CHAPTER 9: REFORMS AND IMPLICATIONS: REGULATION, RECONSTRUCTING THE PUBLIC MONOPOLY ON FORCE, AND JUST WAR THEORY

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Please also note that the chapter is to be updated in response (i) to some very helpful feedback that I have received on the full draft on the monograph and (ii) recent events (the chapter was written in Oct 2012). If you would like to read the full draft of the monograph, please contact me.

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Reforms to address the problems of private military force fall into two camps. The first set of reforms focus on changing the regulation of the industry. These reforms could potentially tackle the contingent problems with the use of PMSCs, thereby ameliorating some of the problems. Although the deeper problems in the first sense are not, by definition, able to be remedied (recall that they are deeper precisely in the sense that they cannot be tackled by an effective system of regulation), the tackling of the more contingent problems identified could nevertheless make a significant improvement to the justifiability of private military force and increase the occasions when private military force could be permissibly employed. I will evaluate three sets of proposals: changes to the international law governing the use of PMSCs (section 9.1.1), additional domestic regulation (section 9.1.2), and self-regulation (section 9.1.3). Although all three reforms would have some merit, each also has drawbacks and is likely to be inadequate on its own. I will defend a mixed approach to regulation, which is likely to be the most desirable way of tackling the contingent problems identified (in the short term at least).

The second set of reforms (considered in section 9.2) is more ambitious. It involves considering what is the best way to organize military force ideally and thereby avoiding, first, the contingent and deeper problems raised by the privatization of military force and, second, the problems identified with the regular military in Chapter 5. I will consider the desirability of various ways of organizing military force and will defend in particular one proposal against the alternatives. This is for a global public monopoly on the authorization and provision of military force, based around a cosmopolitan all-volunteer force (AVF). Such a system would, I will argue, potentially tackle all the contingent and deeper problems identified. In doing so, I will respond to the ‘Global Authorization Objection’, which asserts that if the use of PMSCs were authorized by a global institution, such as the UN, there would be little reason to prefer the public provision of military force. I will also reject the desirability and feasibility of an alternative, seemingly public-based account based on the

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statist authorization and the provision of force, and the fully market-based system defended by anarcho-libertarians. Overall, then, I will defend a global public, supranational monopoly on force as the most desirable way of organizing military force.

In the final section (9.3), I will consider some potential reforms for our thinking about the ethics of warfare more generally, necessary in light of the privatization of military force. I will argue that the privatization of military force challenges both the collectivist and statist bases of prevailing Just War Theory. It ultimately necessitates an approach to the ethics of war that places as central issues related to individual participation and individual choices in war. Hence, I will argue that the prevalence of PMSCs presents a powerful case for adopting a revisionist, individualist approach to Just War Theory. This builds on the account of individual *jus ad bellum* presented in Chapter 3. In doing so, I will repudiate collectivist approaches to just war, such as that defended by Noam Zohar. I will also argue that Just War Theory, both in its collectivist and revisionist forms, needs to be more sensitive to issues to do with the ongoing legitimacy of the military.

### 9.1 Regulating the Private Military and Security Industry

Let me start by considering some proposals to regulate the private military and security industry and thereby tackling some of the contingent problems posed by the use of PMSCs. Most of the proposals that I will consider aim to tackle the Violation of Human Rights Objection. That is, they aim to ensure that private contractors are sufficiently accountable for any abuses of civilians’ human rights and, at the same time, reduce the opportunities for contractors to violate human rights. Several of these proposals aim to tackle the problems of the lack of democratic accountability of the use of PMSCs and the poor treatment of contractors, and some try to address the problems surrounding the contracting process, such as the cost-effectiveness of using PMSCs. In addition, some of the reforms could tackle the problems at the international level by bringing PMSCs clearly under international law and by decreasing the potential for the use of PMSCs to lead to international instability. Accordingly, if these reforms were actualized, PMSCs may be permissibly used in a greater number of circumstances. There would be a less strong case against their use, given that many or even all of the contingent problems would be addressed.

It should be noted here there are several general problems with achieving effective regulation of the private military and security industry, which to some extent affect all the proposals. First, an efficacious system to tackle the violation of human rights would require an strong system of ongoing monitoring and the investigation of potential incidents. Yet the nature of the private military and security industry can make such monitoring and investigation tricky and expensive, since PMSCs often operate in conflict zones.

Second, the globalized nature of the private military and security industry makes effective regulation difficult. For instance, a PMSC may be registered in one state (the home state), operate in another (the territorial state), be employed by a third state (the client state), and hire contractors from a fourth state. Moreover, PMSCs are increasingly employed by nonstate actors, such as TNCs, which further complicates matters. PMSCs also sometimes subcontract aspects of their contract to other firms. Accordingly, the complex, globalized nature of the industry makes effective regulation difficult since monitoring, investigation, and enforcement can involve several states and nonstate actors.

The third general problem is the feasibility of reform. Several of the proposed schemes would require significant political will to be achieved. Unfortunately, as noted in previous chapters, this is sorely lacking in some quarters. This is due in part to the short-term benefits that PMSCs offer governments, the financial cost of regulation, the fear of reducing
the flexibility that the private military and security industry offers governments, and a general laissez-faire opposition to strong systems of regulation of the market. Of course, the lack of current feasibility is not a persuasive reason to reject a particular reform per se. Rather, the issue of feasibility can help us to decide which reforms, out of those that are desirable, would be better to pursue, so that effort is not wasted and that some desirable changes are made rather than none.

Fourth, almost all of the proposals are likely to have the side effect of increasing the perceived legitimacy of the industry (although not necessarily its moral justifiability). Let me explain. The industry is still to some extent tarnished with a mercenary label and many hold the view that PMSCs are lawless, violent, and aggressive, can kill innocent civilians with immunity, and are generally disreputable. Yet by improving the effectiveness of the regulation of the industry—or, more specifically, improving the appearance of the effectiveness of the regulation of the industry—the industry is likely to be seen as more reputable and therefore the hiring of PMSCs be seen as more acceptable. As noted in the previous chapter, increasing the perceived legitimacy of the industry is one of the reasons why industry advocates often highlight the potential benefits of using PMSCs to perform anti-piracy, humanitarian assistance, and peace operations. Improving the perceived regulation of the industry will also augment its perceived legitimacy. The more that the industry is seen as reputable, the more likely that there will be increased opportunities for PMSCs. Indeed, several PMSCs have actively called for greater regulation of the industry for precisely this reason. For example, one company states that

responsible industry players welcome … improved regulation of the industry, more closely defined legal status for companies and staff working in the field, and effective mechanisms for company and individual accountability… Aside from the clear ethical imperative … we are also mindful of the business benefits of differentiation and improved perception of the sector (in Cockayne and Mears 2009: 15).

However, the potential increase in perceived legitimacy is problematic. To start with, the regulation may in fact do little to tackle the contingent problems raised by the privatization of military force, but still lead to a growth in the industry. In this context, José Luis Gómez del Prado, the Chairman of the UN Working Group on Mercenaries, was worried that the Montreux Document—which does very little in terms of additional regulation of the industry—‘recognises de facto this new industry and the military and security services it provides’ (2009: 444). Even if the proposed regulation does address some of the problems, such as the Violation of Human Rights Objection, other problems may remain, such as the deeper problems that I have identified. Therefore, to the extent that the increase in perceived legitimacy of the industry leads to an increase in the privatization of military force, improved regulation can be problematic. To be sure, the benefits of improved regulation may outweigh this problem, but this is unlikely when the regulation does little to alter the status quo.

9.1.1 International regulation

The UN Working Group on the Use of Mercenaries (2010) has drafted a convention on PMSCs, the ‘International Convention on Private Military and Security Companies’ (or the ‘Draft Convention’). If put into practice, the Draft Convention would rule out the use of PMSCs in certain roles (such as those that are inherently governmental) and attempt to reassert a state monopoly on the use of military force. It would aim to improve on the UN Convention on Mercenaries, which suffers from several shortfalls in its definition of
‘mercenarism’, its applicability to PMSCs, and its level of acceptance amongst states (see section 6.1).

On the one hand, the Draft Convention could potentially play a vital role in the regulation of PMSCs. As Percy (2006: 39) argues, domestic regulation alone cannot control companies who work for illegitimate causes abroad; international regulation is needed for this. More specifically,

[i]international regulation has the capacity to protect states with weak judicial systems from potential problems caused by PSCs; it can prevent PSCs from moving abroad to avoid regulation; it can ensure that contracts between non-state actors and PSCs adhere to minimum standards (Percy 2006: 52).

To be sure, international regulation, such as the Draft Convention, is also unlikely on its own to be sufficient, unless the regulation would be an extensive, supranational system of licensing, monitoring, investigation, and enforcement, which is, of course, very unlikely. Hence, the Draft Convention proposes national regulation and enforcement, such as national licensing regimes, to accompany the new international law (White 2011: 143).

On the other hand, one general worry with a new international law is that it would replicate the problems of the UN Convention on Mercenaries, such as lacking definitional precision and support from states. Indeed, these problems already apply to some extent to the Draft Convention, which adopts a broad—and potentially unpopular—notation of ‘inherently governmental’ and uses the vague term ‘waging war and/or combat operations’ (White 2011: 137–40). The hard (treaty) law of the Draft Convention is unlikely to attract support from states that favour soft law options, such as those based on the Montreux process (White 2011: 150). Indeed, the US, UK, and the EU registered their opposition to the development of a new treaty on PMSCs in the Human Rights Council’s debate on the Draft Convention (White 2011: 150–1). Thus, the danger is that, without sufficient specificity and support from states, a new international law could, like the Mercenary Convention, end up being a weak law and do little to tackle the problems raised by the use of PMSCs.

9.1.2 National regulation

Proposals for domestic regulation can be divided into those that are internally focused—that is, those that aim to tackle the problems within the home state—and those that are externally focused—that is, those that aim to tackle problems beyond the state’s borders. Internally, there are several proposals for improving the contracting process so that governments are not overcharged and PMSCs are clearly under democratic control (e.g., Commission for Wartime Contracting 2011; Human Rights First 2008). The proposals include additional contract oversight officers, reforms of the bidding processes so that there is greater competition amongst PMSCs for contracts, an increase in penalties for failing to meet the terms of the contract, and additional reports to national parliaments. For instance, in their final report to Congress, the Commission on Wartime Contracting in Iraq and Afghanistan (2011) recommends (amongst other things) additional contract oversight officers, an increase in competition, and improved recording and use of PMSCs’ performance data. Such reforms should be more easily achievable, given that they concern only the domestic processes of the state in question.

Externally, the proposals for national regulation attempt to tackle some of the problems surrounding the use of PMSCs abroad. They include reform of domestic laws so that they apply to PMSCs (e.g., the US’s extension of the UCMJ and MEJA to contractors in 2007), a prohibition on PMSCs performing certain roles, and the licensing of PMSCs for
certain activities abroad. For instance, (although not strictly national regulation) in their final recommendations, Priv-War (2011) suggest that the EU, first, regulates or provides guidelines on the export from member states of the services of PMSCs to third states and the use of such services by the EU and, second, develops a system for the registration, licensing, and monitoring of PMSCs.

Externally focused national regulation is likely to be trickier because of its extraterritoriality, which makes effective regulation expensive and sometimes difficult to put into practice (Percy 2006: 37). Indeed, the UK has rejected calls to licence PMSCs because it views licensing schemes as unworkable, given the difficulties of global monitoring (de Nevers 2010: 233). Moreover, domestic regulation by a few states alone is likely to be limited. If PMSCs perceive that their home state has a system of regulation that is too restrictive, they can simply switch bases to another state with a more permissive system of regulation. Consequently, there needs to be a collective effort by states, ideally with a harmonization of national regulation, but this is unlikely. The UK, for one, has made it clear that it plans to continue with its light-touch approach. So, although it would clearly have some benefits, domestic regulation alone is likely to be limited.

9.1.3 Self-regulation

Self-regulation is the option favoured by much of the industry. It involves a membership scheme whereby all members are required to follow a code of conduct. Indeed, the industry already self-regulates to some extent. For instance, PMSCs that are members of the ISOA need to follow the ‘ISOA Code of Conduct’. Self-regulation is also the favoured approach of certain states. As already noted, the UK government has adopted this approach to its national regulation. It relies on the Security in Complex Environments Group, which was established by the trade association, Aerospace Defence and Security, to ‘promote professional standards’ across the UK PMSC industry and ‘to provide for their enforcement through monitoring and sanctions’, as well as ‘to represent the interests’ of the industry to the UK government and other stakeholders (ADS 2011: 1). In addition, industry members and other stakeholders have developed the International Code of Conduct (ICoC) (see ICoC 2012). As of 1 February 2012, it had 370 signatory companies and generally significant support amongst key stakeholders (e.g., the UK claims that it will require all the PMSCs that it hires to be signatories and will pressure other states to follow).

Self-regulation has a number of attractive features. It often has industry support and the support of client states, making its realization more feasible. The DoS’s legal advisor Harold Koh, for instance, says of the ICoC that

by bringing together all of the key stakeholders—states, civil society organizations, relevant experts, clients, and the private security companies themselves—this initiative has the potential to address gaps in oversight and accountability left by traditional regimes (in Rosemann 2011: 14).

Similarly, Anne-Marie Buzatu, the Coordinator of the Geneva Centre for the Democratic Control of Armed Forces’ ‘Privatisation of Security Programme’ argues that ‘[t]he greatest strength of the initiative is its multi-party participation, providing strong assurances as to the viability, sustainability and ultimate success of the ICoC’ (2011: 10). Self-regulation can also create reputational pressure to comply with set standards if employers consider membership when deciding which PMSCs to hire (Schreier and Caparini 2005: 116). In theory at least, firms that are members of the self-regulatory body (and so compliant with the set standards) will be seen as more reputable and therefore more likely to be hired. Self-regulation can also
be more flexible and more relevant than hard law options. To that extent, Rolf Weber, in his discussion of self-regulation generally, argues that ‘[r]ules created by the participants of a specific community are... more efficient because they respond to real needs, mirror the technology, and provide the opportunity to flexibly adapt the legal framework to the changing environment’ (2011: 15).

Yet self-regulation also suffers from several problems. To start with, there is a perverse incentive not to sanction any members that violate the standard. The problem is that in systems of self-regulation the members are typically the ones that pay for the scheme and on whose support it relies. Sanctions against members—and in particular high-profile members—that fail to meet the set standard, such as expulsion, may reduce the ability of the scheme to function. Similarly, Andrew Bearpark, the former Director General of the British Association of Private Security Companies notes, ‘[t]he problem is finding ways of funding an activity, whether through governments or through international mechanisms, so as not to be dependent on the companies themselves’ (in Pfanner 2006: 257). Indeed, one major issue with the ICoC is that it is yet to be established how it will be funded.

Moreover, several of the current systems of self-regulation lack sufficient mechanisms for the ongoing monitoring and investigation of complaints. In this context, de Nevers (2010: 228) argues that the ISOA lacks regular reporting requirements, is reactive rather than proactive in evaluating members’ behaviour, and has insufficient provisions for monitoring of behaviour. The ICoC has proposed to remedy some of these problems by having an independent, not-for-profit oversight institution (the ‘Mechanism’) that will periodically monitor companies, investigate particular incidents, allow for third-party complaints, and potentially suspend or terminate a company’s membership. If the ICoC’s Mechanism were to have these characteristics, this would be a significant development. However, the Mechanism would be likely to require significant financial and human resources—which are yet to be forthcoming—to be able to carry out its mandate effectively. Moreover, if it were to have these resources, it would most likely not be pure self-regulation. It would be, in effect, a new global public body for the monitoring of the use of PMSCs. It would be independent from the industry, not-for-profit, and represent the collective interest of individuals in the international community that would potentially be affected by some of the negative implications of the private military and security industry.

Even if the ICoC were sufficiently robust, there is a further problem with self-regulation: not all PMSCs may join. There may not be enough economic benefits for certain PMSCs to be a member. Membership may be costly and clients may not sufficiently take into account whether the PMSCs that they employ are members to make membership worthwhile. Furthermore, the firms may not meet the set standards. The major problem here is that self-regulation is limited to reputational pressures alone. If these are insufficient or do not apply, then PMSCs have little incentive to join. Disreputable or rogue PMSCs, from the darker, murkier side of the industry, will not be regulated. Yet these firms require regulation the most. Such firms may continue to work for illegitimate clients, for unjust ends, and sometimes violate civilians’ human rights in the process. To tackle such firms, there would need to be a more formal system of national and/or international regulation, such as the proposals considered above.

Overall, self-regulation can play a potentially useful role in what Percy (2006: 53) calls a ‘wider regulatory web’, alongside national and international regulation. Yet the danger is that self-regulatory efforts will be developed at the expense of national and international

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2 The ISOA did launch an investigation into the Nisour Square incident, but it has been claimed that it was opened reluctantly, and Blackwater/Xe/Academi withdrew from the association two days after the investigation was announced (de Nevers 2010: 229–30).
regulation and that the self-regulation that will develop will only be very weak. This is what de Nevers identifies as the central dilemma with self-regulation: ‘companies are unlikely to act without the threat of state intervention... but even weak self-regulatory efforts may reduce state efforts to establish regulation’ (2010: 222). If we also consider the increase in perceived legitimacy that may come from even a weak self-regulatory regime and the consequent (and problematic) further privatization of military force, self-regulation alone may be highly problematic. It is therefore imperative that the more formal national and international efforts discussed above be developed and be seen to be developed in order to gain the benefits of national and international regulation, and to lead to a stronger self-regulatory regime, as potentially promised by the ICoC.

9.2 Reconstructing the Global Public Monopoly on Military Force

We have seen that an augmented, robust regulatory web of national, international, and self-regulation of the private military and security industry would potentially tackle some of the problems surrounding the use of PMSCs. However, even if there were such a scheme, there would still be some problems raised by the privatization of military force. These are private contractors’ greater likelihood of possessing financial motives, the undermining of communal bonds, the Problem of Private Choice (which can weaken democratic control of the military and effectiveness at fighting just wars), and the potential for inadequate access for some to protection. These deeper problems mean that, even with improved regulation, we still should eschew private military force. Let us now consider some more ambitious reforms. These are for alternative ways of organizing military force that would potentially address these deeper problems with private military force, as well as the problems faced by current AVFs and conscripted forces. I will defend in particular a global public monopoly on the authorization and provision of military force, which I will claim is the ideal way of organizing military force and could avoid all the problems identified.

9.2.1 Clarifications

Some clarifications are necessary to make clear what it is that will be proposed in my argument for a global public monopoly. The first concerns the public/private distinction, which Norberto Bobbio famously called one of the ‘grand dichotomies of Western thought’ (Weintraub 1997: 1). This distinction is used in a myriad of ways, such as to denote the limits of legitimate governmental interference with individuals (in liberal political theory), to demarcate the problematic spheres of conventionally accepted patriarchal domination (in feminist political theory), and to differentiate between the market-based and state-based provision of services (in economic theory). For the purposes here, I will take the public to be the collective and to concern a certain group and, conversely, the private to be the particular and to concern the individual. As Jeff Weintraub (1997: 5) notes, this is one of the central ways to use the distinction. As such, the public interest is the collective interest, whereas the

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3 Also see Leander (2012), who argues that self-regulation may increase the legitimization of the industry and acceptance of its presence in a process that empowers military professionals.
4 See Owens (2008) for an account of how the public/private distinctions have been made (and remade) historically as an effect of political power.
private interest is the particular interest of an agent or agents within a larger group. The public authorization of military force means that the collective, perhaps through representatives, authorizes force and the public provision of military force means that the collective provides force through its shared institutions.

The public is often used as a synonym for the political and, in particular, the state (Weintraub 1997). However, in what follows, I will adopt a broader account of the public. Although the state may often be the primary public agent, it is not the only public agent. There can be the public provision and authorization of services at the substate, local level, such as by local communities within a federalized system. There can also be the public provision of the authorization of services at the superstate, international level, such as by regional organizations and international organizations, such as the UN.

What is public at one level may be private at another. Most notably, when considering the international context of the two hundred-odd states and global civil society, the collective, public interest of those within the state’s borders becomes the private interest of a particular state (Kaldor 2007: 262). Even supranational regional arrangements will be partial when considering the global (see Mendez 1999: 396–7). The only fully public arrangement—one that is not private at another level—is one that is global. It is worth noting here that free market-based systems are necessarily private, given that they concern the competitive purchase and supply of services by individual agents within a larger group. However, it is not only market-based systems that are private. As already noted, in the international context, statist provision, even if not market-based, can be considered to be private.

As should be apparent by now, I will be concerned not only with the case for a public monopoly on the authorization of military force, but also a monopoly on the provision of military force. This distinction between the authorization and provision of military force is central. Of course, the two may not go together: a state may have a monopoly on the authorization of military force, but other agents may be employed by the state for the provision of military force. For instance, PMSCs may assist states by providing logistical services to help them fight wars. We need therefore to consider the case for both the public monopoly on the authorization of military force and the public monopoly on the provision of military force. I will also be concerned with defending a public monopoly on force, where only one agent—the collective in question—is tasked with the authorization and provision of military force. I will defend a monopoly of both against the alternatives, such as oligopolies and a completely free-market system.

So, in what follows, I will defend the public (meaning collective) monopoly on the authorization and provision of military force and, in particular, a global public monopoly on the authorization and provision of military force.

9.2.2 Ways of organizing force

There are several potential ways of organizing military force. I will concentrate on the four most relevant candidates for military force.

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5 I will leave aside here whether the collective interest is an aggregate of individual interests, concerns the interest of all individuals within a group, or goes beyond particular individual interests.

6 The case that I will present may apply to other uses of force, in addition to military force, most notably for policing and punishment. However, the case for the public monopoly on force applies to the greatest extent to military force, given that it has the greatest destructive power. Rosky (2004) makes a similar point, although he focuses more on the danger to the state posed by PMSCs.
Global authorization, global provision

A global monopoly on the authorization of military force and its provision would be the most morally desirable way of organizing military force in the (perhaps very) long term. The global monopoly on the authorization of military force would mean that only the specified international organization would be able to authorize military force. The global monopoly on the provision of military force would mean that only one agent—that of the specified international organization—would be authorized to undertake military force. For instance, there would be a UN standing army of professional, volunteer soldiers—a cosmopolitan AVF—to respond to potential conflicts around the world. No other agents, such as states or PMSCs, would possess military capabilities or be able to authorize force.

Let us consider this proposal further. However, before doing so, it is worth noting that there are two additional reasons to consider this proposal. First, it provides a normative vision for the improvement of the legitimacy of military force. Although Chapter 5 largely defended the AVF, it also noted that some state-based AVFs suffer from several shortfalls. The cosmopolitan AVF would go some way to dealing with many of these, as well as those in a statist international system. Although its full development may be a long way off given current political realities, steps on the way to achieving this goal may be beneficial. Second, considering the most legitimate arrangement helps to flesh out the Cumulative Legitimacy Approach since it provides an example of the sort of force that could be fully legitimate on this approach.

The cosmopolitan AVF force would be made up of elite, professional, volunteer soldiers (although still paid) from a variety of states. The force would be, at the start, primarily for peacekeeping operations and minor humanitarian interventions. To that extent, it would have some affinity with Mary Kaldor’s (1999) model of ‘cosmopolitan law enforcement’ in that many of the roles that it would perform would be somewhere between soldiering and policing. Once it grows in size and its authorizing institutions achieve sufficient maturity, it would progress to be able to undertake military operations in defence of a threatened state and other just wars. Soldiers would enlist in the force for a term of several years; for instance, they may be able to receive a secondment from their home state or may even have previously been private contractors. The recruitment process would be rigorous to ensure that only experienced and suitable soldiers would be recruited. Indeed, it would be modelled as an elite force for the most capable soldiers wanting to make a positive difference worldwide. Therefore, in contrast to PMSCs, it would be a public force in that its soldiers—and force more generally—are, on the face of it at least, concerned with the public good rather than the private interest. Indeed, there would be a clear military covenant that outlined, 7

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7 Mendez (1999) reaches a similar conclusion in his defence of the need for a ‘universal peacekeeper’ to keep global law and order and, more generally, to provide global public goods. His proposal differs from mine, however, in that he allows for some subcontracting (Mendez 1999: 405).

on the one hand, the expectations of its soldiers and, on the other, their additional rights and benefits, including an extensive responsibility of care during and after their term.

The (reformed) UN would be in charge of the force: a more expansive Department of Peacekeeping Operations could be the main institution to manage the force. To ensure adequate democratic control of the force, it would, first, be proposed by a reformed UN Security Council (where democratically organized regional organizations replace the current permanent five members) and, second, authorized by a UN parliament. The force would have recruitment targets so that it does not have a strong bias towards any particular nationality, gender, social class, or sexuality, which should reduce the civil-military gap. Soldiers would also be encouraged to take leaves of absence to undertake civilian education in a different state from their home state in order to improve their cultural awareness and their appreciation of civilian life, and, on the other hand, civilians’ understandings of the force.

The potential benefits of this way of organizing military force are as follows. The first is what I will call the ‘Reduced Conflict Benefit’. With a global monopoly on the authorization and provision of military force, there would be much less conflict in the international system since the number of agents that could authorize and provide military force would be massively reduced. This claim builds on the Instability Argument presented in Chapter 7, where I argued that international stability is jeopardized by the fact that the privatization of military force increases the number of agents that can use military force and their abilities to do so. The second benefit is what I will call the ‘Provision Benefit’. There would be a global force ready to deploy when needed to tackle any minor incidents before they become serious and, more generally, to ensure that everyone is provided with a basic level of physical protection. The significance of these benefits will become apparent when we consider the alternative ways of organizing military force. Third, it would be the most legitimate form of military force under the Cumulative Legitimacy Approach. Its elite, experienced soldiers should ensure its effectiveness. Its subjection to the democratic controls of the reformed UN institutions and minimization of the civil-military gap should ensure sufficient democratic control. Although it may not reinforce communal bonds within states, its development may go some way towards augmenting the sense of global solidarity (I will consider an objection to this point below). And, since its soldiers would volunteer, it would be desirable in terms of the proper treatment of military personnel.

On the face of it, this proposal looks similar to that proposed by Herbert Wulf (2005; 2006; 2007) in his helpful accounts of the case for the reconstruction of the public monopoly on force. These accounts, however, do not properly separate issues of authorization and provision, and Wulf allows for more decentralization than I do. He proposes instead a ‘public monopoly of military force at all levels of governance—at the local, national, regional and global levels’ (2007: 22; emphasis added). As he admits, the problem with such a scheme is that there may be competition and conflict between the different agents (Wulf 2007: 22–3). For instance, without a global monopoly on the authorization of military force, the regional level may not enjoy the Reduced Conflict Benefit since there may be competition between various regions each pursuing their own ends. Wulf proposes that, when matters cannot be resolved, the issues should be handled at the global level. However, if the underprovision of goods and conflict within a multilevel system are prospective, as they may be (since there is

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9 There could develop strong interregional norms against the use of force, which mean that regions would largely enjoy the Reduced Conflict Benefit. However, such norms might change and, as such, offer less guarantee of reduced conflict than the institutionalization of force through a global public monopoly. There might also develop interregional norms for the provision of a basic level of physical protection, but, again, these may change and so offer less of a guarantee than a global public monopoly.
no guarantee of either), then there would need to be a global monopoly on force according to Wulf’s proposal. This means that it would not be that dissimilar to my more centralized account.\textsuperscript{10}

\textit{Objections to the fully global system}

There might appear to be four notable problems with this way of organizing force. First, it appears to be highly unrealistic. The establishment of a cosmopolitan AVF and the disarmament of states are very unlikely to occur in the near future. This objection is, of course, correct, but misses the point. At issue in this section is the most morally desirable way of organizing military force. When considering how we should fundamentally organize force, the fact that a particular arrangement is not currently feasible does not mean that it should be rejected. All that is required is that the arrangement be possible. On the contrary, if an arrangement would be the most desirable arrangement, we should work towards its achievement.

The second objection is that if there were a global monopoly on the authorization and provision of military force, there would be no one against whom to use military force. As such, there would be no need, for instance, for a cosmopolitan AVF. This objection is correct to the extent that, by definition, a global monopoly on the authorization and provision of force would mean that there would not be any other armies to fight. Yet there may still be a need for some provision of military force to act as a deterrent against potential individuals and groups that may, on occasion, consider resorting to force. In addition, deterrence may not always work: there may still arise low-level conflicts that require a response stronger than that which could be provided by the police. The cosmopolitan AVF would not be designed for major warfighting—it would not require heavy artillery, submarines, and bombers. Rather, as noted above, like Kaldor’s (1999) model of cosmopolitan law enforcement, many of the roles that it would perform would be somewhere between soldiering and policing.

The third objection is that the global monopoly on the provision of military force would not sufficiently motivate its soldiers. Its soldiers are still likely to be tied to their national and local identities rather than cosmopolitan sentiment. This is problematic, the objection runs, since any such force would struggle to achieve a sufficient number of recruits. For instance, Ian Loader and Neil Walker (2007: 258) object to the cosmopolitan provision of security because of the need for sources of social capital and popular legitimacy to motivate people, which is absent without the state. It may also mean that the benefits that come from the statist provision of military services in terms of promoting bonds between communities would be lost (recall that section 4.1.4 defended the importance of communal bonds).

However, although many may still be tied predominantly to their national identity, others may give significant weight to global concerns. For instance, consider the tens of thousands of foreigners who joined the International Brigades to fight against fascism in the Spanish Civil War. Or consider, more generally, the soldiers who sign up to their national armies with the beliefs that their state is a force for good in the world and that, consequently,

\textsuperscript{10} It should also be noted that even with the global monopoly on the authorization and provision of force (and as with the current system where states have some of the ability to authorize and provide force), individuals \textit{might} conceivably still be permitted to act in their own self-defence on occasion, such as when they face an imminent threat. It should also be noted that, even within the proposed system, there should be the decentralization of decision-making to local bodies as far as possible (in accordance with democratic principles of subsidiarity) and centralization only as far as necessary (see Pogge 1992), in particular in order to avoid conflict and to ensure the provision of security.
by joining they will do their bit to help others. Moreover, potential soldiers may also want to join the UN army for other reasons. For instance, it may be regarded as a very prestigious position to be a UN soldier and potentially a good career move. In addition, it is not clear that a global monopoly on the provision of military services would necessarily be objectionable in terms of communal bonds. On the contrary, the establishment of a cosmopolitan AVF could potentially play a central role in the strengthening of a global identity and the increasing of global solidarity. Its establishment could highlight commonalities between peoples and provide an institutional focus for cosmopolitan sentiments. Furthermore, even if this did not happen, and the force was not beneficial in terms of communal bonds, this would not be a major failing. Recall here that communal bonds are only a contributing—and not a major—factor on the Cumulative Legitimacy Approach.

The fourth objection is that such a scheme would be a world state. This is allegedly problematic because of the dangers of a tyrannical world state. Immanuel Kant famously argues in *Perpetual Peace* that if there were ‘an amalgamation of the separate nations under a single power’, laws would ‘progressively lose their impact as the government increases its range, and a soulless despotism, after crushing the germs of goodness, will finally lapse into anarchy’ (1991 [1775]: 113).\(^\text{11}\) It is far from certain, however, that a world state would in fact lapse into tyranny (and then anarchy). Contra Kant, it might be based on a system of representative, federative governance, much in the same way as large democratic states are, such as the US and India. A world state may also have a series of checks and balances between the various branches of government to avoid the dangers of tyranny. One worry is that if there were a tyrannical world state there would be no option to exit to another state. This worry is largely a misnomer: within a statist system, the possibility of exit to another state often means very little to those suffering the effects of a tyrannical ruler. They have to be able to escape, to afford to exit, and then be able to find a willing host where their rights of asylum will be properly respected, which is often difficult. Besides, by making the case for a global public monopoly on military force, I am not necessarily proposing a world state. On the contrary, the maintenance of the global public monopoly on military force may be the only function of the global institution, with all other functions of statehood being held by local entities.\(^\text{12}\)

**Global authorization, private provision**

Against my suggestion that a public monopoly on the global authorization and provision of military force is the most morally desirable way of organizing military force, it might be responded that only the first type of monopoly is necessary. I shall call this the ‘Global Authorization Objection’. This asserts that there does not need to be a monopoly on the provision of military force to achieve the Reduced Conflict Benefit, that is, of significantly reduced international conflict. Instead, a monopoly on the authorization of military force would be sufficient. As long as the authorization of military force is centralized, PMSCs and other agents such as states can be tasked with the provision of military force. This is because if there were a global monopoly on the authorization of military force, there would not be the problem of PMSCs and states (and other agents) deciding to resort to force in morally problematic cases. The global authorization scheme, it can be presumed, would hire PMSCs

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\(^{11}\) Scully (2000) and Zolo (1997: 121) present similar views. On a world state more generally, see Cabrera (2010), Craig (2008), Lu (2006b), and Wendt (2003).

\(^{12}\) Whether this is sufficient for it not to be deemed a world ‘state’ depends on which definition of the state is adopted, such as whether one moves beyond a narrow, Weberian conception.
only when their use would meet the relevant conditions of *jus ad bellum*. If a particular agent wanted to use force in any other circumstance, when its resort to force would not meet these requirements, it would not receive the requisite authorization, and therefore force would not be undertaken.

The Global Authorization Objection appears not only to pose a major challenge to the case for a monopoly on the public provision of military force, it may also seem to undermine my claim that there exist deeper objections to the privatization of military force. This is because such a scheme, first, may be claimed to be a form of regulation and, second, appear to remedy many of the deeper problems. Most notably, it may *appear* that there would not be the (deeper) problems with access to basic security provision (see the Insecurity Argument in section 7.1) since PMSCs would be hired by the global institution to protect everyone, regardless of their ability to pay or their nationality. In addition, such a scheme may tackle several of the contingent objections. For instance, PMSCs that failed to treat their military personnel properly would not be hired. The Informal Constraints Argument would not apply since the global authorization scheme would make an authoritative and binding decision on private actors. Likewise, the Instability Argument would not apply, given that any uses of force that might be destabilizing would not be authorized.

Indeed, some scholars have defended the case for a global system to authorize the use of PMSCs. For instance, Eric Heinze (2009) proposes that the UN Security Council contract with PMSCs to undertake humanitarian intervention, potentially under the Military Staff Committee. This would, he argues, ‘[a]llow the Security Council to have a military force at its disposal to undertake enforcement operations (including humanitarian interventions) without having to rely on states’ willingness to contribute their own forces to do so’ (2009a: 138). Malcolm Patterson (2008) presents a detailed proposal for outsourcing UN peace operations, including a new UN ‘Contractor Directorate’ to be in charge of authorizing the use of PMSCs. He argues that if PMSCs were very heavily regulated, they could be used instead of state-based forces for UN peacekeeping.

To be sure, the global authorization scheme would be a notable improvement on the current status quo where numerous agents can authorize force and employ PMSCs. Nevertheless, I will now argue that it would not be as desirable as the global provision of military force and it would not tackle the deeper problems.

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*The Problem of Private Choice*

One problem with the global authorization and private provision of military force is that it would not enjoy the Provision Benefit. It might be argued (e.g., Rosky 2004: 234–6) that if there were the public demand for security, such as in cases where there is the global authorization of services, it would not matter fundamentally if there were the private provision of services. What matters is that individuals will achieve the minimum level of physical protection and this appears to be guaranteed by a system of the global public authorization and private provision of military force.

This misses an important point. Even if there were a global authorization—and, we can presume, financing—of the use of PMSCs, so that the physical protection of everyone was *sanctioned*, PMSCs might still be unwilling to provide the requisite services. Recall the Problem of Private Choice, which was outlined in sections 4.2.1 and 7.1. This says that even if there were the adequate regulation of PMSCs, PMSCs and contractors could still choose *not* to provide services. The global authorization scheme may authorize the use of military force, but PMSCs and contractors might decide not to provide services because, for example, doing so would be too risky or unprofitable. The upshot would be that sometimes some
individuals—those whose protection is risky or less profitable—would go unprotected. Consequently, there would still need to be a mop-up, public provision of military force that is willing to protect those deemed to undesirable or unprofitable to protect. So, there would still need to be some public provision of military services.

It is worth noting here that the case for a specialized UN (standing) force to undertake peace operations and humanitarian intervention is largely based around similar reasons (see Kinloch-Pichat 2004; Pattison 2008a). That is, states tend to be unwilling to risk their soldiers and undertake military interventions in order to help those beyond their borders, which leaves many individuals unprotected against the mass violation of basic human rights. This is the case even if there is a UN Security Council mandate authorizing a peace operation, since members states still have been unwilling to commit the necessary troops. There needs to be a UN standing army to ensure that humanitarian intervention occurs when it needs to.

The second central factor on the Cumulative Legitimacy Approach—democratic control—also provides reason to prefer the global provision of military services. The private choice of private contractors and PMSCs to decide whether to take on a contract weakens the degree of democratic control over military force. Even when military force has been authorized by global democratic institutions, PMSCs and private contractors may refuse to act in the field and be unwilling to carry out the request of the global democratic institutions because, for instance, it is financially unappealing. Private actors are an additional layer of decision-making between global democratic institutions and what happens on the ground, which ultimately weakens the democratic control over force. By contrast, a cosmopolitan AVF under the control of global democratic institutions would not have the choice as to whether to undertake the mission. If the global democratic institutions authorized the force to act, it would act.

In addition, assume that the global democratic institutions would have a significant ability to assess the likely justifiability of any war. For instance, suppose that it is the most epistemically reliable institution to assess *jus ad bellum* that could be reasonably established and that it has a series of institutional checks and balances to ensure that the use of military force is authorized only in just cases. 13 Whereas a cosmopolitan AVF would necessarily follow the dictates of this global democratic institution, a PMSC would make an epistemic judgment on *jus ad bellum*. Given their much more limited resources, PMSCs can be expected to make errors on occasion. The problem is not with the unjust use of force—this would (we can presume) not be authorized. Again, the problem is with the underprovision of protection: PMSCs may misjudge a war as unjust that is in fact just and therefore fail to provide their services to a certain group of individuals who, as a result, go unprotected.

However, strictly speaking, the problem of underprovision provides a case only for some global provision of military force—a mop-up global force for difficult cases—rather than a global monopoly. Private actors may still be left in charge of easier cases. Why then should there be a global monopoly on the provision of military force?

First, if there were a global provision of military force to tackle the difficult cases, it may be simpler to have it tackle the easier ones too. Second, and more substantively, the Problem of Private Choice means that a global public monopoly on the use of military force would be a more preferable way of organizing force according to the Cumulative Legitimacy

13 Note that since this is the most epistemically reliable institution that could be feasibly established, the epistemic reasons that individuals have for following their individual judgment of *jus ad bellum* (see section 3.1) would not apply. We can assume that the likelihood of error by this institution would be far less than by currently existing states and that there would be a very small risk of it asking individuals to fight in conflicts the justifiability of which it misjudges.
Approach. As we saw in Chapters 4 and 5, the use of military force by regular soldiers can be expected to be more likely to be effective at achieving the two central rationales of the military (the fighting of just wars and the deterring of unjust threats) because regular soldiers can be required, first, to resort to force when necessary and, second, to follow orders on the battlefield. By contrast, the employment of private military force may jeopardize the ability to launch just wars and just operations because private contractors or their companies may simply choose not to take on risky operations. Now, a mop-up force could potentially handle some cases when PMSCs choose not to take on contracts in the first place. However, it would not be able to undertake easily cases where PMSCs or contractors decide not to take on particular operations, or choose to leave or to disobey orders on the battlefield, given that it would have to immediately mop up the situation. To avoid such scenarios, a global monopoly on the provision of military force is needed. Thus, effectiveness—the central factor on the Cumulative Legitimacy Approach—provides reason to prefer the (in this case, global) public provision of military services.

Third, a global authorization scheme for the use of PMSCs would be, in effect, a monopsony (a market where there is only one buyer). As such, the much-vaunted market rationale would not clearly apply. The suppliers (the PMSCs) would face significant pressure to reduce costs in order to offer the cheapest services to the purchaser (the global institution scheme). The purchaser would be able to drive down the potential profits open to PMSCs significantly. The likely result would reduce the attractiveness of providing military services for potential companies in particular cases, as well as in general. There may be fewer and fewer companies from which to choose, with many being unwilling to provide services in certain cases and some lacking the ability and expertise to perform contracts effectively. This could further exacerbate the problems of underprovision discussed above, if PMSCs were to be relied upon to provide services.\(^\text{14}\)

**Statist authorization, statist provision**

Thus far, I have argued for a fully public monopoly on military force, that is, a global public monopoly on the authorization and provision of military force, rather than the private authorization or provision of military force. Yet a global monopoly may not appear to be the only public monopoly on military force. Another seemingly public option is the statist authorization and statist provision of military force. This appears, to a limited extent, to resemble the current status quo, where states deploy their regular armies that are authorized

\(^{14}\) In his valuable paper on private force in general, Clifford Rosky (2004: 979–1023) also worries about the private provision of military force when publicly authorized. He frames his worry (à la Machiavelli), which has some affinity to the Problem of Private Choice, in terms of disloyalty and order. That is, he argues that PMSCs may form a private monopoly of the supply of military force and overthrow the public authorizing body. Thus, there is a risk of coups d’état by private militaries. By contrast, he argues, regular armies can be more easily socialized into being loyal and so subjugated to the relevant democratic polity. At certain points (e.g., Rosky 2004: 988), he admits that the difference between the public and private military force in terms of disloyalty is only relative (although at times (e.g., Rosky 2004: 998) he also appears to think that it is a necessary feature of private military force). In a somewhat similar vein, the Problem of Private Choice also posits that PMSCs and contractors may ultimately be disloyal (e.g., they may fail to fulfill a contract), whereas the authority structures of the regular military encourage compliance. However, unlike Rosky, it seems to me that the possibility of PMSCs and contractors conducting coups against their employers currently is very remote (see, generally, Baker (2011: 37) and Lynch and Walsh (2000: 146)).
by the relevant national institutions. The statist authorization and provision of military force may appear to avoid the problem of underprovision, since all states’ citizens would be covered by their own state’s public provision of military force. That is, it would still enjoy the Provision Benefit.

That said, the problem of underprovision might still arise with the protection of stateless persons and noncitizens who do not fall under any particular state’s borders. There is likely to be disagreement amongst states about whose protection should be extended to cover these people and a general reluctance to protect them. Worse still, a system based on the statist authorization and provision of military force can be expected to be more unstable and prone to conflict than a system based on the global authorization of military force. Accordingly, it would not enjoy the Reduced Conflict Benefit. The statist authorization and provision of military force might be viewed as an anarchical system that endures several of the systemic problems highlighted by neorealists (e.g., Waltz 1979), such as the security dilemma. Alternatively, suppose that the system would be less conflict-ridden than neorealists predict. For instance, assume that neoliberals (e.g., Keohane and Nye 1977) are correct that there would be more cooperation, constructivists (e.g., Wendt 1999) are right that states construe the meaning of anarchy in what only appears to be an anarchical, self-help system, or English School theorists (e.g., Bull 1977) are correct that the international system is more like an anarchical society. Regardless, other things being equal, a statist system still seems likely to be more conflict-ridden than a system based on global authorization. This is because, in short, in this system states are given significant epistemic responsibilities in terms of judging jus ad bellum. And even if states do not always pursue their self-interest in their external relations with other states, but instead are strongly influenced by their identities, normative concerns, and their perceived legitimacy, they may nevertheless misjudge the justifiability of a war. The problem is that states are in an unprivileged epistemic position to judge jus ad bellum compared to a global authorization scheme. They are likely to lack the global resources and impartiality necessary for an accurate judgment.

To put this another way, the problem with the statist authorization and provision of military force is that, although on the face of it this appears to be a public system, when considering this scheme more broadly in a global context, it would be a private system. At the global level, each state’s individual public judgment is a private judgment. Overall, states may often be motivated by their own private interest, which can lead to conflicts, and even if states are motivated by the global interest, they may be mistaken in this assessment, given their comparative lack of resources. The result may be more unjust wars or fewer just wars.

**Private authorization, private provision**

A fourth way of organizing force is the private authorization and private provision of force. In effect, this is a pure market-based system: any agent can hire the services of a PMSC and everyone is left to provide their own protection. The most notable advocates of such a system are radical right-libertarians or ‘anarcho-capitalists’, such as Murray Rothbard. Rothbard

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15 In the security dilemma, states are threatened by one another and their responses to these threats in turn threaten other states.

16 Of course, it should be reiterated that they are still generally in a much stronger epistemic position than individuals.

17 It might be responded that states could set up a shared institutional scheme to assess the justifiability of a war. However, even if there were such a scheme, and states did follow its dictates about when wars are impermissible, they might still not choose to fight wars that are required. As such, there may still be the underprovision of protection.
(1978) proposes that private protection agencies should take the role of public law enforcement and national defence, accompanied by insurance schemes. As should be apparent by now, such a system would suffer from several serious shortfalls.

To start with, the Provision Benefit would not be enjoyed. Those who cannot afford to hire protection services or to purchase protection insurance, such as the poor and disadvantaged, would be unprotected. The problem of underprovision is therefore likely to be severe in such a system—and indeed worse than in the other systems surveyed. Unlike in systems based on the global public or statist monopoly on the authorization of force, no attempt would be made to protect those who cannot afford to buy the relevant services or insurance. In addition, as also discussed in section 7.1, the underprovision of military force may lead to significant externalities for those who cannot afford to purchase the services of a private protection agency, such as insecurity being deflected onto their areas.

It might be argued in response that private protection agencies would protect the poor and disadvantaged as a side effect of protecting those who purchase their services. As private protection agencies deter potential criminals and imprison them, everyone benefits. However, if this would be the case (which is doubtful, given the likely externalities), then the freerider problem when the market provides public goods would arise. That is, as David Miller (1984: 41) argues, since you can be protected without purchasing yourself the services of the private protection agencies, there is an incentive for you not to purchase these services, and the result may be that nobody, or very few, purchase the protection.

To be sure, the issue of underprovision may not be a concern for libertarians who value negative freedom above all else and are worried that achieving a sufficient level of protection by adopting a public monopoly on the authorization of military force for everyone requires a wrongful violation of negative freedom in the form of taxation. However, there are further problems with the private authorization and private provision of military force that should worry libertarians. Most notably, the Reduced Conflict Benefit would not apply (also see Claassen 2011: 131). On the contrary, such a system can be expected to be extremely conflictual. Since the decision to authorize force is left up to the individual agent, agents may decide to hire the services of protection agencies on a whim or to pursue a particular interest. For instance, a burglar may hire the services of Protection Agency A to protect themselves against Protection Agency B, hired by their victim, with the result being a conflict between the two agencies.

One response made by anarcho-capitalists (e.g., Rothbard 1977; 1978) is that there could be an arbitration scheme to resolve such disputes. However, if the cooperation between agencies were developed to such an extent that there were an arbitration scheme, there may be significant collusion between firms and the development of cartels. Moreover, such schemes are in effect a form of self-regulation, the problems of which were considered in section 9.1.3. Most notably, what happens if a firm or individual does not agree to the arbitration scheme or refuses to be bound by its ruling (Stone 1978: 211)? Rothbard’s (1978) proposals have some affinity with the claims made by the character Milo Minderbinder in Catch-22 that ‘[i]n a democracy, the government is the people’, and since we are the people, ‘we might just as well keep the money and eliminate the middleman. Frankly, I’d like to see the government get out of war altogether and leave the whole field to private industry’ (Heller 1994 [1961]: 298).

To be sure, some libertarians admit that certain public goods, such as military services, are needed in order to avoid freeriding (Loader 1997: 380). For instance, in Anarchy, State and Utopia, Robert Nozick (1974) admits that public control of law enforcement is justified because of the problems with the market provision of private protection.

See, further, Cowen (1992; 1994), Cowen and Sutter (2005), and Friedman (1994).
response, which is that there would be strong reputational pressures against contravening the arbitration scheme, seems to be too optimistic. The costs for the firm may not weigh against contravening the arbitration scheme and the market pressures may not be great (e.g., it may not be widely known that the firm has previously acted mendaciously) (see Miller 1984: 39–40).

In addition, a private protection agency may attempt to undermine the protection of another agency clandestinely. They could do so in order to discredit the other agency’s reputation for competence by, for instance, purposely causing disturbances and civil unrest, and thereby increasing their own market share. This would also lead to increased conflict. Moreover, even if the private firms attempt to use force only in just cases, they are unlikely to be in a sufficient position to be able to make an accurate epistemic assessment of the justifiability of a war. Accordingly, there may not only be several mendacious uses of the force, but also mistaken ones.

A further worry is that protection agencies will develop into protection rackets, with exorbitant fees being extorted from those protected. This may arise when those subject to the coercion of the protection racket cannot hire another protection agency to protect them, leaving them vulnerable. Other agencies may be unwilling to protect these individuals for several reasons, including the fact that they are poor or viewed as too risky to protect, or because protection agencies have monopolies over certain areas. Indeed, monopolies over certain territories may develop. After all, there would be no state regulation to prevent buyouts, mergers, hostile takeovers, and even the physical destruction of other firms. Indeed, the possibility of having a monopoly over a certain area and of running a protection racket, and thereby increasing profits, may be attractive to certain protection agencies.

9.2.3 All or nothing?

I have argued for a global monopoly on the authorization and provision of military force, which is no tall order. It may be objected that my defence of the public authorization and provision of military force, and rejection of the alternatives, requires far too much to be practically useful. In reply, I have simplified the argument set out above in order to present (I hope) a clear analysis of the relevant options. My case for the global public monopoly on the authorization and provision of military services can admit degrees. That is, in between the extremes of, on the one hand, the global monopoly on the authorization and provision on military force and, on the other, the private authorization and provision of force, there can be a wide array of potential arrangements. Some of these will reduce the number of agents that can authorize force and will provide protection for more individuals. There could also be monopolies over particular types of military force, such as a UN standing army tasked with all peacekeeping duties. In general, the closer to a public monopoly on the authorization and provision of military force, the more morally desirable a particular arrangement is likely to be. This is because, first, the fewer actors that can authorize force, the less likelihood there is of international conflict. Thus, the more that the authorization of military force is monopolized, the more the Reduced Conflict Benefit will be likely to be enjoyed. Second, the public provision of military force on a local (meaning not global) level will be likely to guarantee physical security for some at least and may increase the democratic control over military force for those subject to the scheme. Thus, the more the provision of military force is monopolized by a public agent, the greater the likelihood of the Provision Benefit. Accordingly, other things being equal, a statist system would be better than an arrangement that allows for some private authorization or provision of military force. And, a regional arrangement that reduces the number of states that can authorize force (or even simply encourages states to seek regional support) and that guarantees some military provision in
some circumstances (e.g., in cases of mass atrocities within the region’s borders) would, in turn, be likely to be better than a statist arrangement. Other things being equal, it would decrease the likelihood of conflict by reducing the number of actors that can wage war compared to a statist system. It would also ensure that those within a particular region would be protected in cases of mass atrocities. By contrast, states may not be willing to undertake such missions on their own.

Hence, in general and other things being equal, the greater the monopolization of military force, the better. Increased monopolization of the authorization of military force is likely to lead to fewer conflicts. Increased monopolization of the provision of military force is likely to secure the physical security of more individuals (and to the extent that it takes decisions away from PMSCs, potentially increased democratic control).  

9.3 Reconsidering Just War Theory

Let us now consider some more theoretical reforms, relating in particular to the ethics of war in light of the privatization of military force. I will argue that the prevailing, traditional accounts of Just War require updating. It should be noted that the need for some changes to Just War Theory are not unique or necessary to the prevalence of PMSCs. Rather, they are highlighted to a greater extent by the privatization of military force. That is to say, some of the revisions may also be required because, first, of shifts in the regular military (e.g., the increase in the supranational use of force) or, second, the prevailing account of Just War presents a simplistic or misleading view of warfare (e.g., warfare has rarely been as statist as is depicted on the prevailing account). Indeed, other issues (such as drone warfare and Somali piracy) may also highlight the need for Just War Theory to be updated. The privatization of military force simply adds to the case.

Collectivism, Statism, and Individualism

Most generally, in light of the privatization of military force, the statism and collectivism of prevailing accounts of jus in bello is patently mistaken. On what I will call the ‘Collectivist Approach’ to jus in bello, war is fundamentally a collective endeavour and so moral responsibility for war and the moral permissibility of resorting to war are collectively determined. As a result, to determine whether it is permissible to target a particular individual, we should simply look to their membership of a collective—such as whether or not they are combatants—rather than to the specific details of their contribution (which, as discussed in Chapter 3, is the account of liability held by revisionists). McMahan (2009b: 79–84, 208–10) has presented several detailed objections to the Collectivist Approach in his revisionist, individualist approach, many of which I largely agree with, and I shall not repeat his analysis here. My main point is that in the light of prevalence of private contractors and

21 The qualifier, ‘other things being equal’, is necessary since there are, of course, several other factors that influence the likelihood of conflict within the international system. I concentrate here only on the issue of the prevalence of the private authorization and supply of force within the international system.

22 I focus in this section on broader changes to Just War Theory in light of the privatization of military force. In Pattison (2008b), I consider some changes to specific principles of jus ad bellum and jus in bello.
the privatization of military force, the empirical assumptions on which the collectivist view is based are mistaken. In short, the rise of PMSCs adds more grist to the revisionist’s mill.

To see this, let us start by considering why we should prefer a revisionist, individualist approach to the Collectivist Approach to *jus in bello* and, in particular, to Noam Zohar’s (1993) well-known call for a compromise between collectivist and individualist moral concerns, which he argues is reflected in the War Convention. I will not reject or endorse the need for a compromise between collectivist and individualist moral concerns (which depends to some extent on the bigger issue of whether one accepts the notions of collective responsibility and collective intentionality). Rather, I will argue that, even if one accepts the need for *some* compromise, an individualist approach may still be largely correct, given the rise of PMSCs.

There are various responses to Zohar’s call for a compromise. First, one could accept the call but deny that the War Convention reflects an adequate compromise. We may think instead that there should be an alternative account of a morally adequate compromise, which may be closer to an individualist approach. Second, we might accept the need for a compromise between collectivist and individualist concerns for *jus in bello*, but reject that these concerns should be weighted equally. On the contrary, we may still instead tip the balance much more in favour of the individual-focused concerns because we think that these concerns have greater moral significance than those highlighted by the Collectivist Approach. Third, and related, we may think that individual-focused concerns should be given greater weight because the conditions required to assign collective responsibility and collective intentionality are not often met in the context of warfare. Indeed, given the fragmentation of the private military and security industry, the conditions that are commonly required for collective responsibility (that groups have representative decision-making procedures, that group members have common interests and shared solidarity, and/or that there exist shared attitudes between group members) do not seem to apply to private contractors. Thus, we may hold that an individualist approach is for the large part correct as an account of the demands of individual morality and that collectivist morality should play only a secondary role for specific issues where the required conditions for collective responsibility and collective intentionality are met. Fourth, we may hold that much of war is akin to individual confrontations and so can be correctly captured by an individualist approach to *jus in bello*, which asserts that matters of *jus in bello* should be determined by individualist moral concerns (e.g., the justifiability of the individual’s contribution).

In contrast to this fourth claim, Zohar argues that the problem with individual-focused approaches, such as those based on analogies to private self-defence, is that they deny collectives any separate moral standing. In his words: ‘[m]oral deliberation about international relations in general, and about the conduct of warfare in particular, must include explicit recognition of the moral status of collectives’ (1993: 619). This is because ‘[t]he reality of international confrontation is not adequately described by reduction to individualistic terms. We are not only individuals facing other individuals but also a nation confronting another nation’ (1993: 616).

This picture of warfare is largely mistaken. The general thrust of Kaldor’s (1999) ‘New Wars Thesis’ is that new wars, which are intrastate rather than interstate, blur the lines between war, organized crime, and the violation of human rights. They involve a myriad of transnational connections and so render the distinctions between internal and external, as well as local and global, largely redundant. Unlike ‘old wars’, which were fought by vertically-arranged hierarchical units, new wars are fought by a wide array of—and often highly decentralized—actors. Accordingly, the view that wars involve a clearly identifiable

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23 For a clear overview of these conditions, see Smiley (2011).
collective against another clearly identifiable collective is mistaken. War is now often more akin to a haphazard series of individual confrontations between agents who possess only weak group identifications.\textsuperscript{24}

The privatization of military force, which has gathered significant pace since Kaldor presented her New Wars Thesis, has exacerbated this phenomenon. As we have seen, private contractors now sometimes outnumber regular soldiers and are free to pick and choose contracts. They are employed by an array of actors (including states, communities, and other private actors). The employers typically have little control over the contractors in the field, with weak and sometimes nonexistent lines of effective accountability and regulation, which is worsened by the widespread subcontracting in the industry. So, if we accept the New War Thesis and the effects of the privatization of military force, \textit{pace} Zohar, individual morality— and an individualist approach—would need to play a major role for \textit{jus in bello}.\textsuperscript{25}

It is also the case that, given the rise of PMSCs, a revisionist, individualist approach is central for matters of \textit{jus ad bellum}. More specifically, as argued by McMahan, individuals are required to consider the moral acceptability of their participation in war. In contrast to the Deferral View (see section 3.1), they should not defer this judgment to their institution. I have argued that whether regular soldiers should defer judgment to their institution, or at least be excused for doing so, is a moot point, largely dependent on contingent facts (see section 3.3). Nevertheless, the Deferral View\textit{ clearly} does not apply to private contractors. Private contractors can select in which wars they participate and this means that individual-related concerns are of central import for \textit{jus ad bellum}. To that extent, the prevalence of private contractors most clearly shows that at least some individuals in war should consider the moral rectitude of their participation in war, and that the revisionist approach to Just War Theory is at least partly correct in this view.

I also considered in Chapter 3 what individuals should question when resorting to force. I argued that they should look to whether their participation will meet the principles of individual \textit{jus ad bellum}. To that extent, I defended an ‘Individual-Centric Approach’ to the assessment made by individuals (that is, both contractors and soldiers) of the morality of their participation, rather than the ‘Institution-Centric Approach’, which looks to the moral justifiability of the war of their institution. Again, the privatization of military force lends credence to the Individual-Centric Approach in assessing participation in war, since individual contractors and PMSCs are far from guaranteed from making an effective contribution to a war (which is an implicit assumption of the Institution-Centric Approach).

In these ways, then, the rise of PMSCs and the current prevalence of private contractors suggest that the revisionist, individual-focused approaches is most favourable, rather than the prevailing collectivist and statist approaches that fail to respond to the challenges presented by PMSCs and the changed empirical reality.

\textbf{The legitimacy of the military and Just War Theory}

The second change to the prevailing ethics of war and Just War Theory that I will consider concerns the ongoing legitimacy of the military. That is, the privatization of military force has increased the extent to which wars are now fought by a variety of actors and, as such,\textsuperscript{24} The main objection to the New Wars Thesis is that the ‘old wars’ also possessed these features. See, for instance, Newman (2004). Even if this objection is correct, it does not undermine my point here, which does not depend on the newness of these features.\textsuperscript{25} Zohar also argues that a collectivist approach to warfare is the only way of avoiding contingent pacifism. However, as argued in section 3.4, contingent pacifism can be avoided whilst maintaining the Individual-Centric Approach.
highlights the need for Just War Theory to pay greater attention to the ongoing legitimacy of the military. Let me explain.

The issue of the moral legitimacy of the military has been largely overlooked by Just War theorists. To be sure, in their accounts of the requirements of *jus ad bellum*, Just War theorists typically assert that war must have legitimate authority. The legitimate authority principle is generally held to concern those authorizing the use of force, notably the state or international institutions. Yet in their accounts of the legitimate authority criterion, and in their accounts of other principles, Just War theorists tend to overlook the importance of the moral legitimacy of the military used to fight the war. Although the legitimacy of the state fighting the war has received some attention, the legitimacy of the military doing so is a further question, since an all-things-considered legitimate state may have an illegitimate military, and vice versa. To be sure, some Just War theorists have considered issues related to the moral legitimacy of the military, especially the issues of conscription and conscientious objection. For instance, in *Obligations*, Walzer (1970) rejects a consent-based defence of the draft. Similarly, Orend (2006: 127–36) presents an account of what he calls ‘internal *jus in bello*’, that is, the rules of warfare governing the conduct of the warring parties towards their own civilians and soldiers. However, such discussions tend to be brief and, as such, fail to provide a thorough assessment of the alternative ways of organizing the military.

The traditional focus of Just War Theory on matters of only *jus ad bellum* and *jus in bello* is too narrow. Given that whether a war is fought by PMSCs, a conscripted force, or an AVF is likely to impact on its justifiability, if Just War Theory is to provide an accurate assessment of the justifiability of a particular war, this framework should be extended to consider the legitimacy of the military. The rise in PMSCs highlights the import of this issue, given the notable shift in how military force is now organized and the ethical problems raised by the use of PMSCs.

This is because, first, the legitimacy of the military will often be a significant factor in the justifiability of a particular war. To be sure, it is not a necessary condition of the justifiability of a war. Whereas Just War Theory concerns the justifiability of a *particular* war, the legitimacy of the military is a larger, ongoing issue, concerning several wars, peacetime, and the military’s continuing relationship with the polity. On occasion, a just war may be fought by a generally illegitimate military. For instance, the military of a state might be unusually effective in the case of just war A, but generally be illegitimate because it is ineffective at fighting (potentially) just wars B and C. Nevertheless, despite such exceptions, the ongoing legitimacy of the military is typically a significant factor in the overall justifiability of a particular war, given the importance of the concerns highlighted by the Cumulative Legitimacy Approach, such as the fair distribution of the burdens of fighting, the individual autonomy of soldiers, and the importance of democratic control. Indeed, where the war is not clearly just or unjust, the legitimacy of the military may determine whether the war is just. For example, the justifiability of State A’s humanitarian intervention may be moot according to the standard Just War criteria, but its reliance on conscripts renders its war unjust. The moral legitimacy of the military may also determine whether a particular Just War criterion is met. For instance, a military that is generally inefficient—and, on my account, illegitimate—may be unlikely to meet the Just War requirement of a reasonable prospect of success. In addition, as I have discussed throughout, the composition of the military affects the likelihood of the state fighting just or unjust wars.

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26 To be sure, sometimes this principle is also extended to those waging the war; largely at issue is whether only states and state-based institutions can justifiably resort to or authorize force. For instance, in her rejection of the moral importance of legitimate authority, Fabre (2008) interprets the criterion in this way.
Hence, whether a war is fought by PMSCs, a conscripted force, or an AVF is likely to impact on its justifiability. To that extent, Just War Theory needs to be extended to consider the legitimacy of the military in order to provide an accurate assessment of the justifiability of a particular war. More specifically, in section 5.3 I argued that the AVF is currently the most legitimate way of organizing the military according to the Cumulative Legitimacy Approach and, in this chapter, I have argued that a cosmopolitan AVF would be the best way of ultimately organizing the military. By contrast, both conscription and the use of PMSCs pose several major concerns. Thus, we can regard, for instance, the US war in Vietnam as even worse for its reliance on conscripts and, more recently, the US and UK-led action in Iraq as more objectionable given its reliance on PMSCs than it was according to the standard accounts of the Just War criteria.

Of course, the legitimacy of the military concerns more than simply whether a particular war is just; it is a larger, ongoing issue, concerning several wars, peacetime, and the military’s continuing relationship with the polity. Accordingly, although Just War Theory should be extended to capture the legitimacy of the military at the time of a particular war, the issue of the legitimacy of the military transcends Just War Theory. The theories of civil-military relations, which do consider the ongoing issues surrounding the military, may appear to be of greater relevance. Yet most scholars of civil-military relations need to pay much greater attention to the normative underpinnings of their approaches. More specifically, they need to consider to a much greater extent the justifiability of the military’s uses of force and the effects of the military on the human rights of those beyond the borders of the state. Accordingly, scholars of civil-military relations need to engage to a larger degree with Just War Theory and international political theory.

Therefore, we need a richer, broader account of Just War Theory that is more sensitive to the issues surrounding the legitimacy of the military and closer links between civil-military relations and Just War Theory. This should ensure that the judgments of the justice of particular wars are more accurate and should lead to a more sophisticated analysis of the ongoing legitimacy of the military.

9.4 Conclusion

In this chapter, I considered, first, reforms to improve the regulation of the PMSC industry. I argued that currently feasible schemes of international, national, and self-regulation would be most likely to be insufficient on their own and that therefore there needs to be a combination of the three forms of regulation. This regulatory web would go some way towards addressing the contingent problems identified with the privatization of military force. Second, I considered ways of reorganizing military force in order to avoid the problems raised by the use of PMSCs and to achieve a military force that is more legitimate according to the Cumulative Legitimacy Approach. To that end, I have argued for a global public monopoly on the authorization and provision of military force, which would enjoy the Provision Benefit and the Reduced Conflict Benefit. Third, I considered some potential changes to Just War Theory in light of the privatization of military force. I argued that this privatization indicates that a revisionist, individualist approach is preferable and that Just War Theory needs to pay greater attention to the issue of the moral legitimacy of the military.

These reforms to the regulation of PMSCs, to how military force and the international system is organized, and to the prevailing ethics of war would help to provide the institutional and normative frameworks to respond to the challenges posed by privatization of military force. Without them, it is likely that the use of PMSCs will continue to pose significant moral concerns at the individual, employer, and international levels.
REFERENCES


