

# The Weight of the Decision: Just War Thinking in Congolese Armed Conflict as Seen Through the Lens of Lieve Joris's *The Rebels' Hour*

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## Abstract

Ethnic violence and armed conflict continue to ravage the Democratic Republic of the Congo (DRC), particularly its eastern provinces, nearly two decades after the official 2003 end of the Congolese 'Wars of Liberation,' which have cost over four million lives since 1996. Traditional Western mindsets—grounded in the doctrine of the just war theory, which informs much of international humanitarian law and international criminal law—find the ethical underpinnings of this violence extremely difficult, if not impossible, to fathom. Through her novel, *The Rebels' Hour*, Belgian author and journalist Lieve Joris has, albeit unintentionally, graced us with an eloquent case study with which to explore the 1996–2003 Congo Wars through a just war theory lens. This article briefly describes the historical and doctrinal contexts of Joris's novel, and traces in Just War terms the story she tells of its protagonist, a fictitious rebel commander. After discussing the implications of the just war theory posed by the situation Joris describes, this article concludes that the West can draw a moral lesson from Africa, and recommends Joris's novel to Western readers as an excellent entrée to a better ethical understanding of African armed conflicts.

**Keywords:** Just war theory; war crimes; international humanitarian law; Congo; Banyamulenge

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## Introduction

“I don’t know how to put it. You’ve become like a sister to me. You must help me. I’m in danger. The only thing stopping me from sliding over to the other side is ... .” He hesitated for a moment. “The weight of the decision.”<sup>1</sup>

Thus, General Assani, the protagonist in *The Rebels’ Hour*, explains to a rare confidant why he is not mutinying, yet again, from the Congolese Army to re-join his fellow Banyamulenge tribesmen who have revolted once more. Largely a *roman à clef*, Lieve Joris’s work of historical fiction is based on the life story of a man from the eastern Congo, whose Tutsi herdsman ancestors had migrated several generations ago from present-day Rwanda and were caught up in the tumultuous aftermath of the 1994 Rwandan genocide<sup>2</sup> that played out on Congolese soil.

The just war theory<sup>3</sup> may have been far from her mind, yet its tenets can be discerned in Joris’s fictive depiction of the Congo Wars between 1996 and 2003. *Ad bellum* considerations are most apparent, with the ‘just causes’ of both a minority people defending itself against genocide and an external force coming to its rescue. A clear ‘right intent’ appears in the overthrow of a despotic dictator unable to protect his people, but the ‘legitimate authority’ to do so is murky. *In bello*, ‘distinction’ and ‘proportionality’ are honoured more in the breach than in the observance where massacre and genocide are the norm. *Post bellum*, the fragility of ‘order’ and

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1 Lieve Joris, *The Rebels’ Hour* (Grove Press 2008) 256 [first published as *Het Uur van de Rebellen* (Uitgeverij Augustus 2006)]. The quotations in this article are for academic use under the fair use doctrine.

2 The term ‘genocide’ means ‘any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.’ Convention on the Prevention and Punishment of the Crime of Genocide, art 2, 9 December 1948, 78 UNTS 277, 280 <<https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>> accessed 20 August 2022.

3 The body of primarily Judeo-Christian ethics by which one morally scrutinises a sovereign’s resort to and use of armed force. See Walter Wink, *The Powers That Be: Theology for a New Millennium* (Galilee Doubleday 1998) 128–144; Arthur F Holmes ed, *War and Christian Ethics: Classic and Contemporary Readings on the Morality of War* (2nd edn, Baker Academic 2005). Tracing its roots back to the teachings of Saint Augustine and Cicero before him, the just war theory has, over the centuries and particularly during the last, formed an analytical framework currently comprised of three categories, with elements specific to each, as follows: (1) *jus ad bellum*, or justifying the resort to war, containing the primary elements of (i) legitimate authority, (ii) just cause and (iii) right intent, and secondary elements of (iv) likelihood of success, (v) proportionality of ends and (vi) last resort; (2) *jus in bello*, or the righteous conduct of war (also referred to as ‘The War Convention’), with the elements of (i) proportionality of means and methods, and (ii) discrimination between combatants and civilians; and (3) *jus post bellum*, or the right termination of war, with the elements of (i) order, (ii) justice and (iii) conciliation. See eg the useful chart provided in Eric Patterson, *Just American Wars: Ethical Dilemmas in U.S. Military History* (Routledge 2019) 17.

illusiveness of ‘justice’ and ‘conciliation’ are illustrated by a victorious rebellion toppling a kleptocratic dictator, only to realise they had replaced him with something more brutal, triggering a just counter-rebellion. Back *in bello*, however, the persecuted minority and their foreign champion utterly defeat their own purposes by the manner in which they fight. After great bloodshed, the harbingers of *post bellum* ‘conciliation’ (or perhaps of a fourth just war theory category, *ante bellum*) appear in the protagonist’s ultimate decision—a weighty one—to stop exacting vengeance, to support the transitional government, and to commit to building a professional army capable of sustaining the peace. However, reading *The Rebels’ Hour* does not lend itself to ‘excising real world details from consideration by mechanically ticking off abstract propositions’ as the foregoing might suggest. On the contrary, Joris’s art reveals how ‘just war thinking is ... imbued within’ the chaotic, non-Western, so called irregular situation which is the eastern Congo, and thereby allows us to ‘reason within the categories.’<sup>4</sup>

The responsibilities of command were thrust upon him without any military training or education, thus the herdsman who becomes General Assani is without knowledge of the law of war.<sup>5</sup> He has only his conscience to guide him through the seas of evil, which he must navigate. Far from being averse to killing and violence, the reader perceives that he is at heart a good, Godfearing though irreligious man; and that it is in such a conscience as his where the roots of the just war theory are found.

## Historical Context of Joris’s Story

For an American citizen residing in the United States, the idea that a child, born on American soil to immigrant parents, could be ‘not American’ or somehow ‘less American’ than others, is bizarre. Even more strange is the thought that a child, born to parents who themselves were born to immigrants and who had lived in America all their lives, could be ‘less American’ than the child whose ancestors have been there for generations. And to think that such a child, even one born to great-grandchildren of immigrants, all of whose descendants up to that child had lived in America, could nevertheless be ‘foreign,’ is absurd. Yet that is exactly the case of the Banyamulenge people, a distinct minority ethnic group centred on the High Plains (*les Hauts Plateaux*) of South Kivu Province in the east of the DRC. They are of the Tutsi ethnicity, thrust

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4 Jean Bethke Elshtain, ‘Just War and an Ethics of Responsibility’ in Eric Patterson ed, *Ethics Beyond War’s End* (Georgetown Univ Press 2012) 123, 126 citing Eric Patterson, *Just War Thinking: Pragmatism and Morality in the Struggle against Contemporary Threat* (Lexington Books 2007).

5 That body of international law, established to regulate the resort to and use of armed force in disputes between states, also known as the law of armed conflict or international humanitarian law. See generally Antonio Cassese, *International Law* (2nd edn, OUP 2005) 399–434. Its ‘primary purpose ... is to restrict the means and methods of warfare that parties to a conflict may employ and to ensure the protection and humane treatment of persons who are not, or no longer, taking a direct part in the hostilities.’ Nils Melzer and Etienne Kuster, *International Humanitarian Law: A Comprehensive Introduction* (International Committee of the Red Cross 2016) 17.

onto the world's stage by the infamous Rwandan genocide of 1994.<sup>6</sup> Their ancestors migrated to Congo from Rwanda many generations ago—according to some oral traditions centuries ago, but in any event no later than the late nineteenth century.<sup>7</sup> They were and are pastoralists, cattle herdsman, originally nomadic, who came into Congo with their herds from the area now known as Rwanda-Burundi, along the northern shore of Lake Tanganyika. They settled in an area just north of present-day Uvira, and there named their settlement Mulenge, from whence comes the name 'Banyamulenge': 'people from Mulenge' in the Kinyarwanda language, the singular being 'Munyamulenge,' as in 'she is Munyamulenge' or 'he is a Munyamulenge.'

As nomadic pastoralists in their new country they were tenants as opposed to land owners and answerable to the local chieftaincies (*chefferies*). When the colonising Belgians arrived and catalogued the 'indigenous peoples' in order to demarcate administrative districts and sectors, it was according to the landed chieftaincies' claims. The Banyamulenge were, therefore, overlooked by the Belgian ethnic cartographers; hence, they did not appear on the Belgian colonial maps and consequently did not receive colonial administrative attention.

During the early twentieth century, the chieftaincies began to exact even greater tribute, motivating the Banyamulenge to migrate south and further inland, up into the mountains and onto the high plains of Itombwe, which were relatively uninhabited. There, they were isolated from greater Congolese society and more or less ignored by the *chefferies* and colonial authorities, although their annual transhumance<sup>8</sup> caused permanent

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6 The narrative historical discussion which follows, both immediately and throughout this article, is a gross oversimplification tailored to the story line of Joris's novel. Mindful of Professor Jean Bethke Elshtain's admonishment to 'have available a comprehensive and accurate description for the situation on the ground' (n 4 at 126), this author attempts to impart the minimum facts necessary to make sense of the story, with the caveat that this is merely the gleanings of a complex multi-faceted situation. For a more detailed account of that situation, see the sources referenced below in n 7 and Jason K Stearns, *The War that Doesn't Say its Name: The Unending Conflict in the Congo* (Princeton Univ Press 2022).

7 See Joris (n 1) 20–24; see also, generally, Anthony Court, 'The Banyamulenge of South Kivu: The "Nationality Question"' (2013) 72(3) *African Studies* 416–440; Jason Stearns and Anonymus, *Banyamulenge: Insurgency and Exclusion in the Mountains of South Kivu* (Rift Valley Institute 2013) 11 ff; Thomas Turner, *The Congo Wars: Conflict, Myth & Reality* (Zed Books 2007) 76 ff; Lazare Sebiteroko Rukunda, 'Justice and Righteousness in Matthean Theology and its Relevance to the Banyamulenge Community: A Post-Colonial Reading' (PhD dissertation, Univ of Pretoria 2005) 93 ff <<https://repository.up.ac.za/handle/2263/28278>> accessed 11 November 2022; Koen Vlassenroot, 'Citizenship, Identity Formation & Conflict in South Kivu: The Case of the Banyamulenge' (2002) 29 *Review of African Political Economy* 499–515. Also, a moving essay recounting Rwandan history relevant to an understanding of the forces which compelled certain Tutsi peoples to migrate west from present day Rwanda-Burundi, and the origins of the Tutsi ethnicity writ large, can be found in Louise Mushikiwabo, *Rwanda Means the Universe: A Native's Memoir of Blood and Bloodlines* (St. Martin's Press 2006) 159–289 (part III 'Original Sin').

8 'The seasonal transfer of grazing animals to different pastures, often over long distances; of French origin, from *transhumer* (ultimately from Latin TRANS + *humus*, ground).' *Shorter Oxford English Dictionary* 3323 (6th edn, OUP 2007).

animosity with the farmer-gatherer peoples throughout the region. It is these *Hauts Plateaux* which the modern Banyamulenge identify as their rightful homeland, where their ancestors' bones are buried.

In the 1950s, a substantial conversion to Christianity among the Banyamulenge occurred, which gave rise to a class of Banyamulenge religious leaders, who slowly brought the group out of its seclusion.<sup>9</sup> During this decade, 'preachers were moving up into the plains and the first churches were built ... .' The people would gather in these countryside churches, 'the men's walking sticks st[anding] in a row at the back, their hats on top, while the word of God was preached from the front.' The Bible spoke powerfully to the nomadic Banyamulenge,

who had brought a belief in Imana, God, with them from Rwanda, but now God started to speak. Tales of Abraham, Isaac and Jacob; of family quarrels and disputes between farmers and cattlemen; of wandering in the desert in search of a promised land – the stories were all about them. They prayed, sang, praised the Lord, and held nocturnal vigils, after which they walked home through the moonlit hills with so little distance between themselves and God that they could converse with him effortlessly.<sup>10</sup>

The stories were indeed about them. 'The God described in the Bible is none other than the God who is already known in the framework of our traditional African religiosity' explains theologian John Mbiti. 'The missionaries who introduced the gospel to Africa in the past 200 years did not bring God to our continent. Instead, God brought *them*.'<sup>11</sup>

Joris's protagonist, General Assani, keeps these stories at heart (he even wears a star of David necklace constantly), although, as an adolescent, he stops accompanying his mother to church and has not been back since. His own progeniture is reflected in the law of Moses: his 'father' had died before Assani's conception, killed in 1964 while defending their livestock against marauding *Simba* rebels (see below); therefore, it was his uncle who impregnated his mother on his father's behalf.<sup>12</sup>

The Banyamulenge's physiognomy differs markedly from their neighbouring tribes, and their aloofness was interpreted as arrogance. When they began to request social services and political inclusion, they were met with the claim that they were not Congolese (or 'Zairean,' after dictator Mobutu Sese Seko (Mobutu) renamed the country Zaire in 1971). Their absence on the colonial maps 'proved' that they had only recently arrived, and had no claim to citizenship, which was tied to having been

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9 See Stearns (n 7) 17.

10 Joris (n 1) 33–34.

11 John S Mbiti, 'The Encounter of Christian Faith and African Religion' (1980) 97 *Christian Century* 817–820 (emphasis in original), reprinted in *Religion Online* <<https://www.religion-online.org/article/the-encounter-of-christian-faith-and-african-religion/>> accessed 11 November 2022.

12 See Genesis 38:8 and Deuteronomy 25:5, *The Holy Bible* (New Revised Standard Version, anglicised edn, OUP 1995) 36 and 187.

administratively recognised by the former colonial government. They were ostracised and became a scapegoat for society's ills, as the widespread sentiment of Zairean patriotism which Mobutu had fostered during the 1970s evaporated with the increasing unsustainability of his kleptocratic reign.<sup>13</sup> Although Mobutu had come to the Banyamulenge's assistance in the mid-1960s by arming them so as to repulse so-called Marxist rebels who raided their herds under the name *Simbas* (the Swahili word for lion), he nevertheless passed a nationality law in 1981 which, effectively relegated the Banyamulenge to the status of stateless persons.<sup>14</sup>

This act of state 'contributed to sowing the seeds of racial hatred' toward the Banyamulenge.<sup>15</sup> In 1987, their candidates for legislative office were disqualified on the basis of 'questionable nationality,' and they were refused admission to the all-Zaire Conference of National Sovereignty in 1991. When the Rwandan genocide started in 1994, official government reporting branded the Banyamulenge as 'foreign immigrants' on a par with the newly arriving hordes of refugees from Rwanda. In 1995, the Uvira District Commissioner ordered their expulsion from the territory, calling them 'an unauthorised ethnicity.'

In July 1996 the Governor of the South Kivu Province in the *Hauts Plateaux*, called for 'driving out the snakes' and an ethnic cleansing of the territory.<sup>16</sup>

It was this last diabolical clarion call which ostensibly prompted the new, now Tutsi-led Rwandan government (see below) to invade Zaire in defence of their fellow Tutsis, ie the Banyamulenge. The Rwandan army contained many Banyamulenge volunteers who had fled persecution in Congo. Like Joris's protagonist Assani, many had come to Rwanda to complete their university education—the Zairean universities near their homes in South Kivu having been closed to them—but who, soon into their studies,

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13 See David Van Reybrouck, *The Epic History of a People* (English tr, HarperCollins 2014)).

14 '[T]he term "stateless person" means a person who is not considered a national by any state under the operation of its law.' Convention Relating to the Status of Stateless Persons, art. 1.1, 28 September 1954, 360 UNTS 130, 136 <<https://treaties.un.org/doc/Publication/UNTS/Volume%20360/volume-360-I-5158-English.pdf>> accessed 21 August 2022. Statelessness is an 'urgent situation affecting hundreds of thousands, perhaps millions, of Africans whose legal existence is jeopardized by the fact that they are not recognized as nationals of at least one country.' African Commission on Human and Peoples' Rights, 'The Right to Nationality in Africa' Study by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, pursuant to Res 234 (April 2013) approved by the Commission at its 55th Ordinary Session (May 2014) (ACHPR 2015) 5 <<https://www.achpr.org/news/viewdetail?id=112>> accessed 21 August 2022. See generally Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa (May 2017) <<https://www.achpr.org/presspublic/publication?id=25>> accessed 21 August 2022.

15 René Lemarchand, 'Review of Manassé (Müller) Ruhimbika, *Les Banyamulenge (Congo-Zaire) Entre Deux Guerres* (L'Harmattan, 2001)' in (2003) 171 *Cahiers d'Etudes Africaines* 1–3 <<http://journals.openedition.org/etudesafricaines/1537>> accessed 11 November 2022.

16 *ibid*; see also sources (n 7).

heard increasing reports of a perilous and worsening situation back home and heeded the Rwandan army's call to join and prepare an armed return to their homeland to defend their people and exert justice.

### Just War Theoretical Context of Joris's Story

In terms of the just war theory, the Congolese War of 1996 to 1997 (War of Liberation), which overthrew Mobutu's dictatorship, could be seen as four separate wars when one examines the causes—just or not—of the parties who went to war against Zaire. And each party's respective authority—legitimate or not—to wage war, is perceived in the deciphering of those causes.

First is that of the Banyamulenge, who fought a war of *anticipatory attack*, one of *pre-emption* as opposed to prevention, motivated by *self-defence* to prevent genocide of their own people by those acting under the banner of the Zairean state. It was launched upon the call of the South Kivu Provincial Governor for the ethnic cleansing of the province. Nevertheless, they did not act autonomously. Rather, they depended entirely upon their Rwandan and Burundi hosts, and were actively encouraged by Rwanda. The Banyamulenge's authority to attack was inherent in their defence of themselves, although they were not organised into a unified command per se—they ceded such authority to Rwanda, under whose organisational auspices they operated. Despite these caveats, the Banyamulenge's cause met the classic definition of a just pre-emptive attack: there was 'a manifest intent to injure' them, 'a degree of active preparation [by the enemy] that [made] that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting,' would have 'greatly magnifie[d] the risk' of genocide being unleashed against them.<sup>17</sup>

Second, is that of the Rwandan government was fighting a war of ostensible *humanitarian intervention* to assist the Banyamulenge in their anticipatory attack. This was the new Rwandan government, installed by the rebel, Tutsi-dominated Rwandan Patriotic Front (RPF) upon its July 1994 victory that overthrew the Hutu-dominated government which had orchestrated the genocide of 7 April to 15 July 1994. Although fitting the rubric of a state intervening in another's affairs, pursuant to a universal obligation to stave off a humanitarian catastrophe, it was far from altruistic: the RPF unabashedly proclaimed solidarity with their fellow Tutsi tribesmen and that they came to the defence of their own.<sup>18</sup> Hence, this motivation of the RPF can also be understood

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17 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (5th edn, Basic Books 2015) 81.

18 This is not to suggest that for a humanitarian intervention to be 'pure' it must necessarily be selfless, though that may be a utopian requirement. On the contrary, states rarely, in fact never, commit their own blood and treasure to champion the cause of a people in another state if there is not a proportionally compelling interest at stake for the intervening state. After all, 'who goeth a warfare any time at his own charges?' 1 Corinthians 9:7a, *The Holy Bible* (King James Version, Wm Collins Sons & Co Ltd 1949) 219. See generally cases and materials in Hurst Hannum and others,

by applying the logic of *self-defence*, although viewing the Banyamulenge as a Rwandan diaspora would be extravagant. In any event, the legitimacy of this new RPF-dominated Rwandan government's authority was clear: after halting the genocide, it had been quickly recognised by the international community as the legitimate successor government to the one it had recently overthrown.

Third, is that of the same Rwandan government, fighting not the Zairean state but the rump Rwandan<sup>19</sup> state-in-exile on Zairean territory, ie the Hutus responsible for the genocide and their dependents. These had banded under the name *Interahamwe* ('those who work together' in the Kinyarwanda language), with the avowed intent of returning to re-take Rwanda and continue their killing of Tutsi. This also was a war of *anticipatory attack*, so as to prevent the *Interahamwe* from counter-attacking the RPF. Unlike the Banyamulenge's, however, the RPF's cause was more *preventive* than pre-emptive, due to the absence of a manifest imminent threat from the *Interahamwe*. It was nevertheless grounded in *self-defence*. Yet there was also a sense of resumption of their previous Rwandan war of liberation: notions from the *in bello* concept of *hot pursuit* were at play, despite two years having elapsed.

Fourth, and almost as an afterthought, is that of the *Alliance des Forces Démocratiques pour la Libération du Congo-Zaire* (Alliance of Democratic Forces for the Liberation of Congo-Zaire), or AFDL. This was the rebel movement lead by Laurent-Désiré Kabila, who had been living in exile in neighbouring Tanzania since the early 1960s, and who, as an immediate outcome of the war, replaced Mobutu as head of the Congolese state. However, when one strips away the 'war of liberation' rhetoric, his own cause for warring against the Zairean state is unclear. The AFDL were not championing the cause of any persecuted people or peoples within Zaire. Nor were they defending themselves from any imminent or distant threat emanating from Zaire. Granted, had they requested it, they probably would have been denied a peaceable return to Zaire from which they had fled in the early 1960s, when they had named themselves the *Simbas* and assumed the banner of Marxism. This had caught the eye of Fidel Castro who dispatched a handful of Cuban troops under Che Guevara to conduct a brief incursion in 1965.<sup>20</sup> But by 1996, over thirty years later, their only apparent *raison d'être* was as an East African band of smugglers and kidnappers which attracted a few Congolese elites who either had not found or had fallen out of favour with Mobutu.

Thus, for the AFDL itself, its only apparent cause for going to war against Zaire was a sort of *aggression*; specifically, self-aggrandisement and revenge for having been defeated in the 1960s by Mobutu, when—ironically—Mobutu's forces had responded

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*International Human Rights: Problems of Law, Policy and Practice* (Wolters Kluwer 2018) 1088–1153; see also Cassese (n 4) 296–300 and 346–374.

19 See Scott Straus, *Making and Unmaking Nations: War, Leadership, and Genocide in Modern Africa* (Cornell Univ Press 2015) 105.

20 See generally Ernesto Guevara, *Congo Diary: Episodes of the Revolutionary War in the Congo* (1965 diary, English tr Ocean Press 2012).



to pleas of assistance from the Banyamulenge who were being victimised by the raiding *Simbas*. Likewise, their only apparent authority was derived solely from Rwanda; even the Rwandan army chief of staff was appointed as head of the AFDL forces. (The RPF evidently thought it needed a straw man to legitimise its intent to topple a neighbouring government which was harbouring its enemies, the Interahamwe.)

As to each party's *intent*, it appears at first blush that all three attacking parties shared the same: to topple Mobutu and his regime. All three agreed the replacement would be the AFDL under Kabila—a Congolese native affiliated with certain wealthy Mobutu dissidents. However, although the *intent* itself was common to all three, its *rightness* (or lack thereof) was not. For the Banyamulenge, the rightness of their intent is clear, although they had no previous idea of who would replace Mobutu, and therefore they propelled Kabila because the RPF presented him as their man for the job. For Rwanda, the rightness of their intent is doubtful, albeit understandable. Foremost obviously was their intent, shared with the Banyamulenge, of replacing Mobutu. However, the Rwandans' underlying intent, an overriding self-interest, was to hunt down and kill their former oppressors: the Interahamwe *génocidaires*.

For the AFDL, its intent was clear: Take Kinshasa, overthrow Mobutu and install Kabila. The complete lack of rightness in the AFDL's intent, however, can be judged *post-bellum* by Kabila's complete disregard for order, justice or conciliation. Kabila set about governing the territory of Zaire, now restored to its pre-Zairean name of the DRC, 'with insolence, a lot of insolence.'<sup>21</sup> His style of leadership, if it can be called that, was 'secretive and incoherent.'<sup>22</sup> Once he felt firmly ensconced in Mobutu's 'marble palace' (as the presidential residence in Kinshasa was called), Kabila, wittingly or not, completely flaunted the principle of *order* by expelling from the country all Rwandan forces, including his own chief of military staff, immediately upon his return from a trip to Havana.<sup>23</sup> The Banyamulenge, being Congolese and not Rwandan, stayed—despite the Tutsi ethnicity they shared with the Rwandans.

Kabila quickly resorted to his predecessor Mobutu's method of divide and conquer, pitting ethnicities against each other—and particularly scapegoated the Banyamulenge for the present disorder. After all, almost everyone had referred to the war toppling Mobutu as 'the Banyamulenge Revolt,' despite the official AFDL-imposed appellation of War of Liberation.<sup>24</sup> Kabila used the old argument of designating the Banyamulenge as being Tutsi and therefore Rwandan, which rendered them foreigners who should be

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21 Van Reybrouck (n 13) 468.

22 Gérard Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (Oxford University Press 2009) 149–179.

23 *ibid* 178 (apparently with a fresh injection of 'Marxist certainty,' notes Prunier).

24 Jason K Stearns, *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa* (Public Affairs 2011) 188.

expelled. Those who did not leave faced persecution and death, worse than before the ‘revolution’:

All over Congo, Tutsi [were] arrested, executed, lynched. In the streets of Kinshasa, those [who stayed were] roasted alive, burning car tires thrown around their necks to jeers from onlookers. In the military academy in the Katangese town of Kamina, Kabila [forces] shot all the Banyamulenge cadets.<sup>25</sup>

From a just war perspective, Laurent Kabila and the AFDL government were morally doomed from the start: they lacked any just cause for their attack against Zaire, and did not even own the might which fuelled their war of aggression. Their actions gave obvious just cause to both the Banyamulenge to revolt against the new Congolese state whom they had helped bring to power, and also to Rwanda to intervene again on the Banyamulenge’s behalf—this time fuelled by revenge against Kabila for his utter ingratitude and ignominy in ejecting them. Yet the war against the new regime—the ‘Second Congo War’ (1998–2003) lasted five years, owing to Kabila’s finding Marxist-leaning African allies in Zimbabwe, Namibia, Angola, Chad and Libya, who sent munitions, weapons, troops, and airpower (Antonov bombers and MiG fighter jets), and also to the Banyamulenge’s and Rwandans’ heavy-handedness with the civilian population (see below). A settlement could only be reached in 2003 at the peace talks in Sun City, South Africa, two years after Kabila had been assassinated by one of his own child-soldier bodyguards.

### Joris’s Making of a ‘Just Warrior’

Joris’s protagonist, the erstwhile student and rebel militant General Assani, perfectly personifies this complex web of cause and intent (be they just, unjust, both or neither) which characterises the Congo Wars of Liberation. Before he was born, his father had been killed defending the family’s livestock from attack by *Simba* raiders. The character drawn by Joris of Laurent Kabila during his interactions with Assani even infers that Kabila personally had killed him. Assani grows up imbued with stories from the Bible, interlaced with legends of Tutsi kingdoms and pogroms, veiled in the mists of time. As he comes of age, he gradually becomes aware of his unique culture, and its perilous status in the world surrounding it. He hadn’t even heard the word ‘Tutsi’ before going down into the valley as a teenager to attend secondary school in Uvira. Later, eager to pursue a higher education, he goes to Rwanda where he falls in with other Banyamulenge students. From them he hears stories of threats and wrongs perpetrated against their friends and families back home. One such acquaintance gradually recruits

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25 Joris (n 1) 148. See also ‘Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed Within the Territory of the Democratic Republic of the Congo Between March 1993 and June 2003’ (UN Office of the High Commissioner for Human Rights, August 2010) <[https://www.ohchr.org/sites/default/files/Documents/Countries/CD/DRC\\_MAPPING\\_REPORT\\_FINAL\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/CD/DRC_MAPPING_REPORT_FINAL_EN.pdf)> accessed 11 November 2022.

him into the Rwandan Patriotic Front, for which he ultimately abandons his studies, as did most other young Banyamulenge men who were studying or working in, or who simply had fled to, Rwanda. He trains with them for only a few months before they are sent into Zaire in July 1996 to counter a massacre of the Banyamulenge which had been so much as decreed by the South Kivu Governor—and to pave the way for the Rwandan regulars to hunt down and massacre the *Interahamwe*, who had found refuge there two years before. The rebel army marched ‘a thousand miles through the jungle,’<sup>26</sup> delayed only by the Rwandans’ frequent pauses to ‘neutralise’ *Interahamwe* refugee camps along the way,<sup>27</sup> entering Kinshasa (the Zairean now Congolese capital) on 17 May 1997.

We then find our lead character in Kinshasa as the senior most Munyamulenge in command among the new *Forces Armées Congolaises*, or FAC (as the AFDL-Rwandan-Banyamulenge army is now called), garrisoned there. He is all but openly mocked by Laurent Kabila, the President for whom he had fought and whose people’s cause had propelled him to power. Kabila literally throws wads of cash at Assani like bones to a dog, and does not fail to remind him of his father’s demise at the hands of the *Simbas*. Upon Kabila’s ejection of the Rwandese forces from the FAC and expulsion from the country, and as the persecutions against Banyamulenge in the city begin, the Banyamulenge FAC soldiers in Kinshasa congregate around Assani, finding safety in numbers. Under siege, the situation becomes untenable and they fight their way out of Kinshasa, south-west through the Province of Lower Congo to Matadi, where they meet up with a fresh Rwandan unit that has been air-lifted to Kitona base from Rwanda which, two weeks after having been expelled, had re-invaded on 2 August 1998.

Though none of them had ever been explicitly trained in the Law of Armed Conflict, the manner in which the Banyamulenge fight their way through Lower Congo to the Matadi Bridge shows an instinctive adherence to the War Convention. Although their understanding of the Laws of War may be rudimentary at best, it is made all the more poignant by the fact that they were in flight from being butchered:

They were 150 soldiers all told, and everywhere they went people fled. Sometimes they found food abandoned on cooking fires and needed only to share it out. Or they might creep silently into a village and ask the inhabitants to prepare a meal for them. They tried to reassure people, paying for any goats they slaughtered.

More often than not they found nothing at all, or too little to go around. ...The owner of one farm they descended on was nowhere to be seen, so they slaughtered all the chickens and left a note promising to make good the damage.

The farther they went the harder it became to carry the wounded. ‘We’ll have to finish them off’, someone said. Assani hesitated – wouldn’t that be bad for morale? Who’d

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26 Stearns (n 24) 127–141.

27 Van Reybrouck (n 13) 451.

want to fight if he knew getting hurt was a capital offence? ‘At least let’s do it on the quiet then’, he suggested. But when he pointed his pistol at a wounded soldier ..., he couldn’t bring himself to pull the trigger.<sup>28</sup>

Assani soon went to Kigali (the capital of Rwanda), and there was made a senior officer in the new rebel army, the armed wing of the (now) organised Banyamulenge rebel movement, styled the *Rassemblement Congolais pour la Démocratie* (Congolese Rally for Democracy), or RCD. He eventually rose to the level of battalion commander, in charge of operations throughout the strategic Kabolo sector whose rail, road and river communications link Lake Tanganyika to the east at the town of Kalemie with the Congo River on the west at the town of Kabolo. There, he acquitted himself with self-discipline, care for his troops (frequently visiting every unit on an incessant round of inspection over difficult terrain), remaining calm under fire. Unfortunately, his *in bello* command style was the exception, not the norm.

Having organised politically under the RCD, the Banyamulenge now truly enjoyed legitimate authority. They also had clear just cause to rebel again and to go to war against the AFDL-lead Congolese state. They also had a right intent to replace Laurent Kabila with their RCD leader, Azarias Ruberwa. However, their near-perfect *ad bellum* validations were completely frustrated by the RCD’s and its Rwandan ally’s prosecution of the war *in bello*, which in turn sowed the seeds of an enduring disorder *post bellum*. To the majority of Congolese who had not felt the direct brunt of Laurent Kabila’s rule, life in RCD-controlled territory did not feel like liberation but, rather, more like an occupation. ‘It was as if the RCD wanted to coerce the population into reconciliation’ as one prominent chronicler writes.<sup>29</sup> The RCD-Rwandan forces ruled with a heavy, zealous hand:

The rebels now controlled about half of Congo, but their popularity had dropped to less than nil. In the small eastern town of Kasika they’d recently been ambushed by Mai Mai fighters, community-based militiamen opposed to the Rwandese presence on Congolese soil. The rebels had lost several important officers and in revenge they’d murdered everyone for miles around. Kasika – the name hung in the air like a bad omen.<sup>30</sup>

Stories like this were typical:

Mutombo heard about two boys forced to carry luggage for the Rwandans who had run off leaving the bags behind unattended. The infuriated soldiers had gone back to the village to find them. The boys took a roundabout route home and when they got there they found not a soul left alive.<sup>31</sup>

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28 Joris (n 1) 146–7.

29 Sterns (n 24) 265.

30 Joris (n 1) 152.

31 *ibid* 188. See also ‘Report of the Mapping Exercise’ (n 25).

The cruelty with which the RCD-Rwandan forces treated the many rural communities throughout this vast territory spurred these hitherto non-politicised populations, each according to its own particular tribal or clan identity, to form self-defence militias—the *Mai Mai* referenced in the passage above. *Mai* is the Swahili word for water; and these autonomous militias became generically known as *Mai Mai* due to the animist rituals they would undergo so that bullets might glance off of them like water. Being local native sons who now rose up to defend their own, the respective local *Mai Mai* became the only forces trusted by the non-urban populations:

In a village north of Kabolo the rebels had stolen some goats. A *maman* who protested was shot dead. In desperation the population turned to the *Mai Mai* for protection and soon there were *Mai Mai* everywhere. They claimed the Rwandans wanted to make slaves of the Congolese. That struck a chord with the fishermen, who were unable to take their boats out because of the new war; with *commerçants* and smugglers, who depended on the trains running, and with village chiefs, who were forced to watch their ancestors' land being desecrated. Even the pygmies, who used fetishes to survive in the forest, sided with the *Mai Mai*.<sup>32</sup>

The *Mai Mai* fighters typically were uneducated, illiterate, simple 'village soldiers' with 'no notion of a Congolese state,' who 'regarded even the inhabitants of a neighboring village as strangers.' Their rituals and 'traditions ... dragg[ed] them back into old times, setting up little kingdoms built on hatred.'<sup>33</sup> Unfortunately, as non-state armed groups organised initially for self-defence, the various *Mai Mai* have multiplied and endured long after the threat of violence from large warring armies has passed, and remain one of the chief sources of insecurity in Congo's eastern provinces today.<sup>34</sup>

In *The Rebels' Hour*, General Assani's own involvement with the RCD heavy-handedness is complicated. Joris illustrates by describing his reaction to a massacre committed by one of his units, not explicitly on his orders but nevertheless consequential to an action which had been organised in reprisal for a *Mai Mai* attack:

Early the next morning a Munyamulenge soldier knocked at his door. Assani glanced along the corridor to check no one was watching and let him in. He'd been receiving people most of the night, meanwhile taking phone calls and listening to the walkie-talkie. He already knew the reprisal had gotten out of hand.

Deo was dirty and had a groggy look in his eyes. He smelled of sweat and gore, and he flopped into the chair by the bed without asking permission. He started talking in a

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32 Joris (n 1) 186.

33 *ibid* 199.

34 Here this author wishes to reiterate the caveat made above (n 6), and to refer the reader who desires a more comprehensive understanding of the eastern DRC armed groups phenomenon to Jason Stearns, Judith Verweijen and Maria Eriksson Baaz, *The National Army and Armed Groups in the Eastern Congo: Untangling the Gordian Knot of Insecurity* (Rift Valley Institute 2013) and Stearns, (n 6).

toneless voice, sometime interrupting himself and peering furtively around as if the enemy had followed him here.

The Mai Mai had fled into the hills after the attack, but the local population supported them, of course, so the soldiers had taught them a lesson. Assani could imagine the rest: the smoke billowing from the houses and huts, the screams of villagers locked inside, people trying to escape through the windows and back doors and being shot as they fled.

“It isn’t over yet, *afande*” [“boss” or “chief” in Swahili], Deo said. “When I left they were still at it”. The hotel room seemed to have a sobering effect. The tension had fallen away and he suddenly looked deathly tired. He probably hadn’t slept much the past few nights.

Assani thought of [a] Canadian journalist traveling through rebel territory, his sharp eyes scanning his surroundings, always searching for information. What if he heard about this? Local human rights organizations and church groups with contacts abroad would spring into action immediately, too. They didn’t give a damn if Tutsi were killed, but when one of their own was hurt they screamed bloody murder.

“Has the area been sealed off?”

“Of course, *afande*.”

That afternoon Assani drove out to the fishing village. At the first roadblock the soldiers were still standing in excited groups, fired up by the adrenaline of the past few days, but farther on they wandered past the smoldering houses in twos and threes as a guilty silence set in.

Deo had told him how they tricked the fleeing inhabitants. They grabbed a boy and ordered him to shout “*Amani*” – Peace! It was an old tactic used by the Rwandans and Burundians, but people here were so isolated that they’d fallen for it and left their hiding places, glad it was all over and they could get back home before their meager possessions were stolen. They lined the street, several rows deep, looking expectantly at the soldiers, who started shooting at random.

They’d killed hundreds of people in three days and now they were disposing of the evidence in their own bungling fashion. A soldier pulled a wounded baby out from under its mother’s body and carried it to a latrine behind the house. Two soldiers lugged a body to a truck.

In the stench of smoke and rotting flesh, Assani stared at Lake Tanganyika in the distance. Then he turned around and walked resolutely to his car. This must never be pinned on the rebels. He knew what he had to do. They’d be needing more trucks.<sup>35</sup>

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35 Joris (n 1) 161–163.

The incident and Assani's reaction to it is, to say the least, problematic on several levels of the War Convention.<sup>36</sup> His troops and those in their immediate command obviously had committed war crimes: not only by directly and explicitly targeting civilians,<sup>37</sup> but by doing so perfidiously.<sup>38</sup> Although these civilians 'supported' the enemy combatants who had 'fled into the hills,' there is no indication that they had taken any direct part in the hostilities. Worse, there is no indication that the *Mai Mai* had fought among the civilian population, intermingling with them, so as to pose any dilemma of distinction and proportionality. They had totally withdrawn; the reader can only assume these RCD troops knew that. Assani, even though he was not present,<sup>39</sup> nevertheless as commander also is guilty of war crimes because of the concept of command responsibility:<sup>40</sup> directly

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36 An exhaustive legal analysis of the international criminal liabilities of the fictive General Assani and his troops is beyond the scope of this paper. Reference is made hereafter to the Rome Statute and its interpretation by the International Criminal Court, and to the Geneva Conventions, as codification of customary international law with regard to the specific crimes discussed. For an explicit legal analysis of the Congo Wars, see Phoebe N Okowa, 'Congo's War: The Legal Dimension of a Protracted Conflict' (2007) 77 BYBIL 203.

37 See ICC Statute Article 8(2)(e)(i): "'war crimes" means ... (e) ... serious violations of the laws and customs applicable to armed conflicts not of an international character, within the established framework of international law, namely ... (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities ... .' Rome Statute of the International Criminal Court [2002] UN Doc A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002, reprinted in Rome Statute of the International Criminal Court (International Criminal Court 2011) at 5–9 <<https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>> accessed 11 November 2022.

38 See Article 37 of Additional Protocol I to the Geneva Conventions of 12 August 1949 (AP I): 'It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to ... protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy.' Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts [1977] in Protocols Additional to the Geneva Conventions of 12 August 1949 (International Committee of the Red Cross 2010) at 30 <[https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf)> accessed 11 November 2022. Although API speaks to international armed conflict, arguably it also covers non-international armed conflict through application of Article 3 Common to the Geneva Conventions of 1949 when such conflict occurs on the territory of a party to the Conventions. See eg Article 3 of Convention IV Relative to the Protection of Civilian Persons in Time of War [1949] The Geneva Conventions of 12 August 1949 (International Committee of the Red Cross 2016) 151–152 <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>> accessed 11 March 2022.

39 Apart from the baby incident, although it is not explicit from the vignette that Assani actually witnessed it.

40 See ICC Statute Article 28(a): 'A military commander or person effectively acting as a military commander shall be criminally responsible for crimes ... committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where: (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their

by both his decision to cover up the massacre, and by his not punishing those who perpetrated it and also indirectly by not having intervened much earlier, as soon as he received indications of the reprisal ‘getting out of hand.’ Moreover, knowing his troops so well, he should have anticipated that they would experience the reaction that they did, and taken reasonable and necessary measures to prevent the atrocities.<sup>41</sup>

But herein lies the rub: what explicit knowledge did Assani and his troops—a rebel militia made up of largely illiterate and hitherto socially isolated mountain children—have of the War Convention? If they had had any, was it enough to have been trained in and become second nature, so as to have instinctively kept their use of violence within its parameters once the fighting started? Granted, ‘ignorance of the law is no excuse’ as the old English saying goes, and yet moral responsibility is relative, rooted in conscience which expands with knowledge. As the Gospel according to John’s interpretation in the Bible posits, ‘If [God] had not come and spoken to them, they would not have sin; but now they have no excuse for their sin.’<sup>42</sup> The reader suspects that Assani does have a conscience, and there is an inkling of it in his thinking that the operation had ‘gotten out of hand’ and his ‘imagining the rest,’ certainly when ‘a guilty silence set in’ as he approached the scene of the crime. If he were evil at heart, we would expect him not to have had such feelings. Yet his moral conscience is overridden by a pragmatic consciousness of the strategic narrative: ‘what if the Canadian journalist finds out?’ His musings on the international community’s reaction bely that his moral conscience is still chained to the Mosaic *lex talionis*:<sup>43</sup> ‘they don’t give a damn when Tutsi are killed . . . .’

## Joris’s Story and the Just War Paradox

Could it be that so-called ‘African bush wars,’ with their seemingly endless occurrences of massacre and genocide, confound Western thinking, leaving ordinary civilians

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commission or to submit the matter to the competent authorities for investigation and prosecution.’ Rome Statute of the International Criminal Court (n 35) 19–20.

41 See *Prosecutor v Jean-Pierre Bemba Gombo* (15 June 2009) Case No ICC-01/05-01/08-424 (Pre-Trial Chamber II, Decision Pursuant to Art 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo) 150–156, [425]–[426] and [435]–[438] <[https://www.icc-cpi.int/CourtRecords/CR2009\\_04528.PDF](https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF)> accessed 11 November 2022.

42 John 15:22, *Bible* (n 12) 107 (quoting Jesus). See Chinua Achebe, *Things Fall Apart* (William Heinemann 1958) (particularly the scene toward the end of the novel, where the protagonist, after having heard the gospel, begins to experience a new feeling of remorse for the loss of certain children who earlier in the story had been culled from the tribe by the village authorities).

43 ‘The law of retaliation, under which punishment should be in kind – an eye for an eye, a tooth for a tooth, and so on – but no more.’ BA Garner (ed), *Black’s Law Dictionary* 1096 (11th edn, Thompson Reuters 2019). The 4th edition of *Black’s* described this formula’s expression as deriving from ‘the Mosaic law’; it further stated: ‘In international law, the term describes the rule by which one state may inflict upon the citizens of another state death, imprisonment, or other hardship, in retaliation for similar injuries imposed upon its own citizens.’ *Black’s Law Dictionary* 1058 (4th edn, West Pub Co 1951). See also Deuteronomy 19:19–21, *Bible* (n 12) 182 (‘So shall you purge the evil from your midst. The rest shall hear and be afraid, and a crime such as this shall never again be committed among you. Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.’).



bewildered ‘simply’ because they turn the classic just war paradox on its head? The compartmentalisation of *jus ad bellum* from *jus in bello* creates this paradox: whereas one *party* to a war necessarily is wrong (*jus ad bellum*), both parties’ *combatants*, as long as they fight within the War Convention, are in the right (*jus in bello*). Otherwise stated, classic

just war theory “is committed to the seemingly paradoxical position that ... [an aggressive] war taken as a whole is a crime, yet that each of the individual acts which together constitute [it] [[may be]] entirely lawful. Such a war ... is both just and unjust at the same time.”<sup>44</sup>

Yet what to make of a war in which none of the combatants fights consistently according to the War Convention, but wherein there is a just cause that justifies the fight?—such as the RDC versus AFDL Second Congo War? Simple logic drives one to the conclusion that this is but the mirror image of the classic paradox: a war which is both unjust and just (the reverse of just and unjust). For classical Western linear sentiment, this is extremely confusing if not incomprehensible. Yet it is the same mirror which exudes a common ‘tension which goes to the very heart of Just War Theory,’ a tension which produces ‘Walzer’s unhappy distinction of responsibility *ad bellum* from responsibility *in bello*’<sup>45</sup> which is necessary to the Western (Greco-Roman Judeo-Christian) understanding of the phenomenon.<sup>46</sup> It is this tension—produced when the separate wavelengths of *ad bellum* and *in bello* converge<sup>47</sup>—which evinces a common morality, be it underlying, overarching, or intertwined: the ‘sharing of knowledge with God,’ or *conscience*.<sup>48</sup>

We catch a glimpse of this in Joris’s depiction of Assani when he was asked to recount a certain battle to former enemies. It was the first anniversary of the 2003 Sun City Peace accords, and a year since Assani had been assimilated into the new national army, the *Forces Armées de la République Démocratique du Congo*, or the FARDC. All general officers, along with the diplomatic corps, had been convened to attend a

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44 Nigel Biggar, *In Defence of War* (OUP 2013) 192 (quoting David Rodin, *War and Self-Defense* (Clarendon Press 2002) 167) (single brackets in original).

45 *ibid.* Here, Biggar apparently is alluding to ‘The Crime of War’—the second chapter in Michael Walzer’s seminal modern classic, first published in 1977, wherein Walzer posited that the ‘dualism [of war] is the essential feature of its wholeness’: the *ad bellum/in bello* dichotomy ‘reflects our understanding of states and soldiers, the protagonists of war, and of combat, its central experience.’ *Just and Unjust Wars* (n 17) 21–33.

46 Biggar (n 44) 192 (‘These two halves of just war theory in fact represent the antagonistic views of medieval churchmen and lawyers on the one hand, and the warrior classes on the other, which were cobbled together in a pragmatic attempt to regulate and mitigate the evil of war’ (citing Rodin (n 44) 166–7)).

47 Cf Mbiti (n 11) (‘I find the traditional Western distinction between “special revelation” and “general revelation” to be inadequate and un freeing. This is not a biblical distinction. If they are two wavelengths, they make sense only when they move toward a convergence.’).

48 Walzer (n 17) 342.

commemoration of the anniversary at the *Palais du Peuple* (Palace of the People, where the Congolese National Assembly now meets):

Afterward the members of the general staff stood at the top of the steps discussing the five years of war that had divided them. The chief of staff recalled one particular defeat the government army had suffered in the east, near the Katangese town of Kabalo. ‘I hear that General Assani was on the other side at the time,’ he said. ‘Perhaps he can tell us exactly what happened.’

Assani pulled in his head defensively. People had been killed in that battle, maybe even relatives or friends of the officers who were looking at him so expectantly. But when the chief of staff insisted, he said, “We had the feeling there was no one in command on the other side. They had tanks, mortars, antiaircraft defences – they were firing everything off simultaneously and it all landed behind us. We were shooting at them with machine guns from less than five hundred yards away!”

An almost imperceptible smile played about his lips. That morning the Rwandans had said, “Let’s go; we’re off to eat the enemy’s breakfast.” They didn’t find any food, but they did pick up mortars, which they later fired at the government army.<sup>49</sup>

Instead of experiencing professional pride among peers, Assani’s instinct is defensive, to clam up. But not out of any sense of fear. Nor out of a sense of shame, really. Rather, it is out of a sense of respect for the dead, for those who had been killed in battle, and then a sense of respect for the sensitivities of those who had lost friends, family and comrades in that battle. If he were devoid of conscience, or were simply evil, one would not expect this reaction. And although what he did relate was embarrassing to some (we later learn that ‘the face of the officer who’d been in charge that day darkened’),<sup>50</sup> Assani refrained from insult by not recounting the rest of the story.

Even after the 2003 peace accords, with a continuing threat of renewed persecution of the Banyamulenge in the east, compounded by constant attacks from enduring *Mai Mai*, Assani would have been justified in joining his compatriot ‘Jules’—another of Joris’s composite characters, a Mnyamulenge FARDC general like Assani, but assigned in the east—in turning yet again inward, against Kinshasa, and joining a new fight for Banyamulenge autonomy on the *Hauts Plateaux* to where Jules had fled with 500 troops. As they had been by Laurent Kabila and Mobutu before him, the Banyamulenge once again were being branded as foreigners by the old guard with whom the RCD now shared power. The new President, Joseph Kabila—the assassinated President’s son, with whom Assani had served briefly during the first war—‘was doing nothing to shut them up.’ An anti-Tutsi race riot had erupted yet again in Kinshasa. There had been sporadic

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49 Joris (n 1) 101.

50 *ibid.*

killings of Banyamulenge soldiers in the east, and civilians were being threatened. As Assani complains to an officer of the recently-arrived UN peacekeeping force,

“They feel unprotected, so they turn to Rwanda for help – then everyone brands them as traitors! ... My ancestors are buried in the high plains of South Kivu. But every night when I turn on the television I hear I’m not Congolese. Why can’t the UN give us a state where we can live in peace?”<sup>51</sup>

He even once lost his usual cool when a fellow FARDC officer, not a Munyamulenge, exclaimed ‘what are *you people* after? You’ve got so many posts in the transitional government. Why aren’t you satisfied?’ To which Assani retorted, ‘Someone ought to take a proper look at the problems in the east. It’s a mistake to think that the situation has been resolved. Kabila is creating dissidents; they’re all getting in touch with each other and if things go on like this I’ll join them.’ And such talk was not idle: ‘A general in the Burundian army had called him ... and wanted to know if there was anything he could do for him. It was easy enough to get a few untraceable crates of munitions delivered to a friend in need.’<sup>52</sup> Such talk obviously made the central government very worried, and it denied Assani permission to visit his wife and children back east, even to visit his mother while she was gravely ill upon her deathbed. His compatriot Jules kept urging him to defect, asking him why he was still in Kinshasa.

Yet upon the death of his mother, custom was so strong that the government could not deny him permission to leave to bury her. Needless to say, they were extremely nervous that he would not return. But return he did and, to a great sigh of relief of many in Kinshasa, he brought his wife and children back with him. Why? While back east, on the shores of idyllic Lake Kivu where he had bought a lakefront villa, playing in the blue water with his children, he thought ‘everything I need is right here.’ But then he realised ‘if he stayed [there] he’d have to do bad things again. As soon as the drums of war sounded he’d be drawn in, irrevocably.’<sup>53</sup> Once again, his conscience spoke.

### Joris’s Story Augers a Fourth Category of the Just War Theory

Assani had already begun to change, fundamentally, in his thinking. Earlier, during the war against the AFDL, the Banyamulenge had grown tired of the condescending way in which their Rwandan partners treated them. Some urged they defect and autonomously fight both the AFDL and Rwanda. Assani had resisted. Joris paints the picture of when ‘Deo,’ the same lieutenant who had reported the massacre described earlier, urged his commander that they break away:

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51 *ibid* 272–273.

52 *ibid* 276 (emphasis added).

53 *ibid* 283.

Assani thought of the dull look in Deo's eyes on the morning after the murders in the fishing village and wanted to say: What do you have to offer your country? You're simply a village boy, driven by hatred for one person today and another tomorrow.

But he restrained himself. "Instead of turning our fire on Rwanda we should clean up the mess in our own back yard ... The Rwandans are strong; we're no match for their strategic ingenuity. As long as we're weak and divided the best we can do is learn lessons from them. We've got nothing to fall back on, everyone's against us: Interahamwe, Mai Mai, Kabila loyalists. Maybe one or another faction is ready to do a deal with you, but what if your alliance falls apart? Who will you turn to then?" He stared intently at Deo. "Tell that to the others."

Deo's face was dark and expressionless; to him, Assani was a traitor who'd started believing the paranoid tales of the Rwandans. Assani was trying to rectify things, but the others were bent on destruction. He'd run up against a stubborn streak in his people, a result of the isolation in which the Banyamulenge had grown up and their aversion to rules from elsewhere.<sup>54</sup>

Assani's conscience had expanded. That earlier mass killing of civilians had now become 'murder.' The 'eye for an eye' mentality now was for 'simple village boys.' The darkness was beginning to fade.<sup>55</sup>

But there was more, something more concrete which kept the weight of the scales from tipping toward his re-joining the rebels. Over the telephone, on the day she died, Assani had asked his mother for her final advice to him. On her deathbed, she replied without hesitation: 'You must stay in your own country ... respect your boss, and keep your door open to others.' Unlike many in the Congo, Assani had agreed to the Sun City accords and to serve in the national army 'not for money or personal gain but because he wanted to change things.' He had come to realise that violence only begets violence; that his people would be made secure over the long term only by an effective government in which they participated. This is why he had agreed to return to Kinshasa in 2003, and their work 'to build a better army' despite others being 'simply out for revenge.'<sup>56</sup>

This attitude of Assani harkens to what Professor George Lucas identifies as 'an important fourth dimension' of the just war theory, in addition to *jus ad bellum*, *jus in bello*, and *jus post bellum*: 'namely *jus ante bellum*, the proper education and training of moral warriors fit to undertake the rigorous new moral and legal requirements of irregular war.' According to Lucas, this fourth

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54 ibid 169.

55 See 1 John 2:8, *Bible* (n 12) 236 ('... because the darkness is passing away, and the true light is already shining.').

56 Joris (n 1) 280, 271 and 102.

category of just war doctrine encompasses the appropriation of resources for military preparedness, training, and education of troops; provisions to develop requisite military leadership; appropriate management and oversight of military and defence apparatus; and the general preparation for future war.<sup>57</sup>

It embodies the continuous process known in the international security assistance field as ‘Army Reform.’<sup>58</sup> Professor Jean Elshtain would suggest that the aim of security assistance ‘should be to do what one can to position a new regime as belonging in the camp of the minimally decent,’ which may be ‘far too modest a goal for many, and far too idealistic a goal for others.’<sup>59</sup> As ‘Mwensa,’ one of Joris’s many richly developed characters, muses:

Why would Rwandan officers be willing to die in the interior of Congo? At first Mwansa couldn’t work it out. Then he heard that they received regular rations, even cigarettes; their monthly salaries were paid into accounts in Rwanda, and they were given loans to build houses. Congolese soldiers had long since forgotten that such privileges existed.<sup>60</sup>

The point here is, had Assani and his ‘simple village boy’ compatriots been professionally educated and thoroughly trained in the laws and customs of war before being thrust and re-thrust into the fray, perhaps there would have been less scenes like the reprisal-turned-mass murder described above.

Lucas’s fourth element also bridges the Biggar-Walzerian ‘unhappy divide’ between belligerent parties and their fighters,<sup>61</sup> bringing the War Convention back from *in bello* into the period before *ad bellum*. Under the War Convention, the duty of commanders is trifold: to repress violations, to punish violations, and to prevent violations.<sup>62</sup> The first two, repression and punishment, clearly are *in bello* concerns (although courts martial may last into or even occur entirely *post bellum*). However, the third, prevention, is primarily *ante bellum* in nature, although its processes continue *in bello*. As the International Criminal Court elaborated, prevention is

to be guided by relevant factors such as measures: (i) to ensure that [the commander’s] forces are adequately trained in international humanitarian law; (ii) to secure reports that

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57 George R Lucas Jr, ‘Jus Ante and Post Bellum: Completing the Circle, Breaking the Cycle’ in Patterson (n 4) 47, 56.

58 ‘Armed Forces’ is the first of three sectors comprising ‘Security Sector Reform,’ the other two being ‘Police’ and ‘Justice.’

59 Elshtain (n 4) 127.

60 Joris (n 1) 180.

61 See n 46 and accompanying text.

62 See ICC Statute (n 40) Art 28(a)(ii); see also *Prosecutor v Bemba* (n 41) paras 435–436 (‘the three duties ... arise at three different stages in the commission of crimes: before, during and after. Thus, a failure to fulfill one of these duties is itself a separate crime. ... Consequently, a failure to prevent crimes which the commander knew or should have known about **cannot be cured by** fulfilling the duty to repress [their commission] or submit the matter to the competent authorities [for investigation and prosecution]’ (emphasis added)).

military actions are carried out in accordance with international law; (iii) to issue orders aiming at bringing the relevant practices into accord with the rules of war; (iv) to take disciplinary measures to prevent the commission of atrocities by the troops under the superior's command.<sup>63</sup>

The naysayers ask, then, how a rag-tag militia of 'simple village boys,' spontaneously raised in reaction to an existential threat to its people, is to be expected to learn, digest and internalise the niceties of international humanitarian law (as the law of armed conflict, formerly known as the law of war, now is called) before joining the fray? Enter Lucas's notion of *jus ante bellum*, and the weighty decision of Joris's forged-in-the-fire, country-lad-turned-rebel, General Assani to stick with the transitional government and 'build a better army.'

### Conclusion—*The Rebels' Hour* as an Aid to Understanding

Lucas's conception of *jus ante bellum* is, however, from a purely Western perspective, judging by his reference to 'irregular war' as being something 'new.' Being Western, it begs the question whether the just war theory can apply at all to Africa or the East, given that it is '[r]ooted in Greco-Roman thinking about the rightly-ordered society.'<sup>64</sup> Yet Lucas's embrace of 'irregular warfare' suggests that the just war theory should also apply to contexts such as the African Great Lakes Region where so-called 'irregular warfare' has long been the norm. In other words, the just war theory should apply universally, if indeed its taproot grows in the soil of eternal truth common to all humankind. Moreover, this concept might also serve as a counter-weight to those who imply that just war thinking is irrelevant to the changing character of *conventional* warfare in a post-Westphalian world, one in which 'slaughtering the innocent is used ... to bait, punish, or provoke,' and 'killing civilians to manipulate the winds of war and to achieve indirect strategic effects' is the norm; those who claim that international law is 'futile,' and mock the laws of war as a 'marvellous fiction' which have 'devolved into a punch line.'<sup>65</sup>

For Joris's General Assani, this post-Westphalian or 'irregular' way of war is neither. It is the norm into which he was thrown and by which he has fought, but which he has come to realise is unsustainable. That is, it does not lead to any of the *post bellum* goals of durable order, justice or conciliation, but only 'a world within which human life is 'nasty, brutish, and short.'<sup>66</sup> According to Lucas, the fourth category of *jus ante bellum* 'completes the circle' of the just war theory, a doctrine which strives toward the *post*

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63 *Prosecutor v Bemba* (n 41) para 436.

64 Elshtain (n 4) 125.

65 Sean McFate, *The New Rules of War: How America Can Win – Against Russia, China and Other Threats* (Harper Collins 2019) 207, 138, 3, 208.

66 Elshtain (n 4) 128 (quoting Thomas Hobbs, *Leviathan* (Cambridge Univ Press 2006) 89).

*bellum* goals by, paradoxically, preparing for the next war. Although this is circular, it in fact ‘break[s] the cycle of perpetual violence and war.’<sup>67</sup>

If this is true, perhaps then Lucas’s fourth category also could be a springboard by which just war thinking can articulate a moral understanding of the hyper complex and exceedingly cruel armed conflicts in Africa with more utility than simply dismissing them as inscrutably dark or incomprehensibly complicated.<sup>68</sup> Better yet would be if it could extirpate the lingering Western stereotype described by Chinua Achebe of ‘Africa as a metaphysical battlefield devoid of all recognisable humanity, into which the wandering European enters at his peril.’<sup>69</sup> After all, opting out of this difficult discussion is something for ‘only the wicked and the simple.’<sup>70</sup> The West has much to learn from its African brethren so as to persevere, with its democratic freedoms intact, through a dawning age of post-Westphalian ‘durable disorder.’<sup>71</sup> And it is through Lieve Joris’s *The Rebels’ Hour*, written with compassion for, rather than disdain of its complicated protagonist, that any Western novice to African wars can gain an excellent entrée to their moral complexities.

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67 Lucas (n 57) 60.

68 Joseph Conrad, *Heart of Darkness* (William Blackwood 1902).

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70 Walzer (n 17) at xxvii (preface to the 1st edn) (‘The moral world of war is shared not because we arrive at the same conclusions as to whose fight is just and whose unjust, but because we acknowledge the same difficulties on the way to our conclusions, face the same problems, talk the same language. It’s not easy to opt out, and only the wicked and the simple make the attempt.’).

71 See McFate (n 65) *passim*.

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