and even some of the vassals could (under certain circumstances) legitimately initiate a war. By separating secular and religious authorities, Gratian laid grounds to the idea that there were two kinds of justifiable war: the “just wars“ declared by a secular authority and the “holy wars“ declared by the ecclesiastical authorities on the pretext of defending the faith and orthodoxy. However, it was not specified in this work who or what the secular authorities really were.

Why was the question of the authority so important? According to Bellamy (2006:34), war was a significant source of revenues for the lesser nobility of the time and wars among these nobles became more of a norm. Therefore limiting the authority to wage war equaled limitation of the warfare in Europe as well. Because it was not specified who really represented the legitimate authority, it is suggested that the canon lawyers probably assumed that should the feudal society see an unjust authority, it would recognize it as such and the problem would be solved.

4.3.1. Thomas Aquinas

As a scholastic thinker, Thomas Aquinas (1225 – c. 1274) blended philosophy with theology in such a way as to support and justify one another (Bellamy, 2006:37). Compared with Augustine, Aquinas’ writings are less religious. And just like Augustine’s, Aquinas’ work was not all as significant among his contemporaries as we would assume today (all the other schools – the canon law, the chivalric code and the idea of a holy war – were actually much more prominent at the time). However, he undeniably impressed all the future philosophers in such fields as ethics, political theory, natural law, or metaphysics. Being influenced by both the scholastic tradition and Aristotle, Aquinas’ masterpiece is the *Summa Theologica*, representing all Aquinas’ views, theological and philosophical attitudes in just one piece of work.

After this brief introduction, the analysis of *Summa Theologica* will follow later in a separate chapter.

Generally, we can say that the early medieval tradition of thought has exercised impact on the just war tradition in different ways. But what is of greatest interests for this work, a consensus on the matter of the legitimate authority slowly emerged. Only sovereign rulers - kings with no temporal superior – could legitimately initiate and conduct war. Private wars, although still existing until the eighteenth century, diminished in their frequency from the fourteenth century onwards. Augustine, Aquinas and the canon lawyers gave rise to the *jus ad bellum*

conditions, legitimate authority, just case and right intent, which have remained valid ever since.

4.4. Reformation and Renaissance

The just war tradition kept on slowly progressing from the canon law and scholasticism towards the natural and positive law. The process of secularization was complex, and even then theological thinking continued to play a role at shaping the just war theory. In fact, it was not until the nineteenth century that the just war thinking became completely secularized. However, the three major traditions defining the previous era (the chivalric code, the canon law and the holy war doctrine) became less visible and less important during this period. Scholasticism on the other hand retained its importance for the just war tradition – even though the time when scholasticism reached its peak signified the emergence of new humanist methodologies which significantly challenged the previous approaches. The older traditions were slowly substituted by three new ones: realism, legalism and reformism.

The roots of the *jus ad bellum* as we understand it today reach to the classic just war doctrine as formulated in the late sixteenth and early seventeenth centuries by secular theorists Grotius and Gentili, and theologians such as Vitoria, Molina, and Suarez. These theologians managed to “unify, clarify and even amplify” (Johnson, 1973) the medieval scholastic doctrine into an early modern one, while the theorists transformed it into a secular tradition of thought, anchoring it in the international law. The just war tradition was not based on the will of a divine ruler of the universe any more, but on an agreement among men.

4.4.1. Francisco de Vitoria

Francisco de Vitoria (c.1483–1546), professor of theology at the university of Salamanca in Spain, provided a nearly complete scholastic account of the just war – and to this day, basically all of Vitoria’s ideas remain intact, valid and accepted. As Vitoria was primarily interested in the matters of legitimacy of the Spanish adventures in the newly discovered America, the just war was among his secondary interests. Eventually, Vitoria came to the conclusion that the Church and/or the empire had no universal right to initiate war (a point which was quite crucial to the preceding crusade war era) and rejected the idea that conversion wars could ever be just.

4.4.2. Realism and Machiavelli

Machiavelli's opinion on a sovereign's proper behavior was diametrically different from that of scholastics and canon lawyers. The sovereign should *appear* to conform with the traditional virtues of compassion, faith, integrity, humanity and religion in order to maintain the legitimacy. Considering that the sovereign's primary task was to protect the political community (through both justice and armed force), he was however supposed to remain "above" the law and be able to act freely according to the necessity. Therefore Machiavelli argued that no universal legal or moral constraints could be placed on the prince's decision to initiate war or the way a war was actually conducted.

4.4.3. Reformism

On the issue of legitimacy, the humanists of this era claimed not that a war cannot be justifiable under certain circumstances – but instead that no wars of their time were justifiable (Bellamy, 2006:62).

4.4.4. Thomas Hobbes

The period spanning from when the holy war returned to Europe until about 1660s (also during the times of the Thirty Years' War and the English Civil War) brought about a significant change in the just war thinking. Thomas Hobbes' *Leviathan* (first published in 1651 as a reaction to the English Civil War anarchy) and Hugo Grotius' *De Jure Belli ac Pacis* (published in 1625 when Grotius attempted to create such a legal system that would prevent future wars of such a complexity) were shaping the theoretical groundwork of the time. In his work, Hobbes was among other questions occupied with one of the *jus ad bellum* conditions – the principle of right authority. In his view, every war the sovereign waged with the good of state in mind was justifiable (Bellamy, 2006:71); and quite naturally, Grotius as his predecessor had had certain influence on his philosophical theses. In *De Jure Belli et Pacis*, Grotius addressed what he saw as a problem – the realist opinion that sovereigns were entitled to wage war for basically any reason and conduct the fighting in unconstrained manner. Grotius saw the solution in the international law, which, as he understood it, bound states one to each other (Bellamy, 2006:71).

4.4.5. Hugo Grotius

Natural and human law, two components of the international law, defined what was *just* and what was *legal* respectively. Because Grotius saw war as kind of a “quasi-judicial activity” (Bellamy, 2006:73), his concept of right authority was tied to the conditions of last resort and proper declaration. It follows that war could only be waged by sovereigns; and only after they have properly declared their intentions and reasons, as well as after they have offered their enemy an opportunity to provide restitution. Finally, a war might be justifiable only if there is no possible effective arbitration. In case that (at least) one of these conditions is available, but left unused, war cannot be considered just. However, the very same war had to be considered *legal* because it is a legal right of sovereigns to wage war (as recognized by volitional law).

A defensive war is another point though. In *On the Law of War and Peace*, Grotius clearly states that “a private man may wage war against his own state if no legal recourse is available” (I-3), as well as against a foreign sovereign (I-4, I-5; in Fabre, 2008). Therefore, in defense of their fundamental interests (such as one’s own life and property), individuals may sometimes initiate war (however large that war may be).

To sum up Grotius’ take on this tradition, we can conclude that the conditions of just cause, proportionality of ends and right intention were secondary to the conditions of right authority and proper declaration. Should the latter two conditions be fulfilled, war could claim *legal justice*. But in order to claim *moral justice*, all of the other criteria had to be fulfilled as well (Bellamy, 2006:75).

4.4.6. Legalism

The most prominent of the legalist writers of the sixteenth century was Alberico Gentili. In his most appreciated work, *De Jure Belli* from 1589, he rejected the notion that sovereigns could freely wage (justifiable) wars whenever they saw fit. Instead he argued that such steps had to be under auspices of international law; and similarly, that the sovereigns remained “below” both natural and international law (although “above” the positive law).

Another work on law was done by Samuel Putendorf at the end of the seventeenth century. He distinguished two types of law; civil (or positive) law and natural law. Putendorf argued that sovereigns belonged to the state of nature where civil law was completely absent because there was no global universal authority to make and enforce such law (Bellamy, 2006:77). In

On the duty of man and citizen (paragraphs 16-18, in Fabre) however, Putendorf clearly states that “the right of initiating war in a state lies with the sovereign“.

Although there were not many new perspectives in Putendorf’s works, the biggest contribution was the naturalist schema which he attempted to elaborate on in order to fill in the (perceived) gaps in Grotius’ work.

More influential branch of post-Grotian legalism, both in terms of the intellectual development of the just war tradition and in terms of restraining the conduct of war, has been connected with Emmerich de Vattel. Vattel’s *Le Droit des gens* (1758) proved to be the most comprehensive work on the law of war in the period after Grotius². In Vattel’s opinion, nations were free, equal in nature, and independent. Therefore all nations were to be considered sovereign and regarded as equal with each other. And accordingly, all sovereigns should have been granted equivalent (international) rights, not based on type of a state or its relative power. Such sovereignty was based on the relationship between the nation and its ruler, whose authority stemmed from the power delegated from the ruled into his hands. Vattel was of the opinion that sovereigns had the right to wage war and that the *just ad bellum* was a “largely procedural matter dependent on the satisfaction of the rightful authority and prior declaration criteria“ (Bellamy, 2006:81). As a certain commentator (cited in Bellamy) concluded, Vattel’s work practically meant “the end of any dominant influence of natural law in international relations“ (Kahn in Bellamy, 2006:81).

Cornelius van Bynkershoek, a Dutch jurist (1673-1743), conversely argued that sovereigns’ unlimited right to wage war was anchored in the fact that there was no customary law forbidding it.

4.4.7. Reformism and Immanuel Kant

Immanuel Kant’s *Perpetual Peace* (1795) significantly influenced the just war tradition, even though this has been long disputed (Bellamy, 2006:82). Kant rejected the contemporary thinking about just war, arguing instead that the only sources of law were treaties, customary practice and opinions of “recognized authorities“ (Bellamy, 2006:83). As in today’s view,

² Grotius and Vattel were actually two dominant figures in the laws of war thinking until the twentieth century.

international legitimacy of a state was grounded in acting in accordance with the law of nations.

Many authors have been insisting that Kant's contribution to the just war theory was marginal at best, the reason being Kant's desire to abolish war completely. However, as Bellamy argues, not only has the *Perpetual Peace* itself been an important contribution to the just war tradition, but this work does not represent all of Kant's engagement with the just war (2006:84). Kant's philosophical thinking intended to provide categorical imperatives including the just war theory as an interim provisions and action guidelines before the perpetual peace would be established.

Considering the *jus ad bellum*, Kant assumed that just cause ensues from a violation of rights of one of the states involved. Subsequent wars must be limited to satisfaction of the violated rights and the particular sovereign must (after consultation with citizens) properly declare war. What is important, Kant insisted sovereigns to be able to wage war *only* with the consent of their citizens.

Kant further introduced yet another, third constituent to the just war thinking: *jus post bellum*. It was crucial for Kant that the wars were consistent with the aim of perpetual peace. The victorious state therefore had to afford the defeated one the right of self-determination – the right to choose the form of government and not impose its will on the vanquished state.

4.5. Industrial Age: 1789-1945

The end of the eighteenth century signified a turn in the military history: while technological changes increased military power, new ways of communication and logistics enabled states to mobilize bigger armies, faster and for longer periods in time (Black in Bellamy, 2006:88). This process also meant that while mobilizing, entire societies became involved – with the subsequently arising issue of the non-combatant immunity which the (just) war theorists were facing. Even though certain parts of the society were not directly participating in the fighting, they were deeply engaged in the war process anyways. This meant that the number of potential combatants and potential legitimate targets increased significantly.

The Second World War represents an important milestone and a break with the evolution of war thinking of this era, the Industrial Age. When laws of war failed to restrain the belligerents and allowed the war escalate to such a level, the community of states got an impetus of a whole new level of importance to further develop the positive law restraining the

use of force and to create mechanisms for its enforcement. Doctrine of total war was abandoned for the theory of limited war. And with the end of the Cold War and arising moral dilemmas in the world politics, scholars once again turned to the traditional thinking about just and unjust wars.

By the Second World War, the just war tradition had been built around realism and positive law (the legal norms remained subordinate to the realist notion of *raison d'état* and military necessity). The fact that the positive law was a direct result of the wishes and actions of the realist-thinking sovereigns represented a considerable problem.

The Industrial Age thought was dominated mainly by the realism. Sovereigns believed that they had right to wage unlimited wars whenever they considered necessary. Similarly, the conduct of war itself was believed to be limited only by military necessity. In this time, realism evolved into an ideology of the state that united nationalism and militarism. Any lingering constraints on war-making – the chivalric tradition, Church law and the new military codes – were expected to be overridden when confronted with *raison d'état*.

Raison d'état represented the central conception of the normative military (and political) discussion in the nineteenth and early twentieth century. War was defined by domestic political and moral constraints, utility and prudence, not by a universal moral code. Therefore, the *raison d'état* allowed the nations' leaders (both political and military ones) to invoke „necessity“ in order to justify overriding the traditional just war rules of conduct (Bellamy, 2006:91). Strategic considerations were prioritized over the moral ones – no wonder since arguably the most prominent figure of the military thinking was Carl von Clausewitz (1780-1831). As Bellamy also notes, Clausewitz was skeptical about the moral and legal constraints put on war (describing the international law as “cumbersome”) and insisted that there could be no such limitations on the conduct of warfare. In his opinion, war could only be held back by its ends. In the spirit of the time, Clausewitz also believed that the established rules might – and in fact even should – be broken when preservation of a state was at stake. The nation leaders were *morally obliged* to uphold the state, not to follow external moral or legal provisions.

Alongside realism, legalism continued to develop. Not denying the generally acknowledged right of states to wage war (which actually was perceived as a legal principle), legalist were searching for an arbitration system that would allow for a peaceful settling of international disputes. Legalism had, however, bigger impact on the conduct of war (*jus in bello*) than on

the recourse to war (*jus ad bellum*), blending together concepts of military codes, liberal humanitarianism and international treaties (Bellamy, 2006:94).

States have been meeting regularly since about 1860s in order to somehow limit wars. Between this time and the year 1914 though, the focus was almost entirely centered on the *jus in bello*. As Bellamy (2006:98) puts it, this period was “something of a gold era“ of international law governing the conduct of wars. The Hague conferences of 1899 and 1907 attempted to limit the recourse to war, but tacitly accepted the right to do so anyways. The participating states achieved greater progress in the codification of *jus in bello*, producing especially the *Convention on the Laws and Customs of War on Land*. As for the *jus ad bellum*, the Hague Conventions strengthened the arbitration process instead of the outdated cause of war; but failed to establish a compulsory system of arbitration or to limit the right to wage wars. As these developments show, the participating political leaders considered themselves to be precisely the legitimate authority that wielded the power to wage war.

4.5.1. The League of Nations system

After the First World War, the attention understandably moved from *jus in bello* to *jus ad bellum*. The newly established League of Nations system assumed there were two different kinds of war: the expressly unjust wars of aggression (which were supposed to be prevented by the system of collective security in the future) and the legitimate wars resulting from a genuine dispute over rights (which should be avoided by compulsory arbitration; an undertaking which, sadly, failed to be established). According to Bellamy (2006:102), the most significant introduction of the League system was the requirement that the state pondering a war needs to justify its decision to recourse to war to its peers (these would then decide whether they accept this justification, or not). Bellamy also shares his conviction that this has been the most important innovation since Ayala, Vitoria and Gentili and their considerations on the subjectivity of just cause and right intention. This provision suggested that the justifiability of a war lied in the ability to persuade others of the case. As Bellamy further argues, the League did not prove unsuccessful because it was too utopian – it was because it was not utopian enough (2006:103). The League only slightly advanced the limitation of a sovereign’s right to war, but without the need for just cause, right intent or proportionality principle.

4.6. Post-1945

The just war tradition had developed into several forms by the mid-twentieth century. The realism that became the dominant course after the Second World War was significantly different from the realism of the nineteenth and early twentieth century. According to Jean Bethke Elshtain, the just war turned around this time into a sort of “modified realism“. Another opinion is that the realism itself became imbued with the just war tradition. In any way, the two schools became significantly intertwined.

The inclusion of (at least) some of the just war points into the realism was caused by several reasons. First, the existence of nuclear weapons increased the danger of new wars. Second, Nazi Germany showed the ends of where unrestrained pursuit of national interests could lead (Hannah Arendt even argued that Germany was “a logical consequence of modernist and realist dogma“; again in Bellamy, 2006:104). Third, the realists (such as Morgenthau or Niebuhr) were concerned with questions of how to oppose tyrants of Hitler’s nature while at the same time not becoming just like them (the “elemental realist dilemma“); and interestingly, their attitude towards waging war became closer to that of the just war theorists. Their concern about excessive reliance on morality and positive law led them to believe these had to be secondary (or subordinate?) to power and prudence.

4.6.1. Hans Morgenthau

Morgenthau (1904-1980) proceeded from the assumption that positive international law had failed to both prevent war and mitigate its course. According to Bellamy (2006:105), Morgenthau believed that between the Thirty Year’s War and the French Revolution, the just war theory did manage to moderate wars; however, this achievement was later eroded by two factors. First reason was the disruption of the aristocratic responsibility for the foreign affairs, with loosening of aristocratic ties among ruling families and diminishing of the notion of chivalry and honor. Secondly it was the rise of nationalism and the concept of total war which prevailed and altered the course of history and thinking about war. Morgenthau believed that political leaders could achieve setting up *realistic* restraints on war. This could be done first by considering moral requirements while deciding to act and second by accepting that in theory, positive law could in fact succeed in restraining the states in their international behavior. Morgenthau was therefore of that opinion that it is not sufficient to create rules about war but also to develop structures enabling their enforcement.

4.6.2. Reinhold Niebuhr

Niebuhr (1892-1971) also believed that morality, power and prudence were all supposed to be in balance when dealing with political problems. He even argued that morality and self-interest were not two mutually exclusive realms. However, he rejected the traditional just war, being convinced that no moral values could be considered absolute and that all could be sacrificed when other values needed to be defended (Bellamy, 2006:106). Each case should be considered separately on its merits. Niebuhr believed that the criteria of just war could be easily misused and abused. On the other hand, he did argue that while states should pursue their national interests, their leaders should try to align to the considerations of (international) justice whenever possible. When such alignment was not possible, it was up to political leaders to consider the clashing moral demands.

4.6.3. Legalism

The fact that the positive law did not prevent aggressive wars like those pursued by Germany and Japan (among others) was not considered an absolute failure of the law *per se*, but rather as a fact that the law needed to be strengthened. In 1945, the United Nations Charter prohibited the threat or use of force, except in self-defense or when authorized by the UN Security Council in cases endangering (at least allegedly) the international peace and security.

Our contemporary just war thinkers tend to criticize the process of downplaying the role of justice in war's legitimacy by the United Nations. According to Johnson (cited in Bellamy, 2006:107), calling a war "aggressive" does not mean the war is necessary unjust, although that is the assumption the UN Charter makes. One example readily on hand is the Vietnamese invasion of Cambodia in 1979, which aimed to rid the country of its genocidal dictator. The trend and the tradition of rejecting aggressive wars meant that Vietnam was forced to justify the invasion by calling this move a self-defense, a claim that was rejected by many states and that resulted in sanctions imposed on the Vietnamese regime and demanding its withdrawal from Cambodia.

As this chapter has shown, the now so called just war theory developed from a long tradition; a development which is not over yet. Even as a theory, it is not definite and various theorists offer various opinions on the particular and more precise points. That is quite alright. But it also means that when we want to focus on the condition of the legitimate authority, there is

not a single, unchanging concept, ever present in the tradition since the early times till nowadays. The following part of this thesis will therefore elaborate on and analyze the various conceptions of the rightful and legitimate authority as found in the works of St. Augustine, St. Thomas Aquinas, Francisco Vitoria, and finally Michael Walzer.

5. St. Augustine

Augustine (354–430; *Aurelius Augustinus Hipponensis*), a Catholic bishop of north-African Hippo, is considered to be the first Christian philosopher. Having produced more than 110 works, his views on political and social matters bridge the late antiquity and the emerging medieval philosophy. Augustine's philosophy was inevitably determined predominantly by his background. As a Christian cleric, he set out to defend the Christianity against the incessant assault of the various heresies that characterized his times. As a philosopher, he was influenced by the thought of Platonic tradition and by the Neo-Platonists of Alexandria in particular. Last but not least, as a Roman citizen, Augustine considered the Roman Empire to be the entity assigned with the task of spreading and safeguarding the Christianity. This historical context is essential in order to be able to understand Augustine and the intellectual overlapping of Christianity, philosophy and politics within his lifework.

Regarding the just war, we can go as far as calling Augustine its “primary architect” (Ramsey, 1961). He was also the first authoritative thinker in our literature to justify Christian participation in wars.

5.1. Cicero's and early Christian influence

Cicero was the pre-Christian writer most relied upon in time of Augustine. It was him who specified two criteria which constitute the more recent *bellum justum*. First, that “no war can be justly waged except for the purpose of redressing an injury or driving out an invader”; and second that “no war is held to be lawful unless it is officially announced, unless it is declared, and unless a formal claim for satisfaction has been made” (Gaffney, 2011).

Cicero's natural law theory helped to shape Augustine's own perception of Christians' relation to government. However, unlike the previous notions of courage, honor or justice being the highest virtues, for the (early) Christians it was love. The concept of Christian love is the defining factor in Augustine's thinking about war. In contrast to Cicero, Augustine was

of the opinion that “not the reasoned assent of men of good will, but what people love most of all shapes both their justice and their attitudes to war” (Holmes, 1975:36).

According to Augustine, the “usual” kind of just war is the one led with purpose “to avenge wrongs, when a people or state must be chastised for neglecting to punish wrongdoings of their own citizens, or to restore something that has been wrongfully taken away” (Gaffney, 2011). This is a view that was going to represent the standpoint view of the Christian law for centuries to come. Moreover, the necessity of avenging such a wrongdoing is not a choice. Instead, a wise man is *compelled* to wage just wars (Ramsey, 1961: 27).

5.2. Augustine, moral of war and imperative of preserving of order

Augustine’s attitude towards war moved from more of a strict form of Christian pacifism to the approval of war under a legitimate authority waged for the right motives in his later works. Teske (in de Paulo et al.; 2011:xviii) is of the opinion that they were the barbarian invasions in Africa and elsewhere within the Roman empire that led Augustine to conclude that in certain cases war is unavoidable and necessary.

Langan (1984) identifies eight principal elements in Augustine’s work, one of them being “a search for authorization for the use of violence”. In his pondering on the matters of authority, Augustine quite naturally anchored his theory in the Bible, and the story of Abraham in particular.

In the book of Genesis, Abraham, one of the biblical patriarchs, is commanded by the God to offer his son Isaac as a sacrifice³. Not wavering in his faith, Abraham proceeds with what he was ordered by the highest authority, the God. As Langan (1984) explains, “it is the divine authorization that makes the action or attempted or contemplated action praiseworthy rather than indifferent or in need of justification and that makes Abraham faithful and submissive”. Otherwise, acting in such a way on Abraham’s own accord would be unnatural and a sign of “shocking madness” (Holmes, 1975:63).

Faithful and *submissive* are the crucial words here, because in order to understand Augustine’s philosophical approach, it is necessary to keep in mind his preoccupation with

³ And he said, Take now thy son, thine only son Isaac, whom thou lovest, and get thee into the land of Moriah; and offer him there for a burnt offering upon one of the mountains which I will tell thee of. Genesis 22:2.

the preservation of a moral order within a society. Such an endeavor (in fact, the highest aim to strive for) constitutes sufficient justification for the use of violence (Langan, 1984). Abraham therefore not only proves to be guiltless, but his compliance is found especially praiseworthy.

5.3. Augustine and the legitimate authority

Augustine draws similar conclusions from a war-relating story of Moses, saying that “there would have been *less* harm in making war of his own accord, than in not doing it when God commanded him” (cited in Langan, 1984). Therefore war is represented as an exercise of divine power on one side and human obedience and unavoidability on the other side.

This way, Augustine absolves human agents of the task of making moral decisions about war and places them into the hands of divine providence instead. He saw that the cause and the authority under which the wars are waged are important. The matters of the justice of war and the right to use violence are subjected to an appropriate authorization – in Augustine’s words:

A great deal depends on the cases for which men undertake wars, and on the authority they have for doing so: for the natural order which seeks the peace of mankind ordains that the monarch should have the power of undertaking war if he thinks it advisable, and that the soldiers should perform their military duties on behalf of the peace and safety of the community (Augustine in Langan, 1984).

It is clear from this excerpt that the search for the appropriate authorization (whether human or divine) determining the justifiable use of violence plays quite an important role in Augustine’s works. In his view, the responsibility for the use of violence is ideally handed over onto the higher power; or, for that matter, higher powers, whether human or divine (this viewpoint is obviously in contrast with the conception of moral responsibility of the contemporary Western culture).

In the *City of God*, Augustine expresses his opinion that based both on natural law and the love of God, the only right end of the society is peace and justice; even in war. And to achieve this end, authority must be exercised “as a loving service to both men and God” (Holmes, 1975:61). A war restoring peace and justice is therefore an act of *love*. It is not a surprise that what Augustine finds to be truly evil in war is not necessarily the “death of some who will soon die in any case” (Holmes, 1975:64), but instead it is the “love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like”.

And when commanded by God or an earthly legitimate authority, it is necessary to punish such inferior qualities in men.

In *Reply to Faustus the Manichean* (Holmes, 1975: 63-68) Augustine argues that there is “no power but of God, who either orders or permits“. It is clear and obvious that the divine authority is the highest one in Augustine’s eyes. Further it reads: “since, therefore, a righteous man, serving it may be under an ungodly king, may do the duty belonging to his position in the state in fighting by the order of his sovereign – for in some cases it is plainly the will of God that he should fight, and in others, where this is not so plain, it may be an unrighteous command on the part the king, while the soldier is innocent, because his position makes obedience a duty (Holmes, 1975:65).

In the same work (also called simply *Contra Faustum*), Augustine argues that wars must be declared by a legitimate authority, so that a soldier who acts under his prince’s orders does not break God’s prohibition against killing. In Augustine’s words,

the natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority (Contra Faust. 22.75; in Holmes, 1975:107).

In sum, what is to be concluded regarding the legitimate authority principle? Augustine clearly states that the declaration of war by a legitimate authority is one of the conditions of *jus ad bellum*. Working on the presumptions that God in Augustine’s philosophical conception constituted the highest authority, we could establish that God’s earthly representatives could wield such authority to provide for the fulfillment of this condition. Such an authority was therefore attributable to Augustine’s sovereign, the Roman emperor (as de Paulo points out, Augustine is “full of praise for the leadership of the Roman Emperor, Constantine“; 2011:20) and the sovereigns he could treat (to higher or lower degree) as his equals.

5.4. Augustine’s heritage

We might argue about Augustine’s role in the creation of the just war tradition. Whereas Messina and de Paulo (2011:23) assert that “it is St. Augustine who is rightfully considered the founder of just war theory because he was the first to articulate the perennial criteria within the framework of the Christian *ethos*“, according to Gaffney, the “often-repeated claim that Augustine was the founder of Christian just war doctrine is less than a half-truth“

(2011:45-51). Whatever opinion one leans closer to, it is undeniable that Augustine's prestige ensured that even his theology of moral war went largely unquestioned. Later on, as the just war tradition slowly matured, it began to depart from Augustine's teaching; it is necessary to keep in mind that even though Augustine was concerned with moral wisdom about war and despite being the Christendom's most cited authority on the ethics of war for the subsequent centuries, he was not primarily preoccupied with the theory of war justice *per se*. Instead, his discussions on war were rather unsystematic and incidental to other issues.

After Augustine, the just war tradition experienced two main alterations until Aquinas followed up in this tradition. First, the understanding of the nature of a political community shifted from voluntarism to rationalism, which in turn caused a greater emphasis on the natural-law concept of justice when analyzing justified war participation. And second, rules for the right conduct in war (i.e. *jus in bello*) emerged.

However, in the matter of the legitimate authority – that means, who should make the crucial decision of waging war – both Augustine and Aquinas offer only scant guidance, as we shall see in the following chapter as well.

6. Thomas Aquinas

Saint Thomas Aquinas (1225-1274) was an Italian Catholic priest of the Dominican Order („Aquinas“ is actually a demonym referring to Aquino in the Italian Lazio region). Aquinas became one of the most important and influential medieval theologians and philosophers whose work considerably shaped the subsequent Western thought, especially the fields of ethics, political theory, natural law and metaphysics. Aquinas' work on the just war has also had a great influence on the development of the catholic peace teaching. All the subsequent religious works on war and peace had to address the thomistic philosophical tradition.

Aquinas himself was intensely influenced by scholasticism and Aristotle; in his works he strived to synthesize these two traditions. Koritansky (2007) describes Aquinas as standing “at the crossroads between the Christian gospel and the Aristotelian political doctrine“ (Aquinas' work is often understood precisely as a modification of Aristotle's tradition with various Christian viewpoints worked in). Aquinas' lifework includes many pieces on both philosophy and theology, but his most influential (as well probably the most known) one is undoubtedly *Summa Theologica*. Summa represents the fullest presentation of Aquinas' views. He was

devoted to this work from the time of Clement IV (i.e. after 1265) until the end of his life (1274).

6.1. Summa Theologica

The work itself is divided into three parts. The first part is focused on God. Here, Aquinas provides proofs of God's existence, explains God's attributes and basically characterizes the God as the unmoved mover. The second book of *Summa Theologica* deals with ethics and Aristotle's legacy (here, unlike Aristotle, Aquinas defends the idea of a connection between a virtuous man and God). In the last part, unfinished when Aquinas died, he set out to show how God provides salvation, as well as represents and protects humanity both on Earth and in Heaven⁴. The *Summa Theologica* remains the most influential of Aquinas' works and the subsequent analysis of Aquinas' judgment and opinion on the legitimate authority is based almost predominantly on this work.

Aristotle's influence on Aquinas was a novel thing at the times of Aquinas and his contemporaries, as Aristotle was just newly rediscovered in the Western world. However, unlike Aristotle, Aquinas is interestingly not very preoccupied with politics in his works. Koritansky explains this by the fact that (unlike medieval Islamic or Jewish philosophers) Aquinas did not have to reconcile Aristotle with a specific political and legal code established by the holy writing. Formulating a comprehensive political teaching faithful to the Bible and its principles within the Christian sphere just was not that urgent. Aquinas therefore never completed a thematic discussion on politics – on the other hand, he surely did have an opinion on the political philosophy, which can be found within various treatises in *Summa Theologiae*.

6.2. Aquinas and the just war

Aquinas' main treatment of war lies in Question 40 of the *Secunda Secundae* in the *Summa Theologica* (II-II, Q. 40). The first *articulus*, "Whether waging war is always sinful?" gives the impression that Aquinas intends to indeed show that using force is a sinful act. In other words, by "starting with the idea that war might be sinful, Aquinas seems to establish a burden of proof in favor of nonviolence and against war" (Miller, in Reichberg, 2010).

⁴ For more detailed, yet still very concise and most easily accessible summary of the *Summa Theologica*, see the Internet Encyclopedia of Philosophy, chapter Thomas Quinas (1225 – 1274).

However, as Reichberg further explains, the original text did not include any titles for the individual articles and even this title (which was added later by another author) is misleading, because it does not really elaborate on the sinfulness of war, neither in an affirmative nor in a denying way. Instead of delineating the war as a sin, the article explains under which conditions a war could be understood *just*.

Three conditions which are necessary in order for a war to be just are laid down in the first article: authority of a sovereign; just cause; and right intention. According to Langan, at least eight times is Augustine quoted in this one Aquinas' article alone (1984:16). It is also this part where Aquinas stresses the point that war should be waged by a legitimate authority (i.e. *the ruler*) as a precondition for being just in nature.

It is also of importance that Aquinas situated the II-II Q. 40 within the treatise of charity. According to Reichberg's explanation (2010), by doing so Aquinas aimed at reaching a delicate balance. If he had placed the treatise within the part on justice, the elaboration would focus on the issue of punishment and the just war would be considered foremost as a sanction against wrongdoing. Instead, Aquinas presents the just war as a reactive use of force, "both a proactive and restorative measure, exercised by and for temporal society, against grave violations of the peace" (Reichberg, 2010). In the second article of Q. 40, Aquinas asserts that it is both right and meritorious to wage just war. From the perspective of the theological ethic, war, as any other human action, can only then be permitted, if it does not contradict the divine will.

Unlike Augustine, Aquinas elaborated on war in a more organized and comprehensive manner, which resulted in compact ethical treatises. Although not plentiful, his works on war provide distinct general principles on moral assessment of warfare. Even though Aquinas followed in Augustine's footsteps and further developed the Christian moral standpoint towards waging war, one of the biggest differences between these two theologians lies in the understanding of the very nature of war. While Augustine understands war as a "salutary chastising of the bad by the good" (Gaffney, 2011:56), Aquinas leaves this assumption for a more "modern" reasons.

However, it cannot be said either that Aquinas provided comprehensive and fully articulated doctrine of the just war yet – instead, two different theoretical heritage branches are to be found in his work; Augustine's and that of the pre-Christian moralists like Aristotle and Cicero.

According to Gaffney, war did not represent “a big issue“ for Aquinas (2011:55). He comprises Aquinas’ work on war into four categories: (1) whether war is always sinful; (2) whether fighting is permissible for the clergy; (3) whether deception may be used in war, and (4) whether warring is licit on holy days. A war is for Aquinas also a moral act. Even though there are many people involved in a war, it can be a moral act as long as there is the one man who is in the position of a commanding authority over everything that belongs to the warfare sphere and who is (in theory) in the position to be called to account for the war (Beestermöller, 1990:32).

6.3. Aquinas and the legitimate authority

What is quite interesting is that Aquinas based his theory on the “presumption against war“ – a suggestion that war could never be completely *just* because of the injustice caused by killing fellow humans. However, it could be *justifiable* under certain circumstances. His assumption that violence is evil could be “only resolved by appeal to the duty of the ruler to preserve peace internally and externally by the literal use of the sword” (cited from Bellamy, 2005). So as we see, it was Aquinas himself who, accepting the very possibility of a just war, established three requirements for such a war: right (legitimate) authority, just cause, and right intent.

In Summa Theologica 2-2, Question 40, First Article, we read:

(...) the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek for redress of his rights from the tribunal of his superior. Moreover it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evildoers (...), so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies (Holmes, 1975:107).

As can be seen, Aquinas’ position on what constitutes the legitimate authority and what are the duties of such an entity seem quite close to what we might consider to be valid today. He beholds that the authority to wage war belongs to the ruler (“prince“), and is not to be put in

the hands of a private person. This is no surprise, considering that Aquinas assumed that the prince in question is committed to protecting his particular realm by force from both domestic and foreign enemies – and war's legitimate purpose is then a self-defense by a commonwealth or political community. And the other way round, in order to avoid the danger of committing an "arbitrary infringement of natural justice" (Bellamy: 2005), the war or violence always requires "persuasive public justification".

In the medieval hierarchical society defining the Aquinas' times, it naturally follows that those with (earthly) superiors with greater authority were not to possess the right to wage war. Moreover, no war could be just where the problem could be solved by arbitration instead. That belief again reinforces the previous argument because the lower nobility could *always* enjoy the arbitration of their king. On the other hand, there was no higher earthly authority above the kings – and therefore only such rulers assumed the legitimate authority to wage wars.

In his works, Aquinas however deals with the war authority of both an earthly prince as well as the Church. Verstraetens explains (in Beestermöller, 1990:19) that despite Aristotelian influence and its importance of the autonomy of state and of the prince, Aquinas still attributes the Church with a lot of power on the political field, including warfare.

But what is the mutual position of the Church and of a state, and what kind of political peace stands in the background when the Church is assigned the authority in a war? Is it possible to speak of a state's autonomy if the Summa Theologica describes the war autonomy of a prince as the authority of the "earthly sword"; a terminology borrowed from the medieval doctrine of "Two Swords", which presupposed the subordination of the secular power under the religious one (translation A.S.). Even in Verstraeten's work remains this issue without a conclusive decision.

And even though Aquinas argues in favor of earthly princes as the highest authorities, he still works with the assumption of the political and spiritual unity of the West with the Pope at the top, which ultimately leads to certain lack of conclusion.

The decision to base the analysis of Aquinas' just war theory solely on the *Summa Theologiae* might seem a bit simplistic at first, but there are in fact two very good reasons justifying this choice (Beestermöller, 1990: 22-23). First, *Summa* represents a systematic and complete work on theology which the author intended to be fully discrete and not in need of further explanations. It is also the final point in the development of Aquinas' thought. Second

reason justifying the sufficiency of this limitation is the specific ethical character of the part of *Summa* we are dealing with. Instead of looking for answers to norms and principles of human behavior, the point of this part is “*moralis consideratio*“, kind of a blueprint for a theological ethic.

6.4. Conclusion

One has to keep in mind that it is necessary to be very careful with the use of the modern term “war“ describing inter-state violence, since at the time of Aquinas and his contemporaries, there were no states in the sense we understand them today. The difference between a war and a dispute was not easily recognizable in the era of not as clearly defined sovereign states as in our contemporary meaning. One could therefore mean a dispute, a conflict, a difference in opinions, which all could just as easily be settled at a court just as with arms. Aquinas’ requirement of a legitimate authority of a prince or ruler as a precondition for war to be just is therefore a bit precarious in its application. As Beestermöller (1990:25) also concludes, it is because of this that the legitimate condition is not only one of the elements of the just war concept, but it is instead elevated to a level of a *moral* requirement.

A blunt characterization of a prince is a ruler who is leading the people (Beestermöller, 1990:25). At a different place, Aquinas himself asserts that prince is a man who has to rely on the cognition of his own reason (Beestermöller, 1990:29).

Likewise, a war can be led only by a public authority, which does not include the priests and religious leaders, therefore these are not considered a legitimate authority.

As Beestermöller (1990:86) explains, Aquinas insists that in order to wage a just and justifiable war, authority of a prince is necessary. And because the prince is responsible for the upholding of the public order, it is also his responsibility to guarantee and maintain order in a town, province or kingdom which is subjected to his power.

Therefore, I conclude that Aquinas does not insist on a certain size of a realm a particular sovereign is responsible for, as long as this sovereign is a legitimate one. In that case he is considered legitimate authority as required by the just war tradition.

7. Francisco Vitoria

Francisco de Vitoria (1486 – 1546) was a Spanish theologian, the first of the Thomist philosophers of the counter-Reformation era. Born in the Basque province of Spain as Francisco de Arcaya y Compludo, he entered the Dominican order already under the name of Francisco de Vitoria and subsequently studied and later taught at the University of Paris. After his return to Spain in 1523, he began to investigate what he has been most remembered for – the morality of colonization of the New World, the rights of natives, and the limitations of justifiable warfare.

As the head of the theology department at the University at Salamanca between 1524 and 1544, he was in a position to address the key debates of his time (aside from the justice of Spanish adventures in the New World also the matters of Franco-Spanish wars, where he refused to side with the Spaniards and claimed the fault was on both sides). By the sixteenth century, scholasticism lost its former prestige. Vitoria was however inspired to restore the tradition of scholastic philosophy and determined to improve the literary form of the theological science. Moreover, he also managed to address the contemporary intellectual needs of the Church.

Vitoria's religious background was essential for his elaboration on the justice of Spanish conquests of the New World. He refused the notion that war could be made on people on the ground that they were pagans. According to Vitoria's teaching, native peoples could not be forced to convert nor could they be punished for offenses against God. The Pope had no right to provide the European Christian rulers with dominion over these people. The conquests could not be labeled as discovery either – they could only then be justifiable if the conquests were meant as a protection from such crimes as cannibalism and human sacrifice. A revolutionary idea of Vitoria was the notion that the Christian ruler had the duty to grant the native Indians the same benefits his continental subjects enjoyed, for the Indians were as much subjects of the king of Spain "as any man in Sevilla" (Hamilton, Britannica, online). It is also interesting to note that Vitoria in fact introduced Aquinas' *Summa Theologica* in Spain as a textbook. Vitoria's own influence on his contemporaries and future philosophers was quite profound. Some five thousand students passed through his classrooms, his teaching affected royal councils, and he is among others often considered the founder of international law (Hamilton, Britannica).

Vitoria's just war teaching represents an important phase in the evolution of the religious peace thinking, as understood by the modern research. While he might have been concluding the religious phase spanning from Augustine, he is most undeniably understood as a theologian of thomistic tradition. In any case, his work cannot be sufficiently grasped without taking into consideration the background of the age and intellectual developments and advancements.

7.1. Vitoria and the just war

The interest in the law of war was stemming from the Spanish claims to rule over the American Indians, as well as from Vitoria's attempt to limit the horrors of contemporary warfare. As a successor of Aquinas, Vitoria believed that a war could not be justified unless waged as a defense against aggression or unless correcting a previously inflicted harm. He elaborated both on *jus ad bellum* and *jus in bello*.

In his lecture from June 1539, Vitoria focused on four questions: (1) Could Christians wage war? (2) Who represents the authority to wage war? (3) What could be considered as a just cause? And finally, (4) how should wars be waged? Following the canon law teaching, Vitoria claimed that only *sovereigns* assumed the authority to wage war (Bellamy, 2006:52). Regarding the just cause, Vitoria was pondering the question whether a war could be justified if the sovereign merely *believed* in the justice of the particular cause (i.e. in a situation where the sovereign was not absolutely certain). Vitoria argued that the belief itself does not constitute a satisfactory reason for war. Therefore, he advises that a "clever sovereign" should consult with "good and wise men" (Bellamy, 2006:53) and listen to their counsel – as should the sovereign's advisers do. And interestingly, for the subjects of a particular sovereign, the mere fact that a war was waged by the legitimate authority was a sufficient proof of the legitimacy of such undertaking (Bellamy, 2006:54).

Vitoria actually differentiates between a defensive and an offensive war and claims that "any person, even a private citizen, may declare and wage a defensive war" (On war, Q. I, 2-3; in Fabre, 2008). Should the threat to his life or property be imminent, this person does not even have to obtain prior permission from a public authority.

Unlike his predecessors, Vitoria was convinced that war law theory cannot be dealt with purely on its own, but that international law must be applied for further understanding. And vice versa, international law is not enough to justify all of the just war tradition norms.

7.2. Vitoria on the legitimate authority

7.2.1. Historical developments and geopolitical changes

As already noted above, Vitoria's work is a continuation of the theological teaching of Thomas Aquinas. In his requirement of a ruler's legitimate authority (*auctoritas principis*), Aquinas worked on the assumption of the political and spiritual unity of the West with the Pope at the top. However, by the sixteenth century this fictional unity was long but gone. The question therefore arose how to fulfill this requirement under the new political conditions of the early modern times? While there were princes who managed to ensure the independence of their state, such as the Duchy of Milan, there were also other, bigger and more influential states such as the Duchy of Burgundy who lost their independence.

According to Aquinas, a ruler (prince, *Fürst*) is to a certain extent authorized by the God himself to act as a judge and wage war. However, with the amount of lesser and higher princes and monarchs in the early modern time, which of them had the authority to assume the position of judgment over life and death, and waging war? It is also a question whether the older highest authorities, the Pope and the Emperor, were still to assume the role they had used to? After the German reformation movement and the newly established Church of England, what about the Pope's role as a judge among the rulers? And as for the rulers, it was a question who of them assumed the divine commissioning and more importantly, was able to act as a judge in case two other princes waged a war against each other. This matter was even more important with the new geopolitical constellations and the Spanish colonization of America. This question was a crucial one, because should the European Christian kings not in fact be authorized by God to fulfill his will, every war they waged was considered *eo ipso* unjust due to the lacking mandate.

7.2.2. Authority as a supreme judge within his own realm

In Aquinas' theory, everyone with a higher authority above him may try to appeal there. Only when there is no higher authority can one assume the office of a judge above his subjects. However, the erosion of the Christian unity as a result of reformation caused the demise of the idea of a highest judge. As the princes and kings became the highest judges in their own respective states, they entered wars and conflicts reaching over the borders of these states as equal competitors. There was no one to guarantee the peace and to arbitrate among others in a

decisive manner any more. Vitoria therefore was forced to find a new way to settle this dilemma.

7.2.3. Vitoria's approach as a lawyer

As a lawyer, Vitoria asks the question who really is a ruler and what a state is. Through an analysis of political relations Vitoria managed to come to a conclusion as to what constitutes a state (*respublica*) and from there he answers the question who can wield the (legal) authority to wage war as a ruler.

So how does Vitoria come about this question? According to him, everywhere where there are people associated into a state, and where this community is managed by administrative power, this state is legitimate (by the divine power). That is so because the state is based on natural law. As for the political system, Vitoria himself was in favor of monarchy (Justenhoven, 1991:48), even though he recognized other forms of establishment as well. The following analysis is also based on the monarchy as a model, where the prince or monarch (*princeps*) is standing at the top and wields all the power to rule the state. However, the means at his disposal are not unlimited, because his legitimate power is closely tied to the public welfare and state interests. Due to this embedding of the power in the people, the ruler can never be an absolute one.

In order to guarantee the best interests of the state's public, Vitoria prohibits any form of personal private war besides imminent self-defense. Thus should be the ruling monopoly of the monarch preserved. This, according to Vitoria, stands true for individuals, towns, as well as for any disagreements among nobility and aristocracy. Among entities that fulfill these criteria counts Vitoria for example the kingdoms of Castile and Aragon, or the principality of Venice.

What defines a prince?

Since about the sixteenth century, a multitude of monarchs were in charge of taking care of and protecting their respective communities. As rulers they assumed the office of a judge in their states in order to preserve order, peace and security. Because these rulers did not recognize any higher judge (or any higher earthly authority, for that matter), they became equal and slowly lost the option to have their quarrels solved by a higher, third party. Although Vitoria rejects the claim of either Pope or the Emperor to universal power, he also

points out that the monarchs are obliged to serve their states and are not absolutely free in their behavior.

Vitoria also admits the problem of international law enforcement which could be easier solved by a “world monarch“, but he concedes that such a step is not realistic (Justenhoven, 1991:72-73). One could hardly imagine the French or English king (Francis I. or Henry VIII. for example) to give up even a fraction of their power into the hands of any other authority. Vitoria’s conclusion is to entrust the responsibility for the welfare of international community into the hands of each and every one of the monarchs.

7.2.4. Vitoria’s approach as a Christian and a Dominican priest

An interesting food for thought comes with studying those Vitoria’s theories and opinions which are based in his position of a Christian priest. Because even though many of Vitoria’s ideas appear (and undoubtedly indeed were) very modern, some others are rather on the other side of the spectrum. For example, when dealing with the issue of New World natives, Vitoria elaborates on the status of the Emperor. He is of the opinion that “the Emperor is the lord of the world, and in such a way that, even if it be granted that in time past there was a defect in his claim, it would by now be purged as regards our present, most Christian Emperor“. He points out that there is a hierarchy, that “inferior princes have a king and as some kings have the Emperor over them“. Vitoria concludes that the Emperor is not the lord of the whole world though, and therefore cannot be the lord of these aborigines – “no one by natural law has dominion over the world“ (Holmes, 1975:127).

The Pope

In his opinions on the position of the Pope Vitoria shows more than anywhere else his belonging to both the Christian religious community and his origin in the hierarchical approach of the Middle Ages. Interestingly, Vitoria does credit the Pope with the right to immediately interfere in the political order of a state, as the Pope is responsible for all matters spiritual and religious. This responsibility is however restricted to the Christian states only and cannot extend beyond the scope of spiritual focus. Should a conflict of two Christian rulers lead to serious harm to the Church, the Pope is able to act as a judge between the two monarchs. And in enforcement of his decisions, the Pope is dependent on the earthly power of the Christian rulers.

7.3. Conclusion

Obviously, the theses on Pope's authority are hardly compatible with Vitoria's ideas on the independent state authority; he however does not elaborate on this any closer. On one side, the monarch is not subjected to any higher earthly authority, is independent in his legal judgments within his particular state. Together with other monarchs, they are collectively responsible for the well-being of the international community which represented the archetype of our modern society of states. On the other side there is the Church, with Pope at the top who has authority above all the monarchs (albeit nominally only in religious matters). In the end, the earthly rulers indeed remain subjected to the Pope in Vitoria's theories, and the Pope alone decides when an intervention into political matters is necessary. And even though this submission might still appear somewhat legitimate to the Christian rulers, it is hardly plausible for the non-Christian ones.

To end with a note on the language and terms used in this chapter, in his rules of warfare, Vitoria himself is using the word „prince“ for the authority in question:

“Assuming that a prince has authority to make war (...)“ (Holmes, 1975:118).

He further asserts that

“in general among Christians all the fault is to be laid at the door of their princes, for subjects when fighting for their princes act in good faith (...)“.

Even though Vitoria did not use the term “prince” himself, which instead is a product of later translations of his works (alternatively “Fürst” in German), it is the name that has been used most for the person with the authority we are dealing with. Alternatively, I have been using the term monarch as well, but the meaning behind term is still the same.

In the following chapter, I will analyze the legitimate authority as seen and understood by Michael Walzer, an important political thinker of the second half of the twentieth century. As one can notice, there is a period of about four centuries between the death of Francisco de Vitoria and the birth of Michael Walzer. And yet, I believe that no major developments in the just war tradition happened during this phase. Vitoria merged the theological approach of the previous era with the international law of the modern times. There were others, beginning perhaps with Hugo Grotius, who followed the latter path and more or less elaborated on the

just war theory and on the authority principle within it. And while even in the modern era there have been some who continue in and argue for the religious ethics of the just war (such as Ramsey, 1968), most of the just war philosophy is quite secular by now. As explained before in the overview of the history of this tradition, the twentieth century brought about new impetus for the reevaluation of the just war tradition. And I believe that no one is more closely tied with the just war nowadays than Michael Walzer.

8. Michael Walzer

Michael Walzer (1935-) has undeniably been one of most prominent American political thinkers of the second half of the twentieth century. Holding the position of a professor emeritus at the Institute for Advanced Study in Princeton, Walzer's intellectual interests include a variety of topics ranging from political ethics, just and unjust wars, nationalism, ethnicity, and political obligation, to economic justice, social criticism, radicalism, or tolerance. His significant contribution lies in a revival of a "practical, issue-focused ethics" and in the "development of a pluralist approach to political and moral life" (Institute for Advanced Study, online). Walzer's most significant book, *Just and Unjust Wars* will be discussed below; among his other great works belong *On Toleration* (1997) or *Arguing About War* (2004); for account of Walzer's political thought see e.g. Galston (1989).

When trying to analyze Walzer's approach to the question of the legitimate authority, I am naturally starting with the *Just and Unjust Wars*. However, as we shall see, this work does not provide a conclusive answer.

8.1. Just and Unjust Wars

Even more than thirty years after its first publication in 1977, *Just and Unjust Wars* very well might be *the* determining book on the ethics of war and international relations. Walzer based his work in what he describes as "war convention" – our contemporary perception of war-making that arose out of the "articulated norms, customs, professional codes, legal precepts, religious and philosophical principles and reciprocal arrangements that shape our judgments of military conduct" (Walzer, 1977: 44).

The return to the just war tradition in the twentieth century was spurred by the numerous life-changing events in the world politics. As Walzer also explains in the preface of *Just and unjust wars*, his involvement in the just war tradition was a result of many passionate debates

over the Vietnam War. He set out to “recapture the just war for political and moral theory” (Walzer, 1977: xiv). What he means here by the *moral reality* is a domain consisting of both the ends for which a war is waged (*jus ad bellum*, basically reduced to a “theory of aggression” in this work, and the notion that every aggressive war is a crime) and the means employed (*jus in bello*, called here the “war convention”).

First, what is a just war in Walzer’s opinion? A war begun for the right reasons is for him a war which is fought as a response to aggression – “any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another...” (Walzer: *Wars*, cited in Orend, 2001). It is also the main theme of this work that it is a crime to violate territorial integrity and political independence of another state. Walzer elaborates on the just war from the standpoint of the legalist paradigm, drawing an analogy between crime in a domestic society and war in international system.

Just and Unjust Wars deals with the following spheres: “The Moral reality of war” where Walzer disputes the realist notion that “all’s fair in war” and affirms that there’s a moral dimension to every experience; in “the Theory of aggression” he deals with war in international relations; “The War convention” is a part dedicated to judgments (both formal and informal) on what conduct is permissible in war, as it is seen by the governments, services and societies; in “Dilemmas in war” Walzer discusses the tension between winning a war and ethical conduct in such a war; and finally, “The Question of responsibility” is concerned with the actual policies, operations, and individual conduct.

8.2. Legitimate authority in Just and Unjust Wars?

According to O’Brien (1979), Walzer’s account of *jus ad bellum* “suffers from his underestimation of the gravity of any effort to discount the residual limiting effects of the UN Charter and the customary law of the League-UN era”. This might be one of the reasons Walzer does not address the crucial issue for this thesis – the competent authority (along with just cause and right intention) – in *Just and Unjust Wars*. Therefore, I am going to focus on the few thoughts that are touching this problem.

When the question of legitimate authority is concerned, Walzer usually talks about “states”, or “political leaders”, as the following examples depict:

In Walzer’s view,

the burden of proof falls on any political leader who tries to shape the domestic arrangements or alter the conditions of life in a foreign country (1977:86).

And then,

humanitarian intervention belongs in the realm not of law but of moral choice, which nations, like individuals must sometimes make (1977:106).

When discussing the Indian invasion of East Pakistan in 1971, Walzer also touches on the matter of who is authorized to wage war, or certain kind of humanitarian intervention in this particular case. He moves from a single leader or a nation state to the possible action of a coalition of states:

(...) Nor it is clear to me that action undertaken by the UN, or by a coalition of powers, would necessarily have had a moral quality superior to that of the Indian attack. What one looks for in numbers is detachment from particularistic views and consensus on moral rules. And for that, there is at present no institutional appeal; one appeals to humanity as a whole. States don't lose their particularistic character merely by acting together. If governments have mixed motives, so do coalition of governments. And further: (...) I don't think that there is any moral reason to adopt that posture of passivity that might be called waiting for the UN (waiting for the universal state, waiting for the messiah...) (1977:107).

So whether or not the political leaders constitute the legitimate authority as envisioned by the just war tradition, they are recognized as authorities in the real world.

Acts of state are also acts of particular persons, and when they take the form of aggressive war, particular persons are criminally responsible. Just who those persons are, and how many they are, is not always apparent. But it makes sense to begin with the head of state (or the effective head) and the men and women immediately around him, who actually control the government and make key decisions. Their accountability is clear, like that of the commanders of a military campaign for the strategy and tactics they adopt, for they are the source rather than the recipients of superior orders (1977:291).

This particular paragraph clearly shows who Walzer considers to be the authority within a state. But the question remains, what about the authority above the level of nation states?

The chapter called The Question of Responsibility seems promising to offer answers at last. However, Walzer deals here more with morality and moral requirements of armed conflicts than with practical issue of responsibility (and as I came to understand it, the ensuing authority). Therefore it is hard to make conclusions.

Walzer attributes the right of *jus ad bellum* almost exclusively to the heads of state⁵ (or government, depending on the political system). When discussing the responsibility for resorting to war (and the justice thereof), Walzer assigns it to key members of the governing party who are most involved in this decision (and the head of state in particular, be it president or prime minister). In contrast, responsibility for the conduct of war is on the side of state's armed forces (commanders, officers and soldiers). However, since political leaders order the armed forces into action, Walzer concludes that it is them who are held accountable to *jus ad bellum* criteria. Does it mean that these represent the legitimate authority with the power to initiate a just war?

Walzer touches this matter a bit more when discussing the interventions. And what is his answer to the question who should bear the duty of intervention (whether armed or not, for humanitarian or other reasons)? He concludes that this particular duty to act is “imperfect” (Orend, 2000), because there is not a specific country singled out to act. Instead, it falls within the realm of responsibility of the international community. This however does not imply an absolute and inevitable requirement for legitimate authorization from the global agencies (such as the United Nations). Any state willing to assume the burdens of armed rescue is permitted to do so (providing that the just war criteria are fulfilled, of course).

Walzer makes clear that war is not simply a clash of forces. Instead, it is a clash between agents of various political groups who are capable of recognizing one another, and of directing their force at one another, based on the rules they both (or all, in case of more than two parties involved) understand and apply.

8.2.1. Do the historical illustrations hint towards an answer?

Not being able to find an exact answer in the text, maybe it can be deduced from one of the many “historical illustrations” which are scattered throughout the book?

⁵ Defined as a political association of people, on a given piece of land, composed of both the governed and the government. – Walzer's Wars, in Orend, 2000).

In Part Five (The Question of Responsibility), Walzer deals with several various historical events, which all have some evidence to give about either the responsibility to decide going to war, or the responsibility to decide how a war would be waged, with what means and to what extent. However, Walzer focuses mainly on the latter, on the war crimes (illustrated with the help of Nuremberg trials, the Vietnam War, the massacre in My Lai etc.). As throughout most of the book, Walzer remains at the level of a state itself. He notes that until recently, the states by definition recognized no superiors, and therefore had never been morally, but only legally sovereign.

Walzer argues that “acts of state are also acts of particular persons, and when they take the form of aggressive war, particular persons are criminally responsible” (1977:291). This argument then goes on, which unfortunately does not shed any light on the issue of legitimate authority above the state, only within one.

In the next “historical illustration”, the War in Vietnam, Walzer focuses on the role of the population of a nation, the American people in this case. The following illustrations deal with the command responsibility or the necessity in war, but not with the authority any more. Therefore, the search for a supra-national authority is left without an answer again.

8.2.2. The importance of Just and Unjust wars

Being published in 1977 for the first time, does this work still have relevance for us today or is it dated? Over the course of last 35 years, and especially with the end of the Cold War, the international community underwent a significant transformation. As a result, many of the pressing conflicts have not simply been mere interstate wars, but civil wars within states, or interventions in other states for (allegedly) humanitarian reasons (e.g. Somalia 1993, Bosnia 1992-1995, Rwanda 1994-1995, Chechnya 1994-1996 and 1999-2000, Sierra Leone 1999-2000 or NATO intervention in Kosovo in 1999 to name those from the end of the last millennium; not even considering the challenges that emerged in the first decade of the new millennium).

Walzer’s work represents “unambiguously the most influential reconsideration of the tradition in recent times“ (Rengger, 2002). He deals with the issues of aggression, preventive war, intervention, military necessity, status of noncombatants, terrorism, guerilla war, neutrality, nuclear deterrence, supreme emergency, superior orders, command responsibility or nonviolence.

But what is it that is lacking in the book? It is the very “ethical consensus of considerable authority within each particular society” (Paret, 1978). For whatever reason Walzer did not elaborate further on this issue, it might not necessarily be a fault (even though it is naturally inconvenient from the standpoint of this thesis), but a statement instead. In Orend’s words, Walzer’s “omissions, amendments, explanations and justifications result in his own unique and substantive contribution to the tradition and, through it, to our shared war convention itself” (2000).

8.3. Justice and Injustice in the Gulf War

Justice and Injustice in the Gulf War, one of the chapters in the work on morality of the Gulf War (De Cosse, ed.: 1992) can perhaps provide us with further information on Walzer’s opinion about a legitimate authority. In the conclusion of this essay (1992:15–17), he ponders on the idea that (theoretically) future unjust wars would become *crimes* and the just ones would be turned into *police actions*. In order to successfully undertake such an action, we would need a global authority with the power to authorize, organize and deploy a police force. Currently, Walzer does not see any such entity in our international order. The United Nations Organization itself does not use force; instead, it has the power to authorize its members to do so. At the same time, the UN Charter gives any member state the option to come to help to a state which falls victim of aggression from another state – in such a case, no prior authorization is necessarily needed. What is the role of the UN Security Council then?

The role is limited at most. As Walzer says, “ when the Council confirms that the claim that a certain country, invaded by its neighbor, is indeed a victim of aggression, it makes rescue operation easier; and when it condemns the invasion, it gives voice to a general disapproval“. The machinery has sometimes been working better and other times less than well, producing condemnations and confirmations of (sometimes) questionable success.

The United Nations Organization will always be only as strong as the collective combined will of its member states. And as of now, we cannot expect a strong agreement to arise in many of the issues on the UN agenda. Only sometimes when enough states have invested interests of their own in the matter can the UN reach an expressed consent. The United Nations therefore cannot in Walzer’s eyes represent a legitimate global authority.

8.4. Conclusion

Even though Michael Walzer is a prominent figure in our contemporary just war tradition, there is not really a conclusive answer as to what is the legitimate authority on a global level within his *Just and Unjust Wars*. This work is undoubtedly one of the key stones of modern just war thinking, but it aims to answer different questions. Most of the time, Walzer remains in his essays at the level of national states, where the legitimate authority is entrusted into the hands of national leaders, and perhaps a group of people around these leaders, or government of a state.

However, it is quite clear from other Walzer's works that he considers the United Nation to be entitled with this kind of authority. He admits that the UN is not an almighty organization, but one that will always be dependent on the agreement among its member states. This is not necessarily a handicap, as Walzer believes that "a global authority, claiming a monopoly on the legitimate use of force, would be no less threatening than an imperial state".

9. Just war without legitimate authority – the cosmopolitanism

Finally, there is a question whether war can be considered just (or not to necessarily be considered unjust right from the beginning without as much as a second look), even if it is not fought by a legitimate authority. This is also a highly curious matter, although one which goes beyond the scope of this thesis. I decided to outline only a few key points following the theorizing of Cecile Fabre (2008). Fabre in her article (not quite coincidentally named *Cosmopolitism, just war theory and legitimate authority*) addresses the question posed at the beginning of this paragraph from the standpoint of cosmopolitanism.

She expresses certain doubts about the "cogency of the requirement of legitimate authority itself" and argues that (based in the cosmopolitan theory) this requirement could eventually be dropped from the just war theory altogether. The troublesome point is whether it is a necessary condition for the subject to be a political community of a sort, organized around "communal political ends", in order to have the authority to wage war. Cecile Fabre not only aims to show that in order to count as a just war, the war does not need to be waged by a legitimate authority, in fact she expressly says that the *cosmopolitan* account of the just war "must renounce the requirement that a war be declared by a legitimate authority in order to be just" (Fabre, 2008). From the perspective of cosmopolitanism, sovereignty is not the issue: the point and aim is meeting the needs of world's citizens.

In my opinion, this argument is certainly true – considering our contemporary point of view. But in the wider framework of the just war tradition, the legitimate authority retains its importance.

Case (1): The Vietnamese intervention of Cambodia, 1978

One of the examples of a military action which in retrospect can be claimed to be waged with human protection in mind, is the Vietnam's intervention in Cambodia at the end of the 1970s. In the post-Cold War era, the United Nations Security Council has been increasingly using its powers under the Chapter VII of the UN Charter to engage in humanitarian interventions. And one of the significant reasons influencing this development was the Cambodian experience.

Not only has the human rights abuse been a significant problem in Southeast Asia, the 1970s witnessed the region in a state of turmoil and great instability. In Cambodia (at the time called Democratic Kampuchea), the Khmer Rouge seized the power in 1975 and launched its reign of terror lasting four years. It has been estimated that 1.7 million people fell victim to the regime due to executions, starvation, and forced labor. Following a fierce, year-long border war between the two countries, (the Socialist Republic of) Vietnam initiated its invasion into Cambodia.

The relationships between the historical enemies Cambodia and Vietnam had certainly not been trouble-free before. For centuries, the Khmer Empire was under the Vietnamese influence, until the nineteenth century when it was colonized and became a Vietnamese province. This, coupled with attempts to erase the Khmer culture on which the Cambodian society had been built, and with the involvement of the territories in both the Indochinese and the Vietnam wars, resulted in a very strained relations between the two countries.

The Khmer Rouge government reigned the Democratic Kampuchea between 1975 and 1979. Aiming at creating a classless society of peasants, torturing and killing off the ruling clique's opponents and the nation's elite was a norm. However, the regime was not oriented only at the internal enemies. With the end of the Indochinese war in 1975, the Khmer Rouge initiated a new conflict between Cambodia and Vietnam. This led to a series of violent clashes between the former allies, as well as to incursions of the Kampuchean Revolutionary Army onto the Vietnamese territory and executing entire villages. This small scale fighting continued until the Christmas Day 1978, when the Vietnamese army invaded Kampuchea; the war lasted until January 7, 1979, when it ended with the fall of Phnom Penh. Then, the

Vietnamese could claim military victory, the representatives of the Khmer Rouge fled the country, and a ten-year long occupation of Cambodia began.

While it is beyond doubt that the Vietnamese invasion was not fueled by purely altruistic and humanitarian concerns for the Cambodian people suffering under its bloody regime, the resulting toppling of the governing party cannot be just disregarded either. While the Vietnam was backed up by the Soviet Union, the Democratic Kampuchea and the Khmer Rouge received support from China (Vietnam's rival in the north). In the environment of the Cold War and China competing with the Soviet Union for the dominance in the communist world, this obviously led to a deadlock. The United States, one of the major powers, positioned itself also on the side of the Democratic Kampuchea, i.e. the Khmer Rouge. And finally, the United Nations and its General Assembly called in 1979 for withdrawal of foreign (Vietnamese) forces from Cambodia, non-intervention and self-determination of the Cambodian people (which was endorsed by China, France, the United States, the United Kingdom, Portugal and Norway; strongly opposing were the Soviet Union and Czechoslovakia, who blocked approval of the resolution).

In the United Nations, representatives of both the former Democratic Kampuchea and the newly established People's Republic of Kampuchea claimed their right to represent the country. And despite their reign defined by atrocities, most of the world still recognized the Khmer Rouge as the Cambodian legitimate representation. Vietnam and its actions were condemned by the Western powers and the ASEAN (Association of South East Asian Nations) and faced severe economic and international isolation, as well as immediate military conflicts with Thailand and China.

The ten-year long occupation of Cambodia was not perceived positively by either the Cambodians themselves or the international community, which is quite natural. However, if we focus only on the invasion itself and on ridding the country of their bloody Khmer Rouge government, the answer to whether this was a beneficial action or an action worth condemnation is not that easy. The fact remains that none of the superpowers or the Western powers undertook the necessary steps to protect the Cambodian civilians from the atrocities committed by their own leaders. And therefore the Vietnamese invasion, though bringing many negative consequences and deaths in its wake, was successful in this particular regard.

Due to the difficult situation of the Cold War, the aftermath of the Vietnam War and the legacy of the Indochinese wars, the Cambodians were left to their own fate and no country intervened during the four years of the reign of Khmer Rouge⁶. Should the authorities and powers within the international community be more clearly defined (which, on the other hand, one could not expect during the then existing bipolar division of the world), it is possible that the Cambodian people would not have had to endure such treatment. That is also indicative of the need of the current search for the legitimate authority within the contemporary world.

The case of Vietnamese invasion of Cambodia illustrates the dilemma of the just war – in Johnson's words, the "tension between positive law's presumption against aggressive war and natural law's presumption against injustice" (Bellamy, 2006:108).

Since 1945, international human rights law has been significantly intertwined with the development of law of war. Centered on the *Universal Declaration of Human Rights*, these rights have been representing basic principles which are not to be violated even in wars.

Nonetheless, neither realism nor the legalism have provided an answer how to solve the moral dilemmas related to modern wars. Some believe (O'Donovan in Bellamy, 2006:113) that the legalism in *jus ad bellum* should be replaced by a "praxis of judgment" which would permit a war with the power to either prevent or end grave injustice. Instead of the positive law, the just war would be oriented towards more natural law. Elshtain (2003, in Bellamy) called for a revived Augustinian approach which would allow to (militarily) punish wrongdoers and to judge the just cause in more or less objective terms.

10. Relevance of the legitimate authority concept for the contemporary international politics

The analysis of the particular positions towards the concept of the competent authority as presented so far might perhaps appear sketchy and inconclusive. On one side, it is due to the limitations of this paper, but also because of the complexity of the matter and not a single, conclusive definition of the theory. However, I believe that for my purposes it is sufficient.

⁶ For a deeper analysis, see e.g. Wheeler (2002: Chapter 4): Vietnam's intervention in Cambodia: the triumph of realism over common humanity?

Why is the just war tradition now once again in the view of modern theorists? For one, as Ilesanmi argues, “the abiding appeal of just war theory is grounded in its concern for justice as a credible reason to use force for the moral constitution or reconstruction of political community“ (2000). Nowadays, the political cost of a war waged is on the rise. Even the most popular nations strive to legalize the war first, and thus acquire the moral support both of their population and of wider international community. Launching an illegal war has been understood as unjust for a very long time, and can lead to a number of various consequences: the United Nations can decide on imposing sanctions, the victim nation might exert its right of self-defense and counter-attack, the country initiating the war might be made internationally responsible for its actions. All these options are very real and it is questionable to what extend would such an illegal and unjust war eventually bring some good to the perpetrator.

We can ask to what extent is this tradition applicable to the contemporary situation? Precisely because it has been more tradition that a clearly cut, single theory, the just war would possibly benefit from being more cohesive. That way it could be developed into an adequate tool for moral evaluating of conflicts both between and within modern nation states.

Still, even with the more diversified types of actors on our current international security scene, ranging from individuals, minor terrorist groups to states, regional organizations and supranational organizations, the just war tradition keeps on being applied to the states. One of the reasons why the just war tradition is not exactly in favor of private individuals and groups (whether they are irregular combatants, guerrilla army, insurgents, or being labeled otherwise) fitting into the competent authority concept is because these usually lack public approbation and because of their “common practice of engaging in tactics that are beyond the bounds of the laws of war“ (Ilesanmi, 2000). It has been exactly this disregard for the *jus in bello* criteria (those of discrimination and proportionality) that have raised the many concerns about extending the moral license to authorize their use of violence, until now reserved almost exclusively for states.

As Bellamy also specifically points out (2006: 136-138), especially after the 9/11 events and due to the global rise of terrorism it is necessary to revise our understanding of the right authority precisely in order to be able to “apply a meaningful test to non-state actors“. As he further states, “there is a widespread presumption that the sovereign state is the only authority capable of authorizing legitimate political violence”.

In our system of (nation) states, the legitimate authority is usually a single person voted into a position of power. Nations can use the force which individuals and/or smaller groups cannot.

However, with international organizations such as the United Nations or NATO, the situation gets more complicated, possible conflicts over authority rights arise and we get once again to the core and the point of this analysis and this thesis.

The following example is one to demonstrate that in specific circumstances a single nation can unilaterally decide to take military action, and this action could be (at least tacitly) approved by the international community recognizing the moral necessity to act.

Case (2): Tanzanian intervention in Uganda, 1978 - 1979

The intervention of Tanzania in Uganda (in Uganda also referred to as the Liberation War) is a perfect example to compare with the Vietnamese intervention in Cambodia analyzed above. Both events occurred at the same time, in the same geopolitical climate – yet their acceptance by the world could not be more different.

After the decolonization, African states were founded within the boundaries which had been originally drawn by colonial powers and which did not respect the tribes and ethnic groups living on the given territory. This naturally led to many international disputes and conflicts between the states (however, the Organization of African Unity prioritized legality before allegiance in 1963 and confirmed the colonial borders as sovereign). Territory also stood at the beginning of the Tanzania-Uganda war.

Having gained the independence, Uganda consisted of a conglomerate of various kingdoms and tribes under the autocratic rule of Milton Obote. Idi Amin, leader of the Ugandan army, seized the power during a coup d'état in 1971 (a coup which was, in fact, supported by both Britain and Israel). Obote was forced to remain exiled in the neighboring Tanzania, where he was treated as the legitimate Ugandan head of state by President Nyerere. Amin's violent and erratic rule of the country between 1971 and 1979 however led series of massacres, the economy in shambles and grave degradation of the situation in Uganda. The army which Amin stood at the top of witnessed widespread purges and eventually turned into a non-Ugandan mercenary force (a fact that significantly undermined the legitimacy of Amin's rule). In order to avert another of the coups stemming from the military circles, Amin decided to rally and divert his troops by invading the Tanzanian territory. Until the date of the Ugandan invasion, the situation between the two countries could have been described as a "cold war that frequently turned hot" (Acheson-Brown, 2001). However, on 9 October 1979, Uganda initiated invasion into the Kagera Salient, an area spreading over about 710 square miles (1840 square kilometers).

The actual war between Tanzania and Uganda was formed by two different missions. The first one, forcing the Ugandan troops out of Tanzania and securing the border was considered as legitimate as it could get, and completely in accordance with the rights of counter-attack. However, the controversy began when the Tanzanian President Nyerere decided to press ahead, go beyond the right of self-defense, and engage in humanitarian intervention in Uganda⁷.

Tanzanian war aims were evolving along the course of the war. While initially Nyerere strived to punish Amin for his invasion of the Kagera Salient (and for the atrocities his troops committed there) and to secure the border between their countries, he also hoped this action would serve as a incentive for internal uprising against Amin's regime. It was not until he crossed the Ugandan border that he chose to take responsibility for the liberation of Ugandan peoples, capture the capital (Kampala) and topple Amin from power.

Officially, the war ended on 3 June 1979. Ugandan president Amin was supported by about 3,000 Libyan soldiers, while President Nyerere was aided by one Mozambican battalion during the recapturing of the Kagera Salient. And while there were countries condemning the Uganda's invasion (the USA, the Great Britain, Canada, the Nordic countries, Jamaica, Guyana and Zambia), the Organization of the African unity did not. For this lack of condemnation and because of the OAU's later call for a cease-fire (while the Ugandan troops were still occupying the Kagera region), President Nyerere opposed and resisted the pressure to restrain the warfare or to be satisfied with a negotiated solution.

Even though the invasion did not bring peace to Uganda (very much like the Vietnamese invasion did not accomplish that in Cambodia), its reception was diametrically different from the sentiments aroused by the invasion which had happened in Asia only shortly before. Unlike in the Asian region, Cold War played barely any role in Uganda. Besides Libya (and a small and little publicized contribution from Mozambique), no other third country engaged in the conflict; yet the overthrow of the Ugandan government was "greeted with almost tacit approval" (Wheeler, 2002). There was no swift withdrawal for Tanzanian troops representing basically the only source of law and order in Uganda as the civil war raged on after the end of

⁷ For a deeper analysis of the humanitarian aspect, see e.g. Wheeler (2002), chapter 4: *Good or bad precedent? Tanzania's intervention in Uganda*.

the war – a war which in fact was very costly for Tanzania (estimated \$500 million; Acheson-Brown, 2001).

Once again, humanitarian intervention was not recognized as a principle within international politics at the time. However, by the reactions of the community of states, we could judge that they understood the moral context and necessity leading to this action and we could assume that perhaps the international law was at fault in this situation.

We could compare this war not only with the Vietnamese invasion of Cambodia, but also with the Operation Desert Storm in 1991. The choices President Nyerere was faced with resemble those of President G.H. Bush. And therefore we could also assume that should the UN have granted Tanzania its approval, the invasion would not have to be considered illegal (yet, unlike the USA, Tanzania did not possess either the resources or the leverage to achieve such a resolution in UN Security Council).

10.1. Does the just war tradition stay valid?

According to Calhoun (2001), the just war theory is still plausible – even though it can be introduced by both sides in many of the military conflicts. It does play a significant role in motivating troops to fight and other subjects (citizens, as well as companies and corporations) to fund military actions.

Why is it important to single out an agency or a subject in general with the authority (and therefore maybe even with moral duty) to act? In case of humanitarian intervention to be undertaken or while responding to actions that have shocked the moral conscience of mankind, lack of a clearly stated duty to intervene often serves as a reason to sit on the sidelines with the belief that another country or organization will be better suited for acting on behalf of the suffering group. Walzer comes to the conclusion that until a potential global armed force (perhaps under the auspices of the UN Security Council) is established in the future, every subject of the international community needs to rely on its own moral awareness and values (Orend, 2000).

It has been clear that in order to respond to the problems and new demands of the post-Cold War world, the framework of collective security instituted in the UN Charter in 1945 needs to be reconsidered. The 1999 Kosovo events highlighted the divide between what is considered necessary and legitimate on one side, and what is permissible under the UN Charter regime on the other side.

According to Fotion (2007), the legitimate authority is a more straightforward principle than for example the right intention, because it is an objective one, based on a public fact. Because this principle is also grounded in the laws of state, it is naturally clear to everyone. Fotion believes that until shortly after the Second World War, there was little controversy about authorization. In his opinion, the controversy as we know it today is a new phenomenon, connected to the establishment of the United Nations. With the UN, the opposing positions arose. Thus we found ourselves in a position where one group believes that the United Nations is the legitimate authority in today's international system (especially with regard to the wars with humanitarian subtext), while another one believes that the sovereignty of the nation state is still the primary one.

10.2. Reservations and objections toward the just war theory

Just like any other theory, the just war tradition has had its supporters and its critics. Fotion (2007) believes that the most common of the objections towards the just war is the claim that ethics is not the primary reason for which wars are fought. Instead, wars are waged for selfish reasons, otherwise called national interest. Another objection, one which is (not accidentally) closely tied to the previous one, is the attempt to use the just war theory as sort of a guise which is supposed to make the warfare more presentable to the public, invoking ethical, moral and humanitarian concerns. And one more problem represents the application of the principles themselves. They can be interpreted in various ways and applied to different situation, with bad intentions, as well as with the best intentions.

In short, objections have been raised from the pacifist camp, as well as from their realist counterparts; and from many other positions. This short summary presented just the most common ones.

The problem with the authority nowadays is the fact that the transnational and multinational organizations, such as the UN or the NATO, compete with the national states for legitimacy. The issue of the United Nations overriding national sovereignty is a real problem to many states. However, we could recognize two tendencies: if overriding the sovereignty principle aligns with the state's desired decision, it is usually quite acceptable and does not cause many problems. However, if the prospective vote outcome within the UN seems not to be in favor of the nation in question, discussions on the national sovereignty and its inviolability spring up suddenly.

10.3. Who is the just war tradition useful for?

From what have been described and analyzed above, I believe it is quite clear how has the just war theory has been formed, how it evolved over time and what the particular principles are. However, there is still the one question of who is the just war theory for. Besides theorists, philosophers and theologians, who “out there” could use the theory in the real life?

The answer to this question naturally overlaps with the search for the legitimate authority. Obviously, those who might find use for the theory and the justification it provides, are the state officials in the position of decision-making whether to go to war. The theory is there to guide them in their decision, should they choose to apply it.

In the recent past, for example, the just war has been mentioned several times by the presidents of the United States. In 1991, during the Gulf War, the just war and especially the just cause have been called upon by those in favor of liberating Kuwait (interestingly enough, the last resort principle had been invoked as well – both by the supporters and the opponents of the invasion). Then the wars in Afghanistan and in Iraq came along. While the case of Afghanistan was clearer, the debates over the controversial Iraqi operation were endless. Again – was the just war theory used as a disguise for pursuing one’s own self-interests?

It is most likely that the discussion is usually encompassing both positions, mixing the national (or multinational or even international) interest with the ethical and moral considerations. In any case, there is always the public and international pressure and pursuing purely selfish interests does not make one look very good. Fotion (2007) suggests that the theory has probably been used much more than we would otherwise assume. In the article where Fotion discussed the just war theory during the Vietnam War (1955-1974), the Afghan-Russian war (1979-1989), the Falklands war (1982), the Gulf war (1991), the Chechnya war (1999-2000), the Iraq war (2003-2011), and the ongoing war in Afghanistan (2001-), he argues that the theory is “probably used more retrospectively than prospectively” (2007:30).

Case (3): The Gulf War, 1990-1991

The Gulf War was one of the first major international conflicts of the post-Cold War era, and one of those which were met with significant success and a decisive military victory. As mentioned above, it is also a military intervention which could be compared with the Tanzanian action in Uganda in order to show the attitude of the United Nations and international community as a whole.

Unlike in the two cases analyzed above (Tanzania's and Vietnam's), the first Iraq war was waged by an UN-authorized coalition of states under the leadership of the United States on one side, and a single state (Iraq) on the other side. The reason for the war was the Iraqi invasion of Kuwait, which began on 2 August 1990.

After nearly a decade long Iran-Iraq war, Saddam Hussein found himself in debt to both the Saudi Arabia and Kuwait, and eventually saw a way out in invading the neighboring Kuwait, which he had claimed was a historical part of Iraq anyways (and which he proclaimed Iraq's nineteenth province after taking control over the country on August 28). The invasion was met with widespread condemnation; not only from the Western countries, but also from the Arab states in the Middle East, Russia, or China. Even though formally neutral, the United States had supported Iraq materially in the latter's war with Iran; relations between the two countries had never been quite warm though. And neither have been the relations between Iraq and Kuwait. In 1989, Iraq raised complaints that Kuwait kept on overproducing oil (thus not respecting their respective quota and causing the oil prices to fall), and that the country was slant-drilling into the Rumayla oil field on the Iraqi territory. After initiating the invasion on August 2, Saddam Hussein quickly succeeded capturing Kuwait, and after the royal Al-Sabah family fled the country (to find refuge in Saudi Arabia), he was left in control of the country.

A swift response to the invasion came from the United Nations, where Kuwait and the US requested a UNSC meeting within hours. Subsequently, a number of resolutions were passed in the Security Council, beginning with the Resolution 660 of August 2 (condemning the invasion, demanding unconditional withdrawal of Iraqi troops from Kuwait and calling for immediate negotiations), the UNSC Resolution 661 (imposing trade sanctions on Iraq), the UNSCR 662 (declaring the annexation of Kuwait null and void and condemning measures taken in order to strengthen the hold on the invaded country), the UNSCR 665 (permitting the use of naval force to enforce the sanctions), the UNSCR 670 (prohibiting air traffic) or the UNSCR 674 (demanding compensations for financial losses and human rights violations in Kuwait). According to the judgment of the USA's CIA (Central Intelligence Agency), these measures could have taken at least a year until Iraq was forced to comply with the Resolutions.

While Saddam tried to link the possible withdrawal from Kuwait to the issue of Israeli occupation of Palestinian territories, the United States launched the first part of the military measures, the Operation Desert Shield. As the assumption went, if Saddam took control of the

Saudi oil fields as well, it would basically give him control over the major part of the world's oil reserves. In order to prevent this risk, the Operation Desert Shield began on August 7, 1990, and eventually more than 500,000 US soldiers were dispatched in the Saudi Arabia. However, these were defensive measures taken only to keep the Iraq out of Saudi Arabia, and perhaps to use some deterrence in order to force Iraq to withdraw from Kuwait.

The turning point in forming of the coalition arrived on 29 November 1990 when the UNSC passed the Resolution 678, authorizing member states to use "all necessary means" to achieve Iraqi compliance with the previously passed Resolutions. The deadline was set for 25 January 1991. Thirty-four countries eventually joined the anti-Iraqi coalition. There were several public justifications to enter a war with Iraq. First and foremost, it was the occupation of Kuwait and the threat this posed to Saudi Arabia (the US ally and a key oil producer); among other reasons it was the history of human rights abuse in Iraq or its possession of biological and chemical weapons.

Neither the UN Resolutions nor various attempts of negotiating led to any solution. The actual military action (Operation Desert Storm) began on 17 January 1991. The massive air campaign was followed by a ground operation (codenamed Operation Desert Saber) on February 24, and the coalition achieved a striking victory, when only one hundred hours after initiating the advance on the ground they were able to declare a cease-fire. Freedman and Karsh (1991) identify two crucial mistakes on the Iraqi part; the first strategic mistake was releasing the Westerners who had been kept hostage; the second one was not attacking the coalition forces in Saudi Arabia. The Iraqi strategy was instead to rely on the defenses built around Kuwait and to pull the coalition troops into a ground battle, which could inflict high losses and thus weaken the other side's political will (as Saddam was counting on the US sensitivity to casualties). However, a messy ground war was what the coalition intended to avoid – with success.

The US administration claimed that the primary objective of the war was not a regime change in Iraq, but only the liberation of Kuwait. That is why the Kuwaiti forces were the ones to liberate the Kuwait City. On 27 February 1991, Iraqi troops were ordered to retreat from Kuwait, and the next day, on February 28, President George H. Bush declared Kuwait liberated. While the coalition troops (the American, British and French forces in this case)

entered the Iraqi territory while pursuing the retreating Iraqi soldiers, they soon turned back and retreated to the borders of Kuwait and Saudi Arabia⁸. Regime change in Iraq would most likely have been a highly unwise action on the part of the United States, bringing responsibility for Iraq's future development, spreading alarm among the Arab members of the coalition and quite positively leading to clashes with the Soviet Union and China, who were generally supportive of the war.

A striking achievement, which also distinguishes this war from many other conflicts, is the fact that the Western members of the coalition (the United States, the United Kingdom and France) were in the position to use their UNSC membership to tip the scales in favor of legitimizing the action taken against Iraq. The primary political goal – Iraqi withdrawal from Kuwait – had been quite clear from the outset and successfully accomplished. On the other hand, both Kuwait and Iraq suffered huge damage and Saddam Hussein was able to retain his hold on power in Iraq (a fact that eventually led to yet another war in the Persian Gulf).

From the standpoint of the just war theory, the Gulf war can be evaluated in all the just war tradition's principles. However, what is of our interest is the legitimate authority. And as is generally believed, the Operation Desert Storm fulfilled the requirements as much as possible within the contemporary world order. Not only was the intervention based on a UN Security Council's Resolution and granted the United Nation's blessing, it was also carried out by a wide and multinational coalition of states. Precisely the fact that troops from several cultural dimensions supported the military move against Iraq bestows unique legitimacy upon the Gulf War. Although certainly not without critics and objections of both the reasons and conduct of the military action, the Gulf War example perhaps shows that this is as close as we can get to the legitimate authority in today's world.

10.4. Just war and the problem of terrorism

For more than a decade and most definitely since 9/11, terrorism has been one of the biggest challenges the international community has to face. In the aftermath of the attacks, President George W. Bush called for a "war against terrorism". And it did not take long until the word *just* had been recalled as well.

⁸ For a more extensive military strategy analysis in the Gulf War, see e.g. Freedman & Karsh (1991): How Kuwait was won: strategy in the Gulf War.

Since then, the United States have used the force against the regimes in Afghanistan and Iraq and overthrow the local regimes. The discussion about whether these actions can be viewed as just or right can be primarily approached from all three perspectives on the ethics of war: the just war tradition, realism and pacifism.

The US behavior after 9/11 was quite typical for the realist logic of war, therefore the primary association. The USA claimed their right to defend themselves which as such would allegedly need no further explanation or justification. The George W. Bush's belief that no moral constraints can be placed above the interests of the United States is naturally in dire conflict with the just war tradition and its criteria. In short, the problems of the realist approach to terrorism as applied by the United States under President G. W. Bush are best summed up by Bellamy (2005). First, the disregard for the norms of behavior put the international society, its order, and a whole set of customary practices at risk. Second, such behavior, based on the notion of necessity, might in fact encourage the enemy to follow suit and use similar approach, which would eventually lead to a situation without any valid moral boundaries on which we could base our judgment. Third problem lies in the fact that unjust behavior in war would eventually make it much harder to put an end to the war and build a sustained peace. And finally, covering all the actions and operations under the name of war on terror would inevitably weaken the cause which was initially just and undisputed (for more see Bellamy: 2005).

The problem with the pacifist approach is the fact that since it rejects all wars as unjust, there is virtually no option to judge the particular military operation on its justness. We could therefore turn to the remaining approach, which is the just war tradition.

Bellamy (2005) again gives reasons why the just war is the most convenient tool for assessing the modern war on terrorism. The first reason is the tradition of thought in the Western political and academic debate. Second, it is also according to Bellamy "deeply embedded in the Western way of war". And the last argument in favor of the just war is the similarity and closeness between the just war and our contemporary international standards for and norms of wartime conduct. The just war has already spread way past its area of origin, the Christendom, to the modern world society, and is accepted by the most leaders as such.

There are two aspects to the legitimate authority principle, the permissive and the restrictive. As it permits a certain sovereign entity the option to wage wars on one side, it is restrictive in regard to private persons and ordinary citizens, to whom the authority to wage and prosecute

wars is denied. And both these aspects play an important role when dealing with the issue of terrorism.

Defining terrorism

To better explain the relation of terrorist groups to our modern international order and the just war theory, I am going to borrow the insight of Daniel Zupan (2004). The modern international community and the societies within are already quite far from the Hobbesian state of nature, with its anarchy, private wars and absence of justice and injustice. Private persons, such as the terrorist groups, who wish to pursue private wars, however, put themselves into the state of nature towards the rest of the humanity. In their unwillingness to abide by the laws of the society, they employ various coercive measures in order to achieve their goals. In their pursuit, they do not recognize higher authorities, proscriptions, or limits which would bind them by the general notion of justice. According to Zupan, “it might even be more accurate to say that they deny the relevance of commonly accepted notions of justice” (2004). So not only do the terrorists not abide by an internationally recognized authority, through their acts they go as far as to deny its relevance. And therefore by denying the authority of a modern state and of the established order, they are practically denying their morality as well.

This is almost certainly true for a terrorist group such as the al-Qaeda. Are all terrorist acts inherently unjust then? Although James Turner Johnson (a writer on war ethics and the modern just war theory) argues that

(...) terrorism by its nature aims to undermine and erode these goods [of political communities] and this attacks all people who benefit from them (...). The kind of violence we today call terrorism is evil in its very nature, because it attacks the foundations of political community itself. There is no justice in terrorism, only injustice (1999).

However, it is hardly acceptable just to assume that all terrorism is inherently unjust, without any further comment or explanation. For the sake of this chapter, I am going to elaborate shortly on the characteristics. Despite various opinions on the matter of terrorism, we could agree that:

1. Terrorism as a violent act is politically motivated.
2. The perpetrator is a non-state actor or non-state actors.
3. The target group are non-combatants.

4. The goal is to create fear within societies.

By judging whether these characteristics are just or unjust, we can conclude whether the terrorist movement is just or not. Because of the lacking legitimate political authority on the side of a terrorist group, their pursuit could not be justified in the light of the just war theory, as the widespread presumption goes (this whole issue would undoubtedly deserve more space and deeper elaboration, one that would be too much with regard to the extent and focus of this thesis; for more see again for example Bellamy, 2005). However, what definitely sets terrorism apart as unjust under scrutiny from any theoretical approach is its targeting of civilians.

What remains is the responsibility of the rest of the world to face the challenge of terrorism – and here again comes the question of the just war theory to the fore.

Quite a few of the conditions of *jus ad bellum* were not difficult to satisfy in the wake of a terrorist attack. However, the legitimate authority with the power to decide on the future actions is not one of them. As we have seen, the United States under president G. W. Bush have surely felt to embody this authority. However, the war on terror was not proportionate in the sense that it subsumed operations which had little to do with the original just cause provided by the 9/11 attack on the USA (the just war in its classic form did not even discuss the proportionality of a war waged without a just cause, because all violence in an unjust war would be likewise unjust). The just and justifiable option when waging war on terror would have been a clearly planned and executed war on al-Qaeda instead of targeting the Hussein's regime in Iraq.

It is not only in the interest of the United States, but that of many other states as well, to deal with terrorism that often leads to state failure. Therefore the two prevention imperatives are closely interlinked; to prevent terrorism means to engage in humanitarian actions in order to prevent the eventual state failure.

10.5. Just war and the humanitarian intervention

Besides terrorism, humanitarian interventions are another primary international security problem and a hotly disputed issue. Here too are the moral and the strategic realms tightly intertwined. Humanitarian interventions aim at saving innocent from certain harm. The major turning point in our understanding of its necessity was the Rwandan genocide and the world's failure to prevent or later halt the atrocities, a "sin of omission" as aptly expressed by the UN

secretary-general Kofi Annan. It is already quite clear among the international community that horrors such as the Rwanda should not be permitted again.

It is a highly contested question whether the individual states or regional organizations have the responsibility to protect suffering civilians (under perhaps the R2P norm, as discussed later), or whether such an intervention would instead legitimize an interference into the internal matters of a weaker state by their stronger counterparts (and therefore be used as a “Trojan horse” as suggested by Bellamy, 2005b).

It is accepted that within our international system of states, the UN Security has the right to authorize humanitarian intervention under the UN Charter, Chapter VII. As Bellamy points out (2005b), the interpretation of “international peace and security” has been expanded in the 1990s. This expansion includes measurements to protect civilians in safe areas such as in Bosnia, to maintain law and order and protect aid supplies such as in Somalia, or restore a toppled government such as in Haiti. So far the issues are quite clear. However, it is still a question of who has the legitimate authority to approve humanitarian intervention when the Security Council is blocked by veto and unable to act?

A watershed came with the intervention in Kosovo, an “illegal but legitimate” operation. Even though it was not legal according to the international law, it was “sanctioned by its compelling moral purpose” (Independent international commission on Kosovo, 2000). The notion of an intervention with the goal to avert great human suffering was subsequently to a greater or lesser extent accepted by the states of international community, except for (not quite surprisingly) the hostile attitudes of Russia, China, India, and the Non-Aligned Movement. The ensuing ICISS (International Commission on Intervention and State Sovereignty) Report and the notion of the responsibility to protect were on the other hand most favorably received by Germany, Japan, or Canada. These were the countries that were searching for a way out of yet another possible humanitarian intervention confusion after the Kosovo one.

With the Iraq war of 2003, the position of certain states towards humanitarian interventions changed, as they feared that such an action is easy to abuse. The United States (and its closest allies) were hit in their position as carriers of the norm.

In the problem of humanitarian intervention, idealism and realism are two prominent schools of thought playing role here. While the idealism supports the idea that humanitarian interventions are multilateral and cooperation-based, realists believe that governments of

states are the primary actors, acting on the basis of their both long- and short-term interests. Rarely is the just war tradition explicitly cited in the context of the humanitarian intervention, even though as we will see, the concerns raised during such debates fit quite well into the just war framework.

The debate about the humanitarian intervention is centered on the modern international law. This approach equates what is legitimate with what is legal – a different approach than that of the just war tradition. However, the law can hardly cover all the incidents that might possibly happen. And the question remains, what then? The just war tradition with its moral constraints and responsibilities promises to hold an answer and recognizes that ethical concepts of justice are as important as the legal concepts of justice (Fixdal, Smith, 1998).

11. Responsibility to Protect

„Humanitarian intervention has been controversial both when it happens, and when it has failed to happen.” (ICISS Report)

Responsibility to Protect (R2P, sometimes also RtoP) is a new form of international security and human rights protection which hopes to address the international community's failure to prevent, or even stop, genocides, war crimes, crimes against humanity and ethnic cleansing. This new framework has been created with the intention of substituting the previous ad hoc humanitarianism. In brief, the R2P stipulates that:

The primary responsibility for the protection of its population (from genocide, war crimes, crimes against humanity and ethnic cleansing) belongs to the state.

The international community is entrusted with the responsibility to assist states in fulfilling this responsibility.

The international community is responsible to use appropriate diplomatic, humanitarian and other peaceful means in order to protect the populations. If a state does not protect its population or if the state itself is the perpetrator, the international community is to employ stronger measures, up to the collective use of force (through the UN Security Council).

According to Bellamy (2010), there is a general agreement that the R2P is a norm – but not on what kind of norm it is. More than a single norm, it is rather a “collection of shared expectations that have different qualities”.

11.1. History of the Responsibility to Protect

This overview is also to a large degree a history of humanitarian intervention, attitudes towards it, and of the struggles between national sovereignty and humanitarian concerns.

In 1625, Hugo Grotius in his work *On the Law of War and Peace* argued that intervention with the aim of helping a nation to resist tyranny constituted just war. Since the sixteenth century, it was generally understood that the state sovereignty equaled a license to kill; internal affairs were no one's business but of the state itself.

In the aftermath of the Second World War, international efforts aiming at protecting civilian populations in armed conflicts and at preventing acts of genocide, crimes against humanity and war crimes emerged. On December 9, 1948, the UN General Assembly unanimously adopted the *Convention on the Prevention and Punishment of the Crime of Genocide*. However, between the 1940s and 1960s (not quite coincidentally at the time of the demise of European colonialism in Africa and Asia) state sovereignty became a highly sensitive issue for the newly independent countries and one that would be often cited as an argument used against humanitarian intervention. During this time, a major shift occurred in the nature of violent conflicts; the large inter-state wars were increasingly replaced by violent internal conflicts with the majority of victims being civilians.

The 1970s saw three major interventions with humanitarian subtext: in 1971 India intervened in the bloody civil war between Pakistan and East Pakistan (which later declared independence as Bangladesh); 1978 witnessed Vietnam invading Cambodia and deposing the Pol Pot's regime; and in 1979 Tanzania intervened in the neighboring Uganda, which at the time suffered under the rule of its dictator Idi Amin. All three invasions had common characteristics – they were fought because of the particular national interests, but each of them also aimed at preventing further mass killings of civilians (i.e. genocide). These three actions have been seen as kind of precursors of the humanitarian interventions; thought at the time, they were not welcome. Instead, they were generally rejected and attacked.

However, old habits die hard and the non-intervention rule was one of them. The need for developing a functioning concept was a result of the tragic events of the 1990s, when neither the UN nor the international community prevented the ethnic cleansing of Tutsis by Hutus in Rwanda in 1994 and the atrocities committed by Serb forces in Bosnia one year later. The reactions of the international community were often erratic, incomplete, or even counterproductive. When the UN Security Council again did not meet the demands of the

international community and the intervention in Kosovo was not approved, the NATO countries decided not to stay aside and to act instead. The NATO intervention in Kosovo, being “broadly supported, successful, and illegal” (Foreign Policy, online), set an “uneasy precedent”. It is not surprising that near the end of the millennium, there was a significant need to deal with the contemporary crisis prevention and response practices: not only the security of the state, but also the security of the community and the individuals must become priority in national and international policies (ICRtoP, online).

The path towards the R2P itself began in September 2000 when the Canadian Prime Minister Chrétien announced the establishment of the International Commission on Intervention and State Sovereignty (ICISS). This Commission was assigned with the task of drawing up guidelines for a new legitimization of humanitarian intervention and addressing the moral, legal, operational and political issues involved. Building on Francis Deng’s concept of sovereignty as responsibility, and after consulting with governments, NGOs, academics and policy think tanks, the Commission for the first time presented the term *Responsibility to Protect* (Deng, a Special Representative on Internally Displaced People appointed by Boutros Boutros-Ghali, came with the notion that sovereignty as responsibility implies the existence of a “higher authority capable of holding supposed sovereigns accountable”; Bellamy, 2008) The final paper bearing the same title was released in 2001. A crucial question was addressed by the Commission – i.e. when state sovereignty must yield in order to protect against the gravest violations of humanitarian and international law.

Even though the times after 2001 were not the most favorable for new intervention concepts (both because the focus has shifted to counter-terrorism challenges and actions and because of fears of possible misuse of this policy), the UN World Summit in September 2005 witnessed unanimous adoption of the “responsibility to protect” as a principle for preventing “atrocities crimes” in its articles 138 and 139 (among the governments insisting on meaningful commitment were countries such as Argentina, Chile, Mexico, Rwanda and South Africa, to name just a few) and in 2006 it was reaffirmed by the Security Council. The concept was intended to become the first step in the new international legal framework aimed at putting a stop to war crimes. Ban Ki-moon himself identified the effort of moving the R2P “from words into deeds” as one of the cornerstones of his office period. In the Resolutions 1674 (on the Protection of Civilians in Armed Conflict) and 1706 (authorizing the deployment of UN troops in Darfur) the UN explicitly referred to the R2P and the paragraphs 138 and 139 of the 2005 World Summit Outcome Document.

After several attempts to put this principle to practice in 2008 (in the cases of Burma and Zimbabwe), the first serious test for the resolve to actually act came with the Libyan case (for a more thorough account of the cases when the R2P was referred to, see for example Bellamy, 2010).

On 17 March 2011, the UN Security Council adopted the Resolution 1973. This resolution condemned Qaddafi, imposed a no-fly zone over Libya, called for immediate cease-fire and was a precursor of the coalition forces' strike on Libya. On August 20, the Libyan rebels backed by the NATO power ended Qaddafi's rule in Libya (see below).

Finally, the UN Secretary General's report implementing the Responsibility to Protect stated Ban Ki-moon's commitment to turn the R2P concept into policy. Moreover, the report outlined a three-pillar approach identifying measures and actors involved in each pillar. This approach follows the succession of individual responsibilities as identifies already at the beginning of this chapter (pillar one aiming at the states themselves and their responsibility to protect their citizens; pillar two calling on the international community and its responsibility to help the individual states; and the third pillar making the international community responsible for taking timely and decisive action in case of crisis).

Even though the ICISS was in its final report very careful to avoid using the term humanitarian intervention, the discussion about the legitimacy and limits of the R2P has obviously been alive and the opinions and attitudes towards the R2P differ. Nevertheless, not a right to intervene, but the responsibility for protection remains at the core of this approach.

Case (4): The Intervention in Libya, 2011

The Arab Spring, a wave of both nonviolent and violent revolutions spreading across the Arab world, reached Libya in early 2011, and the resulting crisis was both unexpected and rapid. On 15 February 2011, the protests against Libya's notorious leader Muammar al-Qaddafi and his oppressive regime began in Benghazi, and soon turned violent and escalated into a full-scale rebellion and civil war. When Qaddafi answered with a brutal crackdown, it became evident that the Libyan revolution would not follow the path of rather nonviolent uprisings in Tunisia or Egypt. While the revolutionaries (many of them defected from the Libyan government and army) established the Transitional National Council, and were met with quick success and advancements at first, the cadres loyal to Qaddafi kept on fighting, retook most of the country and were moving eastwards towards Benghazi (with the population of more than 700,000).

The international community acted swiftly in the Libyan case. The UN Security Council in its Resolution 1970 from February 26 condemned the use of force by Muammar Qaddafi, placed sanctions on its regime, as well as arms embargo and freeze of Qaddafi's assets. The states of the Arab League reacted likewise, suspending Libya from their sessions and calling for a no-fly zone over the Libyan territory. On 17 March 2011, the UNSC passed the Resolution 1973 (with ten countries in favor: the US, the UK and France, Bosnia and Herzegovina, Colombia, Gabon, Lebanon, Nigeria, Portugal, South Africa; and five countries abstaining from the vote: China and Russia, Brazil, Germany, and India⁹), authorizing the international community to enforce a no-fly zone and to use "all necessary measures ... to protect the civilians and civilian populated areas under threat of attack". Passing of the Resolution is already indicative of the shift in the Security Council's attitude towards the use of force for the purposes of human protection. As Bellamy & Williams state (2011), this was the first time the UNSC authorized the use of force for this reasons against the wishes of a functioning state (as opposed to e.g. in Haiti, Democratic Republic of Congo, Liberia, Sierra Leone or Côte d'Ivoire). Its role played also the new Joint Office on the Prevention of Genocide and the Responsibility to Protect.

Two days after passing the UNSCR 1973, the international coalition launched air and missile strikes against Libyan forces, destroying Libya's air defense systems, rescuing the citizens of Benghazi and enforcing a no-fly zone in accordance with the Resolution. Acting on the Resolution 1973 were in the first line the United Kingdom and France, sharing the command with the US, and further supported by the forces of Canada, Belgium, Bulgaria, Denmark, Greece, Italy, the Netherlands, Norway, Romania, Spain, Sweden, and Turkey, as well as several Arab states (Jordan, Morocco, Qatar and the United Arab Emirates). On March 27, the NATO assumed the command of the actions (from then on codenamed Operation Unified Protector), which was only a logical step, considering that the majority of intervening forces were recruited from NATO member states. Because the Resolution 1973 stood at the base of the Operation, the tasks were clear: protection of the Libyan civilians, enforcement of the arms embargo, and upholding of the no-fly zone. According to Washington, intervention in Libya was fully consistent with the Responsibility to Protect.

⁹ For a deeper analysis of various states' attitudes towards the Resolution and the dynamic within the Security Council, see e.g. Bellamy & Williams, 2011.

Even though the NATO operation did encounter problems while protecting the civilians, the Libyan opposition managed to strike back at Qaddafi's forces by mid August and then in two months' time secured the entire country, captured, and eventually killed Qaddafi. Following the successful advancement of the Libyan opposition forces, the Operation Unified Protector was ended on 31 October 2011, 222 days after it began. Ivo Daalder (US Representative to NATO) and James Stavridis (NATO's Supreme Allied Commander) in their article (2012) appraise the Operation as a "model intervention" and conclude that the NATO succeeded "by any measure".

Like in the Gulf War, the intervention in Libya was carried out by a coalition of states, both from the Western and Arab world; and both interventions were met with military success. However, what distinguished the Libyan case from the operation against Iraq was the involvement of NATO. In Libya, NATO coordinated the joint action of eighteen states (fourteen of which were NATO member states) under unified command. There have been undeniable advantages to NATO involvement – among others it was the common command structure, common doctrine for the conduct of military operations, common capabilities and standing mechanisms for the smoother coordination and communication. In contrast, ad hoc coalitions (such as the one established in order to force Saddam Hussein out of Kuwait) need to start basically from scratch.

The answer to the events in Libya was in a stark contrast with the slow reaction to e.g. the atrocities committed in Kosovo (and perhaps due to the swiftness of the reaction, it was also comparably smaller, involving only about one-fifth of the military assets employed in Kosovo; Daalder & Stavridis, 2012). NATO and its member states perhaps demonstrated in 2011 that the organization can take on more complex and increasingly global security challenges typical for the globalized world. The support of Arab countries proved critical as well, providing the Operation with more political legitimacy.

The revolutions of Arab spring have taken diverse shapes, from more to less violent ones. While the Tunisia or Egypt were on one end of the spectrum, Libya or Syria were on the other end. Yet the international community decided to decisively act in the Libyan case and not in the others – the question is, why? In his speech from March 2011 (the White House, 2011), President Obama said that

given the costs and risks of intervention, we must always measure our interests against the need for action. But that cannot be an argument for never acting on behalf of

what's right. In this particular country - Libya - at this particular moment, we were faced with the prospect of violence on a horrific scale. We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We also had the ability to stop Qaddafi's forces in their tracks without putting American troops on the ground (...).

With the time and space that we have provided for the Libyan people, they will be able to determine their own destiny, and that is how it should be.

The decision whether to intervene in Libya was made easier by Libya's lower geostrategic importance and few reliable allies (compared with, for example, Syria). According to the judgement of the Time magazine, President Obama „didn't intervene in Libya despite great risk. He did it because it was a relatively low-risk venture“ (Crowley, 2012).

The implication of the Libyan intervention are clear. By passing the Resolution 1973, the UN Security Council proved that it will not be prevented from authorizing use of force for protection purposed principally only because of the lack of host state's consent. Another keypoint in the decision to intervene was the relationship between the UNSC and other relevant stakeholders, particularly regional organizations (in this case the League of Arab States' belief in the necessity of taking action proved critical). The UN Security Council proved its willingness to step up, assume the responsibility and authorize the use of military force in order to uphold the human protection. This is a undoubtedly a step in the direction of a strong, legitimate authority, as required by the just war tradition.

As I have mentioned above, the Responsibility to Protect played a significant role in the decision-making process preceding the intervention in Libya. The next part will focus on the development of the norm and its implications for and ties with the just war.

11.2. The ICISS Report of 2001 vs. the 2005 World Summit outcome

As the name already suggests, the International Commission on Intervention and State Sovereignty (ICISS) aimed to reconcile the state sovereignty with the occasional need for armed intervention for humanitarian reasons. The ICISS Report from December 2001 sums up the key principles on the Responsibility to Protect at its very beginning. First, it stresses the belief that state sovereignty implies responsibility – and that states themselves are primarily responsible for the protection of their citizens and residents. Should the particular

state find itself in a position when it is unable or unwilling to uphold the protection of its people, the principle of non-intervention yields to the international responsibility to protect.

The responsibility to protect is based on (a) obligations stemming from the sovereignty, (b) responsibility of the UN Security Council for the maintenance of international peace and security, (c) legal obligations of international humanitarian law, and finally (d) on the practice of states, organizations and the Security Council.

The report also outlines the division of R2P into three kinds of responsibility: the responsibility to prevent, to react and to rebuild – of which the prevention efforts are distinguished as the “single most important dimension”. It is important to remember that the norm was not intended to secure the *right* of the big and strong states to do anything, but to represent and stress the *responsibility* of all the states of the world to protect their own populations, and help others to do so.

The proposed measures for external intervention included a continuum of mechanisms from less to more coercive in nature, from human rights monitoring to the use of sanctions, arms embargoes, war crime tribunals, preventive deployment of peacekeeping forces and the threat of force (Chandler, 2007).

For various reasons (one of them were fears of unilateralism, especially that of the American kind) the 2005 World Summit outcome document presents the principle of R2P in many respects different from the original 2001 one, even though the name and idea behind the concept remained the same. The R2P is found in the paragraphs 138 and 139 of this Outcome.

The most apparent difference between the concept of the responsibility to protect as laid out by the ICISS and as passed by the world leaders in 2005 lies in the omission of the criteria for intervention (the criteria will be analyzed later in the text). Other measures curbing the power and authority of the Security Council were left out, as well as the conduct for the use of veto power and the opening for coercive measures not authorized by the Council (Bellamy, 2008). The World Summit therefore emphasized the role of the international community, while at the same time downplaying the armed intervention.

The original notion that the R2P stems from, and results in both responsibilities and obligations of the international community as a whole (and the UN Security Council in particular) did not pass the World Summit either; instead, the Council committed only to “stand ready” to act when necessary.

Even though this evolution seems unfortunate for the R2P concept, Bellamy (2008) argues otherwise. In his opinion, the scope of the principle has been clarified, and the relevant roles and responsibilities of different actors have been confirmed as well. The R2P still affirms responsibilities of the states to their own citizens, those of all states as members of the international community and those of certain institutions (the UN Security Council). Criteria for the use of force are however not one of the attributes of the R2P. As Bellamy argues, the rejection of these criteria was “politically inevitable and practically inconsequential”.

In the following text, it is still important to pay attention to which of these two R2P concepts is analyzed, whether the ICISS Report or the World Summit Outcome.

11.3. The Just war within the R2P concept

In case the prevention efforts fail, the international community commits to the responsibility to react. Military intervention is one of the steps, although an “exceptional and extraordinary” one. Either “large scale loss of life“, or “large scale ethnic cleansing” (whether actually happening or imminently likely to happen) stand at the beginning of a legitimate military intervention.

The ICISS did not start with the UN Charter when elaborating on whether intervention is permissible, but instead proceeded from the point of view of potential victims and their protection. This enabled the Commission to come up with moral criteria for military intervention, which should exist independently of international law or any political decision made within the Security Council. These criteria, also called *just cause thresholds* or *precautionary principles*, show just how close the Responsibility to Protect is to the just war tradition. The criteria which must be satisfied in order for a military intervention to be justified as responsibility to protect are clearly derived from the principles of just war:

- * *Just cause*: The aforementioned reasons are the only reasons for which a R2P can be legitimately employed.
- * *Right intention*: Disregarding other possible or alleged motives for intervention, halting or averting civilian suffering must always be the primary reason and purpose of an intervention.
- * *Last resort*: Not surprisingly, also here is the military action permissible only when all other measures of peaceful resolutions have been explored – and failed. However, the preceding peaceful means do not need to be necessarily all employed

one after another and to an exhausting level if there is a reasonable ground for believing they would not be successful.

- * *Proportional means*: The minimum possible scale, duration and intensity of the military measures in order to fulfill its objectives should be employed.
- * *Reasonable prospects*: Just like in the just war tradition, a reasonable chance of success must exist that the military intervention will indeed lead to halting or averting the suffering.

Although the criteria did not pass the World Summit in 2005, there was a sound reasoning for including them into the original report. First, they were supposed to “create expectations about the circumstances in which the international community – primarily the UN Security Council – should become engaged in major humanitarian catastrophes” (Bellamy, 2008). Another reason the members of the Commission had in mind was providing a way for legitimizing an intervention not authorized by the Security Council. And finally, they were intended to constrain governments in potential abuse of the R2P and halt a possible spread of interventionist tendencies.

It is hardly surprising that the permanent members of the Security Council were skeptical about these criteria. China and Russia voiced concerns about potential bypassing of the Council, while the United States saw the criteria as a limit put on its freedom to act.

However, it is not at all guaranteed that these criteria would be helpful in cases such as the intervention in Kosovo. One group of states would probably always argue that the criteria were satisfied, while the others would argue otherwise. Even without the criteria, the Kosovo intervention for example is widely being understood as illegal, but legitimate on moral considerations. Moreover, international law already covers the use of forces against the atrocities of genocide, and it is doubtful the criteria would significantly contribute and add to those norms, considering they are not absolute either. The R2P identifies its thresholds, scope, and responsibilities sufficiently without the criteria; we do not need to focus on what is left out, but rather on the operationalizing of the principle in its current form.

11.4. Right authority

Traditionally, the legitimate (or right) authority is one of the conditions of a just war. The fact that it is singled out in the ICISS Report confirms its crucial position. However, if we remind ourselves of the realities of today’s world and of the international community, it is not

surprising at all. Actually, the Commission found an “overwhelming consensus” on this matter and in the Report (2001a) clearly states that

there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes.

In the same paragraph it also assures that “the task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has” (ICISS Report, p.xii). Before any military intervention, a state or a coalition of states should always seek the UN Security Council authorization. According to the Report, the Council is expected to deal with the authorization request in a swift way and seek adequate verification of the facts.

In order to improve the decision-making abilities of the Security Council, the ICISS Report suggested that the five permanent members (P5) could abstain from vetoing a proposal in a threshold-crossing situation, should crucial national interests of the given state not be at stake and should the majority of the Security Council members support a collective action. If however this yields no results, then the states concerned could approach the General Assembly; and should this venue not be successful either, then they are entitled to turn to relevant regional organizations. This is the hierarchy of responsibility as outlined by the Commission: through the Security Council to the General Assembly, to regional organizations, coalition (or coalitions) of the willing to individual states at the end. This is addressed under point D of the particular Report’s chapter:

The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military interventions for human protection purposes for which there is otherwise majority support” (ICISS, 2001a).

The problem of the many past instances is the fact that the permanent members of the Security Council were not able to reach an understanding necessary for passing a resolution and for taking action. However, the problem remains. The criteria of the R2P are definitely not absolutely unambiguous and they leave room for discussion. “If it (the Security Council) fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means...” (Gärtner, 2012:141). Who would in this case assume the responsibility for an action? The United States? Russia? European Union?

African Union? Other regional organizations, coalitions presided by one of the greater powers, other actors?

Many of the non-Western countries call for a reform of the Security Council, claiming that the Council is undemocratic and unrepresentative. However, despite the support the ICISS apparently found in favor of creating a more representative UN system, (especially in the question of military intervention) the final argument is against making the decision-making authority more democratic (Chandler, 2007). The preferred approach is to legitimize intervention by ad hoc coalitions or individual states, which would act without Security Council's or General Assembly's approval. However, the Commission had to acknowledge that such approach would not find much – an understatement, in fact – support. Instead, the Commission was forced to admit that it would be unlikely that any consensus would be found on the military intervention proposal which would not be authorized by either the Security Council or the General Assembly.

The Report however asks one particularly important question: “where lies the most harm: in the damage to international order if the Security Council is bypassed or in the damage to that order if human beings are slaughtered while the Security Council stands by” (ICISS, 2001b: 55).

The Report also brought forward the arguments supporting the UN Security Council's central position in striving for international legitimacy of interventions. For one, the Security Council has kept redefining the meaning of *threats to international peace and security* and thus allowed for expansion of the mandate for legitimate intervention. And what is very important, one can observe the lack of authority of the United Nations to enforce its mandate independently of the will of its strongest members – and vice versa.

11.5. State sovereignty vs. legitimizing an intervention

Sovereignty of a state has been the defining principle of the international relations since the Westphalian system was created in the mid seventeenth century. However, now it is much more than just a principle. For many states – especially the newer ones – it is a sign of their worth and their dignity, of protection of their uniqueness, identity and national freedom, and an affirmation of their right to determine their own destiny (ICISS, 2001a). Recognition of this principle lies at the base of the UN Charter. If we consider all states to be equal in their sovereign rights, how then can one state justly and legally intervene in another one? Many of

the newer states, those born out of the decolonization process, are not only proud of their sovereignty, but very conscious of its fragility and of their own history when they were the target of interventions from the (mostly Western) imperial colonial powers. It is no wonder these states are not exactly in favor of accepting the intervention, no matter what circumstances.

Opposition to the R2P is heard both from the countries such as the USA and the third world countries. Evans (2008) mentions representatives of Latin American, Arab and African countries, who at the UN's budget committee in their speech made a remark that the "World Summit rejected the R2P in 2005", and that the concept itself "was not accepted or approved as a principle by the General Assembly"; a statement which Evans describes in Jeremy Bentham's words as "nonsense on stilts". Yet, it shows that the acceptance of the principle is not universal. Further serious advocacy efforts, both diplomatic and others, will have to be made to explain the purpose and to defend the concept as a norm, so that the R2P will not be seen as a "Trojan horse for bad old imperial, colonial and militarist habits" (Evans, 2008).

However, at one part the ICISS Reports assures that

"the defense of state sovereignty (...) does not include any claim of the unlimited power of a state to do what it wants to its own people" (p.8). And "rather than accept the view that all states are legitimate... states should only qualify as legitimate if they meet certain basic standards of common humanity. This approach [has been called] 'sovereignty as responsibility'. In brief, the three traditional characteristics of a state ... (territory, authority, and population) have been supplemented by a fourth, respect for human rights" (ICISS: Research, biography, background).

Sovereignty of a state is effective both externally (or internationally, to the community of states) and internally (to state's own population), embracing the dual responsibility. According to the ICISS itself, this shifts the "essence of sovereignty from control to responsibility" (Chandler, 2007). There is always the possibility of trying to misuse the R2P for national interests of an individual state, such as was the case of Russia and Georgia in 2008; however, the R2P is quite clear in the fact that it does not enable justification for the use of force without the Security Council approval (even one given ex-post).

11.6. Relevance of the R2P for the just war tradition

It is often claimed (and feared) that the R2P applies to the weak and friendless states, never to the strong ones. It is indeed hardly imaginable that a coercive military intervention would be seriously carried out against Russia, China, or the United States, no matter what might be going on internally. And if we consider that the Security Council is the ultimate deciding authority, how could a decision ever be made to approve an action against any veto-wielding power, or any other country one of the Permanent Members decides to protect?

Regarding the criteria which the ICISS Report put forward in 2001 (those referring to the just war tradition), Bellamy (2008) argues that the Responsibility to Protect as a new, actual norm should be dissociated from them. He goes on further, asserting that there is „something inherently militaristic about R2P that diverts attention away from the non-military solutions“; however, these fears stem plainly from a misunderstanding of the full scope of R2P. Because as already explained, the military option is not the only point of the R2P and not the tool with which the success of the norm is to be measured. Instead, the R2P emerged as a mirror reflecting the contemporary image of the traditional just war theory, fitted to our world and understanding.

Case (5): Syrian Civil War, 2011 – present

Finally, I would like to shortly discuss the Syrian uprising at this place, as it is one of the most recent and grave contemporary crises in today's world.

The ongoing violent armed conflict between the Syrian government and the revolutionary forces began on March 15, 2011, in the wake of the wave of Arab Spring uprisings. The protest movement against the Syrian Ba'ath government and Bashar al-Assad's regime turned into nationwide demonstrations by April 2011, engaging various rebel groups and militants as well as certain (though limited) number of foreign and international actors.

Syria, Assad and the first two years of the civil war

The current president's family has held power in Syria since the 1970s. In the twentieth century, Syria began a journey from a short-lived kingdom to French mandate to establishing a republic after the World War II. The subsequent period was characterized by frequent coups, brief union with Egypt (as the United Arab Republic), and finally a coup that brought the Ba'ath Party to rule over the country in 1966. In 1970, Hafez al-Assad secured his position in the lead, only to be succeeded by his son Bashar in 2000. Upon Bashar al-Assad's

election as the president of Syria (an election in which he stood unopposed), there were certain hopes for reform and a new chance for the country, called the Damascus Spring. However, this movement was suppressed by fall 2001 and only minor reforms were undertaken.

Nearly ten years later, the Arab Spring brought about new impetus for change. What started as peaceful protests was followed by a crackdown by the Syrian forces, radicalized, and turned into a full-blown civil war. The diverse religious composition of the Syrian population is one of the crucial factors stirring up the conflict. While the majority of the country consists of Sunni Muslims (fifty-nine percent of Syrian citizens), the leading Ba'ath Party is composed of and standing for the Alawites (representing about twelve percent of the population). And while this makeup of Syrian society has played positive role during the history and peaceful times, fostering diversity and progress, it proves fatal in a conflict such as this one.

Over the course of the fighting, the protesters grew in numbers significantly. However, the opposition is merely a loosely composed and a highly diverse group. The first protesters were soon joined by soldiers who defected from the army, as well as recruits and volunteers from the civilian ranks. The protesters originally organized themselves under the Free Syrian Army leadership, while radical Islamist groups (some with connection to al-Qaeda) later began to play increasingly dominant role. Assad on the other hand gained on his side the Hezbollah soldiers. The government also remains the stronger side in this conflict, having a vast arsenal of weapons (including chemical ones) and enjoying support (political, moral, and material) of the Russian government.

According to the UN estimations, the conflict claimed so far more than 100,000 lives and millions of displaced civilians. The government has lost control over territories in the north and east of the country (along the borders with Turkey and Iraq), and heavy fighting continues in the cities of Aleppo (the biggest Syrian city) and in the capital, Damascus.

Outside the Syrian borders, Assad's regime is most prominently supported and backed up by Russia and Iran, who provide the government with both financial and military support. Within the UN, both Russia and China have used their power to stop UN Security Council decisions that would condemn Assad's actions against the opposition within his country. On the other hand, the rebels have been supported by Turkey and several of the Arab states in the Persian Gulf, most importantly Saudi Arabia and Qatar. Due to the rising importance of radical Islamists within the opposition forces, the Western states have adopted a rather careful attitude, providing the rebels with mostly diplomatic support.

The United States have exercised an extra cautious stance towards the events in Syria. Obama's administration, long striving to withdraw American soldiers from the battlefields in Iraq and Afghanistan, naturally fears any possible involvement in another conflict in the Middle East.

Attacks on August 21, 2013

On August 21, 2013, nearly 1,400 people fell victims to the use of sarin gas near Damascus; an attack which became a game changer in the development of the Syrian civil war. It has been the single most lethal strike in the two and a half years of the war, cause of great international upheaval and the climax in the Syrian crisis so far.

The use of chemical weapons by the Syrian government came rather as a surprise, and opinions on the reasoning behind the attack differ. One of the theories assumes that the attack might have been a miscalculation, using chemical weapons in an amount larger than the government intended. According to this theory, this would not have been the first time the Syrian regime used this kind of weapons during this war – rather the first time the world took notice. An alternative theory operates with the possible siege mentality of Assad's regime, which might have seen a solution in sending a message to the rebel forces in Damascus suburbs: a message that the government would use all means to defend the country's capital, as "it is the typical behavior of a weak regime facing superior demographic forces (...) to deploy unconventional weaponry" (New York Times, August 27, 2013). However, employment of chemical weapons was beyond what President Obama had described as a red line, and the international community – and the U.S. in particular – had to react accordingly.

In the aftermath of the strike, intervention was suddenly on the table again. It was however clear that although such an action might be morally legitimate, one could not possibly call it legal: "‘illegal’ if you are frank, ‘inconsistent with international law’ if you are a lawyer, ‘difficult to defend’ if you are a diplomat" (Foreign Affairs, August 29, 2013). International law clearly has not changed since the last outbreak of instability in the Middle East. The UN Charter still prohibits the use of force unless in cases of self-defense, which is obviously not the case for the United States, and it is very unlikely that the U.S. policy-makers would be able to (not to mention willing) stretch the understanding of self-defense this far. Naturally, the idea of humanitarian intervention on behalf of Syrian people and the R2P norm have come to mind. However, even in this case a UN authorization would be necessary in order to guarantee legality of a military action.

As has already been mentioned, President Obama marked the employment of the chemical weapons as the red line, believing that “there must be accountability for those who would use the world’s most heinous weapons against the world’s most vulnerable people” (Time, August 26, 2013). And indeed, following the August strike against the Syrian opposition forces, Obama had to consider a military response and went as far as asking for its approval in the Congress. However, the path to this point was not a straightforward one, as such an intervention brings about both pros and cons. On the upside, US involvement in the conflict would support moderate Syrian rebels, quite certainly prevent their defeat, and aid with the refugees problem. On the downside, intervening would be expensive, bloody, with uncertain results, and could become another one in the line of not-so-successful American adventures in the region. But then again, if the Damascus attack was permitted to be unanswered, the credibility of the US would suffer a considerable blow. President Obama found himself therefore in a substantial dilemma, facing the necessity of choosing between strong retaliation and both internal and external adversity to the use of force. As for the US allies, the British Parliament blocked Prime Minister Cameron’s plans to join the US strike, while the French government ruled off going alone into Syria (as compared with the intervention in Mali).

Failing on following through on a deterrent threat could be potentially quite dangerous down the road, with regard to e.g. Iran and North Korea. However, President Obama was saved from the possible defeat in Congress by the Russian President Putin who on September 9 came with the proposition that Syrians surrender their chemical weapons to an international commission under the United Nations, to which Assad quickly agreed. The next day, September 10, Obama requested the Congress to delay their vote.

While the US President as well as other international players suggested or claimed that they played part in this plan, the proposition was a clear diplomatic victory of President Putin. The Russian president has been a long-standing ally of the Syrian president Assad; not quite in order to protect the Syrian regime, but to protect Russia. One of the reasons behind this is the effort to “make sure that terrorist groups with ties to extremists in Russia’s troubled North Caucasus region do not turn from operations in Syria to strikes against Russian targets” (Foreign Affairs, September 11, 2013).

On September 14, 2013, Syria became the 190th member of the Chemical Weapons Convention. As the deal between the USA and Russia requires, Assad agreed to give up his chemical stockpile, which is believed to comprise about 1,000 metric tons of sarin (the nerve agent used at the attack at Damascus suburbs), the blister agent mustard gas, as well as

precursor chemicals necessary to make other agents (for comparison, chemical arsenals of the Soviet Union and the US produced during the Cold War amount to 40,000 and 32,000 metric tons respectively; Foreign Affairs, Sept. 18, 2013). The agreed framework for the destruction of Syrian chemical weapons is based on the Chemical Weapons Convention's typical timework, but has been highly compressed. Whereas the work usually might take up to several years, the US and Russia aim to having this process completed by mid-2014 – without doubt an ambitious plan. The Organization for the Prohibition of Chemical Weapons (OPCW), the convention's inspectorate based in The Hague, has been assigned with carrying out the task. Upon striking the US-Russian deal, the UN Security Council and the OPCW's executive council have been tasked with transforming it into a legally binding document ensuring the elimination of Syria's research, development and production of chemical weapons (a program believed to involve about 45 sites across the Syrian territory).

The problem with chemical weapons

Compared to conventional weapons, it is a fact that the chemical weapons have cost less lives. This led some to claim that we should “erase the red line”, and that the use of this kind of weapons is not a “taboo worth saving” (Foreign Affairs, September 9, 2013). Nevertheless, the attacks in Damascus cost lives of about 1,400 people in a time span of 90 minutes, and brought injuries to many others.

This is where the chemical weapons and the just war meet. Because of their inherently indiscriminate character, they correctly belong in line with the biological and nuclear weapons. And as discrimination is one of the conditions of *jus in bello*, it is clearly not compatible with the chemical weapons. Both the just war tradition and modern international law are concerned with the protection of civilians and noncombatants – and it is no secret that many of those who came to help the victims in Damascus were hurt or died due to the exposure to the sarin gas in the process.

President Assad thus broke this taboo (although this might not have been the first chemical weapons attack in the Syrian civil war and certainly not the first one in the region, since Saddam Hussein had been proven guilty of using chemical weapons as well) and the international community has taken appropriate steps.

The question of the future of chemical weapons arsenal in the hold of Syrian government might be more or less solved for the time being. However, this does not solve the crisis in Syria. The fight between the government forces and the opposition had been quite fierce and

violent prior to this incident, and the removal of chemical weapons from the picture does not mean that the Syrian war has moved closer to an end.

R2P vs. Syria

It is possible that as the effect of Assad's acquiescence wears off and the civil war in Syria drags on, more thoughts will again be given to the R2P. But since the international community has not been very successful in reaching an agreement on the R2P in general, the probability of its employment in Syria is rather low. Comparison with the Arab Spring in Libya comes forward here. As analyzed previously, a coalition of states militarily intervened in Libya in order to spare lives, and brought about the end of the era of Muammar Qaddafi. However, as Western and Goldstein explain (Foreign Affairs, March 26, 2013), there are several profound differences between these two civil wars. Referring to the International Institute for Strategic Studies, they claim that Syria's military capacity is four times larger than Libya's, comprising about 300,000 troops and another 300,000 in reserve (as of 2009). Likewise, Syria's air defense troops and anti-aircraft sites are quite formidable (60,000 and 4,500 respectively; Qaddafi's anti-aircraft batteries amounted to about 300). Other objections aside, it is easy to see why a military action and air strikes were much more plausible in the Libyan case.

Another issue is the nature of the opposition in the respective countries. While in Libya the rebel forces had under control large, compact parts of the country, the Syrian opposition yet struggles to achieve that.

Last but not least, the attitude of other international players could not be more different. Where Colonel Qaddafi found himself quite isolated, the Syrian president Assad enjoys the steady support of Russia and Iran, and China has been voting against any prospective actions against Syria as well.

In any case, the R2P in the form as adopted at the World Summit in 2005 assigns responsibility to protect the civilians to the state itself, and leaves the decision of an intervention to be reached on a case-by-case basis. And Syria will likely not be the case where the R2P norm will be put to test. While for a while it seemed as if the US would once again have to employ military means in the region, the situations turned out quite differently than expected. While the US government and the whole country were stuck in a shutdown caused by its internal political issues, the Organization for the Prohibitions of Chemical Weapons was awarded the 2013 Nobel Peace Prize for its efforts amid the raging civil war in Syria.

Considering the fact that most of the deaths in Syria were caused not by chemical weapons but by conventional ones, it is yet to be seen how big of an impact the destruction of Assad's chemical stockpile will actually have. So far, the civil war in Syria continues without any larger prospects of a near end.

Concluding remarks

Legitimate authority is one of the principles identified as the core of the just war theory. Traditionally, all the conditions need to be satisfied; failure to fulfill even one of the criteria equals injustice of the warfare. Although it is possible to theoretically distinguish the order of importance of these principles, it is impossible to say to what degree a war can be unjust; a war is either just or unjust.

Legitimate authority is one of the principles of *jus ad bellum*; the others are just cause, last resort, likelihood of success (reasonable hope of success), and right intentions. Additionally, there is *jus in bello*, which subsumes two major principles regarding the conduct in battle itself: the principle of discrimination and the principle of proportionality. Legitimate authority principle identifies those in the position of power who are eligible to engage in the decision-making process about whether to pursue or join in warfare. Depending on the historical era, political system or the state entity, it might have been a king, a dictator, a chancellor, a legislative body or perhaps a council.

A war authorized by the legitimate authority is therefore already fulfilling one of the conditions on the way to being considered just. On the other hand, if a war is authorized by anyone else than the legitimate authority, it is automatically unjust, even if all the other conditions have been fulfilled to the greatest extent possible. That is the reason why the legitimate authority principle is so important, so controversial and quite ambiguous in its application.

The just war theory remains a useful structure for the ongoing discourse of debates about warfare. The legitimate authority has perhaps become less prominent in the contemporary just war thinking, as opposed to the medieval and early modern traditions. The evolution of modern warfare caused a shift in focus towards the means by which a war is waged (*jus in bello*), and the principles of last resort and just cause gained on importance as well. In any

case, it is crucial to keep in mind that the just war principles are inherently complex and equivocal, and cannot provide a clear path towards an undeniably just war.

As explained at the beginning of this work, the legitimate authority is so important precisely because only the person (or body) of authority himself can ultimately decide the meaning and level of fulfillment of all the other conditions of *jus ad bellum*, i.e. the conditions regarding initiating or entering a war. In the end they are all linked to the decision of a prince, a state leader, or any other legitimate authority.

The just war tradition is spanning from at least the time of St. Augustine, but its roots are even older, even though the ancient authors did not naturally develop whole, compact treaties on just war. That is why we usually attribute the first signs of the tradition to St. Augustine. As such, the just war tradition is also a product of Christendom, with all the Christian ideological and geographical implications and limitations. But that is also one of the main reasons why the tradition survived, why it spread beyond the borders of Europe, and became one of the cornerstones of the modern international law as well.

St. Augustine in the fifth century had the situation laid out easier than many who came after him. As a citizen of the Roman Empire, he believed that the Roman Emperor was the one in the position of legitimate authority. Because the Christian world was much simpler back then, Augustine did not have to deal with many rulers and princes who all claimed sovereignty, authority, and the right to wage war. Augustine focused more on other aspects of warfare, as his theory of “inward disposition” towards waging war suggests, and his primary interest represented the search for authorization for the use of violence. And indeed, Augustine believed that war was an exercise of both the divine power and the human obedience. The decision making was placed into the hands of God and humans were considered absolved of the necessity of making moral decisions about war. And as the rulers – the Emperor first among them – served as God’s representatives on the earth, they also represented the moral authority.

Eight hundred years after, another prominent Christian priest shaped the theological teaching (and the just war tradition) in a profound way. St. Thomas Aquinas created his own philosophical tradition, very much like Augustine did before. But unlike Augustine, Aquinas devoted more of his work to the matter of just war, and in more compact writings. Where Augustine’s ideas on the just war were scattered through his works, Aquinas handled the problem in single units. By Aquinas’ time, the political situation in Europe had changed and

was not as clear-cut as in Augustine's times. That naturally made the work more difficult for Aquinas.

Aquinas established the three basic requirements for a just war as we know them today; the legitimate authority, just case, and right intent. The authority to wage war belonged into the hands of a prince, a ruler of a state, not into the hands of private persons. Therefore anyone with earthly superiors lacked the authority to wage wars, but there was on the other hand the option of arbitration in case of a dispute, which might have otherwise lead to (private) war. It follows that the lower nobility could always use the arbitration services of their king.

In the early modern times, Francisco de Vitoria brought new insights into the just war tradition when he strived to blend the old theological approach with the emerging international law. A new geopolitical impetus, the discovery of America and the subsequent colonization of the continent, brought Vitoria to new findings. By the sixteenth century, the fictional unity of the West with the Pope at the top was gone and while some states managed to assert and retain their independence, others were not as successful. Vitoria therefore had to deal with the authority claims not only of the Pope and the Emperor, but also of various lower rulers. And here comes to play his approach of an international lawyer. After having settled what defines a state, and therefore who a legitimate ruler is, Vitoria came to the conclusion that the monarchs are collectively responsible for the well-being of the international community of states. This also implied that these rulers must be equal in their rights to authority.

By the twentieth century, the Westphalian system of states became the norm; new states had been emerging, and so had been regional and international organizations. The more players there were at the international arena, the more difficult the search for the new balance of authority became. Not only the nation states, but various organizations have claimed they have the right, among them of course most notably the United Nations. Michael Walzer, arguably the most prominent just war thinker of the twentieth century, believes that the authority still remains with the states, and his *Just and Unjust Wars* remains one of the most impressive contributions to the just war theory in the last century. While there are still works on the just war tradition that follow the traditional Christian path, the just war developed into a secular theory, as we know it from Walzer's works. The need for a clear answer to the problem of authority is even more important because of the new security issues. Dealing with terrorism and better managing humanitarian interventions would both greatly benefit from

better role and authority division, and promises room for further evaluation of the just war tradition.

Because the modern international order is based on the values and principles of the Western civilization dimension, the just war theory and its principles are embedded at its core as well (and while there might not be explicit references to the “just war”, it is beyond any doubt firmly anchored in our common moral consciousness). One example of this fact is the quite recent norm of the responsibility to protect. Drawn up with the intent of human protection, Responsibility to Protect became quite a contested topic. However, the experiences with humanitarian interventions showed that discussion and the inventing of new norms within the community (most likely naturally within the UN forum) are a necessity.

The five examples described during the course of the work illustrate the various historical experiences of interventions with a substantial human protection component. They show how geopolitical circumstances matter in the attitudes to what is acceptable, as what is not. Thus the Tanzanian military self-defense that turned into toppling Idi Amin from power in Uganda proved to be a morally understandable act, while the Vietnamese invasion in Cambodia, undertaken only a few months prior caused diametrically different reactions. During the Cold War, the mainland Southeast Asia was a region with many contradictory interests of world superpowers, regional powers, as well as those interests of the involved states themselves. What was permissible in Africa was unthinkable when Vietnam and the interests and alliance relations of the USA, the Soviet Union and China were concerned. And despite ridding Cambodia of the bloody Khmer Rouge regime (without belittling the negatives and victims of the Vietnamese intervention and subsequent occupation), the invasion was never accepted by the international community.

The next two examples are of a different kind, for they are concerned with interventions undertaken by a coalition of states. Both the Operation Desert Storm in 1991 and the Operation Unified Protector in Libya in 2011 were executed with success, swiftly, by states of various cultures and were backed up by a UN Security Council Resolutions. As these two cases illustrate, these events might be the right ones to indicate the roadmap to the generally accepted authority within the contemporary world. While facing its own problems and need for reform, the United Nations seems to be in the unique position to represent the legitimate authority as drawn up by the just war theory.

Finally, there is the case of Syrian civil war. As the only still ongoing from those conflicts analyzed, it is yet to be seen how the struggle will eventually turn out. Having employed

chemical weapons against civilians, Syrian president crossed the red line marked by President Obama, and for a while the Syria was facing a real threat of reprisal and intervention. However, the situation was solved for the time being when Syrian president Assad agreed to cooperate and to give up his chemical weapons stockpile. Even if there were reasons for an action based on humanitarian concerns, Russia (and to a lesser extent Iran) as Syria's ally will effectively keep on rendering such an action implausible. In the end, while the Responsibility to Protect as a norm is quite beneficial in its nature, its employment around the world remains difficult.

There is of course much more that could be said on the topic of the just war and the legitimate authority, but which is beyond the purview of this work; however, the dilemmas and the mainstream ideas of the just war theorists and philosophers have hopefully been explained to a satisfying level, and it was said enough to illustrate the main points, the evolution and the relevance of this principle for the contemporary thinking about war.

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Abstract

With increasing challenges in the international realm increases also the need for a clearly outlined legitimate authority among the states that would be able to take action. The threat of terrorism is still present, and the occasional need for humanitarian intervention has yet to find a clear framework for action. The just war as a tradition with long heritage of thought might be one of the possible solutions to these and other problems. The condition of legitimate authority as outlined within the just war theory could perhaps offer some guidance. This thesis analyzes the evolution of the legitimate authority principle over the course of the just war thinking, mapping the works and thoughts of St. Augustine, St. Thomas Aquinas, Francisco de Vitoria, until the twentieth century and one of the most prominent contemporary thinkers, Michael Walzer. A large portion of the thesis is dedicated to the Responsibility to Protect, as this is the one contemporary (political) area where the traditional just war is mirrored most notably. Five examples described during the course of the work illustrate the various historical experiences of interventions with a substantial human protection component. They show how geopolitical circumstances matter in the attitudes to what is acceptable, as what is not; these illustrations were chosen in a way that allows for interesting and relevant comparisons: the Vietnamese intervention in Cambodia and the Tanzanian operation in Uganda in 1979, the Operation Desert Storm in 1991 and the Operation Unified Protector in 2011; and finally, the only still ongoing struggle, the Syrian civil war.

Zusammenfassung

Mit den zunehmenden Herausforderungen auf der internationalen Bühne steigt auch die Notwendigkeit eine legitime Autorität der Staaten klar umzurissen, die in der Lage sind, Maßnahmen zu ergreifen. Die Bedrohung durch den internationalen Terrorismus ist nach wie vor vorhanden, und es ist notwendig, einen klaren Handlungsrahmen für gelegentliche humanitäre Interventionen zu erarbeiten. Der *gerechte Krieg*, als Erbe einer langen theologischen, philosophischen, und wissenschaftlichen Tradition, könnte eine der möglichen Lösungen für diese Angelegenheiten darstellen, und die legitime Autorität, die sich innerhalb dieser Tradition entwickelt, könnte der gegenwärtigen internationalen Gemeinschaft die Richtung weisen. Diese Masterarbeit analysiert die Entwicklung der legitimen Autorität im Laufe der Lehre des gerechten Krieges, sowie die Werke und die Theorien von Augustinus, Thomas von Aquin, und Francisco de Vitoria, bishin zum 20. Jahrhundert und einem der prominentesten zeitgenössischen Denkern, Michael Walzer. Ein wesentlicher Teil der Arbeit ist dem Konzept der *Responsibility to Protect* gewidmet, da dieses Konzept der gegenwärtige politische Bereich ist, indem der traditionelle gerechte Krieg am meisten wiedergespiegelt wird. Fünf historischen Beispielen, die im Verlauf der Arbeit beschrieben werden, veranschaulichen verschiedene geschichtliche Erfahrungen von internationalen Interventionen, die eine erhebliche humanitäre Schutzkomponente enthalten haben. Sie zeigen, wie weit geopolitische Umstände eine Rolle darin spielen, welche Interventionen vertretbar wurden, und welche nicht. Diese Illustrationen wurden in solcher Weise gewählt, damit sie relevante und interessante Vergleiche ermöglichen: die vietnamesische Intervention in Kambodscha und die tansanische Intervention in Uganda in 1978, die Einsätze *Desert Storm* in 1991 und *Unified Protector* in 2011, und schließlich der noch andauernde Kampf in Syrien.

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Mar 10 – Jun 10	STÄNDIGE VERTRETUNG DER TSCHJECHISCHEN REPUBLIK IN WIEN • Praktikum / OSZE	AT

SPRACHKENNTNISSE

Tschechisch	Muttersprache	Spanisch	Grundkenntnisse
Englisch	Sehr gut	Niederländisch	Grundkenntnisse
Deutsch	Sehr gut	Französisch	Grundkenntnisse