International Relations

Masters Thesis

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Research Question:

How can Just War Theory help us assess a notion of legitimacy applied to the actions of non-state actors in conflict situations?

Cases:
1) Mai Mai Bakata Katanga in the DRC
2) Pirates in Somalia

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<u>Student Declaration</u>

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Chapter 1 - Introduction

The formulation of International Law has been greatly driven by Western principles.[1] These principles have been applied to the world at large as a result of the continuing hegemony of the global north. Consequently, what is deemed to be just and unjust, legitimate and illegitimate in international relations is dictated by these set standards that have been reified throughout history. Sovereign states, as realist theorist tend to emphasize, are at the core of international relations. One of the basic premises of Realism is that the absence of central authority in the international system is bound to lead to conflict.[2] Various international relations theorists have contributed to this literature in their attempts to unpack causes, solutions and justifications for war. The United Nations Charter provides perhaps the most concrete guidelines and codifications of proper state conduct in the pursuit of peace and order and the resolution of conflicts.[3] However, with the progression of history, the nature of conflict in international relations has experienced various changes. One of these changes worth analysing is the shift away from states as single most important actors in a conflict-prone international context. As a matter of fact, the recent history of international relations has been marked by the rise of non-state actors.[4] This research paper seeks to investigate this shift by revisiting Just War Theory against non-state actors in conflict in Africa.

The main pillars by which just wars are measured according to the theory include: just cause, right intention, proper authority and public declaration, last resort, probability for success, proportionality, obedience of international weapon laws, discrimination and non-combatant immunity, benevolent quarantine for prisoners of war, no means *mala in se*, no reprisals, rights vindication, compensation and rehabilitation.[5] In light of Just War Theory focusing primarily in

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[1] Grovogui, Siba N'Zatioula. *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law.* University of Minnesota Press. 1996. Page 72-75

[2] Wohlforth, William C. 'Chapter 7: Realism', *The Oxford Handbook of International Relations*. Oxford University Press. 2008. Page 131-149

[3] Donnelly, Jack. 'Chapter 8: The Ethics of Realism'. *The Oxford Handbook of International Relations*. Oxford University Press. 2008. Page 150-162

[4] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 9-14

[5] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*,Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page59-63

states as primary actors engaging in war, this paper seeks to revisit the theory by situating non-state actors in African conflicts within it, thus applying the theory outside of its home turf. Therefore, this research seeks to answer the following question: **How can Just War Theory help us assess a notion of legitimacy applied to the actions of non-state actors in conflict situations?**

This research paper seeks to explore the cases of the Mai Mai (specifically the 'Bakata Katanga' Mai Mai group) in the Democratic Republic of Congo and the pirates in Somalia in answering the above question. In these cases, we see the rise of violent non-state actors committing violent criminal acts such as killings, theft and raids which are widely considered as unjust on a national and international level, as highlighted in United Nations' norms, where morals and ethics are emphasized.[6] However, in both cases, the violent non-state actors provide legitimization and justification for their acts of violence, with protection of their sea/land stated as their primary motive. Here, the tension between the Mai Mai as protectors of their land and seas versus their portrayal as greedy villains in the media becomes apparent.[7]

War can be understood as "an actual, intentional and widespread armed conflict between political communities."[8] This definition goes on to include "political pressure groups"[9] as political communities, under which this research places violent non-state actors in the selected cases. It is thus worth exploring the evolution of piracy and in-land attacks as the means of violence chosen to analyse by the Bakata Katanga in the DRC and the Gulf of Aden in the Somali study to gauge how Just War Theory can assess their legality and legitimacy and ultimately allow one to focus on the perception and debates around justification of conflict. In delving into the debate of just wars using these unique cases in international relations, this paper seeks to argue that Western informed universal notions of legitimacy (as a result of international law formulated on Western ideals) has a significant impact in either strengthening or

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[6] Donnelly, Jack. 'Chapter 8: The Ethics of Realism'. *The Oxford Handbook of International Relations,* Oxford University Press. 2008. Page 150-162

[7] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

[8] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 June 2014.

[9] Loc cit.

undermining justificatory discourses of non-state actors in conflict. Essentially, this paper seeks to assess how the chosen theory can help to assess notions of legitimacy even when applied outside its scope in applying it to conflicts driven by non-state actors, which has becoming more common in contemporary international relations.[10] That is, not to justify their actions, but rather to explore how the theory can be useful in determining legitimacy in the justificatory discourses of the Mai Mai Bakata Katanga of the DRC and the pirates in Somalia's Gulf of Aden.

1.1

Aim of Research and Rationale: Understanding Legitimacy

This research paper seeks to reflect on the tension between legality and legitimacy with reference to the role of non-state actors in conflict, focusing specifically on the Mai Mai Bakata Katanga in the DRC and the Somali Pirates in the Gulf of Aden. In doing so, the justificatory themes and the insights into the accounts of the Mai Mai Bakata Katanga and Somali pirates in light of Just War Theory will be explored.

With the growing discourse of international human rights in international law, led by Western hegemonies, the status quo of international relations has been to impose Western rules on the rest of the world.[11] The legitimacy and legality of certain acts are determined by those that dictate the nature of international law. The criteria for just wars, for example, are determined by the global hegemony. Thus, the justification or legitimization of conflict at levels not falling within this hegemony are considered invalid if they do not parallel with those that dominate.

This leads to the notion of legitimacy to be contentious due to the subjectivity involved in the interpretation of what is and is not to be considered as legitimate. The United Nations (UN) is often regarded as the world most important intergovernmental organization is useful in taking upon the role of what would be a 'world government' in the assumed anarchic state of the

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[10] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 9-14

[11] Grovogui, Siba N'Zatioula. *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law.* University of Minnesota Press. 1996. Page 72-75

international system.[12] Though the conventions, articles and protocols of the United Nations are useful in providing a 'universal' set of codes by which states can be guided, the organization's perhaps most major shortcoming is that these are based on consent rather than holding the power of being legally binding.[13] In addition, the notion of universality when it comes to UN set codes of practice and principles and in International Law are also contested. Here, on the subject of cultural relativism, the debate often becomes an issue of Western principles being applied in cases where they may not necessarily fit.[14] This creates tensions with how to determine legitimate versus illegitimate actions and to whose standards. In the cases of the Mai Mai Bakata Katanga of the DRC and the Somali pirates to be explored in the subsequent chapters, this tension definitely arises where these non-state actors' justificatory discourses in conflict are overpowered by the labels of banditry by the international community that undermine their legitimacy. Thus even though these two 'insurgency' groups in their different contexts bring about justificatory reasons behind their violent actions, what is justifiable to these groups may not necessarily align with what is justifiable according to Western set standards that dominate international relations.

It is therefore important to understand the formulation of the hegemonic control of the means of justification and how they operate. According to the literature on the universality of laws, some accounts argue that the dominant Western proclamation of the universality of international law has violently excluded those falling outside the European category through the legal doctrines and juridical idioms that have emerged. These accounts go on to explain that the relationship between the European and the other is an exploitative one which is centred around the Western ideas emerging from the Western powers influencing the content of law as a result of the Enlightenment.[15] The way in which these laws have been applied has varied between regions, between the European and the other, always benefiting the European. Western ideal, norms and traditions have been deemed as universal, which has encouraged the 'othering' of non-Europeans and the collapse of native cultures who had established civilizations prior to colonialism. The

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[12] Forsythe, P David. "Global application of human rights norms" (Part 2) in *Human Rights in International Relations Second Edition*. Cambridge University Press. 2006. Pg 62-63

[13] Loc cit.

[14] Grovogui, Siba N'Zatioul. *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law.* University of Minnesota Press. 1996. Page 72-75

[15] Loc cit. Page 72

notions and idioms of natives were forcefully replaced with those of the colonizer and the process of alterity allowed for the legal objectification of the other against the European self.[16]

And so, in noting the origins of universally applied Just War Theory as situated in these Western ideals, it is worth exploring the issue of legitimization of war using ideas such as those depicted in the theory against the complex cases of violent non-state actors in the DRC and Somalia. This research therefore intends to feed into the debate on legitimacy of conflict by assessing conventional notions of legitimacy alongside the justificatory discourses in the two chosen cases. As legitimacy is arguably a subjective function of politics or ideology, Just War Theory will provide a platform by which legitimacy will be guided. In doing so, this research paper seeks to approach this from an angle that includes insights into the motivations of the violent non-state actors that perpetuate conflicts that are negatively viewed in light of dominating Western discourse and media. That is, not to justify the violent acts on non-state actors, but rather to delve into their motives to assess the notion of legitimacy according to the pillars of the theory. The significance of Just War Theory in contemporary international relations, 'correct' notions of legitimacy as well as the continued Western imperialism in widespread accounts of non-state actor violence is debated at the end of this paper.

1.2

Review of Literature / Background

This section notes the some of the most prominent themes in the accounts of the nature of the DRC and Somali conflicts within the literature. It thus seeks to give an overview of the context in which these two country cases are situated (to be explored in detail in the subsequent chapters). In doing so, some prominent voices (writers and organizations) will be identified in as influencers in the spreading of the image of these non-state groups as villains engaging in acts of banditry and senseless violence. It is this prominent view or image that will ultimately be assessed and argued in the subsequent chapters in focusing on the perception and debates around

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[16] Grovogui, Siba N'Zatioul. *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law.* University of Minnesota Press. 1996. Page 72-75

justification in conflict. The section will end by highlighting the notion of state failure in the literature surrounding these conflicts.

The Democratic Republic of Congo has experienced long term conflict with the involvement of emerging violent non-state actors as well as the involvement of external actors.[17] Since the brutal colonial era, to present day DRC, the nation has never experienced long term peace. The weak state institutions and the failure of the government to exert its authority over all regions of the country has lead to the DRC to, like Somalia, be labelled as a failed state. The nature of the Congolese conflict makes it one of the most unique conflicts that the world has ever experienced due to factors such as its rich mineral reserves and the ongoing interference of external forces.[18]

In protest to these external forces, primarily originating from Rwanda, violent non-state actors such as the Mai Mai have emerged. As is the case with Somali pirates, the Mai Mai engage in conflict rooted in their autochthonous beliefs - that is, that their land should belong to its original inhabitants.[19] As they consider themselves to be Congo's true patriots, the Mai Mai have in their various forms and locations around the DRC, continued to fight for their land. However, in this fight which they deem as legitimate, the Mai Mai have infringed on the human rights of innocent civilians and have been said to exploit the war for their own advantage in instances of looting and theft of cattle among other crimes.[20]This has resulted in their portrayal as greedy villains. This view of banditry is widely shared by international human rights groups, perhaps most expressed by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), who have a significant presence and influence in combating and reporting on the Mai Mai threat.[21] Other human rights protection and monitoring groups present and reporting on Mai Mai activity in the DRC include Refugees International who too paint Mai Mai activity in the DRC as predominantly senseless acts of violence posing a threat to the human

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[17] Baaz, Maria Eriksson and Stern, Maria. "Making Sense of Violence: Voices of Soldiers in the Congo (DRC)". *The Journal of Modern African Studies* . Vol. 46, No. 1, Mar. Cambridge University Press. 2008. Page 57-58

[18] Autesserre, Séverine. " D. R. Congo: Explaining Peace Building Failures, 2003-2006". *Review of African Political Economy*. Vol. 34, No. 113, Sep. Taylor & Francis, Ltd. 2007. Page 426-430.

[19] Loc cit. Page 426-427

[20] Baaz, Maria Eriksson and Stern, Maria. " Making Sense of Violence: Voices of Soldiers in the Congo (DRC)". *The Journal of Modern African* Studies . Vol. 46, No. 1, Mar. Cambridge University Press. 2008. Page 56-60

[21] MONUSCO Radio Okapi. "Katanga : arrestation de 12 personnes suspectées d'être des Maï-Maï". 12 July 2014, 12:40. http://radiookapi.net/actualite/2014/07/12/katanga-arrestation-de-12-personnes-suspectees-detre-des-mai-mai/. Accessed 16 July 2014.

rights of the Congolese community. [22] Similarly, the views of government officials (as interviewed for this paper) on provincial and national levels mostly parallel those of the above mentioned external actors.

On the second country case, since the failure of the state in 1991, Somalia has experienced an ongoing crisis of piracy. [23] These acts of hijacking and ransoming international fishing vessels by Somali pirates has caused much concern in the international arena as the lawlessness in Somalia has made the issue of piracy increasingly difficult to contain. [24] The acts of Somali pirates are self proclaimed to be legitimate as they claim to be defenders of their seas against the illegal dumping and overfishing in their seas by external vessels. Some pirates in fact refuse this label, rather referring to themselves as Somali Coast Guards. [25] In their denial of the legitimacy of those trying to control what they believe to be their seas, Somali pirates posit their need to protect their waters as means of survival. [26]

However, the acts of piracy is seen as a threat to international peace and security by agencies such as the United Nations and well as an obvious threat to economic gains by Western companies that send their vessels. [27] Because of this, Somali pirates have been the subject of much contestation by the international community. They have been criticized for engaging in acts of piracy in order to continually benefit financially through their ransom demands which continually increase and their raids of non-Somali fishing vessels as depicted in the writings of Efthymios Papastavaidis, Patrick Lennox, Patricia Schneider and Matthias Winkler among others. In addition, reports by organizations such as Defence Web and World Food Programme

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[22] Brown, Michelle and Boyce, Michael. "D R Congo: Katanga in Crisis". *Refugees International*. Field Report. 26 June 2014.

[23] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law.* 44:2. 2013. Page 187

[24] Murphy, Martin N. *Somalia: The New Barbary?: Piracy and Islam in the Horn of Africa*. Columbia University Press. 2011. Page 13-20

[25] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

[26] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". Ocean *Development International Law*. 44:2. 2013. Page 186-188.

[27] Loc cit.

also perceive the Somali pirates as criminals of the sea due to their attacks on the vessels that serve as assist them in the wake of humanitarian crisis.[28]

Consequent to these widely shared and reported views, the acts of the Mai Mai in the DRC and the Pirates in Somalia as acts of banditry as informed by common discourse is the prominent image depicted in international media. This has lead to their motives behind their violent acts to be overshadowed by their wrong doings, which ultimately leads to their waging of violent conflict to be generally proclaimed as unjust. However, behind these views lies a context of social inequality, political instability and colonial history that gave rise to these volatile situations that is often ignored by those reporting.[29]

As stated above, the chosen country cases for this research are the Democratic Republic of Congo (DRC) and Somalia, both facing grave human rights crises and listed as failed states according to the Failed States Index.[30] Violent non-state actors have emerged in both countries, sharing several similar justifications in their individual cases. Due to their weak or absent institutions, both Somalia and the DRC have had violent non-state actors emerge in an effort to take control where their governments have failed to do so. Though the notion of state failure is unavoidable when dealing with these two cases, this notion will not be central to this analysis as it is beyond the scope of this paper. However, the notion of the failed state as explored by writers such as Chris Allen, Paul D Williams and Zoe Marriage, in both of these cases will be used to draw parallels, patterns or trends that can be used to guide the analysis of the two case studies (i.e: claims of non-state actors stepping in where the state has failed to do so).

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[28] Murphy, Martin N. *Somalia: The New Barbary?: Piracy and Islam in the Horn of Africa*. Columbia University Press. 2011. Page 8-12

[29] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

[30] Failed States Index. http://ffp.statesindex.org/rankings-2013-sortable. 2013. Accessed 29/05/2014

1.3

Framework of Assessment

This section seeks to explore Just War Theory as the lens / framework of assessment of this paper which will be used to look at the intersection of non-state actors, acts of violence and its legitimate conduct in focusing on the perception of justification, alongside a Realist world view which posits that war is inevitable.[31] That is, the anarchic nature of the world puts the survival of states at the core of state interests. However, as seen with the rise of non-state actors that in some cases exert a power too strong for the state to control, the state is arguably no longer the sole important actor in international relations. Moreover, wars have come to embody various forms, between and within states and for different reasons. However, legitimate wars cannot be waged without the adhering to guideline as outlined in the United Nations Charter, the Geneva Conventions, International Human Rights Law and as explained in Just War Theory.[32] Contributors to the literature such as Brian Orend situate Just War Theory in human rights as a substantial theory. For Orend, human rights are entitlements that can be reasonably demanded by social institutions and others. Territorial integrity and sovereignty are then classic state rights which are also grounded upon foundational and universal moral rights. This view again reflects a Western informed conception of Just War Theory informed by Western norms. Other contributors to the literature such as Mark Vorobej, Helmut David Baer, Joseph E. Capizzi, Cecile Fabre and Kenneth Kemp suggest that the application of Just War Theory can be deeply problematic.[33] They argue for reconfigurations of the theory, particularly around 'just intention' a principle, put into question the concept of legitimate authority, problematize the theory and its paradoxes and call for the theory to be reformulated in a manner that makes it cleaner conceptually that in it is currently formulated.[34] The call for a reconceptualization of the Just War Theory by the contributors to the literature is indicative of the contradictions in views on

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[31] Donnelly, Jack. 'Chapter 8: The Ethics of Realism'. *The Oxford Handbook of International Relations.* Oxford University Press. 2008. Page 150-162

[32] Baer, Helmut David and Capizzi, Joseph E. "Just War Theory and the Problem of International Politics: On the Central Role of Just Intention". *Journal of the Society of Christian Ethics*. Vol. 26, No. 1, Spring / Summer. Society of Christian Ethics. 2006. Page 163-165

[33] Vorobej, Mark. 'Just War Theory and the Invasion of Afghanistan'. *Peace Research.* Vol. 41, No. 2 (2009). Page 29-30

[34] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization".*Public Affairs Quarterly*,Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Pgae 57-58

Just War theory in its traditional formulation which ultimately creates tensions in using the theory to analyse or determine legitimacy in modern conflicts.

Given these views that put into question traditional Just War Theory in its application and call for its reassessment in viability, the theory in the context of non-state actors will therefore be a worthwhile area to explore. According to the theory, just wars are typically initiated by the state according to set principles/pillars (as listed in the introduction). However, in the cases of non-state actors that initiate or engage in violent conflict, it is worth exploring how the theory can be applied or perhaps amended in alternative cases. The following categories containing the pillars of Just War Theory will be explored in this research paper: *jus ad bellum (justice of resorting to war), jus in bello* (justice of conduct during war) and *jus post bellum* (justice of agreements of peace towards the end of war).[35] In doing so, questions of right intention; proper authority; proportionality; international law; weapons and methods; reprisals; and rights vindication will be explored in analyzing justification of violent non-state actors' engagement in conflict.[36]

In investigating the cases of violent non-state actors in the DRC and Somalia, this research paper will use Just War Theory to shed insight into the conflict of legitimacy (claimed by the non-state actors in these cases) and legality (pillars of Just War Theory). It is important to note that this paper seeks to revisit of Just War Theory to assess legitimacy in conflict where the theory is not traditionally applied (non-state actors). The study acknowledges the focus of states in Just War Theory, but seeks to use the pillars of the theory outside of its scope by applying them to assess justice in war in the emerging powerful non-state actors. In doing so, this research paper seeks to provide an analysis of legitimacy and legality in terms of Just War Theory with these cases in contributing to the discourse on conflict in contemporary international relations.

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[35] Toner, Christopher. " The Logical Structure of Just War Theory". *The Journal of Ethics.* Vol. 14, No. 2, June. Springer. 2010. Page 81-85
[36] Loc cit. Page 86

1.4

Methodology

With the use of qualitative data, drawing insights from various assessments of analysis will be the primary method used in this research to investigate the justificatory debates of the non-state actors in the selected cases against Just War Theory.[37] This will provide insight into how Just War Theory can be used to assess legitimacy even when used outside of its scope in contemporary conflicts. This is relevant due to the changing nature of conflict where there is a trend in the rise of non-state actors as central parties in conflict.[38]

The cases of the Mai Mai Bakata Katanga and Somali pirates, share similarities as well as differences. Important case similarities to note are that both cases depict conflict in within weak African states as explained above, both perpetuate violence using claims of protection of land/sea that is rightfully theirs, both primarily target external forces and both act in a state with weak or absent central authorities. However, these cases also harbour differences in their unique conflicts. For instance, the Somali conflict is primarily fought in the sea while the DRC conflict is in land.[39] The amount of external humanitarian intervention between the two cases also varies. Additionally, it is worth noting the differences in types of resources between the two cases which contributes to the respective conflicts. Also, this research does not seek to determine the legitimacy of violent non-state actors' waged wars in *all* states, but rather in the selected African states where violent non-state actors are active. While vital differences to note are that the nature of conflict with these cases are different (in land versus sea, mass killings versus raids and looting).[40][41]

In analysing the insights into the discourse on non-state actor driven conflict in the DRC and Somalia, this research seeks to investigate varying perspectives of notions of legitimacy in

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[37] Collier, David. "Understanding Process Tracing". *Political Science and Politics*. Vol. 44, No. 4. 2011. Page 824-825

[38] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 12

[39] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law*. 44:2. 2013.Page 187

[40] MONUSCO Radio Okapi. "Katanga : des Maï-Maï sèment la terreur à Malemba Nkulu". http://radiookapi.net/actualite/2014/09/22/katanga-des-mai-mai-sement-la-terreur-malemba-nkulu/. 22 September 2014, 12:24. Accessed 03/10/2014.

[41] Murphy, Martin N. *Somalia: The New Barbary?: Piracy and Islam in the Horn of Africa.* Columbia University Press. 2011. Page 16-20

conflict (particularly in weak African states) in contemporary international relations. That is, to delve into the debate and discourses on the changing nature of war and conflict in the international system (shift away from states as central actors in perpetrating war). Insights from various analysis of the non-state actors justifications in driving violence as well as the external responses to the conflicts will be assessed in using the input of commentators on the topic (full list of references in bibliography). The insights and assessments of analysis on these two cases will ultimately be compared to determine the continued relevance, applicability or fairness of measuring mechanisms of legitimacy as set out in the Western informed UN Charter, the Geneva Conventions which are encapsulated in Just War Theory as mentioned above.[42] Therefore, the key words and pronouncements to analyse throughout would be legitimacy, legality and justice in conflict situations.

In analyzing the emergence and motivations of the Congolese Mai Mai and Somali Pirates in their particular contexts in line with the growing discourse on international human rights in line with just war, the research process of discourse analysis seeks to answer key sub-questions. These are:

- How do non-state actors legitimize their actions?
- How might we apply a Just War Theory in order to assess principles of legality and legitimacy in conflicts involving non-state actors?

For this qualitative research, a combination of primary and secondary data has been collected and utilized in compiling the proposed research paper. This included interviews with professionals, analysts, concerned persons in the field, newspaper articles, expert reports issued by institutions such as the United Nations, think tanks, measurable indicators, and secondary literature. The availability of research differs between the two cases, with more reported existing data available for the Somalia case over the Congolese case. Therefore, a heavier reliance on primary sources for the Mai Mai Bakata Katanga case was necessary. Interviews conducted with the following persons for this research (also listed in the bibliography at the end of this paper):

- Adalbert Kitopi Kimpinde. Professeur de droit à l'Université de Lubumbashi / Professor or Law at the University of Lubumbashi. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo, 17/09/2014.

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[42]Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*. Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page59-63

- Celestin Lushingo Ilunga. Commissaire de District. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo, 16/07/2014.

- François Kazembe Kilumba. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo, 18/09/2014.

- Kaumba Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo, 01/07/2014.

- Marthe Tshiwengo. Commissaire de District de Haut Kalenga. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo, 22/09/2014.

- Therese Lukenge. Ministre Provinciale du Genre, Condition Feminine et Famille, Culure, Arts et Sports. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo, 09/21/2014.

- Other relevant and informed commentators on the Mai Mai and Somali piracy case who have chosen to remain anonymous and not cited.

It is important to note that because of the nature of this study, direct interaction with Mai Mai fighters and the Somali rebels was not able to occur due to a lack of access to them. This means that the utterrings of commentators and analysts were assessed rather than the utterrings of the Mai Mai and pirates themselves. Additionally, access, or lack thereof, justifies the increased use of interview in the DRC and the lack of it in the Somali case (Congolese commentators more willing to be interviewed and referenced compared to hesitation or refusal from Somali commentators). Also, it is important to bear in mind that the political backgrounds and professions of the interviewed persons may demonstrate bias in their responses.

Chapter 2 - A Look Into Just War Theory

2.1

Just War Pillars and the Geneva and Hague Conventions Explored

As outlined in the introductory chapter of this paper, the pillars of the Just War Theory include: just cause, right intention, proper authority and public declaration, last resort, probability for success, proportionality, obedience of international weapon laws, discrimination and non-combatant immunity, benevolent quarantine for prisoners of war, no means *mala in se*, no reprisals, rights vindication, compensation and rehabilitation.[43] Each of these will be individually explored in the subsequent paragraphs alongside the Geneva Conventions. The Conventions are vital to investigate here as they interrelate with the principles outlined in Just War Theory by which the Conventions were informed. The Geneva Conventions are made up of four treaties and three protocols which together determine the principles of international law regarding humanitarian treatment during times of war and are applicable to all ratifying states at times of war. Because the convention is based upon humanitarian treatment while wars are taking place, it seeks to protect combatants who have put down arms as well as civilians caught in the situations of violent conflict.

On the other hand, the Hague Conventions of 1907 deals more specifically with crimes committed during times of war under the law of war as well as issues of disarmament which will also be explored alongside the relevant Just War pillars in this section. What is important to note, especially in the cases of the Somali and DRC conflicts, is that the Conventions and Protocols deal with both inland conflict as well as combatants at sea and codify the guidelines as established by Just War Theory in setting a premise for the before, during and after processes of war. This chapter thus seeks to lay the foundation upon which the notion of legitimacy in the chosen cases will be assessed in the chapters that follow. It will illustrate specific Conventions or Protocols informed by specific Just War pillars where necessary, as well as highlight the issues of subjectivity informed by Western ideals with the concerned pillars in determining legitimacy.

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[43] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

Just cause is a suitable starting point in analyzing the pillars of this theory of war. 'Just cause' in war means a lawful or valid reason for which a war is to be waged.[44] This just cause, according to the theory, is solely determined by the state as the ultimate holder of sovereign power. However, for the purposes of this paper, just cause will be analyzed on the level of the non-state 'insurgency groups' in the chosen case studies. The Hague Convention IV respecting the Laws and Customs of War on Land codifies the laws and customs to be respected in times of conflict once a war is deemed just.[45] **Right intention** suggests that wars can be deemed as just if the intention, purpose of aim of starting the war is correct.[46] However, a predicament here lies in the determining factors behind this 'rightness' or 'correctness' which is arguably a highly subjective concept. The subjective nature of such concepts creates the tensions in determining legitimacy which will be further explored in the selected cases.

In a just war with the right intention determined, the betterment of armed forces or combatants is covered in the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces. This was later expanded to include maritime combatants in the 1906 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.[47] The issue, however, with just cause and just intention is again the subjective nature of this 'justness'. What is considered to be just, right and therefore legitimate, varies depending on the lens through which a conflict is assessed. Hence the tensions between the justificatory discourses of the Mai Mai Bakata Katanga of the DRC and the Somali pirates to be explored in this paper, versus the pillars of Just War which were informed by Western ideals as outlined in Chapter 1.1.

Thirdly, **proper authority and public declaration** suggest that a lawful authority needs to have declared the war in an open manner in order for the war waged to be legitimate, which can be

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[44] Vorobej, Mark. 'Just War Theory and the Invasion of Afghanistan'. *Peace Research*. Vol. 41, No. 2 (2009). Page 30-31

[45] International Committee of the Red Cross. "Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague. 18 October 1907". https://www.icrc.org/ihl/INTRO/195. Accessed: 20-07-2014

[46] Baer, Helmut David and Capizzi, Joseph E. "Just War Theory and the Problem of International Politics: On the Central Role of Just Intention". *Journal of the Society of Christian Ethics*. Vol. 26, No. 1, Spring / Summer. Society of Christian Ethics.2006. Page 169-172

[47] International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols". https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed: 20-07-2014

done using platforms such as mass media.[48] **Last resort** is a just war pillar that also resonates in Chapter 7 of the United Nations Charter which, put simply, authorizes military action / intervention when all other non-violent mechanisms to achieve peace have failed.[49] Last resort refers to military action which is why the Geneva and Hague Conventions become important in that they deal with the humanitarian treatment during time of violent conflict.

Probability for success suggests that a war can only be waged if the probability of succeeding in combat is relatively high. This is a pillar of a just war as it seeks to avoid mass amounts of damage, injury and death over and above what is to be expected from a war due to extended war efforts that become difficult to end.[50] Additionally, a war must have a measureable effect on the situation at hand in order to be legitimate. **Proportionality** has mainly to do with the weighting up of 'universal goods' versus 'universal evils in making the decision of going to war.[51] Here, the legitimate authorities need to determine whether the outcomes of the war are worth taking part in the war in aiming to achieve the most positive results from a highly negative situation.

According to Just War Theory, in order for a war to be justified, *all* of the above criteria need to be fulfilled. The above pillars making up *jus ad bellum* are not mutually exclusive, but rather need to be complied with in their entirety in order to engage in a war that is to be considered just.[52] *Jus in bello*, another component of Just War Theory, looks at the legitimacy and correct conduct during war. As this sets out the principles for conduct in the midst of war, it is those who formulate and carry out war policy, such as military commanders and soldiers etc., who are held accountable for any breaches. The following paragraphs seek to illustrate these principles of justice in war.[53]

Obedience of international weapon laws sets out the guidelines in terms of weaponry to be followed in order for a war to be just. Here, weapons used in the process of war making must

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[48] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[49] Fabre, Cecile. "Cosmopolitanism, Just War Theory and Legitimate Authority". *International Affairs* (Royal Institute of International Affairs 1944-).Vol. 84, No. 5 (Sep., 2008). Page 972

[50] Vorobej, Mark. 'Just War Theory and the Invasion of Afghanistan'. *Peace Research*. Vol. 41, No. 2 (2009). Page 39

[51] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*,Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page59-63

[52] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[53] Loc cit.

adhere to the guidelines and rules for weapon use globally. Therefore, weapons that are not authorized, such as weapons of mass destruction, cannot be used of justified in war making.[54]Here, the Hague Convention VII relative to the Conversion of Merchant Ships into War-ships is worth noting for the Somali piracy study to be explored in the chapters that follow as the Somali pirates indeed turn their merchant vessels into war-vessels to engage in their piratical acts.[55]

Discrimination and non-combatant immunity as a just war pillar serves to protect innocent civilians that get caught in conflict situations and are susceptible to injury and death among other damages. This perhaps creates tensions with the collateral damage that occurs in wars where non-combatants and innocent civilians are wounded, have their property damaged or lose their lives in place of the actual targeted enemy. Hence, all four Geneva conventions were informed by Just War Theory.[56] This pillar is specifically reflected in the 1949 Convention relating to the Protection of Civilian Persons in Time of War which was a revision and replacement of the 1929 Geneva Convention relative to the Treatment of Prisoners of War.[57] Additionally, the 1977 Protocol I relating to the Protection of Victims of International Armed Conflicts and 1977 Protocol II relating to the Protection of Victims of Non-International Armed Conflicts also codifies the defence of victims of violence crises.[58] Both of these Protocols are worth noting in this study because of the non-state nature of the actors as well as the international dimensions of the causes of conflict in each case (Rwandan and Ugandan forces in the DRC and international shipping vessels in the Gulf of Aden).

Proportionality in *jus in bello* differs from that in *jus ad bellum.* Here, proportionality is not in terms of universal good versus universal evil, but rather proportionality in terms of the force that

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[54] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[55] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law*. 44:2. 2013. Page 187-190

[56] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*,Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page 64

[57] International Committee of the Red Cross. "Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907". https://www.icrc.org/ihl/INTRO/195. Accessed: 20-07-2014

[58] International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols". https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed: 20-07-2014

is used by combatants during war. The force that is used in combat must therefore be in proportion with the desired outcome of the war. The use of nuclear weapons by a large party, for example, against a smaller party fighting with bows and arrows would not qualify as just war.[59] **Benevolent quarantine for prisoners of war** refers to combatants that surrender in times of conflict and become captives of the opposing force. This pillar states that these ex-combatants or prisoners of war are to not be subjected to torture or targeted by the opposing force as they no longer pose a threat to human rights due to their putting down arms.[60] This pillar is explicitly reflected in the Geneva Convention relative to the Treatment of Prisoners of War which was first adopted in 1929.[61]

No means *mala in se* as a pillar prohibits the use of unethical or evil methods of torture or engaging in war. Thus, war crimes such as genocide, the use of force of captured soldiers to fight against their own, using weapons with uncontrollable effects or mass rapes, among others, are immediately considered as unjust according to the theory.[62] The Hague Convention XI relative to Certain Restrictions with regard to the Exercise of the Right of Capture in Naval War is worth noting here, particularly for the Somali case study, as limits are put to the capturing methods in conflict.[63] **No reprisals** as a just war pillar suggests that a war cannot be deemed legitimate if the reasons behind the war making lie in acts of revenge or vengeance. Thus, defence would be among the primary reasons acceptable for a just war, according to the theory, rather than wars waged on a 'tit for tat' basis.[64] Like with just cause and intention, the subjective nature of what it considered as vengeance and by whom poses issues in determining legitimacy and ultimately legality.

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[59] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*. Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page 71-72

[60] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[61] International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols". https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed: 20-07-2014

[62] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*. Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page 71-72

[63] International Committee of the Red Cross. "Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907". https://www.icrc.org/ihl/INTRO/195. Accessed: 20-07-2014

[64] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/014

While the above pillars indicate the principles for conduct during war to be deemed legitimate and the need for the most senior authority (the state) to continue to respect human rights even in times of war, the following paragraphs will unpack the final component of Just War Theory that is *jus post bellum*. As the third and final component of the theory of legitimate wars, this set of principles provides guidelines by which war is to be terminated and the aftermath of war are to be dealt with.

The pillar of **proportionality and publicity** deals with peace settlements in the end stages of violent conflict. This pillar states that the conditions of peace must not only be practical and realistic, but also measureable. Additionally, the conditions of peace must be made public knowledge so as to encourage adherence to these.[65] **Rights vindication** looks at the violated rights that set off the just war. This means, those very violated rights need to be revisited and secured so as to avoid the occurrence additional conflicts. In essence, this pillar deals with the security of basic human rights, such as the right to life, freedom and territory, in the war affected areas.[66]

Discrimination as a *jus post bellum* pillar seeks to differentiate between the different actors involved and affected in times of war. That is, to differentiate between state leaders, combatants or soldiers, and innocent civilians when negotiating peace settlements and initiating punishments.[67] This pillar seeks to secure the innocent parties in war from bearing the burden of the war in their territory. Again here, the 1929 Geneva Convention relative to the Treatment of Prisoners of War and the 1949 came the Convention relating to the Protection of Civilian Persons in Time of War which replaced it come in to ensure that the innocent are differentiated from the guilty to inform the consequences thereof.[68] Thus, punishments such as sanctions, particularly those of a socio-economic nature, on defeated countries that would negatively affect the civilian population would be ruled out as the innocent would need to be protected. The consequences to be paid by those to be held accountable for crimes during conflict is covered in

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[65] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/014

[66] Vorobej, Mark. 'Just War Theory and the Invasion of Afghanistan'. *Peace Research.* Vol. 41, No. 2 (2009). Page 50

[67] Kemp, Kenneth W. "Just-War Theory: A Reconceptualization". *Public Affairs Quarterly*. Vol. 2, No. 2 (Apr., 1988). University of Illinois Press North American Philosophical Publications Stable. Page 64

[68] International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols". https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed: 20-07-2014

the pillars **punishment one and two.** Here, country leaders and soldiers from all sides of the conflict who committed grave war crimes to be held accountable for their actions through punishments and just public international trials.[69]

Compensation as a just war theory pillar looks at the financial restitution that may occur after war. This financial restitution is to assist the process of reconstruction after the destructive effects of war. Finally, **rehabilitation** in post war times seeks to reconstruct on a more structural and social level in the affected countries. This includes efforts such as disarmament, training of the police, human rights education initiatives among other endeavours.[70]Here the role of neutral actors external to the conflicts at hand becomes important as they facilitate such processes (for example United Nations Organization Stabilization Mission in the Democratic Republic of the Congo - MONUSCO in the DRC[71] and the International Maritime Organization - IMO and United Nations Office on Drugs and Crime - UNODC in Somalia).[72]The role of such actors is codified in the Hague Convention V relative to the Rights and Duties of Neutral Powers and Persons in case of War on Land and Hague Convention XIII concerning the Rights and Duties of Neutral Powers in Naval War.[73]

Thus, all of the above pillars set out the guidelines which determine the legitimacy of war prior to its commencement, during the violent conflict and towards its end and after. What is vital to remember is that the first six pillars, *under jus ad bellum* which are addressed to state heads, must be fulfilled in their entirety in order for a war to be just from the start. While, the pillars under *jus in bello* and *jus post bellum* deal with the nature of war after the start has already been deemed as just. These Just War pillars alongside the Conventions and Protocols explored above are important in this study in providing guidelines by which the justificatory discourses of the non-state actors in this study are to be assessed. The applicability, or lack thereof, of the pillars will build on the discussion of how useful Just War Theory is in assessing a notion of legitimacy

[69] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[70] Loc cit.

[71] Brown, Michelle and Boyce, Michael. "D R Congo: Katanga in Crisis". *Refugees International*. Field Report. 26 June 2014. Page 2-6

[72] Papastavaidis, Efthymios. "Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves' of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 154

[73] International Committee of the Red Cross. "Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907". https://www.icrc.org/ihl/INTRO/195. Accessed: 20-07-2014

in contemporary wars in weak African states where non-state actors are the units of analysis. By delving into the determining of 'justness' and legitimacy informed by Just War Theory from different lenses in explored cases in the subsequent paragraphs, the study will also build on the ongoing debates on the universal applicability of such guidelines.

2.2

The Changing Nature of War: The Rise of Non-State Actors

The notion of state sovereignty has and continues to shape the nature of international relations and global politics.[74] Put simply, state sovereignty places primary authority on a sole polity. The state as this polity exercises supreme power over its land and population. The constitution of the state thus dictates the rules by which the land is to be regulated. With sovereignty, however, also comes state responsibility to protect its inhabitants.[75]

Conflicts in the shape of minor local disruptions to outright large scale wars have occurred throughout history. Some of these wars stem from ethnic or religious tensions, resource scarcity, border conflicts, among numerous other reasons.[76] In cases of conflict, it is the state that continues to hold primary power over the control these volatile situations or even engaging in them. Thus, the state holds the authority is to be held accountable for what occurs with the state during times of war.[77]

Though patterns of interstate conflicts previously dominated international relations, it is conflicts within states which have increasingly dominated contemporary international affairs. Non-state actors are on the rise and with their rise in numbers comes their rise in power. This undoubtedly occurs due to unconsolidated and weak governance in several countries in Africa.[78] This can be seen with the examples of not only the Mai Mai in the DRC and Somali pirates, but also with

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[74] Wohlforth.William C. 'Chapter 7: Realism'. *The Oxford Handbook of International Relations*. Oxford University Press. 2008. Page 131-149

[75] Donnelly, Jack. 'Chapter 8: The Ethics of Realism', *The Oxford Handbook of International Relations*. Oxford University Press. 2008. Page 150-162

[76] Young, Crawford, 'Patterns of Social Conflict: State, Class, and Ethnicity.' *Daedalus*. 111(2), 1982. Page 71-98

[77] Donnelly, Jack. 'Chapter 8: The Ethics of Realism'. *The Oxford Handbook of International Relations*. Oxford University Press. 2008. Page 150-162

[78] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 9-14

other non-state actors engaging in violence in cases as in Liberia, Uganda, Ghana and Nigeria which are among the African states with the highest recordings deaths resulting from non-state violence between 1989 and 2013.[79]In these cases, it is no longer necessarily the case where two states oppose each other in interstate wars, but rather groups with the state opposing each other or furthermore, independent groups opposing the state.[80] Even with this changing nature of war in contemporary international relations does not necessarily involve states as opponents, smaller insurgency group too have the capacity to pose grave human rights threats and damages to property and society.[81]

Non-state actors that engage in conflict form for various reasons, unique to their grievances.[82] Though theories such as just war theory are typically applied or addressed to states as primary actors, non-state actors too have paralleling features in their war making that make the application of this theory worth investigating. Able to acquire weapons and grow in numbers as state authorized combatants would, non-state insurgency groups also commit war crimes and pose grave threats to the international human rights regime championed by the United Nations.[83] States, in international relations, hold the ultimate responsibility of protecting the human rights of its citizens.[84] However, in some cases, it is non-state insurgency groups that claim to take this responsibility in their own hands in initiating conflicts. Before investigating this further in the specific context of the chosen case studies, the Democratic Republic of Congo and Somalia in the subsequent chapters, it might be worth examining international human rights championed by the United Nations and how these codes of practice parallel with the ideas of just war.

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[79] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 12
[80] Loc cit.
[81] Loc cit. Page 9-14
[82] Young, Crawford. 'Patterns of Social Conflict: State, Class, and Ethnicity.' *Daedalus*.111(2). 1982. Page 71-98
[83] Forsythe, David P. "Global application of human rights norms" (Part 2) in *Human Rights in International Relations Second Edition*, Cambridge University Press, 2006. pg 57-88
[84] Donnelly, Jack. 'Chapter 8: The Ethics of Realism'. *The Oxford Handbook of International Relations.* Oxford University Press. 2008. Page 150-162

2.3

The United Nations Charter, Human Rights and Just War

This section provides a short historical overview of the United Nations Charter, particularly the surrounding themes of human rights protection, as well as an outline of military intervention and the Responsibility to Protect. These themes are important to review in the context of the selected case studies where issues of human rights, legitimacy and legality in conflict will be assessed with Just War Theory as an analytical tool.

As mentioned above, the current international system results in the sovereign states of the world being the holders of ultimate importance and power. In order to maintain this power, states act in pursuing their national interest and maintaining their national security at any cost.[85] With this realist approach to international relations human rights and the importance of the individual, as a liberalist ideology, tend to decrease in the national agendas of states. This means that human rights abuses are ultimately more likely to occur as the protection of these rights by states takes a back seat in favour of satisfying national interest first.[86] It is important to note, however, that though Realism is the dominant theory advocating a state-centrist approach in international relations, it is not the only one.

However, the United Nations emerged as an organization to promote the common responsibility to protect human rights across the globe in accordance with the Universal Declaration of Human Rights.[87] As member states the United Nations, the nations of the world undertake to adhere to the values that the organization holds, such as global peace keeping and human rights promotion. The UN Security Council (UNSC) holds the responsibility of approving military interventions that would be necessary to stop human rights violators and there are various legal mechanisms in place which justify and explain military humanitarian intervention.[88]

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[85] Wohlforth, William C. 'Chapter 7: Realism'.*The Oxford Handbook of International Relations.* Oxford University Press. 2008. Page 131-149

[86] Loc cit.

[87] United Nations. 'The United Nations Organisation'. http://www.un.org/en/aboutun/index.shtml. Accessed: 06-07-2014

[88] Forsythe, David P. "Global application of human rights norms" (Part 2) in *Human Rights in International Relations Second Edition*. Cambridge University Press. 2006. pg 57-88

The international human rights regime championed by the UN places at its core the need for the rights of each individual to be protected across the globe. This regime aims to allow human beings to live dignified lives which would ultimately lead to universal harmony. It is the responsibility of states to ensure that the people of their nations have their political, economic, social and cultural rights protected under the codes outlined in the Universal Declaration of Human Rights.[89]

In order to maintain international peace, as stated in the primary mission of the UN, armed humanitarian interventions are sometimes necessary in order to put an end to human rights violators. Here, states would for example send armed military troops into another state where human rights atrocities are taking place as a mechanism to restore or maintain peace.[90] With military force as the core feature of such interventions, intervening states are only justified if their forced entry into the human rights violating sovereign states is in order to put an end to these atrocities or in acts of self defence as emphasized in Chapter 7 of the United Nations Charter.[91]

The UNSC is the organ of the UN which is responsible for the authorization of military intervention by states into other states.[92] Chapter 7 of the UN Charter documents the regulations for authorized military action which can be approved by the UNSC in order to bring about global peace and security. Chapter 7 indicates that military intervention may only take place once all other mechanisms for peace have been exhausted (last resort) and if the reasons behind the intervention are self defence or human rights protection in bringing about the primary goal of international peace as mentioned above.[93]

Also, the notion of Responsibility to Protect (R2P) is important to delve into if the topic of non-state insurgency group led violence is to be investigated. This is because protection is often the reason used by these groups to justify their acts of conflict. However R2P in its traditional sense

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[89] Universal Declaration of Human Rights. UNGA Res 217A(III). 10 December 1948. http://www.un.org/en/documents/udhr/. Accessed: 06-07-2014

[90] Wheeler, Nicholas J and Bellamy, Alex J. 'Humanitarian intervention in world politics' (Ch25) in Baylis, J. and Smith, S. (eds): *The Globalization of World Politics.* Oxford University Press. 2005. Page 556-557

[91] Loc cit.

[92] Forsythe, David P. "Global application of human rights norms" (Part 2) in *Human Rights in International Relations Second Edition.* Cambridge University Press. 2006. Page 57-88

[93] Loc cit.

looks at the responsibility of external states to intervene in other states where human rights violations are occurring.[94] This will be of particular importance when exploring the international response to the conflicts in the chosen case studies, the DRC and Somalia in the subsequent chapters.

The concept of R2P is comprised of principles which recognize the need to prevent and respond to human rights violations in the form of genocide, crimes committed in war, ethnic cleansing as well as general crimes against humanity.[95] This concept of R2P, which has no legal standing in international law, calls upon states to act against states which practice such human rights violations, and this is where humanitarian intervention is relevant.

Though R2P is not in fact a legal treaty, it is internationally recognized as a norm from which acts of humanitarian intervention are able to derive in order to maintain a peaceful globe.[96] The issue that arises with R2P and humanitarian intervention is the infringement that these have on the sovereignty of states.[97] Sovereign states are in theory meant to be protected from external interference in their internal affairs. Therefore a state which is intervening in another state where human rights abuses are occurring is in essence infringing on that state's sovereignty. However, a counter argument to this would be that such interventions are justified as offending states are in fact neglecting their responsibility to respect the human rights of their nations.

The cases of the Mai Mai Bakata Katanga in the DRC and the pirates in Somalia have both posed threats and violations against human rights in their respective regions. As a result of this, the involvement of external actors in each of these crises has occurred, which will be explored in the chapters to follow. It is in these interventions to instil and maintain peace that the actions of these violent non-state groups are painted as acts of banditry which infringe on international human rights norms, though these groups present their individual justifications for their actions.[98][99]

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[94] Evans, Gareth and Sahnoun, Mohamed. ' The Responsibility to Protect'. *Foreign Affairs.* Vol 81 No.6, Dec 2002. Page 99-110

[95] International Coalition for the Responsibility to Protect'. http://www.responsibilitytoprotect.org/. Accessed: 07-07-2014

[96] Evans, Gareth and Sahnoun, Mohamed. ' The Responsibility to Protect'. *Foreign Affairs,* Vol 81 No.6, Dec 2002. Page 99-110

[97] Cronin, B. 'The tension between sovereignty and intervention' .*Human Rights Review*. Jul 2007.

[98] Kazembe, Kilumba François. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Bakata Katanga in the Democratic Republic of Congo. 18/09/2014.

Chapter 3 - The DRC and the Mai Mai Bakata Katanga Crisis

The Democratic Republic of Congo is perhaps one of the most fascinating states to investigate in international relations. This is due to its unique history of brutal colonial rule and ongoing conflict since its independence. The DRC is characterized by weak institutions and is often cited in failed states discourse which creates an environment of opportunity for the emergence of non-state actors amidst instability.[100] The notion of legitimacy will be evaluated in this chapter by delving into the discourse surrounding the Mai Mai Bakata Katanga of the southern region of this central African state. This will be done in the subsequent sub-chapters by first reviewing the collapse or weakness of the DRC, how the Mai Mai emerged and finally exploring insights into their justificatory discourses against the relevant Just War pillars which will provide insight into how Just War Theory can be used to assess legitimacy outside of its home turf (non-state actors) in the concluding chapter (chapter 5) of this paper.

The Democratic Republic of Congo has experienced long term conflict with the involvement of emerging violent non-state actors as well as the involvement of external actors.[101] Since the brutal colonial era, to present day DRC, the nation has never experienced long term peace. The weak state institutions and the failure of the government to exert its authority over all regions of the country has led to the DRC to, like Somalia, be labelled as a failed state. The nature of the Congolese conflict makes it one of the most unique conflicts that the world has ever experienced due to factors such as its rich mineral reserves and the ongoing interference of external forces.[102]

In protest to these external forces, primarily originating from Rwanda, violent non-state actors such as the Mai Mai have emerged. As is the case with Somali pirates, the Mai Mai engage in conflict rooted in their autochthonous beliefs - that is, that their land should belong to its original inhabitants.[103] As they consider themselves to be Congo's true patriots, the Mai Mai have in their various forms and locations around the DRC, continued to fight for their land. However, in this

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[99] Papastavaidis, Efthymios. "Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century." in *Protecting Human Security in Africa*. Ademola Abass. *Oxford University Press*. 2010. Page 126-129

[100] Failed State Index. http://ffp.statesindex.org/rankings-2013-sortable. Accessed 07/06/2014

[101] Baaz, Maria Eriksson and Stern, Maria. "Making Sense of Violence: Voices of Soldiers in the Congo (DRC)". *The Journal of Modern African Studies* . Vol. 46, No. 1, Mar. Cambridge University Press. 2008. Page 57-58

[102] Autesserre, Séverine. " D. R. Congo: Explaining Peace Building Failures, 2003-2006". *Review of African Political Economy*. Vol. 34, No. 113, Sep. Taylor & Francis, Ltd. 2007. Page 426-430.

[103] Loc cit. Page 426-427

fight which they deem as legitimate, the Mai Mai have infringed on the human rights of innocent civilians and have been said to exploit the war for their own advantage in instances of looting and theft of cattle among other crimes.[104] This complexed case will be delved into in the subsequent chapters to assess the legitimacy of the Bakata Katanga against Just War Theory, even though used outside its home turf.

3.1

DRC, The 'Collapsed' State

One would assume that the abundance of natural resources and minerals in a country would automatically lead to a thriving economy, rapid development and high quality of life. However, as seen with the troubled nation of the Democratic Republic of Congo (DRC), this is not necessarily the case. The DRC is a prototypical example of a mineral rich state which has failed to develop. Instead, the resource rich state continues to spiral into ongoing cycles of poverty, dependency and brutal conflicts.[105] The fragile situation in the DRC continues to persist despite presence of the largest United Nations peacekeeping mission in the central African state.[106]

The Congolese crisis is one of much complexity with issues of ethnic tensions, weak institutions, poor governance and plundering external forces making it increasingly difficult to resolve.[107] Dating back to the colonial era to contemporary times, the DRC has not experienced peace and stability. However, with the growing emphasis on the international human rights regime, the spotlight has been increasingly placed on the nation to put an end to the atrocities. A variety of human rights promoting organizations and agencies have taken particular interest in the DRC where gross violations, particularly against women, in the eastern regions continue to occur.[108] The valuable resources in the Congo are a primary driver of this central African conflict which

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[104] Baaz, Maria Eriksson and Stern, Maria. " Making Sense of Violence: Voices of Soldiers in the Congo (DRC)". *The Journal of Modern African* Studies . Vol. 46, No. 1, Mar. Cambridge University Press. 2008. Page 56-60

[105] Marriage, Zoe. 'Divisive Commonality: State and Insecurity in the DRC'. *Third World Quarterly*. 32(10), 2011. Page 463-480

[106] Loc cit.

[107] Marriage, Zoe. 'Divisive Commonality: State and Insecurity in the DRC'. *Third World Quarterly*. 32(10), 2011. Page 463-480

[108] Nzongola-Ntalaja, Georges. 'The International Dimensions of the Congo Crisis'. *Global Dialogue*. Volume 6. Summer/Autumn. 2004. Page 116-126

ultimately means Congolese lives are continually lost for the, usually, financial benefit of individuals, big business and corporations and insurgent groups.[109]

3.2

The Emergence of the Mai Mai Bakata Katanga as Non-State Actors

The Mai Mai Bakata Katanga is just one segment of a larger, more widespread Mai Mai movement that has existed and have continued to be active in the Democratic Republic of Congo for decades.[110] The origins of the Mai Mai are not only traced back to the period of 1998. In fact, the first records of the Mai Mai recount their activities to have begun in 1964. At the time, the group was a rebel movement called "Mai Mulele."[111] This movement was suppressed following the crushing of the Muelist rebellion by loyalist forces (Congolese National Army, Armée Nationale Congolaise or ANC). However in 1998, when the DRC was attacked by the invading forces of the "Burundi-Rwanda-Uganda" coalition, the late president Laurent Kabila organized the defense of the national territory, from the Katanga Province with what he called " les Forces d'Auto-défence populaire or FAP", which was intended to supplement the weaknesses of the loyalist army and lift morale with the slogan "defend your land" or "take care of yourself."[112] After the assassination of President Laurent-Desire Kabila in January 2001, the morale of loyalist troops fell to the lowest, they were no longer in regular supply of necessary goods and weapons and thus deserted the front lines of combat.[113] It is at this point that the local people organized themselves in defence of their respective lands. All over the eastern regions of the DRC where the loyalist army fled in face of the neighbouring invaders, people formed themselves as defenders of their territories and ultimately taking the generic name of 'Mai Mai'.[114]

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[109] Loc cit.

[110] Kitopi, Adalbert Kimpinde. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University f Lubumbashi.. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 17/09/2014.

[111] Kitopi, Adalbert Kimpinde. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University f Lubumbashi.. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 17/09/2014

[112] Lushingo Ilunga, Celestin. Commisaire de District. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 16/07/2014.

[113] Loc cit.

[114] Loc cit.

The Mai Mai are Congolese comprised of several ethnic groups who have experienced the horrors of war of aggression which began on August 2nd 1998. The group had then decided to take up arms in their homeland as a method of defence against the invading Rwandan, Burundian and Ugandan militia.[115] The Mai-Mai are found in all jurisdictions and almost all the tribes of the eastern DRC. Many defended or defend their land against either foreign tribes who settled in the DRC to support wars or dictatorial policies of the Second Republic (lead by Mobutu). For example, in the Eastern Province, many groups from the Mai Mai were fighting to protect their territories against the "Mbororo" tribe of cattle ranchers from the South Sudan from invading their space and slaughtering their herds. Other Mai Mai groups defended their territory against the rebels of the Lord's Resistance Army (LRA) from Uganda for over twenty years.[116] In the province of North Kivu they are essentially the defenders of the territory against Ugandan LRA rebels that comprise of Tutsis from Rwanda or against loyalist troops suspected by local people of being traitors in siding to Rwanda or to defend the natural resource deposits that were constantly being exploited.[117]

In the province of South Kivu, these include the defence of the territory against the presence of Tutsis of Rwandan origin, more specifically the "Banyamulenge".[118] These Tutsi populations were a pillar of the dictatorship of Mobutu, who denounced all natives of this province who were against him. In South Kivu, other groups from the Mai Mai organized themselves to defend their land against the presence of Burundian rebels or in some cases, to exploit some of the minerals in the region which was the same scenario in the province of Maniema.[119] In the Katanga Province, the insurgency group's action was rooted in the aim of defence of the land against invaders, particularly Rwandans from 2010-2013. In this case, it is specifically the group of Mai Mai called "Bakata Katanga", that also claim secession. Also, throughout these provinces there are some small groups who feel rejected by the Kinshasa government for being unable to solve their

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[115] Kazembe Kilumba, François. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 18/09/2014.

[116] Loc cit.

[117] Lushingo Ilunga, Celestin. Commisaire de Distict. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 16/07/2014.

[118] Loc cit.

[119] Lushingo Ilunga, Celestin. Commisaire de Distict. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 16/07/2014.

sufferings, attend to their grievances and improve their living conditions. In their actions, there is a claim for more Mai Mai autonomy as possible so that they can take care of themselves.[120]

The acts of the Mai Mai affect the DRC critically on both the regional and national level; the Katanga province in particular is the economic hub of the country due to its mineral resources. With Mai Mai Bakata Katanga activity, peace is disturbed and development along with other social programs delayed or not executed at all.[121] Schools do not open and populations are compelled to leave or abandon their homes.[122]Therefore, what happens on a regional level affects the national level too, that is, the entire country. This is evident of the interrelatedness of the consequences of Mai Mai and Mai Mai Bakata Katanga action across all spheres. The DRC on both the regional and nation level are thus affected with a similar impact.[123]

Feeding into this debate on state failure, which is itself a contested frame of analysis, would it be fair to say that the Mai Mai Bakata Katanga in their claims of protecting their land are stepping in where the government has failed to do so? This leads one to question what the Congolese government or army has not done that the Mai Mai Bakata Katanga have in turn taken into their own hands. DRC came out of a long war which for many was expected to result in the creation of different countries within what is the DRC. The DRC was not ruled by one overarching power, instead, each part had its different rulers. Coming out of this war, the country finds itself in a fragile position. Therefore, there is an increased focus on rebuilding, stabilizing institutions and elections, which is hindered when groups take arms in ways that harm their own populations.[124]

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[120] Loc cit.
[121] MONUSCO Radio Okapi. "Katanga : des miliciens incendient une soixantaine de maisons dans plusieurs villages". 6 October 2014, 6:12. http://radiookapi.net/actualite/2014/10/06/katanga-des-miliciens-incendient-une-soixantaine-de-maisons-dans-plusieurs-villages/. Accessed 7 October 2014.
[122] Lukenge, Therese. Ministre Provinciale du Genre, Condition Feminine et Famille, Culture, Arts et Sports. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 09/21/2014.
[123] Tshiwengo, Marthe. Commisaire de District de Haut Kalenga. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 22/09/2014.
[124] Lushingo Ilunga, Celestin. Commisaire de District. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 16/07/2014.

The Mai Mai crisis has prompted responses from the Congolese government and as well as external actors to emerge. The response of the Congolese government on a regional and national level to the crisis can be summarized in three primary points:

a) Dialogue with leaders from Mai Mai for the cessation of all activity and eradication of all groups from the Mai Mai.

b) Integration of the Mai Mai who are able and willing to pursue a military career into the Congolese national army.

c) The call for disarmament of the Mai Mai combatants, demobilization of the group and their reinsertion into civilian life.[125]

The role that the international community, particularly MONUSCO, has been to support the government of the DRC in the policy dialogue, providing funding and technical support for the process of disarmament, demobilization and reintegration.[126] This parallels with the notion of R2P. Here, we see the response of international actors to a grave humanitarian crisis, not out of obligation, but responsibility as members of a larger international community.

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[125] Loc cit.
[126] Kazembe Kilumba, François. 2014. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 18/09/2014.

3.2.1

Insights into the Justificatory Discourses of the Mai Mai Ba Kata Katanga

The trouble with the case of the Mai Mai movement and group presently is that there is no single, unified voice pertaining to their desired outcomes of their acts of violence. One reason for this is the existence of various sub groups within the Mai Mai as a whole, such as the Bakata Katanga.[127] Though initially, their aim was clear in opposing the non-Congolese combatants during the early years of the Congolese wars, their more recent actions seem to contradict this as it has been mostly Congolese who fall most victim to their attacks, particularly in the Katanga province.[128]

Furthermore, pro-peace contributors to Mai Mai discourse assert that the DRC has, or is in the process of working towards solid democratic institutions based on fundamental law lead by the constitution.[129] Therefore, if things go wrong in a country, there are non-violent ways that are available to attend to such grievances. It is thus not up to the Mai Mai Bakata Katanga to take matters into their own hands. The discourse on the Mai Mai Bakata Katanga's actions often paint their doings presently in the period post Sun City talks in 2003 as senseless acts of violence.[130]The population of the DRC, according to some, do not know what the group are looking for or what their motivation is for the conflict on the ground.[131]

Perhaps the most widely expressed reasons for the Mai Mai Bakata Katanga's actions since their emergence is that they engage in violence in order to protect their land.[132] That is because it is said that they believe themselves to be the DRC's original inhabitants. Though this is one of the widely expressed reasons for acts of conflict initiated by the Mai Mai Bakata Katanga, much of

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[127] Lushingo Ilunga, Celestin. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo, 16/07/2014.
[128] Loc cit.
[129] Tshiwengo, Marte. Commisairede District de Haut Kalenga. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 22/09/2014.
[130] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 16/07/2014.
[131] Kazembe Kilumba, François. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 18/09/2014.
[132] Kaumba, Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 01/07/2014.

the discourse on the group refutes this, rather considering this claim to be neither true, just nor shared among the Congolese.[133] The commentators of the Mai Mai Bakata Katanga highlight the fact that the Mai Mai Bakata Katanga do not in fact have their own specific land from which they originate. Instead, it is argued that Congo is the land of the Congolese, including the Mai Mai Bakata Katanga, but not exclusive to them. The Mai Mai Bakata Katanga therefore have specific, assigned land to protect as that is one of the constitutional tasks of the Congolese government.[134]

Additionally, among the most reported contradictions raised in Mai Mai discourse concerning this claim of original inhabitants is that they cannot be the original inhabitants of a land while at the same time they engage in killings, destroying the land and engaging in lawless behaviour. Analysts such Celestin Lusingo, Adalbert Kitopi, Kaumba Lufunda and Francois Kazembe refute the Mai Mai claims of being the original inhabitants and therefore the bearers of land protection responsibility.[135] Instead, much of the insights into the discourse highlight that the only land to be considered to be protected is called the Democratic Republic of Congo in its entirety and it is to be protected by the DRC government alone. Therefore the claim of a Mai Mai land within the land of the DRC cannot be legitimized.[136] There contradictions in Mai Mai Bakata Katanga claims versus Mai Mai Bakata Katanga actions therefore raise much concern and accusations on this non-state group that they are not in fact genuinely protecting the Congolese people or the land because they are destroying the same land they claim to protect which leads to the claims of senselessness in their actions.[137]

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[133] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.

[134] Kitopi, Kimpinde Adalbert. 2014. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 17/09/2014.

[135] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Ba Kata Katanga in the Democratic Republic of Congo, 16/07/2014.

[136] Kitopi, Kimpinde Adalbert. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo, 17/09/2014.

[137] Kaumba, Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo, 01/07/2014.

3.2.2

The Nature of Conflict in Katanga, DRC

Key issues existing in the DRC of economic deprivation, political exclusion, lack of opportunities and control of resources are create an environment for the emergence of conflicts as seen in the DRC case. Such issues without a doubt contribute to the emergence of violent groups such as the Mai Mai who engage in conflict often rooted in survival and desperation. When speaking of the Mai Mai Bakata Katanga in particular, they are geographically located and most active in an area that has been coined *Triangle de la Mort*, or Triangle of Death.[138] This is a territorial space located astride the administrative Pweto, Mitwaba and Manono. The name "Triangle of Death" was first coined during the years 2002-2006, because all non-native travelers to that to that region had no chance of venturing there coming back alive.[139] Be it political authorities, administrative authorities, or police. They were all considered the enemy to be defeated. The three territories geographically make up a triangular formation, hence the name it has been given. This area is beside the Upemba National Park in which the Mai Mai Ba Kata Katanga group hide, and from where they attack.[140] One can classify their location within Upemba as hidden because they are not easily found within specific villages nor have they permanently occupied specific territories after fighting the government troops. Instead, they just hide in the park and come out from time to time and raid the villages in these territories.[141] The Mai Mai Bakata Katanga here are ruled under one main leader, that is, Gédéon Kyungu Mutanga (Commander Gédéon) after his escape from prison in 2011. Commentators on the crisis explain that the Commander has particularly strong calls for secession of the Katanga province and

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[138] Madiya, Carroll."Katanga : le triangle de la mort gagne du terrain". 25 June 2014, 10:16. *7sur7 Congo*. http://www.7sur7.cd/index.php/8-infos/6623-katanga-le-triangle-de-la-mort-gagne-du-terrain#.VEdQjPmUf4Y. Accessed 26/06/2014.

[139] Lushingo, Ilunga Celestin. 2014. Commisaire de Distric. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.

[140] Loc cit.

[141] MONUSCO Radio Okapi. 2014. "Mitwaba: plus de 2 000 personnes fuient leurs villages après des attaques des Maï-Maï". http://radiookapi.net/actualite/2014/11/04/mitwaba-plus-de-2-000-personnes-fuient-leurs-villages-apres-des-attaques-des-mai-mai/. 04 November 2014, 08:22. Accessed 07 November 2014.

rumours accuse him of engaging in particularly horrific violent acts such as cannibalism which goes against international human rights norms.[142]

In the years that the Mai Mai Bakata Katanga have been active in this region, violence had escalated at a large scale with the group engaging in severe crimes causing deaths to civilians and destruction of villages.[143] It is the killings of people in the villages that the Mai Mai Ba Kata Katanga attack and raid that has caused public uproar. Additionally, the wildlife in the Upemba National Park with the Mai Mai Bakata Katanga presence cannot live in the park anymore.[144] This in turns leads to these wild animals in turn going into the villages, destroying plantations and causing more deaths in specific reported cases. It is thus clear that kinds of damages have occurred as a result of the Mai Mai Bakata Katanga attacks have primarily left civilians as the ones who fall victim, despite the group's claim of protecting the land and people. With killings, injuring, deserted villages, schools and other infrastructure burned the fundamental basis of life is disrupted.[145]

As far as the means of warfare are concerned, it has been reported that the Mai Mai Bakata Katanga use weapons such as modern guns, arrows, knives and even wooden weapons as well as the rumoured cannibalism as mentioned above. Also, it is reported and widely known that their trust in witchcraft is intensified, which too instils much fear within the societies that are threatened by them. [146] The group attacks fields, shops and strategic places where weapons are kept. So, it is when they attack those places that they can find weapons to use against the Congolese troops. Perhaps the most significant and widely reported raids by the Mai Mai Bakata Katanga was their raids in the town of Lubumbashi in 2013 and 2014 which is one of the DRC's

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[142] Kazembe, Kilumba François. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 18/09/2014

[143] Kazembe, Kilumba François. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 18/09/2014.

[144] Loc cit.

[145] MONUSCO Radio Okapi. 2014. "RDC: l'absence de centres d'examen d'Etat à Mitwaba et Mbankana pénalise les finalistes". http://radiookapi.net/actualite/2014/06/23/rdc-labsence-de-centres-dexamen-detat-mitwaba-mbankana-penalise-les-finalistes/. 23 June 2014, 07:16. Accessed 23 /06/2014.

[146] Kazembe, Kilumba François. Administrateur de Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 18/09/2014.

more modern, economically superior and populated areas.[147] These raids in particular further emphasized the labelling of their acts as simple acts of banditry or merely acts of survival that cannot be justified as they carried out the raid operating like thieves.[148] Commentators report that they come into the towns to collect provisions and cause disruptions, however they never occupy the towns. The acts of the Mai Mai are thus either viewed as banditry or competition against the government or as justifiable acts of protection, depending on whose views are considered. What is clear however is that in the actions of the Mai Mai, there are significant damages that arise which warrant responses and action from the Congolese government and other international actors.

3.3

Legitimacy and the Mai Mai Bakata Katanga: A Just War Analysis

Geographically, when one speaks of the Mai Mai in general, this has to do with the eastern regions of the DRC, namely Katanga, the Oriental Province, Manyema, Northern and Southern Kivu which are the provinces where the Mai Mai are active as mentioned above.[149] Investigating the entire spread of Mai Mai groups across the DRC is beyond the scope of this research. therefore, only the Mai Mai Bakata Katanga group (as the most active of the Mai Mai groups presently, therefore adding relevance to the study) will be used in this analysis against the pillars of Just War Theory. This will allow for one to consider the legitimacy of the Mai Mai Bakata Katanga and their claims of justness in their acts of violence / war making using a theory where legitimacy is highly Western informed. It is important to note that not all of the Just War Theory pillars apply in the same way in this case as they do with states as central actors. Therefore, this section will use only the relevant pillars of the theory in assessing the notion of legitimacy through the Mai Mai Bakata Katanga crisis which have been discriminated according to their applicability to the available insights and data on this case.

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[147] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.
[148] Kaumba, Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 01/07/2014.
[149] Kitopi, Kimpinde Adalbert. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 17/09/2014.

As mentioned in Chapter 2.1, **just cause** in war means a lawful or valid reason for which a war is to be waged. Though according to the theory, this just cause is to be determined by the state, for the purposes of this paper, just cause will be analyzed on the level of the non-state actors which are the Mai Mai Bakata Katanga in this case. **Right intention** suggests that wars can be deemed as just if the intention, purpose of aim of starting the war is correct.[150] With these two pillars in mind, the following points in the Mai Mai Bakata Katanga case need to be explored as informed by the insights of professionals, analysts and political experts interviewed in this case:

a) In 1998-1999, the Mai-Mai who had replaced the FAP wanted to defend their territories against Rwandan, Burundian and Ugandan invaders who looted all their belongings, including natural minerals, vehicles and other property. This cause can thus be considered as worthy in their initial genuine desire to protect their lands and can thus be used to justify their war against the aggressors until the assassination of Laurent-Désiré Kabila in January 2001.[151]

b) In 2000-2001, when the war of rebellion with DRC troops began which was backed by Rwanda and MLC troops backed by Uganda, the Mai-Mai began organizing themselves to defend their land against the troops from Rwanda and Uganda who plunder their territories under the same conditions as in the war of aggression. This time however, the new war was also characterized by a systematic pillage where looting of goods such as natural resources, animals and weapons to supply DRC and MLC rebels in eastern DRC, Orientale Province and North and South Katanga was of particular concern.[152]

c) In Katanga, for example, from 2002-2003 the Mai-Mai turned against loyalist troops to survive and in protest against the looting, abusing of civilians, raping their wives and daughters (again it is to be noted that these are considered unforgivable crimes in for the Lubas of Katanga for which nothing but death is considered to be sufficient punishment) or the taking of their wives by force. In their protection of their land against looting and the other above mentioned

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[150] Baer, Helmut David and Capizzi, Joseph E. "Just War Theory and the Problem of International Politics: On the Central Role of Just Intention". *Journal of the Society of Christian Ethics.* Vol. 26, No. 1, Spring / Summer. Society of Christian Ethics. 2006. Page 169-172

[151] Kaumba, Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 01/07/2014.

[152] Kazembe, Kilumba François. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 18/09/2014

crimes, they also victimized civil authorities and the police that they felt were unable to protect them.[153]

These justificatory discourses by the Mai Mai Bakata Katanga group which in large state the protection of land from external threat as a primary motivation can be assessed to determine legitimacy in that it parallels with notions of self-defence as highlighted in Chapter 7 of the UN Charter and the Geneva Conventions by which Just War Theory is informed.

Proper authority and public declaration as a Just War Theory pillar states that a lawful authority needs to have declared the war in an open manner in order for the war waged to be legitimate. In the case of the Mai Mai, this pillar does not carry weight in assessing notions of legitimacy primarily for the following two reasons. The Mai Mai Bakata Katanga act independently of the state and thus lack the constitutional authority to declare war. Additionally, the Mai Mai Bakata Katanga largely use guerrilla tactics in their war making, that is, sporadic acts of violence without public warning or declaration as in a state lead war.[154] In fact, the latter undermines the legitimacy of Mai Mai Bakata Katanga acts as it undermines the protection of human rights during war as per the Geneva Conventions.

From 2003, at the inability of the central and provincial powers to manage the country and bring peace lead to the Mai Mai losing their faith in the established authority that was unable to care for impoverished population devastated by long wars.[155] Thus, the Mai Mai, believing that the government completely neglected populations, too turned their backs on the weak central authority.[156] This perhaps deals with the pillar of **last resort** in Just War Theory as the Mai Mai Bakata Katanga turned to violence when their needs and calls to the government remained unanswered. However, it can be argued that alternative non-violent forms of contestation such as electoral contestation, civil disobedience and advocacy, to name a few, were not fully exhausted before the Mai Mai took up arms. However, after the 2003 Sun City talks, it was agreed that

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[153] Lushingo, Ilunga Celestin. 2014. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.
[154] Loc cit.
[155] Kitopi, Kimpinde Adalbert. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo, 17/09/2014.
[156] Loc cit.

putting down arms was the way forward for peace in the DRC.[157] Thus in this case, any action by the Mai Mai Bakata Katanga after these talks that rendered their actions illegal according to the constitution can be considered illegitimate. Here, last resort as a Just War pillar is useful in determining which means and channels of non-violence were engaged in before the Mai Mai engaged in violence. Because of the rapidity in taking up of arms, when measured against this pillar, the legitimacy of the Mai Mai Bakata Katanga is undermined.

Probability for success suggests that a war can only be waged if the probability of succeeding in combat is relatively high in order to avoid mass amounts of damage, injury and death over and above what is to be expected from a war due to extended war efforts that become difficult to end.[158] A specific example with the Mai Mai which is suitable to use against this pillar is when Mai Mai stopped the advance of the invading Rwandan troops who were ultimately prevented from reaching the left bank of the Congo River which was an incontestable success for them.[159] It is for actions such as this that the Mai Mai demand recognition. However, the overall impact that the external troops (Rwanda, Burundi and Uganda) has been much stronger than what the Mai Mai, or the Congolese national army for that matter, have been able to easily combat. This is evident in the troubles that persist in the eastern regions of the country to date.[160] Ultimately, in their claims and their fighting, the Mai Mai Bakata Katanga target both the Congolese government for being unable to attend to their grievances, as well as foreign force that they accuse of breaching the DRC's sovereign prerogatives. Both of these 'targets' arguably stronger in theory compared to the Mai Mai Bakata Katanga group as it stands alone due to their dispersed nature and relatively smaller numbers.[161] Thus, it is in fact the opposition forces (Burundi, Uganda and Rwanda) and the Congolese government that boast stronger military capacity. This means that the Mai Mai group in fact lie at a disadvantage in succeeding in their war making which undermines their legitimacy according to this Just War Theory pillar.

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[157] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.

[158] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014

[159] Kitopi, Kimpinde Adalbert. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 17/09/2014.

[160] Jakkie Cilliers. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 1-7

[161] Lushingo, Ilunga Celestin. Commissaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.

Proportionality which considers the weighing up of 'universal goods' versus 'universal evils in making the decision of going to war will consider in this case at 'universality' as the Congolese population and land. Here, the Mai Mai Bakata Katanga will need to have determined whether the outcomes of the war are worth taking part in the war in aiming to achieve the most positive results from a highly negative situation. Because the Mai Mai initially took up arms because the Congolese loyalist troops abandoned the frontlines in the wake of invasion of violent external forces, their actions of defence can be considered to be more beneficial than non-beneficial for the Congolese. This is because with no national army willing to fight, the Mai Mai themselves stepped in to defend their population and land against looting, mass rapes and killings.

According to Just War Theory, in order for a war to be justified, *all* of the above criteria (just cause, right intention, last resort, proper authority and public declaration, proportionality, probability of success) need to be fulfilled.[162] As illustrated in Chapter 2, the above pillars making up *jus ad bellum* are not mutually exclusive, but rather need to be complied with in their entirety in order to engage in a war that is to be considered just. Some of the pillars above have shown to both enhance or undermine the justificatory discourses of the Mai Mai Bataka Katanga. Because not all of the criteria we fulfilled, their actions cannot be legitimized if applied to the theory the way state driven conflict would. However, the jus ad bellum pillars a helpful in assessing some individual circumstance in Mai Mai conflict to determine how justifiable one can consider their acts to be in the before war period.

As illustrated in Chapter 2.1 of this paper, *Jus in bello* is the component of Just War Theory that looks at the legitimacy and correct conduct during war.[163] As this sets out the principles for conduct in the midst of war, it is those who formulate and carry out war policy, such as military commanders and soldiers etc., who are held accountable for any breaches, in this case, the members making up the Mai Mai group. Their conduct during their periods of conflict will be analysed below to assess the strength of their calls for legitimacy.

Obedience of international weapon laws sets out the guidelines in terms of weaponry to be followed in order for a war to be just, which put simply, must adhere to the guidelines and rules

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[162] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014
[163] Loc cit.

for weapon use globally. For this, it is important to consider a) the types of weapons used by the Mai Mai Bakata Katanga in combat, b) how the Mai Mai Bakata Katanga fights, and c) how the Mai Mai Bakata Katanga acquire their weapons, which will be divulged in the following points:

a) Weapons used: Weapons manufactured by themselves (knives, machetes, axes, bows with poisoned arrows, spears and javelins, clubs etc.) as well as modern firearms (kalashnikovs, grenades, rocket launchers etc.).[164]

b) Types of fights engaged in: Guerrilla ambushes as the most common.[165]

c) Sources of weapons: Those stolen or recovered from loyalists fleeing fighting or killed in ambushes. In some regions, the weapons are obtained in illegal trade. Here weapons are exchanged for trafficked gemstones by the Mai-Mai (gold, cassiterite etc.), others are obtained from loyalist troops in the same type of trafficking.[166]

In terms of prohibited weapons during war, the Geneva Protocol from the Geneva Convention as highlighted in Chapter 2 renders illegal the use of chemical weapons as well as biological weapons in armed conflicts internationally.[167] In the case of the Mai Mai Bakata Katanga, though the methods of obtaining weapons are illegal, the above weapons themselves that are used are not in fact prohibited according to the Convention. Here, this pillar is useful in assessing how justified the Mai Mai are in their weapon use. And though they can be argued to be in line with international law in that no prohibited weapons are used in combat, the illegal acquisition of the weapons poses a problem which in turn undermines their legitimacy.

Discrimination and non-combatant immunity as a just war pillar speaks about the protection of innocent civilians that get caught in situations of conflict and are thus susceptible to injury

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[164] Kitopi, Kimpinde Adalbert. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 17/09/2014.

[165] Loc cit.

[166] Lushingo, Ilunga Celestin. Commissaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.

[167] International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols". https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed: 20-07-2014

and death among other damages.[168] To assess the notion of legitimacy in terms of the Mai Mai Bakata Katanga, it is necessary to break down the damages that occur as a result of their attacks. These will be categorized in the following points according to a) the human level, b) the material level, and c) the socio-economic level. These damages depict an high level of consequences that innocent civilians have had to pay as a result of the Mai Mai Bakata Katanga acts of violence. The immensity of consequences can thus be argued to undermine the justifications of the Mai Mai due to the cost paid by those they claim to protect:

a) Many families lost their relatives killed in the fighting. Additionally, their random raids over the years have led to the loss of civilian lives, though the numbers here are relatively low or perhaps misrepresented as a result of insufficient data capturing.[169]

b) On the material level, the Mai Mai attacks have led to the destruction of infrastructure (such as schools, hospitals and health centres, roads and other infrastructure), crop destruction, disruption of education programs (many children have lost up to ten years of schooling in parts of the country).[170]

c) On the economic and social level, the following damages have occurred: destruction of the economic base in all the troubled countries, a rapid increase in crime, the decline of justice following prolonged absence of stable public legal power, increasing poverty and endemic diseases, increasing illiteracy etc. These issues all contribute to social and economic disruptions which hinder the nation as a whole.[171]

Benevolent quarantine for prisoners of war refers to combatants that surrender by putting down arms in times of war and become captives of the opposing force. This pillar states that these ex-combatants or prisoners of war are to not be subjected to torture or targeted by the

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[168] Orend, Biran. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[169] Kaumba, Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 01/07/2014.

[170] MONUSCO Radio Okapi. "RDC: l'absence de centres d'examen d'Etat à Mitwaba et Mbankana pénalise les finalistes". http://radiookapi.net/actualite/2014/06/23/rdc-labsence-de-centres-dexamen-detat-mitwaba-mbankana-penalise-les-finalistes/. 23 June 2014, 07:16. Accessed 23 /06/2014.

[171] Kazembe, Kilumba François. 2014. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 18/09/2014.

opposing forces.[172] In the case of the Mai-Mai Bakata Katanga, this pillar can be analysed in conjunction with the pillars of **compensation** and **rehabilitation**. **Compensation** as a just war theory pillar looks at the financial restitution that may occur after war to assist the process of reconstruction after conflict while **rehabilitation** in post war times seeks to reconstruct on a more structural and social level in the affected areas. [173] This includes efforts such as disarmament, training of the police, human rights education initiatives among other endeavours as clarified in Chapter 2.1.These following efforts were not initiated by the Mai Mai, but rather by the Congolese government and external mediators to include the Mai Mai:

 2003 brought the 'end' of the war with the call of parties to engage in peaceful mechanisms of dialogue in Sun City, South Africa. All belligerents had to choose their delegates for these talks to work towards permanently terminating the war and setting up a government of national unity and to facilitate the transition to the establishment of a new institutional order. From 2003 to January 2006, everyone was thus meant to put down arms.[174] Whoever wanted to continue as working as military men was to integrate the army, whoever wanted to work for the police was to enter the police force and whoever wanted to return to civilian life was to demonstrate that desire and benefit from the reintegration programme called the "Programme de Désarmement-Démobilisation-Réinsertion" and receive a kit to ease the process of reintegration into civilian life.[175] Some of the Mai Mai have expressed that due to their contribution and commitment to defending the national land, after the reunification of the country in 2003 they deserved to be recognized and reintegrated into the military or police of the DRC.[176] Thus, the continuation of Mai Mai Bakata Katanga attacks following these processes would thus be undermined in terms of legitimacy. However, it must be noted that the continuation of Mai Mai lead violence is indicative of shortcomings in these peace initiatives.

No means *mala in se* as a pillar prohibits the use of unethical or evil methods of torture or engaging in war which includes genocide, large scale rapes, forcing captured soldiers to fight

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[172] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /062014

[173] Loc cit.

[174] Kitopi, Kimpinde Adalbert. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 17/09/2014.

[175] Loc cit.

[176] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo, 16/07/2014.

against their own side and using weapons with effects that cannot be controlled. In the case of the Mai Mai Bakata Katanga, such unethical war crimes have been engaged in and were condemned by the Congolese government and the Congolese population themselves as expressed by the political analysts and professionals interviewed. More particularly, mass rapes and cannibalism are the two widely condemned crimes that the Mai Mai Bakata Katanga have engaged in, both of which, according to the Luba of Katanga are unforgivable and for which death is the only suitable punishment.[177] Thus, in a Just War Theory analysis, the pillar of no means *mala in se* alongside the Luba customs and beliefs, the legitimacy of the Mai Mai Bakata Katanga militia is undermined due to the nature of their methods of attack which are considered unethical.

No reprisals in Just War Theory means that acts of revenge or vengeance cannot render a war legitimate or justifiable. In the case of the Mai Mai Bakata Katanga, this pillar can be difficult to assess notions of legitimacy. As illustrated throughout this chapter, the root of the Mai Mai initially began as acts of defence against the external invaders, Rwanda, Burundi and Uganda when the Congolese loyalist army fled the battle fields.[178] In the face of this fleeing, people (the Mai Mai) organized themselves as defenders of their territories. In this case, the acts of the Mai Mai can legitimately be deemed as justifiable acts of self defence, especially because their initially formation was indeed encouraged by late president Laurent Desiré Kabila in 2001 to supplement for the soldiers that had abandoned post.[179]

However, the smaller Mai Mai groups such as the Bakata Katanga continued their attacks even after government instruction to put down arms. Here, groups such as the Bakata Katanga begin to introduce the state as the one of the principle enemies over and above the external threats.[180] The state here is blamed for their inadequate attention to Mai Mai grievances and needs. This is where government officials are targeted in areas such as the Triangle de la Mort. In this case, one

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[177] Kitopi, Kimpinde Adalbert. 2014. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 17/09/2014.

[178] Lushingo, Ilunga Celestin. Commissaire de District. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 16/07/2014.

[179] Tshiwengo, Marthe. Commissaire de District de Haut Kalenga. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 22/09/2014.

[180] Lukenge, Therese. Ministre Provinciale du Genre, Condition Feminine et Famille, Culture, Arts et Sports. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 09/21/2014.

can consider Mai Mai attacks on enemies in the form of state representatives as falling under the category of reprisal rather than defence. The reprisal here would be the acts of vengeance, that is killings, cannibalism and rapes, in order to intimidate or punish the state for their failure to satisfy the Commander Gédéon and the Mai Mai Bakata Katanga group he leads.[181]

The pillars above depict the principles for conduct during war and the need to continue to respect human rights even in times of conflict, which have been analysed in the context of the Mai Mai Bakata Katanga fighters. The following paragraphs again analyse the Mai Mai Bakata Katanga case study against the final component of Just War Theory that is *jus post bellum*. *Jus post bellum* provides guidelines by which war is to be terminated and how the after effects of the conflict are to be addressed.[182]

Rights vindication analyses the violated rights, such as freedom, life and territory and looks for the revisiting of these rights and violations to be attended to in order to avoid the reoccurrence of violence.[183] In their initial acts of defence against the trio of external invaders, the Mai Mai and the Congolese at large can indeed be said to have had their right to life, freedom, territory, education, basic facilities etc. violated in the nature of war.[184] The failure of the Congolese government to resolve the weakness of human rights protection can thus in essence be argued as a legitimate reason for the Mai Mai to engage in conflict. The Congolese conflicts are unique and multifaceted, making it difficult to fully explore in the constricts of one paper. However, the ongoing conflict, particularly in the eastern region of the country, is indicative of a long road that still awaits to peace.[185] The direct and indirect impacts of war are not easily eradicated. The continued violent actions of the Mai Mai Bakata Katanga who express their anger toward the state for failing to address their needs and failing to deliver their basic human rights pinpoints the issues that still need to be addressed in the country on the journey of peace and stability. According to the Just War Theory pillar of rights vindication, the fundamental issues of human rights need to be addressed in order to achieve peace. If not, continued violent actions by groups

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[181] 7sur7 Congo. 2014. "KATANGA : Qui est derrière Gédéon Kyungu ?". http://7sur7.cd/new/katanga-derriere-gedeon-kyungu/. 7 October 2014. Accessed 16 /10/2014.
[182] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014
[183] Loc cit.
[184] Lushingo, Ilunga Celestin. Commissaire de District. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 16/07/2014.
[185] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014.Page 15-16

such as the Mai Mai Bakata Katanga are sure to pose a continuous regional and national threat for the DRC and a hindrance to peace and national unity.[186]

Discrimination as a *jus post bellum* pillar differentiates between state leaders, combatants or soldiers, and innocent civilians when negotiating peace settlements and initiating punishments so as to ensure that innocent parties in war do not bear the burden of the war in their territory. As explained in Chapter 2.1, this means that socio-economic punishments such as sanctions would not be an option on defeated countries.[187] In terms of sanctions placed against the Mai Mai group, perhaps the most prominent example is that of Ntabo Ntaberi Sheka who is the leader of the Mai Mai Sheka group accused of being involved in mine attacks in eastern DRC and hindering the hindering the process of disarmament, demobilization, and reintegration to lead to peace and violating international law.[188] This case saw Commander Sheka subjected to a worldwide travel ban and asset freeze. A case like this, however, affects the individual more than it does the society and is thus not applicable to this case study to assess legitimacy. However keeping with the case of the Mai Mai Bakata Katanga specifically, it is worth noting that Commander Gédéon has not had official sanctions placed upon him nor his territory, again rendering this pillar not applicable.

The final pillar of to be explored in the context of the Mai Mai Bakata Katanga is **rehabilitation**, which seeks to structurally and socially reconstruct post war. Again, the "Programme de Désarmement-Démobilisation-Réinsertion" is vital to mention as the principle program that aimed to rehabilitate and reintegrate combatants, including those making up the larger Mai Mai group into Congolese society. However, the continued troubles of the smaller dispersed Mai Mai groups across the DRC shows that these efforts for rehabilitation and reintegration have not fully succeeded as violence continues just short of a decade after the programs implementation. These issues thus need to be revisited to secure effective solutions for the combatants that continue to express their grievances that have yet to be addressed by the government of the DRC.

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[186] Lushingo, Ilunga Celestin. Commissaire de District. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 16/07/2014.

[187] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014

[188] United States Mission to the United Nations."Press Release from the Permanent Missions to the United Nations of France, the United Kingdom, and the United States on the Designation for Sanctions of an Armed Group Leader in the DRC". http://usun.state.gov/briefing/statements/2011/177846.htm. 2011. Accessed 18/09/2014.

With the basic human rights not being attended to in the grievances of the Mai Mai Bakata Katanga, their justifications for engaging in conflict become increasingly difficult to undermine, though not necessarily condoned. However, the Western informed international human rights violated in Mai Mai attacks lead to the overpowering of their justificatory discourses, making their calls for legitimization significantly weak. This is perhaps evident of the inherent bias towards Western ideals within the theory that renders the legitimacy and justifications of modern day conflicts where non-state actors are central, almost null and void. Here, the calls for a reconceptualization of the theory by writers such as Vorobej, Baer, Capizzi, Fabre and Kemp mentioned above, become ever more relevant.

Chapter 4 - Somalia and the Piracy Crisis

The second country to be investigated in this study is Somalia. The country located in the horn of Africa has experienced a volatile environment and continuous unrest for decades.[189] Facing a pirate crisis, this country case is suitable for this study in this chapter, as the Somali pirates represent a non-state actor group against which Just War Theory can be used to assess a notion of legitimacy even outside the scope of the theory. In doing so, insights into the various assessments and analysis of justificatory discourses raised by the Somali pirates will be evaluated against the theory's pillars, in order to assess the notion of legitimacy in their justificatory discourses. Like in the DRC case above, this will begin by reviewing the collapse of Somalia, which lead to the emergence of piracy in the Gulf of Aden. The pirates actions and insights into assessments of their justificatory discourses will then be explored alongside the theory pillars to determine how helpful the theory is in assessing legitimacy outside of its scope (non-state actors), which will be depicted in the concluding chapter (5) of this paper. The Somali piracy case is complex, with issues of colonialism contributing to the crisis. However, the social inequalities in the wake of the Western quest for economic growth and political domination will be the primary context in which justificatory debates are assessed in this chapter.

Since the failure of the state in 1991, Somalia has experienced an ongoing crisis of piracy.[190] These acts of hijacking and ransoming international fishing vessels by Somali pirates has caused much concern in the international arena as the lawlessness in Somalia has made the issue of piracy increasingly difficult to contain.[191] The acts of Somali pirates are self proclaimed to be legitimate as they claim to be defenders of their seas against the illegal dumping and overfishing in their seas by external vessels. Some pirates in fact refuse this label, rather referring to themselves as Somali Coast Guards.[192] In their denial of the legitimacy of those trying to control what they believe to be their seas, Somali pirates posit their need to protect their waters as means

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[189] Lennox, Patrick. 'Contemporary Piracy off the Horn of Africa". Canadian Defence and Foreign Affairs Institute. *Calgary*. December 2008. Page 5-8

[190] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law.* 44:2. 2013. Page 187

[191] Murphy, Martin N. *Somalia: The New Barbary?: Piracy and Islam in the Horn of Africa*. Columbia University Press. 2011. Page 13-20

[192] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

of survival.[193] However, the acts of piracy is seen as a threat to international peace and security by agencies such as the United Nations and well as an obvious threat to economic gains by Western companies that send their vessels.[194] Because of this, Somali pirates have been the subject of much contestation by the international community. The subsequent chapters will delve into this issue to assess the Somali case's legitimacy in the context of Just War Theory.

4.1

Somalia, The 'Collapsed' State

In the discourse on failed states, Somalia is often the first to be cited. The Somali crisis and seemingly irreversible state failure began in 1988 with the government falling victim of a Somalia National Movement led offensive which saw the fall of president Siad Barre in 1991.[195] Though Barre ruled Somalia in a military fashion during his time in power, his was evident of a stabilizing force for the nation. It is after he was overthrown and forced into exile that Somalia broke out into chaos and lawlessness leading to severe damage as well as high numbers of lives lost. Amidst this chaos and escalated violence in the capital Mogadishu and the nation as a whole, Somalia was stuck in a 'tug of war' between Ali Mahdi and General Mohamed Farah Aidid, two warlords from enemy clans.[196] In the wake of a failing state, the United Nations failed to intervene in Somalia at this critical time. However the Chapter 7 approved UN Operation to Somalia (UNOSOM I) was formed in 1992 in an attempt to alleviate the violent situation. UNOSOM II was later introduced as a second phase in the intervention to secure peace in Somalia from 1993 to 1995.[197] Unfortunately however, these missions failed in their mandate to decrease lawlessness and secure the environment for humanitarian missions to be carried out as presently, Somalia remains in a state of collapse.[198]

The gravity of the Somali pirate crisis has led to much international coverage and international responses due to the heightened number of reported incidents of pirate attacks. These escalated

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[193] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". Ocean *Development International Law*. 44:2. 2013. Page 186-188.
[194] Loc cit.
[195] Loc cit. Page 5-7
[196] Lennox, Patrick. 'Contemporary Piracy off the Horn of Africa". Canadian Defence and Foreign Affairs Institute. *Calgary*. December 2008. Page 5-7
[197] Menkhaus, Ken. 'Mediation Efforts in Somalia'. *Africa Mediators' Retreat*. Centre for Humanitarian Dialogue. 2007. Page 35-40
[198] Failed State Index. http://ffp.statesindex.org/rankings-2013-sortable. Accessed 07/06/2014

cases has prompted the sending of naval assets by various nations, the European Union (EU) and NATO to guard the Gulf of Aden and increase security for the international commercial shipping vessels that sail through.[199] The international response to this crisis can also be argued to be so prevalent due to the interest that lies in keeping these waters safe and easily accessible primarily due to the economic interest. The Gulf of Aden is pivotal for the economic development of the global economy and the facilitation of trade for Western nations, particularly in Europe as it provides a shortcut to Asia. Therefore, shipping through these seas creates increased convenience for those sailing through them because of significantly lower costs. This makes the issue of piracy a pressing one, with the United Nations Security Council (UNSC) even allowing these forces (various nations, EU, NATO) the legal power to trail pirates through various resolutions passed under Chapter VII of the UN Charter.[200]

Additional international efforts such as the 2009 formed, ad hoc, Contact Group on Piracy off the Coast of Somalia. Though this group is more informal in its nature, it nonetheless contributes towards the combating of the Somali pirate crisis. This contribution is done through quarterly meetings where plans of action are discussed pertaining to the coordination of military efforts and political efforts among others to terminate piracy and hold those guilty of piracy accountable for their actions.[201]

However, the utterances on Somali piracy suggests that these efforts by the various international actors responding to the crisis do not provide long term solutions to the issue. Instead, it is argued that their actions provide short-term solutions in dealing with the crisis that do not address the root of the problem - that is, the grievances of the Somalis themselves.[202]Therefore, the Somali pirates refer to themselves as Somali Coast Guards rather than the greedy vilains that they are portrayed as in the media.[203] The international community are quick to act on issues on protection of international vessels sailing through the Gulf of Aden. However, other core

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[199] Papastavaidis, Efthymios. "Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 123-126

[200] Menkhaus, Ken. 'Mediation Efforts in Somalia'. *Africa Mediators' Retreat*. Centre for Humanitarian Dialogue. 2007. Page 35-38

[201] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 123-126

[202] Al Jazeera English. ' Meet the pirates - Abdirashid Muse - 15 June 09'. https://www.youtube.com/watch?v=_jVUP33n0Js. Accessed 17-01-2015

[203] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

contributing facts such as poverty, lack of employment opportunities, low incomes, environmental problems, and the presence of Illegal, Unreported and Unregulated fishing vessels do not receive such urgent attention[204] The lack of will to address these issues depicts a one-sided approach in dealing with the problem of piracy by the developed world, which ultimately adds to the heightened contention for Somalia and other African communities seeking permanent solutions.

When a state is characterized by lawlessness and chaos, the opportunities for insurgency groups to emerge are rife. This is because the weakness or absence of legitimate institutions of authority creates an environment of individual self-rule and autonomy without accountability. Hence the emergence of the Somali pirates in their contentious sea territory which will be explored in the following sub-chapters. Additionally, the subsequent sub-chapters also seek to explore the justificatory discourses of the Somali pirates, the nature of the conflict that they engage in, as well assess their notion of legitimacy against the relevant Just War Theory pillars. It argues that while some pillars enhance their justificatory discourses, some of the pillars which are in contradiction with their actions lead to their legitimacy in their justificatory discourses to be undermined.

4.2

The Emergence of Somali Pirates as Non-State Actors

The piracy crisis in Somalia emerged out of a complex global political and economic order and has been covered greatly over the years, particularly since international organizations such as the International Maritime Organization expressed grave concern over the increase in piratical activity in the area in 2005.[205] However, it is since the early 1990s that piracy off the coast of Somalia has caused a threat to international shipping activity which is illustrated in films such as Captain Phillips that depicts a narrative of the state of piracy in the Gulf of Aden as Somali lead banditry in the seas as a result of poverty in the collapsed state. Thus, though piracy itself is an

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[204] Loc cit. Page 125

[205] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010.Page 123-128

international issue that dates back centuries, the case of Somali piracy is a relatively contemporary issue.[206]

For this section, it is important to note the 1982 United Nations Convention on the Law of Sea (UNCLOS) which is a primary basis of maritime laws and deals with issues of piracy. UNCLOS defines piracy as:

(a) Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:[207]

> (i) On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft[208]

> (ii) Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State[209]

(b) Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft

(c) Any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).[210]

In Somalia, the pirates operate primarily from the semi-autonomous Puntland in the northeast of the country and attack fleets in the Gulf of Aden in the northern coast as well as the Somali basin in the eastern coast. The pirates themselves can be divided into three primary categories, that is: a) local Somali fishermen (who are considered to be the knowledgeable ones of the pirate operations), b) former militiamen that previously fought for local clan warlords and c) technical experts who control the pirate equipment.[211]

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[206] Loc cit.
[207] United Nations. UNCLOS. Convention Agreement Texts, Article 101, http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm. Accessed 09/07/2014
[208] Loc cit.
[209] Loc cit.
[210] United Nations. UNCLOS. Convention Agreement Texts, Article 101, http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm. Accessed 09/07/2014
[211] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 126

Additional to the UNCLOS definition above, piracy can also be described as 'every unauthorized act of violence by a private vessel on the open sea with the intent to plunder'.[212] The acts of these Somali fishermen, former militiamen and technical experts can indeed fall under this definition of piracy as they engage in violence acts in the Gulf of Aden in the aim of attacking and raiding the vessels that they capture.[213]

4.2.1

Insights into the Justificatory Discourses of Somali Pirates

"..'how darest thou molest the whole world? But because I do with a little ship only, I am called a thief: thou doing it with a great navy, art called an emperor.'"[214] The message in this ancient St Augustine quote parallels with one of the primary grievances raised by the contemporary Somali pirates in the seas in which they are active and labelled thieves engaging in acts of banditry in their attacking, hijacking and raiding of international vessels passing through the Gulf of Aden.[215] However, human security issues have been raised by the Somali pirates that they use to justify their acts of piracy in the region.

With the failure of the Somali state, the Somalis themselves are left in a situation where they are required to fend for themselves in the absence of legitimate, stable structures and institutions to protect them.[216] Food security, alongside personal security and other issues thus arise for the people of Somalia which creates a direct link with the acts of piracy in which they engage to secure themselves. Thus, the rife poverty that exists in Somalia as a result of the fragile political

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[212] Loc cit. Page 129

[213] Tharoor, Ishaan."How Somalia's Fishermen Became Pirates". Time. http://content.time.com/time/world/article/0,8599,1892376,00.html. 18/04/2009. Accessed 10/08/2014

[214] St Augustine. The City of God. Liv IV. Chapter 4: A Perotin-Dumon. 'The Pirate and the Emperor: Power and the Law on the Seas. in C Pennel (ed), *Bandits at Sea: A Pirates Reader*. New York University Press, 2001. Page 25

[215] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013.Page187-188

[216] Menkhaus, Ken. 'Mediation Efforts in Somalia'. *Africa Mediators' Retreat*. Centre for Humanitarian Dialogue. 2007. Page 35-38

situation can be argued as one of the primary issues prompting their acts of piracy.[217] However, the pirates themselves raise additional issues.

The depletion of fishing resources in the Gulf of Aden is one of the primary justifications on the part of the Somali pirates that are raised in the Somali piracy literature. Here, the pirates argue that the international vessels that pass through their waters aggravate the problem of the exhaustion of sea life.[218] This ultimately disrupts their food security as the fish in those seas are their primary source of ration. This is of particular concern for Somali fishermen who lack in sophisticated fishing equipment compared to the larger international vessels that plunder their seas. The seas are rampant with Illegal, Unreported and Unregulated fishing (IUU) feels which raid the Somali fishing stocks.[219] This has ultimately lead to the Somali fishermen being unable to keep up, and thus opting to engage in acts of piracy to meet their needs in the face of hardship. In addition, the Somali pirates raise the issue of waste dumping on their shores.[220] Here, they accuse the international commercial naval vessels of polluting their shores with waste, which in turn leads to additional issues that also affect the nature of their fishing capacity and injury to their territory.[221]

The dilemma with determining the legitimacy of Somali acts of piracy is the difficulty in determining whether their acts are done in the aim of public versus private ends. The latter would decrease the legitimacy of Somali piracy, rather reducing their actions to banditry at sea.[222] However, should there be collective public ends as the aim in their acts of piracy, their justificatory calls would be easier to validate if the Somali population at large benefitted from

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[217] Murphy, Martin N. *Somalia: The New Barbary?: Piracy and Islam in the Horn of Africa.* Columbia University Press. 2011. Page 16-20

[218] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013.Page187-188

[219] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa.* Ademola Abass. Oxford University Press. 2010. Page 125

[220] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page186-191

[221] Al Jazeera English. ' Meet the pirates - Abdirashid Muse - 15 June 09'. https://www.youtube.com/watch?v=_jVUP33n0Js. Accessed 17-01-2015

[222] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page186-191

secure seas, eradicated dumping and protection of sea life necessary for their livelihoods and survival through the combating of the threat posed by foreign shipping vessels.[223]

4.2.2

Conflict on the Somali Coast (Gulf of Aden)

Operating primarily from the semi-autonomous Puntland in the northeast of Somalia and attacking fleets in the Gulf of Aden in the northern coast of Somalia as well as the Somali basin in the eastern coast of Somalia as explained above, the Somali pirates engage in violent methods in the piratical activity.[224]

The usual methods of attack from the Somali pirates include the firing of Rocket Propelled Grenades (RPG) as well as the firing of automatic weapons.[225] This is done in order to gain access to the vessels that they attack and ultimately hijack. Hijacked vessels are then sailed by the pirates towards the Somali coast after which they release ransom demands in exchange for the safe liberation of the vessel as well as the crew. In addition to this, journalists and other internationals also fall victim to kidnappings by Somali pirates. A more recent and widely reported case of this was the capturing of American journalist Michael Scott Moore who was held by Somali pirates for over two years and released in September 2014.[226]

The Somali pirates also make use of mother vessels in order to initiate attacks at further distances from their coast. This is able to work as the mother vessels are able to access further distances in the sea and set off smaller boats to engage in attacks of and hijackings of the passer by fleets.[227] This is indicative of a significant level of sophistication in the pirate's attacking tactics, despite their lack of equipment compared to the international vessels.

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[223] Loc cit.
[224] Tharoor, Ishaan. "How Somalia's Fishermen Became Pirates". Time. http://content.time.com/time/world/article/0,8599,1892376,00.html. 18/04/2009. Accessed 10/08/2014
[225] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 126
[226] Fantz, Ashley and Vercammen, Paul. " American journalist freed from Somali pirates". http://edition.cnn.com/2014/09/23/world/africa/somalia-american-journalist-released/index.html. CNN, 24/09/2014. Accessed 24/09/2014.
[227] Tharoor, Ishaan."How Somalia's Fishermen Became Pirates". Time. http://content.time.com/time/world/article/0,8599,1892376,00.html . 18/04/2009. Accessed 10/08/2014

Pirates operating in these areas achieve high levels of success in their attacks and hijackings primarily due to the fact that that zone (between the Horn of Africa and the Arabian Peninsula) cannot be avoided when crossing the Suez Canal.[228] Thus, all vessels obliged to pass transit this area are susceptible to falling prey to the pirates. Because of the lack of functioning government institutions and the high level of autonomy of Puntland, the acts of piracy in which the Somalis engage are highly unlikely to be condemned of punished. In addition to this, the increased acceptance of Somali pirates by the locals themselves which too facilitates the continuity of their piratical activity.[229]

The consequences of Somali pirate attacks are many. The costs of shipping have sharply increased due to the risk of attack. The volatile security in the seas lead to the need for military escort, such as those from Combined Task Force 150 which was later replaced by the Maritime Security Patrol Area, for some vessels which tremendously increases the cost of shipping.[230] This also hinders the delivery of much needed food aid by which the large majority can only arrive by sea. In this case, it is the Somalis themselves that bear the brunt of their actions by hindering deliveries such as those shipped by the World Food Programme.[231]

4.3

Legitimacy and the Somali Pirates: A Just War Analysis

This section seeks to analyze the case of the Somali pirates specifically against the Just War Theory Pillars detailed in Chapter 2.1. This will allow for one to consider the legitimacy of these non-state actors involved in conflict in the seas through their claims of justness in their acts of piracy and thus, how useful Just War Theory is in assessing legitimacy. It is important to note that not all of the Just War Theory pillars apply in the same way in this case as they do with states as central actors. Therefore, this section will use only the relevant pillars of the theory to

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[228] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013.Page 190
[229] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 196
[230] Loc cit. Page 127
[231] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page 191

assess the notion of legitimacy in the Somali piracy crisis which have been discriminated according to the applicability to the insights and available data assessed for this case.

As outlined in Chapter 2, **just cause** as the first pillar of Just War Theory seeks to determine whether the initial reason for initiating a conflict is valid, lawful or justifiable as determined by the state as the ultimate sovereign power.[232] In the case of the Somali pirates, this is not easily determined due to the absence of the state as a legitimate institution. Since the collapse of the state in the 1998, Somalia has been without an overarching power to govern the nation.[233]This leaves an open window for the emergence of insurgency group easily occurred. Thus, the acts of the Somali pirates in the Gulf of Aden cannot be not deemed just by the state from the offset as the state as a functioning institution does not exist. The pirates therefore initiated their acts in their seas based on their own go ahead.[234] This Just War pillar in its traditional sense thus undermines the legitimacy of the pirates' initiation of conflict due to the lack of proper authority permitting the conflict.

However, when taking into account the plundering and waste dumping by the Western commercial vessels that hinders the security and survival or the sea life and in turn hinders the human security and survival of the Somali's themselves, the issue of just cause turns in favour of the Somalis.[235] In the wake of state failure, the Somalis indeed face intensified desperation with the lack of opportunities, secure food resources, jobs and stable livelihoods. It is this desperation and eagerness to survive and sustain themselves that would lead to the Somali's willing to risk their lives against more powerful forces in the efforts to secure their own survival, that is universal goods.[236] In this case, the desperation of the Somalis weighs heavier than the crimes they commit in hijacking the Western fleets.[237]

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[232] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[233] Atta-Asamoah, Andrews and Ramis, Seguí Neus. "Somalia: Fighting the odds in the search for peace after the transition". *ISS Africa*. 5 March 2014. Page 1-3

[234] Al Jazeera English. ' Meet the pirates - Abdirashid Muse - 15 June 09'. https://www.youtube.com/watch?v=_jVUP33n0Js. Accessed 17-01-2015

[235] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page 187-190

[236] Al Jazeera English. ' Meet the pirates - Abdulrashid Ahmed Geography - 15 June 09'. https://www.youtube.com/watch?v=yxTAEWBTS6Q. Accessed 17-01-2015

[237] Loc cit.

Right intention looks at the whether the intention, purpose or aim of starting the war is correct.[238] Due to the subjectivity of the notion of 'correctness' or 'rightness', this pillar needs to be analysed through different lenses in the case of Somalia. With this, the tensions between the pirates themselves and the Western vessels that they attack needs to be considered. The Somali pirates raise grievances of depletion of sea life through plundering and pollution of their shores through dumping as a result of Western vessels sailing through their seas.[239] In this case, the Somali pirates can be seen as committing acts of piracy as a result or in defence of these Western fleets causing destruction in their already fragile circumstances.[240] The Somali pirates rely on their fisheries for survival due to the lack of functioning structures in their failed state.[241] Thus, the plundering of their fish sources and the pollution of the ocean in which these fish sources live poses a threat to their food security, and ultimately Somali human security as a whole.[242] Naturally, attack against an external threat can be deemed justifiable or as a correct intention in the wake of threatened security and the collective good of the Somali population.

However, on the other hand, the acts of piracy through the lenses of the attacked Western vessels are simply seen as acts of banditry, thus failing to adhere to the pillar of right intention. Here, the discourse primarily paints a picture of the Somali pirates as criminals of the sea seeking private ends in what has become a lucrative activity. Furthermore, the defence argument is increasingly weakened with the shift of pirate groups to central Somalia to engage in the abductions of tourists, journalists and workers.[243] Here, Somali pirate cries against the plundering of fish sources and shore pollution are undermined as attacks then shift to land.[244]

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[238] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014

[239] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 124-127

[240] Al Jazeera English. ' Meet the pirates - Abdulrashid Ahmed Geography - 15 June 09'. https://www.youtube.com/watch?v=yxTAEWBTS6Q. Accessed 17-01-2015

[241] Tharoor, Ishaan. "How Somalia's Fishermen Became Pirates". Time. http://content.time.com/time/world/article/0,8599,1892376,00.html . 18/04/2009. Accessed 10/08/2014

[242] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page 187-189

[243] DefenceWeb. "Somali Piracy Remains a Global Shipping Threat; Responsible for Growing Kidnapping on Land—UN." www.defenceweb.co.za/index.php?option=comcontent&view=article&id=27176:somali-piracy-remains-a-global-shipping-threat-responsible-for-growing-kidnapping-on-land-un&catid=108:maritime-security&Itemid=233. 10 August 2012. Accessed: 17-07-2014

[244] Al Jazeera English. ' Meet the pirates - Abdirashid Muse - 15 June 09'. https://www.youtube.com/watch?v=_jVUP33n0Js. Accessed 17-01-2015

This ties into the pillar of **proportionality** which weighs up the 'universal goods' versus 'universal evils in making the decision of initiating conflict to determine whether engaging in conflict is indeed worthwhile in attaining the intended ends.[245] As with the **right intention** pillar above, proportionality needs to be analysed through various lenses. However, in light of the justifications of the Somali pirates in this case (protection of their seas against overfishing and dumping by international fishing vessels, poverty, hunger, lack of opportunities and desperation in the wake of an absent central government to protect them) , their 'universal goods' would include the security of their fish sources in the Gulf of Aden on which they depend for their livelihoods and survival in the face of poverty, lack of jobs, low income and lack of state institutions to ensure a functioning, sustainable society.[246]

A lawful authority needs to have declared the war in an open manner in order for the war waged to be legitimate in order for the pillar of **proper authority and public declaration** in Just War Theory to be fulfilled.[247] Again, the absence of the state as a functioning institution in Somalia renders the legitimacy of Somali piracy weak in the traditional sense of the theory. However, the Somali pirates themselves have made public declarations of their acts of piracy and their demands therein. This is most predominantly seen in their calls for ransom after their hijackings where kidnappings of crew members occur, or the kidnappings of reporters.[248] Here, the Somali pirates make clear their acts of violence to external actors from who their hijacked vessels or kidnapped persons originate. Because the Somali nation has ultimately been forced to organize themselves in the wake of a failed state, it can be argued that these non-state groups become the impromptu 'authorities' in Puntland in particular where their actions are widely accepted.[249] [250]

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[245] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[246] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page 187-190

[247] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 June 2014

[248] Fantz, Ashley and Vercammen, Paul. " American journalist freed from Somali pirates". CNN. http://edition.cnn.com/2014/09/23/world/africa/somalia-american-journalist-released/index.html. 24/09/2014. Accessed 24/09/2014.

[249] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates".*Ocean Development International Law*. 44:2. 2013. Page 190

[250] Al Jazeera English. ' Meet the pirates - Abdulrashid Ahmed Geography - 15 June 09'. https://www.youtube.com/watch?v=yxTAEWBTS6Q. Accessed 17-01-2015

Probability for success suggests that a war can only be waged if the probabilities of succeeding in combat are relatively high so as to avoid mass amounts of damage, injury and death..[251] Interestingly, in the case of the Somali pirates, the odds in their initiating of attacks at sea are highly against them. This is primarily because of the inferiority in capacity in terms of equipment, that is boats, technology, weaponry etc. The vessels that are the target of Somali pirates are large commercial fleets originating from industrialized nations with highly advanced means. Additionally, the patrol vessels launched in the Gulf of Aden by various organizations seeking to combat piracy in this region put the Somali fishermen engaging in piratical activity at an increasing disadvantage in terms of defence.[252] These factors make the quest of Somali pirates increasingly difficult and place a significantly larger element of risk of injury, damage and death for the pirates themselves in attacking the advanced vessels. However, regardless of their considerably lower probability for success (which in the traditional sense of Just War Theory would have undermined the legitimacy of their initiation of conflict), the Somali pirates have indeed been successful in hijacking large Western vessels and holding crew captive.[253]

This ties into the **obedience of international weapon laws** pillar which sets out the guidelines in terms of weaponry to be followed in order for a war to be just, ultimately prohibiting the use of unauthorized weapons according to global weapon guidelines.[254] In their piratical acts, the Somali pirates use much less sophisticated weaponry than what they are faced with from those they attack, and do not use banned weapons such as weapons of mass destruction.[255] In this sense, their legitimacy in terms of weapon use is not undermined as it does not contradict the authorized weapons under this pillar and as laid out in the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare,

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[251] Orend, Brian". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014

[252] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 127

[253] Tharoor, Ishaan. "How Somalia's Fishermen Became Pirates". Time. http://content.time.com/time/world/article/0,8599,1892376,00.html . 18/04/2009. Accessed 10/08/2014

[254] Orend, Brian". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014

[255] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 126

otherwise referred to simply as the Geneva Protocol from the Geneva Convention.[256] However, that is not to justify the damages caused by the Rocket Propelled Grenades, automatic weapons and others that they fire.

Continuing from this, **proportionality** in *jus in bello* differs from that in *jus ad bellum* in that here it refers to the force that is used by combatants during war. This force used must coincide proportionally with the desired outcome of the war.[257] This limits the types of weapons used and the methods of attack used. Again here, the disadvantage faced by the Somali pirates in terms of capacity makes this pillar of proportionality difficult to contravene by the Somali pirates. No weapons of mass destruction and such means disproportionate are used against the Western vessels that they attack, thus keeping them in an inferior position proportionally which in turn does not pose a hindrance to their legitimacy in terms of weapon use.

Discrimination and non-combatant immunity as a just war pillar serves to protect innocent civilians that get caught in conflict situations and are susceptible to injury and death among other damages.[258] This perhaps creates tensions with the collateral damage that occurs in wars where non-combatants and innocent civilians are wounded, have their property damaged of lose their lives in place of the actual targeted enemy. Here, the shift of pirate attacks from the Gulf of Aden to central Somalia clearly contravenes this pillar and undermines the justificatory discourses of the Somali pirates.[259] Because they Somali pirates claim protection of seas and against plundering and dumping, the attacks and kidnappings on land serve as a contradiction to the goal they claim to achieve.

Benevolent quarantine for prisoners of war refers to combatants that surrender in times of conflict and become captives of the opposing force. Prisoners of war or ex-combatants are thus

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[256] International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols". https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm. Accessed: 20-07-2014

[257]Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[258] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[259] DefenceWeb. "Somali Piracy Remains a Global Shipping Threat; Responsible for Growing Kidnapping on Land— UN." www.defenceweb.co.za/index.php?option=comcontent&view=article&id=27176:somali-piracy-remains-a-global-shipping-threat-responsible-for-growing-kidnapping-on-land-un&catid=108:maritime-security&Itemid=233. 10 August 2012. Accessed: 17-07-2014

not be to subjected to torture or targeted by the opposing force as they no longer pose a threat to human rights as a result of their putting down arms.[260] In the case of the Somali pirates, one can use their kidnapped hostages as examples of prisoners of war, even if their hostages are not always necessarily combatants opposing their piracy (captured journalists etc. cannot be considered to be ex-combatants). [261] The captured crew members, human rights workers, reporters etc. are subjected to harsh conditions by the Somali pirates in their quest to obtain the ransoms they demand, which can be used as a basis to undermine their legitimacy especially when those they capture pose no direct threat to the pirates.[262]

The prohibition of unethical or evil methods of torture when engaging in war is highlighted in the Just War Theory pillar of **no means *mala in se***. Here, war crimes such as genocide, forcing captured soldiers to fight against their own side, using weapons with uncontrollable consequences and mass rapes cannot be justified.[263] The nature of conflict in the Gulf of Aden initiated by the Somali pirates cannot be classed as unethical or evil according to this pillar as the conflict by Somali pirates consists of firing of automatic weapons and the firing of Rocket Propelled Grenades, as mentioned above, in order to gain access to the vessels that they attack and ultimately hijack. These hijacked vessels are then sailed by the pirates towards the Somali coast after which they are only safely liberated after random demands are met after negotiations.[264]. However, the conditions in which captives of the Somali pirates are subjected to in different cases can alter notions of legitimacy in investigating whether unethical or evil methods of torture are used.[265]

A war cannot be legitimate if the reasons behind the initiation of the conflict lie in acts of vengeance or revenge. This is highlighted in the Just War Theory pillar of **no reprisals.** This

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[260] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/ 2014

[261] Fantz, Ashley and Vercammen, Paul. " American journalist freed from Somali pirates". CNN. http://edition.cnn.com/2014/09/23/world/africa/somalia-american-journalist-released/index.html. 24/09/2014. Accessed 24/09/2014.

[262] Loc cit.

[263] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[264] Ishaan Tharoor. 2009. "How Somalia's Fishermen Became Pirates". Time. http://content.time.com/time/world/article/0,8599,1892376,00.html . 18/04/2009. Accessed 10/08/2014

[265] Wenheim, Oded L. " ''Do Ourselves Credit and Render a Lasting Service to Mankind'': British Moral Prestige, Humanitarian Intervention, and the Barbary Pirates". *International Studies Quarterly.* 2003. Page 30-32

means that defence remains the primary acceptable reason for a just war, according to the theory.[266] The main justificatory discourses raised by the Somali pirates as illustrated throughout this chapter is that the livelihoods of fishermen of Somali, on which the survival and food security of the nation as a whole depends, is threatened by the presence of Western fleets that plunder the oceans of the Gulf of Aden.[267] Their seas, as a result, are in need of defence from this external threat, according to the Somali pirates. From this lens, the Somali piratical acts do indeed stem from the desire to defend their oceans, livelihoods and ultimately secure their survival in the wake of a failed state.[268] However, through the lens of the attacked who view the Somali piratical acts as banditry, their attacks can be viewed as senseless acts of reprisal. Their acts would be regarded as senseless banditry because of the denial of claims of plundering and waste dumping. Thus, the acts of the Somali pirates could be viewed as revenge stemming from their desperation due to the poverty that is faced in the failed state. The lens from which the crisis is view either augments or undermines the legitimacy of the Somali pirates' acts.

The peace settlements in the end stages of violent conflict are dealt with in the pillar of **proportionality and publicity**. Here, the conditions of peace must be practical, realistic, measureable and made public knowledge.[269] In the case of the Somali piracy crisis, which is ongoing, peace settlements for the crisis in its entirety are yet to occur in a way that fully resolves the crisis.[270] Though the improvement in the security situation in Somalia as a whole has experiences a significant improvement, the country's goal of sustainable peace and development is still far from being achieved.[271] In fact, the discourse highlights the challenge with bringing about peace in this crisis in that the core issues are not dealt with. The discourse on the piracy crisis in the Gulf of Aden critiques the efforts by the various international actors responding to

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[266] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[267] Loc cit.

[268] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates", *Ocean Development International Law*, 44:2. 2013. Page 187-190

[269] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[270] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 153-154

[271] Atta-Asamoah, Andrews and Ramis, Seguí Neus. "Somalia: Fighting the odds in the search for peace after the transition". *ISS Africa*. 5 March 2014. Page 1-5

the crisis for not provide long term solutions to the problem.[272] Rather, the steps taken towards dealing with the Somali piracy crisis merely provide short-term solutions and undecided measures in seeking solutions to the crisis.

These short term solutions do not in fact address the root of the problem - that is, the grievances of the Somalis themselves which primarily includes poverty, lack of employment opportunities, incredibly low incomes, environmental problems, and the presence of Illegal, Unreported and Unregulated fishing vessels which pose a threat to their survival and human security.[273] While the international community are quick to act on issues such as the volatile political and security situation in Somalia that contributes to piracy, other core contributing facts such as are not high on the agenda of issues to address.[274] Here, the pillar of proportionality and publicity thus needs to be addressed in seeking solutions and initiating peace settlements with the Somalis that engage in violent piratical activity. The lack of international will to address these core issues gives increased weight on the Somali pirates' justificatory discourses in engaging in violent acts for survival. This ties in with the pillar of **rights vindication** which looks at the violated rights that set off the just war which includes basic human rights, such as the right to life, freedom and territory, in the war affected areas and seeks to ensure the revisiting of these rights and to ensure their security so as to ensure that conflict does not reoccur..[275] However, on the other hand, the tension here lie in the acts of piracy against aid vessels such as those sent by the World Food Programme.[276] In instances where the Somali pirates attack even food aid vessels which are in essence helpful to their fragile state, solutions to the crisis are hindered and accusations of banditry become increasingly valid.

Discrimination in *jus post bellum* differentiates between the various actors involved and affected in times of conflict, such as state leaders, combatants or soldiers, and innocent civilians. This differentiation of actors needs to be considered when negotiating peace settlements and initiating punishments so as to secure the innocent parties in war from bearing the burden of

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[272] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 153-154
[273] Loc cit.
[274] Loc cit.
[275] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014
[276] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law.* 44:2. 2013. Page 191

unjust consequences.[277] Punishments such as economic sanctions then cannot be validated if even the innocent would suffer the consequences.[278] It is not every Somali or Somali fisherman that engage in acts of piracy. Therefore, efforts such as the sending of naval assets by various nations to enforce security in the Gulf of Aden may lead to even innocent fisherman bearing the brunt of the consequences of the illicit activities of the pirates. The issue of the attacked aid vessels is again worth examining here. In this instance, it is the Somali pirates themselves who place the rest of the population in need at a disadvantage as the aid packages are unable to reach their shores.[279] This poses a major issue as the failed state and ensuing intensified poverty among the nation leads to the dependence on aid packages for survival. In this case, it is the pirates themselves that pose a threat to their own human security and again the legitimacy of their justificatory discourses is undermined.

Compensation in Just War Theory looks at the financial restitution that may occur after war in order to assist the process of reconstruction after the destructive effects that result from situations of violent conflict.[280] So far, the Somali pirates seek their own compensation through their raiding of international vessels and ransom demands.[281] However, whether the profits gained from these hijacking incidents filters down to the Somali society at large is something worth considering in the debate between banditry and defence in their piratical acts. If the Somali society at large does indeed benefit from the acts of piracy, then the piratical justificatory discourses are gain value in terms of legitimacy. However, if it is indeed the kingpin pirate heads that benefit alone, the labels of banditry become more prominent and thus undermine the pirates' legitimacy. Here, the issue of social inequality which is ultimately one of the primary contributing factors to the emergence of Somali piracy is emphasized as the desperate will to survive and maintain a livelihood amidst political instability motivates these piratical acts.

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[277] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[278] White House Government. "Executive Order 13536 concerning Somalia". 13 April 2010. http://www.whitehouse.gov/the-press-office/executive-order-concerning-somalia. Accessed 10 July 2014.

[279] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law*. 44:2. 2013. Page 191

[280] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17 /06/2014

[281] DefenceWeb. "Somali Piracy Remains a Global Shipping Threat; Responsible for Growing Kidnapping on Land— UN." www.defenceweb.co.za/index.php?option=comcontent&view=article&id=27176:somali-piracy-remains-a-global-shipping-threat-responsible-for-growing-kidnapping-on-land-un&catid=108:maritime-security&Itemid=233. 10 August 2012. Accessed: 17-07-2014

However, their justness and legitimacy continues to be undermined as a result of the absence of context of political exclusion, social inequality and repercussion of colonialism in the widespread Western portrayals of pirates as unruly disorganized groups.

Chapter 5 - Conclusions

5.1

The Mai Mai Bakata Katanga and Somali Pirate Conflicts in Summary

This study has looked at the insights into the assessments/analysis (of writers, international organizations, politicians and analysts among others) of the justificatory discourses of non-sate actors within weak African states in conflict against Just War Theory to assess notions of legitimacy. The study acknowledged that Just War Theory in its traditional sense is mean to apply to states as primary actors, but deliberately applied the theory outside its home turf to determine how helpful it is to assess notions of legitimacy in conflicts in contemporary international relations where the trend in central actors has shifted from states to non-state actors.[282]Thus, the focus on non-state actors makes the study relevant to patterns in current world conflict situations.

The Mai Mai Bakata Katanga active in the Democratic Republic of Congo and the Somali pirates active in the Gulf of Aden, both engaging in conflict in their weak states, were chosen as the non-state actors to study as cases. Both groups present justificatory discourses for their violent actions on land and at sea. Therefore both groups present themselves as martyrs in protecting their land and seas, whilst the media widely portrays the group as unorganized, greedy villains.[283] In the case of the Mai Mai Bakata Katanga, the initial primary justification for their engagement in conflict raised by the group was that of protection of land against the external threat of Burundian, Rwandan and Ugandan foreign forces whom they accuse to have breached the DRC's sovereign prerogatives in a war beginning in August 1998.[284] The Mai Mai Bakata Katanga group specifically organized themselves in the aim of defence of their land particularly from 2010.[285] However, their claims and their fighting then went on to target the Congolese government for being unable to attend to their solve their sufferings, attend to their grievances and improve their living conditions. This lead to the Mai Mai Bakata Katanga claiming increased

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[282] Cilliers, Jakkie. "Africa's conflict burden in a global context". *ISS Africa*. October 2014. Page 9-14

[283] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

[284] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014.

[285] Loc cit.

autonomy in their calls from succession. [286] Lead by their leader Commander Gédéon in fighting against these external forces and the Kinshasa government, the Mai Mai Bakata Katanga engaged in violence in the form of rapes, killings, raiding of villages and towns, and rumoured cannibalism.[287][288]

The Somali pirates engaging in piratical acts, on the other hand, target international shipping vessels passing through the waters of the Gulf of Aden.[289] In this case, the pirates attack their targets through hijackings, seizing of property and kidnappings at sea. The primary reasons raised by the pirates to justify their violent acts include their opposition to plundering of their fish resources through unregulated overfishing as well as the dumping of waste in their waters which again leads to the depletion of their fisheries.[290] This poses a problem as in the wake of a failed state, the Somalis depend on fishing for the livelihood and survival, and thus target the international shipping vessels as a threat to their human security. Piracy in Somalia emerged out of a complicated economic and political context where the failure, and ultimately absence of the state as a governing institution for the country left the region chaotic in the lack of regulation.[291] It is this lack of sovereign power over the failed state that creates a 'free-for-all' environment in the Gulf of Aden for unregulated fishing, cheap waste dumping and ultimately piracy to occur.

There has been intervention of external actors, particularly the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), to assist the government to contain and ultimately put an end to Mai Mai violence that they consider to be illegitimate. In Somalia, organizations such as the International Maritime Organization (IMO) and the United Nations Office on Drugs and Crime (UNODC) have too engaged in efforts to find solutions to the violent crises. However though in both cases the gravity of the situation has

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[286] Kitopi, Kimpinde Adalbert. 2014. Professeur de droit à l'Université de Lubumbashi / Lecturer of Law at the University of Lubumbashi. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 17/09/2014

[287] Rfi. "RDC: un chef cannibale sévirait dans le nord du Katanga".http://www.rfi.fr/afrique/20140624-rdc-chef-cannibale-sevirait-le-nord-katanga/. 24 June 2014, 11:27. Accessed 26/062014.

[288] MONUSCO Radio Okapi. "Katanga: 7 femmes échappent aux Maï-Maï après deux mois d'esclavage sexuel". 7 August 2014, 4:36. http://radiookapi.net/actualite/2014/08/07/katanga-7-femmes-echappent-des-mai-mai-apres-deux-mois-desclavage-sexuel/. Accessed 8 August 2014.

[289] Schneider, Patricia and Winkler, Matthias."The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law.* 44:2. 2013. Page 187-191

[290] Loc cit.

[291] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 126-128

decreased, the violent conflict has not been completely eradicated. [292] [293] The justificatory discourses of these non-state actors in both cases continue to be undermined against what is viewed as legitimate internationally. This is primarily a result of the grave human rights abuses (mass rapes and cannibalism) that occur alongside raids of villages and towns by the Mai Mai in the DRC even after process of disarmament, demobilization and reintegration processes were launched.[294] In Somalia, the continued attacks on passing international and aid vessels by pirate groups that does not necessarily benefit the Somali population at large, as well as the shift of pirate violence from the seas in the Gulf of Aden to in land violence in the centre of the country are among the primary reasons for their justificatory discourses to be continually undermined by the international community.[295] In both cases, their nature of the violent conflict in which they engage does not align with what is considered legitimate according to western rooted Just War Theory and the universally applied conventions that it informs. The study therefore concludes that their justificatory discourses are for the most part undermined overall, which is evident of the ultimate power of the western hegemony that controls the notion of justice, legality and legitimacy worldwide.[296]However, some of the individual pillars of Just War Theory do in fact enhance the justificatory discourses of these groups in some cases, as explored in the individual case analysis in the above study. With view of this, sub-chapter below seeks to consider the validity of Just War Theory in contemporary conflicts that have shifted to non-state rooted and what this means for notions of legitimacy.

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[292]Menkhaus, Ken. 'Mediation Efforts in Somalia'. *Africa Mediators' Retreat*. Centre for Humanitarian Dialogue. 2007. Page 35-40

[293] MONUSCO Radio Okapi. "Malemba Nkulu : l'activisme des Maï-Maï est moins intense, selon la société civile". 25 September 2014, 3:09. http://radiookapi.net/actualite/2014/09/25/malemba-nkulu-lactivisme-des-mai-mai-est-moins-intense-selon-la-societe-civile/. Accessed 03 October 2014..

[294] Kazembe Kilumba, François. 2014. Administrateur du Territoire de Manono / Administrator of the Territory of Manono, Katanga, DRC. Interview on the Mai Mai Ba Kata Katanga of the Democratic Republic of Congo. 18/09/2014

[295] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law.* 44:2. 2013. Page 187-191

[296] Grovogui, Siba N'Zatioul. *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law.* University of Minnesota Press. 1996. Page 72-75

5.2

A Shift In War Making: The Validity of Just War Theory in Contemporary IR and its Implications on Notions of Legitimacy

As illustrated above, though once can argue for the legitimacy of the justificatory discourses of the non-state actors in the case studies, the Western informed codes and laws that inform universal notions of legitimacy continue to dominate in international relations.[297] As a result of this, the justificatory discourses of non-state actors are continually undermined against Just War Theory. It must be noted however, that Just War Theory is meant to be applied to states and thus some of its pillars do not in fact apply or apply differently in these cases. Therefore, the analysis of cases against just war theory above either omitted pillars that were not necessarily relevant in understanding notions of legitimacy or applied the pillars alternatively. This study then concludes that when using Just War Theory outside of its home turf (from the state to non-state actors) to assess notions of legitimacy, the pillars of the theory do not always apply or they apply differently. For example, for a conflict waged to be legitimate according to Just War Theory, *all* of the criteria in *jus ad* bellum need to be fulfilled as they are not mutually exclusive.[298] In the case of the Mai Mai Bakata Katanga and Somali pirates, not all of these pillars apply in the same way they would to states, and can thus not be fulfilled in their entirety to legitimate their actions. The political and economic context (weakness or absence of a functioning state) as well as implications of power dynamics affect the ways in which Just War Theory can be applied in these cases.

So, the above analysis of the Just War Theory pillars of *jus ad bellum, jus in bello* and *jus post bellum* against the case of the Mai Mai Bakata Katanga and Somali pirates can enhance the justificatory discourses that can indeed be legitimized in their acts of violence, depending on the lens through which the discourses are assessed. The pillars of 'just case' and 'right intention' are of particularly contention here as the notion of what is or is not to be considered 'just' or 'right' is subjective in nature. The invasion of external forces posing a threat to sovereignty in the DRC and the failure of the Kinshasa government to attend to and satisfy basic human rights on the part

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[297] Grovogui, Siba N'Zatioul. *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law.* University of Minnesota Press. 1996. Page 72-75

[298] Orend, Brian. "War". Stanford Encyclopedia of Philosophy. http://plato.stanford.edu/entries/war/#2. Accessed 17/06/2014

of the Mai Mai can indeed be regarded as legitimate groups to initiate action for change.[299] As is the case with the Somali pirates who, in the wake of a weak or failed state, their seas to rely on for the majority of their food and livelihood which makes their fight against the unregulated overfishing and waste dumping seemingly 'just' and therefore legitimate.[300]

However, on the other hand, the above pillars also highlight issues of legitimacy in the way in which these non-state actors function, that put into question whether their acts are indeed in efforts of defence or whether they are simply armed robbers of their lands and sea taking advantage of the lawlessness that exists in their failed state, ultimately causing more harm than good. Here, pillars such as 'discrimination and non-combatant immunity' as an example undermine the legitimacy of these non-state actors' acts of conflict as innocent civilians in both cases have suffered as a result of the volatility. In the Congolese case, this has particularly been with the killings, rapes, separations of families, destruction of homes and vital infrastructure such as hospitals and schools which have led to a grave environment of social, economic and political instability in the *triangle de la mort* in particular which ultimately affects the region and nation at large.[301] Also, the Somali pirate activity affects the nation negatively when for example World Food Programme aid vessels are attacked and are thus unable to deliver much needed food aid to Somali shores.[302] Also, pirate activity in the Gulf of Aden hinders genuine fisherman from earning their livelihoods among other disruptions to security.

An essential issue to note in both cases is the absence of contextualization in widespread reporting of the volatile situations.[303] That is, the reasons such as; social inequality, driving forces behind political instability, repercussions of colonialism, Western quests for economic growth and political domination, that lead to the emergence of non-state actor violence. This decontextualization is evident of the ongoing signs of imperialism that continue to exist in

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[299] Lushingo, Ilunga Celestin. Commisaire de District. Interview on the Mai Mai Bakata Katanga of the Democratic Republic of Congo. 16/07/2014

[300] Schneider, Patricia and Winkler, Matthias. "The Robin Hood Narrative:A Discussion of Empirical and Ethical Legitimizations of Somali Pirates". *Ocean Development International Law*. 44:2. 2013. Page 187-191

[301] Kaumba, Lufunda. Director of Cabinet of the Minister of Interior, Decentralization, and Traditional Affairs. Interview on the Mai Mai BaKata Katanga of the Democratic Republic of Congo. 01/07/2014.

[302] Papastavaidis, Efthymios. " Chapter 7: Piracy off Somalia: The 'Emperors and the Thieves of the Oceans' in the 21st Century" in *Protecting Human Security in Africa*. Ademola Abass. Oxford University Press. 2010. Page 127

[303] Ali, Muna and Murad, Zahra. 'Unravelling Narratives of Piracy: Discourses of Somali Pirates'. *darkmatter*. 2009. Issue-5. Pirates & Piracy. Page 91-100

contemporary international relations and that continue to inform our notions of justness and legitimacy

The study also concludes that the changing trends in conflicts are indicative of changing norms in governance, changing norms on local and global norms of authority, changing practices of contestation by new actors, changes in access to resources by these new actors, among other shifts. These changes provide for the emergence of non-state actors with different agendas, goals, capabilities, normative outlooks and political cultures that differ from the traditional conception of the state. These shifts also support the need for a framework to assess notions of legitimacy and justificatory debates that is applicable to contemporary international relations.

And so, legitimacy as informed by Just War Theory is indeed a narrow framework - the conflicts that occur presently are differ greatly to when the theory was first formulated. The cases in the study provide evidence that the changing nature of conflict is real, it is not simply a speculation. The issue is, perhaps, that the changing nature of conflicts is occurring faster than what we are able to capture which leads to the continued reliance on the arguably archaic nature of Just War Theory in a different reality. In the end, legitimacy in justificatory debates continues to be influenced and determined by Western ideals.

What is true, however, is that the fundamental issues that are the unmet are the basic human rights in both cases need to be addressed before the issue of non-state actor violence can be solved. Though the pillars of Just War Theory do not prove that the acts of the Mai Mai or Somali pirates can be fully legalized and thus not fully legitimized, they do help to understand that the issue of human security in both cases is the fundamental issue to be addressed. Thus, when the relevance, scope, applicability and purchase of the Just War Theory criteria is discriminated in specific contexts, they theory can still be applied outside its home turf: not to condemn or approve legitimacy/legality of non-state actors' violence, but rather to *assess* their justificatory discourses which in turn allows one to measure legitimacy in their conflicts versus the Western informed codes and norms that dominate. It is in this assessment of legitimacy vis-a-vis the theory's pillars that the continued Western influence in international law which determine legality and legitimacy become increasingly apparent. Therefore, adding to the call for a reconfiguration of Just War Theory by contributors to the discourse such as Vorobej, Baer, Capizzi, Fabre and Kemp, this study does not write off the relevance of the theory outside its

home turf to assess trends in contemporary international relations, but rather argues that it is relevant so long as the applicable pillars are used to explore justificatory discourses to assess legitimacy bearing in mind that the concept continues to be Western informed. Once the Western lens of analysis is removed or challenged, the insights into the analysis of Mai Mai and Somali pirate justifications indeed show that amidst the conflict in which they engage, in their own right intentions of restoring justice and taking back what belongs to them, legitimacy can indeed be found.

List of Abbreviations

ANC - Armée Nationale Congolaise (Congolese National Army)

DRC - Democratic Republic of Congo

EU - European Union

FAP - Forces d'Auto-Defence Populaire

CTF150 - Combined Task Force 150

IMO - International Maritime Organization

IUU - Illegal, Unreported and Unregulated fishing

LRA - Lord's Resistance Army

MONUSCO - United Nations Organization Stabilization Mission in the DR Congo

MSPA - Maritime Security Patrol Area

NATO - North Atlantic Treaty Organization

R2P - Responsibility to Protect

UN - United Nations

UNOSOM - United Nations Operation to Somalia

UNODC - United Nations Office on Drugs and Crime

UNSC - United Nations Security Council

WFP - World Food Programme

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