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## The Principled Case for Employing Private Military and Security Companies in Humanitarian Interventions and Peacekeeping

Deane-Peter Baker  
*U.S. Naval Academy*

James Pattison  
*University of Manchester, UK*

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# The Principled Case for Employing Private Military and Security Companies in Humanitarian Interventions and Peacekeeping

## Abstract

The possibility of using private military and security companies to bolster the capacity to undertake humanitarian intervention has been increasingly debated. The focus of such discussions has, however, largely been on practical issues and the contingent problems posed by private force. By contrast, this paper considers the principled case for privatising humanitarian intervention. It focuses on two central issues. First, is there a case for preferring these firms to other, state-based agents of humanitarian intervention? In particular, given a state's duties to their own military personnel, should the use of private military and security contractors be preferred to regular soldiers for humanitarian intervention? Second, on the other hand, does outsourcing humanitarian intervention to private military and security companies pose some fundamental, deeper problems in this context, such as an abdication of a state's duties?

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## Keywords

Private military and security companies, Humanitarian intervention, Peacekeeping, Soldier-state contract, Conscription, Fiduciary obligations

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### **The Principled Case for Employing Private Military and Security Companies in Humanitarian Interventions and Peacekeeping**

by Deane-Peter Baker  
Assistant Professor of Philosophy  
Department of Leadership, Ethics & Law  
U.S. Naval Academy  
dbaker@usna.edu

James Pattison  
Lecturer in Politics  
Politics, School of Social Sciences  
University of Manchester, UK  
james.pattison@manchester.ac.uk

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**THE PRINCIPLED CASE FOR EMPLOYING PRIVATE MILITARY AND SECURITY  
COMPANIES IN HUMANITARIAN INTERVENTIONS AND PEACEKEEPING  
OPERATIONS**

**Deane-Peter Baker and James Pattison**

[dbaker@usna.edu](mailto:dbaker@usna.edu)

Assistant Professor of Philosophy  
Department of Leadership, Ethics & Law  
U.S. Naval Academy

[james.pattison@manchester.ac.uk](mailto:james.pattison@manchester.ac.uk)

Lecturer in Politics  
Politics, School of Social Sciences  
University of Manchester, UK

**ABSTRACT:** The possibility of using private military and security companies to bolster the capacity to undertake humanitarian intervention has been increasingly debated. The focus of such discussions has, however, largely been on practical issues and the contingent problems posed by private force. By contrast, this paper considers the principled case for privatising humanitarian intervention. It focuses on two central issues. First, is there a case for preferring these firms to other, state-based agents of humanitarian intervention? In particular, given a state's duties to their own military personnel, should the use of private military and security contractors be preferred to regular soldiers for humanitarian intervention? Second, on the other hand, does outsourcing humanitarian intervention to private military and security companies pose some fundamental, deeper problems in this context, such as an abdication of a state's duties?\*

**KEYWORDS:** private military and security companies, humanitarian intervention, peacekeeping, soldier-state contract, conscription, fiduciary obligations

\*\*\*\*\* **This is a draft, so please do not cite.** \*\*\*\*\*

**We are very interested in your comments, suggestions, and views. Any feedback would be most welcome (our email addresses are above)**

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## I. Introduction

As the use of private military and security companies (PMSCs) has become increasingly prevalent in the international system, there have been several calls for them to be used to a greater degree for humanitarian intervention and peacekeeping. Their use could, it is argued, potentially improve the international community's abilities to discharge the responsibility to protect and, in doing so, help to prevent the mass violation of human rights. They could provide much-needed military equipment and capacity, highly trained troops, and intervene in places where state leaders do not want to put their soldiers' lives on the line for fear of them coming home in bodybags.<sup>1</sup>

The focus of such discussions has been largely on the contingent arguments for and against the use of PMSCs in these roles. On the one hand, industry proponents and defenders of using PMSCs for humanitarian intervention and peacekeeping tend to focus on the potential effectiveness of private force, compared to regular forces (particularly those from the developing world, who make up the majority of UN peacekeepers). For instance, Doug Brooks and Matan Chorev (2008: 120) argue that using PMSCs for humanitarian intervention and peacekeeping would be 'faster, cheaper, better'. This is, they claim, because of their economies of scale and their extensive use of experienced former military personnel.<sup>2</sup>

On the other hand, critics of using PMSCs for humanitarian intervention and peacekeeping

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<sup>1</sup> Those who discuss the use of PMSCs in such roles include Baker (forthcoming), Bellamy, Williams, and Griffin (2004: 203–9), Brayton (2002), Brooks (2000), Brooks and Chorev (2008), Bures (2005), Gantz (2003), Ghebali (2006), Heinze (2009a), Leander and van Munster, Lilly (2000), O'Hanlon and Singer (2004), Patterson (2008; 2009), Pattison (2010; forthcoming b), Singer (2003a: 182–7; 2003b), Spearin (2005), Walzer (2008), and Wulf (2005).

<sup>2</sup> Also see, generally, the *Journal of International Peace Operations* (<http://www.peaceops.com/>), the trade journal of the International Peace Operations Association (an industry lobby group, headed by Doug Brooks), almost every issue of which calls for greater involvement of PMSCs in peace operations.

reject the claims that these firms would be more effective. Although they might possess military resources, it is argued, they would lack a number of the other qualities needed for long term, effective humanitarian intervention and achieving a lasting settlement to the humanitarian crisis (such as mediation skills and perceived legitimacy).<sup>3</sup> More generally, those who object to the use of PMSCs, including for humanitarian intervention and peacekeeping, raise the following concerns. First, the use of PMSCs can undermine democratic control over the use of force (and, in this case, humanitarian intervention), since governments can employ PMSCs to circumvent many of the constitutional and parliamentary constraints on the decision to send troops into action (see, for instance, Leander 2006; Leander and Rens van Munster 2007: 209; Schreier and Caparini 2005: 68; Singer 2005: 125; Wulf 2005). This is because it is much easier to use private force secretly, without public debate beforehand. Second, there is a loss of control over the behaviour of those in the field as lines of command and control become blurred by the introduction of the PMSCs as another layer between troops on the ground and decision-makers (e.g., Singer 2003*b*: 5–6). Third, the lack of legal accountability of PMSCs can mean that private contractors can violate principles of *jus in bello* without impunity (Singer 2003*a*). Fourth, the use of PMSCs threatens to loosen the legal and political instruments that govern and regulate warfare. These instruments, such as the UN Charter, largely rely on the use of force by states and state-based institutions. The use of PMSCs, even for humanitarian intervention and peacekeeping, may make it more difficult to sustain effective legal and political instruments to govern warfare, over both states and PMSCs.<sup>4</sup>

What these arguments for and against the use of PMSCs have in common is that they largely concern practical issues and are, to that extent, contingent. That is, they depend on the current realities of the international system and, in particular, the (in)efficiencies of the regular

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<sup>3</sup> See, for instance, Pattison (2010; forthcoming *b*), and Singer (2003*b*).

<sup>4</sup> These criticisms are explored in more detail in Baker (2008) and Pattison (2008).

military and the lack of effective regulation of the private military industry.<sup>5</sup> The persuasiveness of the claims about the effectiveness of using PMSCs for humanitarian intervention and peacekeeping will clearly depend on the current capabilities of PMSCs and the statist alternatives. Similarly, the four objections to the use of private force noted above are only provisional in that they do not claim that there is anything *fundamentally* wrong with the use of private force, including for humanitarian intervention and peacekeeping. There could be put in place a robust system of international regulation that would remove these concerns. For instance, a much tighter system for the vetting of private contractors and the extension of international humanitarian law to PMSC personnel could greatly reduce the likelihood of contractors violating *jus in bello*. An enforced system of national and international licensing of PMSCs could make it much harder for rogue firms to obtain contracts. And greater transparency and openness surrounding the bidding processes and contracts between states and PMSCs could lead to improvements in democratic control over their use.

In this paper, we are concerned instead with the *principled* case for and against using PMSCs for humanitarian intervention and peacekeeping, largely independent of current political realities. We focus on two central questions. First, we consider whether there is a principled case for *preferring* PMSCs to other, state-based agents of humanitarian intervention and peacekeeping. For instance, given a state's duties to their own military personnel, should the use of private military and security contractors be preferred to regular soldiers in this role? Second, we consider

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<sup>5</sup> Several states (including the UK and US) have recently agreed to the 'Montreux Document', which outlines existing legal obligations in international humanitarian law and international human rights law on the use of private force and a series of 'good practices' that states should follow when dealing with PMSCs. However, these obligations are largely not robustly enforced by states. For an account of the effective lack of regulation of the industry, see, generally, Chesterman and Lenhardt (2007). The Montreux Document is available at <<http://www.eda.admin.ch/psc>> (accessed 29 July 2009). For a commentary, see Cockayne (2009).

whether there is a principled case for *rejecting* the use of PMSCs for peace operations. If a stronger system of regulation were put in place, would it be morally acceptable to hire PMSCs for humanitarian intervention and peacekeeping? Some have argued, for instance, that if the industry were tightly regulated, the UN could be in charge of hiring PMSCs to help in its peacekeeping missions.<sup>6</sup> Or, would there *still* be some problems – what we will call ‘deeper concerns’ – that would apply to PMSCs being used for humanitarian intervention and peacekeeping, *even if PMSCs were rigorously regulated?*

Two points of clarification are necessary. First, there may be some deeper concerns for the use of PMSCs *in general* (such as the motives of contractors, the potential undermining of communal bonds, and the challenge to security as a common good), although these may not be of significant weight.<sup>7</sup> What we want to concentrate on are the potentially principled issues that relate specifically to *humanitarian intervention and peacekeeping*. So, we are especially interested in reasons for or against the use of PMSCs that apply particularly to humanitarian intervention and peacekeeping, rather than to outsourcing military force more generally.<sup>8</sup> Second, the suggested use of PMSCs for humanitarian intervention and peacekeeping is not simply heuristic. PMSCs have already played significant roles in several previous interventions, including Pacific A&E and Medical Support Solutions in Sudan, Defence Systems Limited and DynCorp in East Timor, and, perhaps most famously, Executive Outcomes in Sierra Leone. When intervening, PMSCs could play a variety of roles (see Gantz 2003; Pattison forthcoming *b*; P. W. Singer 2003*a*: 184–8), including being hired to undertake intervention by themselves and providing additional combat troops to fill in gaps in another agent’s front line. More likely, however, is that they are used in a

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<sup>6</sup> See, for instance, Malcolm Patterson (2008).

<sup>7</sup> See Pattison (forthcoming *a*). Fabre (forthcoming) takes a different view.

<sup>8</sup> That said, some of the arguments that we consider may also be relevant to other uses of force, such as collective self-defence.



noncombat capacity to bolster another intervener's military capabilities by, for instance, providing much-needed lift capacity and logistical support. Indeed, most previous involvements of PMSCs in humanitarian intervention and peacekeeping have been in this role (the notable exception being Executive Outcomes).

## II. The Case for Privatising Humanitarian Intervention and Peacekeeping

Let us start then with the case *for* privatising humanitarian intervention and peacekeeping. Why might it be claimed that PMSCs should be *preferred* to regular soldiers when it comes to peace operations? We will consider four reasons why one might hold this to be true.

### *(i) Fiduciary obligations*

The first reason for preferring PMSCs invokes the costs of humanitarian intervention and peacekeeping. On the one hand, there is reason to hold that humanitarian intervention is, in certain circumstances, a duty.<sup>9</sup> On the other hand, some object to the costs of undertaking humanitarian intervention for the intervener in terms of both soldiers' lives and civilians' resources. David Miller (2007a: 270), for instance, argues that humanitarian intervention may be a duty. However, he also claims that, if states are to undertake humanitarian intervention, they have to impose potentially problematic requirements on their people, such as increased taxation, and intervention often puts their soldiers at considerable risk (Miller 2007a: 271). To flesh this idea out, it helps to

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<sup>9</sup> See, further, Buchanan (1999), ICISS (2001), Nardin (2006), Pattison (2010), Pogge (1992), and Tan (2006).

consider the fiduciary obligations that states owe to their citizens. On what Allen Buchanan (1999) calls the ‘discretionary association view of the state’, government is *solely* the agent of the associated individuals and its role is the furthering of these individuals’ interests. In Buchanan’s words, it ‘acts legitimately only when it occupies itself *exclusively* with the interests of the citizens of the state of which it is the government’ (1999: 75; emphasis added). On this view, humanitarian intervention cannot be demanded of a state because it would require the government to pursue the interests of noncitizens over citizens, and would therefore break the fiduciary obligation implicit in the social contract. Even on a more moderate position (as Buchanan himself defends), where these fiduciary obligations are not absolute, these obligations mean that states have reasons to minimise harm to their soldiers and civilians.

For this reason, Miller (2007a: 272) goes on to argue that, where no national interest is at stake, the anticipated costs to the intervening state must be quite low. Soldiers, he argues, are owed ‘equal concern and respect’ and this involves limiting the degree of risk to which they are exposed when they are required to rescue noncitizens. In his words: ‘[i]t is simply unfair to ask soldiers or others to face very substantial risks of death or injury to discharge what may well be a humanitarian obligation rather than a strict duty of justice’ (Miller 2007a: 273).

Now, on the logic of this argument, one resolution to the ‘protection gap’ that Miller identifies between the claim-right of those suffering the humanitarian crisis and the costs to interveners is to hire PMSCs to undertake humanitarian intervention. This would help a state to discharge its duty to intervene without running into the problems of excessive costs to soldiers. The government would not be putting its soldiers’ lives at risk and therefore violating their ‘equal concern and respect’. Indeed, Miller (2007b: 5) considers a voluntary model of intervention, where

protection is entirely in the hands of volunteers, as a potential solution to this dilemma.<sup>10</sup>

Are fiduciary obligations then a persuasive reason to favour PMSCs for humanitarian intervention? This argument fails in cases where humanitarian intervention is, in fact, self-interested – when humanitarian intervention would be within the remit of the social contract. Moreover, on a wider, ideational notion of self-interest defended by constructivist international relations theorists, a state's self-interest is also determined by its identity, shared values, and principles, such as the promotion of democracy, freedom, and human rights.<sup>11</sup> Accordingly, many humanitarian interventions will be in the interests of the state and therefore not subject to this criticism.

More fundamentally, the problem with this argument is that it cannot distinguish between military and financial costs.<sup>12</sup> Although PMSCs can be used to circumvent the military costs of intervening, citizens will still be required to take on the financial costs of intervention. That is, citizens will be required to *pay* for PMSCs' intervention, which may require increased taxation and decreased public spending. As such, there would be reason to *oppose* the use of PMSCs for humanitarian intervention on this view – citizens would have to pay for their use, which goes

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<sup>10</sup> To be sure, the suggestion is not that the state should employ noncitizens (e.g., foreign PMSC personnel) because these individuals have *less* moral worth than citizens, given special bonds between citizens. This view could, in practice, be a slippery slope to the stronger view that the state should employ noncitizens for its defence because these individuals, as they are not members of the community, have *no* moral worth. In this context, Thomas More argues that foreign mercenaries (the Zapoletes) should be hired so that citizens (the Utopians) do not have to undertake national defence themselves, but '[a]s for how many Zapoletans get killed, the Utopians never worry about that' (2002: 88–9). (See, further, Baker 2008: 40). By contrast, the discretionary association view treats citizens of different states as having equal moral worth.

<sup>11</sup> See Brown (2005), Heinze (2009b), Pattison (2010), and Wheeler (2000).

<sup>12</sup> One way to highlight military costs in particular is to invoke the soldier-state contract – we consider this in section (iii).

beyond the terms of the social contract – when it is not in the national interest.<sup>13</sup>

*(ii) Fairness and spreading the costs*

It may be responded here that, although using PMSCs also contravenes the terms of the social contract, it is potentially fairer to use PMSCs to those who have to pay the costs of intervention and peacekeeping. This is because, unlike for regular forces, the costs of an intervention by a PMSC can be more easily spread out amongst states.

This links into problem of the fairness of the distribution of the duty to intervene. This problem arises when the general duty to intervene, which falls on the international community at large, is adjudged to fall to a specific intervener or coalition of interveners. It seems unfair for one country or organisation to carry the full burden of a duty that strictly speaking falls on all. Why should country *x*, simply because it happens to be the country which possesses the features that make it the most legitimate intervener, bear all the costs of fulfilling a duty which falls on the international community at large?

This issue might be articulated as a form of the free rider problem: all those countries which fall below the level of ‘most legitimate intervener’ benefit from the intervention (in the sense that their duty is fulfilled on their behalf) whilst carrying none of the costs (both human and economic) of undertaking the intervention. There is a danger that countries which have the potential (in terms of economic and human resources) to become the legitimate interveners might deliberately leave that potential unfulfilled (by, for example, not purchasing strategic lift aircraft,

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<sup>13</sup> Note that we are not rejecting the case for fiduciary obligations. Although the strong case for fiduciary obligations is problematic (as Buchanan points out), the case for using PMSCs is compatible with a weaker view that a state possesses some, non-absolute fiduciary obligations.

or not equipping their military forces for expeditionary operations) in order to ensure that the burden of carrying the international community's duty to intervene falls on another nation's shoulders.

Consider, by way of analogy, the following scenario. A group of friends are frolicking in the waves on an otherwise deserted beach, when one of their number is washed out to sea by a particularly large wave and is in danger of drowning. One of the group happens to be an excellent swimmer, so is rightfully deemed by all to be the legitimate rescuer. Once the decision is made and the good swimmer dispatched on his mission, the remainder of the group go back to their tanning and frolicking. Does such a scenario seem fair and just?

It seems that it does not. The duty to rescue the friend in need is one which falls to every member of the group. So whilst it is legitimate for the best swimmer to take the lead in this effort, we should expect the other members of the party to do what they can, within their capabilities, to contribute to the rescue effort. For example, some of the other good swimmers might swim out part of the way, in order to help pull their endangered comrade in to shore once he is brought within their reach. Others might prepare a vehicle to transport their friend to the nearest hospital, or else telephone the emergency services to send an ambulance. Leaving one member of the party to carry the full burden of the rescue seems manifestly unfair in this case. So why should it be any different in the case of humanitarian intervention?<sup>14</sup>

Employing a contracted combatant force for the intervention, however, may seem to offer a means to avoid this problem. Every member of the UN could be required to contribute

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<sup>14</sup> To be sure, any apparent unfairness in the case of humanitarian intervention will also be reduced by the following considerations: (i) there exists an unassigned duty to intervene; (ii) the intervener may be best placed to act in this case, but may not in future cases – it is simply its turn; (iii) most current interveners have fallen way short in their duties to make a reasonable and substantial effort to protect populations suffering; and (iv) concerns about fairness can be outweighed by the pressing nature of saving lives. This issue is discussed further in Pattison (2010).

financially in support of such an intervention force. Because the contracted combatant force is not the intervener *per se*, but only the tool of the intervener to which it is contracted, it becomes possible to meaningfully consider that such an arrangement will be a case of the international community conducting a humanitarian intervention. This would be desirable because it would ensure that the burden of the duty to intervene is fairly spread amongst the members of the international community.

However, this consideration would only provide a reason to prefer PMSCs if it were not possible for there to be a statist arrangement that distributes fairly the burdens of peace operations amongst potential contributors. But this is quite possible and, to a certain extent, is already how the UN peace operations system currently works (albeit imperfectly). Member states provide financial resources to the UN peacekeeping budget (perhaps very) roughly according to ability to pay, which is then used to pay for particular operations. Certain states tend to provide more peacekeepers than others do, but this is not necessarily unfair on them, given that they receive remuneration for each peacekeeper and the contribution of peacekeepers is voluntary.

Accordingly, fairness to those who have to pay for humanitarian intervention or deploy troops on the ground does not give us significant reason to prefer PMSCs to regular soldiers for humanitarian intervention. Concerns over fairness do highlight that multilateral solutions may be fairer, for they can more easily spread the costs of intervention. But such solutions may be public as well as private.<sup>15</sup>

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<sup>15</sup> Moreover, in the case of the unilateral use of force, the issue of unfairness will arise not just for the regular army, but also for those employing PMSCs. For those states will still be tasked with doing more than their fair share and, in particular, paying PMSCs to intervene.

*(iii) The soldier-state contract*

The Oath taken by officers in the US armed forces reads as follow:

I (name) do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.<sup>16</sup>

This oath, and others like it taken by military personnel around the world, is a verbal affirmation of the contract between the state and the soldiers, sailors, airmen, and marines that serve in the state's armed forces. The person taking the oath consents to an obligation to accept great risks and engage in morally and personally difficult actions on the understanding that the circumstances under which they will act will be when the nation's defence or vital interests require action. But a problem seems to arise when the oath-taker is asked to accept the same kinds of risks and engage in the same kinds of activities for humanitarian purposes. Martin Cook (2003), for one, views this as a significant problem, commenting that 'the military person may say with moral seriousness, "This isn't what I signed up for"' (2003: 151). By this reasoning, state military personnel cannot legitimately be required to undertake humanitarian intervention. Even where there is an unproblematic duty of humanitarian intervention, it seems the state cannot carry out this duty because doing so would conflict with the duties it owes to its own military personnel. The point

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<sup>16</sup> United States Code, Title 5, Section 3331.

here is not that regular soldiers should have some degree of choice over the wars that they fight. The point, instead, is that the contract between the soldier and the state binds the soldier only to a certain *set of circumstances* in which they will be asked to fight.

To reconcile the duty to intervene with these concerns, PMSCs could be hired. Private contractors have a clear choice to sign up to undertake humanitarian intervention.

Private warriors sign on for specific missions, and so there can be no question of their consenting to the specifics of the mission concerned, whether it be a humanitarian intervention or otherwise. It seems, therefore, that the employment of contracted combatants for humanitarian interventions provides a means whereby states can fulfill their moral obligations to intervene, without thereby violating their moral obligations to their military personnel.<sup>17</sup>

It may seem that this argument is unconvincing because the soldier-state contract is not limited to the defence of a state's vital interests. Whilst perhaps not stated explicitly in oaths of office, it is not unreasonable to think that a soldier can expect, when signing up, that they will take part in humanitarian and peace operations, given the frequency of such operations. Indeed, some armed forces (such as the British Navy) have expressly used the possibility of conducting humanitarian intervention in their recruitment campaigns. Similarly, Martin Cook points out that American political discourse has speaks 'in universalizing terms of fighting wars to end all wars, advancing universal human rights and democratic political order, and opposing tyranny and despotism' (2003: 146). Such rhetoric is likely to have an impact on individuals signing up: they

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<sup>17</sup> It might be responded that the consent of soldiers to let the government decide for them which wars will be fought overlooks the extent to which these individuals are manipulated by government and come from poorer segments of society. This may be true. However, this would, first, also count against the use of volunteers soldiers for other uses of force, such as self-defence. Second, this would also be likely to count against the use of PMSCs, given that they may also be manipulated by government (and their companies) and come from poorer segments of society. Their consent, in other words, may also be tainted.



can expect that their state will engage in a variety of military operations, including, sometimes, humanitarian intervention, for the benefit of those beyond the borders of their state. If this is right, we can view modern state combatants as, in effect, consenting to a general requirement that they serve in humanitarian interventions. The Enlistment/Reenlistment Document of the US Armed Forces, for instance, does not distinguish between the types of wars that enlistees may be required to fight.<sup>18</sup>

Yet, even if this is so, it seems that employing contracted combatants for humanitarian interventions must (in this regard at least) be considered to be morally preferable. For though the individual soldier, sailor, airman, or marine may be understood as consenting *in general* to undertake humanitarian interventions, the contracted combatant consents to risking his or her life and limb in support of a *specific* humanitarian intervention. The consent of the contracted combatant must, therefore, be considered to carry more moral weight.

Consider an analogy which will help illustrate this. Consent is a critical element in the ethics of bio-medical research. When new drugs or medical procedures are tested on human subjects, their consent is of the utmost importance. But consent is not given in a general way – volunteers do not sign a generic consent form that outlines in broad terms every potential consequence that they might face from an array of possible and some as yet unimagined medical interventions. Instead the medical volunteer consents to submitting to the testing of a specific drug or medical procedure on his or her body, and every effort is made to stipulate as accurately as possible the potential effects, both negative and positive, that the volunteer subject could experience. Clearly specific consent like this carries far more moral weight than the broad consent

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<sup>18</sup> This is available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0004.pdf> (last accessed 08/01/10).

to volunteer for ‘medical research’. Likewise, it seems clear that the specific consent of the contracted combatant should carry more moral weight than the general consent to participating in humanitarian interventions that military personnel give.

In the case of the general consent of the regular soldier, it is contestable whether he or she agrees to undertake humanitarian intervention when signing up. Although we think that many soldiers do, in fact, agree to such cases, this is an empirical matter: it will depend on the specific reasons for each individual soldier and the details of the drafting contract that they sign, which will vary from state to state. If it is the case that they do not, in fact, agree to undertake cases of humanitarian intervention and peacekeeping, then their individual autonomy will be violated by forcing them to fight in such cases. By contrast, for private contractors, it is unambiguous whether they consent: they clearly agree to fight in the case of a particular peace operation and therefore their individual autonomy is not under threat by their deployment in such operations.<sup>19</sup>

This is not to say that regular soldiers are wronged by humanitarian intervention and peacekeeping. Their general consent makes it permissible for them to be used for such operations. In fact, as we will argue in the next section, even if they do not consent to such operations, it may still be permissible to use them in this role. Our point, rather, is only that the specific consent of contracted combatants presents *some* reason to favour their use.

*(iv) Forcing soldiers to save lives*

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<sup>19</sup> It should be noted here, however, that this argument is not necessarily limited to peace operations. It may also follow that there is a reason to prefer private contractors for other uses of force, including national defence, for they clearly consent to such operations. It may be similarly questionable whether regular soldiers do, in fact, agree to particular operations of national defence (e.g., the preventative use of force).

A fourth, but related, potential reason for holding that private contractors should be preferred concerns whether it is permissible to *force* individuals to save the lives of others. Whereas the previous argument focussed on whether the use of private contractors for humanitarian intervention and peacekeeping should be preferred because regular soldiers do, in fact, not consent to such operations, and therefore cannot be asked to perform such a role, this argument considers, more fundamentally, whether those who do not consent to such an operation can be *required* to save strangers. To put it another way, we have argued that the specific consent of private contractors provides *some* reason to prefer them to regular soldiers, whose general consent is contestable. But it may be argued, more strongly, that it is impermissible to force those who do not clearly consent to peace operations to fight in such operations. In particular, it may be argued that conscription and forcing regular soldiers to fight in war that they do not consent to should be morally prohibited. If this is the case, then it follows that there is a *much* stronger reason to favour private contractors.

In this context, Cécile Fabre argues that regular soldiers cannot be forced to undertake humanitarian intervention because ‘individuals are not under a duty to incur a high risk of death or injury for the sake of another’ (2007: 371). Analogously, a private citizen is not morally required to enter into a burning building to save a trapped child. It follows, then, that conscription for the purposes of humanitarian intervention is impermissible (when the intervention may be risky), since conscripts cannot be forced to put their own lives in danger for the sake of others. However, she argues, when individuals volunteer to do jobs which will lead them to face a high risk of death or injury for the sake of another, ‘they are under the (contractual) duty to do just that’ (2007: 371). A firefighter, for instance, would be required to enter into the burning building to save the trapped child. Likewise, those who volunteer to undertake humanitarian intervention may be morally

required to put their lives at risk. Thus, she argues that ‘states are *not* under a duty to wage wars of humanitarian intervention unless they can raise an army of volunteers for that particular task’ (2007: 372).<sup>20</sup>

The core moral challenge here is well articulated by Michael Gross who writes

If humanitarian intervention imposes a duty on democratic states ... then someone, namely the soldiers of the state that intervenes, must bear the cost of protecting other human beings from genocide, enslavement, ethnic cleansing and wanton rape and murder. These costs are not trivial because some soldiers will die. But unless we are prepared to assume them, humanitarian intervention will fail. ... Here we face what John Lango has called the “moral paradox” of humanitarian intervention: “even if it is obligatory for a state (collectively) to intervene, it can still be supererogatory (individually) for its citizens.” Low costs, great benefits and the prospect of relatively few casualties obligate the state to intercede. High costs and the prospect of death, on the other hand, release each citizen from the very same duty (2008: 214–15).<sup>21</sup>

Therefore, it may seem that private contractors should be very strongly preferred to, first, conscripts when the intervention is risky. This is because private contractors volunteer to perform the role, whereas conscripts do not. Second, it may also seem that private contractors should be

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<sup>20</sup> It should be noted that Fabre (2007: 371) does not think that an individual’s consent justifies them being asked to incur ‘senseless risk’. Also note that we agree with Fabre’s general claim that the ethics of assistance may mean that individuals are under a duty to kill (or assist in the killing) of others to assist a third party when not under a high risk of incurring physical or psychological costs. Nothing substantive, for our discussion at least, turns on the fact that *killing* is required.

<sup>21</sup> Similarly, Miller (2005: 75–6) argues that the duty to respect the rights of fellow citizens – their rights to liberty which conscription denies – outweighs the duty to protect the rights of noncitizens from threats by third parties.

strongly preferred to, second, regular volunteer soldiers, given the distinction between general and specific consent highlighted above. Regular volunteer soldiers consent only to generally perform a variety of options, whereas private contractors would consent to a specific humanitarian intervention. The latter would more clearly agree to the specific risks of intervention.

However, Fabre's argument catches too much in its net. On her argument, private contractors would be preferable not only for peace operations, such as humanitarian intervention and peacekeeping, but also in many cases for national defence. This is because national defence may also involve a high risk of death or injury for the sake of another, that is, for the sake of fellow citizens. Those who do not clearly volunteer to undertake risky national defence cannot be required to do so. Consequently, conscription for the purposes of national defence would be impermissible. This seems to fly the face of our intuitions that, when hundreds or thousands of our fellow citizens are faced with impending death or enslavement, we may be required to defend them.

More specifically, the prohibition on forcing individuals to put themselves at risk to save others does not seem to be absolute. Rather, it may be outweighed by the number of those who are to be saved. In the example above, a private citizen cannot be required to enter into a burning building to save the life of only one other individual, but could be required to do so to save the lives of fifty others. Likewise, conscription may be justified for national defence when the number of those at risk is high, such as when the state is threatened with invasion. And, if it is the case that conscription for national defence can be justified because of the numbers involved, then it would also follow it could also be justified for the majority of humanitarian interventions and peacekeeping operations. Such operations are typically in response to the ongoing or impending mass violation of basic human rights of a large number of individuals. Indeed, there is a strong

case for arguing that such operations cannot be justified *except* in such circumstances.<sup>22</sup>

Accordingly, that private contractors can be required to incur risks, because of their free consent, does not provide a *strong* reason to prefer them to regular soldiers, including conscripts (although, as we argued in the previous section, it does provide *some* reason). When the numbers of those who would be saved are significant, individuals can be asked to put their lives at risk. If ruling out conscription for national defence in cases when the state faces an impending unjust invasion seems highly counterintuitive because of the numbers involved, so should ruling out conscription in cases of humanitarian intervention and peacekeeping.<sup>23</sup>

One potential reason to distinguish morally between conscription in the case of humanitarian intervention, on the one hand, and self-defence on the other, is presented by Fernando Tesón (2005*b*: 131–7) (although Tesón only partially agrees with this view).<sup>24</sup> Tesón notes that it may be argued that conscription for national defence can be justified as a public good necessary to overcome the free rider problem, that is, to ensure that no individual in the cooperative venture of the state free rides on the back of others' willingness to defend the state. By contrast, humanitarian intervention is not a public good because the lives of those beyond the borders of the state are not part of the cooperative venture of the state. As such, citizens cannot be compelled to fight in cases of humanitarian intervention. However, this argument also fails. As Richard Vernon (2008: 45) asserts, if conscription is justified for any purpose, it is justified as

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<sup>22</sup> See Heinze (2009*b*) and Pattison (2010).

<sup>23</sup> In response, it might be argued that conscription can be justified in the case of national defence, but not humanitarian intervention and peacekeeping, because of citizens' communal bonds. Thus, one can be required to save the lives of several fellow nationals, but not the lives of several foreigners. This places, however, a heavy burden of justification on communal bonds, one which they probably cannot sustain. The underlying issue of the moral value of community is too large for us to delve into here. See Caney (2005), Mason (1999), Miller (2007*a*), and Tan (2004).

<sup>24</sup> Tesón (2005*b*: 131–7) concludes that a government must send voluntary soldiers before resorting to conscription in order to balance respect for genuine dissenters with the need to implement the duty to intervene.

much by humanitarian purposes as by defensive ones. This is because the former purposes are implicit in a social contract that makes the latter purposes explicit. More specifically, Vernon argues that those beyond the zones of mutually beneficial relationships are not beyond the pale of moral regard. Compatriots can justify their mutually beneficial social compacts only when outsiders are also in a position to enjoy contexts in which they *too* can create flourishing civil societies. To justify one's right to exclusive association, which diverts care from outsiders and increases the level of benefit to those inside, it is necessary that others can do so too (Vernon 2008: 43). It cannot honestly be given, he argues, 'in relation to those cases in which outsiders suffer the violent effects of political collapse or violent oppression of abusive states, where the capacity to resist state terror or to organize for collective self-preservation has been lost' (Vernon 2008: 45). It follows, Vernon argues, that citizens of successful societies can only justify their own enjoyment of benefits when they are willing to aid the victim of failed or abusive states by, for instance, undertaking humanitarian intervention. Similarly, Tesón (2005b: 134–5) notes that humanitarian intervention may be conceived as a public good and, as such, conscription may be necessary in order to stop free riding on the courage of others.<sup>25</sup>

Notwithstanding, Fabre (2007: 372) presents a further reason for holding that individuals cannot be forced to undertake humanitarian intervention. She argues that even in cases where humanitarian intervention would be almost *risk free*, conscription cannot be justified because to be able to undertake humanitarian intervention, individuals need to be trained to be professional soldiers, given that peace operations require specific skills on the part of soldiers. However, individuals cannot be required to be trained in such a way for this would be unduly costly to them

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<sup>25</sup> To be sure, as noted above, there may still be some special obligations that arise from the social compact. That is to say, when outsiders are also in a position to create flourishing civil societies, there can exist special obligations that derive from the contractual process. In such cases, the fundamental justifiability of the social compact is not threatened.

(it would undermine their freedom of occupational choice and so ability to live flourishing lives). Generally, she argues, individuals are not under a duty to acquire the skills with which they may, at some point, require to help the needy, just as they are not required to ensure that they have surplus material resources in case they need to help someone who is starving. Again, it would seem to follow that we should strongly prefer private contractors to conscripts and regular soldiers.

Yet the problem with this argument is that national defence may also require specialist training and therefore undermine the freedom of occupational choice of conscripts, but it seems permissible to train in case of such eventualities. If we know that (i) at some point in the future, our state is likely to be at risk from unjust invasion (e.g., it would lead to the deaths of thousands of our civilians) and (ii) our citizens can be trained such that they will be able to avert the risk, it would follow that (iii) our citizens can be required to be trained to avert the risk, even if this threatens their ability to live flourishing lives for a few years whilst they undergo training. Similarly, if we know that (i) at some point in the future, the population in another state is likely to be threatened with a serious humanitarian crisis (e.g., mass killing, genocide, and ethnic cleansing) and (ii) our citizens can be trained such that they will be able to avert the risk, it would follow that (iii) our citizens can be required to be trained to avert the risk, even if this threatens their ability to live flourishing lives for a few years whilst they undergo training. What seems to matter here is the degree and likelihood of the risk involved. If it is both likely and significant (e.g., the impending violation of basic human rights), then conscription in the cases of national defence and humanitarian intervention can be justified.

Nothing we say here is meant to deny that conscription is generally undesirable for practical and principled reasons (notably, that it undermines individual autonomy). Our point instead is that conscription is not problematic for humanitarian intervention *in particular* and so



does not provide a *strong* reason to prefer PMSCs for this purpose.

### **III. The Case against Privatising Humanitarian Intervention and Peacekeeping**

It may help to sum up our argument thus far. We have considered four potential principled arguments for preferring the use of PMSCs for humanitarian intervention and peacekeeping. We have rejected three of these, but have noted that the specific consent of private contractors to humanitarian intervention and peacekeeping presents some reason (although not a strong, overriding one) to prefer their use. Let us now consider three potential principled arguments *against* the use of private force in this role: (i) bad intentions, (ii) the alleged abdication of duties, and (iii) the broader impacts of privatisation. These three arguments, we will claim, offer little principled reason to oppose the use of PMSCs for humanitarian intervention.

#### *(i) Intentions*

The first potential argument concerns intentions. For an intervener to be engaged in ‘humanitarian intervention’, it is necessary for it to possess a humanitarian intention. This is because intentions are central to the categorisation of action (see Pattison 2010; Tesón 2005a: 5). An intervener without a humanitarian intention cannot be engaged in humanitarian intervention – their action would instead be self-defence, imperialism, colonialism, or another form of action.

One problem with PMSCs is that they sometimes do not possess a humanitarian intention. Their actions may be profit-driven instead and they are ultimately accountable to their

shareholders rather than the contracting state. As P.W. Singer argues, these firms ‘as a rule are more interested in doing well than doing good’ (2003a: 217). If this is the case, then there is generally reason to question whether PMSCs would ever possess the requisite humanitarian intention that legitimises the use of force for humanitarian purposes. Even if they do not undertake intervention themselves, but play a secondary role supporting another agent’s intervention, the profit-driven intentions of PMSCs could potentially undermine the humanitarian credentials of an intervention.

However, the problem with this line of reasoning is, first, a tighter system of contracts and oversight mechanisms may ensure that any PMSCs hired would have to possess a humanitarian intention, even if their underlying motives are profit-driven. Moreover, some PMSCs, even without regulation, may still be keen to honour their contracts, and this may require their objectives to be humanitarian. As such, invoking intentions does not provide a deeper concern to the use of PMSCs for humanitarian intervention (although they might provide a contingent worry).

#### *(ii) Abdication of duties*

The second potential reason for objecting to PMSCs undertaking humanitarian intervention is that it seems like an abdication of duties. Certain agents have a duty to prevent human suffering and, the argument runs, they should act on this duty *themselves*. Assume that the UK could undertake humanitarian intervention itself in a particular case, say in response to a serious humanitarian crisis in Gabon. Assume further that the UK is morally obliged to tackle this crisis. However, rather than acting itself, the UK hires instead DynCorp – a leading PMSC – to intervene for it. In essence, it is

*paying* someone to do what it is morally required to do *itself*. This might seem morally problematic. If you have a duty to save Bob from drowning, but do not want to get wet yourself, is it okay if you pay Sarah to go into the swimming pool for you? This might seem to be an abdication of your duty to act.

Yet, in reply, assume that other things are equal. That is, assume that DynCorp and the regular British army are equally likely to be effective, use the right sort of means, be welcomed, and so on. In this case, there does not seem to be anything wrong about hiring DynCorp. The Gabonese will still receive the same level of protection as they would have done if the UK had acted itself. In other words, the duty to prevent human suffering does not seem to turn on *how* an agent discharges this duty. What matters is that the duty *is* discharged. Hiring someone to fulfil the duty to prevent human suffering is not morally problematic, providing that the duty is properly discharged – that intervention is undertaken and is as morally justifiable as it would have been with a regular force.

### *(iii) Broader Impacts of Privatisation*

The third potential problem is this: privatising humanitarian intervention, even if properly regulated, will have a series of broader impacts that will potentially jeopardise the perceived legitimacy of humanitarian intervention.

One of the central arguments for using PMSCs for humanitarian intervention is to fill the gaps left by the lack of willingness of other agents to contribute troops and to intervene. However, the use of PMSCs might make this situation worse. By introducing the market into humanitarian intervention and peacekeeping, it will undermine states' willingness to contribute to future

interventions and peacekeeping missions *themselves*. They will no longer see it something that is *morally obligatory*, but as something that they should be *paid* to do. The economic rationale may come to dominate. If humanitarian intervention and peacekeeping become to be seen as something that can be *hired*, why should states risk their own soldiers' lives? State leaders may have real difficulty – much more than at the moment – in justifying the use of their soldiers to their citizens when PMSCs could be hired instead. Analogously, the philosopher Peter Singer (1985: 5–11) asserts that introducing the market into blood donations can decrease the willingness of donors. Previously willing donors are deterred because what was once priceless is now a commodity with a cash value.

Of course, many states are already concerned primarily by the promotion of their national interest. Nevertheless, how states *define* their national interest is tied up with their identities and, as a result, certain states see their national interest in terms of humanitarianism and human rights (see Brown 2005; Wheeler 2000: 24). This has led, for instance, to states such as Ireland, Canada, and the Nordic states as traditionally being major contributors to UN peacekeeping missions, partly out of the desire to be seen as good international citizens and to have a strong presence on the international stage. The extension of the market logic to humanitarian intervention and peacekeeping may undermine the humanitarianism that does exist.

This might not be problematic if PMSCs could be hired in all cases to replace state-based forces. However, there are likely to be many cases where PMSCs will be unwilling to act because they would not be able to make a profit. A mission may be too dangerous. Or, the humanitarian crisis might be in a state, such as Somalia, where few international donors would be willing to pay a PMSC to intervene. This leads to the next point: the introduction of the market rationale to humanitarian intervention and peacekeeping might jeopardise not only states' willingness to

*undertake* intervention, but also their willingness to *pay* for PMSCs to undertake intervention. Of course, there still may be particular areas and regions where they have a clear national interest at stake in resolving the humanitarian crisis, such as to stop border incursions and refugee flows. However, in cases where there is no clear economic advantage or national interest, the humanitarian impulse to do something that sometimes currently exists may be eroded by the market logic of humanitarian intervention and peacekeeping being viewed in economic terms. The economic mindset will become dominant.

Although this objection is plausible, it faces two problems. First, troop-contributing countries currently receive financial contributions for the peacekeepers that they provide from the UN peacekeeping budget. It seems then that the economic rationale is, to a certain extent, *already* present. To be sure, this is not to deny that, as argued above, *increased* commoditisation may undermine the humanitarianism that does exist. Nor is this to deny that the current system faces several major problems, such as the lack of contribution of troops from Western states, whose troops tend to be better equipped and trained (see Bellamy and Williams 2009). Second, although this objection may mean that we should oppose generally the further extension of the market to humanitarian intervention and peacekeeping, nevertheless it may be able to be tackled by regulation. For example, there could be a more efficient system of payments where Western states are given large enough financial incentives to contribute their troops. This may go beyond the boundaries of current political possibilities, but the fact that such a system is conceivable does give us reason to view such an objection as ultimately *contingent* on current circumstances, rather than being a deeper, more fundamental problem.

#### IV. Conclusion

Our tentative conclusion, then, is there are no fundamental problems, specifically related to using PMSCs for humanitarian intervention. If there were put in place a strong system of regulation that alleviated many of the contingent concerns, although there may still be some deeper problems with PMSCs more generally, there would be little reason to oppose their use because of the fact that they are engaged in a peace operation in particular. In fact, as we argued in the first part of the paper, there may be *some* reason to prefer the use of PMSCs to state-based forces. Yet, as we also argued, this is not an overriding reason. As such, contingent problems of the kind mentioned at the beginning of this paper may mean that other agents should be favoured for humanitarian intervention and peacekeeping.

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