

Operation Just Cause?

The American Invasion of Panama as a Just War (1989)



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Introduction

The United States has had a long history of military and economic intervention in Latin America. In this context, the invasion of Panama in 1989 was no exception. Strategically speaking, Panama is of paramount importance to the United States. With its canal, the Isthmus connects the Atlantic Ocean to the Pacific Ocean for all maritime traffic, including military vessels. Moreover, control over the canal means control over said traffic, as well as the movement of goods and people that come through it. Given the United States' geostrategic position, controlling the Isthmus seemed almost imperative.

The country gained independence with help of the U.S. in 1903, after which a strip of land was ceded to the U.S. for the construction and management of the Panama Canal. For nearly a century, the Canal Zone was sovereign U.S. territory until it was fully transferred to the Panamanian authorities in 1999. Although in general U.S.-Panamanian relations had been relatively friendly, a surge of Panamanian nationalism and the desire to have full sovereignty over the Isthmus led to the rise of the populist regime of Omar Torrijos (1968-1981). The *de facto* leader of the country appealed to the international community in order to pressure the United States into signing the Torrijos-Carter Treaties in 1977, which would transfer control over the Canal Zone to the Panamanian authorities (Guevara Mann, 1996).

It was not until the subsequent regime of Manuel Noriega that U.S.-Panamanian relations deteriorated into explicit hostility. Although relations seemed to remain friendly thanks to Noriega's assistance in "various U.S. covert operations in the region" (Scranton, 1992: 347, in Antizzo, 2010: 41), opposition within the U.S. Federal Government grew over the years. After three years of deteriorating relations between the two states, the decision was made to launch Operation Just Cause in order to remove Noriega from power in 1989. The justifications, according to President George H. W. Bush, were multiple. Namely, "to safeguard the lives of Americans, to defend democracy in Panama, to combat drug trafficking, and to protect the integrity of the Panama Canal Treaty" (Bush, 1989).

The case of Operation Just Cause is a particularly interesting occurrence, since a United Nations Security Council (UNSC) resolution was missing, and so there was no unanimous, international approval for the war. Although the UNSC met on various occasions before the U.S. invasion, it failed to produce a resolution on the issue. Namely, in the two Council meetings in 1989 (April 28th and August 7th), talks were limited to Panama accusing the U.S. of meddling in Panamanian internal affairs and violating their territorial integrity, whereas

the U.S. stressed their concerns about the unfairness of the 1989 elections in Panama and general hostility towards American forces in the Canal Zone (United Nations, 1989b: 173-174). Shortly after U.S. action in Panama, the UNSC was summoned on the request of Nicaragua (United Nations, 1989a) to condemn the war as “an unlawful act of aggression” and 14 out of 19 member-states present did so, whereas an additional two considered it “unjustified” and only two other states supported the U.S. (Weiss & Hubert, 2001: 66). In response, U.S. representative Thomas Pickering replied that U.S. actions were fully taken in self-defense (Ibid., 2001: 66). Nonetheless, the outrage in the international community was clearly visible after a General Assembly resolution resulted in 75 member-states condemning U.S. action in Panama as a “flagrant violation of the [U.N.] Charter and international law” (U.N., 1989b: 175). Only 20 members voted against the resolution and 40 abstained from voting.

The question then becomes whether the case can be justified in any other way, such as by way of approaching the case from the perspective of Just War Theory. In this regard, the research question that will be answered in this thesis is:

Is the American invasion of Panama (1989) justifiable according to Just War Theory?

By answering this question, it will become clear whether the antecedents that occurred in Panama justified the U.S. invasion. The hypothesis that was assumed during the investigation is that, although the situation in Panama under Noriega was tumultuous and violent, it did not give the U.S. Government a justification for unilaterally launching a military invasion into Panama. This thesis argues that the American invasion of Panama cannot be justified according to Just War Theory, as the U.S. did not have a just cause to intervene in Panama as per the criteria that Just War Theory lays out. Namely, according to the definitions in international law, there was no case of an ‘armed attack’ that violated American sovereignty, nor was any attack ‘imminent’. Moreover, although the U.S. Government had a just cause due to a humanitarian crisis in Panama, it had no right to act unilaterally without permission from the United Nations.

This thesis comprises four chapters. In the first chapter, the fundamental concepts and theories related to Just War Theory are identified, which will establish the scope and discussion for the case study. The second chapter establishes the methodology of this

investigation, namely the method of process tracing, which will define the framework for the case study. Consequently, the third chapter will be dedicated to the historical context of Panama and U.S.-Panamanian relations. Lastly, the fourth chapter is designated for the case study of the U.S. invasion of Panama.

1. Theoretical Framework

1.1 Just War Theory

1.1.1 Historical antecedents

While it may seem that Just War Theory is a relatively young concept, people have thought about morality and war across the ages. Regardless of whether anybody was even conscious of these concepts, one could still have followed certain patterns of moral conviction with regard to violence and war. For example, one could choose to only utilize force for the purpose of self-defense, while abstaining from aggression.

As Michael J. Butler (2003: 232) points out, the call to limit violence in war can be traced back as far as the Old Testament. Various books of the Bible contain texts that call for the limitation of violence and destruction in war (Deuteronomy 2), urge people to offer appeals to God so that he ends war (Psalms 46, 120), and condemn atrociousness and barbarity in war (Amos 1-2). Later, Plato also wrote about his view on the rules of war in *The Republic* (Plato, 1974). Thus, thoughts about the connection between large-scale violence and morality were already found in Biblical times, as well as in classical Greece.

Actual Just War Theory can find its origins in the likes of two notable Christian theologians, namely Augustine of Hippo and Thomas Aquinas. First of all, Augustine introduced his notion of “the Two Cities”, which states that justice can solely be achieved through ethical statecraft (Phillips, 1984). He then offers a set of rules that should be adhered to in war, namely that war “must be led by rulers of nations (who by virtue of their position are obliged to maintain peace) who prosecute war to revenge wrongs and undo injustices but never in the spirit of vengeance” (Augustine, 1963, in Butler, 2003: 231). Thus, according to Augustine, a war could only be just if these requirements were met.

Working from Augustine’s perspective, Thomas Aquinas gave a more refined statement about just wars in his *Summa Theologica* (Aquinas, 1952). In this work, he proposed three conditions that would make war just. First, the state must receive legitimate authority from

the individuals it governs; secondly, a just cause is needed to start a war; and thirdly, the warring party must have rightful intentions, so that the war is only fought for good purposes.

Augustine and Aquinas established the foundations from which modern Just War Theory was developed (Butler, 2003: 232). After the concept was refined throughout the centuries, modern Just War Theory became divided in two parts: the consideration to initiate a war (*jus ad bellum*), and the ethical way of combat within wars (*jus in bello*). Since this thesis is looking for the possible moral justifications for the initiation of a war, only the concept of *jus ad bellum* is relevant.

A major development in Just War Theory was the institution of the League of Nations after the First World War and later the United Nations after the Second World War. The League of Nations (L.N.) was founded in 1920 as a result of the Paris Peace Conference and had the following intentions:

“to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another” (League of Nations, 1919: 1).

Although the L.N. did not consist of many member-states and did not fulfill the commitment of keeping a peaceful international order, it did lay the foundations of the modern framework of international law that was later established through the United Nations (U.N.).

After the Second World War, the U.N. replaced the L.N. as the international organization that was designed to help to maintain world peace. From that point onwards, many have considered the U.N. Charter to be the leading document in assessing the legitimacy of the use of force, with Article 2(4) being the most important rule: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (United Nations, 1945). Moreover, Article 51 makes an exception to the rule: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the

United Nations, until the UNSC has taken measures necessary to maintain international peace and security” (United Nations, 1945). Thus, the U.N. framework of international law does not intend to prohibit all forms of the use of force imaginable, but rather to prohibit aggressive attacks against sovereign nations (Scheffer, 1989: 3).

During and after the Cold War, the ‘regime’ of the U.N. Charter has served as the main framework that regulated the use of force in international politics and protected the sovereignty of both stronger and weaker states. However, many times international law has been put aside in the decision to resort to war as well (Scheffer, 1989: 2; Weiss & Hubert, 2001: 5), as several wars and armed conflicts occurred during and after the Cold War. In the words of former U.N. Secretary-General Boutros-Ghali, “The time of absolute sovereignty ... has passed; its theory was never matched by reality” (Boutros-Ghali, 1995: 44).

David J. Scheffer (1989: 1) explains that in the 1980s a great debate emerged around the use of force in international politics and international law due to the occurrence of several U.S. military interventions into other states’ territories in the name of self-defense, spreading democracy, and combating terrorism. The question for the U.S. thus became how it would “promote democracy overseas, combat terrorism, and remain faithful to the rule of [international] law” (Scheffer, 1989: 1). All in all, various conflicts were justified through different interpretations and valuations of Article 2(4) and 51, with some governments ascribing more value to the former and others to the latter.

It was not until 2005 that the U.N. provided a solution to this issue. Namely, in that year an agreement was reached at the United Nations World Summit that states do not only have the *right* to come to a people’s defense, but that it is also a *duty* of the international community to come to its defense when needed. Namely, in the U.N. World Summit Outcome Document it is stated that, first of all, “[e]ach individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity” (United Nations, 2005: 31). Secondly, all member states “are prepared to take collective action, in a timely and decisive manner, through the UNSC, [...] should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity” (United Nations, 2005: 31). The R2P doctrine became relevant in light of the NATO intervention in Libya in 2011. This was the first case in which the UNSC voted on allowing the international community to protect Libyan civilians from any attacks committed by the regime of Muammar Gaddafi. Consequently, a no-fly zone was established above the country

and various states participated in supporting opposition forces against the Gaddafi government. However, it is still difficult for the UNSC to agree on when to intervene in conflicts in spite of the agreements made at the World Summit of 2005 (Frowe, 2016: 95). In the case of Libya, multiple important members, such as China and Russia, abstained from voting on the resolution.

1.1.2 Just Cause and other criteria for Just War

In order to determine whether the initiation of military force is justifiable according to Just War Theory, one would first need to assess whether the cause for going to war is just. As mentioned earlier, the law that governs this consideration in Just War Theory is *jus ad bellum*, or 'right to war' in Latin. Although after various centuries a general agreement has been reached about what *jus ad bellum* constitutes, modern Just War theorists still have various disagreements about how some of its rules should be interpreted (Frowe, 2016: 52). These disagreements are considered when discussing the individual Just War criteria in this section.

The U.N. Charter limits the instances in which the use of force is justifiable to a number of two: first, in the case of international peace enforcement that is authorized by the UNSC, and secondly, in the case of self-defense against aggression (Reus-Smit, 2005: 350). As mentioned before, many consider the U.N. Charter to be the leading document in assessing the legitimacy of the use of force, with Article 2(4) being the most important rule. Others argue, however, that the U.N. Charter is easy to work around by interpreting it in different ways, due to the "ambiguous and imprecise" wording, but that does not mean that it is entirely disrespected or ignored at all times (Warren & Bode, 2014: 10).

At any rate, the various armed conflicts that have occurred with the U.N. Charter framework in place provoke some interesting thoughts. The problem that arises within the U.N. *jus ad bellum* framework is that actions are often either justified *or* censured by interpreting the meaning of the Charter in different ways. Especially in light of U.S. intervention during and after the Cold War, such as in Grenada, Lebanon, Libya, Nicaragua, and other places, the question became whether motives such as spreading democracy and 'protecting national security' justified military action into sovereign countries (Scheffer, 1989: 1). In order to provide a solution to these issues, it is important to look at the exact meanings and definitions of concepts such as sovereignty, armed conflict, and imminent threat.

Apart from the U.N. Charter, the notion of Just War Theory also exists as an academic concept. According to the general consensus among Just War theorists, *jus ad bellum* constitutes of multiple general criteria that must be met before war as an enterprise is morally justifiable. This sub-chapter intends to clarify these criteria and their disagreements among theorists. As laid out by Frowe (2016), the criteria for *jus ad bellum* are seven fold:

1. The presence of a just cause;
2. Proportionality;
3. A reasonable chance of success;
4. Legitimate authority
5. Right intention;
6. Last resort;
7. A public declaration of war.

Only the first criterion – just cause – will be discussed in detail here, as the scope of this thesis is limited to said criterion. The presence of a just cause as a criterion for Just War Theory can be divided further into four categories. Namely, a state may have a just cause to intervene when its sovereignty is violated, when an attack on its sovereignty is imminent, to punish another party for past violations of sovereignty, and when a humanitarian disaster occurs.

Defending sovereignty

As Frowe (2016: 53) explains, a just cause for war is most commonly defined as aggression which threatens the sovereignty of a state. More precisely, the U.N. Charter defines it in Article 2(4): “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (United Nations, 1945). As mentioned earlier, Scheffer (1989: 3) explains that this does not prohibit all forms of force, as the right to self-defense is guaranteed by Article 51: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the UNSC has taken measures necessary to maintain international peace and security” (United Nations, 1945).

However, it is difficult to find a consensus on a clear definition of the concept of sovereignty. As Nico Schrijver (2000: 69-70) sums up, many scholars see sovereignty as one of the most sensitive concepts in international law and disagree with one another on its relevance. For instance, Helmut Steinberger (1987: 397) refers to sovereignty as “the most glittering and controversial notion in the history, doctrine and practice of international law” and Eli Lauterpacht (1997: 141) called it a “word which has an emotive quality lacking meaningful specific content”. On the other hand, Ian Brownlie (1998: 289) sees the concept as “the basic constitutional doctrine of the law of nations” and Alan James (1986: 34) views sovereignty as “the one and only organising principle in respect of the dry surface of the globe [...] being divided among single entities of a sovereign, constitutionally independent kind”.

The modern meaning of sovereignty that the U.N. assumes came forth from the 1933 Convention on the Rights and Duties of States in Montevideo. As codified, three main requirements are to be met in order to be a sovereign state: “a permanent population, a defined territory, and a functioning government” (Weiss & Hubert, 2001: 6). Looking back at the U.N. Charter, the last two criteria are included in Article 2(4) in the form of “territorial integrity” and “political independence” (United Nations, 1945). Moreover, Article 2(1) of the U.N. Charter (1945) states that “[t]he Organization is based on the principle of the sovereign equality of all its Members”, which means that any armed attack on a U.N. member-state is also by definition a violation of its sovereignty.

Not only gives an attack against a state’s sovereignty the right to self-defense, but it could also be applied for coming to the aid of other states whose sovereignty is violated or endangered by others’ use of force (e.g. in the case of two or more states having signed mutual defense treaties). This idea comes forth from Chapter VII of the U.N. Charter, in which the possibility of mutual assistance between member-states is named (United Nations, 1945: Art. 49), and in which the right to not only individual, but also *collective* self-defense is guaranteed under Article 51.

Lastly, it is important to know what exactly constitutes an ‘armed attack’. Interestingly enough, the U.N. Charter does not provide a clear definition of the term. However, in April 1974, the General Assembly adopted a definition for the term ‘aggression’ through Resolution 3314. The resolution stated that “[a]ggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this

Definition” (United Nations, 1974: Annex Art. 1). Some argue that an armed attack is an example of aggression, since the French translation of the Charter uses the words *agression armée* (armed aggression). However, the International Court of Justice ruled in the Nicaragua v United States of America case of 1986 that, if a definition of ‘armed attack’ was found, it was not part of treaty law, since no definition is provided in the Charter (Zemanek: 2013: para. 1). Thus, the most relevant definition is that of the term ‘aggression’, since it is not particularly clear what exactly constitutes an armed attack.

Pre-emption

The second possible just cause which is related to responding to threats of violating a state’s sovereignty is pre-emption. Namely, according to Frowe (2016: 75), resorting to war can be considered justifiable if an attack on the state’s sovereignty is imminent. This will then give permission to initiate force against the aggressor. The important question in this issue is how and when a threat can be determined to be imminent. Moreover, pre-emption must not be confused with prevention. In fact, a preventive war could be initiated before an imminent threat to a state’s sovereignty is present, as it “aims to forestall the emergence of a potential long-term military threat” (Warren & Bode, 2014: 24). Thus, “*prevention* and *preemption* [...] relate to different standards of ‘imminence’ – the former looking to longer-range and less definitive threats, while the latter is ‘conscious’ of those more immediate and concrete” (Warren & Bode, 2014: 23).

Although the U.N. Charter only grants the right to self-defense in the face of a direct attack on a nation’s sovereignty, various international jurists in the past considered pre-emption (and to some extent prevention) as legitimate justifications for an armed response. For instance, Alberico Gentili (1995: 173) contended that “[a] defense is just which anticipates dangers that are already meditated and prepared, and also those which are not meditated, but are probable and possible”. However, he argued that “a just cause for fear is demanded; and suspicion [of an attack] is not enough” (Gentili, 1995: 62). Moreover, Gentili (1995: 66) argued that pre-emptive action is only justified when the perceived threat “was accompanied with action”. Furthermore, Hugo Grotius (1995: 173) argued that a pre-emptive response is only justified when “the danger is immediate and certain”, meaning that a state could not act solely on its own assumptions. Lastly, Emmerich de Vattel (1995: 249) considered that a state is right in acting pre-emptively in “direct ratio to the degree of probability attending it, and to the seriousness of the evil with which one is threatened”.

The question whether pre-emption is justified depends on the interpretation of Article 51 of the U.N. Charter. First of all, it is important to point out that Article 39 permits the UNSC to (authorize others to) act pre-emptively in response to “any threat to the peace, breach of the peace, or act of aggression” (United Nations, 1945). However, the question whether pre-emptive action can be taken unilaterally depends on the interpretation of Article 51. As Warren & Bode (2014: 28) explain, Article 51 can be interpreted in a restrictive sense and in a broader sense. On the one hand, the ones who view the Article in a restrictive sense claim that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if” – *and only if* – “an armed attack occurs” (United Nations, 1945). On the other hand, if we look at the French version of the Article, it translates to: “in the case where a member ... is the object of an armed attack” (Warren & Bode, 2014: 29). In this sense, a state can be the object of an attack before the actual attack has been commenced. Therefore, Article 51 can be interpreted to justify pre-emptive military action as well.

The requirements of an imminent threat were first laid out by Daniel Webster in response to the *Caroline incident* of 1837 – a pre-emptive killing of two U.S. citizens, who aided a Canadian independence movement, by British troops. Namely, Webster (1842: para. 3) told the British Government that acts of pre-emptive self-defense need to have the requirements of an attack that is “instant, overwhelming, leaving no choice of means, and no moment for deliberation”. However, it is argued that in modern times “the concept of imminence can no longer be viewed only in temporal terms but must take account of the wider circumstances of the threat, including such factors as the gravity of the harm which would be inflicted, the capability of the party threatening the attack and the nature of the attack which is threatened” (Greenwood, 2011: para. 51). In this sense, Elisabeth Wilmshurst (2005: 9) suggests that “the criterion of imminence requires that it is believed that any further delay in countering the intended attack will result in the inability of the defending State effectively to defend itself against the attack”.

Punishment

A third possible just cause is punishment. For example, classical thinkers such as St Augustine and Cicero saw punishment as a legitimate cause for war. St Augustine (1963: Ch. 7) contended that wars were only legitimate if they punished aggression. Additionally,

Cicero (c. 51 BC/2000: 212) wrote that “only a war waged for revenge or defence can actually be just”.

Nowadays, most Just War theorists do not think that war is justified if it *only* has a punitive aspect. As Frowe (2016: 84) explains, punitive wars can generally be considered just in two occasions: first, in case of retribution, or making the aggressor pay for its crimes and restore justice. Secondly, punitive wars can be just in the case of deterrence, or to make sure the aggressing state or other states do not commit acts of aggression in the future. On the other hand, some think that punitive wars are not just, because having committed a crime does not justify any other state to inflict punishment, and because innocents may very well be affected by punishing the initial aggressor.

Humanitarian intervention and defending democracy

Lastly, the fourth possible just cause for military action is humanitarian intervention. In this case, the moral reasoning would be that it is legitimate to come to the defense of others when they are aggressed against. Especially after the Cold War ended, several interventions took place in countries where a government committed crimes against a group of its own citizens, such as in Kosovo, or in case of a civil war, such as in Libya.

However, the concept of humanitarian intervention raises a large discussion within the U.N. framework of international law. Namely, the difference with regular defense against an armed attack is that a humanitarian intervention means that the sovereignty of a nation is violated by the other state that intends to protect the victims. The argument against humanitarian intervention is then that it violates Article 2(4) of the U.N. Charter. Usually, the emphasis of *jus ad bellum* is only put on the defense of a state’s own sovereignty, which often results in self-defense being seen as the only justification for war.

The question of humanitarian intervention again comes down as to how Article 51 is interpreted. Namely, the Article grants the right to self-defense to states, not only for individual states, but also for the collective of U.N. member-states. Thus, humanitarian intervention would seem a valid act according to international law. Two questions that arise, however, are whether the notion of humanitarian intervention can be abused in order to pursue a different agenda, and whether the right to come to others’ defense is a unilateral right, or that it requires the approval of the UNSC. In light of the first question, many concerns have been voiced about the real intent of various humanitarian interventions. Two scholars describe the dichotomy the following way:

“To its proponents, it marks the coming of age of the imperative of action in the face of human rights abuses, over the citadels of state sovereignty. To its detractors, it is an oxymoron, a pretext for military intervention often devoid of legal sanction, selectively deployed and achieving only ambiguous ends. As some put it, there can be nothing humanitarian about a bomb” (Tharoor & Daws, 2001: 21).

Regarding the second question, the debate is still ongoing about whether there are “limitations on expanding the meaning of ‘international peace and security’ to include humanitarian crises” and whether a humanitarian disaster can nullify a state’s claim to sovereignty (Weiss & Hubert, 2014: 23). Although Article 2(7) prohibits “the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state” (United Nations, 1945), from the 1990s onward we saw a broadening of the definition of “a threat to international peace and security” (Weiss & Hubert, 2014: 9). In 1991, the UNSC condemned “the repression of the Iraqi civilian population in many parts of Iraq” (United Nations, 1991: 31) and censured attacks on civilians in countries such as Bosnia and Herzegovina, Kosovo, and Sierra Leone (Weiss & Hubert, 2014: 9). Ultimately, with the recent development of the Responsibility to Protect doctrine, the U.N. has reinforced the idea that a humanitarian disaster is a just cause for military intervention by another state when authorized by the UNSC.

1.2 Alternative theoretical frameworks

1.2.1 Pacifism

Another way one can morally assess the decision to go to war is through the notion of pacifism. As Cheyney Ryan (2013: 980) describes, pacifism can be divided into two main forms: personal pacifism and political pacifism. The school of thought around personal pacifism is that “the taking of human life [is] prohibited without qualification, in the same way that acts like the sexual violation of children are prohibited without qualification” (Ryan, 2013: 980).

Political pacifism is a similar idea to personal pacifism, but it is applied to actions that surpass those of the individual. In doing so, political pacifism rejects war and sees it as illegitimate at any rate (Ryan, 2013: 980). No war can therefore be legitimate or just, which illustrates the main difference with Just War Theory. Pacifists may also accuse Just War theorists of being able to justify any war with their theory. For instance, British philosopher Bertrand Russell once stated: “The justification of wars of self-defense is very convenient,

since so far as I know there has never yet been a war which was not one of self-defense” (Russell, 1915: 138).

If this theoretical framework is to be taken for this investigation, the answer to the research question would be found quickly. The doctrine of pacifism rejects all wars, regardless of the possible justifications that can be used to legitimize them. Therefore, the American invasion of Panama in 1989 would not be justifiable. Thus, it would seem that Just War Theory is a more apt theoretical framework for this investigation than pacifism.

1.2.2 Utilitarianism

A third framework with which wars can be morally justified is utilitarianism. William H. Shaw (2011: 382) states that this framework is best seen as a refined version of the consequentialist notion that it is only morally justifiable to go to war if it has better results than other options do. In contrast, he defines utilitarianism as: “It is morally right for a state to wage war if and only if no other course of action available to it would result in greater expected well-being; otherwise, waging war is wrong” (Shaw, 2011: 382). So, according to utilitarianism, it is not important what the result for the warring state would be, but rather what the outcome would be in terms of greater general well-being.

When using the utilitarian framework, various questions and problems arise. For instance, what is understood as general well-being? What are the criteria with which this is measured? Are they just material criteria or also psychological criteria, such as happiness? Is it possible to objectively measure happiness? Who determines which criteria are important and which are not? Moreover, how could one accurately predict the outcome of a war? While there is a debate about these and other relevant questions, utilitarianism seems a far less refined and concrete framework to use for this investigation than Just War Theory. Moreover, the result of so many uncertainties in the utilitarianist framework is that it is easy to justify any war or “intervention” under the pretense that it would be better for general greater well-being than doing nothing; and the right to self-defense would essentially be non-existent under such a framework. Therefore, Nicholas Wheeler (2000: 286) argues that humanitarian interventions must be authorized by the UNSC to be legitimate.

2. Research Design

2.1 Research methods

The goal of this investigation is to find out how the American invasion of Panama (1989) can be put into perspective through the framework of Just War Theory. In order to achieve this goal, the investigation of this thesis will test a theory based on the main criterion of the Just War theoretical framework. Thus, the case of the American invasion of Panama will be analyzed in accordance with the Just War criterion 'the presence of a just cause' and the concepts elaborated in the theoretical framework of the first chapter.

The method used for the case study of this thesis will be process tracing. Process tracing is "the systemic examination of diagnostic evidence selected and analysed in light of research questions and hypotheses posed by the investigator" (Collier, 2011: 823). This research method can provide a broad, but comprehensive approach to within-case analyses through investigating qualitative data. Moreover, it requires the investigator to make observations in order to discover causal links between events. Thus, process tracing does not solely describe historical occurrences, but also requires the investigator's interpretation of said occurrences, since it is possible that the causal mechanisms of the case study might not occur in chronological sequence.

Testing whether a hypothesis is true in process tracing can be done by ways of two different tests. First, the hypothesis can be tested with a hoop test, which "proposes that a given piece of evidence from within a case should be present for a hypothesis to be true. Failing a hoop test counts heavily against a hypothesis, but passing a hoop test does not confirm a hypothesis" (Mahoney, 2015: 207). Secondly, a hypothesis can be tested by conducting a so-called smoking gun test. In this test, "the presence of a given piece of evidence strongly supports a hypothesis as true, though the absence of the evidence does not eliminate the hypothesis as false" (Mahoney, 2015: 210-211). Independently, these two tests cannot decisively prove a hypothesis to be true or false. However, when combined, they allow the investigator to come to a well-considered conclusion on the validity of the hypothesis.

Using the method of process tracing, this thesis will analyze the case of the American invasion of Panama through the theoretical framework of Just War Theory. Thus, the premises that led to the decision to intervene in Panama are addressed, and it is

investigated whether they are in accordance with the Just War criterion described in the theoretical framework. In order to do this, a selection of the current criteria of Just War Theory will be used to serve as a guideline for the case analysis. First of all, the first Just War criterion - *the presence of a just cause* - is addressed. Hereby, the official reasons given by President George H. W. Bush will be investigated: “to safeguard the lives of Americans, to defend democracy in Panama, to combat drug trafficking, and to protect the integrity of the Panama Canal Treaty” (Bush, 1989). Moreover, concepts such as sovereignty, armed attack, and imminence are discussed as well. The criterion and concepts have been chosen, because they can be considered the most important constituents of Just War Theory and they are likely to present various complexities and points of contention among Just War theorists. This allows the investigation to be less shallow and more in-depth with regard to the most relevant Just War criterion.

The case material for this investigation consists of secondary academic sources, such as books, compilation books, and peer-reviewed articles, as well as primary sources, such as memoirs and official documents stemming from governments and supra-national organizations.

2.2 Observable implications

When using process tracing, one needs to observe a series of independent variables, which all together make up the cause of the outcome, or one single dependent variable. In this case, it is investigated whether the Just War criteria are present, thus making said criteria the dependent variables. In this case, the main criterion is that of the presence of a just cause.

Regarding the first Just War criterion – the presence of a just cause – the independent variables should be the various forms of just causes described in the theoretical framework. Namely, if the United States had a just cause to intervene in Panama during the rule of Noriega, either one or multiple of the four following conditions must had to be met: (1) U.S. sovereignty was violated; (2) a violation of U.S. sovereignty by Panama was imminent; (3) there was reason for punishment, such as the need to restore justice; (4) there was reason for a humanitarian intervention, such as the presence of a genocide or other crimes against humanity. Furthermore, these conditions can be investigated and measured further by the established definitions of concepts such as ‘armed attack’, ‘imminence’, and ‘humanitarian disaster’.

3. Historical Context

The geostrategic position of the Panamanian Isthmus has been of great interest since colonial times. Although the strip of land is difficult to reach by land due to the jungle and mountains that separate it from its neighboring regions, the Isthmus has been of great geopolitical and economic importance. During colonial times, the Spanish Crown already noted that the region served as an important location for transit between the Pacific coast and the Atlantic Ocean (Ropp, 2014: 432). In this period the idea of digging a canal across Central America emerged, but the Spanish Crown preferred to maintain their monopoly on the communications of what goods were moved across, as well as the security that the strip of land provided (Enock, 1914).

Nonetheless, interest in digging a canal remained an attractive idea. After Colombia, of which Panama was a province, gained independence from Spain, foreign interest in a canal connecting the Pacific and the Atlantic Ocean started to emerge. American investors had already built a railway across Panama in reaction to the need for the transportation of gold after the Californian gold rush of 1849. Consequently, the French received permission from the Colombian government to dig a canal, but their attempt failed due to climatic difficulties. During that construction period, thousands of laborers lost their lives due to yellow fever and malaria (Ryan, 1977: 6).

The second attempt to dig a canal in Panama was made by the United States. In 1903, the Herrán-Hay Treaty, which would give the U.S. an indefinite lease on a strip of land to build the Panama Canal, was signed between the U.S. and Colombia. However, the Colombian senate rejected the treaty and, as a consequence, Panama pushed for independence with American support. Subsequently, the newly independent Panamanian state and the U.S. agreed on a similar treaty – The Hay-Bunau-Varilla Treaty – which transferred a strip of land on the Isthmus to the U.S. in order for them to dig the Panama Canal. From that moment on, the Panama Canal Zone was to be considered a piece of sovereign American territory. Afterwards, the Canal was successfully built and the first vessel passed through it in 1914 (Gordon *et al*, 2018).

The political history of Panama (and Latin America in general) is known by its oligarchic rule and dictatorships. The U.S.-favored oligarchy that ruled Panama during the 1920s was eventually replaced by various elected strongmen, among which the Arias Madrid brothers were arguably the most liked civil dictators in Panamanian history (Ropp, 2014). The Arias

brothers ruled multiple times during the 1930s and 1940s with short periods in between. Subsequently, the Panamanian armed forces took over the power from President Arnulfo Arias in 1968, after he implemented discriminatory policies against foreign laborers in Panama and showed sympathy for Italian fascism (Ropp, 2014).

Omar Torrijos and Boris Martínez, respectively the Executive Secretary and the commander of the Panamanian National Guard, assumed power after committing a coup against Arias. As was traditionally the task of Latin American armed forces (Zagorski, 2011), the duo was supposed only to stay in power for a short period of time, in order for the country to stabilize and for a new government to form. However, due to disagreement between the two about who should assume power next, Torrijos forced Martínez to go into exile and seized the power for himself (Noriega & Eisner, 1997: 36). While he never became the official head of state, Torrijos led the country from 1968 till 1981 as “Maximum Leader of the Panamanian Revolution”. Although Torrijos was not the most loved leader by the international community, he did manage to agree with the U.S. on the Panama Canal Treaty (1977; also known as the Torrijos-Carter Treaties), which set in motion the transfer of the Panama Canal and the Canal Zone to the Panamanian authorities. The treaties went into effect in 1979 and started a transition period of 20 years in which control over the Canal and the Canal Zone were gradually transferred to Panama.

In August of 1981, Torrijos suspiciously died in a plane crash. His plane disappeared off the radar without explanation and after a few days it was discovered by the Panamanian military. There were many speculations about Torrijos’ death being a conspiracy by the U.S. government to assassinate him, but any real evidence has never been revealed. After his death, Torrijos was replaced by General Manuel Noriega as the new *de facto* leader of Panama.

Overall, relations between Panama and the U.S. were relatively friendly, though troubled at times. Arguably, the best way to describe U.S.-Panamanian relations would be by the term “forced alliance” (see Conniff, 2001) due to the Panama Canal being such a valuable asset. The oligarchy that ruled Panama during their time as a province of Colombia up until the 1930s was on relatively good terms with the U.S. government, although there had always been a desire to achieve complete independence among the general population (Long, 2015: 77). Subsequently, the civil and military dictatorships that emerged managed to bring together the majority of Panamanians with their populist and nationalist platforms (Ropp, 2014: 433). In this light, the desire to gain complete independence and take back control

over the administration of the Canal and the Canal Zone by political leaders was welcomed by many Panamanians (Ryan, 1977: 69). Over the decades, various incidents occurred between Panamanians and American residents in the Canal Zone. However, it was only until 1989 that the U.S. government decided that a military intervention was a necessary response.

4. Case Study: Operation Just Cause?

Although the operation that intended to take out Manuel Noriega was first named *Operation Blue Spoon*, it was later changed to *Operation Just Cause*. The renaming of the operation was done to “sustain legitimacy throughout the intervention” (Conley, 2001: 43). In fact, American General Colin Powell admitted that he was fond of the name change, since “even [America’s] severest critics would have to utter 'Just Cause' while denouncing [them]” (Powell & Perisco, 1995: 426). However, giving a military operation a friendly or virtuous name is obviously not a legitimate justification for undertaking it.

Before the invasion, the situation was becoming increasingly hostile as Noriega was dismissed as an asset for the American intelligence community and he refused to give in to the pressure, such as economic sanctions and covert support for a coup d’état in 1989, and demands from the U.S. Government (see Guevara Mann, 1996: Ch. 9; Antizzo, 2010: Ch. 3). According to Noriega himself, his motivations were simple:

“I never wavered in my essential commitment to Panamanian nationalism. I never strayed from the conviction that my country was sovereign and had a right to decide its own future. There was no double-dealing with the Americans, no involvement in killing political opponents, no drug dealing. My emergence as the enemy was the result of machinations by the American propaganda machine, combined with tactical mistakes on my side, opportunism by Panama’s wealthy elite and the bloodlust of the U.S. government under Reagan and Bush, which, in turn, led to an invasion of my country” (Noriega & Eisner, 1997: 111).

Since a UNSC resolution to authorize the intervention was missing, the intent of this case study is then to assess whether Operation Just Cause is justifiable according to Just War Theory. First, the Just War criterion of a just cause is addressed in order to determine whether the motivation for intervening in Panama was in accordance with Just War Theory. This will be done in accordance with the five official motivations given by President Bush Sr., which were “to safeguard the lives of Americans, to defend democracy in Panama, to

combat drug trafficking, and to protect the integrity of the Panama Canal Treaty” (Bush, 1989). Moreover, it will be investigated whether the circumstances at the time warranted a military intervention by the U.S. Government, which will be further discussed afterwards in more detail.

4.1 Safeguarding American lives

After the signing of the Torrijos-Carter Treaties in 1977, the transition period began in which the control over the Panama Canal and the Canal Zone was gradually transferred to the Panamanian authorities. This period would last 20 years, after which the Panamanian authorities would assume total ownership and sovereignty over the Canal Zone in 1999. However, the treaties created a vague situation with regard to the ownership of the Canal Zone during the transition period. Namely, the Panama Canal Treaty (1977) stated in Article 1(2) that “the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to [...] protect and defend the Canal”. The result of this was that about 10,000 U.S. military personnel remained stationed in Panama; all the while the Canal Zone was considered neutral territory.

The first justification President Bush gave for the military intervention in 1989 was “to safeguard the lives of Americans” (Bush, 1989). In particular, two incidents between U.S. citizens in Panama and the Panamanian Defense Forces (PDF) are believed to have made Bush make the decision to intervene. Namely, the first incident occurred in June 1988, when “‘a U.S. Army private and his eighteen-year-old wife were assaulted’ by a probable member of the PDF. The American soldier ‘was beaten and locked in the trunk of his car while his wife was raped’ ” (Watson & Tsouras, 1991: 204, in Antizzo, 2010: 43). Secondly, it is believed that the most direct motive for the military intervention was the killing of U.S. Army lieutenant Robert Paz by the PDF and the subsequent arrest and interrogation of an American couple that observed the killing (Antizzo, 2010: 47). This occurrence came a day after the Panamanian National Assembly declared to have found the country “to be in a state of war so long as the United States continues its policy of aggression” (Scranton, 1991: 197). Interestingly enough, both sides of the conflict accused the other side of being the aggressor.

In order to determine whether these actions against U.S. nationals justify a military intervention in Panama that disabled its armed forces and took out its head of state, three questions need to be answered. First of all, were these attacks mere incidents by erroneous

individuals, or were they parts of a more systematic kind of aggression on behalf of the Panamanian state? Then, the second question that needs to be answered is on what grounds the U.S. would have a just cause to respond militarily: in self-defense, in pre-emption, as punishment, or on humanitarian grounds. Lastly, could the incidents be considered 'armed attacks' that would justify an intervention on the scale of the military intervention on December 20th of 1989?

Regarding the first question, it is important to determine whether the attacks committed by members of the PDF were either individually motivated or part of a more systematic plan of aggressing against the U.S. that was coordinated by Noriega himself. On the one hand, "the military as an institution [in Latin America] had been a pillar of authoritarianism for centuries" (Zagorski, 2011: 136) and cases of abuse and repression by armed forces are plentiful in Latin American history. Especially in the era of the national security doctrine, Panama played an important role in training military leaders through their military academy – the School of the Americas. Therefore, it would be reasonable to suspect that the incidents between members of the PDF and American soldiers were isolated. In fact, when U.S. General Larry Welch asked whether the incidents were committed by "errant PDF soldiers", Generals Colin Powell and Kelly responded that "they were as sure as they could be" (Woodward, 1991: 165, in Shannon, 2000: 309).

On the other hand, one could argue that it would be easy to write the incidents off as if they were isolated occurrences that affected a friendly relationship between the U.S. and Noriega. Over the years, Noriega had started to become increasingly hostile towards the U.S., both in word and deed, due to various escalations in Noriega's relationship with the U.S. Government, such as his dismissal from the payroll of the Central Intelligence Agency (CIA), the drug indictments against Noriega from two U.S. grand juries, and economic sanctions on Panama (Antizzo, 2010: Ch. 3). Another example is that, "[a]s U.S.-Panamanian relations deteriorated, Noriega drew closer to the Marxist regimes in Cuba and Nicaragua" (Antizzo, 2010: 43). This was a huge concern for the U.S. Government in light of regional security during the Cold War. Moreover, "[o]n December 15, the Panamanian legislative body adopted a resolution formally declaring the country to be in a state of war with the United States" (Nanda, Farer & D'Amato, 1990: 496). Although the threat might not have been very credible in terms of military power, such a statement coming from a government entity would still be taken in all seriousness. It is in this sense that the Panamanian state showed a more systematic form of hostility towards the U.S, but not outright aggression as

per the definition of U.N. Resolution 3314: “Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition” (United Nations, 1974: Annex Art. 1).

In the case of the incidents that occurred in Panama, the category that, according to the U.S., gave them a just cause to intervene is (collective) self-defense. In fact, as Scheffer describes (1992: 122, in Shannon, 2000: 310), the U.S. Government partially justified the military intervention by invoking, firstly, Article 51 of the U.N. Charter, which states that all nations have the right of individual self-defense against armed attacks (United Nations, 1945). This would nullify the issue that there was no UNSC resolution that justified the military intervention. Secondly, they invoked Article 21 of the Charter of the Organization of American States (OAS), which states that disputes between nations should be resolved peacefully (Organization of American States, 1952). Since Panama had broken this rule in the eyes of the U.S. Government, the dispute between Noriega and the U.S. was considered by the U.S. Government as an attack on U.S. nationals. It is therefore that President Bush stated in his address to the nation on December 20th of 1989 that, as president, he “had no higher obligation than to safeguard the lives of American citizens” (Bush, 1989).

However, since there was no UNSC resolution, a large part of the international community came to a consensus that the military intervention was in violation of international law (Weiss & Hubert, 2001: 66). Few would argue that the killing of American citizens was a trivial occurrence, but the more relevant question was whether the American response was warranted according to the definition of an ‘armed attack’ and whether a full-scale invasion was the right response. So, it is relevant to briefly address the Just War criteria of last resort and proportionality as well.

Regarding the last resort, it does seem that the U.S. Government had tried to persuade Noriega to change course before he became increasingly hostile. In fact, “[s]tarting in 1987, Washington attempted to use quiet diplomacy in order to persuade Noriega to depart gracefully” (Antizzo, 2010: 42). However, these diplomatic attempts did not have any effect, due to Noriega’s perseverance and the relatively small number of coercive measures to back up the American demands (Scranton, 1992: 349). Subsequently, once Noriega became increasingly hostile in the eyes of the U.S., economic sanctions were issued and eventually all U.S. payments to Panama were blocked to build up the pressure against Noriega, but once again with no effect (Antizzo, 2010: 43). As a consequence of the growing tensions, an

extra 1,500 American troops were moved to Panama to back up the 10,000 that were already stationed on the Isthmus (*Keesing's*, October 1988: 36215, in Antizzo, 2010: 43). In 1989, when the Reagan administration was replaced by the Bush administration, "President H. W. Bush authorized funds [...] for covert aid to encourage a possible coup by PDF members tiring of Noriega and his increasingly paranoid behavior" (Antizzo, 2010: 44). In fact, the coup did happen as well. In 1989, "Noriega's increase in ruthless violence generated multiple street protests" and eventually "a military coup d'état organized by dozens of junior officers"; however, "[the PDF] loyal to Noriega easily defeated the coup and actually captured the rebel officers" (Galván, 2013: 189).

With regard to the criterion of proportionality, the military operation is often considered "flawlessly successful" (Antizzo, 2010: 66) and the casualties on American side were much lower than expected. In total, only three of the 35,000 American citizens in Panama and 23 U.S. military personnel lost their lives during the operation, and 323 servicemen were wounded. In contrast, on the Panamanian side, the PDF lost 314 men and 124 were wounded. Panamanian civilian casualties are estimated between 500 and 1,000 (Antizzo, 2010: 67). Moreover, it only took eighteen hours for the American military to complete its operational tasks. Thus, Operation Just Cause was a relatively small operation, but the question remains whether over 300 military and possibly over 1,000 civilian deaths were worth the cost.

All in all, there has been much disagreement over the legitimacy of the American claim to self-defense, with both sides invoking different articles of the Charters of the UN and the OAS. On the one hand, U.S. territorial sovereignty had not been broken since the Canal Zone had been neutral ground since the signing of the Panama Canal Treaty. Moreover, the acts committed by the PDF against U.S. nationals in Panama did not meet the requirement of the definition of the term 'aggression', which was laid out in U.N. Resolution 3314: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition" (United Nations, 1974: Annex Art. 1).. Thus, although "safeguarding the lives of Americans" (Bush, 1989) does come across as a noble cause, it did not meet the requirements that would warrant a military intervention regarding this aspect. Furthermore, it is also questionable whether the number of casualties was proportional to the initial acts by the PDF, even though military action seemed to be the last resort and the number of casualties was relatively low.

4.2 Defending democracy in Panama

The second justification that President Bush gave for the military intervention in Panama was to restore democracy in the country. In his address to the American public, Bush called Noriega a “dictator”; and told the public that he was replaced by a “constitutionally elected government” through the intervention (Bush, 1989). So, it is clear that the intention was to establish a democracy in the liberal sense – a *constitutional* democracy in which the government would protect its citizens’ civil liberties. The implication of this statement would thus be that the government led by Noriega had not been democratically elected; and that the Panamanian government did not protect the civil liberties of its citizens. Multiple occurrences confirm that this was, in fact, the case in Panama under Noriega.

When military rule was first established in 1968 by Noriega’s predecessor Omar Torrijos, he did so with the intention of bringing about change (Ropp, 2014: 433). However, the longer the military stayed in power in Panama, high-ranking officials started to become increasingly occupied with their individual concerns, which prevented a new, elected government to take over (Ropp, 2014: 433). With the death of Torrijos, the rule of military government continued under Noriega’s *de facto* leadership. It is important to mention that Torrijos and Noriega (at first) still let the presidents that served under their *de facto* military dictatorships maintain their position in the government. However, in reality they had little power in the military governments.

On February 25th of 1988, as the hostility between Noriega and the U.S. Government was increasing by the day, Panamanian president Eric Delvalle decided to discharge Noriega as commander of the PDF. Delvalle announced live on air that “[t]here is no other alternative but the use of the powers that the constitution gives me, to separate General Noriega from his high command and to hand over the leadership of the institution to the current chief of staff, Colonel Marco Justine” (Noriega & Eisner, 1997: 132). In return, the Panamanian Legislature directed by Noriega replied to Delvalle’s action by dismissing him from the position of president, after which Delvalle fled and went into exile to the U.S. (Noriega & Eisner, 1997: 132). In the words of Noriega himself, “[t]he response [to Delvalle’s announcement] was complete and utter silence – no one took Delvalle seriously. Justine, who sat back in his chair, stared at Delvalle as if he were crazy” (Noriega & Eisner, 1997: 132).

The rigging of the 1989 general elections in Panama was another huge blow to the legitimacy of the Noriega regime. As Antizzo (2010: 44) describes, Noriega decided to hold general elections in the country, which were overseen by international observers, due to the growing pressure by the international community. In total, 90 percent of the eligible voters turned up and opposition candidate Guillermo Endara outmatched Noriega's candidates by an overwhelming rate at the exit polls (*Keesing's*, May 1989: 36645; Scranton, 1991: 161). However, many voting tally sheets that counted more votes for the opposition were replaced, "sometimes at gunpoint", by fake sheets (*Keesing's*, May 1989: 36645). The Panamanian Government released results that favored Noriega's candidate, Carlos Alberto Duque, while independent observers and the Panamanian parliament released results favoring Endara. Although Endara was recognized by the international community as legitimate president, Noriega stayed in power.

An important issue to point out is that, while the U.S. Government claimed to want to restore democracy by having the elected government of Endara take office, the question is whether a liberal democracy had ever existed in Panama before the military dictatorships of Torrijos and Noriega. In fact, "it is indeed difficult to say that real democracy, as it is commonly understood in Western societies, ever fully existed in Panama" (Antizzo, 2010: 48). As mentioned in the previous chapter, Panama knows a history of oligarchic rule, as well as civil and military dictatorships throughout the twentieth century. So, although the concept of democracy and electing the government was a part of the political system in Panama, the mechanisms of the governmental structure and the balance of power were often quite different from those of the U.S. and European countries.

However, it does seem that the Panamanian people supported the idea of a more democratic political system. First of all, the great turnout of eligible voters and the overwhelming victory for Noriega's opposition signaled that the Panamanian people were ready for a change to democracy (Antizzo, 2010: 48). Moreover, after the intervention and the installation of the Endara government thereafter, a poll conducted by CBS made it clear that 9 out of 10 Panamanians that were interviewed were in favor of the U.S. intervention against Noriega (Powell, 1995: 434), although it has to be said that the poll was conducted in English-speaking areas of Panama (Trent, 1992). Furthermore, Human Rights Watch reported that reactions coming from the Panamanian population were "generally sympathetic" towards the intervention (Human Rights Watch, 1989: para. 18) So, even

though democracy in the liberal sense may have never existed in Panama before, it does seem that the Panamanian people were willing to embrace the idea.

The type of just cause that could have been invoked in this case would be that of a humanitarian disaster. The presence of a military dictatorship and the absence of a liberal democracy not only entailed the powerlessness of the Panamanian population to influence politics because of the structure of the political system, but it also meant that any political opposition to Noriega was likely to be repressed. Amnesty International explains:

“Since [Noriega] was deposed, Panamanian courts have investigated, tried and convicted him in absentia for the killing of political opponents, unlawful detention, and various other abuses. Among these killings are the assassination in 1985 of former Deputy Minister for Health Dr. Hugo Spadafora and the execution of Major Moisés Giroldi Vera, the leader of a failed coup attempt in October 1989. Other violations include the excessive use of force by security forces against public protests in 1987, deadly electoral violence in May 1989, and the October 1989 ‘Albrook Massacre’, in which 12 others were summarily executed for their part in the coup attempt led by Major Moisés Giroldi Vera” (Amnesty International, 2011).

So, the case of Panama also has a resemblance with modern day cases, such as Libya in 2011: the suppression of civil liberties and human rights violations cause states such as the U.S. to conduct a humanitarian intervention on the grounds of their ‘responsibility to protect’. In this regard, it seems that the U.S. had a just cause for taking action against Noriega.

However, as mentioned in chapter 1, the problem with acting on humanitarian grounds is that a country’s sovereignty has to be violated in order to achieve the goal of protecting the victims. In the case of the intervention in Panama, many members of the international community rejected the operation and called it a violation of international law. In fact, the outrage in the international community was clearly visible after a General Assembly resolution resulted in 75 member-states condemning U.S. action in Panama as a “flagrant violation of the [U.N.] Charter and international law” (U.N., 1989b: 175). Only 20 members voted against the resolution and 40 abstained from voting. This is supposedly an example of why statesmen are often hesitant to come to the defense of others on humanitarian grounds: they are often put off by the costs and possible lack of public and international support. In the case of Panama, this may have been a contributing factor to the fact that the U.S. Government did not intervene by military means earlier, but rather what to them seemed a ‘last resort’.

Moreover, Article 2(7) of the U.N. Charter prohibits “the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state” (United Nations,

1945). So, Nanda, Farer and D'Amato (1990: 498) confirm that "[n]o international legal instrument permits intervention to maintain or impose a democratic form of government in another state"; and "[t]he majority of states does not view the right of self-determination to mean that there is a right of democratic representation or that the government must reflect the will of the majority of the people" (Nanda, Farer & D'Amato, 1990: 500).

Thus, although international law and Just War Theory do not warrant the use of force to meddle in another state's internal affairs, including its form of government, the U.S. Government could have justified their intervention on the basis of humanitarian intervention. Therefore, the just cause that the U.S. Government would have under the guise of "defending democracy in Panama" (Bush, 1989) is the responsibility to protect Panamanians against a humanitarian disaster, which was bound to continue under Noriega's prolonged rule after the rigging of the 1989 elections.

In the end, one of the main objectives of Operation Just Cause was the decapitation of the PDF – the organization that had traditionally been the "power base" of Panamanian dictators – so that the democratically elected Endara government could assume office without trouble (Antizzo, 2010: 51). This objective was completed within mere hours of the operation. The resistance by PDF members was easily dealt with and the Endara government assumed power shortly afterwards (Antizzo, 2010: 67).

4.3 Noriega's involvement in drug trafficking

The third justification that President Bush gave for the military intervention in Panama is to combat drug trafficking. Particularly, one of the operational goals of the intervention was to apprehend Noriega, who had been indicted by two separate grand juries in the U.S. that were investigating claims that Noriega was involved in the trafficking of Cocaine and Marihuana into the U.S. (Antizzo, 2010: 42). It is interesting to know that this was "the first time that drug indictments against a foreign leader were used as a legal justification for military intervention" (Antizzo, 2010: 66).

Notably, Noriega's involvement in drug trafficking had been known by the CIA for a longer time. In fact, Noriega used to be working with the CIA to facilitate the funding and supplying of Nicaraguan contras, who were fighting against their leftist Sandinista government; and the U.S.-backed Salvadorian government who were fighting a leftist insurgency in their country (Guevara Mann, 1996: 166). As a matter of fact, Noriega had been in contact with the CIA since the 1960s, when he became a CIA informant in Peru,

where he was enrolled at the Chorrillos Military School. After he returned to Panama, Noriega was placed on the CIA's payroll when he became a more important asset in U.S. efforts to combat the Sandinista government in Nicaragua (Guevara Mann, 1996: 165-167). In total, the CIA gave Noriega 322,000 US dollars across their years of cooperation (Johnston, 1991: para. 1).

Two important questions that need to be asked are, first of all, why Noriega's involvement in the drug trade was only used against him as late as in 1989, although it had been known by the U.S. Intelligence community for a longer time. Secondly, it needs to be asked whether this gave the U.S. a just cause to deploy armed forces to Panama.

Regarding the first question, it has been documented in interviews that government officials of both the Reagan Administration and preceding Administrations overlooked Noriega's involvement in the drug trade, because of the cooperative partnership between him and the CIA, as well as his willingness to let U.S. armed forces operate out of his country (Hersh, 1986). The indictments against Noriega by U.S. judges surely were pivotal events in American relations with Noriega. Namely, both the Panamanian opposition and international experts on the case were convinced that the CIA would have continued their support for Noriega if the indictments against him had not been made, or at least had not been made known to the public (Hippel, 2004: 34).

Nonetheless, the Single Convention on Narcotic Drugs of 1961 states that U.N. member-states must commit to combating drug abuse, production, trafficking, and so forth. Moreover, the drug-related activities named in Article 36 of the Convention document "shall be punishable offences when committed intentionally, and [...] serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty" (United Nations, 2013: 55). Thus, international law does prohibit drug trade and makes it a punishable offense. However, in the case of Noriega trafficking drugs into the U.S., Article 4 of the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 did only give the U.S. the jurisdiction to enforce the law if "[t]he offence is committed in its [own] territory" or if "[t]he offence [...] is committed outside its territory with a view to the commission" (United Nations, 2013: 131). This means that the U.S. Government would only have gotten the jurisdiction to enforce anti-drug trafficking laws *with* permission from the U.N. commission that oversees the international efforts to combat drug trafficking.

Thus, the indictment of Noriega by American judges is clearly not a criterion that would give the U.S. a just cause for a unilateral military intervention in Panama, neither according to international law, nor according to Just War Theory. Namely, “a state has no authority to violate the territorial integrity of another state in order to apprehend an alleged criminal” (Nanda, Farer & D’Amato, 1990: 502). This may also be another reason why many states agreed that the intervention was a violation of international law. Furthermore, as far as Just War Theory is concerned, criminal allegations against a foreigner are certainly not a just cause to respond militarily in a country. None of the four just causes – self-defense, pre-emptive action against aggression, punishment of aggression, and a humanitarian disaster in the target country – apply in this part of the justification given by the U.S. Government.

4.4 The integrity of the Panama Canal Treaty

The fourth and last justification that President Bush gave for the military intervention in Panama was the protection of the integrity of the Panama Canal Treaty. As agreed by Omar Torrijos and President Jimmy Carter in 1977, the control over the Canal Zone and the administration of the Panama Canal would be gradually transferred to the Panamanian authorities over a period of 20 years. The transfer would be complete after the year 1999.

The Canal had always been an important geostrategic asset for the U.S. for both military and economic reasons. It is the only canal that connects the Atlantic and Pacific Oceans, making travel time significantly shorter than sailing all the way around Cape Horn or through the Strait of Magellan at the Southern tip of South America. The Canal has arguably been more important for commercial traffic than for movement of the U.S. Navy, given that it was too narrow for larger navy ships. However, American control over the Canal did play an essential role in controlling the flow of goods and people, which in turn facilitated maintaining regional security, or hegemonic order. As former U.S. Navy Captain Paul B. Ryan illustrated:

“The factors shaping U.S. canal policy were diverse and included America’s strategic needs, its security obligations to itself and its allies, the naval posture of the Soviet Union in the Atlantic and the Caribbean, the Cuban-Soviet military alliance, the flow of raw materials from Latin American to the United States, the American humanitarian desire to extend to Panama greater control over the canal and the zone, and the effect of a possible war of terrorism and sabotage on the operation of the waterway” (Ryan, 1977: 3).

Therefore, it was understandable that the U.S. Government became increasingly concerned about Noriega's position of power. Namely, "there was a nagging fear among policymakers in Washington, specifically: to whom would the United States have to turn over the canal in 1999 when the Panama Canal Treaties mandated its return to Panama?" (Antizzo, 2010: 47). In fact, Noriega's foreign policy was one point of concern for the U.S. Government, since he put his government in an increasingly hostile position towards the U.S. due to the pressure that the U.S. Government put on him (e.g. through economic sanctions, diplomatic pressure, and American support for a failed coup), while he improved relations with Marxist regimes in the region, such as Cuba and Nicaragua (Antizzo, 2010: 42). Also, it was found that Noriega spied on the U.S. while he was still on the CIA's payroll, effectively acting as a double-agent (Drohan, 1991: 23-24). Moreover, Noriega's practices in the internal affairs of Panama did not give the U.S. Government much hope either. The question for the U.S. was then whether they would hand over the Canal to the same dictator that was in charge at the moment, or to a country that would be in a possible civil war if Noriega was revolted against (Drohan, 1991: 25-26).

Securing the Panama Canal was one of the operational objectives of the military intervention. This meant taking control over the waterway, as well as control over all facilities related to the Canal, such as the canal locks. According to Antizzo (2010: 50), "this was necessary so as to prevent sabotage of the canal, as well as to protect and defend civilians associated with its operation. Early seizure of the canal also would help keep the interruption of traffic through the waterway to a minimum". Once the intervention began, the canal was almost instantly secured by American forces without inflicting any damage to the facilities; and interruption of maritime traffic only lasted for one day (Antizzo, 2010: 67).

Whether the U.S. had a just cause to intervene in Panama with the intention of protecting the integrity of the Panama Canal Treaty is, like the other justifications given, a point of contention. It is relevant to note that the Reagan and Bush Administrations determined that the red line of using military force laid at the protection of American lives and the Canal (Scranton, 2000: 147). However, the question remains whether this would give the U.S. an actual just cause to intervene according to Just War Theory.

The rationale for the U.S. to intervene seemed to have much to do with maintaining control over the Canal, given its strategic and economic importance. However, the desire to control such an asset would not warrant a military intervention on its own, as the issue is

not directly related to the violation of American sovereignty. Interestingly, by tying the protection of the Canal to saving American lives in Panama, the U.S. Government considered that the two were inseparable. Thus, protecting the Canal would mean protecting Americans, and vice versa. In doing so, the story used for the justification of the invasion became more coherent than it was in reality. Namely, while the operation was “[r]ehearsed and ready to go” days before it was announced to the public, various government insiders such as Undersecretary of Defense for Policy Paul Wolfowitz and Bill Price of the National Security Council “were still not sure [they] had a ‘smoking gun’ justifying military intervention” (Powell & Persico, 1995: 639). Moreover, U.S. Army General Maxwell Thurman and Chairman of the Joint Chiefs of Staff Colin Powell called for the intervention “to protect American citizens. [...] Besides, Noriega’s not a legitimate leader. He’s a criminal. He’s under indictment” (Powell & Persico, 1995: 639). So, the protection of the Canal and the Panama Canal Treaty were not named.

Protecting the integrity of the Panama Canal Treaty did not give the U.S. a just cause to launch a military intervention, since the Canal had not been attacked, the Panama Canal Treaty had not been broken, and both sides of the conflict understood that the killing and arrest of U.S. nationals in Panama were isolated incidents (Woodward, 1991: 165). Although it could be argued that the behavior towards American nationals by PDF members was unacceptable, it is hard to argue that American sovereignty was under attack or that an armed attack was imminent. First, there was no aggression according to the definition provided by the U.N.: “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State” (United Nations, 1974: Annex Art. 1). Secondly, none of the criteria of imminence were present: “instant, overwhelming, leaving no choice of means, and no moment for deliberation” (Webster, 1842: para. 3).

Knowing that a direct threat from Panama to the U.S. was farther away than many reports made it seem, it is important to address the implications this brought with regard to invoking the right to self-defense against armed attacks through Article 51 of the U.N. Charter. Namely, if there was no occurrence of aggression (i.e. an armed attack) or an imminent threat as per the definitions in international law, invoking the right to self-defense would not be necessary anyway. Moreover, the same argument could be made for invoking Article 21 of the OAS Charter, which states that disputes between nations should be resolved peacefully: if the peace was not broken according to international law, referring to the treaty would be of no use. Thus, even though the Panamanian government itself

declared the country to be in a state of war with the U.S., in reality there was no armed attack which violated American sovereignty, nor was there an imminent threat according to the definitions of international law.

In light of all this, it is understandable that many members of the international community declared the intervention in Panama to be a violation of international law, not only since there was no UNSC resolution that permitted the use of force against Panama, but also because of the absence of any imminent threat to American sovereignty. The Canal was under no credible, imminent threat of an armed attack and American sovereignty was not violated. Furthermore, the instances in which American nationals were killed or abused appeared to be isolated incidents, and so the right to self-defense was useless to invoke as a justification of a full-scale military intervention.

4.5 Discussion

All in all, Noriega knew very well how to grab the attention of the U.S. Government and get himself in an unfavorable position with regard to the colossus to the north. Up until now, it has become clear that Noriega and the PDF did affect the U.S. and its interests in a number of ways. However, the question whether this gave an evident just cause to launch a military intervention into the country remains contested. President Bush gave the public various justifications, which each raised new questions about their legitimacy. In the end, three of the four justifications given by Bush are worth considering with regard to Just War Theory, namely (1) safeguarding American lives; related to this (2) protecting the integrity of the Panama Canal Treaty; and (3) defending democracy in Panama. The remaining justification, combating drug trafficking, is not applicable for consideration, as explained in chapter 4.3.

In summary, Noriega and the PDF committed a number of acts that, in the eyes of the U.S. Government, gave them a just cause to respond militarily. The most important of those were, first and foremost, the killing of a U.S. soldier by members of the PDF, as well as the abuse and interrogation of multiple other Americans in Panama. Yet, it was known to the U.S. Government that these occurrences were isolated incidents, while the American serviceman that was killed was at fault as well. Moreover, it is noteworthy that the Panamanian legislature declared the country to be in a state of war with the U.S.; all the while American troops were stationed in Panama. Again, however, the Panamanian Government referred to the actions of the U.S., such as economic sanctions, which in their eyes were acts of aggression. Furthermore, the repression of Noriega's political opposition,

as well as Panamanian citizens in general, and the rigging of the 1989 elections also made it clear that Noriega was intending to stay in power as a dictator instead of returning to a democratically elected government as his predecessor Omar Torrijos had intended. Additionally, Noriega was keen to improve relations with Marxist regimes in the region, such as those of Cuba and Nicaragua, and it became clear that he had been acting as a double-agent while working for U.S. Intelligence. Taking all this into account, it did not seem as if the conflict between the U.S. and Panama could easily be resolved through a peaceful manner, as had been attempted for several years before the military intervention. All in all, the situation in Panama was relatively hectic, but the question remains whether a full-scale military intervention without the approval of the UNSC was justified.

As for the first type of just causes, self-defense, the most relevant events in U.S. Panamanian relations were the killing of a U.S. serviceman and the abusive arrests and interrogation of multiple other American nationals in Panama. It was, therefore, appealing to claim the right to self-defense against PDF aggression by invoking Article 51 of the U.N. Charter, but the more important question is whether this gave the U.S. Government an actual just cause to launch a military intervention against the Panamanian state. According to Just War Theory, as explained in chapter 1, a just cause is generally given when a state's sovereignty is violated by another state. In the case of Panama, this definition does not apply, given that the Canal Zone had been neutral territory since 1977. Thus, technically, the U.S. did not have a just cause to respond by military force, since their sovereignty was not violated. If we are to consider international law, it does not seem that the U.S. was right to invoke Article 51 of the U.N. Charter, which states that all nations have the right of individual self-defense against armed attacks, since there was no case of an 'armed attack' against American sovereignty as per the definition provided by international law. Moreover, Article 21 of the OAS Charter prohibits the use of force in resolving international disputes – a rule which, according to the U.S. Government, the PDF broke with the incidents that harmed Americans in Panama. However, invoking this article was of no use either, since the peace was not broken according to the definition of 'aggression' or 'armed attack' in international law. Furthermore, many U.N. member-states agreed that the military intervention was a violation of international law, since there was no UNSC resolution to back it. At any rate, the question remains whether a military intervention was proportional to the murder of one single casualty, although that is hard to determine seen the tense situation and the possibility of further escalation of the conflict.

With regard to the just cause of pre-emption, it does not seem that a Panamanian attack against U.S. sovereignty was imminent. According to the definition of 'imminence' in international law, an attack must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation" (Webster, 1842: para. 3). In the case of Panama, no such attack was imminent and so it did not give the U.S. Government a just cause to intervene militarily. It is arguable that hostility between Noriega and the U.S. increased over the years and that the diplomatic route had not been effective in persuading Noriega to step down. Moreover, the fact that the Panamanian legislature declared to be in a state of war with the U.S. did not give much hope for a peaceful ending of the conflict. However, even though these were all valid concerns, they did not justify a military intervention that took out Panama's head of state. In conclusion, although Noriega's hostile attitude created the suspicion of more aggression against Americans in Panama, Just War Theory once again refers to imminent attacks on the sovereignty of a state. Since the sovereign territory of the U.S. was not in danger, Just War Theory cannot have given the U.S. Government a just cause to intervene.

Regarding the third type of just causes, punishment, the question would again revolve around the attacks against American nationals in Panama. If it is assumed that the incidents that occurred between the PDF and American nationals in Panama are a legitimate justification for self-defense, it would also be legitimate to punish the persons or the state that committed the acts. However, since American sovereignty, territorial integrity, or political independence were not violated by the PDF, Just War Theory, once more, could not have given the U.S. a just cause for a military intervention. Moreover, punishment also involves the dilemma of proportionality. Was a 'full-scale' intervention a proportional response to a small number of incidents? As explained in chapter 4.1, both sides of the conflict were aware that the incidents were caused by isolated, erroneous PDF members.

The fourth and last type of just cause, humanitarian intervention, is an interesting approach for the case of Panama, since it addresses a completely different issue. Namely, humanitarian intervention applies to conflicts that occur *within* a state. In this case, Noriega's crime would be the repression of his political opponents, as well as any other dissidents among the population. This behavior became highly visible for the world to see after the rigging of the 1989 elections in Panama and the fleeing of the democratically elected president Endara. After that moment, Noriega seemed to have assumed total control over the Panamanian Government (assuming he did not have it already), and so restoring

democracy in Panama would be a legitimate reason for the U.S. to intervene. However, the problems with this line of reasoning are, first of all, that Panamanian sovereignty had to be violated to resolve the issue. Moreover, meddling in another state's internal affairs is prohibited by Article 2(7) of the U.N. Charter, and so it was outside U.S. jurisdiction to intervene in Panama from that perspective. Furthermore, in that day and age, the justification of humanitarian intervention was far less developed than today. The Responsibility to Protect (R2P) doctrine was only established in the year 2005 and, therefore, it does not seem that 'bringing democracy' was a legitimate justification at the time. At any rate, although the human rights concerns by the U.S. Government and Non-Governmental Organizations were valid, they did not serve as justifications for the U.S. to unilaterally launch a military invasion into a country to take out its head of state.

In conclusion, although Noriega and the PDF committed harmful acts against American nationals and grave acts of violence to Panamanians, Just War Theory and international law could not give the U.S. Government an evident just cause for a military intervention in Panama with regard to any of the justifications given by President George H. W. Bush. The U.S. Government took several measures to make it look as if they had a just cause to intervene in Panama by invoking multiple international treaties, and it is true that the hectic situation in Panama had to be taken seriously, but the reality is that the conditions did not warrant a full-scale military invasion according to international law. If anything, this case study illustrates the dynamics and the problems in interstate politics and international relations.

Conclusions

Panamanian dictator Manuel Noriega had come a long way from being an important asset of the U.S. intelligence community to becoming one of the U.S. Government's most infamous enemies at the end of the Cold War. Multiple reasons and a chain of negative events escalated the situation to a point that the U.S. considered it justified to launch a military operation to take out Noriega as head of state and take him to court in the U.S. The intervention, or invasion, was seen as a violation of international law by many other U.N. member-states.

Although President Bush gave multiple justifications that, at first sight, seemed noble and legitimate, the question remained whether the invasion was justifiable according to Just War Theory and international law. This thesis began with the question:

Is the American invasion of Panama (1989) justifiable according to Just War Theory?

From the case study, it became clear that the U.S. Government did not have a just cause as determined by the definitions of the concepts of 'sovereignty' (Weiss & Hubert, 2001), 'armed attack' and 'aggression' (United Nations, 1974), and 'imminence' (Webster, 1842) in international law. The implication of this is that the notions of safeguarding Americans and the Panama Canal could not warrant a full-scale invasion that decapitated Panama's armed forces and its head of state, because American sovereignty, territorial integrity, and political independence were not violated. Moreover, the notion of humanitarian intervention may have given the U.S. Government a just cause to intervene, *if* permitted by the United Nations Security Council. Since this permission was not given, it is argued that there was no 'just cause' for the unilateral American invasion of Panama. Hereby, the hypothesis of the investigation has been reinforced: although the situation in Panama under Noriega was tumultuous and violent, it did not give the U.S. Government a justification for unilaterally launching a military invasion into Panama.

Furthermore, the remaining justification of combating drug trafficking was not relevant to Just War Theory, as it is not concerned with the violation of sovereignty. Nonetheless, international drug trafficking could only be punished if the appropriate bodies of the United Nations give permission for it. Thus, in this case, the U.S. Government did not have a right to punish Noriega unilaterally without approval of the U.N.

At any rate, it would be interesting to investigate the other criteria of Just War Theory in the case of Operation Just Cause, since all criteria must be met before a war can be called 'just'. Moreover, the realization that such an operation as Operation Just Cause was not justifiable calls for a new consideration of other U.S. military interventions as well. An interesting example is the American invasion of Grenada in 1983, which, just as in the case of Panama, was also considered a "flagrant violation of international law" by the U.N. General Assembly and all members of the Security Council except from the U.S. (United Nations, 1983).

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