



The Moral Enigma of an Intervention in Syria: A Just War Analysis

Niamh Maria O'Sullivan

Abstract

Few issues in international politics have sparked more debate this year than the events unfolding in Syria. What began 17 months ago as peaceful marches seeking reform has brought Syria to the brink of a civil war that threatens to stop the Arab Spring dead in its tracks. As the death toll rises and accusations of crimes against humanity mount against Syrian President Bashar al-Assad and his ruling Ba'ath Party, many are calling for an armed intervention to put an end to the Assad regime's widespread human rights abuses. Finding the right way forward for Syria, however, is proving elusive and so we turn to philosophy and, in particular, to Just War theory for guidance. Though often criticized as a soft or unrealistic approach to foreign policy, principles like just cause and proportionality guide our way through the moral enigma that has confounded the international community since the uprising began. The answers are far from easy. As the battle for Syria rages on, the most ethical, and difficult, thing to do might just be to stay out.

Keywords: *Syria / Syrian internal conflict / Human rights / Military intervention / Just war theory*

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by Niamh Maria O'Sullivan*

"In the end, it is our failures, not successes, that force us back to the books"
Christopher Coker

Introduction

In the mere 20 months since the Arab Spring first erupted, the geopolitical map of the Middle East has undergone radical revision. A staggering four autocratic governments have already been toppled by mass uprisings and many believe that it is Syria's Bashar al-Assad and his ruling Ba'ath Party who will be next. Recent clashes between government forces and the Free Syrian Army throughout the country, particularly in Damascus and Aleppo, the country's largest city and commercial hub, have marked a further deterioration of the crisis. This, coupled with Kofi Annan's resignation in August as international mediator on Syria, has rendered efforts to find a diplomatic or political solution to the conflict even more difficult or, as Kofi Annan himself said, has made it "mission impossible".¹ As more than 200,000 refugees flee to neighbouring Turkey, Jordan, Lebanon and Iraq and the number of rebel strongholds throughout Syria increase, the fall of President Assad seems to have become a question of when rather than whether.

The regime has certainly been dealt a few harsh blows, but it would be wrong to conceive of these as mortal wounds just yet. Developments in the Syrian conflict deemed to be significant from the outside have proved before to have had little effect on Assad and his government's increasingly brutal crackdown of an uprising that began 17 months ago as peaceful marches. Accusations of crimes against humanity are piling up against the regime, including systematic torture and state-endorsed massacres. At the time of writing in August 2012 the death toll stood at 26,000 and though the debate surrounding the role of the international community in the conflict has intensified, it has so far failed to generate anything more than economic and diplomatic sanctions, as well as a lot of huffing and puffing by world leaders.

The dilemma of the Syrian conflict is how much longer the international community can sit by and watch as evidence of the regime's blatant disregard for human rights continues to mount. Those who subscribe to the Responsibility to Protect (R2P) doctrine insist that we have already reached the point where we are now morally obliged to intervene against the Assad regime, while others demand that Syria's national sovereignty be respected and that the international community stay out.

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* Niamh Maria O'Sullivan is an M.A. candidate at the Johns Hopkins University's School of Advanced International Studies (SAIS) and stagiare at the Istituto Affari Internazionali (IAI).

¹ "Can Lakhdar Brahimi end the Syrian conflict?", in *Al-Jazeera*, 19 August 2012, <http://www.aljazeera.com/programmes/insidesyria/2012/08/201281944722163546.html>.

With political debate at deadlock and the international community paralysed, it is at times like these that we, as Christopher Coker put it, are forced back to the books in search for guidance.² Though the choice between intervention and non-intervention requires careful strategic and political consideration, Just War theory argues that it is ultimately a moral decision. In matters of life and death, we are far more inclined to question our policy choices and, particularly in the case of Syria, we worry that our action or inaction could lead to an even greater loss of human life.³ Political realism may dictate that an ethical perspective will not get you far in international affairs, but there is in fact a great deal that we can learn from moral philosophy and in particular Just War theory when analysing potential approaches to Syria. Starting from the realist perspective that war is an inescapable part of human nature and, therefore, of state relations, Just War theory seeks to limit its excesses by establishing rules to prevent the disaster that unchecked warfare would inevitably bring about, much like what we are witnessing in Syria at the moment. For all the atrocities being carried out on both sides, what we ultimately abhor the most is the killing of the innocent and it is for this reason that war can never be good. It can, however, be just. For that, it needs a just cause (*jus ad bellum*), to be fought justly (*jus in bello*) and *jus post bellum*, a guarantee of a just peace once fighting ceases.⁴ A military intervention in Syria may be justified, but not without adhering to the strict guidelines laid out in Just War theory. Principles like right intention, competent authority, proportionality and last resort could provide the international community or, in certain cases, a smaller “coalition of the willing” with legitimate grounds for intervention but as we have seen in the last 17 months, the obstacles to a just solution in Syria are many and the answers are far from easy. It is with this in mind that we turn to our first criterion for a legitimate intervention in Syria - just cause.

1. Just cause?

Francisco de Vitoria, one of the founding fathers of international law, considered the only just cause for waging war to be in cases where harm had been inflicted.⁵ This concept was later broadened by Hugo Grotius to allow for action against gross violations of the laws of nature.⁶ When the Treaty of Westphalia in 1648 enshrined the nation-state as the supreme authority in international affairs, however, these principles were abandoned to history and inflicting harm was strictly interpreted as violating national sovereignty. After three centuries, the advent of universal human rights, heralded by the UN Declaration, revolutionized the debate on intervention, giving Just

² Christopher Coker, *Barbarous Philosophers. Reflections on the Nature of War from Heraclitus to Heisenberg*, London, C. Hurst & Co., 2010.

³ Michael Walzer, “On Intervention in Libya: A reply to Norm Geras”, in *Dissent*, 10 March 2011, <http://dissentmagazine.org/atw.php?id=397>.

⁴ David Fisher, *Morality and War. Can War Be Just in the 21st Century?*, Oxford, Oxford University Press, 2011.

⁵ Francisco de Vitoria, “On the Law of War, 1.3, sect. 13”, in Francisco de Vitoria, *Political Writings*, edited by Anthony Pagden and Jeremy Lawrance, Cambridge, Cambridge University Press, 1991, p. 302-303.

⁶ Hugo Grotius, “On the Law of War and Peace, bk. II, ch. XX, sect. XL(1)”, in Gregory M. Reichberg, Henrik Syse and Endre Begby (eds), *The Ethics of War. Classic and Contemporary Readings*, Malden, Blackwell, 2006, p. 407.

War theory a new platform from which it could set limits for modern warfare in the wake of the horrors of the Second World War.

In his seminal work on ethical warfare, *Just and Unjust Wars*, Michael Walzer argued that interventions on humanitarian grounds can indeed be just and good, asserting that any government responsible for massacres against its own people must automatically be stripped of its sovereign rights. Sovereignty is after all a mere representation of the individual liberties of its citizens. Once a government ceases to respect these rights, its defeat becomes morally necessary.⁷ Humanitarian intervention is hence justified against governments who engage in acts of war that “shock the moral conscience of mankind.”⁸ Despite having cast out all foreign media early into the uprising, Assad’s attempts to avoid the same negative coverage that contributed to the fall of his Tunisian, Egyptian and Libyan counterparts have failed to prevent images of murdered civilians and often children that shock our moral conscience from appearing on television screens across the world. Nor could he thwart human rights organizations in their efforts to expose the regime’s use of institutionalised violence. A Human Rights Watch report released earlier this month identified 27 detention centres it claims has housed tens of thousands of people since the revolt began, many of whom were allegedly subjected to more than 20 kinds of torture methods, including sexual violence, mock executions and the use of acid and fire. The group insists its documentation of these centres “clearly points to a state policy of torture and ill-treatment and therefore constitutes a crime against humanity.”⁹

The introduction of human rights as a key feature of international politics has awarded outside actors the right to judge the Assad regime’s treatment of its own people. Assad’s response to these accusations, meanwhile, has been one of staunch denial, as he continues to insist his country is under attack by outside terrorist cells. The regime’s use of indirect oppression via the government-armed militia, the *shabiha*, who are reported to have carried out the most notorious atrocities such as the Houla massacre in May 2012, has enabled Assad to deny any involvement in the worst of the bloodshed.¹⁰ As the death toll continues to rise, it would appear that widespread condemnation from the UN, the Arab League and the West, as well as a series of crippling economic and diplomatic sanctions, has failed to alter the regime’s behaviour. It is, after all, nothing new for the Assad dynasty to feel isolated from the international community.

The regime’s campaign of the last 17 months paints a vivid picture of a government that feels it can act with impunity. Both the scale and brutality of the crackdown is increasing, with little or no evidence of letting up. It would appear, therefore, that those seeking an external intervention have, at the very least, their just cause.

⁷ Michael Walzer, *Just and Unjust Wars. A Moral Argument with Historical Illustrations*, New York, Basic Books, 1977.

⁸ Ibidem, p. 107.

⁹ Human Rights Watch (HRW), *Torture Archipelago. Arbitrary Arrests, Torture, and Enforced Disappearances in Syria’s Underground Prisons since March 2011*, 3 July 2012, <http://www.hrw.org/reports/2012/07/03/torture-archipelago-0>.

¹⁰ Frank Gardner, “Syria: The military, the militias and the spies”, in *BBC News*, 28 May 2012, <http://www.bbc.co.uk/news/world-middle-east-18241830>.

Just War theory, however, is defined by the limitations it sets on warfare. Human rights abuses, even on a grand scale, are not enough to justify humanitarian intervention. St. Thomas Aquinas wrote that even a just war can be rendered “unlawful by a wicked intent.”¹¹ Moral philosophers are very careful not to provide *carte blanche* for states who may be overly eager to overthrow unpalatable governments before all non-violent alternatives have been explored. The burden of proof rests with those in favour of intervention.

In addition to a just cause, for which we can say there is ample evidence, *jus ad bellum* requires an intervening power to demonstrate that they have the right intention, meaning they wish only to prevent more loss of life and are not pursuing an alternative agenda. This right intention must be endorsed by a competent authority, whose decisions are respected by all members of the international community. Furthermore, the use of force must be the last resort in the intervening coalition’s efforts to stem large-scale human rights abuses. Lastly and most importantly perhaps, the intervention must adhere to the principle of proportionality, meaning that the harm caused by an intervention must be outweighed by its good outcome. A glance at the Syria debate is enough to appreciate how difficult, even impossible, it will be for an intervention to fulfil our remaining *jus ad bellum* conditions.

2. Right intention?

Divisions on Syria are deep. Following a fresh round of vetoes by Russia and China at the UN Security Council on the 19th of July, the UN has once again been prevented from imposing harsher measures against Assad. Though the resolution called for non-military sanctions, it also referred to Chapter VII of the UN Charter which, according to Russia and China, would pave the way for an eventual military intervention against the regime. The inability to achieve international consensus has led many to suggest that willing nations may soon conclude that all peaceful alternatives have been explored and an intervention can now be justified.¹² The disappointment of those countries in favour of the resolution was clear. In the words of the US Permanent Representative to the UN, Ambassador Susan E. Rice: “we and others increasingly will have no choice but to look to partnerships and actions outside of this Council to protect the Syrian people.”¹³

This assertion is reminiscent of the International Commission on Intervention and State Sovereignty’s 2001 report *The Responsibility to Protect* and its subsequent endorsement in 2005 by the UN General Assembly, which insists on the obligation of states to protect their own populations from gross and widespread human rights abuses and strongly condemns those that fail to fulfil this duty.¹⁴ Some commentators,

¹¹ Thomas Aquinas, “Summa theologiae, II-IIae:40: On war”, in Thomas Aquinas, *Political Writings*, edited and transl. by R.W. Dyson, Cambridge, Cambridge University Press, 2002, p. 241.

¹² Richard N. Haass, “Syria: Beyond the UN veto”, in *Al-Jazeera*, 20 July 2012, <http://www.aljazeera.com/indepth/opinion/2012/07/2012720115714757837.html>.

¹³ “West condemns Russia and China veto on Syria”, in *Al-Jazeera*, 20 July 2012, <http://www.aljazeera.com/news/middleeast/2012/07/2012719144626794335.html>.

¹⁴ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, Ottawa, ICISS, December 2001, <http://responsibilitytoprotect.org/ICISS%20Report.pdf>.

however, have taken R2P one step further and have asserted that failure to protect their own populations results in the delegitimization of such governments, and, therefore, this responsibility is passed on to outside forces which become morally bound to act, unilaterally if necessary, if UN Security Council resolutions are obstructed.¹⁵ Though similar in many ways, it is important not to confuse R2P of philosophers like Peter Singer with Walzer's justification for humanitarian intervention. While Just War theory emphasises the right of outsiders to intervene when necessary, proponents of this strand of moral philosophy instead seek to herald a new international norm - the moral conviction that national sovereignty can and should be overridden in order to protect the rights of the individual and not those who abuse them.¹⁶

Though well-intentioned, R2P does not enjoy international consensus, as is evident in the case of Syria where two veto-wielding Security Council members, China and Russia, are vehemently opposed to an intervention precisely on these grounds.

Having enjoyed a special relationship with the Syrian regime since the end of the Cold War, Russia in particular has strongly contested any suggestion of an intervention. Beyond any particular ties to Damascus, however, Russia's opposition demonstrates its long-standing normative position of non-intervention. Principles like R2P are dangerously open to interpretation for governments like Russia's or China's, who are known to rely on a certain amount of authoritarian control themselves. By standing by the Syrian government, the Kremlin is sending out the strong message to both the UN and the West that it will not approve an intervention on these grounds. It instead accuses the West of attempting to engineer the deposition of governments who fail to conform to its geopolitical agenda under a guise of human rights promotion.¹⁷

If it were indeed the case that Western countries were seizing the opportunity to sneak their imperial ambitions into Syria,¹⁸ we could hardly conclude that they had the right intention to lead a just intervention. Condemnation of the Assad regimes attacks on its own people, however, can hardly be viewed as a Western conspiracy. In the face of gross human rights violations, it is our natural moral intuition to try and stop it. Indeed, a powerful component of Just War theory is its domestic analogy, allowing us to use phrases like war crimes despite the absence of world government to enforce international law. When we regularly read reports of massacres of civilians at the hands of a foreign government, we feel compelled to condemn it as we would a crime occurring in our own country and those powerful states who have the power to prevent this from continuing are occasionally and not surprisingly tempted to play world police and bring these criminals to justice. This ability can be abused, and indeed it was in the 2003 US-led invasion of Iraq, but in the case of Syria there is little evidence that those in favour of an intervention are motivated by anything other than the desire to protect the civilian population from the criminal acts of the Assad regime. It is for this reason that we can comfortably say that there is a right intention behind the desire for an

¹⁵ Peter Singer, *One World. The Ethics of Globalisation*, New Haven, Yale University Press, 2002.

¹⁶ *Ibidem*.

¹⁷ Konstantin von Eggert, "Why Russia is standing by Syria's Assad", in *BBC News*, 15 June 2012, <http://www.bbc.co.uk/news/world-europe-18462813>.

¹⁸ Michael Busch, "Questioning Intervention in Syria: A Response to Anne-Marie Slaughter", in *Dissent*, 29 February 2012, <http://dissentmagazine.org/atw.php?id=697>.

intervention. What is strongly lacking, however, is political will and consensus, particularly in the UN, as the antagonism between the two Security Council blocs obstructs any agreement on a way forward in Syria.

3. Competent authority?

This brings us to the third prerequisite for a just intervention - competent authority. As tensions flare at the Security Council, Russian and Chinese officials are well aware that the United States and its allies may choose to act outside the confines of international law but they are determined not to give them the satisfaction of a UN resolution.¹⁹ Endorsement by the ultimate international authority, the UN, continues to elude interventionists and while R2P dictates that this is not necessary in the face of flagrant violations of human rights, it would be a mistake to discount the UN to such an extent. Though an imperfect instrument often held captive by internal squabbling, the UN's approval is nevertheless still highly desirable when pursuing a policy of intervention.²⁰ The US and others surely would not be seeking to pry it from Russia and China's hands so forcefully if this weren't the case.

In the absence of UN approval, David Fisher maintains that intervention can still be justified by a competent authority but, in true Just War fashion, only according to a graduating scale that depends on the degree of international consensus and the nature of the impending crisis.²¹ The mostly widely renowned and respected of such cases is NATO's operation in Kosovo in 1999. Strong international support, coupled with the "grave and immediate" threat to Kosovar Albanians made this a just intervention, even without explicit UN authorization.²² The same, regrettably, cannot be said for Syria. Calls for intervention have failed to attain anywhere near this level of consensus, and while the evidence of human rights abuse is compelling, Assad's measures are not on the level of Serbian ethnic cleansing. We are therefore obliged to revert back to the UN in our search for approval by a competent authority, which is not likely to happen any time soon.

4. Last resort?

Contrary to R2P, therefore, Just War theory dictates that an inability to reach consensus ought to stay the hand of intervention. Our next stipulation, last resort, brings us to a similar conclusion. Some point to Assad's and the Free Syrian Army's unwillingness to adhere to the conditions of the now failed Annan peace plan as evidence that we have already reached the point of no return.²³ This may be tempting but it would be wrong for countries like the United States to confuse disgust and frustration with a genuine lack of alternatives. The Arab League and the West have already provided much support for the rebels, both financially and diplomatically, but

¹⁹ Konstantin von Eggert, "Why Russia is standing by Syria's Assad", *cit.*

²⁰ David Fisher, *Morality and War*, *cit.*

²¹ *Ibidem.*

²² *Ibidem*, p. 68.

²³ Richard N. Haass, "Syria: Beyond the UN vote", *cit.*

all-out military support may be premature. A last resort implies that nothing stands between Assad and the complete oppression of both the opposition and innocent civilians. But something is standing rather ostensibly in his way - the Free Syrian Army.

We cannot ignore the fact that, despite the killing and torture at the hands of Assad's regime, this is a two-sided battle. Recent struggles between government forces and the Free Syrian Army in Damascus and now Aleppo, as well as on the border with Iraq and Turkey, are clear evidence that the civil war that has been threatening to break out for over a year has finally erupted. As a result, the purpose of an intervention in Syria would no longer be in the name of human rights alone but also to assist the opposition as it overthrows the regime.

Like its various counterparts throughout the Arab world, the Syrian conflict is a struggle for democratic freedom. A strictly non-intervention perspective, as outlined by John Stuart Mill, would insist that the rebels live or die by their own efforts²⁴ and while Just War theorists are not quite as tough as this, they nevertheless maintain that the rebels be given the chance to win on their own before we can justify military intervention.²⁵ Once the point is reached where the rebels are defeated and the regime is engaging in mass punitive measures, torture and murder against a defenceless opposition, we can say that war is indeed a last resort and thus an intervention, even by an alliance of states, is not only justified but indeed lawful.²⁶ As battles rage on throughout the country, however, we have to concede that this critical stage has not yet arrived and it is therefore morally right that we wait and see how the conflict unfolds.

5. Proportionality?

The insistence on a proportional use of force is a strong component of not only *jus ad bellum* but also *jus in bello*. From Vitoria to Walzer no respected moral philosopher has advocated an intervention in the absence of reasonable expectations of success.²⁷ Proportionality is a consideration both before and during a war and the balance between good and harm represents a huge constraint on world leaders and military commanders.²⁸

Despite the media circus surrounding every defection from the regime, there have been far fewer high-level defections than in other Arab Spring revolts, which tells us that there are many who still consider sticking with the regime to be the best option. The danger with a military intervention in Syria, compared with Libya, is that Assad enjoys far more popular and institutional support than Gaddafi did. Furthermore, Assad has

²⁴ John Stuart Mill, "A Few Words on Non-Intervention", in *Fraser's Magazine*, December 1859, p. 766-776, available in *Foreign Policy Perspectives*, No. 8 (1987), <http://www.libertarian.co.uk/lapubs/forep/forep008.pdf>.

²⁵ Michael Walzer, "From Subject to Citizen", in *Dissent*, 7 March 2011, <http://dissentmagazine.org/atw.php?id=392>.

²⁶ Norman Geras, "Resistance and Intervention", in *Normblog*, 8 March 2011, <http://normblog.typepad.com/normblog/2011/03/resistance-and-intervention.html>.

²⁷ Michael Walzer, *Just and Unjust Wars*, cit.

²⁸ David Fisher, *Morality and War*, cit.

substantially more military and paramilitary resources at his disposal.²⁹ The regime has enough fire power to at least temporarily fight off an invasion and severely punish collaborators in the meantime. It would take far more than airstrikes to bring Assad down. In order to protect the civilian population, the UN or a coalition of the willing would need boots on the ground³⁰ and be willing to suffer far heavier losses than in Libya or Kosovo. A greater loss of human life would be the price of an intervention in Syria. Considering the regime's latest threat to use chemical weapons against intervening forces, we are forced to conclude that, from the perspective of proportionality, an intervention is highly likely to intensify the conflict and increase the death toll.

Conclusion

Currently, intervention in Syria fails to fulfil all five conditions for *jus ad bellum*. A just cause and right intention do not suffice for a just intervention. Though we conclude that a military intervention cannot be justified under the current circumstances in Syria, this is in no way to devalue the deep level of suffering endured by the Syrian people and the extent of the crimes being committed by the regime. As Richard Falk says, the conflict in Syria represents the tragic space between the unacceptable and the impossible.³¹ Despite its hallmark *Might does not make Right*, Just War theory appears to us almost as callous as classical realism as we abandon the weak to suffer what they must and allow the strong to do what they can.³² The fall of the Assad regime remains desirable nonetheless, and it is for this reason that many continue to push for a military intervention in Syria on humanitarian grounds. Though not justified, such an intervention could gain popular consensus if it were able to guarantee it would leave a just peace in its wake as outlined in *jus post bellum*. This would mean a sustained post-conflict international commitment to prevent sectarian clashes between Syria's ethnic and religious groups. Many fear a potential Lebanonisation in the political vacuum of a post-Assad Syria, which must be prevented at all costs.³³ Guaranteeing the safety of minorities is therefore paramount in achieving a just peace. Abandonment following an intervention is not an option.³⁴ It is precisely in this light, and in an implicit following of the Just War tradition, that critics of the principle of R2P emphasize the importance of other principles including the responsibility while and after protecting.

In matters of such complex gravity as the Syrian conflict, we can never know for sure. The purpose of Just War theory is to provide us with guidelines and principles to follow in these impossible dilemmas but ultimately all we can do is, to put it bluntly, make the best stab at it we can and hope our decisions will not increase the suffering of the

²⁹ Richard Falk, "Syria: the tragic space between the unacceptable and the impossible", in *Al Jazeera*, 31 May 2012, <http://www.aljazeera.com/indepth/opinion/2012/05/20125318233126386.html>.

³⁰ Michael Walzer, "Syria", in *Dissent*, 9 March 2012, <http://dissentmagazine.org/atw.php?id=706>.

³¹ Richard Falk, "Syria: the tragic space between the unacceptable and the impossible", *cit.*

³² Thucydides, *History of the Peloponnesian War*, translated by Richard Crawley, chapter 17, <http://classics.mit.edu/Thucydides/pelopwar.mb.txt>.

³³ Tarak Barkawi, "The Plague of War in Syria", in *Al-Jazeera*, 30 April 2012, <http://www.aljazeera.com/indepth/opinion/2012/04/2012429133733470159.html>.

³⁴ Michael Busch, "Questioning Intervention in Syria: A Response to Anne-Marie Slaughter", *cit.*

innocent.³⁵ Just War theory is ultimately a question of necessity.³⁶ Is an intervention in Syria absolutely necessary? The short answer is, not yet. However this is not to say we should stand idle. Though the circumstances surrounding the Syrian conflict fail to justify a military intervention, there are other non-violent forms of intervention that we can and ought to pursue. Peaceful means of undermining the Assad regime are very much justified, such as stepping up economic and diplomatic sanctions, providing non-military support for rebel fighters, sending relief aid to the victims caught between the fighting and assisting refugees forced to flee from their homes and those accommodating them.³⁷

We do indeed have a responsibility to demonstrate that the gross human rights violations occurring in Syria will not go unpunished but for now at least, we leave the Assad regime to meet its fate at the hands of its own people. Military intervention or no, things in Syria are going to get worse before they get better and it may be a long time before justice is served.

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³⁵ Norman Geras, "Resistance and Intervention", *cit.*

³⁶ Michael Walzer, "From Subject to Citizen", *cit.*

³⁷ Benjamin A. Valentino, "The True Costs of Humanitarian Intervention", in *Foreign Affairs*, Vol. 90, No. 6, (November/December 2011), p. 60-73, <http://people.umass.edu/charli/docs/ValentinoFA.pdf>.

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Istituto Affari Internazionali

Via Angelo Brunetti, 9 00186 Roma
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