

# **Outsourcing the responsibility to protect: humanitarian intervention and private military and security companies**

JAMES PATTISON\*

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

States have recently agreed that there is a responsibility to protect populations threatened by genocide, war crimes, ethnic cleansing, and crimes against humanity. The international community, however, often lacks the resources and willingness to carry out a key part of this responsibility, that is, to undertake humanitarian intervention effectively when required. One potential solution to this problem is to outsource intervention to private military and security companies. In this article, I consider this option. In particular, I present a largely consequentialist argument which asserts that, when two conditions are met, using these companies to bolster the capacity to undertake humanitarian intervention might be morally justifiable overall.

**Keywords:** authority; effectiveness; humanitarian intervention; the Moderate Instrumentalist Approach; private military and security companies; the responsibility to protect

The International Commission on Intervention and State Sovereignty's (ICISS) 2001 report, *The Responsibility to Protect*, proposes a re-characterisation of the notion of sovereignty, from sovereignty as *control* or authority to sovereignty as *responsibility* – the responsibility to uphold citizens' human rights. This responsibility, the report argues, lies primarily with the state concerned. But if this state is unable or unwilling to fulfill this responsibility, such as in cases of mass killing or ethnic cleansing, its sovereignty is temporarily suspended. In such cases, the responsibility to protect these citizens transfers to the international community, which has the 'responsibility to react' robustly to the crisis. This may involve undertaking 'military intervention for human protection purposes' – humanitarian intervention – providing that certain 'precautionary principles' have first been met.

\* E-mail: james.pattison@manchester.ac.uk

The report has been fairly successful. The idea of a ‘responsibility to protect’ – ‘R2P’ for short – has, to some extent, caught on in policy-making circles.<sup>1</sup> The language is now used regularly by the UN, NGOs, and state officials. Most notably, at the 2005 UN World Summit (the High-Level Plenary meeting of the 60th session of the General Assembly) states agreed to the responsibility to protect doctrine (UN 2005: 30). There remain, however, significant difficulties with implementing this responsibility to protect. One key problem is that the current agents of intervention often lack the resources and the willingness to intervene.

To start with, the UN’s reliance on the *ad hoc*, volunteer contribution of troops from member states has several drawbacks. It can take time for states to decide whether they will volunteer troops, deployment can be painfully slow, and troops repeatedly lack the necessary equipment. Member states are frequently unwilling to pledge their soldiers and, as a result, UN operations often lack sufficient troops. For example, the recent United Nations-African Union Mission in Darfur (UNAMID) has had notable difficulties in getting up to its full strength. Western states, in particular, have shown a reluctance to contribute troops, which is unfortunate, since their soldiers tend to be the best trained and to have the most equipment. In addition, the majority of regional organisations do not possess the infrastructure, expertise, mandate, or finances to tackle effectively a major humanitarian crisis. The European Union (EU) is the most capable regional organisation, but it is doubtful whether it possesses the capability, let alone the willingness, to engage in a large-scale mission beyond Europe. Likewise, although an improvement on its predecessor, the African Union (AU) suffers from massive shortfalls in funding and equipment. By contrast, several Western states (e.g., France, the UK, and the US) have the military and nonmilitary resources to undertake effective humanitarian intervention. But these states tend to be highly selective interveners, often unwilling to risk their soldiers’ lives in response to the mass violation of human rights in other states. Consequently, many serious humanitarian crises continue to go unabated as potential interveners lack the willingness and ability to intervene.<sup>2</sup>

<sup>1</sup> For instance, the Report of the UN High-Level Panel on Threats, Challenges and Change in 2004, *A More Secure World*, argues that ‘[t]here is a growing recognition that the issue is not the “right to intervene” of any State, but the “responsibility to protect” of every State’ (UN, 2004: 56). Similarly, the Report of the UN Secretary-General in 2005, *In Larger Freedom*, argues that we must ‘move towards embracing and acting on the “responsibility to protect”’ (Annan, 2005: 35).

<sup>2</sup> I discuss these problems in detail in Pattison (2010). Note that I assume that humanitarian intervention can be justified on occasion. This is hardly a controversial assumption, especially in light of the agreement at the World Summit. For detailed defences of the justifiability of humanitarian intervention, see ICISS (2001a, b) and Tesón (2005b).

Whilst the public agents of intervention have been suffering from a number of problems, the private military industry has been expanding. Private military and security companies (PMSCs) have been increasingly employed to perform roles traditionally carried out by the regular military. These include training and logistical support, as well as roles more likely to involve combat, such as the armed guarding of personnel and infrastructure. Their use has been most documented in Iraq, where the UK and US governments have employed companies such as Aegis, Blackwater (now rebranded as 'Xe'), Control Risks Group, Erinys, KBR, and Vinnell. It is not only in Iraq, however, that these companies have been employed. PMSCs have been hired throughout the world by a multitude of actors, including states, multinational companies, NGOs, and the UN. Of course, the use of private force is nothing new. Private military actors from the Swiss mercenary units to the Dutch and British East India companies have previously had much influence in the international system.<sup>3</sup> What is new is the range of services offered by these companies, the degree of reliance of states on them, and their polished, corporate face.<sup>4</sup>

This raises an interesting question: should PMSCs be employed to help fulfill the responsibility to protect (and particularly humanitarian intervention)? Some object to private companies playing any role in humanitarian intervention (e.g. Brayton, 2002; Avant, 2004). Others admit that private companies are a potentially legitimate way of bolstering the capacity to undertake humanitarian intervention, but argue that they should be used only if there is first established a strong system of regulation.<sup>5</sup> In what follows, I challenge both positions. I argue that there is a case for outsourcing intervention to PMSCs in certain situations, *even without effective regulation*. In doing so, I examine four central objections to employing private companies to undertake humanitarian

<sup>3</sup> For accounts of the history of private force, see Singer (2003a: 19–39) and Thomson (1994). As Singer suggests (2003a: 39), the state's monopoly over the use of force of the past two centuries is the exception to a world history dominated by the private provision of violence.

<sup>4</sup> The corporate form and range of services offered by PMSCs are usually assumed to distinguish them from mercenaries (e.g. Singer, 2003a: 40–48; Schreier and Caparini, 2005: 7–9). I adopt the Montreux Document's definition of PMSCs as 'private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel' (2008: 6).

<sup>5</sup> Examples include Gantz (2003), Singer (2003b), O'Hanlon and Singer (2004), and Bures (2005). Also see, more generally, Walzer (2008), who has recently considered the potential use of PMSCs, including for humanitarian intervention, in a short piece in *The New Republic*.

intervention: (i) that this proposal is unrealistic; (ii) that PMSCs lack the right motives; (iii) that employing PMSCs undermines democratic control; and (iv) that PMSCs are not legally accountable and, as a result, their employees may violate principles of just conduct in war (*jus in bello*). Rather than challenging the *validity* of the last three of these concerns (I will reject the first objection about feasibility), I dispute the *weight* that we should give to them. The importance of the concerns highlighted by these objections, I claim, can be outweighed when two conditions are met (namely, when a PMSC (1) is responding to a serious humanitarian crisis and (2) is likely to be successful). When these two conditions are met, it may be morally acceptable to use PMSCs.

A few points of clarification are necessary. First, it is important to reiterate that humanitarian intervention is only one part of the responsibility to protect (the ‘responsibility to react’). According to the ICISS (2001a), the responsibility to protect also encompasses the ‘responsibility to prevent’ humanitarian crises and the ‘responsibility to rebuild’ afterwards. In fact, humanitarian intervention may not be the most important part of the responsibility to protect.<sup>6</sup> Nevertheless, when a state is manifestly failing to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and other means of tackling the humanitarian crisis have failed, nonconsensual military intervention may still be called for under the responsibility to protect. In addition, under the doctrine, consensual military action – action *with* the target state’s consent – may be required to help to fulfill the responsibility to protect (such as a robust peacekeeping force with Chapter VII authorisation and a mandate for civilian protection). This consent may be obtained under duress (as was Indonesian consent to the Australian-led INTERFET force in East Timor) and the action may be opposed by certain factions within the state (e.g. rebel groups). This makes such operations more like humanitarian intervention. Note that I define humanitarian intervention as ‘forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing, or halting an ongoing or impending humanitarian crisis’.<sup>7</sup> By a ‘humanitarian crisis’, I mean circumstances in the target state of the mass violation of human rights, such as genocide, mass killing, and ethnic cleansing. The violation need not be intentional (e.g. the target state does not need to set out to harm its people); it can arise from a state’s negligence, unwillingness, or inability to look after its citizens’ basic

<sup>6</sup> Evans (2008: 56–59), Ban Ki-Moon (2009: 6), and Bellamy (2009: 3, 4) argue that prevention is the most important aspect.

<sup>7</sup> I defend this definition against alternatives in Pattison (2010: 24–30).

interests. This definition of a humanitarian crisis (and the definition of humanitarian intervention) is not an account of when humanitarian intervention is *justifiable*. It simply indicates the circumstances in which humanitarian intervention can be said to occur. For there to be just cause for humanitarian intervention, the bar may need to be set higher to ensure that there is sufficient room for the intervener to outweigh any harm that it will cause.<sup>8</sup>

Second, I will not claim that PMSCs should *replace* other agents of intervention (such as the UN, regional organisations, or states). My argument instead is the more limited claim that private companies are a potentially legitimate way of *supplementing* these agents. I take this position because the objections that I consider to using PMSCs for intervention have some force – they present significant reasons to oppose using private force as a substitute for public force for humanitarian intervention. Although I will argue that the force of these reasons can, on occasion, be outweighed by the benefits of using PMSCs for humanitarian intervention, I will also claim that such occasions are likely to be rare and, moreover, in many cases public force may be more effective. As such, a complete outsourcing of humanitarian intervention would be morally problematic.

Third, I do not deny that we should improve the regulation of PMSCs. On the contrary, there is a strong case for reforming the laws governing these companies, by, for instance, licensing which companies can operate (and withdrawing the licence from companies whose methods are morally objectionable).<sup>9</sup> Yet there are notable barriers to achieving such reforms. States have shown little interest in internationally regulating PMSCs, which often offer them a high degree of political convenience (Brayton, 2002: 231).

Fourth, my focus is on the most pertinent objections when using PMSCs to undertake humanitarian intervention. There are other objections to the increased use of PMSCs, such as deeper normative concerns about private force, which I consider in Pattison (forthcoming), and the challenges that PMSCs pose to Just War Theory, which I consider in Pattison (2008).<sup>10</sup>

<sup>8</sup> For a thorough discussion of just cause for humanitarian intervention, see Heinze (2009).

<sup>9</sup> For detailed analyses of the options for regulation, see Chesterman and Lehnardt (2007), Foreign and Commonwealth Office (2002), Holmqvist (2005), and Percy (2006).

<sup>10</sup> In the latter, I argue that the privatisation of military force means that it is necessary to amend our understandings of right intention, legitimate authority, and discrimination, to reassert the importance of formal declaration of war, and to develop principles of internal *jus in bello* (Pattison, 2008).

## PMSCs and the Responsibility to Protect

Employing PMSCs for humanitarian intervention has some immediate appeal. Current agents often lack the willingness to intervene because of their reluctance to commit troops to save the lives of those perceived to be distant strangers and, more practically, because of military capacity. Using PMSCs could overcome both problems by, first, undertaking intervention in places where other agents are loath to act. Using private companies to undertake humanitarian intervention would not require states to risk their own soldiers, thereby circumventing ‘Somalia Syndrome’ (the notion that states are unwilling to put their soldiers’ lives on the line for humanitarian intervention after the US experiences in Mogadishu in 1992). Second, PMSCs could bolster other agents’ capability, thereby enabling them to intervene.<sup>11</sup> In addition, even when other agents are willing to act, PMSCs could act as a force-multiplier, greatly increasing the capacity of other agents (such as the UN and AU) to intervene. Michael O’Hanlon and P.W. Singer sum up the idea:

The rise of this industry has prompted calls for a twenty-first century business solution to the world’s twenty-first century human security problems. If most other formerly state-run services, from prisons to social welfare, have been privatised, goes the reasoning, why not turn peacekeeping over to the private market? (2004: 91).

The suggestion is not a new one. In the midst of the Rwandan genocide, Executive Outcomes (a disbanded South African PMSC) claimed that, for \$150 million, it could place armed troops on the ground within 14 days and provide safe havens (O’Hanlon and Singer, 2004: 92). More recently, Chris Taylor, the Vice President of Blackwater offered to play a significant role in Darfur: ‘If the AU comes in and performs an intervention in one area, we can follow behind them and relieve them so they can continue elsewhere’ (in Witter, 2006: 2).<sup>12</sup>

<sup>11</sup> Sometimes the lack of willingness to undertake military intervention may be acceptable because intervention by the agent in question would be unjustifiable. For instance, intervention by an agent may not be likely to tackle the humanitarian crisis effectively (e.g. because it lacks military capability) or may be excessively costly for the agent. In such cases, the agent may still be morally required to do what it justifiably can to tackle the crisis to ensure that the responsibility to protect is discharged by, for instance, helping with diplomatic efforts and assisting another agent with its intervention.

<sup>12</sup> There are numerous other examples of PMSCs offering to undertake humanitarian intervention. One of the most notable is an open letter from Sandline International in 2000 (a PMSC that was disbanded in 2004). This letter called for the UN to consider using experienced private contractors to assist regular UN troops to end conflict in Africa (Sandline, 2000).

In fact, the possibility of using private companies for humanitarian intervention has been debated frequently by governments and policy-makers over the past decade. For instance, in response to the UK Foreign and Commonwealth Office's Green Paper on the privatisation of military force, the Foreign Affairs Committee claimed that it 'sees no difficulty of principle in private companies offering support to humanitarian or peacekeeping missions directly to the UN or to other international bodies that mandate or co-ordinate such missions' (2002: 4). Likewise, the former UN Special Rapporteur on Mercenaries, Shaista Shameen, argued that using PMSCs to undertake humanitarian intervention 'could help compensate the deficiencies of the UN when the latter is confronted with widespread violations of human rights and genocide' (in Ghebali, 2006: 218).

More specifically, there are three roles that a PMSC could play. The first would be to undertake humanitarian intervention by itself. This would involve another agent funding intervention by the company. The PMSC would stabilise the local situation by removing any spoilers and then hand control to local forces or a more traditional peacekeeping force (Gantz, 2003). The potential benefit of employing a PMSC in such a role is clear. It could mean quick, decisive, and effective intervention when other agents are unwilling or unable to intervene themselves. Indeed, some industry proponents (e.g. Brooks, 2000; Brooks and Chorev, 2008) claim that such an intervention would be 'faster, better, and cheaper' than intervention by other agents. This is because PMSCs can target their recruitment at the most capable personnel and scour markets for the best equipment (Singer, 2003b: 4).

The second role would be to provide troops to bolster or to fill gaps in another agent's intervention. PMSC personnel could be used, for instance, to ensure that a UN mission has the number of troops required by its mandate. Alternatively, it could offer a rapid reaction capability or provide an elite force to tackle challenging combat situations (Singer, 2003a: 184). The potential benefit of employing a PMSC in such a role is again clear. Given the difficulties that the UN and regional organisations have, firstly, in securing sufficient troops and, secondly, with the combat capability of the troops that are contributed, PMSC personnel could ensure that these agents are at full-strength and able to intervene effectively.

The third role would not involve direct combat operations, but instead support services to assist another agent's intervention. A PMSC could provide logistics, training, intelligence, lift-capacity, and other support services to bolster the capability of a state, regional organisation, or the UN. Since a number of agents of intervention have significant problems with these functions, employing a PMSC in one of these roles could make

a large contribution to the success of the intervention (see O’Hanlon and Singer, 2004: 95). A further benefit of employing a PMSC in one of these roles is that it could make humanitarian intervention easier to undertake. Many agents have previously had to rely heavily on US military assistance to undertake humanitarian intervention because of their lack of capacity (particularly in regard to technical and lift capacity). But the range of services offered by PMSCs means that these agents (such as the EU) could boost their military capabilities without being dependent on strong support from the US, which has not always been forthcoming.<sup>13</sup>

In what follows, I am concerned with the case for the employment of PMSCs in all three roles. As will become apparent, the problems posed when using PMSCs in the third role, which does not involve combat, are less serious and, as such, the case for their use in such a role is stronger (although still subject to notable difficulties).

## Four Objections

### *Objection 1: unfeasible proposal*

An immediate objection to this proposal is that there are considerable practical obstacles to outsourcing the responsibility to protect to PMSCs. For instance, who is going to pay PMSCs to undertake humanitarian intervention? States have already demonstrated their unwillingness to get involved in humanitarian crises by their reluctance to commit their own troops. This unwillingness may extend to an aversion to pay others to intervene. Indeed, a number of states oppose the use of these companies because they are seen as a tool of Western governments. In this context, David Shearer argues that ‘[d]eveloping countries have enough difficulty swallowing the concept of human security that in their eyes weakens their sovereignty by allowing outside forces to enter states uninvited to protect civilians, without contemplating a privatised military doing the job’ (2001: 3).<sup>14</sup> Moreover, PMSCs may themselves be reluctant to take on the first and second roles, which involve combat operations. Indeed, it is questionable whether PMSCs have the capacity to take on a major combat role. The objection, then, is that this proposal is utopian: it is extremely unlikely to be achieved. Normative theorising about outsourcing the responsibility to protect is therefore futile and takes us away from serious

<sup>13</sup> The second and third roles should be seen in the context of a growing trend for major peace operations to be undertaken by agents acting together in ‘hybrid operations’. See Bellamy and Williams (2009: 47–49) and Piiparinen (2007).

<sup>14</sup> See, further, Avant (2004: 26), Ghebali (2006: 225), Lilly (2000: 59), and Spearin (2005: 243).



discussions about realistic improvements that could be made to the agents and mechanisms of humanitarian intervention.

In response, it is important to note that PMSCs have already been employed for humanitarian intervention in all three roles. To name a few examples, the AU Mission in Sudan was supported by Pacific A&E and Medical Support Solutions, who provided transportation, as well as logistical and communication services (funded partly by the US State Department) (Holmqvist, 2005: 18). Pacific A&E was also employed to provide logistical support for UN missions in the DR Congo and Sierra Leone (Foreign and Commonwealth Office, 2002: 19; Ghebali, 2006: 224) and, in 2007, were awarded a \$250 million contract for the establishment and provision of camps for UNAMID in Darfur. In East Timor, DynCorp provided transport and communications and Defence Systems Limited supplied both logistical support and intelligence services for the UN-sanctioned force (Bures, 2005: 538). Most notably, in 1995, after the Revolutionary United Front (RUF) had slaughtered, raped, and maimed thousands, the government of Sierra Leone employed Executive Outcomes. Given their military superiority, Executive Outcomes were able to successfully lift the siege of Freetown and destroy the RUF's headquarters (ICISS, 2001b: 105).<sup>15</sup> Admittedly, the current level of political opposition and the disbandment of Executive Outcomes (as well as Sandline International) mean that private companies are less likely to be employed in roles that involve direct combat operations in the near future. But in the third role, which does not involve direct combat operations, PMSCs are a potential policy option to boost intervention capacity. Indeed, most previous involvements of PMSCs in humanitarian intervention have been in this role.

Moreover, there are three, perhaps speculative, reasons to hold that, even in the first two roles, states may turn to PMSCs in the future for humanitarian intervention. First, tackling serious humanitarian crises can be in a state's national interest and therefore a state may be willing to fund intervention by a PMSC. On a wider, ideational definition of national self-interest, a state's self-interest is determined not only by its material interests, such as economic gain, but also by its identities, principles, and shared values, such as the promotion of democracy, freedom, and human rights (Wheeler, 2000: 24). As such, humanitarian intervention can be in the national interest since it promotes the values endorsed by the state (i.e. respect for human rights) on the world stage. Even on a narrow notion of self-interest, humanitarian intervention can be in a state's national

<sup>15</sup> For a detailed analysis of this intervention, see Howe (1998).

interest by, for instance, preventing large refugee flows and avoiding a failing state from becoming a breeding ground for international terrorism and piracy (see Welsh, 2004: 189; Evans, 2008: 229). Yet there remain political sensitivities with states risking their own soldiers' lives for humanitarian intervention and many states' militaries are currently overstretched. PMSCs could therefore be a useful compromise, allowing states that wish to tackle a humanitarian crisis a politically and militarily viable way of doing so.

Second, if the global trend towards economic liberalisation continues, it is likely that there will be market pressure to use PMSCs to undertake humanitarian intervention in the future (Ghebali, 2006: 221). As Shearer (2001: 3) argues, like it or not, we may be heading inexorably down the path of privatised peacekeeping anyway. One of the effects of what has been called the 'brawn drain' of regular soldiers to PMSCs is that concerns about overstretch are likely to grow and this will lead to an even greater outsourcing of functions to private companies.

Third, humanitarian interventions can, in practice, often be distinguished from outright warfighting because they tend not to involve heavy fighting.<sup>16</sup> As such, even the first and second roles, which involve direct combat operations, may be attractive to PMSCs. Indeed, there already exists a trade organisation of PMSCs – the International Peace Operations Association (IPOA) – that lobbies for a greater role for private force in peace operations.

### *Objection 2: inappropriate motive*

The previous section rejected a largely unsuccessful practical objection to using PMSCs to help discharge the responsibility to protect. Let us now consider three normative objections. These objections, I will argue, have some validity. In fourth section, however, I will claim that the concerns raised by these objections can be outweighed in certain circumstances. Accordingly, I will argue that employing PMSCs to undertake humanitarian intervention can be morally justifiable.

The first normative objection is deontological. To put it crudely, this objection holds that people should do the right things for the right reasons. More specifically, the claim is this: self-enrichment constitutes an inappropriate motive for conducting war in defence of basic human rights. This objection is in fact a version of one of the standard arguments made against humanitarian intervention in general. That is, those that

<sup>16</sup> On the recent trend of humanitarian interventions to be more like robust peacekeeping than warfighting, see Cottey (2008).

undertake humanitarian intervention do not intervene for humanitarian reasons, but for their own self-interest.<sup>17</sup> There are two premises to this objection: (i) agents of intervention undertake humanitarian intervention for self-interested motives; (ii) self-interested motives are inappropriate motives to undertake humanitarian intervention.<sup>18</sup> Thus, humanitarian intervention is objectionable. In the context of PMSCs undertaking humanitarian intervention, it seems that both premises are correct and therefore that we should oppose using private force to help undertake intervention for humanitarian purposes.

First, it seems that self-interested motives, and particularly financial gain, will dominate the decision of a PMSC and its personnel to undertake humanitarian intervention. (Note that the concern is not only with the motives of the PMSC, but also the motives of its private contractors.) Although we should not presume that *all* PMSCs and private contractors are motivated by financial gain, there is reason to believe that, generally speaking, these companies and their employees tend to be motivated primarily by financial reasons.<sup>19</sup> Since PMSCs are private companies, the decision of a PMSC's board to agree to undertake humanitarian intervention would probably be profit-driven rather than out of concern for those suffering the crisis. Thus, Singer argues that 'private companies as a rule are more interested in doing well than good' (2003a: 217). Likewise, the high wages on offer may be a key motivating factor for private contractors.

The second premise also seems to be correct. The argument that self-interest is an inappropriate motive to undertake humanitarian intervention is intuitively plausible. This argument is based on the Kantian notion that individuals should be motivated by the right sort of reasons for their actions to have moral worth. For instance, if the reason for an individual's donation to charity is a tax break rather than wanting to help those that

<sup>17</sup> I focus on the objection that self-interested motives render humanitarian intervention morally problematic. It is worth noting that those who make this objection might still hold that self-interested intervention (although morally problematic) is nevertheless 'humanitarian intervention'. By contrast, it is also sometimes objected that self-interested motives mean that there is no such thing as 'humanitarian intervention'. Humanitarian intervention, the objections runs, must be motivated by humanitarian reasons to be 'humanitarian'.

<sup>18</sup> To be precise, this objection is to an intervener's *motive* rather than its *intention*. (An intervener's intention is the objective it wishes to achieve with the intervention, whereas its motive is its underlying reason for intervening.) This distinction between intention and motive is now increasingly recognised in the literature on humanitarian intervention. For instance, see Nardin (2006), Pattison (2010: 153–180), and Tesón (2005a). Also see Scobbie (1992), who discusses this distinction in relation to mercenaries. Those that overlook this distinction (such as Ayoob, 2002) tend to exaggerate the importance of motives.

<sup>19</sup> Note that the concern is with the *primary*, rather than the *sole*, motivations of PMSCs.

are more disadvantaged, that individual's action has less moral worth. Accordingly, if we undertake humanitarian intervention in order to benefit ourselves, it appears to be less morally valuable. It follows that intervention by a PMSC is morally problematic because both the employees of the PMSC – the private contractors – and those in charge of the PMSC – for instance, its CEO, board, or shareholders – may not possess a humanitarian motivation.

A further objection is that the possible *financial* motivations of a PMSC and its personnel are particularly egregious.<sup>20</sup> The problem is not the financial motivation in itself – possessing a remunerative motive in other contexts is not necessarily morally problematic. Rather, the problem is possessing a financial motivation *in the context of using military force*. The use of military force inflicts suffering on individuals. It seems wrong then that individuals are motivated by financial gain to such an extent that they are willing to inflict suffering (or assist others to inflict suffering).<sup>21</sup> We tend to believe instead that there are limits to the actions that an individual can legitimately undertake for financial gain.<sup>22</sup>

Thus, using PMSCs to undertake humanitarian intervention seems morally problematic because of the self-interested, financial motivations of private contractors, and those in charge of the PMSC's decision-making. Note here that the concern is that a PMSC and its employees' motives may be *intrinsically* problematic. It may also be that they are *instrumentally* problematic. For instance, being motivated by profit might mean that private contractors are more willing to abandon their posts if the situation becomes too dangerous. This instrumental concern about the motives is part of a larger concern about the inability of PMSCs to achieve an effective resolution to the humanitarian crisis, which I consider in fourth section.

It may be responded that it is not the private contractors or companies' motives that matter, but the motives of the intervener as a whole (e.g. the employing state), which are determined by the ruler or ruling elite. Indeed, the focus of *jus ad bellum* is traditionally on leaders rather than soldiers because leaders are responsible for decision-making. There are several points to note about this argument. First, if there is good reason to

<sup>20</sup> For further analysis of the problems of 'mercenary motives,' see Baker (2008), Scobbie (1992), Pattison (forthcoming; 2008: 144–149).

<sup>21</sup> I am not claiming that financial motives are the worst sort of motives in this context. Other motives, such as sadism, are more morally problematic.

<sup>22</sup> Possessing a remunerative motive might seem less problematic if a PMSC and its employees are financially motivated to inflict suffering on others only when doing so would be likely to do more good than harm (i.e., when tackling the humanitarian crisis would prevent more suffering than it causes) and, more generally, when part of an otherwise just war.

focus on the motives of leaders, this lends support to my argument below about the relative insignificance of this objection to PMSCs. Second, although there may be a case for focusing on the motives of leaders, this does not mean that we should completely overlook PMSCs or their employees' motives. The motives of PMSC personnel may be morally important, more generally, to the extent that individuals' motives for undertaking *any* action are morally relevant. In fact, there is reason for giving private contractors' motives greater weight than the motives of regular soldiers. Private contractors' motives are relevant to the decision to take on a particular intervention – their motives will determine whether they agree to a contract (the same point applies to PMSC directors). By contrast, regular soldiers' motives are less relevant to whether they undertake an operation; they are under the authority of the armed forces and, as such, are obliged to obey their leaders' decision to intervene. The motives of private contractors and their companies may also have a greater impact on the ground – on what actually goes on during the intervention – than the motives of state leaders. Given the problems of command and control raised by the use of PMSCs (discussed below), it will be hard for the motives of leaders to filter through. Thus, the motives of the private contractor and PMSC may still be relevant.

### *Objection 3: lack of democratic accountability*

A third objection to employing PMSCs to discharge the responsibility to protect concerns a state's control over its armed forces. By employing PMSCs to undertake humanitarian intervention, the forces that the state utilises are no longer its forces, but the forces of a private company. When it is a democratic state employing their services, this reduces the degree of democratic control over the intervention.

Why is democratic control over the use of military force and, in particular, humanitarian intervention valuable? There are both intrinsic and instrumental reasons. Intrinsically, it matters that citizens either directly (e.g. through a referendum) or indirectly (e.g. through their representatives) have control over their state's armed forces – in this case, for humanitarian intervention – because this is an important aspect of individual self-government, which has significant noninstrumental value (see Dahl, 1989: 89). In short, individuals should have some control over how the armed forces of their state are used because it is *their* state. In addition, Thomas Christiano (1996) argues that democratic decision-making is needed for equality, particularly the equal consideration of interests. Thus, democracy is required for each person's interests to be given equal consideration, including for decisions to deploy armed force. Instrumentally,

citizens, either directly or indirectly, should have control over their state's armed forces, including for humanitarian intervention, because this ensures a more considered use of military force.<sup>23</sup>

Why is it that employing PMSCs reduces democratic control over a humanitarian intervention? The first reason concerns governmental decision-making on humanitarian intervention. Governments can employ PMSCs to circumvent many of the constitutional and parliamentary – and ultimately democratic – constraints on the decision to send troops into action. For instance, the US President can use PMSCs to reduce the role that Congress plays in decisions about the use of force (Percy, 2006: 16). As such, using PMSCs can undermine a legislature's input into the decision to intervene and subsequent choices during the intervention (such as to increase troop numbers and spending). Using private companies also gives the government more scope to initiate an intervention, or to extend the size of state involvement, without public debate beforehand (Leander and van Munster, 2007: 209). This is because there is a general lack of transparency about the use of these companies. As Percy (2006: 21) notes, simple facts about the industry, such as its size, the economic savings (if any) of using private force, and the number of contractor deaths are difficult and sometimes impossible to come by, and often obscured because of the secretive way that states make contracts with PMSCs. Hence, using PMSCs allows 'governments to carry out actions that would otherwise not be possible, such as those that would not gain legislative or public approval' (Singer, 2005: 125).

The second issue concerns the degree of control that states have over a humanitarian intervention. By outsourcing military force, the state (including both the legislature and the executive) loses some control over how that force is used during the intervention. It is difficult for governments and legislatures to monitor the behaviour of private contractors and to make decisions accordingly. Lines of command and control, from democratically elected representatives to soldiers, also become blurred, as private contractors are ultimately accountable to their employers rather than the state. This may mean that they follow the orders of the executives of a private company rather than the military commanders of the state employing their services. According to Singer,

the security goals of clients are often in tension with the firms' aim of profit maximization. The result is that considerations of the good of a

<sup>23</sup> On the instrumental value of democratic decision-making, see Arneson (2003). I discuss the importance of citizens' opinions on intervention being represented in governmental decision-making in more detail in Pattison (2010: 129–151).

private company are not always identical with the public good. For privatized peacekeeping, the ensuing dangers include all the problems one has in standard contracting and business outsourcing. The hired firms have incentives to overcharge, pad their personnel lists, hide failures, not perform to their peak capacity, and so on. The worry, though, is that these are all now transferred into the security realm, where people's lives are at stake (2003b: 5–6).

The contract between a state and a PMSC does little to change this situation. Contracts are often ambiguous and provide companies with a large degree of freedom in the theatre of operations. They also often lack oversight mechanisms, have unspecific terms without external standards of achievement, and leave it to PMSCs to evaluate themselves whether the contract is being met (Schreier and Caparini, 2005). They therefore do little to ensure control of the behaviour of the PMSC by the legislature, executive, and public opinion during an intervention.

These two issues therefore mean that the potential for the use of PMSCs to undermine democratic control over humanitarian intervention is a serious normative concern. Of course, humanitarian intervention is not always undertaken by democratic states. Using PMSCs to assist intervention by certain regional organisations, the UN, or undemocratic states may not raise issues of democratic control because these institutions are (to varying degrees) not democratic to start with. That said, although democratic states can be selective in where they intervene, they have often led humanitarian interventions. Examples include the US's interventions in northern Iraq (1991) and Somalia (1992), the UK in Sierra Leone (2002), Australia in East Timor (1999), and France in Rwanda (1994) and Côte d'Ivoire (2003). Moreover, using PMSCs to assist certain regional organisations, non-democratic states, and the UN may weaken what little democratic control these institutions possess, and so PMSCs may pose concerns for democratic control for nondemocratic institutions as well.

#### *Objection 4: lack of legal accountability*

The fourth objection to hiring PMSCs relates to their lack of effective legal accountability.<sup>24</sup> As Percy (2006: 41–44) claims, there are no specific legal instruments concerning PMSCs. The three main legal instruments prohibiting the use of mercenaries (the OAU Convention for the Elimination of Mercenaries in Africa, Article 47 of Protocol I additional to the Geneva Conventions, and the United Nations International Convention

<sup>24</sup> This section draws on Pattison (2008: 151–152).

Against the Recruitment, Use, Financing, and Training of Mercenaries) do not clearly apply to PMSCs. Moreover, the states in which PMSCs *operate* frequently lack the ability (and sometimes the willingness) to prosecute contractors who commit wrongdoing. In Iraq, for example, the Coalition Provisional Authority Order Number 17 specifies that Iraqi laws or regulations do not apply to contractors. In addition, the regulation of PMSCs by the states in which the firms are *based* varies from state to state, and is generally limited.

There is, however, some self-regulation by the private military industry as PMSCs have become increasingly concerned about their public image. In particular, the IPOA has developed an industry code of conduct to which a number of leading PMSCs have signed up. But self-regulation is on its own insufficient since it is too permissive and does not influence the companies that are less concerned about negative publicity (Singer, 2003b).<sup>25</sup> As such, PMSCs largely operate outside the effective jurisdiction of national and international law.

Why is PMSCs' lack of effective legal accountability a concern? The problem is that it leads to impunity. Private contractors can violate the principles of *jus in bello* without fear of reprimand, most notably the principles of noncombatant immunity (by harming civilians) and proportionality (by using excessive force). In Iraq, for instance, a number of PMSC employees have been involved in human rights abuses of Iraqi civilians, but almost none have been prosecuted (Singer, 2005: 127).<sup>26</sup> Similarly, in Sierra Leone, the government terminated the contract with Executive Outcomes after the company was subjected to allegations of human rights abuses (ICISS, 2001b: 105).<sup>27</sup>

That said, when playing a minor, supporting role for another intervener, concerns over the violation *jus in bello* may dissipate as private contractors will not be engaged in combat operations. Moreover, it may be argued that many private contractors are ex-soldiers with specialist training and are unlikely to commit abuses (Singer, 2003a: 217). Indeed, defenders of private force argue that private contractors have a far greater standard of military professionalism than other actors in local conflicts

<sup>25</sup> See, further, Amnesty International's (2009) criticisms of the IPOA's code of conduct.

<sup>26</sup> Although five of the Blackwater employees accused of shooting fourteen civilians in Nisour Square, Baghdad in September 2007 will go on trial in the US in early 2010, there has been a notable dearth of criminal prosecutions of private contractors during the occupation of Iraq.

<sup>27</sup> These concerns may be even greater if it is the case, as I argue in Pattison (2009), that those undertaking humanitarian intervention should follow even stricter standards of *jus in bello* than those found in traditional accounts of Just War Theory.



(Singer, 2003a: 217). Furthermore, PMSCs need to retain a reputable image in order to win another contract (Brooks, 2000).<sup>28</sup>

The need to retain a positive reputation, however, does not act as a strong barrier to the violation of principles of *jus in bello* by private contractors. The desire for a positive image may simply mean that PMSCs cover-up, rather than report, violations of human rights by their employees (Singer, 2003a: 222). In Bosnia, for instance, DynCorp was implicated in a sex-slave scandal, but none of its employees was ever prosecuted, and the company later fired the whistle-blowers (Bures, 2005: 541–542). Moreover, violating principles of *jus in bello* may cut costs and therefore be in the financial interests of the company (Singer, 2003a: 218). It is also difficult for PMSCs to screen potential employees and then to monitor their behaviour in the field (Singer, 2003a: 222). In fact, the problem of the conduct of private contractors is exacerbated by the recruitment practices of some PMSCs. The private military industry provides employment opportunities for those that have been forced out of public military activities and those traditionally drawn to mercenary work (Singer, 2003a: 221; Avant, 2004: 21). As Singer argues, ‘many former members of the most notorious and ruthless units of the Soviet and apartheid regimes have found employment in the industry. These individuals acted without concern for human rights in the past and certainly could do so again’ (2003b: 6).

### Consequences and Outweighing

Thus far, we have considered four major objections to employing PMSCs to undertake humanitarian intervention. The first of these – that this proposal is unrealistic – is largely mistaken. But the other three objections do seem to be convincing. It seems problematic that private companies and their personnel may be motivated by financial interests rather than humanitarian concerns. Using PMSCs also undermines democratic control over the use of armed force – in this case, humanitarian intervention. And PMSCs lack legal accountability, which means that their personnel can (and sometimes do) violate principles of *jus in bello* with impunity.

One way of responding to these objections is to claim that the other agents of intervention (i.e. the UN, regional organisations, and states) are also subject to them. First, regular soldiers may also be motivated by financial remuneration (Lynch and Walsh, 2000: 136). Likewise, the

<sup>28</sup> Also see Avant (2004: 22), the Foreign and Commonwealth Office’s Green Paper (2002: 17), and Spearin (2005: 247).

various elements that comprise the intervener may be self-interested. A number of states, for example, contribute to UN peacekeeping missions for financial reasons (Shearer, 2001; Foreign and Commonwealth Office, 2002). Second, certain agents lack democratic control over military force too. Most obviously, ECOWAS, the AU, and the UN include many undemocratic states. Third, other interveners have dubious records when it comes to respecting principles of *jus in bello*. For example, the Nigerian-led ECOWAS force in Liberia committed abuses against civilians (ICISS, 2001b: 83; Nowrojee, 2004: 5). Similarly, Stephen Kinloch-Pichat (2004: 178) argues that a lack of discipline, amoral personal behaviour, and the corruption of the contingents participating in UN missions have been recurrent themes in its interventions, such as the involvement of UN troops in child prostitution in the DR Congo. The difficulty of legally sanctioning the UN troops involved exacerbates these problems (Kinloch-Pichat, 2004: 186). Thus, the Foreign and Commonwealth Office's Green Paper on PMSCs argues that 'national armies are in many cases guilty of precisely those abuses with which PMSCs are charged. Often they are unaccountable, a danger to stability and frequent violators of human rights' (2002: 19).

This method of defending PMSCs is a common tactic in the literature – to defend the use of private force by highlighting the problems with its public counterpart.<sup>29</sup> And this method seems to be persuasive. It appears that criticism of outsourcing the responsibility to protect can be deflected by comparison with regular soldiers. There is, however, a flaw with this method of argumentation. The problem is this: if it is the case (which I doubt below) that the problems raised by using PMSCs are so serious that intervention by them would always be, all things considered, illegitimate, we should reject outright intervention by PMSCs. We cannot get round this by citing problems with other agents. If other agents have similar problems, it does not follow that using PMSCs becomes morally justifiable. Rather, the proper conclusion should be that we regard *both* PMSCs and other agents' intervention as morally unjustifiable.

This appears to be a major difficulty with the notion that we should consider outsourcing humanitarian intervention. It is not decisive, however. On the one hand, these objections concerning PMSCs' motives and lack of democratic and legal accountability seem to be largely correct. They highlight morally relevant issues with outsourcing intervention to PMSCs. On the other hand, these objections are not, in certain circumstances,

<sup>29</sup> Examples include Scobbie (1992), Lynch and Walsh (2000), and Foreign and Commonwealth Office (2002).

that *significant*. So, rather than challenging their *validity*, I want to challenge the *weight* that we should give to these concerns. Doing so will show that we can hold that humanitarian intervention by PMSCs can be morally justified, without relying on problematic comparisons with other agents.

To do this, I will make a largely consequentialist argument (I say ‘largely’ because there are some nonconsequentialist values, such as democratic accountability, that should play a role in the decision whether to hire PMSCs). More specifically, I will present what I call the ‘Moderate Instrumentalist Approach’ to humanitarian intervention, which I have developed at length elsewhere.<sup>30</sup> The key assertion of this approach is that an intervener’s effectiveness is a *primary*, and sometimes *sufficient*, determinant of its justifiability.

Let me start then by outlining this approach. In its most general form, Philippa Foot asserts, consequentialism ‘identifies certain states of affairs as *good* states of affairs and says that the rightness or goodness of actions (or of other subjects of moral judgment) consists in their positive productive relationship to these states of affairs’ (1988: 244–245). The Moderate Instrumentalist Approach takes the good ‘state of affairs’ that is to be promoted as the enjoyment of human rights (specifically the rights listed in the Universal Declaration). Greater weight should be given to the enjoyment of what Henry Shue (1996) calls ‘basic’ rights, notably the right to physical security (including the rights not to be subject to murder, rape, and torture) and the right to subsistence (including the rights to adequate food, clothing, and shelter). Such rights are basic in that, on the one hand, their enjoyment is necessary for the enjoyment of all other rights (Shue, 1996: 18–20). On the other hand, they are basic in that they are the most morally urgent rights because they protect individuals’ fundamental interests and welfare. Accordingly, the effectiveness of a PMSC undertaking or assisting humanitarian intervention should be measured by its consequences for individuals’ enjoyment of human rights, and especially their basic human rights.

Two further clarifications are required. First, whose enjoyment of human rights needs to be promoted by a PMSC for its intervention to be effective? Most obviously, intervention needs to improve the enjoyment of human rights (and especially basic rights) of those in the political community that is subject to the intervention. But, in addition, some weight should be given to the effects of the intervention on individuals’ enjoyment of human rights in the world as a whole (and, where relevant, the enjoyment of human rights of the main intervener’s home population).

<sup>30</sup> See Pattison (2010).

The importance of this condition is best seen in the negative: an intervention by a PMSC that would cause severe international instability – by, for instance, creating massive refugee flows – would be ineffective and largely unjustifiable. Second, the effectiveness of a PMSC should be measured over the long-term and compared to other potential courses of action.<sup>31</sup> The longer-term view fits with the emphasis of the responsibility to rebuild after humanitarian crises (a central part of the responsibility to protect doctrine) rather than a quick in-and-out intervention that could lead to the crisis flaring up again after the intervener leaves.

Now to the crux of the matter: if a PMSC will be effective at achieving highly beneficial consequences – that is, effective at improving the enjoyment of *basic* human rights of a *large number of* individuals by tackling (or assisting others to tackle) a serious humanitarian crisis – then its use might be morally justifiable *overall*. This is despite its possible inappropriate motive, lack of democratic accountability, and violation of the principles of *jus in bello*. Suppose, for example, if in the beginnings of the genocide in Rwanda, the international community had taken Executive Outcomes up on its offer of humanitarian intervention. Suppose further that this intervention would have been highly effective at saving thousands of lives, but Executive Outcomes would have been motivated by profit and could have violated some Rwandan citizens' human rights. Given its effectiveness at tackling genocide, at saving tens of thousands of Tutsi lives, this intervention would have been justifiable overall, despite the problematic motivation and violation of principles of *jus in bello*. My point, then, is that, generally speaking, the central factor in the moral justifiability of an agent's intervention is its effectiveness. It follows that, if a PMSC is highly effective in one of the three roles identified, its employment can be justifiable overall, despite other moral problems.

It is only in certain circumstances, however, that a PMSC's effectiveness can be sufficient for its justifiability. In particular, this happens only when two conditions are met. First, the PMSC needs to be responding (or assisting in the response) to a humanitarian crisis that is extremely serious. That is to say, there must be scope for the PMSC to achieve a substantial *magnitude* of success by improving the enjoyment of *basic* human rights of a *large* number of individuals, such as in cases of mass killing or genocide. Second, the PMSC needs to have a high *probability* of being successful in its role. Employing the PMSC should be expected to lead to a more effective tackling of the humanitarian crisis than would have

<sup>31</sup> See Seybolt (2007: 30–37) for a defence of the use of counterfactual reasoning in the context of humanitarian intervention.

occurred with intervention solely by public authorities or no intervention whatsoever. Together, these two conditions require a PMSC to have a high probability of achieving a sizeable improvement in the serious humanitarian crisis, either by intervening largely by itself or by assisting others in their intervention. It needs to be expected to make a significant, positive impact on the enjoyment of basic human rights for its intervention to be justified, all things considered. In short, the PMSC needs to be *highly effective*. The good achieved by such an intervention will outweigh possible problems of motivation, democratic accountability, and the violation of the principles of *jus in bello*.

Why is it that the significance of these three concerns can be outweighed when these two conditions are met? My reasoning is as follows. Particularly serious humanitarian crises pose grave problems to human rights and human security regionally and globally, but especially locally, where those in the midst of the crisis have to endure the violation of basic human rights. The degree of human suffering typically involved in the violation of basic human rights – torture, killing, rape, physical injury, death, starvation, and so on – is perhaps the *worst moral wrong* that can happen to an individual. A serious humanitarian crisis usually involves the *mass* violation of basic human rights. As such, it involves (i) the worst moral wrong (ii) on a massive scale. Accordingly, it is of the utmost moral importance that a serious humanitarian crisis is halted.

When the two conditions above are met, a PMSC will be effective at tackling the worst moral wrong on a massive scale. In this context, the potentially morally problematic motivations of private contractors and PMSC decision-makers are overshadowed. The mindset of those intervening seems far less important than that the severe humanitarian crisis is effectively tackled. Likewise, a government might circumvent parliamentary constraints and public opinion on the decision to intervene by employing a PMSC and, by doing so, undermine democratic control over the intervention. But if this PMSC plays a central role in tackling an egregious humanitarian crisis, this lack of democratic accountability seems less problematic. Third, a PMSC may violate some citizens' human rights, for instance, by occasionally failing to distinguish properly between civilian and military targets. Yet its intervention can still be justifiable if it prevents many more violations of basic human rights. Analogously, most regard NATO's intervention in Kosovo as justifiable because it halted ethnic cleansing, despite its use of cluster bombs.<sup>32</sup>

<sup>32</sup> The same applies to the other possible objections to using PMSCs for humanitarian intervention. For instance, the use of PMSCs can still be justified despite unclear liability and ambiguous chains of command.

To be sure, this is not an extreme consequentialist argument. It applies only when these two conditions have been met. That is, it applies only when a PMSC, firstly, is responding to a serious humanitarian crisis and, secondly, when it is likely to be successful. And these conditions will not always be met. First, the humanitarian crisis might be serious (such as arbitrary detention by an oppressive government), but not so serious that the basic human rights of a large number of individuals are at stake. Alternatively, the PMSC might not be effective in the role that it plays in the intervention. In such situations, given the moral problems that arise, we should avoid employing private force to undertake humanitarian intervention (particularly in the first two roles that PMSCs can play). Furthermore, I am not claiming that when these two conditions *are* met it does not matter whether PMSCs possess the right motives, are democratically accountable, and follow principles of *jus in bello*. On the contrary, PMSCs should be properly motivated, democratically accountable, and follow the principles of *jus in bello* in *all* circumstances. A PMSC's intervention will possess *greater* justifiability if they do so since all three qualities have noninstrumental value. My defence of employing PMSCs to undertake humanitarian intervention is restricted, then, to cases where the other concerns that we may have about employing these companies are outweighed – when PMSCs will be highly effective at tackling a serious humanitarian crisis.

### Authority and Assessing Effectiveness

Thus far, I have argued effectiveness is the primary determinant of, and sometimes sufficient for, the justifiability of a PMSCs' intervention. But why not hold that other qualities, such as motives, matter more? The problem is that, as argued above, the other possible qualities to judge an intervener's justifiability do not seem to matter as much as its effectiveness in promoting a large number of individuals' enjoyment of human rights (and especially basic human rights). There is more, however, that may be said in defence of a deontological approach and against the Moderate Instrumentalist Approach. One notable problem is that it can be difficult to assess the likely effectiveness of a PMSC's intervention or contribution to an intervention. There are two forms of this claim.

The first is a stronger, more fundamental objection: we should reject any form of consequentialist thinking because we cannot know beforehand the consequences of an action, such as humanitarian intervention (e.g. Roff, 2009: 81). The ramifications of our actions are unpredictable, unforeseeable, and incalculable, and make any judgment impossible.

We can know the consequences of an intervention afterwards, but this knowledge is of little use. It would not help us to decide whether to hire a PMSC when we need to know whether it will be effective.

This objection is mistaken. First, we can adopt an expected consequentialist criterion of rightness that asserts that the rightness of an action or a decision-making procedure is determined by the *expected* consequences of the act or procedure (rather than the actual consequences).<sup>33</sup> This means that, on the Moderate Instrumentalist Approach, the justifiability of the decision to hire a PMSC for humanitarian intervention depends on whether we can *reasonably expect* it to be effective, rather than whether it *actually* was effective (perhaps due to unforeseeable events). Second, this epistemic problem also arises for almost any alternative action-guiding, forward-looking moral approach. Most deontological theories give consequences *some* moral significance.<sup>34</sup> The same problem would therefore arise for the assessment of consequences for these theories. Moreover, there may also be similar epistemological problems for ruled-based deontological approaches, which, if forward-looking, will have to assess whether an intervention can be expected to meet a particular rule. A rule requiring absolute fidelity to the principles of *jus in bello*, for instance, may run into problems in determining whether an intervener, such as a PMSC, would be likely to meet these principles. In other words, the epistemological problems of assessing future behaviour can arise for both consequentialist and deontological forward-looking approaches.

The second form of this objection does not focus on the problems of consequentialism *in general* at making predictions; rather, it concerns the problems of knowing the consequences of *humanitarian intervention* in particular. Thus, it may be argued that the complexity of humanitarian crises and the number of different factors involved make any assessment of a PMSC's likely effectiveness impossible and, as a result, useless as a moral guide to its potential justifiability.

This argument also fails to persuade. Although there may be difficult cases, it is sometimes possible to predict fairly accurately the likely success of a PMSC's intervention or support of another agent's action. For instance, suppose that Company A is to provide State B with much-needed airlift capacity. This airlift capacity will enable State B to provide civilian

<sup>33</sup> For further discussion of expected consequentialism, see Hooker (2000), Miller (2003), and Singer (1977). Those who favour actual consequentialism, which judges the rightness of an action by its actual consequences, include Smart (1973).

<sup>34</sup> As Rawls argues: '[a]ll ethical doctrines worth our attention take consequences into account in judging rightness. One which did not would simply be irrational, crazy' (1999: 26).

protection throughout State C, which is currently suffering a major humanitarian crisis. Assume further that Company A has an excellent reputation of fulfilling its contracts to the best of its ability and has much experience in airlift. In this case, we can judge that Company A's contribution is likely to improve the effectiveness of the intervention. Alternatively, suppose that Company D is to guard key infrastructure in support of State E's intervention. Company D has previously broken contracts when the situation has become dangerous and lacks experienced personnel to carry out the mission. In this case, the effectiveness of Company D's action would be much more dubious.

That said, it might be argued that a procedural approach would be preferable. This is because, although there may be clear-cut cases, there will also be difficult cases where it will be hard to judge whether a PMSC will be likely to be effective. The authorisation of the use of PMSCs should be left to an international institution that has sufficient expertise to make this decision. Moreover, it may be claimed that PMSCs should not be left to judge the effectiveness of intervention themselves since they cannot be trusted to make this judgment in a reliable manner. They have notable financial incentives to overemphasise the likely effectiveness of their intervention. Nor should the judgment be left to the state employing the services of PMSCs, the argument runs, because states may be mistaken in this assessment. For instance, state leaders may not possess sufficient knowledge to assess the likely effectiveness of a PMSC and close ties between PMSC directors and state leaders may corrupt any judgment.

There is something to these arguments. They present a strong case for setting up a procedural scheme whereby the use of a PMSC for humanitarian intervention requires the authorisation of an international institution that has expert knowledge of the PMSC's likely effectiveness (and other qualities). Such an institution could authorise the use of PMSCs for humanitarian intervention by the UN, regional organisations, or states.<sup>35</sup> The problem, of course, is that no such institution currently exists. The UN Security Council could be handed the task, but it is doubtful whether it possesses the requisite expertise and sufficient manpower to play such a role.

Should the establishment of an institution that could play such a role be regarded as a prerequisite before PMSCs can justifiably be used for humanitarian intervention, especially in combat situations? This is

<sup>35</sup> See Malcolm Patterson (2008), who presents a detailed proposal for outsourcing UN peace operations, including a new UN 'Contractor Directorate' to be in charge of authorising the use of PMSCs.



doubtful. Although the estimates of a PMSC's effectiveness may, on occasion, be mistaken or corrupted, this should not mean that there is an absolute prohibition on the use of these firms without appropriate international authorisation. The concerns of misjudging the effectiveness of a PMSC's intervention may mean that any assessment of a PMSC's likely success should be cautious. Nevertheless, as suggested above, there may be clear-cut cases where it is patent that a PMSC will have a high probability of achieving a sizeable success. And, although permitting humanitarian intervention by a PMSC in such cases may set a precedent whereby states and PMSCs in less clear cases mendaciously claim that their intervention will be highly effective, such cases of abuse are not necessarily problematic. They do not necessarily mean that the use of PMSCs should be prohibited outright, as long as the harm caused in the cases of abuse will be outweighed by the good achieved (in terms of the enjoyment of basic human rights) in the clear-cut cases.<sup>36</sup>

### Consequentialist Problems

A more telling objection concerns not the problems with *predicting* whether a PMSC will be likely to be effective at undertaking humanitarian intervention, but, more practically, with whether a PMSC will, in fact, be likely to be successful. That is, it may be objected that humanitarian intervention by PMSCs will not be effective for a number of reasons. Therefore, the second condition (that PMSCs must be likely to be successful) will rarely be met, if ever. To start with, PMSCs are often viewed by the public as mercenaries. This may make it harder to win the hearts and minds of the local population, which can be crucial. Companies may also fail to tackle the causes of the crisis, offering only short-term solutions (Singer, 2003b: 7; Holmqvist, 2005: 13). The sort of operations necessary for a successful long-term resolution (and post-conflict reconstruction), which would restore torn social fabrics and foster

<sup>36</sup> A procedural approach might also be claimed to avoid some of the general uncertainties that a consequentialist approach runs into with its reliance on predictions. We could know with certainty, for example, whether a PMSC has UN Security Council approval and could use this as the basis of our decision-making. The difficulty, though, is that the procedures of the international system possess little, if any, noninstrumental moral value in the context of humanitarian intervention (Buchanan, 2004; Tesón, 2006). Most notably, it is doubtful whether the procedures of the UN Security Council have intrinsic worth, given the unrepresentativeness and the undemocratic nature of Council decision-making (see Lepard 2002: 310–330). Consequently, using the procedures of the current international system as the basis to decide whether to use PMSCs for humanitarian intervention would be a morally questionable way of making this decision.

cooperation among local parties, are not profitable (Singer, 2003b). As a result, the humanitarian crisis may well reignite quickly after the PMSC has left. In Angola and Sierra Leone, for example, Executive Outcomes and Sandline International's involvement did not address the fundamental issues that prompted the conflict and, consequently, did not secure a final peace (Howe, 1998; Brayton, 2002: 322).

Furthermore, PMSCs have an incentive *not* to be effective, especially in the long-term. Their fortune relies on continued business. If they are too successful, if they tackle the humanitarian crisis straightaway, their services will no longer be required. As a result, PMSCs have reason to prolong insecurity so that they continue to be employed. This incentive to be ineffective may be somewhat counter-balanced by the need to have a good reputation in order to be employed again. Nonetheless, a PMSC may be able to prolong the conflict without it being obvious that it is doing so and consequently without harming its reputation (Bures, 2005: 540). PMSCs' possible profit motivation also means that they sometimes have incentives to avoid undue risks and to break a contract if the situation becomes too dangerous, which can further harm the effectiveness of an intervention (Singer, 2003a: 155–159).

It would be too sweeping to suggest that PMSCs will never be effective, however. There is some reason to expect them, if only in exceptional cases, to meet the two conditions, particularly in supporting roles. As discussed above, providing logistical support, training, and lift capacity may improve the success of another agent's humanitarian intervention, and the concerns over the violation of *jus in bello* may be less serious. Nevertheless, these practical objections do much to repudiate the case for a significant outsourcing of the responsibility to protect to the private sector for all three potential roles.

## Conclusion

To recap: I have argued that the use of private force for humanitarian intervention can be morally justifiable, even without a strong system of regulation, providing that two conditions are met: when a PMSC is (i) responding to a serious humanitarian crisis and (ii) likely to be highly successful. Although the use of PMSCs poses concerns over motives, democratic accountability, and fidelity to the principles of *jus in bello* (particularly in roles that may involve combat), these problems can be outweighed by the beneficial consequences of making a sizeable improvement in a large number of individuals' enjoyment of basic human rights. Much will depend on the details of the case and, in particular, how

effective the use of PMSCs will be. Detailed empirical investigations (beyond the scope of this article) would be required to assess the seriousness of the humanitarian crisis and whether the use of PMSCs would be sufficiently beneficial. This can then be used to determine whether PMSCs should actually be employed in a particular case, making use of the theoretical framework that I have developed (the Moderate Instrumentalist Approach).

I have not defended a general, wholesale outsourcing of the responsibility to protect to the private sector. My (partial) defence of the use of PMSCs for humanitarian intervention asserts that the use of PMSCs should be considered only to supplement the existing agents of intervention and on a case-by-case basis. Moreover, I have suggested that there are several doubts over PMSCs' effectiveness, which mean that there will often not be a strong rationale for using PMSCs for humanitarian intervention in a particular case. In fact, the problems with PMSCs' lack of expected effectiveness (as well as the other three problems outlined) may mean that rather than looking to the private sector as the solution to the problems faced by the current agents and mechanisms of humanitarian intervention, it would be more fruitful to focus our attention on improving the capacity to intervene in other ways, such as by augmenting regional organisations' capabilities and improving links between potential interveners (such as the AU, NATO, and the UN) to enable further hybrid peace operations (see Piiparinen, 2007; Pattison, 2010: 219–243). Nevertheless, as the general thrust of this article has maintained, there may still be cases when it is potentially morally justifiable to use PMSCs for humanitarian intervention: namely, when the use of these firms can help to tackle effectively the mass violation of basic human rights.

### **Acknowledgements**

I would like to thank Derek Bell, Daniel Steel, three anonymous reviewers, and the editors for their helpful comments on earlier drafts of this article.

### **References**

- Amnesty International (2009), 'Amnesty International USA analysis of IPOA code of conduct, version 12', *Amnesty International USA*, July 2009. Retrieved 17 August 2004 from <http://www.amnestyusa.org/military-contractors/aiusa-analysis-of-ipoa-code-of-conduct-v-12/page.do?id=1520016>

- Annan, K. (2005), In larger freedom: towards development, security and human rights for all, A/59/2005. Retrieved 19 June 2009 from <http://www.un.org/largerfreedom/contents.htm>
- Arneson, R. (2003), 'Defending the purely instrumental account of democratic authority', *Journal of Political Philosophy* 11(1): 122–132.
- Avant, D. (2004), 'Think again: mercenaries', *Foreign Policy* 143: 20–28.
- Ayoob, M. (2002), 'Humanitarian intervention and state sovereignty', *International Journal of Human Rights* 6(1): 81–102.
- Baker, D. (2008), 'Of "mercenaries" and prostitutes: can private warriors be ethical?', in A. Alexandra, D. Baker and M. Caparini (eds), *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations*, New York: Routledge, pp. 30–42.
- Ban Ki-Moon (2009) Implementing the responsibility to protect: report of the Secretary-General, A/63/677. Retrieved 17 August 2009 from <http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/677>
- Bellamy, A. (2009), *Responsibility to Protect: The Global Effort to End Mass Atrocities*, Cambridge: Polity Press.
- Bellamy, A. and P. Williams (2009), 'The West and contemporary peace operations', *Journal of Peace Research* 46(1): 39–57.
- Brayton, S. (2002), 'Outsourcing war: mercenaries and the privatization of peacekeeping', *Journal of International Affairs* 55(2): 303–330.
- Brooks, D. (2000), 'Messiahs or mercenaries? The future of international private military services', *International Peacekeeping* 7(4): 129–144.
- Brooks, D. and M. Chorev (2008), 'Ruthless humanitarianism: why marginalizing private peacekeeping kills people', in A. Alexandra, D. Baker and M. Caparini (eds), *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations*, New York: Routledge, pp. 116–130.
- Buchanan, A. (2004), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press.
- Bures, O. (2005), 'Private military companies: a second best peacekeeping option?', *International Peacekeeping* 12(4): 533–546.
- Chesterman, S. and C. Lehnardt (eds) (2007), *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, Oxford: Oxford University Press.
- Christiano, T. (1996), *The Rule of the Many: Fundamental Issues in Democratic Theory*, Oxford: Westview Press.
- Cottey, A (2008), 'Beyond humanitarian intervention: the new politics of peacekeeping and intervention', *Contemporary Politics* 14(4): 429–446.
- Dahl, R. (1989), *Democracy and its Critics*, London: Yale University Press.
- Evans, G. (2008), *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington, DC: Brookings Institution Press.
- Foot, P. (1988), 'Utilitarianism and the virtues', in Samuel Scheffler (ed.), *Consequentialism and its Critics*, Oxford: Oxford University Press, pp. 224–241.
- Foreign Affairs Committee (2002), *Private Military Companies: Response of the Secretary of State for Foreign and Commonwealth Affairs*, London: The Stationery Office. Retrieved 17 August 2009 from [http://www.fco.gov.uk/resources/en/pdf/7179755/2002\\_oct\\_ninth\\_report](http://www.fco.gov.uk/resources/en/pdf/7179755/2002_oct_ninth_report)
- Foreign and Commonwealth Office (2002), *Private Military Companies: Options for Regulation*, London: The Stationery Office. Retrieved 17 August 2009 from [http://www.fco.gov.uk/resources/en/pdf/pdf4/fco\\_pdf\\_privatemilitarycompanies](http://www.fco.gov.uk/resources/en/pdf/pdf4/fco_pdf_privatemilitarycompanies)

- Gantz, P. (2003), 'The private sector's role in peacekeeping and peace enforcement', *Refugees International*, 18 November 2003. Retrieved 17 August 2009 from <http://www.globalpolicy.org/component/content/article/199/41034.html>
- Ghebali, V. (2006), 'The United Nations and the dilemma of outsourcing peacekeeping operations', in A. Bryden and M. Caparini (eds), *Private Actors and Security Governance*, Berlin: LIT Verlag, pp. 213–230.
- Heinze, E. (2009), *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention*, Albany: SUNY Press.
- Holmqvist, C. (2005), *Private Security Companies: The Case for Regulation: SIPRI Policy Paper no. 9*, Stockholm: Stockholm International Peace Research Institute.
- Hooker, B. (2000), *Ideal Code, Real World: A Rule-Consequentialist Theory of Morality*, Oxford: Clarendon Press.
- Howe, H.M. (1998), 'Private security forces and African stability: the case of Executive Outcomes', *Journal of Modern African Studies* 36(2): 307–331.
- ICISS (2001a), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre.
- (2001b), *The Responsibility to Protect: Research, Bibliography, Background: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, Ottawa: International Development Research Centre.
- Kinloch-Pichat, S. (2004), *A UN 'Legion': Between Utopia and Reality*, London: Frank Cass.
- Leander, A. and R. van Munster (2007), 'Private security contractors in the debate about Darfur: reflecting and reinforcing neo-liberal governmentality', *International Relations* 21(2): 201–216.
- Lepard, B. (2002), *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania: Pennsylvania State University Press.
- Lilly, D. (2000), 'The privatization of peacekeeping: prospects and realities', *Disarmament Forum* 3: 53–62.
- Lynch, T. and A.J. Walsh (2000), 'The good mercenary?', *Journal of Political Philosophy* 8(2): 133–153.
- Miller, D. (2003), 'Actual-consequence act utilitarianism and the best possible humans', *Ratio* 16(1): 49–63.
- Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict (2008). Retrieved 17 August 2009 from <http://www.eda.admin.ch/psc>
- Nardin, T. (2006), 'Introduction', in T. Nardin and M. Williams (eds), *NOMOS XLVII: Humanitarian Intervention*, New York: New York University Press, pp. 1–28.
- Nowrojee, B. (2004), 'Africa on its own: regional intervention and human rights', *Human Rights Watch World Report*. Retrieved 17 August 2009 from <http://199.173.149.120/wr2k4/download/4.pdf>
- O'Hanlon, M. and P.W. Singer (2004), 'The humanitarian transformation: expanding global intervention capacity', *Survival* 46(1): 77–100.
- Patterson, M. (2008), 'A corporate alternative to United Nations *ad hoc* military deployments', *Journal of Conflict and Security Law* 13(2): 215–232.
- Pattison, J. (2008), 'Just war theory and the privatization of military force', *Ethics & International Affairs* 22(2): 143–162.
- (2009), 'Humanitarian intervention, the responsibility to protect, and *jus in bello*', *Global Responsibility to Protect* 1(3): 364–391.

- (2010), *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?*, Oxford: Oxford University Press.
- (forthcoming), 'Deeper objections to the privatisation of military force', *Journal of Political Philosophy*.
- Percy, S. (2006), *Regulating the Private Security Industry*, Adelphi Chapter: IISS and Routledge.
- Piiparinen, T. (2007), 'The lessons of Darfur and the future of humanitarian intervention', *Global Governance* 13(3): 365–390.
- Rawls, J. (1999), *A Theory of Justice*, Revised Edition, Oxford: Oxford University Press.
- Roff, H.M. (2009), 'Response to Pattison: whose responsibility to protect?', *Journal of Military Ethics* 8(1): 79–85.
- Sandline International (2000), 'Open letter from Sandline on peacekeeping and PMCs', 5 June 2000. Retrieved 17 August 2009 from <http://www.sandline.com/comment/list/comment28.html>
- Schreier, F. and M. Caparini (2005), *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Occasional Paper – no. 6. Geneva: Geneva Centre for the Democratic Control of Armed Forces.
- Scobbie, I. (1992), 'Mercenary morality: a reply to Professor Coady', in A.G.D. Bradney (ed.), *International Law and Armed Conflict*, Stuttgart: Franz Steiner Verlag, pp. 71–91.
- Seybolt, T. (2007), *Humanitarian Military Intervention: The Conditions for Success and Failure*, Oxford: SIPRI and Oxford University Press.
- Shearer, D. (2001) 'Privatising protection', *World Today*, August/September 2001. Retrieved 17 August 2009 from <http://www.globalpolicy.org/component/content/article/199-peacekeeping/40933.html>
- Shue, H. (1996), *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, 2nd edn., Princeton: Princeton University Press.
- Singer, M. (1977), 'Actual consequence utilitarianism', *Mind* 86(341): 67–77.
- Singer, P.W. (2003a), *Corporate Warriors: The Rise of the Privatized Military Industry*, New York: Cornell University Press.
- (2003b), 'Peacekeepers Inc.', *Policy Review* 119. Retrieved 17 August 2009 from <http://www.hoover.org/publications/policyreview/3448831.html>
- (2005), 'Outsourcing war', *Foreign Affairs* 84(2): 119–132.
- Smart, J.J.C. (1973), 'An outline of a system of utilitarian ethics', in J.J.C. Smart and B. Williams (eds), *Utilitarianism: For and Against*, Cambridge: Cambridge University Press.
- Spearin, C. (2005), 'Between public peacekeepers and private forces: can there be a third way?', *International Peacekeeping* 12(2): 240–252.
- Tesón, F. (2005a), 'Ending tyranny in Iraq', *Ethics & International Affairs* 19(2): 1–20.
- (2005b), *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd edn., New York: Transnational Publishers.
- (2006), 'The vexing problem of authority in humanitarian intervention: a proposal', *Wisconsin International Law Journal* 24(3): 761–770.
- Thomson, J. (1994), *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*, Princeton: Princeton University Press.
- UN (2004) *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change, A/59/565. Retrieved 17 August 2009 from <http://www.un.org/secureworld/report.pdf>
- (2005) *2005 World Summit Outcome*, A/RES/60/1. Retrieved 17 August 2009 from <http://www.un.org/summit2005/documents.html>

- Walzer, M. (2008), 'Mercenary impulse: is there an ethics that justifies Blackwater?', *New Republic*, 18 November 2003. Retrieved 17 August 2009 from <http://www.tnr.com/politics/story.html?id=a498d530-e959-4f1e-8432-8851075ac657>
- Wheeler, N. (2000), *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford University Press.
- Witter, W. (2006), 'Private firms eye Darfur', *Washington Times*, 18 November 2003. Retrieved 17 August 2009 from <http://www.washingtontimes.com/news/2006/oct/01/20061001-114438-5654r/>
- Welsh, J. (2004), 'Authorizing humanitarian intervention', in R. Price and M. Zacher (eds), *The United Nations and Global Security*, Basingstoke: Palgrave Macmillan, pp. 177–192.