Whose Responsibility to Intervene?:
Moral, political and legal considerations of employing private military and security companies in humanitarian interventions

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I. INTRODUCTION

After the shocking events of Second World War, global community was committed to establish an international legal regime which unequivocally ensures that those heinous actions against human rights do not occur again. The Universal Declaration of Human Rights was a historical milestone in developing systems to protect human rights, and it boosted creating treaties and regulations about the obligations and duties of different actors towards their citizens and populations abroad. However, just as the inherent part of human behaviour, international actors, mostly states, are also not always willing to comply with those principles and norms which had been outlined in specific international treaties. In order to overcome the challenges of such breaches of legal rules, states came to the conclusion that if the perpetrations of basic human rights are escalating to an extreme scale, they might have the right to intervene to halt and avert extreme human suffering.

The norm of humanitarian intervention has a controversial history, and scholars, politicians and legal experts have continuously and repeatedly discussed its raison d’être. In the new millennium, states reached a historical moment when they managed to conceive responsibility to protect as “a new approach to protecting populations from mass atrocities”\(^1\). R2P has extended the scope and deepened the meaning of being responsible for and respecting others’ human rights as demanding that attention should be paid not just to reaction, but also to prevention before the conflict and reconstruction after it. Unfortunately, mass atrocities yet do not constitute the past of mankind, and it might occur that states and liable international organisations, especially the United Nations, decide not to be willing to play the role of the saviour. The current case of Syria has shed light on the fact that states and state-based organisations might be reluctant to take any actions, mostly due to their self-interested reasons.

This negligence of international society raises the question whether there are other agents at hand which might replace them. The most recent answer has come unexpectedly from the market: private military and security companies (PMSCs) tend to participate in even humanitarian actions, occasionally with high profile of effectiveness and efficiency. Despite the successes, however, scholars pointed out several objections to employ them in humanitarian

actions. The aim of this paper is to address all the questions on private military firms and their application in humanitarian crisis which have been emerged throughout the first decade of 21st century.

It is necessary to note that the scope of this thesis does not allow a detailed research on the employment of private military contractors in every stages of R2P. The paper has chosen to deal with the second stage of it, namely responsibility to react, and it treats humanitarian military intervention as a means to fulfil obligations and duties concerning responsibility to react. The ambiguous legality and legitimacy of humanitarian intervention is a well-discussed topic of international academia, and the issue of private military corporations has also challenged both experts and the public.

Therefore, the first part of the thesis will focus on the legal, political and moral justification of initiating humanitarian actions. It will examine which circumstances could invoke the necessity of humanitarian intervention, and what should be done if the liable organisation does not give its authorisation of acting. The main question of this part, however, is what constitutes a good intervener, and what are those parameters and features which are indispensable to be selected as a respective, effective, and, most importantly, legitimate intervener. The paper also seeks to offer some options instead of states and the United Nations which might be capable to do the serious task of “saving strangers”\(^2\). The second half of the thesis will elaborate deeply the matter of private military and security companies as a potential humanitarian agent. First, it seeks to clarify their legal status based on international treaties and to give a proper answer to the question whether they are mercenaries in a modern sense or not. The following chapter will discuss the relevant objections against using them in military, even humanitarian, operations in accordance with those parameters which have been outlined in the first part. The paper presupposes that PMSCs meet the requirements of being a legitimate intervener to a certain extent; however, it can not be considered as justified agent on the field. As a result of the analysis, the paper will offer regional organisations to fill the agency gap between states and the UN and PMSCs.

II. HUMANITARIAN INTERVENTION AND RESPONSIBILITY TO PROTECT: A NORMATIVE AND MORAL FRAMEWORK TO PROTECT BASIC HUMAN RIGHTS

II. 1. From humanitarian intervention to responsibility to protect

II. 1. 1. A historical background: from Grotius to the UN Charter

The contradictory principles around humanitarian intervention are by no means recent. As the work of two well-known international legal scholars, Grotius and Pufendorf, show the concepts of intervening and non-intervening other states’ internal affairs celebrates its birthday with the emergence of nation states. Parekh paints an interesting picture of the international relations of sixteenth-seventeenth century as saying that the neighbouring and ideologically close (Christian) societies believed in the “unity of the mankind” and in the duties owing towards each other. He had cited Francisco de Vitoria that Christian people shared a moral background on which they had the right to intervene in the internal issues of “backward” societies to end such inhuman practices like human sacrifice. Grotius had reiterated and developed further this approach as saying that because of the shared human nature citizens possess certain “common moral duties”. It is fair to note, however, that Grotius considered intervention not as an obligatory step from the people to defend others from the wrongdoings of their rulers, but it was an opportunity to act in their favour.

On the contrary, the non-intervention principle has been an answer to the previously mentioned natural law approach. It stated that not every state has a right to “enforce natural law”, and territorial sovereignty of nation states should be respected. In other words, according to the

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Using Holzgrefe’s terms, Grotius was talking about the right to intervention rather than the duty to it. Holzgrefe (2003): 26.
advocates of non-intervention principle the international order is “best maintained by respect for non-intervention in the internal affairs of other states”\(^9\). Furthermore, Pufendorf added that just intervention could occur only if the victims of oppression were asking for external assistance\(^10\). Although the general academic literature had recognised the existence of the right to humanitarian intervention in nineteenth and twentieth century as well, Brownlie noted that the doctrine was “inherently vague” and “open to abuse by powerful states”\(^11\), and the case of humanitarian intervention had been set aside out of the agenda until the 1970s\(^12\), since there were no acts what could be considered as a (humanitarian) intervention.

On the other hand, the heinous acts of the two world wars opened the eyes of the international community to strengthen their commitment to the prohibition of the use of force, which had affected the issue of the legality of humanitarian intervention as well. The Charter of United Nations (hereinafter the UN) was the first ever multilateral treaty which explicitly prohibited the use of force in state relations; this is the reason why Evans called it a “stunning innovation”\(^13\). Article 2 (4) calls the member states to abstain from the threat or use of force against the territorial integrity or political independence of any state, and Article 2 (7) has called the Security Council to be bound to the same principle, i.e. not to intervene in matters which are essentially within the domestic jurisdiction of any state. However, the Charter did not completely rule out the principle of the use of force by taking the exception that states are entitled to use force in case of collective security (Article 42) and self-defence (Article 51), but they also need the authorisation of the Security Council\(^14\). Nevertheless, it should be noted that the Charter does not regulate the use of force in the most severe humanitarian crises and deprivations of human rights, either in the case of state practice or in the case of actions under the Security Council\(^15\).

Additionally, it should be noted that whereas the legal regime of human rights has been developed drastically during the period of Cold War, which could have created situations for intervention to stop continuous human rights abuse by national governments, the ideological and

\(^12\) It is interesting to note that the use of force had been also restricted, since the Briand-Kellogg Pact had prohibited the use of force in relation to disputes between states. The Briand-Kellogg Pact had meant a milestone and a ground on which the basic principles Charter of the United Nations concerning the use of force could be built.
\(^14\) Charter of the United Nations, 1945
political tension between the Permanent Members of the Security Council (hereinafter P5) did not allow to take significant measures to protect the victims of domestic human rights abuse. As it has been stated earlier, the debate on humanitarian intervention was silent until the 1970s, when some states decided to override the allegedly absolute principle of non-interference, and they undertook unilateral interventions in favour of other nations. Franck summarized what happened those times the following way: “...in domestic cases of ‘extreme necessity’, it appears that evidence, facts, and process trump absolute legal principles, at least within a narrow, but significant, margin of flexibility”. The tension between the two competing principles of customary law, namely state sovereignty and protection of human rights, has woken up the debate on humanitarian intervention in the 1990s as well. The egregious events of the decade have prompted the international community to put an end to the question of legality and legitimacy of humanitarian intervention, which has also led to the birth of the new principle called responsibility to protect.

II. 1. 2. Responsibility to protect: more or less than humanitarian intervention?

According to Bellamy the current notion of ‘humanitarian exception to the non-intervention rule’ dates back to the invasions in northern and southern Iraq in the beginning of the 1990s. By this time it became increasingly clear that state sovereignty could no longer serve as a ‘shield’ for perpetrators to avoid being held accountable for their human rights violations. The changing attitude of international organisations and states was clear-cut. First, while the previous military interventions of the 1970s were justified by the self-interests of states, from the 1990s the Western powers started to take measures on the basis of humanitarian terms. On the other

20 The interventions of the 1970s were undertaken by mostly neighbouring countries in order to protect their national borders and security of their populations. Since these interventions were lacking the authorisation of the Security Council, such interventions “were considered...as illegal and selective arrogation of power by the strong to trample over the sovereignty of the weak”. Arbour (2008): 446.
hand, the Security Council seemed to be more committed to observe and punish the perpetrators by creating ad hoc tribunals for Yugoslavia and Rwanda.\(^{22}\)

However, it is fair to say that humanitarian intervention was lacking to have a uniformed ‘face’, therefore some humanitarian crises were embraced by the international community, such as Liberia in 1990, Haiti in 1994 or Sierra Leone in 1997, while in case of others major powers remained muted to act, and the actions taken in Somalia (1993), Rwanda (1994) or Bosnia (1995) was perceived as “too little too late, misconceived, poorly resourced, [and] poorly executed.”\(^{23}\) In order to overcome the shameful reluctance of international community, especially of the prominent members of the Security Council (P5), Kofi Annan embraced the idea to develop a standardised regime to decide whether and when it is legitimate and legal to undertake humanitarian actions by the UN, the regional organisations or other groups of states. Whereas the debate was ongoing whether which of the competing principles prevails over the other, Annan put his hands on the importance to defend human rights. To quote his words:

“...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?”\(^{24}\)

The historical moment in the debate has come, however, when the Special Representative on Internally Displaced People, Francis Deng, came up with the idea of redefining sovereignty itself as stating that state sovereignty has another meaning rather than just territorial integrity. Although Deng created the new notion in connection with internally displaced people, the extended meaning of sovereignty could have been easily adapted to other victims of human rights violations. What was historical in Deng’s work? According to him, sovereignty involves the responsibility of the host government to respect and protect basic human rights of their citizens, and when a state is not able to fulfil its duties to do so, it should ask for international assistance.\(^{25}\)

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\(^{22}\) Arbour (2008): 446.
In sum, the former characteristics of sovereignty have been extended with a fourth component, namely with the respect for human rights\(^{26}\).

Simultaneously, in the aftermath of the ‘illegal, but legitimate’\(^{27}\) intervention in Kosovo, the tension between state sovereignty and protection of human rights was kindled again, which – with the pressure coming from the Secretary-General Annan – led to the establishment of the International Commission on Intervention and State Sovereignty with the mandate to “develop a global political consensus on how to move from polemics ... towards action within the international system”\(^{28}\). This was the 2001 report called *The Responsibility to Protect*. According to Bellamy the report was seeking to outline two strategies “for preventing future Rwandas and Kosovos”\(^{29}\). First, the Commission sought to set down the parameters of responsibility in order to encourage the P5 to take on their responsibilities. Parameters can be separated into two clusters. First, there are the *just cause thresholds* (large scale loss of life, large scale ethnic cleansing) upon which the Security Council could initiate intervention against the perpetrators. The second group involves the *precautionary principles* (right intention, last resort, proportional means, and reasonable prospects) which could justify the military interference by the international society\(^{30}\). On the other hand, the Commission tried to set up a new language ‘to guard against potential abuse’; in other words, to hamper stronger powers to use humanitarian intervention as a camouflage against weak states\(^{31}\).

Although the principle has been modestly changed until it has been accepted by the UN members in 2005\(^{32}\), the responsibility to protect norm brought a brand-new approach in relation to international humanitarian action. As Arbour also highlighted, the principle has altered the circle of addressees from those who should undertake the intervention to the victims’ point of view\(^{33}\). It is fair to note that the responsibility to protect is not a new legal, but a political

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\(^{27}\) Bellamy (2008): 628.
concept, because it has not been created by the development of the international legal regime (although the creators have considered the customary legal elements of undertaking humanitarian intervention), but by the consensus of global leaders and their experts. R2P is a chain of responsibilities: the duty of protection encompasses three different levels of responsibilities, namely prevention, reaction and rebuilding. It is unambiguous that R2P offers and gives more than humanitarian intervention because it made intervention just one link of the chain; for instance, according to Chandler the main focus of responsibility has shifted from reaction to prevention. However, the main debate is still around humanitarian intervention, since the important questions of legality and legitimacy of it are not clarified.

In sum, the history of the emerging principle and practice of humanitarian intervention shows how difficult it is to find a good solution which could be easily recognised by the international community as a morally, legally and politically acceptable one. To determine in which circumstances PMSCs could contribute to the success of an intervention, it might be helpful to sketch what are the main challenges of the justification of humanitarian intervention, especially in legal, political and ethical sense.

II. 2. Legal, political and moral considerations of humanitarian intervention

II. 2.1. How to define humanitarian intervention

Atack says that the UN Charter and the human rights regime have created huge tension between the responsibilities and duties of states and other actors of international community, because they should simultaneously respect the national borders and give help to halt and avert human suffering and provide the enjoyment of (basic) human rights. Moreover, non-governmental organisations, whose main field is humanitarian work, are sceptical about the humanitarian motivation of military actions. They think that there is a political agenda behind every military action.

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34 This statement has been told by János Tisovszky at a conference organised by the Hungarian Institute of International Affairs in 2013.
A short analysis of definitions of humanitarian interventions also underpins this statement, because most of the definitions highlight both sides of the problem; the only difference in them is their tone. Holzgrefe summarises the main characteristics of humanitarian intervention as follows: “the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied”\(^{38}\). On the contrary, Knudsen has also emphasised the humanitarian motive of the intervention, but he stressed that the act of humanitarian intervention “dictatorially” and “coercively” interferes “in the sphere of jurisdiction of a sovereign state”\(^{39}\).

Some experts exclude the importance of the breach of state sovereignty from their definitions, and at the same time they involve the main parameters of a just humanitarian intervention. Perhaps, the best example could be the liberal legal theorist Fernando Tesón who described “permissible” humanitarian intervention as follows: “the proportionate international use or threat of military force, undertaken in principle by a liberal government or alliance, aimed at ending tyranny or anarchy, welcomed by the victims, and consistent with the doctrine of double effect”\(^{40}\). As this description shows, Tesón entirely forgives about the importance of the principle of sovereignty as territorial integrity, and his main focus is that the primary task of states and governments should be to respect of their citizens’ human rights, to which they are entitled on the simple basis that they are human beings\(^{41}\).

To sum up, the definitions of humanitarian intervention mainly refer to all the problems which are coming up in the debate on the justification of international military interventions, namely their legality, legitimacy and morality. In the next sub-chapters, I am going to introduce two different clusters of challenges of just and permissible humanitarian intervention. The first group is dealing with the political and legal circumstances and consequences of a humanitarian intervention, while the second one is focusing on its moral side.

\(^{40}\) Tesón, Fernando (2003): ‘The liberal case for humanitarian intervention’, in Holzgrefe-Keohane, 93-130, pp. 94. In the forthcoming chapters, I am going to enter into details of the phenomenon of double effect.
\(^{41}\) Tesón (2003): 93.
II. 2. 2. Political and legal challenges of humanitarian intervention

If one seeks to analyse the legal background of humanitarian intervention, he could find an interesting gap in international law: there is no legal instrument which explicitly acknowledges the right to humanitarian intervention. As the chapter about the historical background of emerging principle of humanitarian intervention (and R2P) revealed, international law has made some decisions in relation to use of force, even in the case of humanitarian emergency. Just a quick reminder, the UN Charter has prohibited the threat or use of force, and made exceptions in two cases: self-defence and collective security. Furthermore, the Security Council is the only authority which can give permission to use of force in order to protect international peace and security.

For most international lawyers and legal positivists, this is the end of the story, because states are obliged to be abided by international legal regime. However, Holzgrefe’s argument goes that some scholars might justify taking humanitarian actions even within the framework of the UN Charter. He cites several international scholars who argue that the primary motive of humanitarian intervention is to halt and avert human rights violations within the territory of a foreign state rather than to jeopardise its territorial integrity. Tesón argues similarly as saying that a “genuine” humanitarian intervention does not result in “territorial conquest or political subjugation”. Additionally, Knudsen argues that humanitarian intervention could be seen as an extension of the exceptions to use of force incorporated in the UN Charter as stating that systematic and continuous violations of human rights might be viewed as a threat to international peace and security. Tesón adds that in “morally abhorrent” cases general prohibition to use of force could lose its primacy. However, the opposition of this view emphasises that neither treaty nor customary law demands change in the hierarchy of goals enshrined in the UN Charter.

Pluralist theorists have a very similar understanding to oppose humanitarian intervention. They argue that the moral obligation to prevent armed conflicts prevails over the moral obligation to...
respect and protect human rights. This is a quite strange argumentation because in the last five decades the UN has made a huge step forward to build up a consistent and well-elaborated regime of human rights.

On the other hand, the legality of humanitarian intervention is not the only question in relation to the UN ius ad bellum regime, but there is also a huge dispute on whether there are other actors who can initiate humanitarian, but military actions. While it seems that the Security Council is the only authority which could initiate a humanitarian intervention in a foreign state, some proposals have been implemented to overcome the lack of Security Council’s permission and its inaction to take measures. The ICISS Report offers several alternatives within the UN to authorise international military action. It suggests that Article 11 of the UN Charter gives responsibility to the General Assembly to make decisions on maintaining international peace and security. Therefore, to give a shape to this provision they established the so-called ‘Uniting for Peace’ procedures in 1950 with the ultimate goal to replace the Security Council when it is unable to fulfil its primary responsibility to restore international peace and security. Although the requirements of launching an action in the frame of ‘Uniting for Peace’ are not easy to achieve, the Commission believed that “the mere possibility that this action might be taken will be important additional form of leverage on the Security Council to encourage it to act decisively and appropriately.” Additionally, the Commission has identified other possible actors which could launch humanitarian military aid if the Security Council fails to act. The Commission thought that the spill-over effects of some humanitarian catastrophes could invoke the responsibility of regional organisations or of ad hoc coalitions of states in the region to react “within its defining boundaries” when the Security Council explicitly rejects to take any action to reconstruct peace. However, it is necessary to mention that the implementing instrument of R2P, the 2005 World Summit Outcome Document has forgotten to recommend other actors than the Security Council to launch intervention in case of humanitarian crisis, which literally means that there is no room for coercive measures not authorised by the Security Council.

51 A two-third majority is required to bring the mechanism into life. ICISS (2001): 53.
Furthermore, the NATO intervention in Kosovo had drawn attention to the possibility to interfere legally and legitimately without the permission of the Security Council. Bellamy emphasises that the Kosovo intervention could be viewed as a turning point because it seemed that the international community was disposed to acknowledge a “limited right” of unauthorised intervention in cases of extreme human suffering\(^{55}\). The Kosovo case was not unique, because in the Cold War era several interventions had happened without the authorisation of the Security Council, for example in East Pakistan (1971), in Cambodia (1978) or in Uganda (1979)\(^{56}\). The classicist view of interpreting international law, especially the UN Charter, has rejected to accept the existence of such norm. According to its argument, the text of a treaty should be interpreted on the basis of the original intent of its creators\(^{57}\). If we accept the classicist approach, it would be clear that the UN Charter does not contain any provision to permit unauthorised intervention.

On the other hand, as the argument of legal relativists goes, there is a concession in the UN Charter in disguise upon which it is possible to launch unauthorised humanitarian intervention\(^{58}\). They invokes Article 2 (4), more specifically, its second part as saying that “or in any manner inconsistent with the purposes of the United Nations”. Additionally, some legal scholars insist that the norm of unauthorised humanitarian intervention exists in customary international law. Tesón made his conclusions on the basis of former humanitarian interventions when he states that the recurring behaviour of states to prevent extreme human suffering on foreign soil provides a strong case “for the existence of the right to humanitarian intervention”\(^{59}\). Pattison queries this approach. One of the basic requirements for a norm to become a custom is the so-called *opinio juris*, i.e. an evidence of a belief that a certain action has been carried out because it was legally mandatory. Pattison thinks that most of the interveners did not claim that their actions were in accordance with the international law or international human rights law, and they did not justify their actions on the basis of humanitarian causes\(^{60}\). Many believe that the just cause thresholds and precautionary principles raised by the R2P norm have laid ground to justify unauthorised humanitarian intervention as well, because they could serve as common and agreed requirements to hold such intervention validated. To recall a prominent advocate of this view,

\(^{55}\) Bellamy (2004): 220.
\(^{56}\) Weiss (2004): 144.
\(^{57}\) Holzgrefe (2003): 38.
\(^{59}\) Tesón (1997): 176.
Bellamy cited former UK Prime Minister Tony Blair who referred to those criteria as “guidelines” which provide legitimacy for the actions of other actors than the Security Council. Bellamy also adds that some paragraphs (namely Articles 77-80) can also be read as implicit recognition of the possibility to intervene without the sanction of the Security Council. In sum, the existing documents on governing humanitarian intervention ‘regime’ do not offer a solid ground to build on a unilateral or concerted action of states or regional organisations. Moreover, the questionable legality of humanitarian intervention raises another barrier to justify an intervention without the approval of the Security Council.

It is necessary to mention that legal constraints are not the only barriers advocates of interventionism should face. Before every (not just) humanitarian intervention there are political decisions to make. In many cases, a humanitarian intervention has not been come true because of mere financial difficulties and of lacking appropriate capacity to intervene. Pattison argues that current agents of humanitarian intervention (mostly states and state-based organisations) often “lack the willingness to intervene because of their reluctance to commit troops to save the lives of those perceived to be distant strangers”. Additionally, those countries, which otherwise have the appropriate capacity both in numbers and equipment, are often deployed in other and remote conflict zones or possess the wrong kind of troop configurations and equipment to undertake “the fast and flexible” jobs most often demanded. Take the example of Darfur. The case of Sudan was first mentioned only in a 2004 UN resolution, and it took more than two years when the organisation decided to start a military intervention. The slow and ineffective international performance in Darfur has led to that the less well-equipped and trained African Union troops had to interfere to stop, or at least to mitigate the ongoing perpetration of human rights abuse. The main restraining power was the United States because its military was overstretched in Iraq and Afghanistan and because “American priorities [were] also incompatible with military engagement in Sudan.”

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The lack of political will to cooperate on the issue of military intervention has been also witnessed when the acceptance of R2P norm was on track. Anti-interventionism and respect to state sovereignty are deeply rooted in Russian and Chinese politics, and these permanent members of the Security Council often threaten other states to use their right to veto if they feel that the action in question might breach the sovereignty principle. While the ICISS Report had made attempt to extend the circle of those who may initiate intervention, the 2005 Outcome Document sought to satisfy the supporters of non-intervention norm with placing R2P entirely in the domain of the Security Council\(^\text{67}\). To describe how committed China and Russia are to the principle of state sovereignty and of non-intervention, the Kosovo case must be invoked where Russia and China, in regard to their political intentions, raised misgivings about the legality and morality of military intervention\(^\text{68}\). On the other hand, Wheeler expresses his belief that they would not use their veto power in “clear-cut case of genocide or wholesale slaughter”, unless their primary national interests are at stake, but they would be quite supportive of other, non-military measures to convince the perpetrator state to stop massive violation of its citizens’ human rights\(^\text{69}\).

Finally, in relation to R2P norm Chandler argues that it has been formulated in a way what helped Western powers to keep distance from their responsibilities and duties to stop gross human suffering in non-Western states. As his argumentation flows, Western responsibility is “much more limited”, because it does not necessarily entails direct intervention in distressing humanitarian situations, but it involves to support “weak” states to enhance their responsibility to their own citizens in the prevention phase of R2P norm\(^\text{70}\). In other words, according to their behaviour and the outcome papers of the process of accepting R2P it seems that Western states are trying to keep their right to decide whether they will use their forces to “save strangers”\(^\text{71}\). To underpin this conclusion, in relation to the original criteria of R2P the United States declared that the States’ primary concern is their national interests, thus they do not want to be bound by such criteria which would “constrain its right to decide when and where to use force”\(^\text{72}\).

\(^{67}\) Bellamy (2006): 166.
\(^{68}\) Bellamy (2004): 218.
\(^{70}\) Chandler (2010): 164.
\(^{71}\) The cited expression is borrowed from Wheeler (2000).
\(^{72}\) Bellamy (2006): 151.
II. 2. 3. Moral considerations of humanitarian intervention

As we have seen earlier, the ambiguous legal and political provisions, principles and practices could hamper the realisation of humanitarian interference in order to save foreigners’ lives and to protect their human rights. Simultaneously, humanitarian intervention could be undermined on the basis of moral concerns. First of all, there is a general consensus among the advocates of interventionism that some of the criteria set in the frame of Just War Theory by Michael Walzer\(^3\) could serve as a moral basis for legitimate humanitarian intervention.

First and foremost, possibly the most important moral factor to launch a humanitarian action is to have a *just cause* to do so. Steinhoff differentiates two possible meanings of just cause: as what gives occasion to fight and as what is the goal or aim to fight for\(^4\). It is fair to mention that to give a well-elaborated, universal definition of just cause is not as easy as it seems at first sight. It is unambiguous that just cause covers a massive humanitarian suffering. Wheeler describes the just cause for a legitimate military intervention as a “supreme humanitarian emergency”, although he emphasises that there is no universal criteria what constitutes a supreme humanitarian emergency, and what are its contours and content\(^5\). For example, it is difficult to have a universally acknowledged, be numerical or other objective, measure to decide what can be seen as a gross or massive human suffering. According to the ICISS Report, the exceptions to the breach of non-intervention norm should have a strict limitation; therefore the Commission stinted the cases of intervention to large scale loss of life and large scale ethnic cleansing\(^6\). Although some experts suggested to extend just cause criteria with, for instance, serious violations of humanitarian law\(^7\), Evans and Sahnoun list all the cases which are not considered just cause: human rights violations falling short of outright killing or ethnic cleansing, the overthrow of democratically elected governments and the rescue by a state of its own nationals on foreign territory\(^8\).

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\(^6\) ICISS (2001): 32.

\(^7\) Bellamy (2006): 156.

\(^8\) Evans-Sahnoun (2002): 104.
Proportionality goes hand in hand with just cause, at least according to Steinhoff. He argues that proportionality is a sub-criterion of just cause because only the gravest humanitarian challenges could invoke military actions. Heinze conceives similarly as writing that humanitarian intervention is permissible if it is restricted to instances of “widespread and systematic (disrespectful) violations of basic rights.” In case of proportionality, the outcomes of a humanitarian action should also be considered. Bellamy writes that in order to reach humanitarian outcome the intervener should choose humanitarian means as well. In other words, if the problem, humanitarian in nature, could be handled through other means, such as political or diplomatic channels, humanitarian intervention must be avoided. Knudsen adds that there is always a possibility that intervention will result in doing more harm than good. The requirement of having a reasonable prospect to success is quite close to proportionality, because in an ideal case both requirements lead to the same outcome, i.e. doing more good than harm. What can be viewed as a successful humanitarian intervention? Seybolt argues that success is the number of those who have been saved via humanitarian military assistance. He adds, on the other hand, that counting of survivors could be misleading because governments could manipulate the numbers of them in order to flatter itself. Furthermore, the representativeness of the sample might be questionable in conflict zones. Similarly to the case of just cause, it is quite difficult to find a general consensus whether to what extent can be seen the number of survivors as a success.

Beside just war criteria, other moral considerations can be emerged. Many bring universality to launch humanitarian intervention into question. They argue that the selective application of those principles could undermine the legitimacy and morality of humanitarian assistance. The opponents presume that great powers tend to stretch their right to intervene in weaker states using humanitarian label as a camouflage. The tension between Western and non-Western world on the application of intervention has been captured by the academia as well. For instance, Rieff accuses of Western world to overlook those problems of non-Western states.
which are not in connection with their national interests as saying that “in effect humanitarian intervention is just a sop to the Western conscience and that the rich nations are using it as a way to avoid dealing with the chronic and serious issues of poverty and misgovernment in the Third World states”\textsuperscript{85}. Non-Western world constantly fears that humanitarian intervention is just a ‘Trojan horse’\textsuperscript{86} for great powers to undertake military actions for self-interested, perhaps hegemonic, reasons. The motivation behind every act of interveners is also a key component of moral consideration; however, as it is quite close to the agents themselves, it will be elaborated on the following pages.

\textbf{II. 3.  Agents of justice: who are entitled to intervene?}

\textbf{II. 3. 1.  Parameters of a good intervener}

In order to give an appropriate determination about what agents of international community could be seen as agents of justice, i.e. agents of humanitarian intervention, moral and material-financial issues should be examined. First, an intervener should have a legitimate authority to use force on the territory of a foreign country. Historically, the right to use of force was in the hand of the sovereign, but when national state had emerged as the most important and dominant political institution, the matter of authority was more closely related to it\textsuperscript{87}. In legal terms and according to the current practice of using force, an intervener is legitimate if its actions are authorised by the UN Security Council.

To recall Steinhoff’s typology of just cause, just cause can have two different meanings: the occasion which creates the necessity of intervention, and the goal or the aim for what the interveners fight. The moral expectation of having a right intention is closer to the second understanding, i.e. what are the intentions behind the decision of an intervener to go to war. However, in the academic literature there is a long-lasting debate about what constitutes right intention. There is a general agreement among scholars that war must be fought for just cause\textsuperscript{88};


\textsuperscript{86} The expression is borrowed from Pattison (2007): 308.

\textsuperscript{87} O’Driscoll (2009): 25.

\textsuperscript{88} Steinhoff (2014): 39.
therefore it is fair to conclude that humanitarian intervention also has to be fought for just cause, namely alleviating extreme human suffering. It is not surprising to assert that humanitarian intervention presupposes some kind of humanitarian motive which guides the acts of the preferred agent. According to the classic understanding of humanitarianism, which represents the principles of the International Committee of the Red Cross, the fundamental principles of a pure humanitarian action are the followings: humanity, impartiality, and neutrality. However, several experts and scholars reject the absolutism of pure humanitarian principles, and similar approach can be found in the text of the ICISS Report as well. As Parekh points out, humanitarian intervention “should be wholly or primarily guided by the sentiment of humanity, compassion or fellow-feeling, and in that sense disinterested”. The wording of ICISS Report is more specific about the hierarchy of motivations as stating that “the primary purpose of the intervention must be to halt or avert human suffering”. In other words, while humanitarian intention behind every action of the agents is indispensably important, reasons or motives of agents could vary. Therefore, distinguishing intention from motives is necessary.

It is quite naive to presume that states go to war purely for humanitarian reasons; moreover, as Heinze writes, if a state has no other concern than humanitarianism to intervene in a foreign country, it is not likely to deploy its military forces and assets on every occasion. According to a comprehensive analysis of former humanitarian interventions has shown that primary motive of interveners was far from being humanitarian; in most cases, they acted based on self-defence or other self-serving reasons. Ayoob emphasises that decisions on which international agents behave and act are made at national level, so practically it is impossible to prevent considerations of national interest, and this is also true for humanitarian actions. He adds that in situations where national interests are not involved to some extent, states tend to reject any kind of help or humanitarian assistance. He believes that the USA procrastinated to enter Somalia in 1992 because of this argumentation. Moreover, Steinhoff argues that motives

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93 The analysis was done by Simon Chesterman. Heinze (2009): 132.
95 Ayoob (2002): 86.
and intention of the individuals of whom the intervening force consists should also be counted. Pattison agrees with it as saying that it is misleading to “anthropomorphise” the intervener, because an intervener is a collective of individuals with their own motives to join the forces. In sum, scholars tend to agree that humanitarian intention should be dominant when an intervener starts to act against the perpetrators, but it could do so with a mix of motives; what really essential is to reach humanitarian outcome.

It might be relevant to bear in mind, however, that every act may have two consequences, one that is intended and one that is not. A humanitarian-motivated intervention could be harmful if it has been fought with inhuman means, and an intervention based on less valuable motives may be successful in humanitarian terms as well, if the intervener uses humanitarian means and strategies. This argumentation is known as Aquinas’s doctrine of double-effect. In Bellamy’s reading, “even if we intend good, we must be sure that the good achieved outweighs the possible negative consequences.” But mere human rights-driven motivation does not qualify necessarily as a legitimate reason for humanitarian action. Beside other, more political reasons, the USA explained its intervention in Iraq with the fact that Saddam Hussein perpetrated several human rights abuses against his own people and the USA wanted to prevent him to continue the inhuman treatment of his citizens. Evans does not accept this reasoning as emphasising that “the rationale for coercive humanitarian intervention is not punishment for past sins ... but to avert, here and now, threats to large numbers of people which are actually occurring or imminently about to occur.” It is not surprising that abusive use of humanitarian assistance by the US in the case of Iraq resulted in the reluctance of taking responsibilities under the umbrella of humanitarianism by states and organisations, and it led to a certain kind of scepticism towards humanitarian intentions in the people as well.

Moral components, however, are not the only parameters which characterise a good intervener. It is not enough that an intervener is morally committed to take serious steps to prevent further human rights violations if it does not possess means and assets which are indispensable to be effective. According to Pattison, the effectiveness of an intervener is “determined by whether it is successful at tackling the mass violation of basic human rights in the

97 Pattison (2007), 309.
political community that is subject to intervention”\textsuperscript{100}. He lists all the requirements which are relevant to qualify as an effective and well-prepared intervener. First and foremost, a possible intervener needs sufficient military resources, which means a number of armed, trained and motivated personnel, an arsenal of necessary military devices and vehicles, and transporting and logistical support. Second, next to military resources a good intervener should also have non-military, more importantly, economic and political resources to accompany and complement military ones. For an efficient interference, the intervener must possess a “suitable and realistic” strategy to use its resources successfully. The help must come as soon as possible to achieve the best conceivable outcome, so a good intervener should be capable of responding in a timely manner. Finally, those who are the subjects of intervention should perceive the interference as legitimate. Geographical proximity can also positively influence the intervention, especially when it is conducted by a regional organisation or a group of regional powers\textsuperscript{101}.

To sum up, a good intervener has to correspond to the legal and moral principles of humanitarian intervention, and all the parameters outlined above. A humanitarian intervention could only be legitimate if its performer would be also held as legitimate. Pattison argues that R2P raises an “unassigned duty” to intervene which falls on diverse agents of international community in general\textsuperscript{102}. The next short chapter will give a look at these possible agents.

\section*{II. 3. 2. Who should intervene? }

In an ideal world, the Security Council, based on threshold criteria and precautionary principles enshrined in the ICISS Report, gives its permission for using force to halt and avert extreme human suffering. While the United Nations is also capable of intervening, history has witnessed that on many occasions the UN failed almost entirely to improve the situation where it acted. To become successful, an intervener should respond to humanitarian crisis quickly, devote considerable military forces and be able and willing to accept all costs of the intervention. Seybolt argues that the UN did not often meet these requirements\textsuperscript{103}. One of the biggest problems with the UN is that it has no standing army what could be immediately deployed, and because of

\textsuperscript{101} Pattison (2008b): 266-267.
\textsuperscript{102} Pattison (2008b): 264.
this deficiency the organisation is reliant on the goodwill of its member states to offer their military personnel and assets. However, it happens that military personnel offered to UN missions are undertrained and poorly equipped. Furthermore, “troop-contributing countries” prone to not taking part in UN missions because this way they can put the blame on the UN for the possible failures, and they do not have to take the responsibility. Regional organisations often have to face similar difficulties, but their situation has been improved greatly in the previous decades. The ICISS Report has also mentioned them as possible agents of military intervention due to their geographical proximity to the conflict zones. In the case of international or multilateral organisations, Pattison argues that the best choice to undertake military intervention for a humanitarian cause is the NATO\textsuperscript{104}. In effect, its effectiveness is not comparable with other organisations. Due to its well-built military infrastructure and resources it is able to give a quick response to humanitarian crisis. Pattison emphasises that NATO uses a special strategy which consists of two levels of assistance: first, it ensures a rapid response to humanitarian crisis, and second, it provides long-term peace and security\textsuperscript{105}. It is fair to mention, however, that NATO is not using humanitarian means every time when it intervenes. For instance, in Kosovo it applied aerial bombings against Serbian targets, which indiscriminately harmed civilian targets and population as well\textsuperscript{106}.

Sometimes states may decide to initiate their own actions for the same reasons based on the same intentions as the UN has, and they undertake the intervention unilaterally. At first sight, states seem a legitimate protector of human rights. From a human rights perspective, protection of human rights should be burdened on the shoulders of states because they are the primary subjects of international law. The International Convention of Civil and Political Rights and other human rights instruments define negative and positive duties for states: states must respect human rights and refrain from violating them, and simultaneously they are obliged to provide and effectively implement and protect them\textsuperscript{107}. Realisation and feasibility of human rights and their protection is dependent on financial resources owned by duty-bearers, in this case, by states\textsuperscript{108}. However, the terrible events of previous decades have altered the way how human rights of

\textsuperscript{105}Pattison (2010b): 200.
\textsuperscript{106}Pattison (2010b): 200.
citizens, be nationals of a foreign country or of ours, should be protected. Although the primary
duty to uphold rights remained in the hands of domestic governments, the highly interdependent
nature of international community created a new form of second responsibilities of governments
to stop continuous rights violations and to encourage efforts to provide them. This norm is known
as R2P, which developed the extraterritorial duty of states to protect human rights. As Weiss
writes: “human rights can really only be defended by democratic states with the authority and the
monopoly of force to sustain such norms”\(^{109}\). After a short analysis of former humanitarian
interventions it comes quite clear that states could be successful to end violations of human rights,
but sometimes states are just not willing to fulfil their responsibilities regardless of the fact that
they possess all necessary means to do so.

After the Cold War era a new phenomenon started to rise, and it has been peaked in the
2000s, especially thanks to the Afghanistan and Iraq War. Hiring private military and security
companies is one of the most controversial military issues of the new century. Whereas almost no
one questions their ability to provide great support and effort in humanitarian interventions, their
role can be questioned from several aspects. The next chapters will discuss the status and relevant
objections against private military and security companies, and they seek to find the answer
whether they may be considered as legal and legitimate interveners to stop gross violation of
human rights.

III. PRIVATE MILITARY AND SECURITY COMPANIES: A NEW HUMANITARIAN AGENT\textsuperscript{110}

III. 1. Mercenaries and private military contractors: are they equals?

There is nothing new about employing private soldiers to protect the territory of a country or to use them as proxies to pursue foreign policy goals. From the twelfth to seventeenth centuries in Europe, it was quite common to hire foreign, independent and financially motivated soldiers despite the anomalies regarding their behaviour and their responsibilities while they were on a mission to fulfil their contracts. However, it turned out quite early that European rulers were not able to control the actions of mercenaries abroad, and they strove to find other ways to fight their battles by using more appropriate means and ‘employees’. While hiring mercenaries were never out of the plate, they had to wait until the mid-twentieth century to revive and to be employed again by states\textsuperscript{111}. The displeasure to mercenaries has been emerged by this time, because their participation in African national liberal movements jeopardised the territorial integrity and new-born statehood of some countries\textsuperscript{112}. In 1990s, a new industrialised form of mercenaries has evolved in the persona of private military and security companies (hereinafter PMSCs), and this transformation was parallel to the altered circumstances to wage war. According to Singer, the re-emergence of privatised military force has been influenced by three converging “dynamics”: the end of the Cold War, the transformations in the nature of warfare which blurred the lines between civilians and combatants, and a general trend to privatise and outsource certain governmental functions\textsuperscript{113}. Nonetheless, employees of PMSCs still do not enjoy popularity neither among the public nor the academia. One of the reasons behind their rejection is that they are condemned to be mercenaries up to this day. In order to reveal their importance or their insignificance on the battlefield in humanitarian missions, first, it is necessary to investigate whether they appear to be mercenaries in nature and in legal and professional terms.

\textsuperscript{110} Several academic works have made up different groupings of the existing models of private military sector. This work, because of its, mostly, theoretical understanding, does not differentiate based on their scope of job, and it will use all relating words and expressions interchangeably.


In academic circles, there is a general consensus about the fundamental features of mercenaries. A closer analysis of definitions shows that three dominant characteristics might identify a soldier as a mercenary: his actions are motivated by gaining profit, they are hired by foreign governments to wage war on foreign soil, and they are employed to take direct part in hostilities. One of the broadest definitions in academic literature has been given by Ervin Frigyes who summarised the relevant findings about mercenaries as follows: “[m]ercenaries are those people or groups of those people – united in different organizational units – who perform military...activity without all kinds of ethical, nationality, ideological or regional bonds, exclusively for material remuneration and are only motivated by financial interests for any clients – who pays them out”\(^\text{114}\). To compare with those features what the general public think of private military contractors, it is fair to say, and it appears to be the case at first sight, that employees of PMSCs might be considered as mercenaries.

To get an even deeper insight what constitutes a mercenary, it is necessary to observe the findings of international law. As mercenaries were involved in African liberation movements, international law sought to catch their basic characteristics in order to describe precisely who should be considered as a mercenary. In 1977, international law witnessed two parallel legal endeavours to give a detailed description about them. International humanitarian law created a distinct status for mercenaries because it did not label them neither combatants nor civilians. According to Article 47 of the *Additional Protocol I to the Geneva Conventions*, a *mercenary* is a person who

a) is specially recruited locally or abroad in order to fight in an armed conflict;

b) does, in fact, take a direct part in the hostilities;

c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

d) is neither a national of a Party to the conflict nor a resident of
territory controlled by a Party to the conflict

e) is not a member of the armed forces of a Party to the conflict; and

f) has not been sent by a state which is not a Party to the conflict on
official duty as a member of its armed forces\textsuperscript{115}.

Furthermore, the Additional Protocol adds that mercenaries are not entitled to prisoner of
war status, which means that the only protection for them in armed conflicts is the respect of their
fundamental human rights provided by Article 75 (fundamental guarantees), namely the respect
of their right to life and to physical and mental well-being. Interestingly, at the same time a
regional convention has been also created to govern mercenary activities on the continent in
question. The \textit{Convention of the Organisation of African Unity for the Elimination of
Mercenarism in Africa} has determined mercenaries the same way as the well-known instrument
of international humanitarian law did, but this Convention expanded it with the definition of
mercenarism by declaring it as a crime\textsuperscript{116}. Singer criticised the document that it has been
formulated to be accommodated with the interests of African governments\textsuperscript{117}. More than a decade
later, the UN managed to develop its own notion of the phenomenon by developing the
\textit{International Convention against the Recruitment, Use, Financing and Training of
Mercenaries} (1989). The UN document has used the same panels as the previous legal
instruments, but it extended the scope of acts by adding the requirements of “participating in a
concerted act of violence aimed at i) [o]verthrowing a Government or otherwise undermining the
constitutional order of a State; or ii) [u]ndermining the territorial integrity of a State”\textsuperscript{118}.
Kalidhass emphasises another discrepancy between the UN Convention and other international
legal instruments regarding mercenaries as saying that the UN Convention does not claim “direct
participation in hostilities” to classify a person as a mercenary\textsuperscript{119}.

\textsuperscript{115} \textit{UNGA} (1977): \textit{Additional Protocol I to the Geneva Conventions 1949}, available at:
October 2014)

\textsuperscript{116} \textit{OAU} (1977): \textit{Convention for the Elimination of Mercenarism in Africa}, available at:
http://www.au.int/en/sites/default/files/Convention_En_Elimination_of_Mercenarism_in_Africa_Libreville_03July1
977_52.pdf (accessed 25 October 2014)

\textsuperscript{117} Singer (2004): 529.

\textsuperscript{118} \textit{UNGA} (1989): \textit{International Convention against the Recruitment, Use, Financing and Training of Mercenaries},

\textsuperscript{119} Kalidhass, P. R. (2014): ‘Determining the Status of Private Military Companies under International Law: A
Quest to Solve Accountability Issues in Armed Conflicts’, \textit{Amsterdam Law Forum}, 6 (2), 4-19, pp. 7.
The analysis of legal and academic definitions shows that the legislators and scholars stinted the circle of those who meet every single elements of qualifying as a mercenary. Several scholars agree that almost no one could correspond to the requirements laid down in the definitions. Cameron has made a short research on private military contractors operating in Iraq. She found out that although it is not impossible to find some individuals who could meet the legal and academic standards to be named as mercenary, thousands of individuals, who are working for the similar company as those who qualify mercenary standards, have no clear status on the field because, for instance, they are nationals of one of the belligerent states. According to Steinhoff, a broader description based on the most common features of historic forms of mercenaries, such as loose mercenary bands or internationally operating PMSCs, could open the floor to a more adequate determination of the group of people who can be seen mercenaries. He suggests the following definition: “[a] mercenary is a person who is contracted to provide military services to groups other than his own (in terms of nation, ethnic group, class, etc.) and is ready to deliver this service even if this involves taking part in hostilities. Which groups are relevant depends on the nature of the conflict.” This definition stands quite close to the ones which describe PMSCs. According to Chesterman and Lehnardt, private military and security companies are “firms providing services outside their home states with the potential for use of lethal force, as well as training of and advice to militaries that substantially affects their war-fighting capacities.” However, Steinhoff’s definition for mercenaries, although it is based on the mutual characters which bond different forms of outsourced military force, forget about the intrinsic differences between them, for instance the matter of nationality which clearly affects the determination of employees of PMSCs as mercenaries or not, and it only offers a convenient solution to overcome the difficulties of defining mercenaries and PMSCs. It is to say that PMSCs hardly fit into the legal mercenary categories.

The elementary problem of comparing mercenaries with private military companies is that while mercenaries were independent soldiers furthering their own interests, private military companies are working in a corporate form, operating with a mixed staff whose members have

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their own motivations. In practice, their organisational structure and profit-orientated business form distinguish them from mercenaries. Moreover, PMSCs are offering a much wider range of services, which makes them more than just war-fighting machines\textsuperscript{123}. The differences in organisational structures and activities are listed in the next table, borrowed from Kálmán\textsuperscript{124}.

\textit{Table 1: Differences between mercenaries and PMSCs}

<table>
<thead>
<tr>
<th>Mercenaries</th>
<th>Characteristics</th>
<th>Private Military Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Try to stay away from public attention</td>
<td>Publicity</td>
<td>Transparent advertising and offering of their services</td>
</tr>
<tr>
<td>Small group of individuals</td>
<td>Form of organization</td>
<td>Corporative, business form, legal personality</td>
</tr>
<tr>
<td>Usually foreign citizens, terrorists, criminals, guerrillas</td>
<td>Members</td>
<td>Members usually have previously served in national armies, and are recruited from multinational database</td>
</tr>
<tr>
<td>“Bottom-up”</td>
<td>Form of violence privatisation</td>
<td>“Top-down”</td>
</tr>
<tr>
<td>Direct offensive activity</td>
<td>Activity</td>
<td>Training, military intelligence, counter-espionage, maintenance, logistic support, military support, military attendant support, or reconstruction</td>
</tr>
<tr>
<td>Black market, cash</td>
<td>Condition of hiring</td>
<td>Contracts, many times invitation to tender</td>
</tr>
</tbody>
</table>

While it is quite unambiguous that PMSCs show huge differences in their construction and services from mercenaries, it is more complicated to distinguish them in accordance with morality and legality because their business model is also founded on financial motivation and their legal status is as unclear as of mercenaries. In the following chapters the thesis will focus on the relevant objections raised against PMSCs and their application in humanitarian interventions, and it will strive to respond to each of them. The discussion will concentrate on what motivations guide PMSCs and their employees to take part in such interventions, including the comparison

\textsuperscript{124} Kálmán (2013): 375.
between them and national army soldiers, their effectiveness on the battlefield in terms of costs, equipment and rapidness, their lack of democratic control and their legal accountability, which, this essay assumes, undermines, besides financial motivation, the most all of their positive contributions in humanitarian missions.

III. 2. Relevant objections to employ PMSCs in humanitarian interventions

III. 2.1. The ‘financial gain’ objection: does profit entirely undermine humanitarian intention?

PMSCs tend to paint such picture of them that they serve a universal cause when they are participating in missions for international peace and security. They might present themselves as “new humanitarian agents” claiming that they help to create “a safer, healthier and more prosperous world” and serve “the greater causes of peace, development, and human security”\(^{125}\). A research conducted by Joachim and Schneiker points out that on the basis of the ambiguous notion of humanitarianism, PMSCs are not reluctant to pick and choose those components of humanitarianism which best fit to the images they try to sell to the public. Furthermore, they intend to set up their humanitarian identity by “associating themselves with or distinguishing themselves from other humanitarian actors”\(^{126}\). It should be admitted that this might be a smart way to influence public mind-set on the nature of PMSCs and their actions.

However, it must be also mentioned that, at first sight, they failed to succeed in changing their image in people’s mind. One of the most persistent moral objections to the individuals involved with private force is still the claim that PMSCs lack a “socially acceptable” cause for participating in an armed conflict, let alone in a humanitarian intervention\(^{127}\). As we have seen earlier, in Just War Theory a war is justified if a higher “just cause” is attached to it; a just cause upon which waging war seems a legitimate action. To follow this argumentation, a humanitarian intervention should be conducted based on a humanitarian intention, namely to stop the continuous violations of human rights in favour of the citizens of a foreign country. Financial


gain could be hardly understood as a just cause or a humanitarian intention, but it is necessary to note that the basic problem is not the financial motive per se but its strange relation to military force. Although it must be recognised that it is natural when an organisation which sells its services and compete with their adversaries on the market is orientated by profit considerations, it is fearful that morally problematic motivations of PMSCs could lead inappropriate behaviour on the battlefield or may undermine the good intentions of the employing state. For instance, a South African-based private military provider, Executive Outcomes, was hired by the government of Sierra Leone to prevent Revolutionary United Front (RUF) to continue its terrorist activity against the Sierra Leonean population in exchange of getting diamond concessions as a payment for their services. Executive Outcomes was interested in fighting rebels until the mining areas of its interests have been cleared of rebel groups. As a consequence, its actions left the civilian population vulnerable to continued RUF actions. According to Montague, “the firm has little interest in providing humanitarian services outside of financially lucrative areas”.

Profit motivation has instrumental problems as well. Unlike other commercial contracts, the contracts signed with PMSCs are extremely vague, and lack essential elements regarding their successful fulfilment, such as clearly formulated escape clauses. As a consequence, PMSCs could decide not to perform their contractual obligations when they see the situation becoming more or too dangerous, which could undermine their profits. This was the case in Iraq where several private firms delayed, suspended or ended their operations during the intense violence which put a huge burden on US military troops. Additionally, in the hope of quicker success, and because the vagueness of the contracts leaves space to do so, they could direct their efforts to achieve some “representative goals” instead of real success. This was the case with PMSCs’ landmine clearance operations in Africa where they chose to clear only major roads, but they left risky, but necessary areas, like rural footpaths or school areas, unclear. It shall be noted here, that although several scholars argue that profit motivation of PMSCs could negatively contribute

131 Singer (2005)
132 Singer (2005)
to their commitment to the objectives of a military intervention\textsuperscript{134}, it is fair to follow previously mentioned distinction of motives and intention. While PMSCs act in accordance with their commercial motives, namely to gain material profit, yet their intent is “to prevail militarily, and, depending on exactly what the PMSC was contracted to do”, actually rescue the lives of those who are suffering from extreme inhuman conditions\textsuperscript{135}. Percy acknowledged this argumentation as saying that it is difficult to estimate the weight of material gain in a PMSC’s action or that PMSCs are not able to match the extent to which national army soldiers are committed to humanitarian actions by good and general intent”\textsuperscript{136}. Moreover, market forces are also challenging PMSCs to remain bound by their contractual obligations. It might happen that their negligent attitude toward contractual obligations and respect of human rights during their operations can result in reluctance of future clients to hire them. According to an official of Executive Outcomes, alleged human rights violations would easily get them out of business\textsuperscript{137}. Spearin has also emphasised, by contrast, that this scenario is unlikely as former cases paint a highly different picture. He recalls the case of DynCorp, one of the largest private military providers, in Liberia in 1990s where it withdrew its deployments when the situation started to be heated, but despite this failure it managed to enjoy new contractual relations with US agencies, other states and non-state organs\textsuperscript{138}.

Lynch and Walsh listed two more critics against those who reprehend private military contractors for fighting mostly for material reward. First, as there is no official description what constitutes a right intention, therefore it is possible to expropriate the notion and to allow understanding right intention in only one way, that is ‘patriotic defence of the nation-state’\textsuperscript{139}. Relating to humanitarian intervention, this meaning of right intention does not mean much, so the leading force behind every action of intervening agents must be other than (self-)defence. In medieval times, it was very common that mercenaries took missions because of their desire to fight. Today, this could be a reason to join national army or even PMSCs but its ethical imperative is more than questionable. Accordingly, it is fair to presume that an ethically  

\textsuperscript{135} Heinze (2009): 133.  
\textsuperscript{138} Spearin (2005): 246.  
acceptable right intention of PMSCs might be that they get bound to their contractual obligations and they are acting in alignment with the intention of those who hired them, as it has been explained above. Second, modern national militaries are organised in a way where the personal moral judgment plays less role in deciding whether to wage war or not.\textsuperscript{140} In other words, unlike national military soldiers, private contractors have greater freedom to decide whether they contract to go to war or not. However, this argument does not exclude the fact that private soldiers are not merely morally driven to take part in humanitarian missions, and the freedom of choosing between fighting a war or not are primarily laid down on the possibility of getting injured and paid well.

The most common objection to pecuniary motives of PMSCs is that national soldiers could also be recruited on the basis of getting higher financial remunerations than they might expect to have in other sectors of labour market. Ordinary people tend to think that national armies consist of persons who are willing to give their lives to defend their home countries while military contractors lack this commitment and the only reason they are disposed to wage war is financial remuneration. In historical sense, national military service was considered as a “special calling requiring self-denial and sacrifice for the sake of the state”.\textsuperscript{141} In this sense, population considered soldiers of national army as representatives of the community fighting for the interests and well-being of their countries.\textsuperscript{142} It shall also be noted that a shift has been passed off in relation to joining national armies in the past decades. While conscription was a prevalent method to make citizens serve in national military forces,\textsuperscript{143} after the Cold War era volunteer-based, professional standing armies have taken the place of conscripts.\textsuperscript{144} It is not far from the truth to argue that national soldiers are often driven by pecuniary motives as well. Lynch and Walsh note that modern military spends much of its time to promote national standing armies as a “career option characterised by competitive remuneration and levels of skill acquisition”.\textsuperscript{145} National military service could be very attractive in those regions of states where high rates of unemployment and complete absence of workplaces could offer no other solution for the poor but

\textsuperscript{140} Lynch-Walsh (2000): 134.
\textsuperscript{141} Spearin (2005): 248.
\textsuperscript{142} Wolfendale (2008): 217.
\textsuperscript{143} Conscription had been ordered after French Revolution for the first time, and after that setting up national armies became popular throughout Europe. Csapody, Tamás (2005): Utak és útvesztők – a sorkötelezettség története (Ways and mazes: the history of conscription). Valóság, 48 (11), 77-87, pp. 77.
\textsuperscript{144} Krahmann, Elke (2008): 'The new model soldier and civil-military relations', in Alexandra et al., 247-265, pp. 249.
\textsuperscript{145} Lynch-Walsh (2000): 135. It should also be noted that before mandatory military service, army could serve as an opportunity to get a higher place in the social ladder.
to apply for a place in the national army. From the perspective of financial motivation, practice shows that despite all the reforms which have been used to address more nationals to join standing armies of states, private military companies appear to win the ‘battle’ for employees. The possibility to get paid better leads to the sad reality that national military servicemen more often tend to rank financial reward higher than patriotism, a former motivating principle. It is not surprising because a private military contractor is able to earn tax-free 1,000 dollars per day.\textsuperscript{146}

Overall, it appears that financial motivations of PMSCs and their employees might morally and ethically undermine their commitment to humanitarian interventions. It is not easy to distinguish a private military contractor from a mercenary when they openly confess that their actions are primarily guided by money. As one US citizen recruited by Halliburton for a notoriously dangerous position admitted: “I look at it from business perspective. When you’re talking a possible $1,000 a day tax free, it’s real attractive”\textsuperscript{147}. As it has been argued earlier a pure humanitarian intervention should be conducted and undertaken on the basis of certain humanitarian intention, namely to halt and avert massive human suffering. It is obvious that pecuniary and self-interested motives of these firms do not qualify as pure humanitarian motive. However, other agents could also be governed by their self-interests first, and humanitarian motives are ranked at second place. Several states initiated humanitarian interventions on the ground that their basic interests would have been at stake without taking appropriate actions to stop human rights violations close to their borders. By contrast, Pattison argues that the main problem with financial motivations is not the absence of a socially more acceptable intention, but the existence of an inappropriate one\textsuperscript{148}. In sum, self-interest, involving financial motivation, is ethically questionable, but it does not exclude PMSCs and any other agents to take part in just wars, let alone in humanitarian interventions until their primary intention is to protect the victims. In the case of PMSCs this might happen in disguise of fulfilling their contractual obligations in accordance with the intention of their employer. It seems acceptable that to reject the employment of PMSCs in humanitarian intervention should not be based exclusively on their alleged inappropriate motivations.

\textsuperscript{146} Spearin (2005): 247.
\textsuperscript{147} Krahmann (2008): 255.
III. 2. 2. The effectiveness argument: a real contribution to humanitarian missions?

The general consensus among scholars and politicians is that humanitarian missions are in need of improvement to some extent. As it has been outlined above, current agents of humanitarian actions often lack the appropriate amount of resources to act on behalf of the international community, and, more ironically, they are missing political will to take significant measures or to agree on provisions which could facilitate humanitarian interference. The involvement of other, mainly commercial, partners to overcome the challenges of shortcomings in equipment and political will has been considered an affordable and convenient answer to the problems, mainly because states just have to give the money to pay for the services offered by PMSCs without threatening the lives of their soldiers and civil personnel and their reputation in case of failure. The improvement of military facilities was more urgent in the context of emerging principle of R2P, as the responsibility of international community has been extended to pre- and post-conflict operations as well, respectively, not forgetting about the previous failures of multilateral humanitarian interventions and UN-led multilateral peacekeeping operations.

Private military and security companies appear to satisfy easily every condition what states set up to fulfil in order to employ them as supplementary or even single forces to strengthen or replace unilateral and multilateral state actions. In short, scholars and politicians believe that PMSCs offer “faster, better and cheaper services”\(^\text{149}\) compared to national forces and multilateral military contingents under the auspices of the UN. Pattison summarises three different scenarios where PMSCs could be successfully used in case of humanitarian interventions\(^\text{150}\). First, it is imaginable that PMSCs could act as sole interveners in a conflict because they possess all necessary means and resources to send their employees and equipment in time\(^\text{151}\) and they can frame their services and means into the needs of the victims. Comparison between deployment time of regular forces, UN contingents and PMSCs could really shed light on the advantages of employing PMSCs for taking these tasks. For national standing armies, the average deployment time ranges from two to four months, while for the UN it is six to eight


months. By contrast, PMSCs only need two or six weeks to deploy all of their equipments\textsuperscript{152}. It has been also mentioned above that sometimes great Western powers decide not to engage in any (humanitarian) intervention if they are not able to relate it to their national interests. In the context of African missions governed by PMSCs David J. Francis has argues that when Western government are not willing to take the responsibility to perform humanitarian actions ‘mercenaries’ are “covertly supported to do their dirty job”\textsuperscript{153}.

The second role would be to provide troops “to bolster or to fill gaps in another agent’s mission”\textsuperscript{154}. As it has been stated above, the UN contingents are based on the goodwill and available forces of member states, and sometimes it can occur that there are not enough available troops to intervene efficiently and effectively. By the beginning of the new millennium, contributions of Western powers with significant size of militaries were frayed from the UN statistics. For instance, the ratio of American contribution did not exceed one per cent of the grand total of peacekeepers deployed in 2004\textsuperscript{155}. PMSCs, by offering their services, could guarantee that the UN will be able to fulfil its obligations toward those who are in need. Brooks and Chorev called PMSCs as “force multipliers” who play a great role to contribute to the success of national and multinational military forces\textsuperscript{156}. Third, instead of giving help in combat measures, PMSCs could assist other agents’ troops by providing their logistical, training, intelligence, lift-capacity, and other services. Iraq War is a good example to the third role of PMSCs. Pattison has also emphasised that PMSCs might be able to boost the capacities of regional organisations as well when they are undertaking humanitarian actions without being dependent on the support of the US\textsuperscript{157}.

Costs and benefits of previous humanitarian actions of the UN and PMSCs, respectively and collectively, have been calculated in detail. Interventions of the 1990s seem to bear great results on the side of private military contractors compared to the UN missions. Most academic articles mention Sierra Leone or Angola as real success stories of PMSCs in terms of military

\textsuperscript{152} Brooks-Chorev (2008): 120.
\textsuperscript{154} Pattison (2010c): 7.
\textsuperscript{156} Brooks-Chorev (2008): 121.
\textsuperscript{157} Pattison (2010c): 8.
capacities and financial efficacy as well. By contracting the aforementioned Executive Outcomes the Sierra Leonean government managed to start negotiating with RUF rebel groups, and most of the one million displaced citizens were able to return to their homes. In terms of financial calculus, the success of Executive Outcomes was even greater at first sight. It is undeniable that EO operations were much cheaper than the ones conducted by the UN. According to the contract signed between the company and the government, Sierra Leone was obliged to pay $35 million for a 22-month long private operation, while the UN observer forces which spent eight months after the peace agreement had been signed cost $47 million. Additionally, scholars have calculated that further humanitarian crisis could have been handled if international society would have been prepared to put their trust in PMSCs to perform humanitarian missions in the name of it. For instance, Executive Outcomes estimated that it would have been able to send its armed forces within fourteen days to Rwanda to stop massive killings and been also able to deploy their soldiers with the necessary equipment (air and fire support) within six weeks. The effected measures, unfortunately, proved the necessity of the involvement of PMSCs instead of a pure UN mission. On one hand, the costs of the actual UN mission were five times higher per day than the estimated expenses of a private one. On the other hand, the UN relief operations had been deployed right after the killings ended up, and it was also not able to guarantee the security of the refugee camps. It is fair to assume that the sad experiences of Rwandan case have resulted in the fact that later the UN was not reluctant to contract with private companies to protect its relief missions, just as it did with DSL and LifeGuard in Sierra Leone in 1998, one year earlier that it established its peacekeeping operation in the country (UNAMSIL).

However, it has to be also borne in mind that financial and operational efficacy is just one side of the coin, and in terms of durability the results of EO operations could easily bring into question. It turned out that the stability and coercive security built by the EO could not be maintained and did not offer viable responses to political and socioeconomic issues that the conflict instigated. As part of the Abidjan peace accord between the Sierra Leonean government and the RUF, Executive Outcomes must have been departed from the country before the UN

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160 Singer (2003b)
peacekeepers have arrived which led to the sad reality that the new-born state began to fall apart\textsuperscript{163}, and got involved in a new wave of civil war.

A recent example can also shed light on the ambiguity of employing PMSCs for undertaking military actions. Although the example of Iraq War does not qualify as clear-cut humanitarian intervention, experiences gained by the US might be helpful to evaluate the necessity of using private troops in such operations. According to the media, Iraq War is considered the first privatised war in the history, since their ratio in the Gulf region has been multiplied ten times compared to the number of them in 1991\textsuperscript{164}. In every sense, the US is the world’s largest employer of PMSCs. Data and calculations reveal that around 170,000 private ‘soldiers’ are working for only the US Department of Defence\textsuperscript{165} which entirely shows how dependent the US government and other state agencies are on the services of private contractors. First, it is necessary to emphasise that in the case of the US outsourcing of some former governmental military responsibilities did not just happen because of the general thinking that they are cheaper and faster. As Isenberg argues the US has acknowledged that it does not possess appropriate resources and does not enjoy the support of the public to continue its job as the provider of global security\textsuperscript{166}. It seemed to be viable to contract out some military tasks to PMSCs in order to reduce the costs of national military actions and to protect the lives of national army soldiers.

However, either from financial or operational perspectives, Iraq War has been proved as a kind of failure in the context of outsourcing military functions. According to financial experts, the final bill of Iraq War exceeded $3 trillion, and more than $138 billion have been paid to PMSCs for their logistical, security and reconstruction support\textsuperscript{167}. Financially, the US government had to face incidents when it was quite clear that the only intention of PMSCs was to profit from their presence in the military conflict. For instance, Halliburton, which had quite close

\textsuperscript{163}Brayton (2002): 314, 323.
\textsuperscript{164}Singer (2004): 523.
\textsuperscript{165}Pattison (2010a): 425.
ties with then Vice President Dick Cheney, has been accused of invoicing such services it did not render and of overcharging for gasoline. The high rate of costs relating to PMSCs is hard to be considered convincing about their cost efficiency. Profit motivation might have also been the reason that some corporations who were almost entirely new in the market when Iraq War started, came to the decision of “cut[ting] corners in their screening procedures” which has been resulted in that they hired untrained and unskilled persons instead of specialists and well-trained former professional soldiers of military forces. For instance, the US government and its agencies had to face the problem of the lack of appropriate training of PMSCs employees about what is allowed to do in accordance with the principles of *ius in bello* (international humanitarian law), which called forth the prisoner-abusing Abu Ghraib scandal. In case of Abu Ghraib, it has been explored that 35 per cent of contract interrogators of CACI, a US-based private military company, did not get any training which could have prepared them for interrogating alleged criminals despite the fact that CACI was mandated to hire professional interrogators. In other words, even if the corporations are well-supplied and possess all necessary means to wage war successfully, the flaws of their untrained personnel and profit-motivated behaviour do not enhance the feeling that they could be effective either in replacing or in supplementing and accompanying military forces on the ground.

In sum, the balance of evidence shows that in terms of cost efficiency and operational efficacy PMSCs give an ambiguous performance. On one hand, their cheaper, better and faster deployment in conflict zones might enhance the capacity of actors already operating in the field. At first sight, it seems that they fulfil most of the requirements set by Pattison to be measured as effective interveners. They hold all necessary means in their hands to act successfully in an armed conflict; they can deploy their contingents and equipment as soon as possible. Nevertheless, it should be borne in mind that costs of PMSC and UN operations might be shared unequally. While in the case of the UN missions expenses are shared between those who contribute to them with their military personnel, equipments and other services, the costs of PMSCs would be charged on only those governments or organisations which hired them. This could be a more inconvenient problem for governments whose states had been failed, and it is not certain that they are able to finance those private operations which might be their only hope to

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168 Singer (2005)
169 Singer (2005)
170 Singer (2005)
survive. The example of Iraq War, however, presented that financial motivations of private firms would easily overwrite their endeavours to fulfil their contractual obligations. Insistence on profit would have bad effects on their effectiveness, for instance, they might not be able to protect soldiers who they are accompanying or they might commit serious crimes against civilian population. The worst case scenario is that PMSCs would prolong conflicts in order to gain as high profit as possible\textsuperscript{172}. Pattison argues that only circumstances when PMSCs’ effectiveness could morally justify their involvement in humanitarian interventions are when PMSCs are responding to a massive humanitarian crisis and when positive outcome has a “high probability”\textsuperscript{173}. He deeply believes that the reached good could morally justify the role of PMSCs in humanitarian operations despite their possible problems, such as mercenary motives. By contrast, Brayton thinks that PMSCs are willing to undertake such operations which are low-cost and limited\textsuperscript{174}, namely they are not bound by the basic principles of UN peacekeeping operations.

Nevertheless, it should be added that it is quite difficult to predict the probable results of an action; and, in addition, determining the measure of success is quite subjective. In theory, it could happen that the only way to provide high probability of real success is to wait until the perpetrators ran out of supplies. Until this occurs thousands of people’s lives could not be protected. What counts a real success then? To defeat constant abusers of human rights does not classify a victory if the number of victims is uncountable. As a matter of fact, examples of past and recent times are not entirely convincing, since every success have been overshadowed by huge failures.

III. 2. 3. Lack of democratic accountability: a silent approval?

According to historical traditions of international law, a war is just, among others, when it is initiated by a legitimate authority. The persona of legitimate authority was changed time after time, but the emergence of nation states turned the scales whether who constitutes a legitimate authority. Legitimate authority has two connotations\textsuperscript{175}. First, it helps to determine the scale of democratic control over military forces in armed conflicts, and second, it creates the legal space

\textsuperscript{173} Pattison (2010c): 20.
\textsuperscript{174} Brayton (2002): 325.
\textsuperscript{175} Pattison (2008a)
in which its forces are acting and within which they are held legally accountable. The privatisation of military forces brought changes in the relation between the state and its military force. The following chapters will be focusing on the challenges of what these changes eventuated.

The objection to employing PMSCs in humanitarian intervention concerns the possible lack of democratic control over the actions of private firms. According to democratic values, states have the monopoly to launch humanitarian missions on foreign soil, while its population should be almost entirely involved in decision-making about the call for using military force, and people should also give voice to how this force can be applied in reality. By using military power, states might conceive that they are allowed to initiate actions without having a public debate on it or they can hide information about actual losses and costs of actions from the eyes of the public. The lack of transparency of information and exact data about the expenses of waging war reduces the oversight by the public and the Congress itself in relation to governmental decisions. This has been experienced during the Iraq War. The Bush administration strove to outsource some military functions to private military corporations with the intention of lowering political costs of its policies, and simultaneously, it did not make PMSCs subjects to the Freedom of Information Act, which means that exact data about the number of deployed private employees or contractor casualties were, and are, not available for the public. In history, the US has followed this recipe to reduce political costs by hiring private personnel. For instance, during the Vietnam War, President Lyndon Johnson managed to avoid congressional mandated military cap by hiring more than 80,000 private soldiers.

Nonetheless, the public (and the media) can also ease the situation of the government. According to a 2012 study by the UK’s Ministry of Defence, “[n]either the media nor the public in the West appear to identify with contractors in the way that do with their military personnel. Thus casualties from within the contractorised force are more acceptable in pursuit of military ends than those from among our own forces.” It is interesting to note that based on calculations

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179 Schreier-Caparini (2005): 68.
thirty per cent of American casualties were private military contractors\textsuperscript{181}. Although a large scale of research data is not available on this matter, it is fair to presume that the reason of such negligence is very simple, and it is closely related to the alleged mercenary nature of private military contractors\textsuperscript{182}. As it was discussed earlier, nationals of a country tend to see military soldiers as motivated by patriotic feelings comparing to private soldiers who are considered mercenaries without any doubt. Besides financial motivation, there is another indicator which can undermine the identification of citizens with private soldiers. In case of employees of private military firms, national patriotism can also be missed because of their diverse nationalities. It is very common that contractors are “neither working for or in their home countries”\textsuperscript{183}. To Iraq, for example, corporations have arrived with an interesting mixture of nationals in their contingents. They were recruited from mostly developing countries, like Columbia, Chile or Philippines, or they were originally from Eastern Europe, such as Croatia, Bosnia, Bulgaria and Ukraine\textsuperscript{184}.

However, humanitarian intervention can construct such circumstances in which the nationality of intervener does not count as important as what he does in favour of a group of other nationals. Thus, it is not necessary to identify with them as a group because they are fighting for others’ well-being and not for self-defending reasons. As Baker writes, “… a warrior may ethically be involved in an armed conflict even where his identification with the group for whose benefit he fights is no more specific than his identification with the humanity in general”\textsuperscript{185}. By contrast, to be a legitimate intervener, as Pattison argued above, those who are the subjects of the interference should also perceive the actor legitimate. Current evidence shows that local populations are not fascinated by the presence of private ‘militiamen’. According to a study conducted amongst the Afghan population, local people usually do not have strong understanding about PMSCs and their activities on the field. This is because it is quite hard for them to

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\textsuperscript{182} According to a survey by Avant and Sigelman, twenty per cent of respondents assumed that PMSCs employees are mostly motivated by financial gain, and the ratio was increased when they provided further information on them. (2010): 257.

\textsuperscript{183} Krahnmann (2008): 255.

\textsuperscript{184} Krahnmann (2008): 255.

\textsuperscript{185} Baker, Deane-Peter (2008): ‘Of ’mercenaries’ and prostitutes: Can private warriors be ethical?’, in Alexandra et. al, 30-43, pp. 35.
\end{footnotes}
differentiate between foreign military forces. More importantly, on the other hand, local people also can not accept that PMSC are working for money by using their weapons.\textsuperscript{186}

Overall, the lack of transparency about hiring PMSCs can easily undermine the control by the public and the legislators as well. It seems that public is not eager to know more about PMSCs as they think that PMSC employees could not reach the morality of national soldiers. According to Michaels, “[p]rivate contractors are politically valuable insofar as they neither enter into official head or body counts – nor, it appears, into our hearts... largely absent from the public consciousness are the thousands of civilians putting their lives on the line as contractors in Iraq”\textsuperscript{187}. In theory, this could be an easy way to consider humanitarian intervention authorised by the public because it seems that it does not mind any military action which does not involve killings and kidnappings of ‘its’ national soldiers and heroes. However, according to available data, the targets of humanitarian intervention could also be hostile to private interveners. It might be a problem to acknowledge PMSCs as legitimate interveners.

Other concern relating to letting PMSCs to conduct humanitarian intervention is that it is not possible to control their actions on the field by the governments and legislatures. As corporate businesses, PMSCs do not follow the traditional chain of command, and they are responsible directly to their employers, not to the state. While they were hired by states in most cases, they comply with the orders of the executives of the private firms in question rather than the military chiefs of state.\textsuperscript{188} Moreover, as it has been written in previous chapters, the wording of contracts between states and PMSCs is vague and is lacking several democratic mechanisms to control them. In case of the US, according to the current US law if the contract amount does not exceed $50 million, US military firms are allowed to work abroad without notifying it to the Congress.\textsuperscript{189} This might cause that the US government or the Congress is not able to monitor the size of the private contingents abroad, and they are not able to control their operations. This raises the question of whether PMSCs can be held accountable before courts. Without a straightforward regulating and monitoring system, it is challenging to control the acts of PMSCs. This will be discussed on the following pages.

\textsuperscript{188} Pattison (2010c): 14.
\textsuperscript{189} Singer (2004): 539.
III. 2. 4. Criminal accountability of PMSCs: a legal black hole

The final objection to using private military contractors in humanitarian missions, let alone interventions is normative, and according to this essay, is the most problematic one. As the introduction of this part has highlighted, it is hard to specify the international legal status of private soldiers. First, based on the comparison between them and mercenaries, it becomes clear that they can not be unequivocally seen as mercenaries. As a consequence, it is not easy to refer them to one of the categories of *ius in bello*, namely whether they are combatants or civilians. Their classification of whether being a combatant or a civilian must be determined on a case-by-case basis by examining their contracts. This ambiguity can negatively affect the protection of their rights during any armed conflict. For example, if PMSC employees are contracted to accompany military forces in armed conflicts, and they are not expected to engage in fighting, they appear to be civilians. However, if they get involved in any armed activity, they might be held legally accountable for the killings unlike military soldiers. Furthermore, if they are not considered as combatants, they are not entitled to Prisoner-of-War status just like mercenaries. In this case, the only protection they could have in custody is minimum standards of treatment and minimum judicial guarantees provided by the Fourth Geneva Convention.

The second, and more serious problem in connection with humanitarian intervention, is that unlike military soldiers who have “all manner of traditional controls over their activities, ranging from internal checks and balances, domestic laws regulating the activities of the military force and its personnel ... and numerous aspects of international law”\textsuperscript{192}, PMSCs’ activity are not regulated by any international legal instrument. While it is important to determine their status because of the protection of their rights, “individual criminal responsibility does not depend on a person’s status”\textsuperscript{193}. In reality, some endeavours have been made by international community to determine the responsibility of PMSCs and of their hiring states without significant international support. A good example is the non-legally binding *Montreux Document* initiated by the Swiss government and the Red Cross. The Montreux Document summarises existing legal obligations laid by international humanitarian law and international human rights law on the use of private


\textsuperscript{191} Cameron (2006): 592.

\textsuperscript{192} Singer (2003a): 220.

\textsuperscript{193} Cameron (2006): 594.
force and a series of ‘good practices’ that states shall follow when they are contracting with PMSCs. According to the document, for instance, all states involved in the process (the hiring, the territorial where PMSCs are operating and home states where PMSCs are registered) have legal obligations to ensure that PMSCs will comply with the existing rules of humanitarian and human rights laws during their service. Huskey thinks that the Montreux Document by outlining good practices has shed light on the fact that domestic legislation has more potential to ensure the articulation of states and PMSCs’ obligations. Another international endeavour was seeking to reach the opposite outcome, namely to build a new international framework of international obligations for PMSCs and their personnel. The UN Draft Convention on Private Military and Security Companies (2010) emphasises that there are no binding standards on state responsibilities or obligations “with respect to what can be outsourced, to whom, and how”. The Draft Convention also seeks to give answer to the matter of reparation to the victims of PMSC misconduct and tries to articulate state responsibility for violations of international law. As a consequence, the Draft Convention claims that state parties have an obligation to punish those private soldiers who caused harm to the civilians, and simultaneously, to provide compensation to the victims. Scholars tend to argue that the Draft Convention is ambitious, and some of its provisions will be more than welcomed by states that are considered to be the most dependent on the industry. However, it is fair to mention that until there is no binding international legal regime which can directly invoke the accountability of states and PMSCs, alleged human rights violations must be handled via national criminal codes.

One might ask the question why the lack of effective legal accountability constitutes such a huge concern from legal and public perspectives. The opponents of using PMSCs in armed conflicts tend to argue that it seems PMSC employees are often seen as immune, and they do not need to face any national or international prosecutions. While other groups involved in hostilities,

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199 Only exception might be that if a PMSC commits a war crime or a crime against humanity, its responsibility could be invoked before the International Criminal Court, but according to Lehnardt it seems unlikely. See: Lehnardt, Chia (2008): ‘Individual Liability of Private Military Personnel under International Criminal Law’, The European Journal of International Law, 19 (5), 1015-1034, pp. 1030.
such as guerrillas in failed states or even peacekeepers, might commit more crimes compared to
the record of PMSC personnel\textsuperscript{200}, and it is also not empirically evidenced that they are likely to
get involved in misconduct than their state counterparts\textsuperscript{201}, it is a real danger that private military
contractors do not go to a trial. The information provided by Amnesty International may underpin
this worry. It has been reported that in spite of several credible allegations of human rights
violations, including torture or sexual abuse, were raised against security contractors, and most of
them were immediately declined by liable courts\textsuperscript{202}. On the other hand, because of their
reputation on the market and of their profit-motivated corporate model, PMSCs are also
interested in hushing up alleged human rights abuses. According to Bures, the “best-documented
case in a peacekeeping context” for bolstering this argument is when DynCorp was contracted to
train Bosnian police in the 1990s. The corporation was implicated in a “grim sex slavery scandal”.
Despite all the evidence none of the employees were convicted, but they were withdrawn from
Bosnia\textsuperscript{203}. Some argue that private contractors are unlikely to commit any crimes during their
operations because most of them are highly trained military professionals\textsuperscript{204}. However, as we
have seen earlier, private military firms tend to put forward profit to anything else, and it is not
impossible to imagine that they employ unskilled but cheaper labour to spare certain amount of
money. Furthermore, PMSCs might hire those that have been forced to leave public military
service and those “traditionally drawn” to mercenary work who are well-known for not taking
human rights provisions seriously\textsuperscript{205}.

Scholars have come up with several solutions on how to overcome the challenges of the
accountability of PMSC employees. Among others, one way of holding accountable PMSC
personnel is to construe them as state agents who are binding by human rights provisions. A
further mechanism would be to incorporate human rights obligations directly into the contracts
and into the licensing or regulatory schemes under which PMSCs are hired\textsuperscript{206}. Currently, the best
means at hand to hold PMSC personnel accountable is domestic criminal prosecution. The ‘\textit{aut
dedere aut judicare}’ principle obliges the custodial, national, and territorial state “to investigate

\textsuperscript{200} Bures (2005): 542.
\textsuperscript{201} Lehnardt (2008): 1016.
\textsuperscript{202} Amnesty International: Fact Sheet: Outsourcing Abuses in the “Global War on Terror”, p. 1., available at:
November 2014)
\textsuperscript{203} Bures (2005): 541-542.
\textsuperscript{204} Pattison (2010c): 16.
\textsuperscript{205} Pattison (2010c): 17.
\textsuperscript{206} Cameron (2006): 594.
and prosecute and extradite persons suspected of having committed grave breaches of the Geneva Conventions and Additional Protocol I irrespective of the nationality of the alleged perpetrator or place where the crime was committed\textsuperscript{207}. Nonetheless, the majority of domestic laws are not willing to recognise the phenomenon of PMSCs or they have no sufficient means at hand to regulate the industry\textsuperscript{208}. On the other hand, PMSCs often operate in failed states where liable authorities are not able to prosecute the alleged criminals. The essay will explore some of the elements of US law under which private contractors might be charged. Recently, the US government has sought to find any step to narrow the existing personal accountability gap between military soldiers and employees of private firms. First, American legal system had to overcome the problem of prosecuting those crimes which were committed abroad by civilians. Ironically, crimes against local population might have been judged in the countries where PMSCs operate, but according to the Order 17 accepted by the US-led occupation Iraqi government foreign (non-Iraqi) contractors were granted to be immune before local civil courts, and it subjected PMSC personnel to the jurisdiction of the sending country\textsuperscript{209}.

However, several federal acts might be available upon which the accountability of PSMC personnel can be invoked. The \textit{Military Extraterritorial Jurisdiction Act} (MEJA, 2000) was the pioneer attempt to handle the situations since it has been issued to make federal prosecutions available for any person hired by or accompanying military forces abroad. MEJA has been criticised for a long time, because according to the original text only contractors hired by the Department of Defence would have been under its scope\textsuperscript{210}. Although there were several efforts to amend MEJA, the treaty has been successfully applied only once to a PMSC employee\textsuperscript{211} until the ground-breaking conviction of four contractors in October 2014 which will be outlined in detail below. The need for holding PMSC personnel accountable for their human rights abuse and misconduct has brought \textit{US Alien Tort Claims Act} (ATCA, 1789) into question. The ATCA permits foreign nationals “to sue non-state actors including corporations in the US courts”\textsuperscript{212}.

One of the most famous lawsuits what has been set on the ATCA regulations against a PMSC

\textsuperscript{207} Lehnardt (2008): 1031.
\textsuperscript{208} Singer (2004): 537.
\textsuperscript{210} Singer (2004): 537.
\textsuperscript{212} Caparini (2008): 177.
was the *Saleh v. Titan case*\textsuperscript{213}. Titan and CACI were hired to participate in interrogations and to provide translation services to detainees in several detention facilities in Iraq, including Abu Ghraib. Private military contractors have been accused of torturing and of treating alleged criminals inhumanly. However, the case has been disclaimed by the Court of Appeals for the District of Colombia in 2009 by stating that claims under ATCA can not be brought against private contractors because they were not present in Iraq as ‘state agents’\textsuperscript{214}. Lehnardt underpins the argument of the Court of Appeals as saying that civilians can be held accountable as state agents if they are hired to carry out services which involve exercises of ‘public authority’. The interrogation might be seen as such exercise, but only if the subjects of interrogations are prisoners of war, and not civilians\textsuperscript{215}. The *War Crimes Act* (WCA, 1996) allows charging anyone who commits “grave breaches of the Geneva Conventions if the crime was committed by or against a US national or a member of the US Armed Forces”\textsuperscript{216}. It is problematic that the law did not describe what ‘grave breaches’ directly means. This leaves a loophole for US agencies, like the CIA, and private contractors to use means “short of the most extreme constituting torture” when they are interrogating and dealing with detainees\textsuperscript{217}. It is not surprising that no one has been sentenced under the WCA. US officials strove to overcome the challenges invoked by US laws which are not entirely related to civilian contractors on the field. In 2012, a proposal has been made to create a specific regulation on the accountability of private soldiers not hired by the Department of Defence overseas. The *Civilian Extraterritorial Jurisdiction Act* (CEJA) would supplement MEJA and other federal provisions on extraterritorial jurisdiction, and beside federal offenses it would also involve crimes like corruption or trafficking offenses\textsuperscript{218}. But so far, US officials’ efforts to make the CEJA acknowledged were unsuccessful.

The balance of evidence shows that there are several domestic legal options in the US to sentence private military contractors for the crimes they have committed during their services; however, it is also obvious that something is missing to use them. Probably, that is the political will to prosecute them. Once, a State Department official has been questioned why it is not likely

\begin{itemize}
\item \textsuperscript{214} CCR (2011)
\item \textsuperscript{215} Lehnardt (2008): 1017-1018.
\item \textsuperscript{216} Caparini (2008): 177.
\item \textsuperscript{217} Caparini (2008): 178.
\end{itemize}
to bring PMSC personnel before court. He responded as follows: “[o]ur job is to protect Americans, not investigate Americans”\(^{219}\). On the other hand, a recent development in prosecuting PMSC personnel has been witnessed. On 22 October 2014, seven years after four employees of the largest US-based private military firm, Blackwater, killed fourteen unarmed Iraqi civilians at the Nisour Square, Baghdad, a federal jury in the District of Columbia convicted them of murder and manslaughter under the MEJA\(^{220}\). According to the media, the so-called Nisour massacre was “the single bloodiest incident involving American private security contractors” during the Iraq War\(^ {221}\). After the massacre, it seemed that Blackwater contractors are lucky to avoid being held accountable for what happened. For example, in 2009 plaintiffs have already initiated legal procedure against private soldiers in question, but their complaint has been disclaimed by an American judge as saying that defendants’ constitutional rights were “recklessly” violated during the case-in-chief. The complaint was refused despite the fact that an extensive FBI investigation revealed that the victims did not possess any weapons or explosives\(^ {222}\). However, the case was reopened in the summer of 2014 and ended after ten weeks\(^ {223}\). The argument of contractors that they acted in the belief of being attacked by Iraqis was poorly evidenced, which has been determinated in the jury’s decision. Many think that the conviction of those who committed the most serious human rights abuse against civilians during the Iraq War might be a ”watershed”\(^ {224}\), and it could open a new way to prosecute others successfully and to convince people that private military contractors are no more immune.

Certain theorists argue that if there was an adequate system of regulation to monitor and coerce the accountability of private military contractors, there would be less revulsion to the use of PMSCs\(^ {225}\). It is not difficult to agree with it. Although current international and domestic regulations are not able to convince entirely those who deeply believe in the impunity of PMSC

\(^{219}\) Singer (2004): 539.
\(^{223}\) Devereaux (2012)
\(^{225}\) Pattison (2010a): 427.
personnel, the Blackwater verdict may show that there are efficient means in judges’ hands to find private military contractors responsible for what they have done. It might not be possible to change people’s mind about the nature and motivations of PMSCs, but by setting up an adequate legal system one of the basic objections to using them might be appeased.
IV. FILLING THE AGENCY GAP BY REGIONAL ORGANISATIONS

The result of the analysis detailed above has just shown that PMSCs might be successful interveners to a certain extent; however, it is not possible to initiate intervention by them, just to supplement the actions of other agents. However, it is also obvious that something needs to be done if the UN or individual states are not able or not willing to take any actions against the continuous violations of human rights. The ICISS Report has proposed other relevant agents at hand who might be capable to undertake any humanitarian mission, including military intervention. Amongst them, regional (and sub-regional) organisations can be seen as a viable solution to replace the UN or individual states to handle humanitarian situations. Unfortunately, the scope of this thesis does not allow a detailed analysis of former interventions undertaken by regional or sub-regional organisations; however, it strives to paint the relevant contours of the topic.

There are several good reasons to hold regional organisations legitimate to halt and avert severe human suffering perpetrated by governments. First and foremost, entrusting regional organisation to take military actions in favour of foreign citizens has international legal traditions. Chapter VIII of the UN Charter says that “[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority” (Article 53)\(^226\). However, the Charter also states that such action can not be initiated without proper authorisation of the Security Council. Another convincing argument for making regional organisations responsible to act is the previously mentioned advantage of them, namely their geographical proximity. Being that close to conflict zones can predestinate them to deploy military contingents as soon as possible. Furthermore, besides humanitarian calling other factors come into play for intervening in a neighbouring country or elsewhere in the region. States in the region have to also face numerous political, economic and social challenges. For example, the massive scale of human rights abuse can drive local population to leave their homes and flee to neighbouring states which may cause serious social crisis in target countries as well\(^227\). MacFarlane and Weiss call attention to the cultural aspects of intervention as well as arguing that regional agents are aware of the cultural and traditional customs of different societies and states; therefore they understand better the nature of conflicts. Moreover, local conflicts might not get enough attention

\(^{226}\) UNGA (1945): 11.
from the global community, and regional intervention is the only chance to stop the perpetra-
tions of human rights.\textsuperscript{228}

However, cultural and legal traditions might impede any intervention in certain regions. For in-
stance, it is well-known that in Asia the principle of non-intervention has a long history, and it is de-
epth rooted both in politics of Asian states and in public mind. In case of the crisis of East Timor, for
example, sub-regional groupings involving Indonesia’s neighbours, namely the ASEAN, were not
willing to take any actions because of their adherence to non-intervention principle.\textsuperscript{229} Fur-
thermore, Third World countries are not convinced to trust Western powers in case of using force at all.
This has been widely discussed during the acknowledging process of responsibility to protect norm.
Asian officials insist that humanitarian intervention remains a “prerogative” of stronger powers, and
they have not enough voice in Security Council (especially amongst the P5) to influence voting about
interventions; therefore they will never be able to invoke humanitarian intervention against a more
powerful state.\textsuperscript{230}

On the other hand, it has been seen in case of East Timor above that regional and sub-
regional organisations may lack significant amount of resources and equipment to undertake a
successful intervention. Take the example of the European Union (EU). According to Evans, the
European Union is the most capable to “make R2P a reality”, not just because of its population
size and wealth comparable to the US, but it possesses the most successful conflict prevention
model what made quite impossible to have effective war among its member states.\textsuperscript{231} From the
perspective of the second pillar of R2P, namely reaction even militarily, the picture is quite vague.
The EU is the only regional arrangement that can intervene outside its territorial scope.\textsuperscript{232} The
organisation’s first military operation outside Europe, but authorised by the Security Council,
was the 2003 Operation Artemis in Democratic Republic of Congo which has been brought into
being right after that the liable UN operation (MONUC) failed to protect civilian from militia
forces.\textsuperscript{233} The EU has effectively developed its rapid-reaction forces by establishing so-called

\textsuperscript{228} MacFarlane-Weiss (1994): 283.
\textsuperscript{229} Acharya, Amitav (2002): ‘Redefining the dilemmas of humanitarian intervention’, Australian Journal of
International Affairs, 56 (3), 373-381, pp. 379.
\textsuperscript{230} Acharya (2002): 378.
\textsuperscript{231} Evans, Gareth (2008): The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All.
\textsuperscript{232} Pattison (2010b): 205.
\textsuperscript{233} Badescu, Cristina Gabriela (2011): Humanitarian Intervention and the Responsibility to Protect: Security and
‘battlegroups’ comprising 1,500 soldiers each. By contrast, Pattison criticises the resources of the EU for not being able to do large-scale humanitarian interventions as stating that the limited size of its battlegroups and the lack of an appropriate heavy-lift air capacity makes it quite weak agent in armed conflicts. It is fair to note that there were many attempts to establish a European standing army consisting of at least 60,000 soldiers, but leaders of member states embraced the idea of creating battlegroups instead. It also should be mentioned that the EU tends to use ‘softer’ means rather than military force. In Syria, for example, EU officials decided to apply diplomatic tools and economic sanctions instead of direct use of force in order to persuade the Syrian government to stop hurting its population.

On the other hand, mistrust in Western powers may lead certain regional organisations to the intention of finding their own solutions for their own problems. Article 4 of the Constitutive Act of the African Union (AU) recognises the right of the Union to “intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.” At first sight, the AU possesses the most important tool to launch a humanitarian action: it managed to establish a standing military force (African Standby Force, ASF). Badescu notices that the ASF plays the most relevant role in African peacekeeping context as it would be able to be deployed in time and in cases ranging from monitoring operations to military interventions. However, the AU and its forces need to face several, mostly financial and technical, challenges. The AU, just like any other multilateral organisations, finances themselves from the contributions of member states, and its capabilities are highly dependent on the goodwill of its members and external financial resources. As we have seen earlier, due to shortcomings of capabilities and finances the AU did not succeed in influencing effectively the events in Darfur. In Libya, the AU was not able to overstep its (bad) tradition to support incumbent governments and state leaders, thus it decided not to participate in multilateral military intervention against Gaddafi and his government, and it favoured less-

239 Badescu (2011): 89.
coercive resolutions\textsuperscript{241}. On the other hand, the Economic Community of West African States (ECOWAS) is probably the most notable sub-regional organisation which conducts humanitarian military intervention, although its reputation is not that high. For example, its forces intervened in Liberia in 1990 with a high profile of success in terms of pushing back rebel forces, but it was not efficient to establish a stable internal authority. Moreover, its peacekeepers were accused of committing abuses against civilians and giving arms support to rebel groups as well\textsuperscript{242}.

Practical evidence shows that there are many steps to take in order to consider regional organisations as efficient and effective intereners. In legal terms, it might be useful that international community gives them the right to authorise interventions, so they would be allowed to act without permissions of further authorities. It also seems that they need time to set up effective capacities to act properly, but recent developments in the European Union gives hope that in the not that distant future their capabilities will be available for any kind of humanitarian mission at any time. Moreover, they might get the authorisation from their public as well because it would use their own personnel which may be much more aware of the nature of cultural or ethnic tensions in the region. By comparing them to PMSCs it might be argued that in terms of equipment they have to develop, but in any other parameters they are doing well or even better than their private counterparts.

\textsuperscript{241} Omorogbe, Eki Yemisi (2012): ‘The African Union, Responsibility to Protect and the Libyan Crisis’, 

\textsuperscript{242} Pattison (2010b): 206.
V. CONCLUDING REMARKS

The main goal of this paper was to examine the legitimacy of using private military and security companies in humanitarian interventions. The first part of the thesis revealed the most important factors to consider intervention as legitimate and legal. In terms of international law, there are circumstances when general prohibition of using force might be suspended, and international society practically is responsible to take actions. According to the UN Charter, an intervention can be undertaken only if the Security Council gives its authorisation to do so; on the other hand, several theorists, and also the thesis, acknowledge the possibility of launching humanitarian intervention without UN permission if the situation dictates so, just like it happened in Kosovo. The thesis reiterates the argument that humanitarian intervention must be fought for a so-called just cause. According to R2P norm, humanitarian intervention can be invoked in case of large scale loss of life and large scale of ethnic cleansing. Advocates of humanitarian intervention have also noticed that military force should be used as last resort, so if the situation can be handled without using coercive means, agents should do so.

The paper also outlined all relevant parameters which should be met by an agent to qualify as legitimate humanitarian actor. Moral and practical issues are the most important ones. Morally, a good intervener must be driven by a right intention to fight, and that intention should be accepted by the public as well. However, the thesis embraced the view that motives and intentions must be treated separately, and an intervener is considered good if its activities result in positive ends according to humanitarian terms, even if it may have other, less altruistic motives. In practical sense, a good intervener must be effective and efficient in the field by possessing all necessary equipments and personnel, being able to be deployed in a timely manner, and having a well-elaborated and detailed strategy to act.

The thesis ascertained that private military and security companies partially comply with the aforementioned parameters and factors. It reiterated that mercenaries could not entirely be seen as mercenaries because their organisational frames are not comparable. While traditional mercenaries were individuals or smaller groups of individuals, PMSCs are following the corporate model of modern times. However, their most elementary character, namely being motivated by profit, makes difficult to differentiate them from traditional mercenaries. It turned out that because of their profit motivation they fail to be a legitimate intervener in many aspects. Although it has been recognised that other motives than altruism might drive interveners to react
to grave human suffering successfully, it seems that financial motivation can not reach that point since it influences the activities of PMSCs and their personnel negatively from different angles. Interestingly, financial motivation does not completely undermine the right intention clause, since an analysis of intentions and motives of other agents has shown that in practice there are no actors in the field, with the exception of non-profit organisations with an exclusive humanitarian profile, which are not driven by other motivations as well. It has been revealed that even national soldiers may tend to join military forces in the hope of higher financial remunerations. More probably, effectiveness of such corporations might be more affected by their hunt for profit.

Looking at their equipment and professionalism of their personnel, it is fair to assume that they might be the best option to undertake a humanitarian intervention. However, the chase after financial gain may inspire the leaders of private military firms to employ unskilled, not well-trained semi-professionals or persons without any particular military background which might dramatically influence the outcome of the operations. Furthermore, unlike national army soldiers, private military firms might decide to suspend or end their operations when the situation starts to be heated. Leaving the conflict before fulfilling their contracts does not increase their effectiveness or efficiency either.

Populations of both hiring and target states do not tend to trust those interveners which are primarily motivated by financial remuneration. The lack of transparency and information about their operations may increase that mistrust. Interestingly, the ignorance by the media and the public may support the application of private forces in conflict zones, as they are less risk averse when the discussion turns to private military controls. This public negligence might goad governments to rely on private military contractors rather than their national armies, especially when the forces have to face grave violence. Furthermore, democratic control could also be blemished when legislative powers are not able to monitor and control their activities abroad, as they are not part of the official chain of command. Operating without proper authorisation PMSCs could not be held as legitimate interveners.

Many scholars think that the aforementioned moral objections to private military companies overshadow other objections to them. It is fair to agree that these objections, especially the pecuniary one, are the most deeply-rooted in publics’ mind, and there is no chance to alter these views in the near future. However, the objection to their legal accountability might be muted by strengthening the effectiveness of international and domestic regulations on criminal
responsibility of PMSC personnel. An appropriate legal regime might abolish the feeling of the people that PMSC personnel are immune, and they could do anything in conflicts without making them going to trial. It must be admitted that current international legal system is not useful on holding PMSC employees accountable before both international and domestic courts, and only few countries have attempted to create a legal framework to try them at national level. In order to overcome the disadvantages of such fragmented and not really successful legal regime, an international treaty on PMSCs might be welcomed. Current endeavours of the United Nations may give hope that international society will reach consensus on the matter, but there is a constant fear that those countries most dependent on private military industry might not support any more serious regulations. However, the success of Blackwater verdict shows that there are potentials in national regulations to convict those who committed serious crimes against humans.

As a consequence, it is fair to say that because of their wealth in equipment and professionalism PMSCs could be useful contributors in military actions; however, their employment shall be avoided in humanitarian interventions, mostly because of their vague legal status and criminal accountability and of their commitment to making profit. This thesis offers regional organisations as the second best legitimate humanitarian intereners after the United Nations and states. Although their effectiveness might be questioned because of their lack in standing armies with rapid deployment, their knowledge on cultural traditions and, for example, ethnic tensions in the region and their geographical proximity to the conflicts make them a potential humanitarian intervener. In order to be capable of react in a timely manner, the right to authorise intervention shall be awarded to regional organisations as well, but it is unlikely in the near future.
VI. BIBLIOGRAPHY

**Primary sources from international governmental and non-governmental organisations and national organs**


*Secondary sources: books, academic articles and journals*


PLAGIARISM CLAUSE

I, the undersigned, Rita Felföldi, candidate for the M.A. degree in International Studies declare herewith that the present thesis is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person’s or institution’s copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

NYILATKOZAT SZAKDOLGOZAT SZERZŐSÉG SZABÁLYAINAK BETARTÁSÁRÓL

Alulírott, Felföldi Rita (Neptun kód: MVSDPI), jelen nyilatkozat aláírásával kijelentem, hogy a “Whose Responsibility to Intervene?: Moral, political and legal considerations of employing private military and security companies in humanitarian interventions” című szakdolgozatomat magam készítettem, azt sem más műhelymunka kurzusra, sem szakdolgozatként, sem ezen, sem más egyetemen és szakon, sem én sem más be nem adta értékelésre. Mindezek alapján jelen dolgozat önálló munkám, annak elkészítésekor betartottam a szerzői jogról szóló 1999. évi LXXVI. törvény szabályait, valamint az egyetem által előírt, a dolgozat készítésére vonatkozó szabályokat, különösen a hivatkozások és idézések tekintetében. Fentieken kívül kijelentem, hogy az önállóságra vonatkozóan, a dolgozat készítése közben konzulensemet nem tévesztettem meg.