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The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes

DEANE-PETER BAKER & JAMES PATTISON

ABSTRACT *The possibility of using private military and security companies to bolster the capacity to undertake intervention for human rights purposes (humanitarian intervention and peacekeeping) 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 article considers the principled case for privatising humanitarian intervention. It focuses on two central issues. First, 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? Second, on the other hand, is there a case for preferring these firms to other, state-based agents of humanitarian intervention? 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 for humanitarian intervention?*

1. 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 interventions for human rights purposes, that is, for humanitarian intervention and peacekeeping. Their use, it is argued, could 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.¹

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 argue that using PMSCs for humanitarian intervention and peacekeeping would be 'faster, better and cheaper'.² This is, they claim, because of their economies of scale and their extensive use of experienced former military personnel.³

On the other hand, critics of using PMSCs for humanitarian intervention and peacekeeping reject 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).⁴ 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.⁵ 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 PMSCs.⁶ Third, the lack of legal accountability of PMSCs can mean that private contractors can violate principles of *jus in bello* with impunity.⁷ Fourth, the use of PMSCs threatens to loosen the legal and political instruments that govern and regulate warfare.⁸ 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.⁹

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 largely depend on the current realities of the international system and, in particular, the (in)efficiencies of the regular military and the lack of effective regulation of the private military industry. 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 largely provisional in that they do not claim that there is anything *fundamentally* wrong with the use of private force, including for intervention for human rights purposes. In theory at least, 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 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 the democratic control over their use.

In this article, we are concerned instead with the *principled* case for and against the use of PMSCs for intervention for human rights purposes, largely independent of current political realities. We focus on two central questions. First, we consider whether there is a principled case for *opposing* the use of PMSCs for intervention for human rights purposes. 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.¹⁰ 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*? Second, 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 these roles? Overall, we will argue, first, that there is little principled reason to oppose PMSCs for humanitarian intervention and peacekeeping and, second, that there is *some* principled reason for favouring PMSCs in this role (although this is not of an overwhelming magnitude).

Three 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).¹¹ What we want to concentrate on for the most part are the potentially principled issues that relate specifically to intervention for human rights purposes. So, we are primarily 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. Second, we are concerned with the use of PMSCs for a wide range of peace operations, from more traditional peacekeeping missions by the UN to robust military interventions by states (and so we shall sometimes use the catch-all term 'intervention for human rights purposes'). This is because it is no longer so easy to draw a clear line between humanitarian interventions and peacekeeping missions¹² and because similar normative issues arise for outsourcing humanitarian interventions as for peacekeeping missions (both concern military actions with the predominant aim of the promotion of human rights rather than solely national interests). Third, 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 (although the humanitarian credentials of this operation may be questioned). When intervening, PMSCs could play a variety of roles, including being hired to undertake intervention by themselves and providing additional combat troops to fill in gaps in another agent's order of battle. More likely, however, is that they are used in a 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).

2. The Case against Privatising Intervention for Human Rights Purposes

Let us start then with the case *against* privatising humanitarian intervention and peacekeeping. We will consider two potential principled arguments against the use of private force in these roles: (i) bad intentions and (ii) the alleged abdication of duties. These two arguments, we will claim, offer little principled reason to oppose the use of PMSCs for intervention for human rights purposes.

2.1. 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.¹³ An intervener

without a humanitarian intention cannot be engaged in intervention for human rights purposes (humanitarian intervention or peacekeeping) — their action would instead be self-defence, imperialism, colonialism, or another form of action. Note that our focus is on PMSCs' *intentions* — their purpose or objective of their action — rather than their motives — the underlying reasons for acting. We have considered the vexed issue of the alleged mercenary motives of those engaged in private force in detail elsewhere¹⁴ and so will not repeat this analysis here. Also note that our focus is on the intentions of the PMSCs, rather than individual private contractors. Whilst there may be a strong case for extending the *jus ad bellum* principle of right intention to include the individuals who carry out the use of force (although we cannot make the point here), *ad bellum* issues are usually deemed to be the province of those who decide whether to resort to the use of force and, typically, only political leaders or the state more generally. But even on this more restrictive view of *jus ad bellum*, it seems that PMSCs and their CEOs are a proper subject of *jus ad bellum*. Like states and their leaders, PMSCs and their CEOs make a decision whether to resort to force, and so should be governed by the just war criteria, including right intention.

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.¹⁵ 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, that a tighter system of contracts and oversight mechanisms might be able to ensure that any PMSCs hired would have to possess a humanitarian intention, even if their underlying motives are profit-driven. To explain: a tighter system of, first, contracting could limit the roles in which PMSCs could be hired. They may be legally hired, for instance, in only humanitarian roles. They would not be given contracts where their role would not be humanitarian and may lack a humanitarian intention. To fill the humanitarian roles, PMSCs will need to possess a humanitarian intention (recall here that we define intention as a 'purpose or objective of action'). Of course, it may be that even when they are given a humanitarian contract, PMSCs will depart from the terms of the contract. However, a tighter system of, second, oversight could limit the extent to which PMSCs depart from the terms of the contract — that is, lack a humanitarian intention. Compliance with the contract may be incentivised and departure from it penalised. A strong system of contracts and oversight mechanisms might then be able to ensure that PMSCs have humanitarian intentions, even if their underlying motives are still profit driven. To be sure, states have currently shown little desire to develop such mechanisms at the international level. For instance, 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 existing obligations, for the most part, are not robustly enforced by states and the Montreux Document was watered down in several key ways.¹⁶ As such, it may be that achieving the requisite system of regulation to ensure that PMSCs will possess

the right intention is a long way off and, consequently, this objection about intentions will continue for the foreseeable future to pose a contingent concern. However, that there could be such a system means that it is not ultimately a *principled* reason to oppose the use of PMSCs (the focus of this article).

2.2. 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 tackle human rights violations 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 since its intervention is likely to be the most morally justifiable. This is because it will be the best state in terms of effectiveness at tackling the crisis, as well as showing fidelity to the principles of *jus in bello*, having internal support (in the case, from the UK population), and external support from the victims of the crisis.¹⁷ However, rather than acting itself, the UK hires instead DynCorp — a leading PMSC — to intervene for it. In essence, it is *paying* someone 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 acceptable to 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 morally justifiable. Both would be equally effective at tackling the crisis, would show equal fidelity to the principles of *jus in bello*, have the same level of internal support, and equal external support from the victims of the crisis. In this case, there does not seem to be anything wrong about hiring DynCorp. Most notably, the Gabonese would still receive the same level of protection as they would have if the UK had acted. Consequently, the duty to tackle human rights violations does not seem to turn on whether the agent discharges this duty *itself*. What matters is that the duty *is* discharged justifiably. Hiring someone to fulfil the duty to tackle human rights violations 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.¹⁸

3. The Case for Privatising Intervention for Human Rights Purposes

Having rejected the principled case against privatising humanitarian intervention and peacekeeping, let us now consider the case *for* outsourcing these roles. Why might it be claimed that PMSCs should be *preferred* to regular soldiers when it comes to intervention for human rights purposes? We will consider four reasons why one might hold this to be true.

3.1. 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 intervention for human rights purposes is, in certain circumstances, a duty.¹⁹ 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, for instance, argues that humanitarian intervention may be a duty.²⁰ 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, moreover, intervention often puts their soldiers at considerable risk.²¹ To flesh out the issue of costs, it helps to consider the fiduciary obligations that states owe to their citizens. On what Allen Buchanan 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.²² 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'.²³ 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.

Miller goes on to argue that, where no national interest is at stake, the anticipated costs to the intervening state must be quite low.²⁴ 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'.²⁵

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 would be 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, elsewhere Miller considers a voluntary taskforce especially for intervention, where protection is entirely in the hands of volunteers, as a potential solution to this dilemma.²⁶

Are fiduciary obligations then a persuasive reason to favour PMSCs for humanitarian intervention? To start with, this argument fails in cases where intervention for human rights purposes is, in fact, self-interested — when humanitarian intervention would be within the remit of the social contract. Examples might include India's intervention in Bangladesh, which as well as saving lives weakened Pakistan, and Tanzania's intervention in Uganda in 1979, which aimed to save lives but also removed Idi Amin from power (who had previously attacked Tanzania). 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.²⁷ Accordingly, many interventions for human rights purposes will be in the interests of the state and therefore not subject to this criticism.

More fundamentally, this argument cannot distinguish between military and financial costs.²⁸ 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 beyond the terms of the social contract — when it is not in the national interest.

While the above points are sufficient to cast doubt on this ostensible reason in favour of the employment of PMSCs for interventions for human rights purposes, the strong account of fiduciary obligations on which the argument is based seems itself to be erroneous. As Buchanan points out, the discretionary association view denies that government possesses any obligations to those beyond the borders of the state.²⁹ If this were correct then almost any action, including imperialism, colonisation, and exploitation, could be justified if it would advance the interests of those within the state, regardless of the harm caused to those beyond its borders. This is clearly problematic, and gives reason to doubt the strict discretionary association view in general.

More plausibly, we can acknowledge that governments possess special obligations to promote their citizens' interests, but reject the idea that this entails that governments have no responsibilities to noncitizens. In other words, a government does not have to occupy itself *exclusively* with the interests of its citizens. Rather, the point is that the *primary* role of government is to promote its citizens' interests. This more moderate approach allows room for a government to possess certain obligations to those beyond its borders, including the duty to intervene when a humanitarian crisis is serious, even when the intervention will be risky. So, an intervener can subject its home population to some harm when helping a *much greater* number of individuals from *severe* harm beyond its borders. In such cases, the duty to intervene to help foreigners outweighs the duty to its citizens. (In less serious cases, humanitarian intervention may go beyond the scope of a government's obligations to those beyond its borders.)

In this regard it is difficult to disagree with Richard Vernon, who asserts that those beyond the zones of mutually beneficial relationships are not beyond the pale of moral regard.³⁰ 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.³¹ The right of associative obligation cannot honestly be given, he argues, 'in relation to those cases in which outsiders suffer the violent effects of political collapse or the violent oppression of abusive states, where the capacity to resist state terror or to organize for collective self-preservation has been lost'.³² Accordingly, Vernon argues that citizens of successful societies can justify their enjoyment of benefits only when they are willing to aid the victims of failed or abusive states by, for instance, undertaking humanitarian intervention. 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. But when outsiders are not in such a position, such partiality can be permissible only when a reasonable effort is made by those within the social compact to assist outsiders to create flourishing civil societies, such as by undertaking intervention for human rights purposes when required to do so.

3.2. Fairness and Spreading the Costs

Another reason that could be proposed, on principled grounds, in favour of using PMSCs for interventions for human rights purposes, is the claim that it is potentially fairer to those who have to pay the costs of intervention. This is because, unlike for

regular forces, the costs of an intervention by a PMSC can be more easily spread 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, 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 intervention?³³

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 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 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 react is fairly spread amongst the members of the international community.

However, this consideration would provide a clear reason to prefer PMSCs only if it were not possible for there to be a statist arrangement that distributes fairly the burdens of intervention amongst potential contributors. But this is quite possible and, to a certain extent, is already how the UN peace operations system currently works (albeit imper-

fectly). 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 interventions for human rights purposes. 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.³⁴

3.3. *The Soldier-State Contract*

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

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.³⁵

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 protecting the human rights of those beyond the borders of the state. Martin Cook, 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"'.³⁶ By this reasoning, regular volunteer military personnel cannot be legitimately required to undertake humanitarian intervention. Even where there is an unproblematic duty of humanitarian intervention, it seems that the state cannot carry out this duty because doing so would conflict with the duties that it owes to its own military personnel. The point 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 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 fulfil their moral obligations to intervene, without thereby violating their moral obligations to their military personnel.³⁷

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 interventions for human rights purposes, given the frequency of such operations. Indeed, the recruitment campaigns of some armed forces (such as the British Navy) have used the possibility of conducting humanitarian intervention in their public advertisements. Similarly, Cook, in fact, points out that American political discourse speaks ‘in universalizing terms of fighting wars to end all wars, advancing universal human rights and democratic political order, and opposing tyranny and despotism’.³⁸ Such rhetoric is likely to have an impact on individuals signing up: they 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.³⁹

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

To help to see this, consider the following analogy. In the testing of new drugs or medical procedures for biomedical research, the volunteer’s consent is crucial. This consent is not, however, given generally. The volunteer does not agree to a generic consent form that details all the possible effects of a wide array of potential drugs and procedures. Rather, they consent only to the testing of a specific drug or procedure, with the likely effects of that drug or procedure detailed as far as possible. It seems that such specific consent carries far more moral weight than the broad consent to volunteer for ‘medical research’. Similarly, the private contractor’s specific consent seems to carry more moral weight than the regular soldier’s general consent to participating in humanitarian interventions.

Why exactly should specific consent carry greater moral weight than general consent? In short, the reason is that the former, unlike the latter, is unambiguous. More specifically, Onora O’Neill argues that consent is an attitude to a proposition that describes the action to be performed, and propositions may be more or less detailed.⁴⁰ So, with specific consent, there is greater detail and so no doubt as to whether the individual has agreed to the action. By contrast, general consent, which is less detailed, provides only a presumption. There may be some — even if only a little — doubt about what exactly the individual has generally agreed to.

Thus, in the case of the general consent of the regular volunteer 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 *particular* wars or 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 (when they are

not misled), 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.

It should be noted here that this argument is not necessarily limited to interventions for human rights purposes. 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). It should also be noted that there might be unanimous support amongst the soldiers for the intervention or war. Thus, although their consent is not sought, the war would not undermine their individual autonomy since they would want to participate anyway. As such, the moral import of the strength of our point about specific and general consent depends on the level of willingness amongst the soldiers fighting the wars and generally assumes that at least *one* regular soldier would not desire to fight.⁴¹ All this is not to say that regular volunteer soldiers are wronged by humanitarian intervention and peace-keeping (or wars more generally). Their general consent makes it permissible for them to be used for interventions for human rights purposes. In fact, as we will argue in the next section, even if they do not clearly 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.

3.4. Forcing Soldiers to Save Lives

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 volunteer soldiers do not, in fact, consent to such operations, this argument considers, more fundamentally, whether those who do not consent to such an operation can be *forced* to save strangers. To put this 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 undertake intervention for human rights purposes to fight in such operations. In particular, it may be argued that conscription and forcing volunteer soldiers to fight in a war that they do not consent to should be morally prohibited. If this is correct, then it seems that there is a much stronger — even infeasible — reason to favour private contractors.

Why might one hold this position? It might be claimed that individuals cannot be forced to save the lives of others without their consent. Analogously, it might be argued that without his *ex ante* agreement a private citizen cannot be required to enter into a burning building to save another. To force the individual to enter the building would be to violate their individual autonomy and so to seriously wrong them. Therefore, it may seem that private contractors should always be 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 overwhelmingly preferred to regular volunteer soldiers, given the distinction between general and specific consent highlighted above. Regular volunteer soldiers only generally

consent to perform a variety of options, whereas private contractors would consent to a specific humanitarian intervention. The latter would agree more clearly to the specific risks of intervention.

However, this argument seems to be too strong. The prohibition on forcing individuals to save others does not seem to be absolute. On the contrary, there are three reasons for holding that forcing individuals to save the lives of others can sometimes be permissible. First, the amount of risk that the individuals will be subject to when saving others may vary. There may be only a small chance that they will be seriously harmed or killed. Second, the degree of harm that they will be at risk of may be only of a relatively small magnitude, such as only a minor injury. Combining these two points, an individual would face, for instance, only a (i) small risk of (ii) minor harm if they were to enter into a burning building to save the life of another. Despite this risk, it seems that they could be coerced into doing so. Third, even in cases of a more likely serious harm, this harm may be outweighed by the prevention of a much greater harm, such as by the saving of a much greater number of individuals from likely death. In the example above, a private citizen cannot be justly forced to enter into a burning building, at great and significant risk, to save the life of only one other individual, but could be justly forced to do so to save the lives of five hundred small children.

To be sure, we are not defending here a simple consequentialist calculation of how many lives are to be saved against how many lives are to be put at risk. The justifiability of forcing individuals to face a risk will be dependent on the likelihood and magnitude of the risk, the difference between doing and allowing, and several other moral considerations, such as the individual's particular circumstances. As such, any assessment will be highly complex. Nevertheless, *at some point* it is permissible to force individuals to face risk to save the lives of others; their clear consent is not always necessary for this. This point may be reached only when the numbers of lives to be saved is significantly higher than the number of lives to be risked. Nor are we arguing that individuals are under a duty to sacrifice themselves. Rather, our claim instead concerns *decision makers*, who will sometimes be morally justified in forcing individuals to face the risk of major harm in order to avert an even greater harm.

Likewise, conscription, even when it may involve likely death, may be permissible for national defence when the number of those at risk is high, such as when the state is threatened with invasion by a brutal aggressor.⁴² Indeed, intuitively, conscription seems to be a relatively clear case of when some smaller number of individuals can be forced to save the lives of a higher number of innocents who are at risk of serious rights violations. And, if it is the case that conscription for national defence can be permissible because of the number of rights violations involved, it seems to follow that it could also be permissible 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 permissible except in such circumstances.⁴³

Thus far, we have made the case for the permissibility of conscription and a regular volunteer army for intervention for human rights purposes *compared to not acting*. But it might be argued here that we should strongly prefer PMSCs *comparatively*. Suppose that Alan volunteers to rescue several people in a burning building at great risk to himself. Bob could also save the people — he would be equally capable as Alan — but does not

volunteer. It might appear that Alan's consent provides a very strong reason to prefer it that he be selected to save the people rather than Bob. Likewise, it might seem that private contractors' clear consent to the risks of intervention provides a sizeable reason to prefer them to regular soldiers who give only their general consent or conscripts who may not consent at all.

We agree that this comparative consideration does provide *some* reason to prefer PMSCs. Indeed, this was largely captured by the difference between general and specific consent outlined in the previous section. In short, PMSCs may do better in terms of the moral import of individual autonomy of those conducting the intervention. But even in the case of conscription, this comparative consideration does not provide an indefeasible reason. If our argument above that conscription may sometimes be permissible is correct, then the moral import of the individual autonomy of those conducting the intervention can be outweighed by other considerations, such as consequentialist ones. Such considerations may be more morally important than the individual autonomy of those conducting the intervention when it comes to deciding who it is that should intervene.⁴⁴ For instance, if it is the case that Bob would be much more effective than Alan at saving the people in the burning building, Bob may permissibly be chosen over Alan to save the people. Alan's clear consent is outweighed by the import of saving several lives effectively. In addition, in the case of regular volunteer soldiers, it should be recalled that they do give their *general* consent. As such, they are not like Bob, but rather like fire-fighters who agree to tackle a range of potential hazards. If it would be the case that fire-fighters would be, for instance, more effective at saving lives than Alan, it seems that they should be selected. So, the moral difference between general and specific consent, which stems from uncertainty, can be more easily outweighed by other moral concerns than the difference between consent and the lack of it.

Another apparent challenge to our view comes from Cécile Fabre, who argues that because individuals do not possess duties to subject themselves to high levels of risk,

... states are *not* under a duty to wage wars of humanitarian intervention unless they can raise an army of volunteers for that particular task. In fact, and more strongly, governments are not entitled, vis-à-vis their own citizens, to take an army of conscripts to such a war.⁴⁵

Her focus here is on humanitarian interventions that would be risky. But she also contends 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.⁴⁶ But, she argues, individuals cannot be required to be trained in such a way for this would be unduly costly to them (it would undermine their freedom of occupational choice and so negatively affect their ability to lead flourishing lives). Generally, she argues, 'individuals are not under a moral duty to acquire specific skills for the sake of the needy, and conscription into wars of humanitarian intervention is therefore impermissible'.⁴⁷

Fabre's main argument in effect makes three separate claims: (i) *individuals* are not under a *duty* to subject themselves to risk; (ii) *states* are not under a *duty* to subject their soldiers or citizens to risk; and (iii) *states* cannot *permissibly* subject their soldiers or citizens to risk.⁴⁸ The last two points are highly questionable. That *individuals* do not possess duties to sacrifice themselves in humanitarian missions does not mean that *states*

and, more generally, *third parties*, cannot permissibly subject their soldiers to risk or that they are not under a duty to do so. Suppose that, in the burning building example above, Chris is a local mayor and, as such, is morally required to do the best for the interest of all under his jurisdiction. It seems that Chris has a role-based duty to select Bob, who would be much more effective at tackling the fire but does not consent to the risk, than Alan, who clearly consents. Similarly, state leaders may have duties to both their own citizens (in cases of national defence) and to those beyond their borders (in cases of intervention for human rights purposes) that require of the leaders that they order one (smaller) group of individuals to subject themselves to great risk, even without their consent, in order to save another, larger group. To help to see this further, suppose that State A has a conscript army, but could intervene very effectively in State B, thereby preventing genocide in State B. That it has a conscript army seems to be too weak a reason to deny that it has the duty to intervene. In short, the import of the individual autonomy of those fighting the war might be outweighed by other moral considerations. Suppose further that State C has a volunteer army, but it would be far less effective at tackling the genocide and so hundreds of thousands more individuals would die. If we were to ask who it is that should carry out the intervention, it would seem to give the individual autonomy of the soldiers too much weight to say that it should be State C. Accordingly, interveners may possess the duty to intervene, despite their conscript army, if they would be the most desirable intervener all things considered (and their intervention would be morally permissible). For instance, in addition to the case for their self-defence, the Allies had a humanitarian duty to fight World War II, despite the riskiness of the war and their resort to conscription, since they were best placed to fight the war. Hence, contra Fabre, the violation of conscripts' individual autonomy is not sufficient to deny that there exists a right or duty to intervene.⁴⁹

In summary, then, it does not seem that there should be an absolute prohibition on conscription and, more generally, forcing individuals to save the lives of others (such as when the consent of the soldiers is unclear).⁵⁰ 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 may still sometimes be permissible and so does not provide an *indefeasible* reason to prefer PMSCs for interventions for human rights purposes.⁵¹ Nevertheless, as we have argued, there is *some* reason to favour their use.

Thus, we have considered four potential principled arguments for preferring the use of PMSCs for interventions for human rights purposes. 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 an overriding one) to prefer their use.

4. Conclusion

Our tentative conclusion, then, is there are no fundamental problems, specifically related to using PMSCs for intervention for human rights purposes. 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 an

intervention for human rights purposes in particular. In fact, as we argued in the second part of the article, 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, it may be that contingent issues will determine whether PMSCs ultimately should be justified. These include, for example, PMSCs' potential to lack legal and democratic accountability (mentioned at the beginning of this article) and the potentially problematic intentions of PMSCs. Such concerns may mean on balance that other agents should be favoured for intervention for human rights purposes.

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NOTES

- 1 Those who discuss the use of PMSCs in such roles include Deane-Peter Baker, *Just Warriors, Inc: The Ethics of Privatized Force* (London: Continuum, 2010), pp. 144–78; Steven Brayton, 'Outsourcing war: Mercenaries and the privatization of peacekeeping', *Journal of International Affairs* 55,2 (2002): 303–30; Doug Brooks & Matan Chorev, 'Ruthless humanitarianism: Why marginalizing private peacekeeping kills people' in A. Alexandra, D-P. Baker & M. Caparini (eds) *Private Military and Security Companies: Ethics, Policies and Civil-Military Relations* (New York: Routledge, 2008), pp. 116–30; Doug Brooks, 'Messiahs or mercenaries? The future of international private military services', *International Peacekeeping* 7,4 (2000): 129–44; Oldrich Bures, 'Private military companies: A second best peacekeeping option?', *International Peacekeeping* 12,4 (2005): 533–46; Malcolm Hugh Patterson, *Privatising Peace: A Corporate Adjunct to United Nations Peacekeeping and Humanitarian Operations* (London: Palgrave, 2009); James Pattison, 'Outsourcing the responsibility to protect: Humanitarian intervention and private military and security companies', *International Theory* 2,1 (2010a): 1–31; Carmen Pavel, 'Alternative agents for humanitarian intervention', *Journal of Global Ethics* 10,3 (2010): 323–38; P.W. Singer, 'Peacekeepers, Inc.', *Policy Review* 119 (2003) available at <<http://www.hoover.org/publications/policyreview/3448831.html>> (accessed 21 Nov 2011); Christopher Spearin, 'Between public peacekeepers and private forces: Can there be a third way?', *International Peace-*

- keeping 12,2 (2005): 240–52; Fernando R. Tesón, ‘Humanitarian intervention: Loose ends’, *Journal of Military Ethics* 10,3 (2011): 192–212; and Herbert Wulf, *Internationalizing and Privatizing Peace and War* (Basingstoke: Palgrave Macmillan, 2005).
- 2 Brooks & Chorev op. cit., p. 120.
 - 3 Also see, generally, the *Journal of International Peace Operations* (<http://www.peaceops.com/>), the trade journal of the International Stability Operations Association (an industry lobby group), almost every issue of which calls for greater involvement of PMSCs in peace operations.
 - 4 See, for instance, Pattison op. cit. and Singer op. cit.
 - 5 See, for instance, Deborah Avant & Lee Sigelman, ‘Private security and democracy: Lessons from the US in Iraq’, *Security Studies* 19,2 (2010): 230–65 and Anna Leander, *Eroding State Authority? Private Military Companies and the Legitimate Use of Force* (Rome: Centro Militare di Studi Strategici, 2006).
 - 6 See Katherine McCoy, ‘Beyond civil-military relations: Reflections on civilian control of a private, multinational workforce’, *Armed Forces & Society* 36,4 (2010): 671–94 and Singer op. cit., pp. 5–6.
 - 7 Singer op. cit.
 - 8 Deborah Avant, *The Market for Force: Consequences of Privatizing Security* (Cambridge: Cambridge University Press, 2005).
 - 9 These criticisms are explored in more detail in James Pattison, ‘Just war theory and the privatization of military force’, *Ethics and International Affairs* 222 (2008): 143–62.
 - 10 See, for example, Malcolm Hugh Patterson, ‘A corporate alternative to United Nations *ad hoc* military deployments’, *Journal of Conflict & Security Law* 13,2 (2008): 215–32.
 - 11 James Pattison, ‘Deeper objections to the privatisation of military force’, *Journal of Political Philosophy* 18,1 (2010c): 425–47. Also see Cécile Fabre, ‘In defence of mercenarism’, *British Journal of Political Science* 40,3 (2010): 539–59, who argues that private military force can in principle be permissible.
 - 12 See James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010b), pp. 24–30.
 - 13 Pattison 2010b op. cit., pp. 153–80; Tesón op. cit., pp. 199–209; Fernando R. Tesón, ‘Ending tyranny in Iraq’, *Ethics & International Affairs* 19,2 (2005), p. 5.
 - 14 Baker op. cit.; Pattison 2010c, op. cit.
 - 15 See Pattison 2008, op. cit.
 - 16 See James Cockayne, ‘Regulating private military and security companies: The content, negotiation, weaknesses and promise of the Montreux Document’, *Journal of Conflict & Security Law* 13,3 (2008): 401–28. For an account of the lack of effective regulation of the industry, see, generally, Simon Chesterman & Chia Lehnardt (eds) *From Mercenaries to Market: The Rise and Regulation of Private Military Companies* (Oxford: Oxford University Press, 2007). The Montreux Document is available at <<http://www.eda.admin.ch/psc>> (accessed 1 Nov 2011).
 - 17 For a defence of the moral import of these factors when deciding who should intervene, see Pattison 2010b, op. cit.
 - 18 A potential reply from republican advocate of the citizen-soldier model that it is important that citizens carry out their civic duties themselves (including military actions such as interventions for human rights purposes), rather than outsourcing them to an all-volunteer force or PMSCs, is rejected in James Pattison, ‘The legitimacy of the military, private military and security companies, and just war theory’, *European Journal of Political Theory* forthcoming, and James Pattison, *The Morality of Private War* (Oxford: Oxford University Press, under contract).
 - 19 The existence of the duty to intervene is too involved to defend here. See, instead, Terry Nardin, ‘Introduction’ in T. Nardin & M. S. Williams (eds) *NOMOS XLVII: Humanitarian Intervention* (New York: New York University Press, 2006), pp. 1–28; Pattison 2010b op. cit., pp. 15–20; Thomas Pogge, ‘An institutional approach to humanitarian intervention’, *Public Affairs Quarterly* 6,1 (1992): 89–103; and Kok-Chor Tan, ‘The duty to protect’ in T. Nardin & M. S. Williams (eds) *NOMOS XLVII: Humanitarian Intervention* (New York: New York University Press, 2006), pp. 84–116.
 - 20 David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), p. 270.
 - 21 Miller op. cit., p. 271.
 - 22 Allen Buchanan, ‘The internal legitimacy of humanitarian intervention’, *Journal of Political Philosophy* 7,1 (1999): 71–87.
 - 23 Buchanan op. cit., p. 75; emphasis added.
 - 24 Miller op. cit., p. 272.
 - 25 Miller op. cit., p. 273.

- 26 David Miller, 'The responsibility to protect human rights', Working Paper Series, SJ006, Centre for the Study of Social Justice, University of Oxford, May 2007, p. 5.
- 27 See Chris Brown, 'What, exactly, is the problem to which the "Five-Part Test" is the solution?', *International Relations* 19,2 (2005): 225–9 and Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000).
- 28 One way to highlight military costs in particular is to invoke the soldier-state contract — we consider this below.
- 29 Buchanan op. cit., p. 78.
- 30 Richard Vernon, 'Humanitarian intervention and the internal legitimacy problem', *Journal of Global Ethics* 4,1 (2008), p. 45.
- 31 Vernon op. cit., p. 43.
- 32 Vernon op. cit., p. 45.
- 33 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 prevent human suffering; (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 short in their duties to make a reasonable and substantial effort to tackle human rights violations; and (iv) concerns about fairness can be outweighed by the pressing nature of tackling human rights violations. This issue is discussed further in Pattison 2010b, op. cit.
- 34 Moreover, in the case of the unilateral use of force, the issue of unfairness will arise for both the regular army and, importantly, those employing PMSCs. The latter may still be tasked with doing more than their fair share and, in particular, paying PMSCs to intervene.
- 35 United States Code, Title 5, Section 3331.
- 36 Martin L. Cook, ' "Immaculate war": Constraints on humanitarian intervention' in A. F. Lang Jr (ed.) *Just Intervention* (Washington, DC: Georgetown University Press, 2003), p. 151.
- 37 It might be responded that invoking the consent of soldiers overlooks the extent to which these individuals are manipulated by government and come from poorer segments of society. This may be true. However, this response, first, would count against the use of volunteer soldiers for other uses of force, such as self-defence. Second, it would 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. See, further, McCoy op. cit., pp. 681–6, on the exploitation of foreign contractors.
- 38 Cook op. cit., p. 146.
- 39 This is available at <<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0004.pdf>> (accessed 1 Nov 2011).
- 40 Onora O'Neill, 'Some limits on informed consent', *Journal of Medical Ethics* 29,1 (2003): 4–7.
- 41 A further clarification should be made: regular soldiers might be given the opportunity to decide whether to participate in a particular intervention or war. There might, for instance, be a very permissive system of conscientious refusal whereby regular soldiers can refuse to fight wars that they deem unjust or simply do not want to participate in. If this were the case, then the regular soldiers would, in effect, be giving their specific consent and so there would not be a principled reason in favour of using PMSCs. That said, it is certainly questionable whether there could exist such a system without the differences between private contractors and regular soldiers being eroded. This is because the difference between private contractors and regular soldiers is usually held to relate to the latter being under the authority structure of the regular military (see Pattison under contract, op. cit.). However, a very permissive system of conscientious refusal would raise doubts about whether the soldiers would be under the authority structure of the regular military.
- 42 Although we cannot present the details here, a policy of conscription should meet several conditions, such as that individuals should first be given incentives to fight before being forced to do so, it should be fair in how it chooses which individuals are to be conscripted, and there should be some scope for conscientious objection.
- 43 See Eric Heinze, *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention* (Albany, NY: SUNY Press, 2009) and Pattison 2010b, op. cit.
- 44 This point is developed at greater length in Pattison 2010b, op. cit.
- 45 Cécile Fabre, 'Mandatory rescue killings', *Journal of Political Philosophy* 15,4 (2007), p. 372.
- 46 Fabre op. cit., p. 372.
- 47 Fabre op. cit., pp. 372–3. To be sure: she notes that, if individuals are permissibly conscripted first for reasons of national self-defence and thereby attain the skills necessary for humanitarian intervention, individuals would then be under a moral duty to fight humanitarian wars.

- 48 These claims can be found in Fabre *op. cit.*, pp. 372–3. Note that Fabre limits these claims to the context of humanitarian intervention.
- 49 In addition, her claim that even risk free humanitarian intervention would be impermissible because *individuals* are not under a duty to acquire the skills needed for the sake of the needy does not convince. Although *individuals* might not possess such duties (we remain agnostic on this issue), it does necessarily follow that *states* and *third parties* cannot permissibly require individuals to train for such eventualities. If a state leader knows that (i) at some point in the future, the population in another state is likely to be threatened with a serious humanitarian crisis that will lead to the mass violation of basic human rights (e.g. mass killing, genocide, or ethnic cleansing) and (ii) her citizens can be trained such that they will be able to avert the risk, it would follow that (iii) her citizens can be required to trained to avert the risk, even if this threatens their ability to lead 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 permissible.
- 50 Our rejection of the absolute moral import of the individual autonomy of those conducting wars seems also to undermine Tesón's 2011 *op. cit.*, rejection of the permissibility of using conscripts for humanitarian intervention and defence of the use of PMSCs for interventions for human rights purposes.
- 51 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 noncitizens. This places, however, a heavy burden of justification on communal bonds, one which they probably cannot sustain. The underlying issue of the moral value is community is too large for us to delve into here. For strong treatments of this issue, see Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005); Andrew Mason, *Community, Solidarity and Belonging: Levels of Community and their Normative Significance* (Cambridge: Cambridge University Press, 2000); and Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004).