

University of Tampere

Department of Political Science and International Relations

MIRVA SALMINEN

Struggle over outsourcing of the security functions of the state:

The case of September 16, 2007 shooting in Baghdad

International Relations

Pro Gradu –thesis

October 2010

Vilho Harle

Acknowledgements

I want to thank my supervisors Vilho Harle, University of Tampere and João Reis Nunes, University of Aberystwyth for their good advice and patience during the thesis writing process.

In addition, completing the “Thesis of Doom” would not have been possible without the help and support of my family, the brotherhood of Armonkallio, Aura, Susu, Ell, Laurence, Lawrence, Alex, the Troika and the Cookies.

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Pro Gradu -thesis, 190 pages

International Relations

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Outsourcing of the state's security and warfare related tasks has become an increasingly popular, but contested policy in the United States. An increasing number of tasks that used to be carried out by the state armed forces has been delegated to private military and security companies (PMSCs) which currently, for example, protect employees of and visitors to the State Department (DoS) and other US state agencies in conflict zones.

This thesis discusses the production of the outsourcing of the tasks of state armed forces into the general understanding. How do we perceive the outsourcing and the actors related to it? How are truth and knowledge about the phenomenon produced and disseminated in the general understanding? The study is conducted by examining a shooting incident in Iraq in 2007 which involved personnel of a private security company (PSC) working for DoS. In addition to constructing a historical narrative about "the September 16 shooting", Foucaultian discourse/dispositive analysis is utilised to investigate knowledge production around the incident and power struggles related to it.

In the discourse the emergence and existence of PMSCs are primarily produced as a negative phenomenon. The state armed forces are used as a priori which PMSCs are compared with. The companies are perceived as uncontrolled actors which are to be brought under improved state supervision and stricter control, and military models are often suggested to be utilised in this normalising process. In the dispositive the state gradually reinforces its position in relation to other governance actors, while PMSCs become legitimised actors in conflict zones. Theories of state transformation, transformation of the American warfare and commodification of security provide an explanatory framework that seems to promote the aforementioned legitimisation process. However, whether to locate PMSCs in civilian or in military sphere and whether there exists legislation to hold the companies accountable remain unanswered questions in the dispositive even after the judicial proceedings in the September 16 shooting case that had the character of a precedent.

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1. Introduction

Blackwater USA, an American contractor that provides security to some of the top American officials in Iraq, has been banned from working in the country by the Iraqi government after a shooting that left eight Iraqis dead and involved an American diplomatic convoy.¹

A preliminary Iraqi report on a shooting involving an American diplomatic motorcade said [...] that Blackwater security guards were not ambushed, as the company reported, but instead fired at a car when it did not heed a policeman's call to stop, killing a couple and their infant.²

Blackwater is now the focus on investigation in both Baghdad and Washington over a Sept. 16 shooting in which at least 11 Iraqis were killed. Beyond that episode, the company has been involved in cases in which its personnel fired weapons while guarding State Department officials in Iraq at least twice as often per convoy mission as security guards working for other American security firms [...]³

This thesis examines in detail the incident referred to in the extracts above. Although just a single incident among several similar cases, this one became particularly significant. It attracted the interest of the media, it became politicised and it was widely perceived to be an important event. Consequently, it is regarded as having raised awareness and generated discussion, both in the United States and internationally, concerning the increasingly common governmental practice of outsourcing tasks traditionally allocated to the armed forces. Although not the only country that outsources the tasks of its armed forces – after the end of Cold War it has become a common practice in strong Western states⁴ – the United States is the country in which outsourcing practices have gone the furthest. Indeed, it is often said that the current wars in Iraq and in Afghanistan could not be fought without contractors.⁵

The research question I am investigating in this thesis is *how is the phenomenon of outsourcing of the tasks of state armed forces produced in the discursive and non-discursive practices in the United States?* Specifically, I concentrate on the location of the phenomenon *on the civilian-military borderline* in this production. I claim that the production of the outsourcing of the tasks of state armed forces is closely tied to common, prior understandings of civilian and military, as well as of

1 The New York Times 18.09.2007.

2 The New York Times 19.09.2007.

3 The New York Times 27.09.2007.

4 Buzan sets three definitional conditions to a “strong state”: it has a physical basis, institutions through which governing of that basis takes place, and an ideology that legitimises the existence of the state in the eyes of its citizens. The physical basis consists of territory and population. (Buzan 1991, 65–66.) Lipschutz clarifies Buzan's ideas by naming population, available resources and technology as the basis, political and governmental system as its institutions and nationalism as the legitimating ideology (1995, 7). With “Western” I refer to an artificial conceptual entity, whose members to an extent share certain discursive and non-discursive practices of political, social, economic, judicial, historical and cultural.

5 For example, Isenberg 2009, 6; 17; 20; 26; Krishnan 2008, 3; 25.

state, war and security. As our understandings of state, war and security are transforming, new space has been created for the outsourcing of the tasks of state armed forces as a phenomenon to emerge and to exist. This development, again, has required re-establishment⁶ of the borderline between civilian and military. As this borderline, like any other borderline, has never been firmly fixed, the power struggles over its right location are clearly present in the outsourcing.

It is often said that private military and security companies (PMSCs), which have taken over some of the tasks that used to be taken care of by the state armed forces, are a relatively new phenomenon in the Western world. Before the end of the Cold War, nobody seemed to have heard of them and into our general understanding⁷ they have emerged gradually⁸. However, the United States led military operations in Afghanistan and Iraq brought PMSCs on the focus of news reporting and the outsourcing of the tasks of state armed forces was introduced or re-introduced⁹ to the general public. Whilst PMSCs have become actors in current conflicts, there has been an urge to establish them firmly into our general understanding and to locate them somewhere on the borderline between civilian and military spheres. Since PMSCs are only in the process of becoming ossified into the general understanding, it is important to examine power struggles that take place in this process. These power struggles are recognisable in the discursive and non-discursive practices in which the production of the outsourcing of the tasks of state armed forces as a phenomenon takes place. Knowing the practices and recognising the power struggles makes it possible to influence these struggles and to better understand the world around us.

As this thesis is a case study related to the US led coalition's operation in Iraq, I further delimit my scope of commentary to the context of the conflict in Iraq. In Iraq, the number of operating PMSCs is higher and the variety of the tasks they do wider than it has been or is in any other conflict. Operations of companies are so influential that they are said to have strategic importance – not only in relation to the United States led military operation but also in relation to wider US foreign policy goals. Thus, PMSCs – which in Iraq depending on the contract operate under either civilian or military command – and their operations influence both, civilian and military spheres. A shooting

6 By re-establishment I also refer to the attempts to erase the civilian-military borderline.

7 By “general understanding” I refer to the dominating knowledge structure shared by people living in strong, Western states. Putting cultural differences aside, there is some level of shared knowledge that frames how we understand, for example, what a state or a society is or what it is like to be a human being.

8 However, during the Cold War people were aware of the actions of individual mercenaries or groups of mercenaries in conflicts around the world. Mercenary activities were especially present in conflicts that accompanied decolonisation. See Mockler 1985.

9 The September 16 shooting was not the first incident involving PMSCs that hit the headlines in the United States. For example, another Blackwater incident four years earlier, which had led to the killing of four Blackwater employees and dragging their bodies along the streets of Fallujah in Iraq, had been widely reported at the time and re-emerged on the news agenda in relation to the September 16 shooting.

incident in Baghdad did not become only a problem for the US military organisations and their representatives, but also for the US civilian structures and actors. Moreover, whether the outsourcing of the tasks of state armed forces is evaluated as a successful practice in the Iraq operation, its legitimacy and desirability as an overall practice becomes stronger. Therefore, what happens in Iraq shapes what the future conflicts will look like as well as what the states', whose conceptual existence has for a long time been tied to the monopoly of the legitimate use of violent means, future will look like.

Nevertheless, my ambitions in this thesis are more restricted than explaining the whole phenomenon of outsourcing the tasks of state armed forces – not even in relation to the conflict in Iraq. In this thesis, I study the September 16 shooting¹⁰ in Baghdad, and how the outsourcing was produced in discursive and non-discursive practices related to that case. The case caused intra-administrative changes in the United States; increased the flow of information; led to multiple suggestions for modifying and improving the regulation of companies as well as to legislative initiatives with the same purpose. Finally, it brought employees of a private security company for one of the first times to a US court. In this case, regardless common speculations about the chances of bringing the case to a court martial, a civilian court was assigned to be appropriate venue for judicial proceedings. To phrase the aforesaid differently, the case intensified the attempts of knowledge production about the outsourcing as well as the attempts to regulate and control the phenomenon. The current standing is still that more has to be done¹¹, but the September 16 shooting with its consequences seems to have made a difference.

As the case made the phenomenon widely known and introduced it to many people who previously were unaware of PMSCs, it serves as a prime example of how the outsourcing of the tasks of state armed forces is produced to our knowledge. For example, with regard to the case it has been

10 “The September 16 shooting” is only one of the several names given to the event in media and in literature. Others include, for example, “the Blackwater shooting” or “incident”, “the September 16 incident” and “the Nisour Square shooting” or “incident”. Also the square on which the event took place has had at least three different ways of writing: “Nisour”, “Nisoor” and “Nisur”. I prefer using the date of the event as denominator because of the uncertainty around the name of the square and because of not wanting to make my thesis a commercial for one company.

11 These notions come up, for example, when reading the United States Government Accountability Office's (GAO) reports on the issue, GAO-05-737 (2005), GAO-06-865T (2006), GAO-09-19 (2008) and GAO-09-538T (2009). The basic message in these reports is that there are no sufficient monitoring and oversight arrangements to guide contracting and the conduct of contractors, in other words, the accountability and responsibility issues have been neglected by the government agencies. Over the years, GAO reports improvements in oversight, but the problem still exists and needs to be corrected. There are more reports available, but the examined ones discuss the outsourcing of the tasks of state armed forces directly in relation to DoS. In relation to legislation, for example, The New York Times reports on October 5th 2007 about a law that has been accepted in the House of Representatives and would bring all contractors working in Iraq under US criminal law. On October 12th 2007, it tells that people who got injured or whose relative was killed in September 16th 2007 shooting sue the private contractor in a US civil court and on December 6th 2008, that five of the company employees will be charged in a criminal court.

claimed that the outsourcing is a useful and responsible governmental practice as well as that it is an irresponsible and counterproductive policy; that the outsourcing is a necessity or that it serves only the interests of the military-industrial complex; or that in this case the policy actually does not involve outsourcing of the tasks of state armed forces because the armed forces did not take care of the designated tasks even before outsourcing. Regardless what the presented truth claim is, the case presents the channels through which truth claims circulate; it enlightens how the claims circulate; and it indicates how the whole phenomenon has gradually been established as a legitimate policy in the strong, Western states. The last point does not mean that there would not be resistance to the establishment of this legitimising framework, but rather the contrary – as the discourse studied in this thesis presents. Many power struggles in which phenomena are produced become visible only because of the resistance that the silent, normalising power confronts. When the case studied in this thesis raised severe concerns about the conduct of PMSCs and their employees in conflict zones, it made visible the practices through which the outsourcing has emerged.

While studying the discursive and non-discursive practices in which the outsourcing of the tasks of state armed forces is produced, this thesis comments primarily on the power/knowledge relations around the phenomenon. It asks how the phenomenon emerges to our general understanding and retains its position in that general understanding. It shows how the phenomenon both challenges and retains the existing power relations and positions, and how these processes are intertwined with the production of knowledge about the outsourcing. It describes how different forms of power (from sovereign power to disciplines and to bio-politics of population) and different domains of knowledge production (governmental, authoritative declarations of truth; scientific truth claims; investigative news reporting) are clearly present in the outsourcing of the tasks of state armed forces. It also highlights how the truth claims circulate from one domain of knowledge production to another and back again.

Data is the starting point of this thesis. As theory and methodology are closely related and intertwined with data¹², the theoretical framework and methodology used in this thesis are combinations of different theories and methods. In order to answer to the research question and to properly address the reality under scrutiny, I have found it necessary to use multiple, albeit interconnected theories and methods. The theoretical framework relies mainly on Foucaultian philosophy and notions, but describes theories of commodification of security, state transformation and transformation of warfare as the explanatory triad that has usually been applied to the

12 Threadgold makes this point very clear by arguing that the separation of theory and data – in other words, of that which is observed and that which is analysed – is impossible (2000, 40).

outsourcing of the tasks of state armed forces. However, in this thesis I am not studying state transformation or transformation of warfare as such, but the power/knowledge relations around the outsourcing of the tasks of the state armed forces.

The hybrid methodology used in this thesis consists of two main elements: historical narrative and discourse/dispositive analysis. Historical narrative runs on the background of the analysis connecting different episodes to one another and describing the case. A version of discourse analysis is used to explain how the outsourcing of the tasks of state armed forces is produced in the discursive and non-discursive practices in this case. The version of discourse analysis used relies highly on Michel Foucault's notions on discourse. Therefore, instead of discussing discourse, it might be more correct to claim that I analyse the dispositive of outsourcing of the tasks of state armed forces in the United States. Albeit the photographs and statistical presentations that are presented in the discourse are important sources of truth claims and discourse analysis could be applied to them as well, I exclude these forms of statements from my analysis. This is due to the space and time related restrictions of this work as a Master's thesis.

Structure of this thesis is following. First, I describe and discuss the phenomenon under scrutiny and its complicated existence on the civilian-military borderline. Second, I describe the data selected for this thesis. Third, I present the theoretical framework and tie it to the case study. In addition to addressing Foucault's notions of power and knowledge, I describe his conceptions of the relationship between society and war, security, law and regulations. Fourth, I present the hybrid methodology used in the case study. Fifth, I analyse the data while embedding the analysis of dispositive in the historical narrative. Research results are presented throughout the thesis and therefore, the final, conclusive chapter just collects the main results together while stating how the research question was answered to.

2. Research topic

2.1. Outsourcing of the tasks of state armed forces

The topic of this thesis is the outsourcing of the tasks of state armed forces. The expression given to the topic is one among several alternatives and not the prevailing one. More commonly, the phenomenon is named either "privatisation of war" or "outsourcing of war". Even if prevailing in the general understanding, I find both of these terms misleading; especially with regard to the case that I am addressing.

Firstly, “war” refers better to a certain social phenomenon, historical stage or order of things, which includes so many aspects that it, as an entity, can hardly be privatised or outsourced. “Warfare”, on the other hand, refers to the art of war, the way of waging war or the practices of war. What can be privatised or outsourced is warfare, which since the codification of state system and the establishment of national military structures has been seen as a function monopolised by state armed forces. Needless to say, monopolisation of warfare to the function of state armed forces has hardly ever been successful. Nevertheless, the idea is a prevailing one in our Western understanding of the state, war and their interrelatedness¹³. This understanding, influenced by Enlightenment philosophy, refuses to notice that private soldiers and militaries have been more a rule than an exception in the course of Western history¹⁴.

Secondly, the strong, Western state is not willing to give up the whole function and all of the practices and tasks of warfare. Instead, for privatising and outsourcing it selects tasks that are assessed to be ancillary and further away from the core function of state armed forces – in other words, tasks not directly related to actual war fighting¹⁵. Thus, discussing privatisation or outsourcing of warfare, without first delineating which of the tasks that used to be taken care by state armed forces are talked about, tends to give the impression that the whole function is in process of being handed over to private business entities. This is not the case. The tasks that are outsourced vary greatly. Private companies cater for troops; provide translators; transport people, equipment and supplies; build, maintain and repair military equipment and facilities; guard people and sites; conduct interrogations; develop and operate weapon systems; provide information and intelligence; train troops and consult police and armed forces in their home countries and internationally – the list of examples could go on far longer. Typologies of companies or services that they provide have been attempted, but this seems to be almost an impossible task.¹⁶ The impossibility is due to the multiplicity of tasks that a company and companies can do, the variability in their clientele, financiers and corporate structure and the constant changes in the tasks that are designated to the private sector¹⁷. Moreover, some of the tasks that have been outsourced and are discussed under the topic of the outsourcing of the tasks of state armed forces were not taken care

13 Cf. Maguire, who explicitly warns about the naturalization of the link between state and war. According to him, the custom of defining the state through its link to violence has become commonplace only over the past 30 years. This kind of approach to the state presents it in unnecessarily negative light making it unquestionably threatening and conflicting with the citizen. Instead of prioritizing the state’s link to violence and thus individualizing it from other social structures, the state should be seen as an entity consisting of multiple governance practices. (Maguire 2006, 293–310.)

14 Shearer 1998, 69–70; Avant 2005, 26–27; Singer 2003, 19–20; 29; Isenberg 2009, 2–8.

15 Gansler 2003, 17.

16 Multiplicity of the tasks that private military and security companies (PMSCs) carry out is addressed and typologies are presented, for example, in Avant 2005, 16–22; 32; Singer 2003, 88–100; Kinsey 2006, 2; 8–33; Isenberg 2009, 25; Creutz 2006, 23–26.

17 Avant 2005, 3; 7; Creutz 2006, 17; Isenberg 2009, 26.

by the armed forces in the first place. This further complicates the overall picture of the industry. The industry is in constant flux and rigid typologies cannot keep up with the changes.

Thirdly, it needs to be kept in mind that “privatisation” and “outsourcing” are not synonyms. They both indicate that some practices and tasks that used to be conducted by state or state related agencies – in other words, by public sector – are handed over to private sector¹⁸. When “privatising” the state usually transfers an existing public entity to be owned and/or managed by a private actor¹⁹. For example, in several states this has been done to the railways. The state does not interfere in how the railways are organised or what kind of services are provided to customers, unless there are serious malpractices or neglects that threaten the nature of railway as a public service, that is, as something essential to the functionality of the state. There are several types of privatisation, of which full or partial privatisation are the simplest forms. In the former, both assets and workforce are sold; in the latter, assets remain state owned, but the workforce is provided by private company.²⁰

When “outsourcing” the state still holds control over, and responsibility for, the provision and management of the designated tasks. The state designates what kind of tasks need to be done and, often, how they are to be done; then, the state enters into contracts with private entities that specialise in the designated tasks. Thereby, the state acts as a customer and as a manager by paying for and monitoring the provision of these tasks. Outsourcing and “contracting out” – a term that is also commonly in use when discussing the topic of this thesis – are often understood as the same management strategy, but differences between these can be seen in the length of the agreement and the status of personnel. Nevertheless, contracting out can be understood as a subcategory of outsourcing.²¹

On the basis of these distinctions, I argue that outsourcing is the most accurate term to describe the kind of transformatory processes that are going on inside the armed forces of strong, Western states. States are not turning the tasks of state armed forces into privately managed ventures. Neither are they selling their workforce to private entities. Former personnel of state armed forces that have moved, or are moving, to work for private companies do that voluntarily and from their own initiative. In other words, they change employer, and the state does not profit from this move.²² The

18 The differentiation between public and private is not this simple, but a simplified reading is here necessary for the sake of clarity. I will address the public-private problem better in the next chapter.

19 Gansler 2003, 27.

20 Gansler 2003, 27.

21 Gansler 2003, 12–13.

22 Isenberg 2009, 59–62. This issue also came out constantly in the United States House of Representatives Committee

state is selling its assets in global arms markets and, especially after the end of the Cold War, when several states reduced the size of their armed forces, superfluous armament and armour was made widely available on the global arms market²³. Nevertheless, the state is not selling assets that are part of its active defence structure, or when this is done, it is done through private-public partnerships²⁴ rather than through privatising. There are several practices through which outsourcing of the tasks of state armed forces is carried out and different management strategies being used²⁵. The chosen strategy seems to depend on the designated task and on the state agency that outsources. In the case studied in my thesis the provision of personal and of convoy security were contracted out to a private company.

Fourthly, the organisation whose tasks are outsourced is here termed “state armed forces”. What are outsourced are some of its “tasks”. The term “state armed forces” retains the assumption of monopolised legitimate use of violence within territorial boundaries²⁶, which is part of the knowledge structure my thesis comments on. The term also includes all armed services, instead of distinguishing, for example, between army and navy. This is important with regard to the case that I am studying. The tasks that Blackwater was carrying out were not service specific, but cross service

on Oversight and Government Reform hearing on Private Security Contracting in Iraq and Afghanistan. For example, Prince, Erik, transcript of the House Committee hearing, 23, 82; Clay, WM Lacy, transcript of the House Committee hearing, 81–82; Welch, Peter, transcript of the House Committee hearing, 108. In the literature on PMSCs it is a common argument that after the Cold War, when several states downsized their armed forces due to observed mitigation in international tensions and increased costs of maintaining large armed forces, many military professionals found themselves unemployed. Increase in conflicts other than war, and states’ reduced capability and unwillingness to respond to arising international claims for intervention in these conflicts created demand for hired military and security personnel. (Shearer 1998, 70; Singer 2003, 49.) Because the demand for private personnel has risen alongside the prolonging of the conflicts in Iraq and in Afghanistan and because the pool for potential private personnel is restricted, there are increasing concerns about private companies luring active service personnel from the state armed forces (Isenberg 2009, 59–62).

23 Krishnan writes widely about the changing trends in defence industry (2008, 26–36).

24 Public-private partnerships are a management strategy which allows several different combinations of private and public sectors to share risks, costs, benefits and profits. Work force, production, assets and capital are then combined from different sources. What differentiated this strategy from others is that the state bears, in addition to recipient risks, also sourcing risks. (Gansler 2003, 32.) This form of contracting is popular when new military technologies are developed.

25 Gansler lists in his report management strategies that are used in the outsourcing of the tasks of state armed forces. These include outsourcing, competitive sourcing, privatisation, public-private partnership and government entrepreneurship. He also discusses separately the use of contractors in security operations, which according to him, are to be taken as a special case due to the severity of risks that companies and their personnel take to carry out. (Gansler 2003, 42–47.) When reading the literature on PMSCs, it often comes out that contracting of the tasks of armed forces is or should be done on the basis of the Office of Management and Budget (OMB) Circular A-76. In his report, Gansler (2003, 17–18) categorises Circular A-76 processes as competitive sourcing and differentiates this management strategy from outsourcing and privatisation. On the latter two, there is an unquestioned commitment to the point of view that private sector provision is more effective and efficient, where as in the former, private and public sector providers compete. When it comes to the outsourcing of the tasks of state armed forces, there seems to be a commitment to the point of view that private sector provides some of the services for cheaper and is more effective and efficient. Moreover, not all the contracts with private companies are done through competitive bidding. For example, Waxman, Henry A., transcript of the House Committee hearing, 23; Prince, Erik, transcript of the House Committee hearing, 65–66; Kucinich, Dennis J., transcript of the House Committee hearing, 65–66; Welch, Peter, transcript of the House Committee hearing, 107. Also Ortiz 2009, 6–7.

26 Weber 1994, 316.

tasks. Talking about “tasks”, again, delineates the point of view to practices and actions of state armed forces. Thus, it rules out the use of terms such as “military outsourcing” or “defence outsourcing”, which can also refer to, for example, military technology manufacturing. In this thesis, I am not addressing, for example, armament or armour development, which can be put under the same topic of “military outsourcing” or “defence outsourcing” along with the tasks of state armed forces²⁷.

Finally, the tasks that Blackwater was carrying out in the studied case are closer to tasks that police or bodyguards would – according to our general understanding – perform²⁸. The company personnel were safeguarding individuals and a convoy in which those individuals were travelling²⁹. However, this was done in a conflict zone abroad, where state police usually do not have the authority to act and where, traditionally, these tasks have been taken care of by military police. Furthermore, the company was working for the United States State Department (DoS)³⁰ and not for the United States Department of Defence (DoD)³¹. These notions bring us to another painful definitional intersection: in this case, should the discussion be about outsourcing of state's warfare-related or security-related tasks, and is it possible or desirable to distinguish these tasks? However, before addressing these questions I will discuss commodification of security; a process that is going on in the strong, Western states and that has made it possible to outsource the tasks of state armed forces in the first place.

2.2. Commodification of security

The outsourcing of the tasks of the state armed forces revolves around the theme of security. Companies taking over the tasks like the case studied in this thesis are often called *Private Security Companies*, the services they provide are labelled as *security* services and the product they deliver is called *security*. Thus, security has been commodified into a market-based product that can be delivered under the conditions specified in a trade agreement. What security in each case means and how it is delivered, depend on the terms of the agreement.³²

27 Avant 2005, 65.

28 Avant 2005, 16; Krishnan 2008.

29 The New York Times 18.09.2007.

30 The New York Times 18.09.2007.

31 I will return to this last point in the following chapters.

32 Wood & Shearing 2007, 18; Krahman 2008, 287–288.

The multiplicity of meanings has become possible when the seemingly self evident understanding of security has been problematised and numerous attributes have been attached to the term in order to specify what kind of security and whose security is under discussion each time. This kind of questioning of self evident truths became possible when the shared knowledge structures of the Cold War lost their unquestionable predominance. I am here referring to the relatively stable understanding of security in international relations during the Cold War; an understanding that defined security strictly in terms of the state, warfare and international balance of power. The provision of security was then seen as a challenge for a collectivity called the state and the forum for taking that challenge was the international realm.³³ After the Cold War, the term has, to an extent, preserved its meaning as a collective and thus somehow objectively definable good, usually assumed to be provided by the state³⁴. However, at the same time new ways for providing individually re-definable security have emerged and security can now also be seen as a commercial, private commodity³⁵.

When dissatisfaction with the state's security establishments has risen³⁶, there has been a turn towards private means for security³⁷. When it has been realised that the state cannot produce a perfect state of security and that risks in everyday life refuse to decrease regardless of the actions of the state³⁸, there has been a turn towards different guarantees and securities against these risks. Security is no longer solely about safeguarding the state and its citizens from perennial threats, but also about insuring them against potential harms and about managing risks. The state seems to have failed in providing guarantees against risks and companies market themselves as being better prepared and equipped to do this task. They promise to do it more cost-efficiently and faster, and to

33 I will address this discussion more in detail in the next chapter. Interestingly, majority of the academic work on the outsourcing of the tasks of state armed forces mentions the end of Cold War as a landmark for the emergence of the phenomenon – as did *The New York Times*, 18.09.2007.

34 Wood & Shearing 2007, 20; 125.

35 According to Krahan, it depends on the meaning given to security, whether it is perceived as a commercial, private commodity or as a common good. If security is defined as managing risk, it is seen as a commercial commodity; if it is defined as an absence of threat, a common good. She also points out the distinction between public and private providers and common and private goods. Both, public and private providers can produce commercial commodities alongside common goods. Krahan also distinguishes a third meaning for security: if security is about deterrence, then it is a club good. (Krahan 2008, 382–387.)

36 The rise of individualisation and the evolvement of new value setting have often been offered as an explanation for this trend. People have diverse security needs and they turn to all the available – and affordable – providers to satisfy them. Contrary accounts have also been provided. For example, Chevrier has claimed that instead of setting the individual on the focus of theorising, we should see the socialised political as the corner stone of current order characterised by privatisation of state functions (2004, 241–257).

37 Krahan 2008, 329; 396–397; Mandel 2002, 56.

38 The capability of the state to provide security to its citizens is most commonly seen as a prerequisite and the primary reasoning for the state's existence (Krahan 2008, 279). People's dissatisfaction with the state's security establishment does not only indicate that the state may have failed in addressing the security needs of its citizens, but also that the needs of the citizens evolve and change constantly so that a perfect state of security will never be achieved. The frustration of the people is also due to this non-achievability of the security promise which the state is seen to have given.

target their services better to meet the requirements of the client.³⁹ This notion of risk makes commodification of security possible and provides statistical means for evaluating and setting value to insurance against it⁴⁰. PSCs then operate in the market of insurance along side other providers of security related services and products (including the state), and derive their premium from promising to protect against risks; controlling and managing their potentially negative effects. This aforementioned duality of security as a private, commercial commodity and as a common good is at the heart of the discussion about the outsourcing of the tasks of state armed forces.

In the general understanding the state is still largely seen as the primary guarantor of security and other security providers complete its functions or take care of its functions, when the state has delegated these functions to them.⁴¹ Therefore, the outsourcing the tasks of state armed forces draws both its legitimisation and its doubt from the general understanding of the state as the prime security provider and from the concern, on the one hand, of the effectiveness and, on the other hand, of the accountability of the security tasks performed by the state or by companies⁴². In the general understanding, the modern state⁴³ has been set as the norm against which actions of the other security providers are to be evaluated. Assumed to be democratic, it has been set as an ideal of political control and accountability over the practices of security and therefore, all other means for providing security are normatively assumed to be a defect⁴⁴. For example, it has been commonly noted that the state can be trusted to fight the wars to the end since it is fighting for the people; companies are assumed to fight until it is no longer in their financial interests to do so since they are fighting for profit.⁴⁵

As it has been noted, security is both a public and a private problem. Drawing a clear line between the public and the private is impossible and partnerships of public and private entities in providing security have further interlinked these spheres⁴⁶. Commerce has traditionally been seen as an activity within the private sphere whereas political and thereby state related⁴⁷ issues have been seen as something that takes place within the public sphere. The public sphere has been state lead whilst

39 Dillon 2008, 315; 321; Mandel 2002, 156–157.

40 Dillon 2008, 310; 318–320; 323.

41 Krahman 2008, 279.

42 Krahman 2008, 380. Cf. Flinders 2006, 224–225.

43 What characterises the modern state is territoriality, nationalism as its legitimising ideology, hierarchical bureaucratic structure with a clear order of accountability, sovereignty to make decisions within established borders and a monopoly over the use of violent means to back up those decisions (Weber 1994, 316).

44 Flinders, on his part, has reminded that electoral accountability is just one form of accountability among others. At least expertise, experience, objectivity and professionalism should be recognised as other forms of accountability. He has also pointed out that transformations can lead to better accountability and new, innovative forms of it. (Flinders 2006, 236–238.)

45 For example, Isenberg 2009, 52–54.

46 Cf. Flinders 2006, 225–233.

47 This is just one of the many and a very limited view of the political.

the private sphere has been relatively free of intervention within state laid borders⁴⁸. In theory, issues of common concern have been decided in the public arena whilst what happens in the private sphere is mainly the concern of the actors themselves as long as they obey state laws and international regulations. The outsourcing of several state functions has changed and re-located this borderline between private and public. Public and private have been mixed in order to increase efficiency, raise standards and provide more choice; at the same time the protection of public ethos is attempted.⁴⁹ This has changed the characteristics of the state as well as of the international.

When trying to re-establish the border between public and private, it is worth considering that several theories state that the political has penetrated other spheres of society to the extent that society has become politicized thoroughly⁵⁰. On the other hand, it has been claimed that the economic has gradually conquered more and more of the political space and thereby shrunk the political or even that the establishment of states has ceased the overtly political.⁵¹ Shrinkage of the political and depoliticisation have been both praised and feared by the discussants. It has been seen as a way to sever political connections and cut off corruption. It has been hoped that once powers of decision making, policy formation and regulation have been delegated to para-statal bodies, political dictates would interfere less in evaluations of situation and decision making.⁵² On the contrary though, it has also been argued that the reduction of politics to bureaucratic calculability is an unfortunate tendency. The political is here seen as a moment of constructing, through power, struggle and choice, the social order which then defines the limits of politics and non-politics. Thus, once the state had been put into its place, it retroactively constituted – and still reconstitutes – its own basis and what has taken place afterwards have merely been functions of the technology of governance.⁵³

The outsourcing of the tasks of state armed forces as a phenomenon emerges in the middle of the aforementioned discussion about the changing equation between political, economic and social. In the United States outsourcing decisions have primarily taken place in the intradepartmental decision making process. The departmental outsourcing officials have met with representatives of the industry, who as such have been granted the status of security experts. This has been claimed to

48 Berndtson 1996, 41–49.

49 Flinders 2006, 224; 240.

50 For example, Berndtson 1996, 45–48.

51 Teivainen 2002; Edkins 1999, 1–2; 5. Also Berndtson 1996, 47–48.

52 Flinders 2006, 240–242. Flinders reminds that it is a relatively naïve assumption to believe that para-statal organisations are apolitical and even if this happened to be the case, informal channels of influence stay in use. In any case, it is hard to convince the public about the apolitical nature of organisations. (Flinders 2006, 243.)

53 Edkins 1999, 1–3; 5; 8–11. Also Cox 2007, 504–505. Governance will be explained in detail later in this thesis.

have opened doors for lobbying and corruption in the decision making⁵⁴. Outsourcing decisions have then been made as a result of these meetings as well as of negotiations inside the department in question and between the department and other administrative agencies which have a stake in the outsourcing process. The Congress or other checking and balancing institutions with namely democratic powers have widely been excluded from the process, which has often been claimed to have given the administration relatively free hands to implement its agenda⁵⁵. In other words, the influence of experts seems to have grown over the influence of democratically chosen representatives in the matter. In addition, the outsourcing decisions have to a wide extent been made in the name of economic efficiency, savings and better use of the tax-payers' money. In other words, economic rationality has been the main reasoning behind the decisions. Interestingly, the same rationality has also been one of the main reasonings on the basis of which these outsourcing decisions have been questioned.⁵⁶ As it can be concluded from this discussion, the attempts to relocate and to re-establish the borderline between public and private in the dispositive of outsourcing of the tasks of state armed forces are multidimensional and include fierce power struggles.

The attempts to re-establish the public-private borderline do not only take place within the state or the society, but they also request for rethinking the international. Whilst during the Cold War the international was tightly bound to the inter-state power struggle, its meanings have now been multiplied. For example, Robert W. Cox sees the international as “the compatibility or incompatibility of self-identifying human groups in contact with one another”⁵⁷. According to him, there are three configurations of power – the American leadership or Empire, the inter-state system and the civil society – that accommodate the aforementioned human groups in global governance⁵⁸. The international can also be conceptualised as a discourse in which the practices of governing are given an increasing importance. This kind of approach recognises the historicalness and contingency in the international instead of fixing it to a particular standpoint of the state and thus, avoids using the state as a naturalised division line between inside and outside.⁵⁹ It makes it

54 For example, transcript of the House Committee hearing, 65–66; 87–88; 108.

55 For example, transcript of the House Committee hearing, 17; 75; 111; 138.

56 For example, transcript of the House Committee hearing 33; 52–53; 82; 160–161.

57 Cox 2007, 515.

58 Cox 2007, 520–521. With the “American Empire” Cox refers to US influence that penetrates borders of other states to control the actions of the representatives of the states' public and private spheres. This generates accommodation of US political, economic and social practices and attitudes in the other states. The “civil society” can, according to him, be found within states and within the Empire, but it also has its own transnational aspect. Cox also mentions the covert world of intelligence, organised crime, “terrorist” networks and so on as an additional power sphere in the international. (Cox 2007, 520–521.)

59 Neumann & Sending 2007, 678–679; 685–687; 695. Also Bigo & Walker see the international as an effect of knowledge production as well as of the historically constituted practices which the knowledge is produced of (2007, 727–729).

possible to see the international as a time and space specific realm which is constituted in our discursive and non-discursive practices, and which intermingles with the state realm creating a new forum for renegotiating the borderline between public and private or civilian and military⁶⁰. This is also the approach to international applied in this thesis.

Moreover, sensibleness of the whole practice of producing borderlines has been questioned in some of the re-conceptualisations of the international. There is said to be a need

[...] to uncover both the arbitrariness of origins and the legitimacy of any consensus about the need to have a border as a line of separation and differentiation, a need that is over and above any more specific dispute about where the border is to be located⁶¹.

It is claimed that focusing on borderlines can in itself essentialise the relations that are analysed on those borderlines and emphasise order instead of transformation. Still, it is not suggested that the existence of borderlines should be rejected, but that they should be understood as relational, rather than fixed, lines which purpose and location always depends on the position of the observer. In this way, what is inside and what is outside can always be questioned and challenged.⁶² These re-conceptualisations of the international have created room for the commercial security providers to emerge as actors not only within the state, but also in the international realm.

While government and governance technologies are often touched upon in this thesis, what is relevant for now is the notion that the border between private and public, if it is establishable, is fluid and constantly renegotiated. When it comes to the outsourcing of the tasks of state armed forces it can be said that the border between private and public is renegotiated and set in every contract made between the state and the contracting company. It can also be said that the aim of this kind of contracting is to produce a public good with private means. Next, it is time to consider, what this public good is understood to be and how it is in suspension with another, private good.

60 It has to be noted that albeit the axes of public-private and of civilian-military cross over on several points they are neither the same axis, nor even parallel axes. In the dispositive of outsourcing of the tasks of state armed forces their main point of crossing is the prevailing notion of the use of legitimate violence as being solely a public function.

61 Bigo & Walker 2007, 731.

62 Bigo & Walker 2007, 733; 735–737. However, anchoring of the purpose and location of borderlines to the observer contradicts with Foucault's theorising. According to him, analysis should not begin with interpreting the meanings of "things" to the observer, but with interrogating the discourse and dispositive in which these "things" are produced. Therefore, my stance to borderlines in this thesis differs from that of Bigo and Walker, although I agree that borderlines should be seen as something relational instead of seeing them as something fixed. Moreover, albeit the locating the division line between inside and outside that has most commonly been set at the borders of the state is questioned in these paragraphs, I retain it as an analytical tool, because it has not lost its importance in the general understanding that this thesis comments on.

2.3. Warfare and Security

In the common IR understanding⁶³ security was for a long time about warfare. Under the conditions of anarchy⁶⁴, in order to ensure the future existence of a state and its population, the state was doomed to prepare for war. Since it could not be sure about the intentions of others of its kind, it had to be prepared and, as it is generally believed, under these circumstances there is less room for cooperation and trust than for fear and mistrust, which made the state obsessive about its security. Therefore, if a negotiated solution to a conflict or a dispute with its neighbouring state was unattainable, the state was doomed to decide whether to wage war in order to settle the dispute. If war was waged, it was done in order to guarantee the state's existence and security against the threats of peril. At the same time, preparations which increased the feeling of security in the state increased the feeling of insecurity in the neighbouring state. If the level of insecurity and the sense of danger rose to an unbearable level in the neighbouring state and it decided to wage war as a pre-emptive move, it was done in order to reduce insecurity.⁶⁵ The doctrine of sovereignty was developed as a justification for these assumptions and violence was stated to be the means a state fortifies itself and prepares to act against other states with.

In this thesis, this way of thinking and acting is termed as security through warfare. This has been the main way of theorising about public, state security. Once the notion of security has been widened⁶⁶, also economic, environmental, social and ideological aspects have been included in the notion of state security. Nowadays state security is as much about the well being of its population and a vivid economy to attract investment and business activity into the state as it is about securing

63 By "common IR understanding" I refer to the canonised collection of texts discussing international relations. In that collection, so called realist texts are prevailing and liberal or idealistic texts are often set as a dichotomic category to them. These are not the only IR categories, but the best known and ideas put forward in them seem to resonate widest with our common understanding. Foucaultian critique of common IR understanding begins with questioning the transcendental subject that seems to be taken for granted in the majority of IR theorising (Dillon 1996, 4–6; 74; 77; Foucault 1984a). The reason that I am discussing the common IR understanding even if my thesis focuses on the general understanding is that given its status of expertise the common IR understanding strongly influences the constitution of the general understanding.

64 In anarchy, there is no central authority to govern the actions of states, but dissent and agreement amongst them is established and managed solely by their own actions.

65 This is the basic logic in realist IR texts. Nevertheless, I have taken this formulation of the "security dilemma" from Ken Booth's & Nicholas J. Wheeler's more critical IR text which problematises the assumptions of automatic and unavoidable recourse to violence in threatening situations and highlight actors' decisions. Booth & Wheeler (2007, 4–5.) According to Booth, security studies were until 1980's preoccupied to give predefined answers to predefined questions in a realist framework. Instead, security should be understood as an essentially derivative concept, in other words, it does not have a closed meaning. (Booth 2005, 3–4; 13.) Krause & Williams also argue for widening and deepening the concept of security in order to better understand its multiple dimensions and highlight that individual security does not equal with state security as it has been commonly assumed in IR and in political science theorising (1997, 34–36; 44). According to Collins, security studies privileges the position of the state when it concentrates on studying the threat, use and control of military forces and creates a tendency to reduce security to military security (2007, 55).

66 For example, Buzan 1991; Buzan et al. 1998.

its existence in the face of environmental degradation and climate change. Nevertheless, as the notion of security in this thesis is relatively narrow; covering only the international threat estimations done in the United States, as well as the physical wellbeing of individuals and their perceptions of threats and risks in their lives – which I will come to later in this chapter – I leave the discussion about wider notions of security aside. Needless to say, social relations also are not this simple and theorising about them is more complex and detailed, but here providing a simplified reading of a more complex phenomenon is necessary.

As noted in the previous paragraphs, the state has been the prime referent object of security in the common IR understanding. What is to be secured has solely been the state. Traditionally, state security has been something that is produced by state owned means. This has been expected to guarantee that the actions taken to secure the state are not contradictory or counterproductive but reinforce one another and enhance the overall condition of security. All means are assumed to be under functioning and capable central command which directs their use towards a commonly recognised and desired end. Clear lines of authority and accountability are expected to exist. There should be no problems with critical infrastructure and no shortages of critical supplies, since all of these are provided and produced by the state or its trustworthy allies. Theories of bureaucratic politics have questioned these assumptions, but the popular image of the uniformity of the state has remained⁶⁷.

Further on, state security has been generally divided into internal and external security. Often the main reason given for establishing a state has been its ability to secure peaceful conduct of life within its borders through centralised authority and through a coercive apparatus to enforce decisions made by the centralised authority. This coercive apparatus takes the form of police and judiciary, and works in the civilian capacity. When the state was not concerned so much about the order of things within its borders, but its relations to others of its kind, it was said to be concerned about external security. The apparatus to deter others of its kind from executing expansionary politics or other malicious intentions takes the form of state armed forces. Simultaneously, a separate military capacity is established. When the sole existence and the estimated capabilities of the state armed forces are not enough to deter the others, the function of this apparatus changes to that of engaging in the use of violence.⁶⁸ In the establishing processes the realm of the international, which was discussed in the previous chapter, has also been created – and re-problematised.

67 Flinders 2006, 223.

68 For example, Avant 2005, 16; 21; 33.

Respectively, parallel structures for the provision of internal and/or external security within the state administration have been established. In the studied case, the DoS is a civilian agency within the US state administration, whose main concern is the political and diplomatic conduct of practices related to external security. It does not have authority over state armed forces, which are under the authority of the DoD, a half-military, half-civilian agency within the US state administration, whose main concern is the military conduct of practices related to external security. Neither of the mentioned state administration agencies has authority over police, which operates mainly in the realm of internal security and under the authority of the United States Department of Justice (DoJ). DoJ and its agencies predominantly fall under the civilian capacity, and in principle, they only have authority to operate within the US state borders.

The authority structures within the US administration are important to the case studied in my thesis because they are part of the studied dispositive and because the administrative agency to which a phenomenon is assigned guides discourses revolving around the phenomenon and, thus, how this phenomenon is objectified in our knowledge. For example, discourses inside and related to the DoD objectify a phenomenon differently from discourses inside and related to the DoJ. In the former, the outsourcing of the tasks of state armed forces is usually objectified in a domain of state or national security and threats, defence, war fighting and operational success. In the latter, the phenomenon is objectified in a domain of justice; rightdoing or wrongdoing, rights, sanctioning and correcting behaviour. Different domains also mean different responsibility chains and different practices to monitor and enforce those responsibilities. Furthermore, not only are the related discourses influenced by the existing administrative structures and non-discursive practices, but discourses, structures and non-discursive practices mutually reinforce one another.⁶⁹

The commonly noticed dichotomy between civilian and military has been established – and is continuously re-established and renegotiated – in our general understanding by discursive and non-discursive practices. Military has usually served as the base line or the norm that has been restricted and firmly described, whilst civilian has been everything outside of military. The outsourcing of the tasks of state armed forces questions and blurs this dichotomy. This becomes visible in the struggles over whether to locate the phenomenon to civilian or military sphere as well as over the naming of the actors in the outsourcing. Even if this is not the only dichotomy that has been questioned by the outsourcing, it is the one I am concentrating on in this thesis. I examine the civilian-military borderline that does not equal to, but cuts across the spheres of warfare and security.

69 Foucault 1984c, 175; 2005, 42–45.

The blurring of civilian-military borderline is closely related to the changes in the ways that we understand security in international relations. Potential referent objects of security have multiplied in the era following the Cold War. If the Cold War was about the security of the state, the following era has also been about, for example, world, individual, social or group security.⁷⁰ These notions are not solely related to warfare, but as this thesis examines a shooting incident in a conflict zone, I closely connect my reading of the theories of individual security to that context. With what is here termed as security in warfare I refer to the private, personal security of individuals (whether in civilian or military capacity) designated to work as part of the US led operation in Iraq, of dignitaries visiting the country, of Iraqi people not taking part in fighting and of the representatives of the Iraqi government and agencies under its authority. As the individualisation processes in our strong, Western societies seem proceed ever further, the importance of security in warfare keeps on increasing⁷¹.

The concern about individual security has its basis on the widely accepted notion of human rights. All human beings are stated to have the equal right, for example, “to life, liberty and security of person”⁷², to be recognised⁷³, to fair treatment in front of the law⁷⁴, to property⁷⁵, to social security⁷⁶ and to freedom of thought and of opinion⁷⁷. The state is assumed to be the main guarantor of these rights to its citizens, but when it fails to do so or in itself consists a major threat to the realisation of these rights, there are pressures within the international community to interfere. One of the conditions for a justified outside intervention is said to be that the rights will be better guaranteed after the intervention; people are expected to feel safer and secure afterwards and to be able to live their everyday lives with less restraint caused by fear or injustice. It has been questioned whether this has been the case in Iraq; especially in relation to PMSCs, which are seen to act in the country outside of the reach of any kind of legislation and have been observed behaving accordingly.

When theorists of individual security have wanted to avoid making direct connection to the declaration of human rights and to the United Nations-sponsored term “human security” which has been more commonly used in this context, they have preferred discussing “individual security”, often in the context of emancipation⁷⁸. In this thesis, I follow this convention and write not about

70 For example, Booth 1991; Krause & Williams 1997, 44.

71 I will return to this point later in this thesis.

72 The Universal Declaration of Human Rights, article 3.

73 The Universal Declaration of Human Rights, article 6.

74 The Universal Declaration of Human Rights, articles 7–11.

75 The Universal Declaration of Human Rights, article 17.

76 The Universal Declaration of Human Rights, article 22.

77 The Universal Declaration of Human Rights, articles 18–19.

78 For example, Booth 1991.

human, but about individual security. The reason for this is that while human security has a connotation with the security of people who live in conditions where their own government is unable or unwilling to guarantee their rights (as it is in the case of Iraqi people), individual security also includes the security of US soldiers, contractors, government employees and visiting dignitaries whose rights, in principle, are guaranteed by the US government in the United States, but who face different risks and dangers when working in a conflict zone abroad. To my mind, the starting point for Iraqis' and US citizens' security in Iraq is different, which brings an additional tension to the case studied in this thesis.

Needless to say, even if security is increasingly named to be the reasoning for waging a war, warfare is not only about security; there have always been other motivations for waging war than the state security. In addition, an armed conflict always compromises the individual security of the people living in a conflict zone, as well as that of those who take part in the overall operation. Thus, security through warfare creates the need for security in warfare, which is a product of the discursive and non-discursive practices by which we create our self-understanding as well as our understanding of the world around us. In other words, the obsession for security that now characterises the strong, Western states and the pacified societies they nest has created the need to guarantee the individual security of both, the representatives (either civilian or military) of those strong, Western states and the others who have been assessed as innocent, in conflict zones and in the course of violent confrontations.

2.4. Private Military Company (PMC) or Private Security Company (PSC)?

The questioning and blurring of the civilian-military borderline has led to a kind of definitional chaos around the outsourcing of the tasks of state armed forces. This chaos relates not only to disputes and struggles over how the phenomenon should be named – in other words, how it should be objectified. It also affects perceptions of the participants of the phenomenon. The main tension remains the same: whether to call the actors in the name of military or in the name of security. Most of the time, some kind of intrinsic relationship between these two concepts is assumed, but not discussed any further⁷⁹. References to actors are made with numerous terms and concepts, the main ones being: private security company (PSC) or -firm or -contractor and private military company (PMC) or -firm or -contractor⁸⁰. There is no shared opinion on what to call these companies or how

79 This point comes up often in the data of this thesis, when in the House Committee hearing the phenomenon is addressed – depending on the speaker – either as a military issue or as a civilian security issue.

80 For example, “Private Military Firm” in Singer (2003); “Private Military Company” in Mandel (2002), Kinsey

to differentiate between the companies taking over different warfare or security related tasks – or whether not to differentiate. Therefore, some scholars prefer referring to companies with a combined name “private military and security companies” or calling them just “contractors”.⁸¹ Multiple other nomenclatures also exist⁸².

The existence of this chaos in itself tells something about the phenomenon. It has not been firmly objectified into our general understanding; in other words, we do not know what it actually involves. The body of knowledge that constructs the outsourcing is only emerging. Power struggles in which the outsourcing is produced are fierce and take place on several stages: for example, in politics, academia, commerce, judiciary, military and media. Alongside such power struggles, a wide demand for information has risen. The definitional chaos seems also to reflect well what has been written about the form of warfare that is emerging. As much as in our common understanding external security has often been reduced to warfare and internal security simply to policing, the emerging mode of warfare has blurred these distinctions and made it impossible to differentiate between internal and external, peace and war, civilian and soldier or conflict and reconstruction.⁸³

Bringing the aforesaid to the case studied in my thesis, I will now explain why I define the company in the case as a private security company. Firstly, the case happened outside the borders of the United States and in a conflict zone. As penetrable and diffuse as state borders have become, and are becoming, they still make a difference. In the context of the September 16 shooting, the applicability of laws and regulations is dependent on state borders, as is the authority of state agencies and officials. The ways in which the case is addressed in discourse keep it firmly in the international realm⁸⁴. The shooting took place in a foreign country, Iraq, and was thus addressed as an issue of external security. No matter the nature of the tasks that Blackwater personnel was carrying out, it was working outside the United States and, as a result, the case is not as conveniently related to police as it is to state armed forces. Moreover, the event took place in a conflict zone where state armed forces are still considered as the main actors.

Secondly, linking the case to state armed forces suggests Blackwater should be named a PMC. If it was more straightforwardly said that what is taking place in Iraq is “war” and not, for example,

(2006), Chesterman & Lehnardt (2007), Isenberg (2009); “Private Security Company” in Avant (2005), Isenberg (2009).

81 Similar notion has been made by, for example, Ortiz 2009, 2; Isenberg 2009, ix; 14.

82 For example, together The New York Times news articles and transcript of the House Committee hearing include 187 different expressions used for PMSCs and their employees.

83 For example, Kaldor 2006; Avant 2005, 33.

84 For example, The New York Times mainly addresses the case in its “international” or “world” section and within the US administration it was for long discussed only by the US embassy in Baghdad and DoS.

“contingency conflict”, it would be more legitimate to declare that all the tasks done in a conflict zone are warfare-related, and that a company doing any of them should be named a PMC. The argument goes that warfare is a holistic effort and a job for state armed forces; deducting and separating parts of the whole may obscure the overall picture. Also, when taking into consideration the nature of the tasks Blackwater personnel was carrying out, it should be kept in mind that similar tasks have previously been carried out by military police, an actor that is seen as a part of the armed forces. Nevertheless, the picture is more complicated. The conflict in Iraq is not officially a war⁸⁵. Blackwater was not a contractor for the DoD, but for the DoS – a civilian authority. It was not responsible to the same administrative structure as the armed forces are and thus, not responsible to military authority. In addition, the actor which before the outsourcing had taken care of the tasks that Blackwater now carried out was an intra-DoS office of Diplomatic Security Service (DSS). In other words, they had not been carried out by a military actor. These points suggest that the company should not be named a PMC.

Thirdly, the tasks Blackwater was taking care of are not directly linked to actual war fighting, but are more support tasks that, and even as such, are not critical from the military operational point of view. There has been an urge inside the United States administration to define and categorise what the core tasks of state armed forces are – that is, the tasks that should not be outsourced – as well as the critical support tasks related to them. Protecting civilian administrative personnel in a conflict zone falls short of belonging to either of the categories. Inside the armed forces these tasks are not seen as military, and this understanding is spreading to the civilian administration as well.⁸⁶ The civilian administration does not want to be related to warfare as much as to reconstruction and prefers, as much as is obliged, to organise the protection of its agencies and agency personnel via means other than the state armed forces. For both military and civilian authorities, the tasks Blackwater was doing seem not to be so much about warfare as about provision of security. In addition, the company employees did not have military, but rather civilian, status.⁸⁷

85 President George W. Bush declared the major combat operations being over in May 2003. After that the operation has been called more commonly “reconstruction” or “contingency conflict”. Needless to say, the various phases of conflict overlap one another and cannot be clearly differentiated. For example, Cordesman 2003, 234–238. About the conceptual diversity see, for example, Rantapelkonen 2000. In the House Committee on Oversight and Government Reform hearing it was also discussed how to define the conflict in Iraq (transcript of the House Committee hearing, 92–93; 97).

86 Gansler 2003, 8; Luckey & al. (2009). The outsourcing of the tasks of state armed forces is often related to a wider privatisation trend inside state administrations. This is said to have begun in the 1980's after the economic crises of the 1970's. Neoliberal economic theory conquered many corners of the world and led to downsizing of the state apparatus in many places, including the United States. (Krishnan 2008, 39.) This point was also discussed in the House Committee on Oversight and Government Reform hearing. For example, Tierney, John P., transcript of the House Committee hearing, 79; Issa, Darrell E., transcript of the House Committee hearing, 21.

87 For example, Shays, Christopher, transcript of the House Committee hearing, 148; McCollum, Betty, transcript of the House Committee hearing, 97; Prince, Erik, transcript of the House Committee hearing, 97.

Fourthly, the notion of individual security seems to be prevailing in the case. The tasks of Blackwater were related to the protection of the lives and wellbeing of individuals working for DoS or visiting in Baghdad. The office within DoS that is responsible for organising such protection is called Diplomatic Security Service (DSS), which also suggests that instead of PMC the company in this case should be named a PSC. When state security is mentioned in the discourse, it is done so usually in the context of asking whether the actions of PMSCs in Iraq contribute to the US state security or endanger it⁸⁸. The questioning of the legitimacy of the use of private companies in conflict zone is often done from the perspective of individual security. The neglect of the security of Iraqis, both as individuals and as a population, in the actions of private companies has risen as one of the prime reasons for concern and objection. The companies prioritise the security of their customer over everything else, and are said to be ready to protect their customers at any cost, without taking other matters into consideration.⁸⁹

In conclusion, PSC is, for above mentioned reasons, the most suitable nomenclature for Blackwater in this case. Contracted companies doing some other tasks for some other administration agencies may well be more suitably named with some other terms.⁹⁰ As can be seen from the reasoning above, PSCs doing tasks like Blackwater in the studied case operate in an area and do tasks that can and should be discussed in the context of two parallel processes: outsourcing a state's warfare related tasks and outsourcing a state's security related tasks. In a conflict zone these processes overlap, coincide and penetrate one another on several dimensions, but are not the same process. Firstly, the former process refers more closely to the security through warfare, the latter to security in warfare. When discussing outsourcing of the state's tasks in relation to warfare, there is an inherent expectation that security is the end product following from the accomplishment of several tasks allocated to different actors. On the contrary, when discussing outsourcing of the state's tasks in relation to security, security is often seen as a constant stage in people's lives that is to be maintained by different means even in the times and places of armed confrontation.

88 For example, Maloney, Carolyn B., transcript of the House Committee hearing, 19; Kucinich, Dennis J., transcript of the House Committee hearing, 21; Cummings, Elijah E., transcript of the House Committee hearing, 62; Waxman, Henry A., transcript of the House Committee hearing, 73.

89 For example, Cordesman writes that many of the problems which the United States is facing in Iraq are caused by failures in providing adequate security to the local people (2003, 494–515). These concerns come out consequently in *The New York Times* news articles, in the United States House of Representatives Committee on Oversight and Government Reform hearing discussions as well as in literature discussing the outsourcing.

90 Different chains of reasoning and wider approach to the phenomenon may result in different conceptualisation. For example, Ortiz wants to avoid making connotation to better know security companies that provide guards in more peaceful and stable societies (2009, 3–4). Isenberg points out that a “private security company” is the conceptualisation that the companies and their trade association favour, because of the above mentioned connotation. They want to be rather associated with companies in stable societies than with the armed forces. (Isenberg 2009, 5.) Also Chesterman & Lehnardt, introduction.

Secondly, when the discussion is about warfare, the expectation is that we are talking about issues related to state security and to the threats of peril. When the discussion is about security, the threats are turned into risks that are calculable and manageable. In other words, we are then discussing about something that cannot question the existence of the state, but can harm individuals and cause a temporary setback even to the state, from which it can yet recover. However, neither the process of outsourcing the state's warfare related tasks can escape the notions of security, nor can the process of outsourcing the state's security related tasks escape the notions of warfare since we are talking about phenomena which take place in the context of war and other kinds of conflicts. I argue that while most of the writing about the outsourcing the tasks of state armed forces assumes a somehow intrinsic link between war and security, this assumption mainly serves as a legitimising tactic and market strategy for a product called warfare capability. While this product is often sold as a product called security, security does not reduce itself to warfare but is a much wider concept. Therefore, naming of the actors and the services they provide is a delicate effort. Concepts are important and selecting some instead of others should be reasoned, instead of just based on referring to the common use of terms and concepts in the field of study⁹¹.

PSCs are not the biggest branch in the industry. Companies providing services related to, for example, logistics, catering, training, technological research and development, armament and armour manufacturing are more numerous and have bigger financial deals. PSCs just tend to attract more academic and media attention, partly due to their armament, armour and overall appearance as much as their operational procedures which resemble those of state armed forces⁹². Crudely, it could be said that PSCs draw more attention because their actions are potentially scandalous; their actions can harm people and cause death, which seems to be in our general understanding the ultimate misfortune to be avoided at any cost. PSCs actions are also highly visible, especially when something goes wrong. Bad news is disseminated, put into circulation more easily and faster through media networks than the slow and uninteresting processes of moving goods from a place to another or the long term scientific processes of armament and armour development.

Now, after having described and specified the research topic, it is time to introduce the data used in this thesis. It needs to be pointed out that the data is the starting point of this thesis and, therefore, all the definitions made above and all the categories designated are done in the light of it. What has been stated above is neither as such applicable to another case study, nor a universal truth about PMSCs, but a generalisation that claims to enlighten some aspects of the outsourcing of the tasks of

91 Unlike it is done in Chesterman & Lehnardt 2007, introduction or in Isenberg 2009, ix.

92 Isenberg 2009, 3.

state armed forces.

3. Data

3.1. News articles, governmental reports and hearings, judicial documentation

The data of this thesis consists of three main elements. Firstly, I analyse the news articles published in The New York Times from 16th of September 2007 – the date when the shooting incident to be examined in this thesis took place – until 2nd of January 2010 – the date when the judicial processes that in the United States followed from this shooting came to a hiatus due to the suspension of charges on the basis of investigatory errors⁹³. The newspaper was selected as a primary source because it, as other media, serves as a medium for disseminating information and for constructing our general understanding. Newspapers are commonly perceived as some kind of neutral and objective media for disseminating information that is first produced somewhere on a higher level and then delivered to the masses. However, they also actively participate in the construction of our general knowledge by selecting issues and events that they see worth of releasing as pieces of news, as well as by writing stories and publishing photographs about these issues and events.⁹⁴ News and photographs, as other stories and images, always include truth claims, which – if effectively disseminated and generally accepted – become the facts of our general knowledge. This does not mean that the media dictates the construction of knowledge and truth any more than, for example, the politicians or other influential people or businesses or bureaucracies do, but that it is one of the actors which have been acknowledged as an actor in the construction of the world as we perceive and experience it⁹⁵.

Even if it is widely acknowledged today that media companies are like any other companies in respects that they are selling their product in order to make profit, they still hold the position of information funnels. What a newspaper writes is still most commonly read as a neutral account of events; it tends to be seen as true and even historical research has problems in challenging this truth. News articles are also written in the way that they reinforce this perception.⁹⁶ Therefore, I find it important to look at the initial construction of the September 16 shooting and its suggested consequences in the light of The New York Times news articles. As The New York Times is one of the most prolific and most prestigious newspapers in the United States and is widely read outside

93 The New York Times, 01.01.2010; 02.01.2010.

94 Ridell 1994, 27–29; 91; 104; 161.

95 About the symbiotic relationship between media and people holding power positions, see, for example, Kunelius et al. 2009, 11–12; 307; 315–326.

96 Ridell 1994, 26–29.

the country, I opted for this specific paper. It has its own reporters on the ground in Iraq, which makes it capable of providing its “own” news – rather than solely referencing publications of international news agencies. Therefore, it is able to provide wider coverage on Iraq than many smaller newspapers.

The media tends to favour speakers in certain positions; it puts more weight on what they say and gives more visibility to them. It is not an equal arena of discussion on which anyone has a fair opportunity to share his or her opinions and on which all the voices are heard and recognised. In the media statements given from certain subject positions are of more value than other statements; they are regarded as important, worth of repetition and often, because of the acknowledged expertise that has given these speakers their positions, true. In other words, statements spoken from certain positions are regarded as authoritative declarations of truth.⁹⁷ The visual production of the phenomenon is to support the truth claims made in the discourse.

People who speak in the news articles are often those who are perceived to have power. Consequently, what politicians, high authorities or successful businessmen say or do, is a topic for a news article in itself.⁹⁸ On the contrary, the reader of a newspaper – associated here with the common man – tends to be just a receiver of information and unable to contribute to the construction of it – except in the “Opinions” section of the paper. Furthermore, certain events become topics of news articles easier than others. For example, a violent conflict that is seen to have something to do with the security of strong, Western states becomes a news topic relatively easily and when analysing news articles, it is unavoidable to notice the tyranny of rapid change and quick death. In order to be interesting, to make a good news story and to sell the paper, a news article has to produce a spectacle for the readers to wonder. Therefore, a shooting incident in Iraq that caused the death of innocent people and involved a US security company had a good potential to become a news story.

How news articles are grouped together, is another important point to keep in mind, when analysing newspaper articles. The New York Times wrote about the September 16 shooting most commonly under its “international” or “world” section⁹⁹. Out of the 76 news articles that I was able to read on microfilm, only five were situated in *some* other sections, for example, in business section or in national news section. The case found its way to the front page of the paper 28 times; mainly during

97 Kunelius et al. 2009, 33–34; 315–326.

98 Ibid.

99The name of the section in The New York Times was changed during the period under examination from “International” to “World”.

the months following the incident in 2007. Six times a news article discussing the case had a photograph attached to it on the front page; 32 times in the international/world section. On the pages of the newspaper (excluding the front page) the case was presented mainly in the context of the war in Iraq. Several different stories and photographs describing the situation in Iraq were most commonly positioned on the same page. Stories and photographs telling about the war in Afghanistan were common as well; as were those telling about war and military in general, PMSC issues and either foreign politics or national political struggles. In two occasions Blackwater was presented in the context of business news: when it softened its business imago and when the US government auditors questioned the legality of the company's contracts¹⁰⁰. Once the company was presented in the context of national criminal issues: that was, when its land acquisition plans were fiercely opposed¹⁰¹. What can be concluded from this is that the outsourcing of the tasks of state armed forces is in The New York Times firmly located in the sphere of state, foreign policy and military. The phenomenon cannot be discussed, for example, in a casual business context but in exceptional occasions.

I selected the news articles included in the data with the help of The New York Times's on-line archive by typing in "Blackwater" as the searched word and setting the timeframe of the search from 16th of September 2007 to 2nd of January 2010. Then I went through the hits and excluded all the other forms writing in order to concentrate on news articles¹⁰². This is an artificial division since all the other forms of writing – for example, editorials, columns and published opinions – contribute to the discourse and the construction of truths within it. The sheer need to control the size of research data played a big role in making this division, and I wanted to concentrate on the form of writing which is often taken as the least biased, neutral and objective. In addition I excluded news articles which were not directly addressing the case but mentioned Blackwater for some other reasons.¹⁰³ I went through the news articles as they were available on microfilm at The National Library of Wales in Aberystwyth¹⁰⁴; what I could not find in this form I read from the on-line archive of The New York Times.

100 The New York Times, 22.10.2007; 12.02.2008.

101 The New York Times, 11.12.2007. Also 13.12.2007.

102 This is not a Foucaultian approach to the data. According to Foucault, we should begin our research by forgetting, or at least suspending, all established and generally accepted categories, because they are no more natural than any other possible categories are. The established categories often hide some important notions and make us blind or deaf to some points or some voices. (Foucault 2009, 23–27.)

103 A full list of the analysed news articles can be found on bibliography section of this thesis. The New York Times online archive can be found on the newspaper's internet site: <http://www.nytimes.com/>.

104 The news articles that I was able to read on microfilm cover the period from 16th of September 2007 to 22nd of August 2009.

Secondly, I examine reports written and studies done on the request of different bodies within the United States administration, as well as documentation related to investigations undertaken and a hearing held by The House Committee on Oversight and Government Reform on Private Security Contracting in Iraq and Afghanistan on 2nd of October 2007. This hearing examined the rising US government spending on security contracting as well as the contractor accountability issues. As the chairman of the committee said in his opening statement:

Today, we are going to examine the impact of privatization on our military forces. We will focus on a specific example, the outsourcing of military functions to Blackwater, a private military contractor providing protective services to U.S. officials in Iraq. We will seek to answer basic questions. Is Blackwater, a private military contractor, helping or hurting our efforts in Iraq? Is the Government doing enough to hold Blackwater accountable for alleged misconduct? What are the costs to the Federal taxpayers?¹⁰⁵

The House Committee is one of the intra-administration watchdogs in the United States and hence, it has “jurisdiction to investigate any federal program and any matter with federal policy implications”¹⁰⁶. It was already investigating the use of private military and security companies as part of the United States war efforts in Iraq and in Afghanistan, when the September 16 shooting took place.¹⁰⁷ When carrying out its investigatory tasks the House Committee can hold hearings, request reports as well as send and publish letters to raise awareness over certain matters. In the United States, it occupies a recognised power position and therefore, its investigations and conclusions tend to make the headlines in themselves¹⁰⁸. Even if the September 16 shooting was not directly addressed in the 2nd of October 2007 hearing, the discussion in the hearing reveals how the phenomenon emerges and upholds itself in the US intra-administrative sphere and is hence included in the data of this thesis.

Under the pressure that the September 16 shooting caused, the US State Department (DoS) began its own investigation on the practices and guidelines under which its contractors operate in Iraq. The result of this investigation was the “Report of the Secretary of State's Panel on Personal Protective Services in Iraq”¹⁰⁹. In addition to this report, two other reports published by an agency under DoS's authority are included in the data. This agency, the Office of Inspector General's Middle East

105 Waxman, Henry A. opening statement, transcript of the House Committee hearing, 1; 6.

106 “About the Committee on Oversight and Government Reform” on the Committee's internet site.

107 This point came out in The New York Times articles as well as when I was going through the list of hearings held by the House Committee while investigating defence and security related matters. See “Investigations on Defense and Security” on the Committee's internet site.

108 The House Committee hearing was in recognised in The New York Times both on 02.10.2007 and on 03.10.2007.

109 The report is available through Military Education Research Library Network (MERLN).

Regional Office (MERO), was opened in January 2008. Its purpose is to provide “oversight of the department activities and of crisis and post-conflict areas” by, for example, auditing, investigating contractor related issues and evaluating program management and workings of the embassies in the region.¹¹⁰ So far, MERO has produced two reports that relate to personal protective services in Iraq and specifically evaluate how DoS has implemented the recommendations given in the initial, aforementioned report on personal protective services in Iraq¹¹¹.

When the lack of suitable and accountable contracting and monitoring practices became apparent in the aftermath of the September 16 shooting, new cooperation arrangements between different US governmental agencies were made. One of these arrangements was an agreement between the US Department of Defense (DoD) and the DoS on the United States Government (USG) Private Security Contractors, signed on December 5th 2007. Its purpose was “to clearly define the authority and responsibility for the accountability and operations of USG Private Security Contractors (PSCs) in Iraq”¹¹². A memorandum of this agreement is included in the data. Other regulations that are important in relation to the case studied in this thesis are the Coalition Provisional Authority's (CPA) Order No. 17¹¹³ and the Office of Management and Budget's (OMB) Circular A-76¹¹⁴. The former rises as an issue in the studied discourse, because it seems to grant immunity in front of Iraqi law to the private military and security contractors who work for the US or for the Coalition forces or for CPA in Iraq¹¹⁵. The latter is the circular on basis of which outsourcing of governmental functions is said to be done in the United States¹¹⁶.

Thirdly, as the case later on led to several judicial processes in the United States, documentation related to these processes provides more relevant data. Two of these processes were dealt in the

110 “Middle East Regional Office” on OIG's internet site.

111 MERO-IQO-09-01 and MERO-IQO-09-02.

112 Memorandum of Agreement (MOA) between the Department of Defense and the Department of State on USG Private Security Contractors. Otherwise referred to as DoD-DoS MOA.

113 CPA was the international governing body that governed Iraq from April 2003 to the end of June 2004, that is, the period between the decease of Saddam Hussein's government and the establishment of a new Iraqi interim government. It exercised governmental powers “in order to provide for the effective administration of Iraq during the period of transitional administration, to restore conditions of security and stability [and] to create conditions in which the Iraqi people can freely determine their own political future [...]”. It was “vested with all executive, legislative and judicial authority necessary to achieve its objectives [...]”. (Coalition Provisional Authority Regulation No.1, available at CPA's internet site.) CPA's Order No. 17 was about the status of coalition provisional authority, multinational force, certain missions and personnel in Iraq. Available at CPA's internet site.

114 OMB is an office under The White House's authority. It assists “the President in overseeing the preparation of the federal budget and [supervises] its administration in Executive Branch agencies”. It, for example, evaluates the agency programs and policies, sets funding priorities as well as oversees and coordinates procurement, information and regulatory policies in order to help improve administrative management. (“OMB's Mission” on Office of Management and Budget's internet site.) OMB's Circular A-76 is about Performance of Commercial Activities. It “establishes federal policy for the competition of commercial activities”. Available at OMB's internet site.

115 For example, The New York Times, 18.09.2007.

116 Isenberg 2009, 15; Avant 2005, 35.

district court for the District of Columbia and available documentation related to these processes is included in the data¹¹⁷. In the first court case, three estates and a victim raised civil charges against Blackwater. The claim is included in the data. This judicial process resulted in a settlement outside the court room. The terms of the settlement are confidential.¹¹⁸ The second court case was a criminal case: the United States against six Blackwater employees. One of the employees pleaded guilty and cooperated with the prosecutor in raising charges against the other five employees. The charges in this case were dropped in January 2010 on the basis of technical mistakes made in the investigation.¹¹⁹ Documents related to the latter court case that are included in the data are the criminal information related to the employee who cooperated and his guilty plea, the grand jury's indictment to make the five other employees appear in court and the district court of Columbia judge's memorandum of dismissal of charges against the employees.

Judicialisation of the political sphere has gone much further in the United States than has usually been the case in Europe. In other words, in the United States preliminary rulings and other court cases articulate more in detail what the legislation that is produced in the political processes means in practice. Laws and regulations are less specific and give more freedom for interpretation in the lower decision making levels and in the judicial processes which test these laws and regulations. The judiciary has a multidimensional role in the establishment and maintaining of knowledge and of the institutionalised processes that uphold it. Therefore, the documentation of the two judicial processes that followed from the September 16 shooting in the United States is included in the data. The lack of preliminary rulings with regard to the outsourcing of the tasks of state armed forces can on its own part give an explanation why, according to The New York Times, the former Secretary of State Condoleezza Rice admitted that “there was a 'hole' in United States law that had allowed Blackwater USA employees and other armed contractors in Iraq to escape legal jeopardy for crimes possibly committed there”¹²⁰.

Additionally, but in relation to the judicial processes and as a counter balance to the United States administration related voices I listen to what Human Rights First have to say about the matter. Human Rights First is a United States-based non-partisan, non-profit international human rights

117 Documents have been obtained from three sources: internet sites of The New York Times, the United States Department of Justice and internet data bank of The Project on Government Oversight (POGO) on Federal Contractor Misconduct. POGO is an independent non-profit watchdog, which “investigates and exposes corrupt and other misconduct in order to achieve more effective, accountable, open and ethical federal government”. (“About us” on POGO's internet site.)

118 The New York Times, 12.10.2007; 10.11.2009; 08.01.2010.

See POGO databank site <http://www.contractormisconduct.org/index.cfm/1,73,222,html?CaseID=820>. Visited 17.01.2010.

119 The New York Times, 11.10.2007; 16.01.2008; 06.12.2008; 09.12.2008; 01.01.2010.

120 The New York Times, 26.10.2007.

organization that aims at promoting laws and policies that advance these rights. This promotion is done by “coalition-building, inside advocacy, litigation, research and reporting, and public advocacy”¹²¹. This Lawyers Committee for International Human Rights has published a report “Private Security Contractors at War. Ending the Culture of Impunity”, which discusses specifically the case studied in this thesis and legislation that could be used to make PMSCs and their employees accountable in the United States judicial system.

The data selected for this thesis seems to have been produced for two main purposes: on the one hand, for providing information and constructing knowledge, and on the other hand, for guiding and commenting policy decisions. Thus, it reflects the current interests of knowledge in relation to the phenomenon. The data also expresses well, how the flow of information and truth claims is not unidirectional, but the truths circulate from one source to another. The selected documents make references to one another and borrow visual images from each other. The data suggests that a broadly accepted approach to the case, as well as to the larger phenomenon, is a governance one. The event is most commonly framed as an oversight and politico-legal accountability issue. Even though some claims for re-establishment of the state armed forces as the sole legitimate actor in conflict zones are presented, the main concern in the documents is how the new actors, among which the private security contractors are but one, could be brought under supervision and control of the main governance bodies.

3.2. Source criticism

I am aware of that the data of this thesis is biased and favours the United States administrative point of view. However, it comes from multiple sources and reflects widely the discussion going on in the United States about the outsourcing of the tasks of state armed forces. This bias in itself tells something about the power structures in which the phenomenon is produced. The access to information on government outsourcing or on private security providers’ contracts is strictly restricted, which, again, restrains the positions from which it is possible to talk about the outsourcing. Anyone who studies the phenomenon soon notices that there is information available, but finding relevant data is difficult. There are numerous news articles and opinion writings available, but these documents are mainly descriptive accounts of events and different justifications given for outsourcing. When I was first studying the phenomenon in 2007 not much other kind of data was available. Now, often interpreted as a consequence of the rise in awareness that the

121 “About us” on Human Rights First’s internet site.

September 16 shooting has caused, there are several sources of information and more are under development. Still the main problem remains the same: it is difficult to find relevant research data.

When discussing the outsourcing of the tasks of state armed forces, we are discussing a matter which is labelled as sensitive primarily in respect of two matters. Firstly, we are talking about highly competitive market where there is a potential for great profits. For this reason, the companies providing military and security services do not want to publish too detailed information¹²². Still, companies have to market their services, and having a good reputation among the customers, current and potential ones, is the best marketing asset. This requires some information about one's actions, experiences and operating strategies to be put into public. Secondly, we are talking about national security, which seems to be the area that is securitised to the maximum. States want to keep information related to national security secret. However, they have to strike a delicate balance between what is to be kept secret and what is to be publicly noticed. It is necessary to keep some matters secret in order to obtain and maintain the capability to defend the state in the case of an armed confrontation. Equally, it is necessary to be transparent in some matters in order to obtain and maintain a believable capability to defend oneself which serves as deterrence and safeguards the feeling of being secured within the population. These two issues are needed to be kept in mind regarding the lack of relevant data, how biased it is or the difficulty in collecting data or in interpreting it.

The September 16 shooting in 2007 made the wider public in the United States aware of how poorly recorded, monitored and overseen the outsourcing practices of the tasks of the state armed forces were. Better practices and more transparency were demanded in the name of national security, the citizens' right to know, democracy, good governance, respect for human rights and company accountability – just to name but a few reasonings. Under pressure, the United States government had to develop new overseeing practices and to open up, that is, to make more information publicly available. This is well documented in The New York Times news articles. Moreover, several non-governmental organisations have taken private military and security companies on their watch lists, and there are information sites collecting information from several sources and presenting it to the public. Nevertheless, and in addition to the excess of supply, the available information is scattered, partial and for example, some of the statistical presentations given are incomprehensible due to the lack of explanatory tables.

¹²² This point comes up, for example, when browsing the internet sites of PMSCs. The outlook of the sites is often very dynamic and selling, but not much detailed information is available. Superficial descriptions of services provided are given, but for further information one is advised to contact the companies directly. Sometimes, services are marketed as customary made, in other words, giving more detailed information would either reveal business secrets or be simply impossible, because the company modifies its services according to the customer's wishes.

After discussing the data, it is time to introduce the theoretical framework I am using in this thesis. First, I will discuss the Foucaultian framework which guides my reading of the data. According to Foucault, phenomena or “things” do not exist prior to our knowledge production about them. This knowledge production is thoroughly enmeshed with power relations and also influences those power relations. The power/knowledge dynamic – which can be studied by examining the discursive and non-discursive practices in which phenomena are constructed or produced – is on the focus of my study, but as Foucault’s conceptualisations of war/security relationship, of security, as well as of law and regulations differ from those of both the common IR understanding and the general understanding, I find it necessary to briefly address them as well. Knowing the Foucaultian conceptualisations makes my analysis of the September 16 shooting more understandable. Second, I will examine more closely the theories that are commonly applied to explain the outsourcing of the tasks of state armed forces. Stating why the phenomenon exists has most commonly been possible in the context of the theories of state transformation as well as of the theories of transformation of warfare. The third corner of this commonly applied explanatory triad – the commodification of security – was already discussed in the chapter 2 of this thesis.

4. Theoretical framework

4.1. The Foucaultian framework

4.1.1. Essential Foucault’s concepts for this thesis

My aim in the thesis is not to give an overall presentation of Michel Foucault's philosophy. A Master's thesis is the wrong forum for such an attempt. On the contrary, I have extracted parts of his theorising which I find essential for this thesis. I concentrate on his notions of power and knowledge as well as of discourse and dispositive. I also build on Foucault’s notions of security, politics as a continuation of war, law and regulations as well as on Michael Dillon's and Julian Reid's Foucault-influenced theorising on liberal way of rule and war. To me, these threads of theorising give an important insight into the power struggles and knowledge production around the outsourcing of the tasks of state armed forces which take place in the discursive and non-discursive practices in the United States. As a result – or more precisely, as a temporary hiatus¹²³ – from these practices the outsourcing of the tasks of state armed forces has emerged (and is emerging) in the common IR understanding as well as in our general understanding – and retains its place in them.

123 The production of phenomena in the discursive and non-discursive practices is an ever on-going process. However, the research has to take some time and space specific point of view to the on-going process, so that it becomes possible to claim something meaningful about the phenomena.

When introducing Foucault's concepts, in addition to his own works I rely on Kai Alhanen's study on his concepts.

Objectification of an object and a subject To Foucault an object or a subject does not exist in any transcendental form. Their existence is dependent on the time and space specific discourses and non-discursive practices within which they are produced. By objectification an issue or a phenomenon is made an object in our thinking; by this practice an issue or a phenomenon emerges. In the same process a subject who thinks about the object is defined; this practice also influences how the subject thinks, behaves and acts. What attracted Foucault's attention in particular was how a human being as a subject has become an object in his or her own thinking – in other words, how we evaluate ourselves. How we evaluate our thinking, behaviour and acts and how these evaluations guide our future thinking, behaviour and acts and thus, our identity construction.¹²⁴

The outsourcing of the tasks of state armed forces is objectified in our thinking through discursive and non-discursive practices that are studied in this thesis in relation to the September 16 shooting. As it will be shown in the analysis part of this thesis, the outsourcing is mainly objectified as something negative or as something necessary in our general understanding. These stances are in suspension, but not mutually exclusive. When the phenomenon is seen as something negative but necessary, it is formulated into an issue of control and accountability. In the same process, PSCs and the government agencies that use the services provided by PSCs are objectified as actors in the phenomenon. One of the main questions in relation to PSCs is whether they should be objectified as civilian or military actors. The more general attitude towards Blackwater is twofold: either both the company and its employees are thanked for their good services in Iraq or they are accused for reckless and neglecting behaviour. The attitude towards DoS is more straightforward: the agency has not carried out its supervisory tasks in an adequate manner. How the speakers, who have a right to attend the discussion about the outsourcing of the tasks of state armed forces, see – or want to see – themselves influences the stances they take in this discussion. This, for example, came up clearly in the House Committee hearing when the representatives spent a fair amount of time debating over what is or should be the purpose of the hearing¹²⁵.

Truth and knowledge Truths are constructed in discourses and reflect the power struggles going on in these discourses and more widely in society. Truths as such cannot be true or false; what matters, is that they are given the status of truth. Compilations of truths are then converted into knowledge.

124 Foucault 1984a, 42; 1984b, 78; 83–84; 2004, 45; 2005, 42; 2007, 3; Alhanen 2007, 21–22; 107.

125 See transcript of the House Committee hearing, 17–22.

Even though knowledge is disguised in neutrality, it is tightly intertwined with power. Knowledge is produced by power and helps to maintain that power and its relations; thus, knowledge also produces power. Knowledge is codified by those who hold winning positions in networks of power relations and even when these positions get new occupants, it is not possible for these occupants to entirely escape the existing knowledge and the structure it has formed. The existing knowledge restricts and guides the constant production and reproduction of knowledge and the maintenance of the forms of power to which it is tied. Nevertheless, this does not mean that power relations and the knowledge tied to them cannot change; just that change also in some ways reproduces what existed before it.¹²⁶ Saying this may help to illustrate why I found the definitional work done in previous chapters important. Not only does the choosing of concepts matter, but the definitional work reflects and takes part in the struggles over truth.

The search for information which enabled the establishment of truths was fierce after the September 16 shooting. There was a need to know what happened, and then to use this information to push forward the suggestions of truth that served one's interests. The power struggles on the background were not only about the legitimacy of the outsourcing of the tasks of state armed forces, but also, for example, about the state, the armed forces and the right balance between political, economic and social in the United States. The old categories, for example, of war or of state or of armed forces or of civilians guided the production of truth, but did not dictate it. They were utilised both to facilitate and to resist the production of the outsourcing of the state armed forces as a legitimate phenomenon in our general understanding. Reinforcing or questioning the legitimacy of the phenomenon, again, either strengthened or weakened one's hold of the power position one was at the time occupying.

Discourse + non-discursive practices = dispositive Foucault differentiates between discursive and non-discursive practices. Discursive practices are a group of practices that guide what can be said or what cannot be said in a discourse. The difference between what could be said grammatically correct and what is actually said, then, forms a discourse. In other words, in addition to grammatical rules there are other rules that restrict the discourse and thus, make some utterances meaningful while ridiculing some others. Non-discursive practices refer to all other practices. These have more material existence than those found in discourse. Practices are time and space specific and regulate objectification of objects and subjects. They guide people to speak in a certain way about certain objects, behave and act in a certain way and understand themselves in a certain way.¹²⁷

126 Foucault 1984a, 36–37; 46–47; 1984b, 85–86; 1984c, 175; 2004, 24; 2005, 41–42; 45; Alhanen 2007, 65; 77; 133–138.

127 Foucault 2004, 28; Alhanen 2007, 28–31; 46.

When discursive and non-discursive practices link to one another in a network of relations they construct a dispositive. A dispositive is an entity of relationships between practices around some phenomenon. It is not a unified whole, but an entity of ever changing relations and practices which can also be contradictory to one another.¹²⁸ The French term “dispositif” that Foucault used has been translated into English by several different words; most commonly by the word “apparatus”. However, in this thesis I follow Jeffrey Bussolini’s line of argumentation which points out the differences between the French terms “dispositif” and “appareil” of which the former is etymologically closer to the English term “dispositive”, the latter to the term “apparatus”. According to him, Foucault specifically opted for the use of the term “dispositive”, because he wanted to distance his theorising from the apparatus of state, and especially from Louis Althusser’s theorising about the ideological state apparatus. Moreover, Bussolini – referring to Giorgio Agamben’s theorising – states that in legal sense the term “dispositive” has more force than the term “apparatus”.¹²⁹ Kai Alhanen also translated “dispositif” into “dispositiivi”, not into “aparaatti” in his work written in Finnish. On the basis of selections for a term done by these two scholars, and the argumentations that they have used to back up their selections and that I have found convincing, I analyse namely the dispositive of outsourcing the tasks of state armed forces. I pay attention to both discursive and non-discursive practices, but I treat them more as methodological tools and therefore they are considered further in the methodology section of this thesis.

Society/war -relation Instead of seeing war as continuation of politics by other means¹³⁰, to Foucault politics is to be seen as continuation of war by other means. This notion has multiple aspects. Firstly, society is always an image of war in the sense that it preserves and upholds tensions that are present in war. Society upholds power relations between classes, but under the pacifying cover of society, power struggles keep on going. Thus, society is in constant stage of war. Secondly, when organising itself according to the principles of economy, society copies its organising principles from those of warfare and preparation for war. Thirdly, war as an open conflict is the moment of the rupture of old practices and relationships of power, and of codification of the new ones.¹³¹

What is the United States today is a product of its prior and on-going wars. As it will be theorised later in this thesis, the country has become obsessed with security to the extent that it claims to wage its wars for security and aims at waging these wars with zero US casualties. The illusion of

128 Alhanen 2007, 104–107.

129 Bussolini, Jeffrey 2010. An unpublished paper and e-mail conversation.

130 Clausewitz 1998, 20.

131 Foucault 2004, 49–51; 156–162.

winning wars without casualties has become possible through the technological development that enables fighting from the distance. At the same time, another aspect of this “safe warfare” has entered our knowledge through the multiple movies, television series, books and video games about war fighting. War has become some kind of spectator sport¹³² instead of a threat to our everyday life. If – and as it is often brought up when the outsourcing of the tasks of state armed forces is discussed – President Eisenhower found it necessary to warn about the emergence of military-industrial complex¹³³, the current concern is about the emergence and strengthening of military-industrial-media-entertainment network¹³⁴. The economy and warfare in the United States are tightly intertwined and in this context PMSCs are finding their legitimate place. As the enormous increase in demand for PMSCs’ services in the course of the Iraq conflict shows, new actors – in this case, PMSCs – can gain power positions that were previously reserved solely for other actors – in this case, for the state armed forces.

Security is, according to Foucault, a dispositive distinguishable by its mechanisms, such as the tendency to address a phenomenon in terms of a series of probable events, calculable costs and optimal-acceptable evaluations instead of addressing it in terms of absolute certainty. In other words, within the security dispositive it is recognised that perfection is not possible and uncertainty will always remain, but the aim is to maximize positive effects and minimize risks and inconveniences. This future oriented managing is done on the basis of probability calculations and executed with techniques of regulation.¹³⁵ Security is a continuously adaptable and adapting order based on fear. Its discourses are recognising dangers and risks, constructing them and giving guidance how to deal with them. In this way, knowledge of security is codified and practices are developed to tackle dangers and risks; practices such as surveillance, reports and enquiries, whilst other procedures try to prevent anything that is estimated to be dangerous from emerging.¹³⁶

When some of the tasks in conflict zones are addressed within the realm of security rather than in the realm of state survival, it becomes possible to allocate these tasks to private, non-military actors. Tasks which are not seen as the core tasks of the state armed forces and thus, do not relate directly to the existence of the state, can be evaluated in terms of risks and cost-effectiveness, and outsourced to private actors on the basis of these evaluations. The state then relinquishes some of its sovereignty and settles for a regulative role with regard to these selected tasks. Interestingly, when

132 See McInnes 1999.

133 President Eisenhower’s farewell address (17.01.1961). Available at http://www.eisenhowermemorial.org/speeches/19610117_farewell_address.htm, Visited 05.08.2010.

134 See Der Derian 2000.

135 Foucault 2007, 2; 6; 8; 10–12; 15; 19–20; 29.

136 Dillon 1996, 16–18; 22–26; Dillon & Reid 2009, 103–105; 132.

in the case studied in this thesis Blackwater and its employees' conduct were acknowledged as risks to the state security of the United States, practices of surveillance and investigation were applied to this provider of individual security acting in the name of the United States.

Law and regulations Foucault links the emergence of certain practices of control to certain forms of power that have dominated in certain times and spaces. Law is for him an expression of sovereign's will and right; regulations are an expression of society's normalising power. Different forms of power have emerged in the course of history and changes have taken place due to, no more or less than, contingency. Foucault does not deny the existence of some continuity, but wants to highlight contingency on the background of events that we often perceive as naturally following from one another. To an extent, emergence of something new requires a break from the old, but in the process the old does not phase out, but remains in existence and sometimes even reinforces itself. Therefore, laws remained as a practice for constituting right and wrong with coercive power to back them up and inflict harm and death when seen as necessary, even when regulations as a practice for enforcing social inclusions and exclusions by establishing the norm came about.¹³⁷

After the September 16 shooting it was noticed that the existing regulations were not sufficient to control and to normalise the behaviour of PMSCs and their employees in conflict zones to comply with the models preferred in the US society. Since the regulations in themselves did not seem to be strong enough to guide PMSCs' conduct, demands for enforceable laws became louder. It became clear that even if the United States currently favours governance approach to issues and phenomena, the sovereign state with its enforceable legislation has to be called in to help when no other means seem to be sufficient to enforce the norms and to uphold what is seen as acceptable behaviour. Simultaneously, the power struggles on civilian-military borderline re-actualised themselves when the question of whether civilian actors could be brought under military legislation was raised.

As said, what is studied in this thesis is how the outsourcing of the tasks of state armed forces is objectified into our knowledge and who are identified as the subjects that can act in relation to this phenomenon. This study is conducted by examining the dispositive in which the phenomenon is produced with regard to a selected shooting incident in Iraq. By analysing the dispositive I claim to be able to enlighten the struggles of power and knowledge production that influence our understanding of the phenomenon. A special focus is put on the struggles on the civilian-military borderline. As it will be shown later in this thesis, the main ways of producing the phenomenon are to provide information of and truths about it, and to claim for more laws and regulations to restrict

137 Foucault 1984a, 45–46; 1984b, 88; 2004, 25–26; 37–39; 44; 128–137; 215; Edkins 1999, 45; 51.

it, as well as to control the phenomenon through several disciplinary and bio-political practices. In addition, the Foucaultian notions of war and society, as well as of security guide my reading of data. I claim that these Foucault's notions can bring some insight into the seemingly chaotic way that the notions of war and security are interwoven in the dispositive of outsourcing of the tasks of state armed forces. Now, after introducing Foucault's concepts that are seen essential for the analytical framework of this thesis, it is time to discuss the issue of power, which to him is the prevailing problem in society.

4.1.2. Sovereign power, disciplines and bio-politics of the population

Power to Foucault is not something that can be possessed. Instead, power is a relationship. It does not have a segmented form, but it changes its form from one situation to another and always confronts resistance. Often it can only be observed because of the visibility of the resistance it confronts. Relations of power construct networks and in these networks different actors hold different positions, which give them different capabilities to influence discourses and non-discursive practices and thus knowledge – which, in turn, either maintains or changes those networks of power. Power has two functions; it does not only restrict and forbid, but it also produces. Through objectification power produces us as we are and the networks within which we live. It is also important to differentiate between force and power. With force Foucault refers to people's capabilities and ability to do different things, with power to attempts to govern those capabilities and abilities.¹³⁸ Since power is such an essential part of Foucault's theorising and important for this thesis, there is a need to look at it more closely.

In his studies about society, Foucault distinguishes three forms of power that have emerged in different historical junctions. The earliest form was the power of a sovereign to decide over life and death. It was based on a right and firstly attached directly to rulers in person, although later on it was transformed to become the power of a non-personal state apparatus. This is the form of coercive power, and in Foucault's conceptual examinations comes close to violence. Ultimately, the difference between power and violence is that in front of power the subjugated always preserves his or her chance to resist, but in front of violence he or she does not have this opportunity. Violence does not leave room for disagreement or negotiating, corrective movements or finding the middle way. Violence coerces and forces people to choose between obedience and death; it destroys.¹³⁹

138 Foucault 1984d, 259; 2004, 29–30; 92; 2005, 41; 45; 168–169; Alhanen 2007, 112; 119–122; 125.

139 Foucault 2004, 26–27; 94–95; 240; Alhanen 2007, 122–123.

In the course of history two other forms of power developed, though sovereign power still remained as one of the existing powers in society. Both of the new forms – disciplines and bio-politics of population – are forms of government; a subtle form of power, a kind of rationality inherent in state and society, that always allows disagreeing and acting differently – even though these kinds of mal-functional actions are followed by stigmatising practices, some forms of sanctions and further attempts to educate and change the mal-functional ways of behaving. Practices of governing thus concentrate on people's ways of thinking and behaving and try to make them adapt to certain models.¹⁴⁰ Both of the new forms are also those of biopolitics: disciplines and bio-politics of population. They both target the human body, instrumentalising it and reducing it to a function, to a production capability, but they do it in different ways.

Firstly, when the human body was taken as the focus of sciences, it became possible to attain ever more detailed information about an individual body and correct its faults, so that it could serve as a cost-efficient production unit. If it was not possible to correct the perceived faults, the human body was excluded from society by isolative practices. This economisation of human body happened when the form of production in a society gradually changed to capitalism. Here, the form of power is not coercive, but a normalising one. By producing norms as borders of inclusion and exclusion, and disciplines as practices that enforce those norms, society governs people's behaviour, actions and self-understanding. Malfunctioning actions are sanctioned, but the idea behind sanctioning is not to cause harm to the human body, but to re-educate it to become part of the normal society. Surveillance is set to work in order to monitor individual behaviour and separate malfunctions from economically efficient actions; disciplines are put to work to get people to behave in a certain way, which, eventually, is most cost-efficiently done through the practices of self-disciplining.¹⁴¹

Secondly, there emerged a form of power that can be called bio-politics of population. In this form government and regulatory networks do not anymore concentrate solely on individuals, but on a whole population. Still, they share several of the characteristics of the disciplines from surveillance to normalising effects, but in a transformed form. Deviance is seen natural within a population, but it is to be kept within acceptable limits, which requires more sophisticated controlling and correcting means than were used before. For this purpose, statistics, censuses and surveys that were developed further as techniques of information gathering made it possible not only to concentrate on individuals, but on the whole population or on segments of it. This, again, made it possible to govern the conduct of the population and its physical condition towards ever increasing national

140 Foucault 1984d, 259; 1991b, 89–91; 95; Alhanen 2007, 124–125.

141 Foucault 1984d, 261–262; 1991b, 92; 97–98; 101; 2004, 31–39; 133–134; 146–147; 181; 2005, 28–32; 36–40; 44; 2007, 338–342; Alhanen 2007, 103; 107–110; 139–144; Dillon & Reid 2009, 21; 24–28.

production capability.

As well as governing the conduct of life, power began to govern birth, its emergence. Power began to enable life, to lengthen it to its maximum and to decide what kind of life was desired, and what kind of not. In Foucault's words: "the basic biological features of the human species became the object of a political strategy"¹⁴². Society was to be defended against unwanted forms of life; no matter whether those were found inside the society or outside of it. In the process the state transformed from a mainly legal and punitive structure into a regulating and enabling welfare structure and the state's penetration ever deeper into human life was legitimated in security and welfare discourses. Ever more detailed information and control were to give better chances to interfere in the development of threatening malfunctions and pathologies in their early stage and to manage contingency. Power moved from the realm of reaction into the realm of action and even proaction and in the process the role of professionals and experts became vital.¹⁴³ It needs to be mentioned that currently the bio-politics of population is not only applied within a specific society, but also in the international realm¹⁴⁴.

In the dispositive of outsourcing of the tasks of state armed forces all the Foucaultian forms of power are identifiable. To begin with, it is important to notice that PSCs have force in the form of, for example, skilled personnel, money, equipment as well as political mandate and connections which makes them meaningful actors in the dispositive. They are actors who are in their own part implementing sovereign power in Iraq in the name of the United States and over the population of Iraq. In their actions, they are expected to follow a use of force continuum, which gives their opposites a chance to resist, but eventually leads to the use of violence and lethal force¹⁴⁵. Once there seems to be no functioning restrictions to their actions and no enforceable laws to make them accountable, their capability to implement sovereign power in Iraq seems virtually absolute. This is not necessarily the case, but it is a major concern amongst both, the Iraqis and the representatives of US government, politicians, experts, media and non-governmental organisations. Sovereign power also operates with regard to PSCs, but since the legislative framework both internationally and in

142 Foucault 2007, 1.

143 Foucault 1984d, 260–261; 1991b, 99–101; 2004, 61; 81; 137; 216; 239–250; 2007, 1; 6; 20; 33; 42; 57–66; 71–72; Alhanen 2007, 139–144; Reid 2006, 8; Dillon & Reid 2009, 31; 39.

144 See Dillon & Reid 2009.

145 In the House Committee hearing Erik Prince described this use of force continuum. When PSC employees observe a potential threat they are to use lights, sirens, hand signals and audible commands to warn the potential threat off. If these measures are not enough, pin flares are to be used or water bottles are to be thrown before there is an authorisation to shoot, for example, at an approaching car. The first shots are to be targeted so that they will disable the vehicle or to break its windscreen, the following ones to kill the driver. (Transcript of the House Committee hearing, 60; 79.) These procedures were also described in ambassador Richard J. Griffin's written testimony to the committee (transcript of the House Committee hearing, 134–135).

the United States is weak – or there is no will to apply the existing framework, which can be seen, for example, when the actors in this phenomenon are not objectified into our general knowledge as mercenaries, but as PSCs¹⁴⁶ – there had been no major judicial processes against PMSCs or their employees prior to the September 16 shooting. Sovereign power is also something that the Iraqi government tries to get a hold of, but its attempts fall short because it is subjugated under the US authority and control.

PSCs use of force continuum is not only a guide for conduct in the situations they end up, but also a guide for an attempt to govern through making examples, threatening and accustoming. In other words, PSCs try to govern through the use of force, but most commonly the situation leads into violence – as it did in case of the September 16 shooting. The United States administration has been more successful in applying disciplines to PSCs and to their employees. This has taken place roughly according to the principles Foucault laid down in his studies. Firstly, ever more detailed information has been sought about each company and each of their employees. This has been done through, for example, bidding procedures, background checks and security clearances as well as different reporting practices. The aim of these processes has been to produce as cost-effective service providers as possible, who also qualify for executing the US foreign policy on the ground – in Iraq and elsewhere. With regard to the last point, each PSC employee has to go through a DSS approved training program before qualifying to work for DoS¹⁴⁷. Secondly, surveillance has been applied to PSCs and to their employees in order to provide more information and to correct detected misbehaving.

Thirdly, there is an attempt to establish a norm for PSCs and for their behaviour; to establish a normalising practice that would make it possible to sort mal-functions out of the mass of companies and to correct their behaviour by sanctions. The norm is to be based on the estimations done in the whole of the US society, not only amongst the people who work in the industry. The sanctions are to be applied to both, the companies (in the form of a loss of contract or not getting one) and to their employees (in the form of fines, dismissal or loss of a security clearance). The lack of the possibility for judicial sanctioning has been recognised and work is done also in that respect. To my mind, the power struggles which this thesis examines are primarily about the establishment of this

146 Article 47 of Protocol Additional to the Geneva Conventions, signed on 12 August 1949, namely outlaws mercenaries in conflict zones. Similar purpose has been in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries which was signed on 14 December 1989. However, the first international treaty applicable to PMSCs was issued on 17 September 2008. This is the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict.

147 Griffin, Richard J., transcript of the House Committee hearing, 144; Prince, Erik, transcript of the House Committee hearing, 55; 94.

norm: what it should be like and how it should function. Fourthly, while trying to establish a norm for PSCs, models have been adopted to the civilian sphere from the military sphere. With regard to this, the US armed forces have served as a norm that PSCs have been compared with. Here, a problem arises. Because the existing models and framework have been for military – not for the civilians – the question is, to what extent the same models and framework can be applied to civilians. When the old category of a mercenary seems to have been lost in the power struggles revolving around the production of the phenomenon, PMSCs have emerged as new actors in the conflict zone and there is a need to decide how to deal with them.

In order to produce information on the mass of PMSCs statistics, comparisons and categorisations have been utilised. This has been done not only within the US administration, but also – and especially – in the literature discussing the phenomenon. As said, typologies of the companies or of the services that they provide have been constructed; statistics and comparisons have been utilised to relate the companies and their behaviour to one another. The aim of this knowledge production is the same as is that of the disciplinary tactics: establishing a norm and deviance from it as well as controlling that deviance. PSCs as a mass are set under scrutiny and control in order to make them more productive to the overall US operation in Iraq; not only to efficiently protect their principals. In this process the experts have been called in to interpret the statistics, to give advice and to declare the authoritative, scientifically established truths about the outsourcing of the tasks of state armed forces as well as about the actors in this outsourcing.

The established norms and regulations are not only to control the conduct of already existing PMSCs, but also that of the emerging and ever growing industry. Nevertheless, there is little evidence that this control of emergence has been successful. The PMSC industry has been, and is, mushrooming in Iraq and in Afghanistan¹⁴⁸, which has led to concerns of decreasing standards and accountability even within the industry. Whilst more control mechanisms and regulations are developed, the outsourcing in itself is produced as a legitimate phenomenon into our general knowledge. In the on-going power struggles, PMSCs are increasingly produced not anymore as outlaws, but as regulated and accountable companies. Once framed as accountable companies that can contribute to the overall US operation in Iraq, they can work alongside with the US armed forces when preventing or claiming to prevent insurgency and resistance amongst the Iraqis from emerging. However, the fears are that without a functioning regulatory and disciplinary framework

148 In August 2010 Afghanistan banned PSCs from operating in the country. The companies were given four months time to phase out their operations. “The sole exception to the order allow[ed] private guards to continue to operate within compounds of embassies, consulates, nongovernmental organizations and economic organizations, like the World Bank (The New York Times, 17.08.2010).” The New York Times, 16.08.2010; 17.08.2010.

PMSCs end up only behaving in a counter productive manner.

Dillon and Reid have continued Foucault's line of theorising on bio-politics, for example, by writing about the liberal way of rule and war. According to them, the liberal rule – which currently characterises the strong, Western states – cannot escape the liberal way of war that is subjectifying it (and vice versa). Not only have the previous wars fought made our society what it is, but constant preparation and preparedness for war, continuous state of emergency and the constant employment of security dispositive as well as current conflicts shape the liberal rule. It is characterised by the hyperbolisation of security and exigencies of war, which can be seen as much in its aim, which is eradicating war, as in its means, which are means from nuclear power to ever increasingly technologised means for fighting non-nuclear war. Liberal rule tries to achieve its aim by governing, but easily slips into using violence, because its aim does not give to the subjugated other options than to accommodate it or to violently reject it. It fights war, not against another political entity, but against other forms of life and tries to calculate the necessary level of killing that enables it to abolish threatening forms of life, control their emergence and still preserve its own form of life.¹⁴⁹ It does not notice that its aim in itself is contradictory, since achieving the aim requires eradication of difference, which its own existence as a normalising power is dependent on¹⁵⁰. Nor does it admit that it actually is in a constant state of war. As it is commonly understood, this liberal rule attaches to itself notions of such virtues as respect for human rights, good governance, individual freedom, free trade, freedom of speech, self rule and democracy and makes everyone and everything that does not accommodate these values its enemy¹⁵¹.

Dillon's and Reid's work establish the framework within which the overall US operation in Iraq is conducted. It cannot be directly applied to the study of the outsourcing of the tasks of state armed forces, but it describes well the intensifying and transforming processes of control and pre-emption that influence the dispositive under examination in this thesis. Dillon's and Reid's work clarify the current discourse and non-discursive practices which have made it possible for transformation in war and warfare to occur. Requirements for increased precision, protection and speed in warfare have created space and demand for the services that PMSCs provide to emerge. Likewise, the liberal rule transforms the state to be better able to respond to the ever changing requirements set for it. This has meant changes in the relationship between state, civil society, capital and markets and transformed the state more into a regulatory state¹⁵². In order to give insight into the

149 Dillon & Reid 2009, 2; 5–9; 15–20; 31–32; 37; 40–45; 49; 81; 96; Reid 2006, 3–5; 18–20.

150 Reid 2006, 17.

151 Dillon & Reid 2009, 94.

152 Moisis 2007, 230.

conventional explanatory context for the outsourcing of the tasks of state armed forces I will next briefly describe the theories of state transformation and transformation of American warfare.

4.2. Conventional explanatory theories

4.2.1. State transformation

What is meant with “state” is not as clear and self-explanatory as it first may seem. The term has had different meanings throughout history and continues to have in different theoretical contexts. Today's general understanding of the state is widely bound to the modern state¹⁵³. What characterises the modern state is territoriality, nationalism as its legitimising ideology, hierarchical bureaucratic structure with a clear order of accountability, sovereignty to make decisions within established borders and a monopoly over the use of violent means to back up those decisions¹⁵⁴. Basically, the modern state is seen as a security apparatus that constructs and maintains an order within its borders while pushing disorder outside those borders, into anarchy¹⁵⁵. But the state never reaches its ideal; it is always becoming and in the mean time, even the ideal of the state changes. Therefore, the modern state has never existed and it seems that even its main modern features are undergoing transformation.¹⁵⁶ While the discussion about globalisation and the models of multilevel governance¹⁵⁷ have concentrated on claiming either, that the state is losing its position as the main organiser of the relationships between people or people and material, or that the state is gaining competence in new areas within these relationships, the state transformation theories suggest that what the state is, is constantly renegotiated and in transition. Neither the relationships between people or people and material are fixed nor are the structures that guide and organise them.¹⁵⁸ Thus, among other characteristics of the state, its monopoly over the use of violent mean can be reordered and renegotiated.

153 Sørensen 2004, xii; Axtman 2004, 259, 262.

154 Weber 1994, 316. See footnote 4 in chapter 1. about strong states.

155 Ashley 1989; Sørensen 2004, 122.

156 Hibou 2004, 3.

157 “Multi-level governance” makes the state just one of the numerous governing bodies in the global arena. These governing bodies include, in addition to the state, instances such as interstate organisations, market entities or other transnational entities. (Flinders 2006, 231; Sørensen 2006, 194–195; Sørensen 2004, xiii; 62.) According to Sørensen, the term multi-level governance refers to a situation where political power is diffused and decentralised (2004, 65). Shaw makes a notion that the governance theories tend to overemphasise the significance of other governing structures in relation to the state. In this criticism, he refers specifically to the uniqueness of the military power that the state has in its governing tool box. (2000, 88–90). To my mind, Shaw's critique is valid to the extent that the state still seems to be the prime form of the organisation of our social relationships (cf. Peters & Pierre 2006, 215–217; 220). But to draw a line between the state and other institutions exercising governance by referring to the monopoly of the use of violent means does not hold as the phenomena of outsourcing, privatising of the use of violent means show. Instead of making a distinction we should be interested in seeing the continuity and the transformation in governance. Cf. Foucault 1991b, 91; 93–95; 99.

158 Sørensen 2006, 190–208; Sørensen 2004, xii; Hibou 2004, 1–4, 15. Also Dillon & Reid 2009, 91–92.

Instead of seeing the state as something fixed and clearly definable, it can be understood as an outcome of, and a contribution to, political, economic and social activities; in other words, as an outcome of a process to which it itself is contributing to¹⁵⁹. The political overlaps and is tightly intertwined with the economic and the social, and together the relationships between and across these spheres of action construct the state as such it is in particular circumstances¹⁶⁰. Therefore, even if the state's monopoly of the legitimate use of violence is dissolved by other actors who enter the markets of legitimate violence, this does not mean that the state in itself ceases or that its form cannot be renegotiated. This explains why the state remains such a meaningful actor in the dispositive of outsourcing of the tasks of state armed forces. Theories of current state transformation seem to focus mainly on the interrelationship between the political and the economic. The social developments are recognised, but often seen as derivative from, or supplementary to, the changes between the political and the economic.¹⁶¹ It has been stated, that the relationships between the political and the economic are intensifying and that this is currently leading to the formation of a certain form of "governance" or "regulatory state"¹⁶². As in the phenomenon of outsourcing of the tasks of state armed forces are commonly claimed to have emerged primarily through the changes in relations between the political and the economic, I will now examine the notions of governance and regulatory state a bit further.

In current theories of governance, it is stated that the legitimacy of state governance derives from the capability to set goals and to reach these goals, that is, the common good, with the means chosen and developed for it¹⁶³. In other words, the state is evaluated on the basis of its success¹⁶⁴. The role of the state has changed from doing both steering and rowing, to being focused on steering the economy and the society. Other actors have been enrolled to do the rowing, that is, to perform the tasks required to reach the goals set. Markets, especially, have been seen as suitable to pursue

159 Levi-Faur 2005, 14; Hibou 2004, 3.

160 Shaw 2000, 46; Levi-Faur 2005, 14.

161 Levi-Faur 2005, 17; Moisio 2007, 231. For example, Sørensen recognises that state transformation is relational to processes in both, the economic and the social. Still, he distinguishes globalisation, the driver behind the transformation, into two different theoretical points of views; the first seeing globalisation as a primarily economic process, the second as a wider sociological process which includes the economic process. The main motor of transformation seems to continue to be the economic and especially the global capitalist economy. (2004, 6; 18–19; 23–25). According to Shaw, similar kind of bias can be found in the whole field of the study of international relations (2000, 82). On the other hand, Axtman begins with the social aspects of state transformation and with contesting the singularity of the people, which has been identified as one of the main characteristics of the modern state (2004, 266).

162 Sørensen 2006, 193; Peters & Pierre 2006, 209–222; Levi-Faur 2005, 17. Amongst scholars, there is no agreement what the modern state is transforming into. Alongside the terms governance or regulatory state, terms like, for example, "market state" (Axtman 2004, 273), "enabling state" (Peters & Pierre 2006, 209) or "competitive state" (Sørensen 2004, 36) have been used. I found regulatory state to be the most compatible term with the theoretical approach I am using in this thesis.

163 Wood & Shearing 2007, 9–10; 12; Peters & Pierre 2006, 215.

164 Dillon & Reid 2009, 38.

the rowing task because of their efficiency and the economic logic. This has been the main reasoning for outsourcing some of the tasks of state armed forces as well. Furthermore, the state's steering activities have become a potential objects for privatisation or outsourcing and have taken the form of state-directed partnerships and networks, like the public-private partnerships, regulated self governance of the market, deregulation and governance, which the differing kinds of social networks in civil societies employ.¹⁶⁵

In essence, governance is about establishing priorities and making decisions, reconciliations, implementing the decisions made, understanding the consequences of actions and establishing accountability¹⁶⁶, but all this is done by “a multiplicity of governance authorities and providers that coexist in multiple ways to produce diverse [...] outcomes”¹⁶⁷. This diversity of outcomes indicates that the numerous actors involved in governing also have numerous motivations for action and that governing strategies have unforeseen and sometimes unwanted side effects¹⁶⁸. In order to master and control the side effects, expertise and professionalism have become the desired forms of knowledge for decision makers and those who advise them¹⁶⁹. This does not mean only that multiple actors within societies have gained a recognised power position and thus, a right to attend the practices of governance. On the contrary, and especially, governance has occupied the international.

In the dispositive of outsourcing of the tasks of state armed forces the different US state agencies are not the only governance actors. The umbrella organisation representing PMSCs – the International Peace Operations Organisation (IPOA) – controls and guides the actions of its member companies by its enrolment criteria and its codes of conduct. PMSCs have also established regional and national trade associations that are lobbying for them as well as monitoring their member companies. For example, a local association has been established for PMSCs operating in Iraq – Private Security Company Association of Iraq (PSCAI). PMSCs themselves do lobbying actively, but have also been asked for greater corporate accountability¹⁷⁰. In addition, there is an important regulatory work going on of which first bench mark was the publication of “The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict” on 17th September

165 Wood & Shearing 2007, 6; 10–14; 20–23; Levi-Faur 2005, 15; Hibou 2004, 29; 37. Peters & Pierre also make a notion that these processes are not necessary novel as such, but have gained more central role through state transformation (2006, 210–211).

166 Peters & Pierre 2006, 215–217; Wood & Shearing 2007, 117–122.

167 Wood & Shearing 2007, 13.

168 Hibou 2004, 3; 40; Wood & Shearing 2007, 24.

169 Levi-Faur 2005, 16; Wood & Shearing 2007, 19; 109–110.

170 For example, transcript of the House Committee hearing.

2008. This document, which is not legally binding, was to remind states as well as other entities working with PMSCs about the rules of international law that apply to states in their relations with PMSCs and to establish a set of good practices to be followed in contracting with PMSCs¹⁷¹. Both, the United States and Iraq, took part in the preceding negotiations as well as have signed the document. The overall evolutionary process of regulations and legislation over PMSCs can be followed from PrivateSecurityRegulation.net which is maintained by Geneva Centre for the Democratic Control of Armed Forces (DCAF). Regardless of these practices of governance, negative side effects, such as the September 16 shooting, still occur and no clear guide lines how to collectively respond to them exist.

Embedded in governance, regulatory state seems to have become the form the state is taking in response to pressures from both, outside (transnational environment) and inside (society)¹⁷². Instead of producing services or material goods itself or directly managing this production, and as well as stating, via legislation and jurisdiction, what is forbidden, the state concentrates on the regulation, guidance and oversight of the production process. It does this by making rules and enforcing them; by giving guidelines for other entities to establish and administer detailed policies in a relatively autonomous fashion¹⁷³. The state regulates; it takes care of the bigger picture, coordinates, and does this not only via forbidding but also via enabling action within provided boundaries¹⁷⁴. According to Levi-Faur, this has meant that

a new division of labor between state and society (privatization) is accompanied by an increase in delegation, proliferation of new technologies of regulation, formalization of interinstitutional and intrainstitutional relations, and the proliferation of mechanisms of self-regulation in the shadow of the state¹⁷⁵.

This has meant that business like thinking has been applied to the public sector as well and that efficiency has become the main measuring scale for the quality of provided services. Public institutions and agencies have entered the competitive markets and faced challenges from the private sector.¹⁷⁶ Neither the tasks of the armed forces, nor the security related tasks of other state agencies have been exceptions to this. While privatisation was the leading trend in the 1990s, the

171 The Montreux Document, Preface.

172 Levi-Faur 2005, 25.

173 Levi-Faur 2005, 13; Sørensen 2004, 33–34; 37; 110; Hibou 2004, 17; Flinders makes the notion, that not all forms of delegated governance have the same level of autonomy. According to him, it is possible to differentiate between the levels of autonomy, but more difficult to explain why certain forms are given more autonomy and on what basis the decisions to delegate certain tasks have been made. Delegation varies from state to state and is conditioned by different constitutional, legal, cultural and historical factors and path-dependency between them. (Flinders 2006, 226.)

174 Hibou 2004, 29; Wood & Shearing 2007, 147; Flinders 2006, 223.

175 Levi-Faur 2005, 13.

176 Wood & Shearing 2007, 123; 131; Flinders 2006, 233.

creation of regulatory agencies has followed in the 21st century¹⁷⁷. This has led to a growth in state regulation and auditing¹⁷⁸. Even so, this form of governance has not abolished previous forms of governance or state structures; rather, it exists alongside them and has provided new functions for them, whilst also changing the relative power between them¹⁷⁹.

While the state is transforming and the international is transforming, there is also a parallel transformation going on in warfare which has in our general understanding been so tightly intertwined with the state. Therefore, I will discuss this transformation next.

4.2.2. Transformation of the American warfare

While the common understanding of war and warfare is, in the Western world, widely tied to the modern notion of war as a contest between two or more states that are governed by mutually accepted or internationally recognised rules¹⁸⁰, the ways of waging war are also transforming. It seems that, at least rhetorically, war can be waged not against other states but also against more abstract enemies, like terrorism. It can be waged, for example, against guerrilla groups, loosely organised insurgencies or armies of local warlords. It can also not be waged, when, for example, a humanitarian intervention takes place instead.¹⁸¹ In any of the cases it is rarely defined what is exactly meant by war. War is expected to be something self-explanatory or something so dependent upon contingency that it cannot be clearly defined.

To my mind, there are two contradictory tendencies in applying the term in the common IR understanding. On the one hand, a tendency to apply the term war to ever extending forms of violent conflict and, on the other hand, a tendency to avoid the use of the term and instead, call these situations with names like “low intensity conflict”, “contingency conflict”, “military operation other than war”, “stabilisation” or “peace enforcement”¹⁸². Both tendencies are embedded in the collective memories of modern war and in political debates about, for example, whether to use military force in some situations and whether the use of state military can be justified in situations

177 Levi-Faur 2005, 18–19; Peters & Pierre 2006, 213; Flinders 2006, 231.

178 Levi-Faur 2005, 19–21; Wood & Shearing 2007, 123–124.

179 Levi-Faur 2005, 15; Sørensen 2004, 33; 110–111; Flinders 2006, 228.

180 Shaw 2005, 4–5; Kaldor 2006, 15; 18–19.

181 For example, Freedman 2002, 37–39; Shaw 2005, 18–19. In Iraq, the current war is said to be fought against groups such as Iraqi nationalists, Sunni Islamists, Shi'ite resistance groups, individuals resisting the occupation, criminal and terrorist groups (cf. Kaldor 2006, 158–161).

182 Tangredi 2002, 13; House 2001, 279; Gray 2005, 212. Also Rantapelkonen 2000.

which do not seem to be directly linked to state security¹⁸³. There is a vivid contemporary discussion and several formulations are used to address the issue of war. The following paragraphs of this chapter will discuss the different ideas of what contemporary American warfare seems to be like.

Although, Martin Shaw's use of terms war and warfare is somewhat different to that of Foucault's and also to my own, his theorising enlightens – even if in different terms – the difference between war as a social phenomenon and warfare as a practice. Therefore, it is useful to consider his point of view. According to Shaw, a distinction should be made between warfare as a social institution and war as a project. Warfare as an institution is interlinked with the organisation of a society – its structure, history and values – and the economy. These are all reflected in the project of a particular war as well, but in narrower terms.¹⁸⁴ Following Mary Kaldor's theorising, Shaw distinguishes between a mode of warfare as “the general complex of social relations, processes and institutions through which wars are prepared, military power organized and wars fought in a given society and historical period” and a way of war as “a particular way of organizing war adopted by an actor or group of actors”¹⁸⁵. A way of war is thus embedded in the social institution of warfare and guided by the understandings developed in this institutional framework; a way of war is always an image of the society whose name it is waged in¹⁸⁶. In this context, from now on, I will refer to the social institution as war and the way of waging war as warfare.

Usually, when the transformation of the US armed forces is addressed, it is done in the area where war and warfare overlap. For example, when Kugler and Binnendijk write about four main components of “defence transformation” – transformation of technologies and weapons, of force structures, of force operations and transformation of capabilities and battlefield performance¹⁸⁷ – they are, to me, addressing a particular aspect of the change in war which then will have its practical test in warfare. Society enables and restricts the evolution of the institution of war, which is the basis of defence transformation. Defence transformation, again, enables and restricts warfare. The focus in this thesis is on American warfare in Iraq, the role of PSCs in it and the impact the experiences in Iraq will have on practices in the United States. This is where the transformations of state and warfare come together and coincide. Even if it is noted that explaining the evolvement of the one in terms of the evolution of the other is not necessary and not exhaustive at all – contrary to

183 Tangredi 2002, 13; Mandel 2002, 58–59.

184 Shaw 2005, 29–31; 40; Hammes 2004, 2–3; 12, Longsdale 2004, 20–22.

185 Shaw 2005, 42 in reference to Kaldor 1982.

186 Kaldor 2006, 15; Longsdale 2004, 19–20.

187 Kugler & Binnendijk 2002, 58–63.

what realist understanding of international relations often seems to claim¹⁸⁸ – it has to be admitted that to an extent these transformations overlap. War has made and still makes states¹⁸⁹; states among other actors wage wars. Now it is therefore the time to consider exactly what characterises the American warfare under consideration.

There has been a significant decrease in inter-state conflicts after the Cold War. The majority of modern conflicts seem to be intrastate in character.¹⁹⁰ In American warfare there has been a slow and painful transformation from the expectation of large scale conventional war to the reality of smaller scale unconventional conflicts. The war in Iraq began as a conventional, inter-state war, but after the initial attack phase soon evolved into unconventional, allied state armed forces against insurgency sort of war¹⁹¹. At the same time, different factions within Iraq began fighting one another¹⁹². From the American point of view, this second phase of the war is said to be about stabilisation and peace building, about post-conflict operations and about establishing security through warfare¹⁹³. Nevertheless, the situation has turned into attempts to establish security in warfare, even if the major combat operations are declared to be over. This kind of formulation reflects the situations that state armed forces find themselves in more often. Once the conception of war has widened, the armed forces have received new tasks of which majority are related to post-conflict peace and stability building. These include, for example, the re-establishment of state institutions and infrastructure, putting down insurgencies and monitoring the compliance of different parties with the terms of peace agreement, in other words, establishment of control over violence¹⁹⁴. This apparent extension in the range of tasks to be done has had a significant impact upon the state armed forces, which have undergone and are undergoing evaluation and restructuring, downsizing and refocusing. The doctrines and guidelines that guide the actions of armed forces have been rewritten and the question of outsourcing more than the core tasks of state

188 Harrod 2001, 111–125; Tangredi 2002, 6; Cf. Holsti 1996, 19–40. Kaldor also links the establishment the modern way of war with the emergence of modern state as the owner of the monopoly of the legitimate use of violence within its territory. According to her, distinctions between public and private, spheres of state and non-state activity; between internal and external; between economic and political; between civilian and military and between the legitimate bearer of arms and the non-combatant or criminal were established in the same process. (2006, 18–20; 22.) These are exactly the same distinctions that are claimed to have become blurred in the current transformation of the American way of war, as the following paragraphs of this thesis will establish.

189 Foucault 2004, 15–16.

190 Holsti 1996, 21. Cf. McInnes, who reminds that even if intra-state conflicts have outnumbered inter-state conflicts in recent decades, inter-state conflicts are not disappearing, but continue to occur with regularity. What has changed is that inter-state conflicts have been localised and thus, have not had the potential to escalate to global scale. (1999, 151–154.)

191 Hammes 2004, 4; Murray & Scales 2003, 236–237.

192 Kaldor 2006, 155; 158; Hammes 2004, 183.

193 Cordesman 2003, 233–235; 238.

194 Flinders 2006, 244; Gray 2005, 333. Cf. Tangeri, who claims that majority of the “new” tasks have been routine operations of the military throughout history, but only now the public and policymakers are attaching more importance to them (2002, 13–14). According to Cordesman troops should be trained and equipped for both, war fighting and peacekeeping (2003, 232).

armed forces has become more current.¹⁹⁵

The outsourcing of the tasks of state armed forces seems to have as much to do with the military downsizing as it has with overall privatisation and outsourcing within the state. In the West, the size of state armed forces has been reduced after the Cold War, even though a bigger variety of tasks has been issued to them¹⁹⁶. In the United States, some of the new tasks for the state armed forces have been transferred directly to the providers in the private sector. Some are seen to come so close to the core task of state armed forces – that is, waging war and fighting the battles¹⁹⁷ – that the armed forces have begun to focus on these while outsourcing some of their older tasks which are seen to be further away from the core task. The US armed forces have moved towards smaller, but more skilful and professional troops that focus on their main tasks and leave the commercial sector to take care of the secondary tasks¹⁹⁸. Professionalism has meant more weight on special operations forces and building up more independent fighting units that can be combined in flexible ways¹⁹⁹. Tasks like catering and maintenance have been outsourced to the extent that it has been said that the US armed forces are nowadays followed by colonies of private companies into battle.

Outsourcing has brought new actors onto the stage of warfare now that PMSCs have begun taking over the tasks of state armed forces. Violence has moved into the private sector also due to the numerous politically motivated armed groups that are taking part in contemporary conflicts, to the illegal and criminal actors who are profiteering from conflicts, to the international organisations and transnational non-governmental organisations and aid agencies that request for armed protection while working in conflict environments and to the multinational corporations that are seeking business opportunities in volatile areas and regions. Parties in conflicts have multiplied which has made it more difficult to manage the conflicts and coordinate the actions of different actors.²⁰⁰ This has further blurred the already challenged modern distinction between soldier and civilian and made

195 Tomes 2007, 136; Binnendijk 2002, xvii. It depends on the writer, where the beginning and end of the on-going transformation are put. Tomes argues for transformation, which having begun with the Vietnam War came to its end by the War in Iraq (2007, 1). Tangredi (2002, 12) and Murray & Scales (2003, 59–62) write about transformation which started from the 1980's and with the Gulf War, got new frames with the Clinton administration and was reinforced by the Bush administration. All these writers recognise the influence of the Gulf War and the changes in world political situations since the end of the 1980s and track similarly the trends that characterise the current transformation. Kugler & Binnendijk see the transformation as a continuing process that has got different characteristics in different eras, the current era being characterised by information technologies and adaptation to their use (2002, 63–87).

196 Shaw 2005, 6; Kaldor 2006, 152; House 2001, 277.

197 War fighting is still seen as the prime function of the state armed forces (Tangredi 2002, 7).

198 Longsdale 2004, 52.

199 Murray & Scales 2003, 58; 64; 243–244; Cordesman 2003, 240. The need for skilled personnel has been highlighted in the current urban war in which the US armed forces have resorted in Iraq (Tomes 2007, 140–141; Murray & Scales 2003, 237; Longsdale 2004, 38; 61–62).

200 Kaldor 2006, 97–101; Shaw 2005, 17.

it more difficult to define what is righteous in warfare and what is not. This is the environment in which American wars are nowadays waged. In the United States, it has been a political decision to partially give up the dominant normative framework guiding warfare and start pressing for a looser framework, which is claimed to be justified by necessity. The War on Terror has been constructed as a political and ideological framework to legitimise any war which is seen otherwise unjustifiable.²⁰¹

The civilian population seems to carry the biggest burden in contemporary conflicts. In relation to civilian casualties fewer soldiers are killed in action, while the proportion of civilian casualties keeps on rising. This has been explained by an emphasis on force protection, especially within the US armed forces.²⁰² The value of a soldier has risen not only in terms of transfer costs, but also because of the long education phase and the cost of the equipment an individual soldier carries with him on the battlefield²⁰³. Losing soldiers has become more expensive and developing technology, which enables the transfer of soldiers further away from the battlefield, seems to have been the solution to this problem. It has been claimed that technology and air power have filled the battlefield while soldiers have disappeared from it. Soldiers have moved behind computer screens to operate technology in the field or have been replaced by civilian contractors who have been educated to do the task more efficiently.²⁰⁴

At the same time, it has been argued that the battlefield has become less contingent and easier to master when all the parts of and the units in the military operation are connected to one another by technical means and can be coordinated from a central command post²⁰⁵. It has been claimed, if not that the fog of war has been removed, then at least that it has been transformed into something calculable, potentially avoidable and definitely manageable. Information dominance and quickly established, accurate knowledge about the opponent and the battlefield as well as about the operational and strategic environments should give the US armed forces a non-outmanoeuvrable advantage in war. Network based warfare that builds upon precision, speed, simultaneity, lethality and fighting from the distance seems to be the path that will be followed in the future.²⁰⁶ In addition, the concept of information warfare has been widened to include media operations and traditional methods of propaganda alongside high-tech warfare²⁰⁷. The importance of interoperability with allies has been highlighted. Here, the assumption is that the future wars will be

201 Shaw 2005, 24; Gray 2005, 159. Also Jackson 2005.

202 Kaldor 2005, 9; Freedman 2002, 43; Shaw 2005, 79–84.

203 Shaw 2005, 36–37; Murray & Scales 2003, 250.

204 Longsdale 2004, 49–50; Shaw 2005, 35; Murray & Scales 2003, 58.

205 Binnendijk 2002, xix; Hammes 2004, 7.

206 Hammes 2007, 6–7; Murray & Scales 2003, 245–247.

207 Binnendijk 2002, xix.

fought with ad hoc alliances, like the trend has been for the last couple of years. Even if the ad hoc alliances are given up, jointness of the services of the US armed forces and capability to fight together seamlessly will remain major challenges in the future.²⁰⁸ Nevertheless, the war in Iraq seems to have proven that soldiers are needed on the ground. Technology cannot differentiate between lookalike targets, automation does not take the human element into account and several mistakes have been made due to overreliance on technology. This has the tendency to anger and frustrate the people living in conflict zones and nowadays wars cannot be won without gaining the support of the local people. This again requires eyes and ears on the ground.²⁰⁹

In the discourse studied in this thesis, there are several references done to statements of US military officials, who accuse “civilians on the battle ground” for endangering the jointness and effectiveness of military operations in Iraq. There are several problematic areas identified; main ones being that PMSC operations have not been coordinated with US/Coalition military operations which has blurred the overall situational awareness, and that PMSCs’ excess use of violence often brings the blame or at least the angry reaction of Iraqis to the face of the armed forces. This latter point has been seen to raise the risks and dangers that the US troops in Iraq encounter without a good reason.²¹⁰ Therefore, it was one of the main concerns addressed when the new cooperation agreement was signed between DoD and DoS²¹¹. I will return to these findings later in this thesis.

In conclusion, the on-going transformation in American warfare can be summarized as a movement from aggression as a basis for war fighting to excessive rationalism, calculation, and risk management as a basis for war fighting. Instead of seeking the decisive battle, the aim today is to cause such a paralysing overall effect in the totality of the opposite's political, social and economic system that it is unable or unwilling to continue fighting.²¹² Reliance on technology and the forms of war fighting that it enables have become the important feature of American warfare alongside risk aversion²¹³. Wars are expected to be short and definitive, but Iraq, for example, has proven otherwise: the US armed forces are stuck in the situation and with tasks that they are not willing and confident in doing. Media management has become a highlighted aspect of war, since the legitimacy of war and the feasibility for its continuation are dependent on popular acceptance. Wars

208 Cordesman 2003, 487–488; House 2001, 281–282.

209 Murray & Scales 2003, 245–255; Kaldor 2006, 155–165. Also Murray & Scales writing about the war in Afghanistan, which has been seen as a similar test case of the contemporary American way of war as Iraq. Several of the lessons from Afghanistan were expected to be learnt and taken into consideration when planning and executing the war in Iraq. (Murray & Scales 2003, 58.)

210 For example, Tierney, John F., quoting US military leaders (transcript of the House Committee hearing, 78).

211 DoD-DoS MOA 2007.

212 Shaw 2005, 34; Murray & Scales 2003, 74–75; 236.

213 Shaw 2005, 32–35.

are fought far away from the American territory and do not influence the everyday life of the majority of the population, but are brought every evening to living rooms by news coverage and documentaries, increasingly also by movies and drama series. Clear cut differentiations between civilian and military, between political aims and military means have become impossible and wars are not fought any more for a state's existence but increasingly for economic, ideological and political interests²¹⁴ – however, still in the name of state security.

Now, after having established the theoretical framework for this thesis, it is time to examine how this framework co-operates with the methodological setting, which will be established in chapter 6, in answering the questions set in chapter 5 for the analysis part of this thesis.

5. Research setting

The research question in this thesis is *how is the phenomenon of outsourcing of the tasks of state armed forces produced in the discursive and non-discursive practices in the United States?* A special focus is put on the power struggles and knowledge production that try to locate the phenomenon somewhere *on the civilian-military borderline*. In relation to the research question the theoretical framework established in chapters 2 and 4 has three main functions. Firstly, it describes the circumstances and the ways of thinking – as well as the changes in these circumstances and in the ways of thinking – in which the emergence of the outsourcing of the tasks of state armed forces has been possible. It describes the transforming processes which are intertwined with the emergence of the outsourcing; which seem to follow from the outsourcing and sustain the phenomenon and therefore, have often been used as explanations for the outsourcing. As it has been said, the processes of state transformation and the transformation of American warfare have created room for commodification of security and outsourcing of the tasks of state armed forces as a part of this commodification to take place.

Secondly, it creates a framework in the light of which reading the explanatory theories and histories related to them differently, as well as reading the data in a manner supportive to these re-readings, becomes possible. When it is recognised that certain circumstances and certain knowledge structures are not neutral or somehow natural or inherent in the phenomenon, but function actively in the production of the phenomenon, it becomes possible to interrogate the phenomenon, circumstances and knowledge structures related to it and, especially, power relations related to it.

214 Shaw 2005, 34–37; Hammes 2004, 178.

Foucault's notions as well as Foucault -influenced theorising guide us to examine not so much the transforming processes as such but the power/knowledge structures related to them. These theories shift the focus of study to our ways of thinking – and in this thesis to our general understanding of the outsourcing of the tasks of state armed forces. They also direct the study to observe and to make noticeable power relations and the struggle that takes place in them. Therefore, and thirdly, the theoretical framework justifies the formulation of the research question of this thesis, which initially has risen from a dialogue between data and the theories applied for this thesis.

As it has often been reminded, all research is always tied to its time, location, dominating practices and existing ways of thinking, which include culture, values and authority structures. Thus, I am not claiming to explain universally how the outsourcing of the tasks of state armed forces are produced, but to give insight into how it is done in the data selected for this thesis. In the analysis, I also concentrate on the specific borderline – the borderline between civilian and military – which has proven to be meaningful in the studied dispositive. I respond to this challenge by applying a hybrid methodology, which will be briefly outlined now and examined in detail in the next chapter.

As it has been noted several times already, in this thesis I am conducting a case study on the dispositive of outsourcing of the tasks of state armed forces. My aim is to identify, in relation to the case, discursive regularities and rules that those regularities form and which guide the construction of the outsourcing into our general understanding. In addition to discourse, I examine the non-discursive practices that influence the dispositive and affect the outsourcing alike. By studying the discursive and non-discursive practices I claim to be able to say something about the power struggles and knowledge production that take place in the dispositive. This way, it becomes possible to recognise the network of power relations which we live in and which makes the phenomenon seem normal and acceptable. However, as I am doing a case study, I found it difficult to examine the phenomenon without telling what the case is about. Making a case study without describing the case would make it difficult for the reader to understand what he or she is reading and for the writer to justify her findings. Therefore, and also because I find this the easiest way to describe the non-discursive practices in the dispositive, I begin my study by constructing a historical narrative of the September 16 shooting and of its suggested consequences in the United States. Still, this narrative is only a research tool created to facilitate the research on discourse and on non-discursive practices, in which the case and the outsourcing are produced.

Why do narratives and discourses matter? As Lene Hansen points out, “foreign policies need an account or a story of the problems and issues they try to address” and “policies are dependent upon

representations of the threat, country, security problem, or crisis they seek to address”²¹⁵. With the help of stories, certain situations are described and legitimised as necessary, or as being in the national interest or as needed in order to defend human rights. Through stories, these situations are positioned within wider discourses. These discourses are built on certain readings of problems and of those who are to cause or to solve these problems. Nevertheless, it is through the same discourses that these very problems and actors are produced. Moreover, within the same discourses alternative policies are produced and the decisions about which policy to choose made.²¹⁶ In this thesis, I am studying the US led coalition’s operation in Iraq in relation to which the chosen policy option in the United States has been to outsource some of the tasks of state armed forces to private companies. The chosen policy has been challenged primarily by the alarming stories coming from Iraq and Afghanistan that tell about PMSC misconduct, fraud and overspending. When these stories find their ways into wider discourses they become part of the general truth and knowledge production which, again, guides the future policy decisions and their implementation in the United States. Therefore, studying narratives, discourses and dispositives matter.

In addition to describing the dispositive, in the analysis part of this thesis I answer to a number of scrutinising questions. Firstly, what matters are spoken about in the dispositive and what are not? Even if Foucault was explicit in noting that what is said is not as important as how it is said, it makes a difference what matters are coupled with the outsourcing of the tasks of state armed forces and what are not. Secondly, who are the speakers that have a right to attend the discourse and from which power positions they speak? As it is discussed in chapters 3 and 6 it makes a difference who does the talking and which institutions the speakers represent. Thirdly, what can and what cannot be stated in the discourse? Which statements are acceptable, which are not and to what prior knowledge the statements try to appeal in order to legitimise themselves? Fourthly, who are objectified as actors in the dispositive? Fifthly, how Blackwater and PSCs as a category are objectified in our general understanding; how the outsourcing is objectified and how the actors objectify themselves as subjects in the dispositive? Finally, where the norm is set in the dispositive; how this is done and what is becoming as normal in the dispositive? The importance of normality can hardly be overestimated since it is the camouflage which hides power struggles from our eyes.

Whilst answering to the above posed questions, in the analysis part of this thesis I utilise the theoretical framework and the methodological setting to describe the emergence of the September 16 shooting in our general understanding and the knowledge production around it. When reading

215 Hansen 2006, xvi; 5–6.

216 Hansen 2006, xvii; 17; 21.

the data selected for this thesis it becomes clear quickly that the knowledge production around the outsourcing of the tasks of state armed forces well follows Foucault's notions on knowledge production. While describing the emergence of the case, I comment on the conventional explanatory framework set for the outsourcing and indicate points where discourse around the September 16 shooting and the conventional explanatory theoretical framework coincides. In the analysis part, I also show how the dispositive transforms during the time period under scrutiny. With the applied methodology I claim not only to be able to present the case meaningfully but also to identify the surfaces of emergence, authorities of delimitation and the forms of specification in the discourse – and the parallel regularities in the dispositive – as well as track the circulation of statements in the discourse and the archive of which their acceptability is dependent on. These are the requirements set for discourse/dispositive analysis by Foucault. What I mean by this will be explained better in the following chapter of this thesis. All in all, in the analysis part of this thesis I claim to be able to show how enmeshed in power the dispositive of outsourcing of the tasks of state armed forces is and what kind of power relations are established, maintained, reproduced, replaced or crumbled in the dispositive during the period under security. I claim that by using the theoretical framework and the methodological setting chosen for this thesis something new can be learned about the outsourcing of the tasks of state armed forces.

The case and especially the way the truth claims and knowledge around the case were constructed seem to have changed something in our practical processes and in our ways of thinking. Nonetheless, when going through research literature on the topic, I have not found another study that examines the rules that guide the production of the phenomenon of outsourcing the tasks of state armed forces or how the discourse gets a form in non-discursive practices and how these non-discursive practices affect the discourse. In other words, what are the relations between different statements and images in the discourse? How are these statements and images used in the discourse and how what is said turns into and is influenced by the non-discursive practices? Here, it needs to be repeated that whilst I recognise the importance of the visual production of the phenomenon – especially on the pages of *The New York Times* – I have ruled out photographs and other images from the data of this thesis. This decision was done due to the limitations that the form of this work as a Master's thesis set. Yet another point to mention is that I have not lived in the United States and therefore, I do not know the culture in depth. This thesis is an outsider's interpretation of the discourse and of the non-discursive practices in the United States.

Before addressing the questions stated in previous paragraphs and analysing the case a more profound introduction of the methodological tools used in this thesis is required, which I will do

next. I begin with the ancillary tool, historical narrative, before discussing discourse and dispositive in detail.

6. Methodology

6.1. Historical narrative

A few words of warning to begin with: in this thesis, I am not doing narrative research. I am not examining the narratives constructed or stories told about private military and security companies or the outsourcing of the tasks of state armed forces. Instead, I use the narrative tool more like a historian would do. In order to grasp the dispositive of outsourcing the tasks of state armed forces I construct a historical narrative of the September 16 shooting on the basis of what The New York Times has written about it. I do not claim to tell the truth about the events, but to give a suggestion of what may later on become a generally accepted truth – or what may become a forgotten narrative. The constructed historical narrative is just a research aid used to illustrate what happened on that day and onwards, as it appears by reading The New York Times and other documents that discuss the case. Causal relationships between events in the chronicle and in the constructed narrative are similar to those suggested in the newspaper, even though I have had to select and emplot the events in order to construct a more coherent story. For a historian the data of this thesis would not be a wide and large enough to claim to do high-standard historical research. However, I have found historical narrative the best way of representing the case studied in this thesis. As the way of conducting and structuring the study is not the most conventional one, I find it important to specify what I refer to with a historical narrative.

What is a narrative? There is no agreed definition of a historical or any other kind of narrative. It has become a widely used concept which crosses disciplinary boundaries and gets new interpretations and applications so often that narrative researchers have begun to argue for a more specific definition of it.²¹⁷ Not any text is a narrative, but several kinds of texts can be narratives. Matti Hyvärinen has done profound and all-inclusive research on different definitions and usages of the term narrative and therefore, I rely mainly on his accounts when summarizing how narrative as a concept can be understood.

217 For example, Hyvärinen maps the use of the concept in different disciplines and presents claims made for restricting its overwhelming usage (2006a; 2006b; 2006c; 2007). Also Rimmon-Kenan 2006.

According to Hyvärinen, narratives tell about events and how human beings experience them. They transmit a human experience, whether this transmission is done by the same person whose experience is in question or by some third person telling about somebody else's experience.²¹⁸ In other words, narratives are told by someone. Furthermore, narratives construct an order and they are presented in a recognisable way in the medium that transmits them. Therefore, their tellability is dependent on the situation in which they are told. In other words, people who write, tell, read and hear narratives recognise them because of their coherence and entirety, genre, the cultural shared models and traditions that they rely on. If these characteristics are not present, the narrative cannot be told, because it does not make sense to us. In the data of this thesis, news articles, reports, hearing transcript, judicial documents, agreements and guidelines – they all tell a narrative of their own kind; as do the people speaking in these pieces of data and finally, the author of this thesis. Narrative seems to be the main form of knowledge production and of historical memory in the data.

A narrative consists of, at least, two events so that something can change. A static description of a situation is not a narrative, but by a definition a narrative requires change, transformation or process and evaluation, but it does not necessarily have to come to some kind of an end²¹⁹. Narratives relate events to one another in a thematic world that these events construct and discuss thus formed constructive relationships, most commonly through causal reasoning. The process of relating events to one another is commonly called *emplotment*. It can be described as a process which takes place both in the telling end as much as in the receiving end of the transmission of the narrative. It is done by using a priori known signs, rules and norms so that, for example, the combination of actors, ways of acting, circumstances, interaction and suggested results become recognisable and acceptable to the receivers. In other words, by *emplotment*, some integrity is produced into the narrative. Nevertheless, narratives contain contradictions, conflicts, tensions, contingency and simultaneity which make them interesting in the first place and help to explain why they are always told for some purpose. There is always a reason for telling a narrative.²²⁰

Hyvärinen separates narratives from stories. To him, a story is a chain of events that narratives express. Several different narratives can tell the same story, in other words, a certain story can be

218 Hyvärinen, 2009, 1–2.

219 An Aristotelian model of narrative consists of a distinctive beginning, middle and end, but the current understanding of narratives does not require an end as a closure. For example, narratives can be left open and thus, dependent on the receivers' imagination for further development. (Hyvärinen 2007, 132.)

220 Hyvärinen 2009, 1; 2006a, 1; 3–4; 7–8; 10–13. Also Czarniawska 2004, 67–69; 88; 118; 125. Rimmon-Kenan reduces the necessary features of narrative into the domination of double temporality (“the chronology of the events and their presentation in the text”) and a transmitting agency. As optional characteristics she lists “beginnings-middles-and-ends, closure, coherence, causality, addressee”. (Rimmon-Kenan 2006, 10; 16.) The power structures inherent in the data of this thesis were discussed in chapter 3.; as were the justifications given to the data production.

understood as a loose framework within which different narratives can be told and the listeners still understand them as the same story.²²¹ In this thesis, the story is about a certain shooting incident in Baghdad and its consequences in the United States – an incident of which several different narratives can be told. All of these narratives nest within the wider discourse which rules determine what can or cannot be told in these narratives. On the other hand, Barbara Czarniawska argues that a text can be a narrative, but not a story without an emplotment. To her, a narrative is usually a chronologically connected text that gives an account of event or action or series of events or actions. Emplotment, again, is a process in which a plot is constructed and a structure introduced, so that the reported events start to make sense in relation to one another. The plot usually consists of following phases: equilibrium → disturbance of that equilibrium by some power or force → disequilibrium → by actions of a power or force this disequilibrium is directed to another direction → a new equilibrium.²²² From this point of view, instead of constructing a narrative, I am constructing a story in this thesis. Nevertheless, in this point I am following the conventions of historical research and write about a historical narrative, not about a historical story.

After what was said the previous paragraph, it is good to bring in another point of view to narratives from the field of history. Hayden White has defined narrative as an emplotted presentation of suspected events in the past. To him, a narrative has an author who selects an event as a starting point by attaching some value to it, by making it important. The event is then followed by a group of selected and organised happenings as transformational elements leading to a selected end. White does not suggest that any event can be important enough to become a historical event or that the author can subjectively choose an event and artificially make it important. On the contrary, these selections take place in the wider society. By using different modes of emplotment, formal argument and ideological implication the author supports the claims in his narrative, but the narrative has to have some resonance in its audience in order to become accepted as a truth.²²³ To elaborate this last point, I borrow some of Chaïm Perelman's theorising of rhetoric. To him, the author has to know his audience, for example, the truths it has adopted and accepted, its rejections, and its values. In order to make his claims appealing to and supported by the audience, the author has to try to transfer the acceptance from the previously accepted truths to his claims.²²⁴

White treats any work of history as “a verbal structure in the form of a narrative prose discourse²²⁵”. Instead of expecting a specific form of historical knowledge to exist, history should be recognised

221 Hyvärinen 2006a, 2–3.

222 Czarniawska 2004, 17; 19; 122.

223 White 1975, ix–x; 5; 7–29.

224 Perelman 1977, 23–24; 28.

225 White 1975, ix.

as a “discourse that purports to be a model, or icon, of past structures and processes in the interest of explaining what they were by representing them”²²⁶. To him, historians tell historical stories that turn a chronicle of “events that exist outside the consciousness of the writer” into a story of a particular kind²²⁷. Unsurprisingly, White's remarks have raised heated opposition amongst scholars of history. For example, Richard J. Evans has argued that history is not only a text. To him, history relies on historical facts and their interconnectedness, evidence, certain forms of causation that establish a hierarchy of importance, various concepts of temporality and all important source criticism. It has its reference points in reality. According to Evans, a historical fact should be understood as “something that happened in the past, which had left traces in documents which could be used by the historian to reconstruct it in the present²²⁸”. History does not claim to tell about the past in some neutral way, but from the current point of view while keeping in mind the context of the events in the past. It does not claim to be able to establish a fixed and not modifiable explanation to events and other historical facts. To Evans, “[m]ost historical narratives consist of a mixture of revealed, reworked, constructed and deconstructed narratives from the historical past and from the historian's own mind”²²⁹.

Even though also Evans applies the term of historical narrative in his accounts, in this thesis I rely more on Hyvärinen's, Czarniawska's and White's accounts on narratives than on Evans's. They fit better with the ontological and epistemological starting points of this thesis and are more suitably connected with Foucaultian notions of discourse. As Hyvärinen points out, narrative can also be understood as a specific type of discourse. Narrative is discursive action rather than merely its end result; it is a discursive practice. Discourse in itself can include several narratives – as is the case in the discourse that is examined in this thesis – and on the other hand, a broader and more complex narrative can cross over several discourses.²³⁰ It is also good to keep in mind that in his notions Foucault specifically discussed the field of history and the kind of knowledge that is typically produced in it. To him, history is not only a form of narrative knowledge²³¹, but he discusses, for example, statistics, categorisations, distinctions and reporting as practices of knowledge production and power²³². These same practices are mentioned in Evans's text when he remarks that history is

226 White 1975, 2. Italics removed.

227 White 1975, 6–7, especially footnote 5. As forms of employment White distinguishes between Romance, Satire, Comedy and Tragedy (1975, 7–11).

228 Evans 2000, 75.

229 Evans 2000, 3; 38–43; 76–79; 103; 106–113; 129–130; 140–142; 147; 153; 158. Also Hyvärinen argues that in the field of history, a researcher evaluates documents and explanations carefully before writing the most credible explanation to events afterwards (2006a, 15).

230 Hyvärinen 2006a, 4; 14; 16.

231 About the differentiation between narrative and scientific knowledge and how scientific knowledge has to rely on narratives to legitimise itself, see Lyotard 1984, 18–31.

232 For example, in Introduction of *The Archaeology of Knowledge*, Foucault writes that the tools that historians use

not only narrative in its form²³³. Nevertheless, what Evans sees as ways of defending history, Foucault sees as functions of power. This does not make it any different that Foucault is, to a large extent, studying history as well and that his own works are narratives as well. However, they are told from a different point of view than was the common practice amongst the historians. Instead of telling about warfare and battles, 'high politics' and the acts of important men, Foucault wanted to follow the genealogical paths of phenomena, divisions and categorisations that we tend to see as something natural and unquestionable.²³⁴

In this thesis, historical narrative is used as a background story describing how the non-discursive practices change and develop, as well as how they are utilised in the production of the outsourcing of the tasks of state armed forces into our general understanding. It is used to describe the September 16 shooting and thus, to tie the studied discourse to its non-discursive context. The study of dispositive is embedded in the told historical narrative. Next, I will discuss the main method of this thesis.

6.2. Discourse analysis and the analysis of dispositive

In this thesis, I am analysing the network of discursive and non-discursive practices, in other words, the dispositive of outsourcing the tasks of state armed forces²³⁵. What I mean by this, will be explained in the following paragraphs. Here, it is still necessary to point out that readings of Foucault's texts differ in this point. Whereas Kai Alhanen makes a distinction between discursive and non-discursive practices, Derek Hook writes about the neglected materialistic dimension of discourses and claims that "a strictly Foucaultian method of discourse analysis does not exist". As reasoning for this claim, Hook points out that the analysis of discourse in Foucaultian terms cannot separate itself but artificially from the broader analysis of power, history and knowledge.²³⁶ I do not see Alhanen's and Hook's approaches as mutually exclusive, but as complementary. Whereas Hook

are partly inherited and partly made by themselves. Tools of other fields of study have been introduced into history and the study of linear narratives has been accompanied by the study of phenomena in depth. According to him, instead of establishing a line, the historians are now more interested in, for example, dividing things up, arranging them in levels and establishing individualised series. Instead of discussing events, the historians have turned towards the study of structures. (Foucault 2009, 3–4; 6–7; 9.)

233 Evans 2000, 151–152.

234 See Foucault 2009, Introduction.

235 Alhanen, in his analysis of Foucault's texts, has given clear and coherent definitions to the concepts of discursive practices and non-discursive practices. According to him the former are specific group of practices that guide the actions of human beings in discourse, in other words, they are socially ossified ways of producing statements. The latter are all the other practices. (Alhanen 2007, 30; 59–60.) Discursive and non-discursive practices then relate to one another and construct a complex network that Foucault has named as dispositive (Alhanen 2007, 104–105).

236 Alhanen 2007, 30–32; 59–60; 104–106; Hook 2001, 521–523; 529–530; 537–539; 542. About the materiality of discourse also Poynton & Lee 2000, 6; Threadgold 2000, 49–50.

writes mainly about discourse, Alhanen, who also acknowledges the materialistic dimension of discourse, further connects discourse with other, non-discursive practices without claiming that they all should be read as a part of discourse itself. Instead, the complex network of discursive and non-discursive practices should be regarded as a dispositive. Alhanen's approach is also followed in this thesis.

One more point is good to be made before introducing Foucault's notions of discourse and dispositive. What was introduced as a historical narrative in the previous chapter is to Foucault a form of discursive practice that is blind to its own functions and thus, ends up sustaining and privileging certain power relations. Foucault criticised historical research, for example, for making assumptions on the basis of apparent causality and privileging the linear understanding of time which both help to maintain our ways of thinking as they are and reinforce the dominant, generally accepted regimes of truth. According to him, historical narratives produce certain kinds of truths and in the same process exclude and silence alternative suggestions to become legitimated as true.²³⁷ Moreover, scientification of historical research by which Evans, amongst other things, defends the historical research against White's notions about narrativity in history is another form of practices that, according to Foucault, serve the purpose of maintaining certain power relations and of sustaining the dominance of certain understandings of truth and knowledge. To him, applying the jargon of scientificity is even stronger and more powerful way of supporting a certain regime of truth and knowledge.

Foucault does not deny the merits of historical research, but he himself is more interested in how these kinds of historical truths are produced and the power relations to which the production of these historical truths is tied to²³⁸. Nevertheless, as historical narratives, as well as statistical presentations and other means to produce scientific truths, are important practices in the dispositive in which the outsourcing of the tasks of state armed forces is produced, I do not see the point of disregarding them completely. In this thesis, these methods serve as examples of the practices used in the production of the phenomenon, while the primary aim of my study is to show how the use of these practices creates and maintains certain relations of power and produces certain knowledge to support these relations of power. It is also good to note that – primarily due to the data selection – my study discusses mainly the dominant, administrative discourse within which the outsourcing of

237 Foucault criticises predominantly the kind of historical research that was done in his times and before. Historical narratives have later taken also other starting points and point of views than those of so called high politics; diplomacy, war and security. In other words, historical narratives of marginal groups have also been written. Nevertheless, this does not annul Foucault's criticism on narratives.

238 See, for example, Foucault 2009 Introduction, 3–19; Foucault 2002, 131.

the tasks of state armed forces is in the United States produced²³⁹. Now, it is time to investigate closer the Foucaultian notions of discourse and dispositive.

As it was noted earlier, to Foucault discourse is not just about language. He sees language as “a system for possible statements, a finite body of rules that authorizes an infinite number of performances²⁴⁰”. With regard to language, besides grammatical rules there are no other limitations to what can be expressed. This is not the case with discourse, which is more restricted than language. Discourse is an individualised field that has been constructed in the course of time. By individualisation of a discourse Foucault refers to the practices that distinguish it from and relate it to other discourses; to the emergence of rules which determine what can and what cannot legitimately be said in that discourse, and which establish the observable regularities in the discourse that seem to characterise it.

In other words, in addition to the rules of grammar, there is another set of rules that individualises a discourse by delimiting it. These additional limits are closely tied to power relations that prevail in the dispositive in question as well as wider in the society. This additional set of rules establishes time and location specific conditions of possibility for utterances to emerge and exist in the discourse as well as for utterances to vanish from it. Their level of rigidity varies (while some of them can be almost stable, some of them are highly flexible), which enables, first of all, existence of the discourse, but also its transformation; disappearance of some utterances as well as introduction of some new ones or re-introduction of some of the already disappeared ones.²⁴¹ Yet, expressed in a different way: “discourse is constituted by the difference between what one could say correctly at one period and what is actually said²⁴²”.

In the dispositive of outsourcing of the tasks of state armed forces, the discourse is individualised in relation to, for example, the discourses of warfare, of security, of state and of the international as well as of the overall practices of outsourcing and of economic efficiency. All the delimiting discourses are present when the rules for the discourse about the outsourcing of the tasks of state armed forces are formed. The delimiting discourses have their own rules and regularities that try to occupy room in the discourse studied in this thesis and fierce struggles take place over the available

239 See chapter 3.

240 Foucault 2009, 30. Moreover, he argues that “language exists only as a system for constructing possible statements; but in another respect, it exists only as a [...] description obtained from a collection of real statements”. Thus, language and statement (which relations to other statements construct the order of discourse and the discursive field) do not exist on the same level. (Foucault 2009, 96.)

241 Foucault 1991a, 54; 59–60; 63; Foucault 1998, 17–18; 27; Foucault 2009, 30; 37–38; 42; 82–84; 134. Also Edkins (1999, 45–47) interpreting Foucault; Hook 2001, 525; Alhanen 2007, 45; 59; 83–91.

242 Foucault 1991a, 63.

room. This conflictual situation enables seemingly contradictory statements to emerge, exist and disappear.

Rules of discourse guide the production of both objects and subjects in discourse. They determine what can become an object in discourse, who or what can act in it and from which subject positions utterances can be spoken. According to Foucault, objects in discourse are produced by the relations through which their surfaces of emergence, authorities of delimitation and forms of specification are linked together. By surfaces of emergence he refers to the limits of normal or to the differentiation between acceptable and unacceptable – both established in the light of what has generally been accepted as truth and knowledge; to the places, where individual differences can be named as something abnormal, pathological or undesired²⁴³. By authorities of delimitation he means, for example, laws, institutions, groups of individuals, bodies of knowledge and practices or generally recognised authorities that can delimit, designate, name and establish something as an object²⁴⁴. Lastly, forms of specification are systems according to which differences within an object are classified, contrasted, related, regrouped and derived from one another as objects in discourse²⁴⁵. Subjects in discourse, again, are produced by relations which determine who can speak, from which institutional positions attending the discussion is possible and the positions that it is possible for this specific subject to “occupy in relation to the various domains or groups of objects²⁴⁶”.

Rules of discourse also guide how a discourse circulates within society and how it relates to the non-discursive context, for example, the institutional, social, economic and political relations in which it operates.²⁴⁷ This is not to say that the rules operating in the production of non-discursive context are the same that operate within the discourse, but that there are rules operating on the border and that these have to be included in the analysis²⁴⁸. Discourse and its material context are inseparable and mutually constitutive; therefore, a discourse cannot be examined without examining also the non-discursive practices it is linked to. Moreover, discourse itself should be understood as a practice which establishes the producing system of relations instead of seeing this system as something given.²⁴⁹ This brings the dispositive of outsourcing of the tasks of state armed forces into

243 Foucault 2009, 45–46.

244 Foucault 2009, 46.

245 Foucault 2009, 46–47.

246 Foucault 2009, 57–58.

247 Foucault 1991a, 54–58; 61; Foucault 1998, 24–25; 33–34; Foucault 2009, 45–52; 55–57; 83; 103–107; 137–138; 141. Also Edkins (1999, 47) interpreting Foucault; Alhanen 2007, 46; 64; 67; 85. Threadgold points out that whereas author, discipline and the will to truth as usually observed as desirable, to Foucault they are activities of constraint, control and rarefaction, in other words, activities for imposing limits and exclusion. (Threadgold 2000, 48.)

248 Alhanen formulates this as follows: “Foucault examines structures in discourse and structures in social practices that are similar to one another (Alhanen 2007, 39, translation from Finnish by the author).” *Similar*, not the same.

249 Foucault 2009, 50–51; 54; 59; 89.

the focus of this thesis.

When something is spoken or written about, it is already noteworthy that it is spoken or written about²⁵⁰. Therefore, in the analysis of discourse the central issue to Foucault is to

[...] account for the fact that it is spoken about, to discover who does the speaking, the positions and viewpoints from which they speak, the institutions which prompt people to speak about it and which store and distribute things that are said²⁵¹.

The quotation above adds some dimensions to the analysis of discourse. Firstly, it highlights the institutions and social procedures that support discourse. These institutions and procedures can be seen as expressions of the knowledge produced in the discourse and also something that supports and controls that discourse and the production of knowledge in it. In other words, knowledge and institutions are mutually constitutive and the production of both of them takes place in discourse and in dispositive. The strongest discourses and dispositives seem to be those, who can claim to base themselves on different correlates of truth and reason, for example, on the natural or on the scientific. What counts as natural or scientific is produced in the functions of multiple power relations which include and exclude; that form dependencies at the intradiscursive²⁵², interdiscursive²⁵³ and extra-discursive²⁵⁴ levels as well as between these levels.²⁵⁵

Secondly, the quotation refers to storing and distributing, in other words, to the functions of memory and archive as well as the different media for disseminating what has been said. Previous knowledge and practices always delimit what can be expressed and how it can be expressed, in other words, discourse and dispositive are dependent on historical a priori, although this a priori does not fully determine it. With a priori Foucault does not refer to some unified structure that would establish a historical truth, but to a “density of discursive practices, systems that establish statements as events [in discourse] and things [that influence discourse]”.²⁵⁶ All the systems of statements then construct an archive, which can be defined as

250 Foucault 1998, 6–7.

251 Foucault 1998, 11.

252 Changes in the rules of a discourse and the reciprocal relations of these changes (Alhanen 2007, 93).

253 Changes in the relations between discourses and how these changes affect the rules of discourses (Alhanen 2007, 94).

254 Changes in the rules of discourses caused by non-discursive practices and vice versa (Alhanen 2007, 95).

255 Edkins 1999, 47; 50; Hook 2001, 522–526; Foucault 1991, 58; Foucault 1998, 56–59; Foucault 2009, 133; 139.

256 Foucault 2009, 117; 143–145; Alhanen 2007, 58.

[...] the reason why so many things, said by so many men, for so long, have not emerged in accordance with the same laws of thought, or the same set of circumstances [...], but they appeared by virtue of a whole set of relations that are peculiar to the discursive level [...] born in accordance with specific regularities [...]. [...] [This is] the system that governs the appearance of statements as unique events, [b]ut [...] also that which determines that all these things said do not accumulate endlessly in an amorphous mass [...], but they are grouped together in distinct figures, composed together in accordance with multiple relations, maintained or blurred in accordance with specific regularities.²⁵⁷

In the dispositive of outsourcing of the tasks of state armed forces the archive consists, for example, of the historical knowledge structures around the outsourcing of the tasks of state armed forces, the state, warfare and commerce, but also of what PMSCs remind people about, for example, mercenaries, the French foreign legion or trade companies. The archive establishes “the general system of the formation and transformation of statements” and thus, the system for differentiation of discourses²⁵⁸. This leads us to perceive that a statement and especially the relations between statements are the basic building blocks of discourse. The importance of statements relies in their forcefulness; statements seem to be the building blocks that include truth claims and that are appreciated accordingly.

Not every utterance is a statement to Foucault; vice versa, statements are relatively rare. A statement is not the same thing as a sentence, a proposition or a speech act, but neither it is reducible to a material object. Instead, it should be understood as a function of existence, an enunciative function that operates in relation to the other aforementioned “things” and cuts across structures and expected unities. It gains its effect when it is grouped together with other statements and with the other “things” and when is multiplied in circulation, in other words, multiplied in media that disseminate it.²⁵⁹ Whilst discourse has three meanings to Foucault – one as a general domain of all statements, another as an individualisable group of statements and a third one as a regulated practice that accounts certain number of statements²⁶⁰ – these meanings can only exist, when a statement is understood as an enunciative function. It is then to be studied “by the analysis of the relations between the statement and the spaces of differentiation, in which the statement itself reveals the differences²⁶¹”; it is to be studied in relation to other statements and “things”, and it has to have a

257 Foucault 2009, 145–146. A good example of archive is a system that was established to classify people’s pleasures in the fields of medicine, psychiatry and pedagogy. See Foucault 1998, 63–64.

258 Foucault 2009, 146. Italics removed.

259 Foucault 2009, 90–93; 97–98; 135. Threadgold points out that this circulation of statements is possible without the notion of authorship and takes place without discursive and disciplinary control (2000, 48).

260 Foucault 2009, 90. Also Foucault 2009, 121; 131.

261 Foucault 2009, 103.

material existence, which here refers to the medium by which it is expressed.²⁶²

We should begin the study of a discourse by questioning the existing groupings of the studied material (was it then a book or the whole production of a certain author) and then “to disconnect the unquestioned continuities by which we organize, in advance, the discourse that we are to analyze”²⁶³. We should not reject the existing ways of organising material entirely, but to disturb and interrogate them and to show how they result from certain rules which application the existence of that discourse is dependent on. This interrogation of existing unities enables us to see the statement in “the specificity of its occurrence”, to restore the contingency of its existence and to relate it properly with its past, present and future. It also enables us to grasp other forms of regularity and of interplay in relations between statements, between groups of statements and between statements and groups of statements and different kinds of events, for example, those of political, social, economic or technical. Moreover, it enables us to analyse the coexistence, succession, mutual functioning, reciprocal determination, independent or correlative transformation of discourses and dispositives.²⁶⁴ In this thesis, for the sake of clarity, the existing groupings have not fully been abandoned. For example, when a government report is specifically mentioned in the historical narrative, it is usually also summarised. However, in the main analysis I follow this Foucault’s requirement of abandoning the seemingly natural groupings.

According to Foucault, what is to be found in discourse is not then a unity or undisturbed continuity, but a discursive formation. In other words, what is to be found is a system of dispersion, which nevertheless has some regularity. This regularity establishes itself in the order of successive appearance, in the correlation of simultaneity in existence, in the assignable positions in a common space, in a reciprocal functioning and linked transformations in relations between statements, groups of statements and the aforementioned events of different kind. In order to describe the discursive formation, one has to pay attention to the forms of succession and thus, to the forms of establishing an order in it, to the forms of coexistence and to the procedures of intervention that causes changes in the formation. All the statements formed to the same forms, in other words, according to the same rules of discursive practices establish a discursive formation.²⁶⁵ This observable regularity in discursive formations is what reflects the rules of their formation. Therefore, discourse analysis should focus on this regularity.

262 Foucault 2009, 31–32; 100–101; 108–114; 119–120; Alhanen 2007, 57–58.

263 Foucault 2009, 24; 27.

264 Foucault 2009, 28; 31–32; Alhanen 2007, 53; 55–56.

265 Foucault 2009, 41; 62–66; Alhanen 2007, 71–72.

In this thesis, only spoken or written texts are analysed with the help of Foucault's notions on discourse and on dispositive. Photographs and statistical presentations that are part of the discourse could also be analysed with this method. Gillian Rose is very specific about this point when she highlights that visibility also is a form of discourse. According to her "a specific visibility will make certain things visible in particular ways, and other things unseeable, for example, and subjects will be produced and act within that field of vision"²⁶⁶. Not only are the truth claims presented in texts dependent on truth claims presented on other texts, but also on images, and especially the 'realism' of photographs is produced by the use of these images in a specific realm of truth, in other words, "so that photographs were seen as evidence of 'what was really there'"²⁶⁷. I agree with Rose's notions, but due to the restrictions of the form of this work as a Master's thesis, I have done violence to the data and excluded images from my analysis.

Having written so much about discourse with just brief references to dispositive, it is time to examine further this network, which consists of discursive and non-discursive practices as well as the relationships between and amongst them. As noted, discursive and non-discursive practices are mutually constitutive and infiltrated by power. In his studies, Foucault has described the simultaneous emergence of certain discourses as well as institutions and social practices related to them; both discursive and non-discursive practices reflect the power relations that produce them. They also reinforce one another as well as those productive relations of power. Like a discourse is time and location specific, so is the dispositive that the discourse is part of. In other words, discursive and non-discursive practices do not always relate to one another in similar ways, but the relations between them vary.²⁶⁸ Therefore, the dispositive is also to be analysed in its uniqueness and in its context.

Foucault conducts his analysis of dispositive by examining the functional relationships that different practices, both discursive and non-discursive, construct. By these functional relationships he refers to both a practice's function in dispositive and the complex relationships of dependence between different practices in dispositive.²⁶⁹ I observe here some parallels with the statement and its functions in discourse as they were described in previous paragraphs. The effect of practice in the dispositive is dependent upon its relations to other practices, in other words, practices can reinforce one another as they can weaken one another²⁷⁰ – as can different statements in discourse. Practices do not relate to one another always the same way, but their relations are different and always

266 Rose 2001, 137.

267 Rose 2001, 136–138. Also Foucault implies this interpretation, for example, in 1988, 100–101; 187–191.

268 Alhanen 2007, 102–106; Foucault 1998, 12; 61–62; 82–85.

269 Alhanen 2007, 106.

270 Ibid.

changeable²⁷¹ – as are relationships between statements in discourse. Also, objectification and subjectification which are done in discourse move on to dispositive and are influenced by it. Furthermore, it is necessary to keep in mind, that dispositives, like discourses, do not exist in solitude, but are always related to and influenced by other dispositives. Dispositives overlap and discursive as well as non-discursive practices proliferate from one dispositive to another forming thus the complex network of power relations within the whole of society.²⁷²

Now, after having established both, the theoretical framework and the methodological setting for analysis, as well as having already presented some of the research findings, it is time to examine the case and to answer to the questions posed in chapter 5. While analysing the discourse and dispositive of outsourcing of the tasks of state armed forces, I do not differentiate between the methods used to do the analysis. In other words, the discourse and dispositive analysis is written into the narrative that runs on the background of the analysis and carries the analysis forward. Another point to be mentioned about the historical narrative constructed around the event is that it does not fully follow the linear time, but jumps thematically.

7. The September 16 shooting case

7.1. September 16, 2007

The September shooting, one of the bloodiest involving private security guards in Iraq, set off furious protests from the Iraqi government and has forced a major reassessment in both the Bush administration and Congress over the role of private contractors in the war zone²⁷³.

On September 18th, 2007 The New York Times published a news article telling that the Iraqi government was seeking to ban a US private security company from operating in the country. The reason for this ban was the company's and its employees' continuous reckless behaviour that ignored the Iraqi population and did not take its security into consideration. Culmination point of this behaviour had been a shooting incident two days earlier, on September 16th, 2007. Even if the details of the incident were uncertain and not even the numbers of the dead or injured Iraqis could be confirmed for a long time, the scale of the event and the level of violence it entailed had angered the Iraqi people and their government to the point that heated demands for the deportation of the company were expressed. These demands were reinforced by the observably poor procedures that

271 Alhanen 2007, 106.

272 Alhanen 2007, 107–108; 111–113; Foucault 1998, 48; 89–93.

273 The New York Times, 16.01.2008. Also Human Rights First 2008, 5.

existed for making PSCs responsible for their actions judged as misconduct.²⁷⁴

This first news article about the incident well established the tensions and struggles – which turned into discursive regularities in the longer run – over the production of the September 16 shooting, as well as the whole phenomenon of the outsourcing of the tasks of state armed forces, into our general understanding. Firstly, it identified the main actors in the dispositive clearly as governments and administrations as well as private military and security companies. The important question which arises from the basis of this identification is how do these actors relate to one another in the dispositive? What are the relationships between the US administration, the Iraqi government and PMSCs? How do the Iraqi citizens relate to this network of relationships? These relationships will be discussed on several occasions in this thesis.

Secondly, the news article established states and nationalities as important categories in the dispositive and thereby, activated the question of the international. It can be asked whether the state of Iraq is a similar actor in the dispositive as the state of the United States. They both are nominally modern, sovereign states – the Iraqi government namely claimed its sovereign right to rule over its territory by threatening to ban Blackwater from operating in that territory – but it can be asked whether Iraq can exercise its sovereign right and whether the nationalities are of the same value²⁷⁵. When interrogating the data, it soon becomes clear that in the dispositive the categories of Iraq and Iraqi are subordinate to those of the United States and American. When it comes to the actions of PMSCs, the Iraqi people and their security seem to be secondary to the US citizens and their security. The Iraqis are preserved the role of victims who can only reactively express anger over the actions of PMSCs. Their government, on the other hand, has a visible and audible grasp on power only when it resists the actions of the US government and of the companies operating in the name of the United States. Therefore, it can be asked whether the Iraqis confront power (which leaves room for resistance) or mere violence (which leaves nothing but the options of submitting or being annihilated) in their relations to the United States²⁷⁶. This brings us to the problem of the international. When the assumption in the common IR understanding has been that different states are congruent entities, the situation in Iraq seems to propose something else. Even if in the discourse related to the September 16 shooting references to the nation state system are made, the main way of describing the situation is what Cox labelled the “American Empire”: a situation in which the influence of the United States “penetrates across the borders of formally sovereign states

274 The New York Times, 18.09.2007. Also The New York Times, 19.09.2007; 20.09.2007; 23.09.2007.

275 About the characteristics a modern, sovereign state see chapter 4.2.1. and chapter 1. footnote 4; about the functions of sovereignty see chapter 4.1.

276 See chapter 4.1.2. about the difference between power and violence. Regardless of how much the United States tries to operate through power, it easily slips into the use of violence in Iraq (see pages 42–43 about the liberal rule).

to control their actions from within through compliant elites [...]” and “[...] constitutes a movement of convergence towards the American pattern in political, economic and social practices and in basic cultural attitudes”.²⁷⁷

Thirdly, even if the news article required the establishment of norms for PMSCs’ behaviour, it also created the possibility conditions for accepting some deviance from the norms by stating that the incident took place on a war zone, that is, in exceptional circumstances. Here, PMSCs and their employees are referred to as a population and forms of specification amongst PMSCs begin to emerge²⁷⁸. The article counted that approximately 126 000 PMSCs’ employees, out of which some 30 000 PSCs’ employees, operated in Iraq “alongside American troops” and “supplying guards and training at many levels of war”²⁷⁹. PSCs are hence distinguished from PMCs, as well as from the state armed forces, and the number of their employees is to suggest that some deviation within such a large population is only natural. In other words, even if there is a requirement to establish order in the disordered or chaotic, the probability of some disorganisation within that order is recognised. The notion of war zone is also important for it relates the shooting incident to warfare. This, again, introduces violence in the discussion – all the way to the severity level of death. The severity of the incident is emphasised in the news article by naming it as one of the bloodiest. This practice individualises the incident highly negatively, and makes it serious enough to be lifted onto the agenda of the most senior administrative officials and politicians both in the United States and in Iraq, which, again, reinforces the existing relationships of power²⁸⁰. Other interesting questions also emerge on this surface: What impact coupling of the incident with warfare has on the dispositive? What is the role of violence in the dispositive? Who has the right to resort to violence? How can the use of violence be justified? I will return to these questions later in this thesis.

Fourthly, the news article raised the questions of security and of whose security is to be taken into consideration. It introduced the multifaceted aspects of security by relating the notions of individual security and of state security, of the security of one individual and of another individual, and of security through warfare and security in warfare to each other²⁸¹. It introduced security as something calculable and thus, as something to be addressed in terms of risks²⁸². In the discourse,

277 Cox 2007, 520. See also chapter 2.2. footnote 58.

278 See pages 39–40 about bio-politics of population; pages 64–65 about surfaces of emergence.

279 The New York Times, 18.09.2007.

280 This reinforcement takes place when additional value is attached to the event (see the discussion on importance of events presented on pages 60–61) with a suggestion that important people should become concerned about it – involvement of these people, again, strengthens their status as important people (see who can attend discourse in chapters 3. and 6.).

281 See chapter 2.3. about different notions of security.

282 See chapter 4.1.1. about security as a dispositive; chapter 2.2. about commodification of security.

different notions of risk are present. These include, for example, risks to the United States; risks to the US armed forces; risks to PSCs, to their employees and to people in their protection; risks to Iraqi people; risks to the Iraqi government. In order to estimate and control these risks, knowledge has to be produced about them increasingly. This increases the importance of statistical means and models, estimations and evaluations²⁸³. On the basis of produced knowledge, it will then be evaluated, for example, how much risk to the PSC's principals is bearable in comparison with the equation of security versus risk to the Iraqi population. This formula of calculations, infiltrated by economic rationalism, reduces the security problem to the security dilemma presented in chapter 2.3 of this thesis. It sees one's security to be comprised of risks to others around the one, and tries to estimate the right equation between security and risk on that basis. One of the main concerns in the discourse revolving around PSCs is that hardly any risk is accepted to the people in PSCs' protection regardless of the risks that this policy causes to the Iraqi population and without taking into consideration the possible increase in risk for the future principals caused, again, by the frustration and anger of the neglected Iraqi population. This argument derives support from the theories of contemporary warfare in which force protection is emphasised, but which also require guaranteeing security to civilian population and respecting human rights²⁸⁴.

Finally, in the news article PMSCs are seen as civilian actors. Blackwater is introduced as a private company operating in Iraq, although it is also contributing to the collective security enjoyed in the United States²⁸⁵. This leads to two further notions. First, a sovereign state, which Iraq claims to be, can ask for a private company to stop operating on its territory. Even if the territory of Iraq is a conflict zone, asking for a unit of foreign armed forces – even though it was involved in a similar shooting incident – to leave would be more complicated, if not unthinkable. Second, a sovereign state deporting a company usually can only do this by claiming that the company has been involved in criminal action. Under the conditions of free trade, which today have been coupled with the democratic political system and are tried to be established in Iraq, no other justification is strong enough for this move. Therefore, the Iraqi government was obliged to refer to the rights of the Iraqi people and to the US negligence over them – which has globally been accepted as a justifiable reason for taking actions and belong to the set of tasks which the Iraqi government is expected to carry out on behalf of its citizens – in order to resist the occupying force. This Iraqi argument activated the dispositive of human rights, which is a neighbouring dispositive to that of the outsourcing of the tasks of state armed forces.²⁸⁶

283 About the importance of statistical means in the production of knowledge, see page 36.

284 See chapter 4.2.2. about transformation of warfare; chapter 2.3. about different notions of security.

285 About the public-private problem, see chapter 2.2.

286 About the security problem, see chapter 2.3.; about the influence of neighbouring dispositives, see chapter 6.3.

The notions made in the previous paragraph relate to the struggles over space, which take place between the political and the economic²⁸⁷. The political controls the economic through legislation and regulation, but it cannot control the occupying armed forces, which can resort to violence, by the same means. It is subjugated to them because it does not have force to respond to the potentiality of violence. Instead, the rules of war have been created to regulate the conduct of the armed forces in the international sphere. In addition, the occupier's aims and policies created to reach these aims have guided the conduct of the armed forces.²⁸⁸ In the case of the September 16 shooting, the political and the economic regrouped and by doing so, they created new conceptual space and confusion. This new conceptual space will be discussed later in this thesis when yet an unsettled issue of the location of responsibility for misconduct in relation to PMSCs is examined.

The shooting incident did not hit the headlines until it was politicised and brought onto the international news agenda²⁸⁹. It became a news story, when it raised political rows, that is, intensified power struggles; when the Iraqi government declared that it would not close its eyes in front of the shooting and instead, it would exercise its sovereign right and ban Blackwater from operating in its territory. With this move the Iraqi government raised awareness of and concern about the conduct of PSCs in Iraq, reinforced its own position and created need for further information. Consequently, this politicisation of the event was widely accepted which increased the potentiality of the event to remain an event in history as well²⁹⁰.

In the United States, not only were the demands for justice, accountability and respect of Iraq's sovereignty seen as motivations behind the Iraqi anger. Some US officials suggested that financial motivations were important as well, whilst less foreign companies operating in Iraq would create more space for local companies²⁹¹. In other words, as righteous and legitimate as the Iraqi demands for values that are highly respected in the Western world were, there were also less idealistic and more pragmatic financial motivations on the background. The economic was suspected of having occupied room from the social; however, this was not a majority stance in the discourse. This kind of doubt and mistrust on the Iraqis – whether they were government representatives or other officials, eye-witnesses of the incident or victims – prevails amongst the US officials and the representatives of PMSCs (as they have been quoted in *The New York Times*) as well as on the pages of the newspaper. There is consistence in the division between us (the speakers of truth; insiders) and them (the suspicious; those to be kept outside). Even if what the Iraqis say is accepted

287 See chapter 4.2.1. about the changing equation between political, economic and social.

288 See chapters 2.3 and 4.2.2. about characteristics of modern warfare.

289 Salminen 2008, 28; Human Rights First 2008, 15; 18.

290 See White's notions on page 60.

291 *The New York Times*, 23.09.2007.

as potentially truthful, it is to be doubted until the US counterparts have confirmed the Iraqi accounts. Therefore, even if the Iraqis are produced as subjects in the discourse, they are subjugated to the US speakers of truth and thus, excluded from the realm of truth.

No matter how evident the excesses in the use of violence by Blackwater and other PSCs were, they were not the only reason why the shooting became politicised in the United States. An important factor was also that the existence of PMSCs challenges the existing power structures in the United States: the assumption of a political centre that subjugates the state armed forces to its unquestioned command and control. PMSCs as corporations bring additional interests to those defined by the US government onto the battlefield and thus, change the balance between the political and the economic; not only on the battlefield, but also in the United States. Therefore, it was easier to accept the initially Iraqi move to politicise the September 16 shooting than it otherwise might have been. Politicising the incident served the interests of the US political elite, as well the interests of the opposition. While the opposition was concerned about the secrecy and murkiness of the outsourcing of the tasks of state armed forces because this outsourcing seemed to take place largely outside the mechanisms of democracy, the elite got concerned about the potential flow of influence from the political centre into the hands of PMSCs²⁹². This does not mean that the ideals of democracy including, for example, good governance, accountability and transparency would not have been utilised in the elitist justifications given to the politicisation.²⁹³

Interestingly, the notion presented in the previous paragraph is contrary to what has most commonly been said about PMSCs as being an elitist venture to make money from warfare and to add tools to the state's foreign policy toolbox. It has been stated that PMSCs often function as a proxy for the state enabling it to make delicate policy decisions which may require an opportunity to deny any involvement by the state.²⁹⁴ Thus, even if representatives of the state, PMSCs do not politically and diplomatically bind the state to the events as tightly as the use of armed forces does, which can bring additional flexibility to the policies of the state. Here, the difference between civilians and military occurs again. In our general understanding, the armed forces are naturalised as a public, state bound actor that operates with the logic of coercion internally as well as towards other actors. PMSCs, on the other hand, operate in the realm of commerce, in other words, in the realm most commonly associated with civilian activities and with negotiations and bargaining. Whereas the armed forces are an institution of compulsion, the companies are institutions of negotiations. This

292 See, for example, Avant 2005.

293 See chapter 4.2.1. about state transformation which describes how changes between political, social and economic are expected to take place without substantial changes in the legitimising discourse.

294 For example, Creutz 2006, 60–61.

makes the expected power relations and authority structures to seem more diffuse with regard to PMSCs, which again makes them seem more flexible, but also less trustworthy entities. Thus, PMSCs are objectified into our general understanding through doubt.

For whatever motivations, the September 16 shooting remained on the news agenda more than two years later and it has had multiple consequences, both discursive and non-discursive, within the United States administration and outside of it. What happened on Nisour Square in Baghdad on that day “remains clouded”²⁹⁵ even today and the news reporting has from the beginning concentrated as much on the consequences of the shooting incident as on the details of the event. Nevertheless, The New York Times and the District Court of Columbia's judicial documentation have given some colourful accounts of what happened on that day. Next, I will utilise some of these accounts to tell the story of the September 16 shooting. The story is in the form of an intertextual dialogue. The dialogue takes place between three different narratives about the event, which are separated from one another by indentations. I have chosen this form of presenting the story, because it gives voice to the data and therefore, also serves as an example of the discourse in which the event is produced.

It started as a family errand: Ahmed Haithem Ahmed was driving his mother, Mohassin, to pick up his father from the hospital where he worked as a pathologist. As they approached Nisour Square at midday on Sept. 16, they did not know that a bomb had gone off nearby or that a convoy of four armored vehicle carrying Blackwater guards armed with automatic rifles was approaching.²⁹⁶

[...] [A]round 11:50 a.m. on Sunday, [...] [d]iplomats with the United States Agency for International Development were meeting in a guarded compound about a mile northeast of Nisour Square [...].

A bomb exploded on the median of a road a few hundred yards away from the meeting, [...] prompting a fateful decision to evacuate. [...] [A] Blackwater convoy began carrying the diplomats south, toward the [International] Zone. Because their route would pass through Nisour Square, another convoy drove there to block traffic and ensure that the diplomats would be allowed to pass.²⁹⁷

[...] [T]he defendants were part of a Blackwater Tactical Support Team answering to the call sign “Raven 23,” whose function was to provide back-up fire support for other Blackwater personal security details operating in Baghdad. [...]

The Raven 23 convoy [...] took positions in Nisur Square, a traffic circle located just outside the International Zone, to secure an evacuation route for the American officials and the Blackwater team providing their security. [...]²⁹⁸

[A] white vehicle approached the team at a high rate of speed and would not stop despite his hand signals and throwing a water bottle. Other civilians tried to wave the vehicle down, but it still would not stop. [Slough, one of the Blackwater employees] engaged and

295 The New York Times, 02.10.2007. Stating that something remains clouded is a practice to indicate chaos and disorder in the dispositive. See page 44 about the functions of disorder.

296 The New York Times, 03.10.2007b.

297 The New York Times, 28.09.2007a.

298 Memorandum of Dismissal 2009, 3–4.

hit the driver.²⁹⁹

At 12:08 p.m., at least one guard began to fire in the direction of a car, killing its driver. [...] [M]ore shots were fired, killing a woman [sitting next to the driver] [...] ³⁰⁰.

[...] [A] bullet tore through Mr. Ahmed's head, he slumped, and the car rolled forward. Then Blackwater guards responded with a barrage of gunfire and explosive weapons, leaving 17 dead and 24 wounded [...].

The car in which the first people were killed did not begin to closely approach the Blackwater convoy until the Iraqi driver had been shot [...] and lost control of his vehicle. Not one witness heard or saw any gunfire coming from Iraqis around the square. [...]

The events in the square began with a short burst of bullets that witnesses described as unprovoked.³⁰¹

[...] [T]he Raven 23 convoy began "receiving small arms fire from the left side of their vehicles by two individuals in the tree line. [Slatten, one of the Blackwater employees] returned fire with two rounds hitting one of the individuals."³⁰²

[T]he convoy "started receiving small arms fire from the six o'clock position"³⁰³.

[...] [C]onvoy [...] responded with an intense barrage of gunfire in several directions, striking Iraqis who were desperately trying to flee.³⁰⁴

At some point during the shooting, one or more Blackwater guards called for a cease-fire [...] [It] "was supposedly called out several times [...]. They had an on-site difference of opinion" [...].³⁰⁵

Minutes after that shooting stopped, a Blackwater convoy – possibly the same one – moved north from the square and opened fire on another line of traffic a few hundred yards away [...] ³⁰⁶.

The government contends that the dead and wounded were unarmed civilians who were the victims of unprovoked violence by the defendants. The defendants maintain that they came under attack by insurgents and that their actions constituted a legitimate response to a mortal threat.

The paroxysm of violence that occurred on September 16, 2007 in Nisur Square triggered immediate responses that would have far-reaching consequences. [...] [T]he State Department, the U.S. military and Iraqi forces commenced immediate inquiries into the shooting. Media began investigating the incident, interviewing eyewitnesses and probing sources in the U.S. government. And ultimately, the decision was made to commence a criminal prosecution against the defendants in this case.³⁰⁷

The extracts above well present how different forms of storytelling can convincingly be utilised in telling narratives about the September 16 shooting. Whether the narrative is a highly personalised

299 Slough, Paul in an interview 16.09.2007, according to Lopez Memorandum Report of Interview 16.09.2007.

Quoted in Memorandum of Dismissal 2009, 6.

300 The New York Times, 28.09.2007a.

301 The New York Times, 03.10.2007b.

302 Slatten, Nicholas in an interview 16.09.2007, according to Lopez Memorandum Report of Interview 16.09.2007.

Quoted in Memorandum of Dismissal 2009, 6.

303 Liberty, Evan in an interview 16.09.2007, according to Lopez Memorandum Report of Interview 16.09.2007.

Quoted in Memorandum of Dismissal 2009, 6.

304 The New York Times, 03.10.2007b. Also The New York Times, 08.10.2007a.

305 The New York Times, 28.09.2007a.

306 The New York Times, 03.10.2007b. Also The New York Times, 08.10.2007a.

307 Memorandum of Dismissal 2009, 4.

news story (The New York Times 03.10.2007b), a detailed chronicle of happenings stating the exact time of their occurrence (The New York Times 28.09.2007a) or a judicial chronicle (Memorandum of Dismissal) it is still able to produce believable notions about the incident.

As said, there are several different accounts of what happened on September 16th, 2007. This has made it evidently impossible to establish an unquestioned truth about the event. Disagreement condenses around the questions of who shot first³⁰⁸, why the shooting began and was the shooting justified or not. In principle, this disagreement is a struggle over guilt. Guilt is closely associated with what is unacceptable or against norms and thus, serves as a surface of emergence in the dispositive³⁰⁹. The dispute whether Blackwater employees came under fire or not occurs in almost every The New York Times article as well as in the government reports, in the non-governmental reports and in the documentation of the judicial processes. It serves as an axis around which the whole discussion about the shooting incident spins and along which truth claims travel from one form of data to another – and back. Interestingly, stating that Blackwater employees began shooting unprovoked does not make it impossible to state that the employees were attacked and only responded to fire. The strictness of these opposite stances merely makes it impossible to state that it does not make a difference who shot first. In this discussion, there are parallels to the common defence/offense argumentation that characterises the discussion around the armed forces, as well as about the overall legality and legitimacy of warfare. These parallel structures link the dispositive of outsourcing of the tasks of state armed forces closely to theories of and discussion around war and warfare.

The dispute about who shot first and why highlights the themes of accountability and responsibility; lack of which is the main source of concern also in the wider discussion about the outsourcing of the tasks of state armed forces³¹⁰. Because the codes of conduct for PSCs authorise only defensive use of violence, a high level of shooting first incidents – which has been established by statistical recording and accepted as a fact in the discourse – does not provide an image of a responsible service provider³¹¹. Here, the basic tension is established between justifiable and non-justifiable. It can only be stated that killing 17 people in a shooting, even if in a conflict zone, cannot become accepted as a normal course of events or as a normal way of behaving – neither for civilians, nor for

308 The New York Times comments on this point 18.09.2007 by stating that “[b]ut typical for Iraq, confusion prevailed over who was firing at whom”.

309 About the functions of norms, see chapter 4.1.2.; about surfaces of emergence, see pages 64–65.

310 Soon after the shooting, this became the main point of discussion and remained as such until the judicial processes and beyond. The New York Times 18.09.2007; 19.09.2007; 20.09.2007; 22.09.2007; 23.09.2007; 26.09.2007b; 28.09.2007a; 03.10.2007b; 06.10.2007; 08.10.2007a; 11.10.2007a; 13.10.2007; Also ranking member Davis, Tom, opening statement, transcript of the House Committee hearing, 14; Human Rights First 2008, 5.

311 The New York Times, 20.09.2007; 27.09.2007; 28.09.2007.

military personnel. This normative stance has led to a heated dialogue over the right levels of violence used by PSCs and whether PSCs are properly supervised by the US government agencies which use their services. Of the aforementioned concerns, the first has resemblance with Dillon's and Reid's notions about the acceptable level of killing in current warfare³¹²; the second with the notions of theorists of regulatory state³¹³. In the September 16 shooting, not only was the behaviour of Blackwater employees on the ground evaluated as exaggerated. There were also questions about the use of air power in the operation and whether shooting at a car which did not stop after having been given a stopping sign was the right measure to be taken in that situation³¹⁴. Dispute about the correct measure to be taken in the situation is based on the use of force continuum set for PSCs operating in Iraq, which occupies the position not only of a guideline and a norm, but also of the truth about the right way of acting. This continuum will be discussed in detail later in this thesis.

As it has been said, the use of violence is seen as something calculable in the dispositive of outsourcing of the tasks of state armed forces; as something that can be set on the right level³¹⁵. The excesses of violence increase risks not only to the Iraqi population, but also to the US armed forces when making the Iraqis angry is expected to backfire. Therefore, norms for the PSCs use of violence should be set and executed more firmly. This means not only that the use of violence is restricted to defence (that is, to something acceptable in the name of self preservation), but also that it is the last reserve and that it is to be accommodated to the threat level as well as to the expected consequences in every situation. There also should be some kind of objective means for measuring this right level. In this way, security in warfare becomes emphasised³¹⁶. Interestingly, this requires some flexibility in strictness: the requirement to take each unique situation into consideration before making judgments on the basis of the set norms about the right level of violence creates this flexibility. These requirements do not only occur in the discussion about the September 16 shooting, but they were already established in the contractual framework, for example, between DoS and Blackwater³¹⁷. The established/will be established norms for the use of violence, again, are the norms against which accountability of PSCs is evaluated.

Blackwater's internal policy according to which security convoys which get involved in shooting do not remain in the incident area to see whether any casualties were caused or injuries inflicted, but

312 See page 43.

313 See pages 47–48.

314 The New York Times, 18.09.2007; 19.09.2007; 22.09.2007; 02.10.2007; 11.10.2007a.

315 See chapter 4.1. about the dispositive of security and the liberal way of war; chapter 2.2. about the conditions for commodification of security.

316 Security in warfare is explained on page 18.

317 For example, Prince, Erik, transcript of the House Committee hearing, 54; 74; Griffin, Richard J., transcript of the House Committee hearing, 143.

quickly continue their journey towards their destination³¹⁸, has led into further calls to make PSCs more accountable. The prevailing situation, in which a company's internal policy seemed to be the highest authoritative guideline was said to be unsustainable. In other words, the regulatory environment that relied primarily on self-regulation of PSCs was acknowledged as not being good enough. It could not be that the company had power to dictate over behavioural norms which should have been agreed in the wider US society. Instead, the company should, at least, be forced to take care of the aftermath. This, according to the representatives of PSCs, would endanger their missions. The discussion reverts to the question of whose security is important and highlights the social need to establish norms³¹⁹: Blackwater's policy which had not been discussed in the wider society was not legitimate and therefore, it had to be reconsidered. In addition, if Blackwater was not taking care of the aftermath, the US armed forces would have to do it on its behalf. The armed forces here represent state security and an obligation related to threats of peril, whereas PSCs represent voluntary services provided in the economic sphere and freedom of choice which is one of the primary requirements under the liberal rule³²⁰. If there is a danger that an incident's aftermath can turn into diplomatic rows or even into increased violence, an institution to control the situation is needed. This has been a unique requirement for the armed forces, but is insisted to be expanded to PSCs.

As the actors in the September 16 shooting, that is, a PSC and its employees have not yet been firmly objectified into our general understanding and their status in a conflict zone is unclear, the power struggles in which their objectification takes place are highly tense and well visible in the discourse. The struggle is not only about Blackwater and one shooting incident, but also an extensive attempt to produce PMSCs as legitimate or illegitimate actors in conflict zones and to produce the outsourcing of the tasks of state armed forces as a normal and acceptable or as a dangerous and contestable policy. In this struggle detailed and figurative descriptions of events, similar to those presented in the inter-textual dialogue above, become important means of persuasion. The more details – whether verbal or visual – are presented, the more credible the account of events is expected to be. This follows well Foucaultian notions on the importance of details in knowledge production and their persuasiveness when a statement is evaluated to be true or not³²¹.

318 The House Committee on Oversight and Government Reform, Majority Staff Memorandum 2007, 2; 7; The New York Times, 02.10.2007; 03.10.2007a. Ranking member Davis, Tom, opening statement, transcript of the House Committee hearing, 14; Kucinich, Dennis J., transcript of the House Committee hearing, 21. Similar policy has been said to be in force inside DynCorp and Triple Canopy.

319 About the functions of norms, see chapter 4.1.2.

320 See Dillon's and Reid's notions about the liberal rule in chapter 4.1.2.

321 See chapter 4.1.

In the discourse, the September 16 shooting incident became framed as an issue of security without a question. What is meant by security in this context is a rather narrow conceptualisation of security as the physical wellbeing of individuals and as the minimal outside threat to the United States. What seem to be missing from the conversation are the estimations of Iraq's national security and this incident's consequences to it; such a thing as Iraq's national security does not seem to exist in the discourse. This indicates that Iraq is not recognised as a sovereign state with a legitimate concern over its national security. An important part of this deficiency of Iraq as a state is its lack of structures for providing both internal and external security. This task has been handed over to the US armed forces and to PSCs. In other words, Iraq is not recognised as a plenipotentiary actor in the dispositive because it does not have the monopoly of the use of violence in its territory and thus, it cannot back up its decisions with coercion. In addition, Iraq's regulative power is weak. For example, with regard to PMSCs it only covers regulations for the companies to register and obtain licences from Iraqi ministries. In addition, there is another, more able actor in its territory. Nevertheless, Iraq is recognised as a state, which could be accepted as a proof of acceptance of the process of state transformation in our general understanding.³²²

Now, after having described the September 16 shooting, it is time to examine the practices that have produced this event into our general understanding. First, I discuss the practices which were utilised in the immediate aftermath of the shooting and in the remaining chapters of the analysis I will concentrate on the longer term developments.

7.2. The Aftermath

In the immediate aftermath of the event, there was an urgent need to know. Commonly known practices were utilised to establish the required knowledge: reporting, inquiries, interviews and incident scene investigations took place, when both US and Iraqi officials tried to establish a picture of the September 16 incident. In the US investigations, DoS's Diplomatic Security Service (DSS) agents carried the initial burden of knowledge production by reading incident reports produced through then existing DoS reporting practices, by interviewing Blackwater personnel as well as eye-witnesses of the incident and by writing memoranda and reports to disseminate the produced knowledge farther into the US administrative structures.

322 See chapters 2.3. and 4.2.1.

Hours after the shooting, the Department of State's Diplomatic Security Service ("DSS") directed all the members of the Raven 23 convoy to submit to interviews at the State Department offices in Baghdad [...]. The [...] interviews appear to have been conducted in connection with the reporting procedures set forth in a State Department memorandum authored by Regional Security Officer [...] and titled "WPPS³²³ On-Duty Discharge of Firearm Reporting Procedures". [...] [The] Memorandum required all Blackwater personnel involved in a shooting incident to report immediately to the Regional Security Office Tactical Operations Center for a debriefing by State Department officials. [...] After the debriefing, any employee who discharged his weapon was to be given a form [...] on which to prepare a written statement.³²⁴

On September 18, 2007, the defendants and their fellow Raven 23 team members submitted written statements regarding their actions at Nisur Square to the State Department [...]. On September 18, 2007, at the Iraqi National Police [...] Headquarters, DSS investigators also interviewed fourteen Iraqi nationals who claimed to have witnessed the Nisur Square incident³²⁵.

Over the following days, defendants Slough, Slatten, Ball and Heard submitted to additional questioning by DSS agents regarding their actions at Nisur Square. [...] DSS investigators [also] conducted an incident scene investigation at the Nisur Square traffic circle.³²⁶

Media reports regarding the Nisur Square shooting began to appear almost immediately after the incident. Several of these early reports included statements from State Department officials asserting that Raven 23 had been engaged in a firefight at Nisur Square [...]. In the following days, the defendants' September 18 written statements [...] were leaked to the media and disseminated globally in news reports.³²⁷

The above described, pre-set reporting requirements serve as an explicit example of a non-discursive a priori; of structures which restrict as well as enable the production of truth and knowledge about the incident. Therefore, not only is knowledge dependent on prior knowledge, but also on non-discursive practices related to this prior knowledge.³²⁸ The knowledge production done after the September 16 shooting was to guarantee to the US administration the position of authoritative speakers of truth. Superior knowledge that could be claimed to be correct and accurate with the help of details was to guarantee its position in the network of power relations that cut across the national and international spheres³²⁹. What was officially told to the public was a very short or non-existent account of the event with a reference to the importance of on-going

323 WPPS II, Worldwide Personnel Protective Services II -contract. Was rewarded in 2005 to Blackwater, DynCorp and Triple Canopy to provide protective services for DoS; each of the companies in a different geographical location in Iraq. DynCorp operates in the north and had in September 2008 153 employees in Iraq, Blackwater in the central Iraq with 968 employees (including aviation support personnel) and Triple Canopy in the south with 169 employees. Blackwater operates for DoS in Iraq and Afghanistan as well as provides aviation transportation services and attends contract management in Washington. MERO-IQO-09-02, 11–12; 23.

324 Memorandum of Dismissal 2009, 5; 7.

325 Memorandum of Dismissal 2009, 8. Also The New York Times, 20.09.2007.

326 Memorandum of Dismissal 2009, 9.

327 Memorandum of Dismissal 2009, 10. The New York Times is able to tell details about the investigation's findings from 28.09.2007a onwards, when it is noted that "[...] during the operation at least one guard continued firing on civilians while colleagues urgently called for a cease-fire. At least one guard apparently also drew a weapon on a fellow guard who did not stop shooting, an American official said" and that "[...] the guards told American investigators that they fired in response to enemy gunfire".

328 See pages 33–34 about truth and knowledge production.

329 Cox's notions presented in chapter 2.2. are relevant here.

investigations and to the necessity to conduct them without any outside interference³³⁰. “Let these folks to do the investigation and get all the facts. [...] [I]f the department procedures were not followed, after the facts have been gathered we [...] decide what action to take³³¹” and comments alike became common. The US investigators were said to be unwilling to present incorrect results which then would have to be overturned³³². Therefore, information about the investigations came to the public from anonymously given statements of “officials familiar with the investigations”. The belief in facts as a preferred form of truth is widely present in the dispositive and function as a reasoning for the silence over the incident. This belief in facts will be discussed better later in this chapter and the practice of investigation is examined in chapter 8.1.

The New York Times often quoted unauthorised statements and tried to bring critical notions into publicity, for example, by interviewing eye-witnesses. The newspaper tried to do its own part in resisting the normalising power which was clearly present in the statements of Blackwater and its employees as well as in the initial US government accounts of the incident. Majority of these statements interpreted the course of events on September 16th as self-defence, that is, as something which was widely accepted and justifiable³³³. Soon after the incident the paper established a contradiction between Blackwater and Iraqi accounts of the event and gave several colourful descriptions of the incident while labelling the scene “chaotic” as well as the shooting uncontrolled and indiscriminate. With regard to this it applied the familiar practice from common IR understanding: what could not be ordered was pushed into chaos. This practice created order as a preferable counter pole to chaos and woke up the promise of access to the ordered.³³⁴ However, in addition to interviews of Iraqis who gave descriptions of the event or stated that they felt mistreated, the newspaper mainly reported the US investigatory procedures, while waiting for the official investigations to finish and the truth to be authoritatively announced. Thus, the paper submitted to the normalising power. In other words, the position from which the Iraqi citizens were speaking was recognised, but seen as something derived from experience and emotions rather than from scientific practices used in verifying truth and reason.

In the discourse the belief in facts and in the ability find them are attentively present. It was said that through detailed and profound investigations the correct course of events on September 16th could be found out or at least, it would be possible to get as close to the correct course of events as

330 The New York Times, 22.09.2007; 23.09.2007; 27.09.2007; 08.10.2007a.

331 Vasquez, Edgar, DoS spokesman. Quoted in The New York Times, 19.09.2007.

332 The New York Times, 23.09.2007.

333 See Perelman's notions about attempts to transfer acceptance from a priori established truths to new claims on page 60.

334 About chaos and order, see page 44.

possible. The task was to establish the facts, to connect and compare them and on that basis, to draw the correct conclusions and decide upon what procedures to follow. The model followed in knowledge production hence is the model of economic rationalism³³⁵. This rationalistic model closes up the production of truth in this case into the politico-judicial realm. People who did the investigation were either the representatives of the Iraqi state apparatus or the US state apparatus. They had the right to investigate and an access to the sources of truth. The New York Times and non-governmental organisations could do their own reporting, but the authoritative announcement of truth would come after the politico-judicial investigations. These investigations were the primary authorities of delimitation in the discourse³³⁶. When the shooting had been framed as an issue of security, the level of acceptable secrecy around the investigations was lifted. Moreover, because there was the possibility of criminal charges the rights of the potential defendants had to be protected, which again tightened the ribbon of secrecy tied around the case. Secrecy and conduct of investigations in the politico-judicial sphere efficiently maintain the existing power relations in the dispositive by restricting the access to truth and delimiting the circle of the speakers of truth. Those who occupied suitable power positions prior to the September 16 shooting were hence able to maintain their position and exclude other potential discussants.

After the incident, the minimum requirement of the Iraqi government seemed to be that DoS changed its “protector” from Blackwater to other companies (DoS also had contracts with two other companies, DynCorp and Triple Canopy, within the WPPS framework)³³⁷. In other words, it tried to negotiate with the US administration over the matter. The Iraqi government saw PSCs as a security issue; related to risks rather than to the threats of peril as warfare usually is seen. Therefore, it tried to negotiate.³³⁸ This change was not seen as likely to happen due to DoS's heavy reliance on the company's services in central Iraq³³⁹. The US administration indeed starkly fended off the demands for Blackwater to be evicted³⁴⁰. Nevertheless, the Iraqi government proceeded to cancel the company's license and to prosecute the company³⁴¹. This can be seen as a counter measure to the strict US attitude. The described dialogue between the US and Iraqi administrations well demonstrates, how power operates through dialogue. In this process, it turned out that cancelling the company's license was not possible since the company had not had one for months, but it was in the

335 See chapter 4.1.2. about the functions of economic rationalism.

336 See pages 64–65 about authorities of delimitation.

337 Al-Maliki, Nuri, Iraqi prime minister, according to The New York Times, 20.09.2007. Also 22.09.2007.

338 About risk thinking and security dispositive, see chapters 2.2. and 4.1.

339 The New York Times, 22.09.2007.

340 The New York Times, 28.09.2007b; 06.10.2007.

341 The New York Times, 18.09.2007. Also The New York Times, 19.09.2007; 20.09.2007; 23.09.2007; 27.09.2007; 08.11.2007. Companies that operated in Iraq had to obtain licenses for weapons and also register with the Ministry of Interior and the Ministry of Trade (The New York Times, 18.09.2007).

process of getting one³⁴². It also turned out that the CPA Order No. 17 made it effectively impossible to prosecute Blackwater or its employees in Iraqi courts³⁴³. That the order had been given by the US led CPA further demonstrate the subordinate position that the Iraqi government occupies in the dispositive. The Order No. 17 will be discussed more in detail later in this thesis.

The Iraqi government seems to have accepted some level of legitimacy to PMSCs, since it did not require that all the private companies should leave Iraq, just Blackwater. The chosen policy option was yet another form of specification used to individualise the company³⁴⁴. In the discourse as well as in the non-discursive practices that the government targets towards Blackwater, the company is individualised as different from others of its kind. As the Iraqi government itself is dependent on the services of PMSCs³⁴⁵, it cannot ask for banishment of all the companies. US administration's reliance on PMSCs (documented in the previous paragraph) as well as Iraqi government's dependence on the companies testifies about the power position which PMSCs have gained in the dispositive: they are recognised as experts with superior knowledge as well as with the capability to execute effectively their operational plans. However, as the Iraqi government tries to achieve some level of acceptability and trust amongst Iraqis, the shooting incident and the anger it raised among the Iraqi population compels it to do something. Gaining support of the population would be an important power resource for the government. Therefore, it targets its rejection directly to Blackwater.

The US government, on the other hand, while trying to hold onto its credibility as an occupying force cannot admit that it might have misjudged Blackwater or that it might have made a mistake. Therefore, it is often repeated in the discourse that no other company is able to provide similar services to those that Blackwater provides – at least, not in the short run. The company is said to provide necessary and vital services for the United States, which should convince the US population of whose support the US government is dependent on. Similar argumentation is used to fend off claims that DSS personnel or the US armed forces should take over the tasks of PSCs in Iraq. The generally accepted truth with regard to this point is that there simply are not enough trained employees or troops with the right equipment to do this.³⁴⁶ Moreover, the armed forces is said to be

342 The New York Times, 19.09.2007; 08.11.2007.

343 The New York Times, 23.09.2007; 05.10.2007. In addition to the Order No. 17, the problem, according to the US official, is that criminal proceedings in Iraqi would not guarantee Blackwater or its employees a fair trial (The New York Times, 05.10.2007; 11.10.2007b).

344 See pages 64–65 about forms of specification.

345 Satterfield, David M., an opening statement, transcript of the House Committee hearing, 123; The Secretary of State's panel report 2007, 4.

346 For example, Watson, Diane E., transcript of the House Committee hearing, 85–86; Prince, Erik, transcript of the House Committee hearing, 53; 86; also quoting the US ambassador to Iraq, Ryan C. Crocker, in his opening

unwilling to take over the tasks, whilst DSS cannot. This is due to the lack of recourses and skills; military tactics are said to be mastered in these kinds of security operations, which DSS agents may not be capable of doing. In the discourse Blackwater and PSCs altogether are contrasted with both the armed forces and DSS agents and established as something different from them both. However, the armed forces and DSS agents serve as a priori which delimits the objectification of Blackwater and PSCs in general³⁴⁷.

The direct response of the US embassy, which represents DoS in Iraq, to the September 16 shooting was to suspend diplomatic missions temporarily³⁴⁸; to temporarily annul a malfunctioning practice. This was not seen so much a sign of a coherent and coordinated response than a reaction to pressures requiring something to be done³⁴⁹. The diplomatic missions were resumed only three days later and Blackwater was still operating³⁵⁰. Justification given to this restart was that DoS could not do its daily operations without PSC protection. Here, Blackwater's position is clear again: the US embassy is acknowledged of being dependent on the company. The decision to resume Blackwater's operations was said to be done "in consultation with the Iraqi authorities"³⁵¹. The statement tries to convince its audience that the Iraqi authorities are accepted as a negotiating party and that the Iraqis are informed about the proceedings in the matter. It seems that even if the United States subjugates the Iraqi government, in the eyes of the international community, the Iraqis and the citizens of the United States the legitimacy of the US presence in Iraq is dependent on its interplay with the Iraqi government. The statement of the Iraqi government on this matter was that it was compelled to allow Blackwater to remain in operation because removing the company's personnel would create a security vacuum, especially in Baghdad and thus, would force the US armed forces to remove troops from other volatile areas to secure the capital³⁵². Thus, the need to provide security for US officials was reasoned by the need to provide security for the Iraqi population. In other words, the interlinkedness of different spheres of security³⁵³ was acknowledged and the decision to allow Blackwater operations to continue was made on that basis. Blackwater was recognised as an able and needed security provider in its own niche through both, discursive and non-discursive practices.

statement (transcript of the House Committee hearing, 26–27); Satterfield, David M., an opening statement, transcript of the House Committee hearing, 123; 129–130; The Secretary of State's panel report 2007, 5.

347 The armed forces and DSS act as authorities of delimitation in the dispositive. See pages 64–65.

348 The New York Times, 19.09.2007.

349 Human Rights First, 1; 15.

350 The New York Times, 22.09.2007.

351 Nantongo, Mirembe, US embassy in Iraq spokeswoman, quoted in The New York Times 22.09.2007.

352 Al-Sheikhly, Tahseen, spokesman for the Iraqi security forces, according to The New York Times, 24.09.2007.

Stating that the Iraqi authorities were "compelled" implies that the Iraqis considered that they were confronting violence in their relations with the United States, not power.

353 With different spheres of security I refer to the security of DoS's personnel, to the US armed forces guaranteed stability and security throughout Iraq, to operational security, to the security of the Iraqi population and of the Iraqi government. There might be also others. See chapter 2.3. about different notions of security.

Nevertheless, not only were the Iraqis worried about the behaviour of PMSCs, but also the representatives of the US armed forces and several US diplomats and politicians expressed their concern. It was seen as unjustifiable to kill innocent Iraqis and incidents like the September 16 shooting were seen as causing unnecessary anger and resentment among Iraqis, which again was feared to be counterproductive to the overall operation in Iraq. Quotes like “[i]t [is] really affecting attitudes toward the United States when you have these cowboy guys out there. These guys represent the U.S. and there are no rules of the game for them³⁵⁴” became common in the discourse.³⁵⁵ The missions of PMSCs which were rarely notified to the US armed forces were said to cause confusion and additional work in the overall military setting. In addition, the kinds of actions which would bring court martial to members of armed forces were not accepted to go unpunished when the actors involved were PMSC employees instead of soldiers.³⁵⁶ There seemed to be a double standard; one for soldiers and one for civilian PSC employees in this matter.³⁵⁷

Every American believes [a Blackwater employee] violated policies. If he lived in America, he would have been arrested, and he would be facing criminal charges. If he was a member of our military, he would be under a court martial. But it appears to me that Blackwater has special rules. [...] Now, within 36 hours of the shooting, he was flown out of Iraq.³⁵⁸

There seemed to be no way of getting PMSC employees accountable even in clear criminal offenses. Harmonisation of the procedures was usually seen as an answer to this problem. There was need to establish a uniform norm according to which every violent incident in any conflict zone would be judged and a clear division between right and wrong could be done.³⁵⁹ With regard to PMSCs a model to be applied in the civilian sphere could be found from the military sphere. Interestingly, requirements for the authoritative relationship between civilian and military are here inverse in comparison with the prevailing concerns in the discussion revolving around the armed forces. When in relation to the armed forces it is emphasised that the military structures have to be under civilian political control, in relation to PMSCs it is claimed that military models should be followed in the civilian sphere.³⁶⁰ PMSCs should be brought closer to the military sphere when the civilian control has proven to be defect and the regulations in the economic sphere insufficient. Moreover, if there was no international norm or the local legislation did not apply, US legislation

354 Schakowsky, Jan, representative, quoted in *The New York Times*, 27.09.2007.

355 This is a surface of emergence for the outsourcing of the tasks of the state armed forces. See pages 64–65.

356 *The New York Times*, 27.09.2007; 03.10.2007a; 06.10.2007; 11.10.2007b; 13.10.2007; 17.10.2007; 23.10.2007; 24.10.2007. In the House Committee hearing Chairman Henry A. Waxman quotes military commanders and defence officials while claiming that PMSCs are mainly hurting the overall operation in Iraq (transcript of the House Committee hearing, 73–75).

357 For example, Maloney, Carolyn B., transcript of the House Committee hearing, 58–59. Also Davis, Danny K., transcript of the House Committee hearing, 72.

358 Maloney, Carolyn B., transcript of the House Committee hearing, 58.

359 About the functions of norms and clear division between right and wrong, see chapter 4.1.

360 See Foucaultian notions about society/war relation on pages 35–36.

should be enforced. This point falls into the sphere of governance: the international is set on a primary position, while the national supplements it. The appeal to laws is also a practice utilised to reinforce the position of the state in the dispositive.

In addition to the civilian-military comparison, another important comparison is made in the quotation above. The Blackwater employee is recognised as being a civilian, but also a civilian who committed a crime outside the US territory and in a territory, which legislation was not applicable to the US citizens. Therefore, the wrongdoer seems to have left unsanctioned, which is unacceptable³⁶¹. In other words, not only do location and status of the individual become important, but also – and afresh – his nationality. It seems to be impossible to justify every kind of behaviour in a conflict zone in the name of the US state security; in addition to the control of emergence of phenomena outside the borders of the United States, it is important to prevent and sanction unwanted behaviour amongst the US nationals. These two dimensions of the control are not mutually exclusive, but complement one another.³⁶²

The usefulness of nationalities lies in the notion that they are relatively easy categories to differentiate between us and them. If the lives of US nationals are to be secured, they are to be secured against them. However, not any kind of behaviour is acceptable from us, but it has to be accommodated to the ideals of what we hold of ourselves³⁶³. Therefore, it is important to recognise, separate and sanction unwanted characteristics from what it is to be us. Contrary movements can also be made, in other words, behaviour can be defended by relating it to us. This explains why the then CEO of Blackwater preferred labelling his employees in the House Committee hearing as “Americans working for America³⁶⁴” and described his employees rather as dedicated professionals as well as “loyal Americans doing necessary job in hostile territory” and risking their lives to protect US nationals overseas than agreed on the trigger-happy mercenary picture given of them³⁶⁵. How American the company was and how American its employees finally were became a larger issue in the House Committee hearing. It was discussed, how well PSCs respected the Iraqi life in comparison to their vested interest in keeping the profiting conflict going on, how this was advancing or undermining the overall operation in Iraq and also, how PMSCs could be distinguished from each other and from the members of state armed forces by the Iraqis to whom,

361 This again is a surface of emergence in the dispositive, see pages 64–65.

362 See Foucaultian notions about controlling the emergence on chapter 4.1.2.

363 See pages 33–34 about the objectification of a subject.

364 Prince, Erik, transcript of the House Committee hearing, 91. Also requirements “to make sure that you are a loyal U.S. company” are expressed in the discourse (Cooper, Jim, transcript of the House Committee hearing, 91).

365 The New York Times, 03.10.2007a.

they all seemed to represent the United States³⁶⁶. Thus, several additional surfaces of emergence and forms of specification were introduced in the hearing.

PSCs are difficult to distinguish from each other or soldiers or other actors in conflict zones. PSC employees carry similar weapons and other equipment as soldiers do, use similar kinds of vehicles and aerial components, dress in similar garments and colours, their body structure is similar and the tactics they use remind those of the armed forces. None of this is surprising, since many of the PSC personnel are retired soldiers or policemen, especially former special operations people³⁶⁷. PSCs and their employees seek acceptance by approximating themselves with either police or the armed forces. Moreover, as former officers or soldiers they often still hold on to the self-understanding which they had while serving either in police force or in the armed forces. Nevertheless, in their current occupation they do not have the status of soldiers and when studying the discourse on outsourcing the tasks of state armed forces it becomes quickly clear that the distinction is something that most of the attendants want to preserve and reinforce. The requirement for recognisability of contractors led to demands for individualised number plates on each PSC vehicle³⁶⁸, which was later rejected. This rejection was justified by the risks these identifiers would cause to the PSC employees and to people in their protection. Therefore, it was accepted that the disappearance of distinctiveness of actors in the current conflicts has its advantages as well³⁶⁹.

After having studied how the September 16 shooting emerged on the pages of The New York Times, I will next examine the struggle over truth about the incident and its consequences as well as about the outsourcing of the tasks of state armed forces in a longer term. The rest of this thesis will scrutinise how the incident remained on the pages of The New York Times as well as how other, additional discussants chose to attend the truth production that establish the outsourcing of the tasks of state armed forces into our general understanding.

366 For example, Cummings, Elijah E., transcript of the House Committee hearing, 61–62.

367 For example, transcript of the House Committee hearing, 23; 56; 95; 120; 123.

368 The Secretary of State's panel report 2007, 6; 9.

369 About the blurring of civilian-military borderline, see chapter 4.2.2.

8. Investigations

8.1. *Investigations as a practice*

Investigation can be seen as an intensified practice of knowledge production. It bears the status of a truth production apparatus which findings can hardly be questioned. What is remarkable in itself is that both, the US and the Iraqi, administrations viewed the incident as something to be investigated. The September 16 shooting was not something that could be taken as a normal course of events in a conflict; there was something exceptional in it (if nothing else, then the high number of casualties³⁷⁰) and it had to be investigated³⁷¹. In addition to political investigations, criminal investigations took place. This is the point in which police and judiciary in total get involved and hence, activate the dispositive of justice not only in discursive level, but also in non-discursive level³⁷². Forensic as a practice was adopted from police and its conduct was later on handed over to the FBI, in other words, to a US police authority. This anticipated the involvement of DoJ through prosecutions and trials, which, again, implied a transfer of the September 16 shooting to the sphere of law and justice. In this way, the incident gradually moved from the international sphere towards the national sphere in the United States.

Investigations in Iraq and in the United States were conducted or, at least, guided by agencies that occupy seemingly powerful positions in the dispositive of outsourcing of the tasks of state armed forces: the US government and administration, the US armed forces and the Iraqi government. Judicial agencies emerged as new actors in the dispositive when the FBI got involved. Instead, Blackwater was blocked from doing its own investigations³⁷³, albeit doing intra-company evaluation of the successfulness of a business operation would expect to be a conventional practice. The blocking further differentiated Blackwater from companies operating in more “conventional” business areas. In this way, the positions that aforementioned actors occupy in the dispositive were reinforced; investigations as truth production apparatuses were reserved solely to the public, state-related entities³⁷⁴. The politico-juridical reports tend to concentrate on fine tuning practices and by doing so they maintain the existing relations of power. Blocking Blackwater was not only an action

370 DoS director of management policy Patrick Kennedy said specifically that although Blackwater had been involved in shooting incidents in Iraq already before the September 16 shooting, DoS acted this time because the death rate in this incident was much higher than it had been in the previous cases, according to The New York Times, 29.09.2007.

371 Cf. Human Rights First 2008, 5 which states that “[t]he significant loss of life at Nisour Square, however, did what all the everyday incidents of shot-up cars and trucks have failed to do over four years: it brought into the public spotlight the illegal use of lethal force by U.S. security contractors. The incident and its repercussions may represent a turning point”.

372 About different levels of dependence, see page 66.

373 The New York Times, 28.09.2007a.

374 See pages 64–65 about authorities of delimitation.

to keep investigations impartial, but also to firmly subjugate the company to state agencies. It demonstrated, how a company and its internal guidelines could not be accepted as the highest authority in relation to incidents such as the September 16 shooting, but that the political would still control the economic³⁷⁵ – as Blackwater in the dispositive is, first of all, a representative of the economic.

The state hence reins the truth production in the dispositive. The international sphere was touched upon in the investigations when a joint US-Iraqi committee was established, but even in that commission the states were the primary actors. There were no other international agencies or bodies to conduct investigations and the access of media to the sources of truth claims was restricted. Associations like Human Rights First could publish their points of views, but these were mainly based on governmental and media reports and therefore well demonstrate the circulation of truth claims in the dispositive. In addition, reports like this tend to be released after a relatively long period of time (Human Rights First report was published in January 2008³⁷⁶), when the emergence of a phenomenon has already taken place. The production of truth in the dispositive was not reserved to the civilian sphere, but also the US armed forces were investigating the incident, which, again, shows the blending of civilian and military spheres in the dispositive. It also tells something about the strength of the position of the armed forces in anything conflict related for in our general understanding it seems natural that DoD is conducting an investigation over the incident. This point became an interagency bone of contention which was settled with an interagency agreement (DoD-DoS MOA). This agreement will be discussed in detail later in this thesis.

Struggle over the truth in relation to the September 16 shooting became quickly visible, when the initial US administration statements relying heavily on the reports given by Blackwater personnel and stating that the diplomatic security convoy had come under an attack contradicted with the findings of Iraqi investigations. I will next examine the different investigatory processes in detail.

8.2. Iraqi investigations

Interviewing eye-witnesses and doing incident scene investigations were the initial phases in Iraqi investigations. On a day following the first published piece of news about the incident, the Iraqi

375 See chapter 7.1. about the importance of intra-company guidelines in the dispositive; see chapter 4.2.2. about the changing equation between political and economic.

376 The New York Times mentioned the publication of the report on January 16, 2008.

government came into public with details from a preliminary investigation report³⁷⁷. The next day, it published a list of seven registered incidents in which it held Blackwater responsible³⁷⁸. All these incidents were taken into consideration, when the government decided how to proceed with the September 16 matter³⁷⁹. The listing of cases was an action of knowledge production as well. In addition to showing the points of concern and to demonstrating in numerical terms that the September 16 shooting was not a single incident of its kind³⁸⁰, this listing was to give proof of defunctness of the US regulatory state and of the international governance. Both spheres had failed in meeting the needs of security in warfare; a task that these spheres had normatively inherited from the institution of international law. International law functions primarily in the inter-state realm, while globalisation and changes in the understanding of international have required and have resulted from establishment of additional mechanisms of control and of production.³⁸¹ When the treaties between states could not keep up with the transformation of the state and of the international, the regulative attempts needed to be reinforced.

The main tune in the statements of high-ranking Iraqi politicians as well as in the interviews of Iraqi people conducted by The New York Times reporters was that of disquiet and anxiety. The primary concern of the Iraqis in relation to PSCs was that these companies “care[d] little for Iraqi lives³⁸²” or were “playing with the lives of the people³⁸³”. In other words, important dimension of security in warfare had been neglected: that of the population living in conflict zone³⁸⁴. These kinds of notions would not be possible without the archive of just warfare – which set rules for warfare – in our general understanding. The archive of just warfare functions as a priori guidance to what is acceptable or unacceptable in warfare and thus, functions also as a surface of emergence in the dispositive³⁸⁵. Even far harsher language was used by the Iraqi government, for example, the preliminary investigation report by the Iraqi Interior Ministry, the National Security Ministry and the Defence Ministry stated that “the murder of citizens in cold blood in the Nisour area by Blackwater is considered a terrorist action against civilians just like any other terrorist operation”³⁸⁶. Here, the delimiting discourse is different from the aforementioned. Instead of relying on just warfare discourse, it draws more directly from the judicial, criminalising discourse and from the

377 The New York Times, 19.09.2007.

378 The New York Times, 20.09.2007. Also 12.11.2007.

379 The New York Times, 23.09.2007.

380 Here, the record does not only serve as a statistical proof, but also establishes an archive. See chapter 6.2.

381 About changes in understanding of the international, see chapter 2.2.; about impact of globalisation, chapter 4.2.1.

382 The New York Times, 19.09.2007.

383 The New York Times, 20.09.2007.

384 About the security problem, see chapters 2.3. and 4.2.2.

385 See chapter 6.2. about archive and surfaces of emergence; see chapter 2.3. about the importance of rules in warfare.

386 Quoted in The New York Times, 23.09.2007. Also The New York Times 20.09.2007; 02.10.2007.

discourse of the War on Terror³⁸⁷ to label Blackwater and its employees as criminals or as terrorists, that is, as outlaws. Applying Western terminologies and rules of the aforementioned individualised discourses is not only done in order to ridicule the Western discourses, but also to seek support and power resources through and from them. Interestingly, then Blackwater CEO Prince in the House Committee hearing also resorted to the War on Terror discourse; this time only in reference to the Iraqi insurgency³⁸⁸.

In the last quotation of the previous paragraph, the notion of civilian is somewhat different from what is the most common in the discourse. Here, civilian does not merely mean non-military³⁸⁹, but refers to a person that is further away from the military operations or hardly has anything to do with them. When PMSCs and their employees are seen as civilian, they are still more closely tied to their opposite in the civilian-military dichotomy than when the Iraqi population is labelled as civilian. At least, if civilian and military are set at opposing ends of an axis, in our general understanding PMSCs will be located closer to the military end of that axis than the Iraqi population. In the latter, the civilian population is seen strictly opposite to the armed forces, which is not the case with PMSCs, and often an attribute of “innocent” is added in front of the civilian. Both of these notions of civilian are widely present in the discourse revolving around the September 16 shooting.

The stance of the Iraqi government to the shooting incident became quickly straightforward. The Prime Minister Nuri al-Maliki's office stated that investigations had led the government to judge the incident as a “deliberate murder” because no evidence of attack on the Blackwater convoy could be found; as “a deliberate crime against civilians [which] should be tried in court and the victims should be compensated”³⁹⁰. From the Iraqi point of view, the shooting was a crime from the beginning and remained so³⁹¹. As it was mentioned in chapter 7.1, the Iraqi government saw it necessary to criminalise the incident in order to be able to proceed with regard to it the way it wanted to. Conclusions of the Iraqi investigation were reported some weeks after the incident: “[t]he shots fired at Iraqis were unjustifiable”³⁹² and hence, regardless of the obscurity of norms set for PSC behaviour Blackwater and its employees were guilty of breaching them. From then on, the government pushed for a prosecution and compensation to the victims or to their families in the case. Nevertheless, it was willing to wait until the US investigation came to a conclusion before

387 See Jackson, Richard 2005. See chapter 6.2. about delimiting discourses.

388 Prince, Erik, transcript of the House Committee hearing, 23; 60–61; 78.

389 Cf. how civilian was defined on page 17.

390 Al-Dabbagh, Ali, spokesman for the Iraqi Prime Minister. Quoted in *The New York Times* 08.10.2007a.

391 *The New York Times*, 18.09.2007; 20.09.2007; 23.09.2007; 13.10.2007; 08.11.2007

392 Al-Waili, Shirwar, the state minister for national security affairs, quoted in *The New York Times*, 23.09.2007. The investigations were reported to be in over in *The New York Times*, 08.10.2007a.

referring the case to US judicial system.³⁹³ This, again, indicates weakness of the Iraqi government in relation to the representatives of the United States in the dispositive. Later there still existed confusion whether a legal action in Iraq was possible, if some third party sued the company on behalf of the victims³⁹⁴. These uncertainties were addressed in the new status of force agreement (SOFA) between Iraq and the United States which came to force on January the 1st 2009³⁹⁵. This agreement not only defined the position and competence as well as the schedule of withdrawal of the US armed forces from Iraq, but also the position and competence of PMSCs in relation to Iraqi legislation and judicial system. Again, this agreement is a document of international regulation, and drafting and signing it was a step for Iraq towards fuller statehood as SOFAs are customarily negotiated only between sovereign states, which Iraq was not previously acknowledged to be.

In conclusion, in the Iraqi accounts the September 16 shooting was framed as a criminal act. It did not fall under the category of customary violence in a conflict zone. Like the case was seen as a matter of security, not of warfare³⁹⁶, it was also seen as a judicial matter, not a matter of acceptable violence in a conflict zone. Even if the legislative framework around the outsourcing of the tasks of state armed forces was unclear and obscure (as it will be shown later in this thesis), the attempt to move the case from the realm of war, defence and violence into the realm of law, justice and order was a strong discursive move. This attempt proved to be highly successful. In *The New York Times* the reporting turned gradually from the descriptions of the incident into discussion about which legislative framework would fit into the case and would make it possible to raise charges in the United States. In other words, the potential criminality of Blackwater's actions was acknowledged – as well as the weakness of law and regulations in this matter.

There are both continuity and change in the discourse: the September 16 remained framed as an issue of accountability, but the vocabulary and regularities of judicial discourse reinforced themselves in the dispositive. This shows the importance of the context of emergence for a phenomenon, even if changes and transformations are more of a rule than an exception in the dispositive³⁹⁷. When the investigations proceeded, the axis on which the incident was located was increasingly the axis between criminal action and righteous, justifiable action – alongside the axis between civilian and military. In the dispositive, the FBI and DoJ got involved in the case and the US government was obliged to review its practices and legislation related to the outsourcing of the tasks of state armed forces. These points will be highlighted later in this thesis. For now, after

393 *The New York Times*, 08.10.2007a.

394 *The New York Times*, 08.11.2007.

395 *The New York Times*, 30.11.2008.

396 About the relationship between security and warfare, see chapter 2.3.

397 Rigidness and flexibility of discursive rules were discussed in chapter 6.2.

examining the Iraqi investigations, it is time to study the discursive and non-discursive practices that took place in the United States when the September 16 shooting was investigated.

8.3. US investigations

8.3.1. The Secretary of State's Panel on Personal Protective Services in Iraq

DoS's response to the recognised problems with the use of PSCs became more coherent when the Secretary of State nominated a deputy secretary of state to oversee the response soon after the September 16 shooting³⁹⁸. In addition to the DSS investigations, the department sent “a team of outside experts” to review the use of PSCs in Iraq. The team was to provide a report including “recommendations on how to protect US mission personnel while furthering US foreign policy objectives”.³⁹⁹ Already this team’s task order framed the security of individuals somehow contrary to state security⁴⁰⁰. By sending a team of outsiders DoS wanted to guarantee impartiality of the investigation – at least, to avoid claims of being partial – and thus, to respond to the strengthening calls for transparency. When the team did its investigation it became clear that the US diplomats were not familiar with PSC procedures, and were keen on getting more information⁴⁰¹. In other words, even within the US administration there were information gaps and lacks in knowledge. This indicates how vaguely the outsourcing of the tasks of state armed forces is objectified into our general understanding.

The team's efforts resulted in “Report of the Secretary of State's Panel on Personal Protective Services in Iraq”, which in the news media was described as highly critical on DoS's practices in overseeing PSCs⁴⁰². This report was followed by two MERO reports that evaluated DoS’s implementation of the given recommendations⁴⁰³. In the discourse, when PSCs were produced as unaccountable and irresponsible, their supervisors were produced as incompetent, neglecting and not up to date with their responsibilities. In other words, Blackwater and DoS were mutually constituted in the discourse, and DoS wanted to contribute to this constitution by reviewing its practices. DoS’s involvement, firstly, moved the department also on the focus of investigations. Not only were PSCs seen important to attain knowledge about, but also DoS. Whilst knowledge about

398 The New York Times, 28.09.2007b; 11.10.2007a.

399 The New York Times, 28.09.2007b; 29.09.2007. Quotation from The Secretary of State's panel report 2007, 3.

400 See Maguire 2006. About different notions of security, see chapters 2.2. and 2.3.

401 The New York Times, 08.10.2007a.

402 The New York Time, 23.10.2007; 25.10.007a.

403 MERO-IQO-09-01; MERO-IQO-09-02.

both actors was produced in order to identify lacks and gaps in procedures, misconduct and neglect, the produced knowledge functioned in different way in relation to different actors. Control over PSCs was increased on the basis of the produced knowledge and therefore, they were to lose some of their freedom of action. Well detailed information made it possible to categorise and compare PSCs and their employees, differentiate mal-functioning actors and target corrective measures accurately. In this way, PSCs were brought tightly to the realm of disciplines.⁴⁰⁴ On the contrary, control was increased by DoS, which strengthened its position in the dispositive of outsourcing of the tasks of state armed forces. Strengthening of DoS's and of other related state agencies' control over PMSCs reinforced their position; not by restoring some of their former tasks, but by strengthening their regulatory grasp⁴⁰⁵. This evolvement is well documented in the MERO reports⁴⁰⁶.

Secondly, DoS's proactive stance to investigations made it possible for the department to influence the production of truth about the department and about its competence. In addition, according to the Western principles of democracy, including the principle of good governance, DoS was expected to make a debriefing of its procedures and practices. When something so clearly had gone wrong, an explanation for why and how this had happened was demanded by several voices. To DoS the team's investigations were a case of self-disciplining and self-adjustments, albeit the pressure for these adjustments came from outside. On the one hand, it could be said that DoS had internalised the rules set for governmental agencies by the principles of democracy and good governance and therefore, disciplined itself by conducting a review over its practices. On the other hand, it could be said that DoS had not internalised the rules since it acted only when outside pressure forced it to act. What is important here is that not only PMSCs became an object of disciplining practices in the dispositive, but also their supervisory agencies in the US administration.⁴⁰⁷

Thirdly, DoS clearly wanted to indentify itself as a civilian actor, who would be capable of overseeing military style operations in conflict zones. Its increased involvement in conflict zones seemed to require this kind of capability. This brings us to the merging of warfare and post-conflict, reconstructive operations in the current conflicts; the self-understanding of DoS, on its own part, farther blurs civilian-military borderline. In Iraq, DoS is said to engage in post-conflict reconstruction outside the military setting⁴⁰⁸, but in an area where the open, violent confrontation is

404 See chapter 4.1.2. about disciplines and knowledge production related to them.

405 See chapter 4.2.1. about state transformation.

406 MERO-IQO-09-01 and MERO-IQO-09-02.

407 About disciplines, see chapter 4.1.2.

408 For example, Satterfield, David M., transcript of the House Committee hearing, 139; 148; Shays, Christopher, transcript of the House Committee hearing, 148.

still going on. The security situation in Iraq is challenging, and the state of Iraq is not able to provide security to its citizens – not to mention the multiple stakeholders in reconstruction, such as US state agencies, multinational companies and aid agencies.⁴⁰⁹ This situation has turned even the civilian security operations closer to those of the armed forces. DoS has been unable – or unwilling – either to train its own personnel to meet the skill demands for such security operations, or to be dependent on the US armed forces to do these tasks. Therefore, the department has turned to PSCs who provide security services tailored to the needs of their customers – if only price is agreed on. In other words, DoS has found the skills it need from the private market for force. However, the supervisory practices and resources of the department have not kept up with the demands in regulation.⁴¹⁰

The panel's principal findings and recommendations that based on interviews and discussion with contractors, US embassy officials, US military officials and Iraqi government were that the DoS security practices were

highly effective in ensuring the safety of mission personnel, but that prompt measures needed to be taken to strengthen the coordination, oversight, and accountability aspects of [DoS] security practices in Iraq in order to reduce the likelihood that future incidents will occur that adversely affect the overall US mission in Iraq⁴¹¹.

The quotation well condenses the primary tension in the dispositive of outsourcing of the tasks of state armed forces in relation to the conflict in Iraq. The effective provision of security to the representatives of the United States should not compromise the security of Iraqi population too far. In other words, not so that security operations backfire and endanger the overall mission conducted in the name of US state security. Another point to notice is the quotation's orientation towards future: it asks for reduction of similar incidents in the future. This is an approach that comes close to bio-politics of population while aiming at controlling future emergence as well as current practices.⁴¹² In the current US concept of state security and defence, the US national security sphere begins far away from its state borders. The aim in national security plans and policies, instead of concentrating on defending the territory of the United States, is to construct a world order compliant with the US interests.⁴¹³ The United States also aims at doing this by controlling risks and threats before their emergence. Therefore, the operation in Iraq is important. It is conducted in order to

409 About the security situation in Iraq, see chapter 4.2.2.

410 See DoS hearing in the transcript of the House Committee hearing, 122–161.

411 The Secretary of State's panel report 2007, 3–5. The New York Times, 08.10.2007a. Similar stance was repeated in MERO-IQO-09-02, 13.

412 About orientation towards future in bio-power, see chapter 4.1.2.

413 For example, The National Security Strategies of the United States 2002, 2006 and 2010. See also Cox's notions about the American Empire presented on pages 13 and 71.

prevent the emergence of powerful anti-American power block in the Middle-East that would also be willing to use means and tactics in international power struggles that the United States does not approve – not to forget the economic opportunities in the area.

The quotation also serves as a good example of how PSCs are produced as efficient security providers in the discourse. In Iraq, Blackwater has protected DoS personnel and visiting dignitaries since 2004 and not a single person in the company's protection has been killed. This point was made very clear in the House Committee hearing, when representative Christopher Shays went through the statistics year by year with Erik Prince, and compared them with the numbers of killed Blackwater employees who were doing this protection. The conclusion was that several Blackwater employees had been killed while none of the principals had even been badly injured.⁴¹⁴ Therefore, in the discourse it cannot be claimed that Blackwater, or PSCs all in all, are doing their work inefficiently or that their negligence has compromised the security of their principals. On the contrary, the main criticism rises from the basis that while doing their work, companies seem to compromise everything else except the individual security of their principals and that the poorly coordinated and deficient supervision environment enables this⁴¹⁵. This has led to claims that the companies are above the law, in other words, the general constitution of right and wrong does not seem to apply to them. This again shows how PMSCs are not entrenched into our general understanding. The emergence of law around some phenomenon usually takes times; in the meanwhile regulations should meet the needs of control, supervision and accountability.

The Secretary of State's panel's report and its follow-ups – that were compiled by using similar methodology and investigatory procedures as the initial report⁴¹⁶ – produce the problem of PSCs in Iraq mainly in terms of discipline and productive power⁴¹⁷. In the reports, the prevailing supervisory environment in Iraq was described as “[...] chaotic, unsupervised, deficient in oversight and accountability, and poorly coordinated⁴¹⁸”, which was seen as a result of hasty outsourcing decisions, as well as the lack of time, standards, continuity and resources in building appropriate monitoring structures⁴¹⁹. In other words, disorder was also here pushed into chaos and explained by the lack of ordering norms as well as of force to enforce them. This chaos was something to be

414 See transcript of the House Committee hearing, 68.

415 Indeed, in the House Committee hearing Chairman Henry A. Waxman labelled DoS as “Blackwater's enabler” (transcript of the House Committee hearing, 138).

416 MERO-IQO-09-01, 3; MERO-IQO-09-02, 3.

417 About disciplines and productive power, see chapter 4.1.2.

418 The Secretary of State's panel report 2007, 4. Also MERO-IQO-09-02, 13.

419 The need to establish security provision in Iraq quickly was recognised by Ambassadors David M. Satterfield and Richard J. Griffin, transcript of the House Committee hearing, 138–139. About the problems of understaffing, high personnel turnover, fast operational tempo and increasing tasks, see MERO-IQO-09-02.

shifted. Moreover, the requirement of continuity is strongly present in the report. Continuity creates a chance for expectations, which again guide our behaviour. When we can anticipate behaviour of others based on the expectation of continuity, efficiency follows because we do not have to guess every time what is going to happen. Therefore, continuity and norms are closely related to one another and insisted in the discourse around outsourcing of the tasks of state armed forces.

On the other hand, without denying the shortcomings in oversight, the report noted that use of PSCs made it possible for DSS to respond quickly to changing security needs without the delay caused by recruitment and training of its own agents⁴²⁰. In other words, use of PSCs was a power resource for DSS. With the help of companies it was able to operate quicker and thus, contribute to the US security efforts as well as to strengthen its own power position. Here, it is good to mention that DoS's outsourcing policy is an ad hoc kind of policy. Outsourcing needs, requirements and qualifications are negotiated separately for every security mission. This is a common practice in agreements between PSCs and their clients as it was established in chapter 2.2. The mission in Iraq was said to be different from any other mission DSS had carried out and therefore, there was not enough experience to establish an intra-agency norm – not to mention a norm which would have been accepted in the wider society. A tension thus emerges in the discourse between the requirement of continuity and the utility of flexible policies that enable quick response.

As resulting from the aforementioned tension, it was evaluated that some of the multiple shortcomings had undermined the confidence of US armed forces as well as of the Iraqi people and government on DoS's security program. Therefore, improving coordination, oversight and accountability was necessary, if the agency wanted to restore trust on its security program. Trust was to be followed from the extension of disciplines and sovereign power of the United States over PSCs; in other words, from continuity. There was a need to overcome inter-agency disputes which were seen as signs of indecisiveness and weakness within the administration. Coordination, oversight and accountability were to be enhanced, for example, by contractors and the armed forces getting known with each others procedures and operations better, freer information circulation between different actors and structures, adequately staffed agencies, clearer and stricter regulations as well as proper liaison arrangements. The aforementioned practices were to intensify the circulation of truth claims from PSCs to the armed forces and vice versa; from the civilian sphere to the military sphere and vice versa. All in all, more cooperation was required between DoS, DoD,

420 MERO-IQO-09-01, 9. This point was also discussed in the House Committee hearing, when representative Issa, Darrel E. stated that DSS would not need the kind of capacity much anywhere else than in Iraq or Afghanistan and therefore, it did not make much sense to have it in-house (transcript of the House Committee hearing, 86–87). Also Ambassador Richard J. Griffin's written statement made this point clearly (transcript of the House Committee hearing, 129–130).

contractors and the Iraqi government and security forces so that the conduct of PMSCs would be adequately in control.⁴²¹ Not only in these reports, but also more widely in the discourse increased cooperation was seen as the cure for the disease of incoherence. Here, the discourse parallels to the discourse around transformation of the armed forces in which jointness of the forces is seen to guarantee operational effectiveness and success.⁴²² This tends to mean that PSCs as civilian actors are drawn closer to the military sphere through enhanced reporting, intensified circulation of truth claims, and learning processes. It also means strengthening the centralisation of power to the state as well as strengthening of governance.

The report stated that especially, more unified procedures should be established between DoS and DoD, so that all contractors would be subject to the same regulations and guide lines.⁴²³ Whilst different departmental guide lines and regulations maintained the civilian-military borderline, this approach seemed to require merging of civilian and military spheres somehow in the dispositive. Parallels to the claimed disappearance of civilian-military distinction from the battlefield can be made⁴²⁴. How far would this unification process go? What would it mean for society? Maybe it can be said, following Foucault's notions, that merging of civilian and military spheres only makes politics as continuation of war explicit and more visible⁴²⁵. DoS and DoD are objectified as the main regulatory instances within the US administration to deal with the outsourcing of the tasks of state armed forces⁴²⁶. The main responsibility for improvements was set to DoS's and DoD's local representatives: DSS and the US embassy in Baghdad as well as the Multi-National Force in Iraq. Because PSCs' security provision was evaluated as critical to the achievement of the overall US mission in Iraq, and neither DSS nor the US armed forces were seen willing or properly resourced to replace PSCs, regulation and coordination on the local level had to be improved. The surveillance of contractors should be organised better, and the demand for PSC services should be estimated more accurately and resources allocated more efficiently.⁴²⁷ In other words, more economic rationality was seen to be the answer⁴²⁸. Since incidents like the September 16 happened, it could not be said that DoS and DoD had got the supervisory measures right, but supervisory measures

421 The Secretary of State's panel report 2007, 5–11. Also *The New York Times*, 23.10.2007; 30.10.2007. MERO-IQO-09-01, 1; 5–6; 20; MERO-IQO-09-02; *Human Rights First* 2008, iii. See Booth&Wheeler (2007) about the role of trust in the security dilemma.

422 About jointness in the operations of the armed forces, see chapter 4.2.2.

423 The Secretary of State's panel report 2007, 5–11. Also *The New York Times*, 23.10.2007; 30.10.2007.

424 See chapters 2.3. and 4.3.2.

425 See pages 35–36 about the society/war relation.

426 MERO-IQO-09-01, 17–18. Also, for example, DoD-DoS MOA 2007 states this clearly by saying that the Secretary of Defense and the Combatant Commander are responsible for the security of all DoD elements and personnel in Iraq; the Secretary of State is responsible for the provision of security to USG personnel other than those under the military command (article III.).

427 The Secretary of State's panel report 2007, 5–1; MERO-IQO-09-02, 3. Also *The New York Times*, 23.10.2007.

428 See chapter 4.1.2. about the role of economic rationality.

were believed to be the primary area of corrections that could lead to decrease in misconduct.

The follow-up reports, as well as The New York Times news articles, testified about the progress that had been made. Surveillance practices were improved according to the given recommendations by, for example, instalment of video and audio recording systems as well as tracking systems into PSC vehicles, recording all radio traffic, establishment of contractor conduct database, special investigatory units and a Joint Incident Review Board.⁴²⁹ The aforementioned, disciplinary practices created an archive of PSC conduct in Iraq on the basis on which truths about individual employees and companies as well as truths about the whole industry can be produced. They also were to make it possible to target sanctions accordingly. Nonetheless, they also served another function, which comes closer to bio-politics of population. Whilst PSCs and their employees were informed about these measures, the sole existence of the measures was expected to guide the actions and behaviour of the companies and their employees. The measures brought the companies in the realm of guided self-disciplining more tightly than they had been before.⁴³⁰ In addition to written comparisons, the progress in the matter was testified with the help of statistics and charts⁴³¹, which showed, for example, a significant decrease in “the use of lethal force incidents” after the September 16 shooting⁴³².

The New York Times reported how DoS began to bring Blackwater's employees under a stricter control by sending DSS personnel to operate as monitors in all of the company's convoys.⁴³³ The initial measures were mentioned to apply only to Blackwater, because it was “the only company operating in and around Baghdad, where the pace of operations and the number of violent attacks [were] greater than elsewhere”, but were said not to mean that DoS would have lost its trust in the company⁴³⁴. These practices further individualised the company among its kinds. Critics of the measures said that they only showed “how much [DoS] want[ed] to keep Blackwater on the payroll” by sending dozens of agents to baby-sit the company⁴³⁵. Highly critical accounts on DoS also led to changes in personnel, when DSS's director resigned⁴³⁶; just to be followed by DoS inspector general⁴³⁷. All measures suggested to and taken by DoS demonstrate a point in the

429 The Secretary of State's panel report 2007, 5–1; MERO-IQO-09-01, 11–28. Also The New York Times, 23.10.2007; 24.10.2007; 31.10.2007b.

430 About bio-politics of population, see chapter 4.1.2.

431 Statistics and charts dress the presentation of truth claims in cloak of science, thereby explicitly associating them with truth and reinforcing their testimonial power.

432 See MERO-IQO-09-01, 12.

433 The New York Times, 06.10.2007; 17.10.2007; 23.10.2007; 31.10.2007b.

434 McCormack, Sean, DoS spokesman, according to The New York Times, 06.10.2007.

435 Schakowsky, Jan, House representative, quoted in The New York Times, 06.10.2007.

436 The New York Times, 25.10.2007a; 30.10.2007.

437 The New York Times, 08.12.2007.

dispositive in which warfare, security and surveillance merge. This has been claimed to be characteristic to the current warfare as it was stated in chapter 4.3.2. Warfare has become more an issue of control than of winning an armed confrontation, and in this process the dispositive of security and techniques of surveillance have become increasingly important. Similar seems to be the development in relation to the outsourcing of the tasks of state armed forces.

However, as noted earlier, regulatory practices and disciplinary procedures were not seen strong enough to control the behaviour of PMSCs. There were no sheared norms in the dispositive. What could be seen as normal or acceptable conduct in a conflict zone seemed to depend on companies' internal policies and on individual employees' – to whom the biggest consequence from a misjudgement seemed to be loss of working place, repatriation and some financial penalties – estimations. In the reports it was recommended that a firm legal framework would be established in order to bring the contractors under US legislation⁴³⁸. In other words, the state's sovereign powers are needed as well to get PMSCs properly accountable and trustworthy, as well as to dictate between right and wrong⁴³⁹. In the first MERO report, the lack of applicable legislation was directly framed as a legal/sovereignty issue, which was highly important and could only be decided in cooperation between DoS, DoJ, OMB and Congress⁴⁴⁰. National legislation was the preferred legality framework for two primary reasons: there was no law in the international sphere and the United States in many aspects prefers national legislation anyway. As one of the first steps to this direction, the Order No. 17 was to be replaced by a regulatory framework mutually agreed with the Iraqi government.⁴⁴¹ This practice further subjugated Iraq to the United States: Iraq as a sovereign state could not decide on this matter on its own.

The reports also discussed the issue of governing the Iraqis. In order to control and mitigate their anger, the embassy was, in addition to better inclusion of the Iraqi government and security structures, to seek contact with the victims and their families more actively in order to get the compensation policies functioning. It was emphasised that compensations to be paid to the families of victims or to people who had suffered property losses due to the actions of PSCs were part of the Iraqi custom and legal procedures. Here, DoS could follow the model of DoD in conciliating and showing respect to the Iraqis. In addition, better language skills and knowledge of the local culture were required from the contractors. The latter point was seen as extremely important in winning the

438 The Secretary of State's panel report 2007, 4–5.

439 About the functions of law, see page 37.

440 MERO-IQO-09-01, 15.

441 The Secretary of State's panel report 2007, 8.

support of the local population.⁴⁴² All these practices are an attempt to govern Iraqis; not through violence, but through productive bio-political governing of the population, which is presented in chapter 4.1.2. Again, the follow-up reports testified about improvements, but also, as in other issues, gave further recommendations. Controlling both, the outsourcing and the Iraqi reaction to it were objectified as on-going, ever modifiable processes which had to transform on the basis of ever changing security environment and demands in Iraq.

In conclusion, these reports recognised the need for improved internal organisation of DoS, the need for improved cooperation between PMSCs and other institutions as well as the need for recognising the needs of local population, but mainly as a way of legitimising the use of PMSCs. In other words, order and continuity in practices were sought after. The monopoly of the use of violence was not to be reverted to the state, but the state was to improve its regulatory and supervisory practices in order to control the behaviour of PMSCs. PMSCs could do the rowing, but the state had to improve its steering in order to navigate in between of shoals⁴⁴³. This is seen as a way of reinforcing the accountability and responsibility of PMSCs, which again is to mitigate the anger that sole existence of financially motivated security providers in conflict zones tends to raise. When war is fought not so much in order to gain victory in the field than to gain the support of the local population, to “win a fight for hearts and minds⁴⁴⁴” or to gain control over the population, security and warfare intertwine in a different way. What becomes important is not only security through warfare, but also security in warfare. As much as security in warfare has become a prevailing guideline in risk transfer warfare that demands increased force protection and protection of one's own administrators, it also demands increased protection of the local population and their representatives⁴⁴⁵. Security in warfare and security through warfare are inseparable and finding the right balance between them is not easy as this discourse well establishes. In attempts to establish the balance similar rules are required for the actors, were they public or private; civilian or military. Similar rules, not the same – these dichotomies are not expected to disappear, but to merge in some way.⁴⁴⁶

442 The Secretary of State's panel report 2007, 5–11; MERO-IQO-09-01, 19–20; 27–28; also The New York Times, 23.10.2007.

443 The metaphor was introduced in chapter 4.2.1.

444 Obama, Barack, Senator, quoted in The New York Times, 04.10.2007; Morrell, Geof, DoD spokesman, quoted in The New York Times, 31.10.2007b.

445 The New York Times reports on 08.10.2007a about a joint commission of American and Iraqi officials that has the goal of “agreeing on recommendations to ensure the safety of Iraqi civilians when they encounter personal security guards escorting American diplomats [...]”. See chapter 4.2.2. about transformation of warfare.

446 Discussion about the merging of dichotomies was begun in chapters 2.2. and 2.3.

The MERO reports also raised the question of whether some of the services that PSCs provide for DoS should be regarded as inherently governmental (in this case, the inspection of contractors was outsourced to contractors) and asked for an investigation on the matter⁴⁴⁷. Most commonly, PMSCs are seen as necessary, irreplaceable and filling a gap in the transformed conflict environment. They have the skills and equipment to do some crucial tasks that are evaluated neither as core tasks of the state armed forces nor as inherently governmental by some other criteria. As operations in warfare have come more special operations like, so have the multiple security operations in conflict zones. This has led to the assumption that security operations in current conflict zones require military skills. Associating PSCs and their security operations with special operations of armed forces not only tells something about the contemporary warfare, but also individualises the companies – not only from other security providers, but from the regular armed forces as well⁴⁴⁸. PSCs and their employees are objectified as most professional in carrying out the tasks they do; in the discourse this is only disputed through the claim that they do not take the bigger picture into consideration⁴⁴⁹. Since there is parallel evolvement in military and security operations, the question to be asked is what does this indicate? Is this a sign of the asserted militarisation of security? Have the increased demands for security in warfare assisted these evolvments? How do these changes relate to the demanded increase in DoS-DoD cooperation in the dispositive of outsourcing of the tasks of state armed forces? While these questions will be left to remain rhetorical questions in this thesis, they are important to ask and hopefully, by someone to answer.

Another cluster of questions is to be asked in relation to the emergence of aforementioned skills gap that PMSCs claim to fulfil. Where did this gap appear from? Its emergence has usually been explained by the transformation processes in the state armed forces after the end of Cold War or by the need of DoS and other US state agencies as well as many international actors to get involved in conflicts at an earlier stage, which has caused the divisions between warfare and reconstruction to disappear⁴⁵⁰. In this, the discourse from the early 1990's onwards, which has emphasised the international obligation to protect and to intervene alongside the state sovereignty, has played an important part. However, the gap has not only been created on the demand side, but also on the supply side of the dispositive of outsourcing of the tasks of state armed forces. Demand and supply

447 MERO-IQO-09-01, 21; MERO-IQO-09-02, 6.

448 For example, Prince, Erik, transcript of the House Committee hearing, 76; 82; 94; 98; Issa, Darrel E., transcript of the House Committee hearing, 21; McHenry, Patrick T., transcript of the House Committee hearing, 94; Burton, Dan, transcript of the House Committee hearing, 144.

449 This problem is familiar from the military science: tactical operations may contradict with strategic goals. Intensified information sharing and cooperation between military units and command levels is usually presented as a solution to the problem. In other words, the suggested response to similar problem in the dispositive of outsourcing of the tasks of state armed forces also draws from the military sphere. See Foucaultian notions about the relationship between security and war in chapter 4.1.1.

450 See chapters 2. and 4.2.2.

in the dispositive have grown hand in hand.⁴⁵¹ Only conflicts in Afghanistan and in Iraq exploded the demand, but would that have happened without the increase in specified services that PMSCs dare to provide? I doubt that. As it has been stated earlier in this thesis, security seems to function as a marketing term for the services that PSCs provide. One of the basic guidelines for a successful marketing is first to create a need to which the offered product or service then provides a solution to. By marketing their services as solutions to US state agencies' and other actors' security needs in conflict zones PSCs have been able to increase their market and profits, as well as to expand the whole industry. For example, PMSCs have been provided as solutions to peacekeeping, coups as well as to security problems in refugee camps. This is not to say that the success PMSCs has resulted from a successful marketing trick. In addition, PMSCs claim to specialise in security and warfare tasks that are not evaluated as being inherently governmental, that is, they do not claim to challenge the position of the state armed forces, but to supplement it. Next, it is time to discuss the concept of "inherently governmental", which seems to serve as a surface of emergence in the dispositive as well⁴⁵².

What is "inherently governmental" is not a fixed concept, but the OMB Circular A-76 defines it as

[...] an activity that is so intimately related to the public interest as to mandate performance by government personnel [...] [and which] requires the exercise of substantial discretion in applying government authority and/or in making decisions for the government [...].⁴⁵³

[It involves] [b]inding the US to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise: [d]etermining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise: [s]ignificantly affecting the life, liberty, or property of private persons; or [e]xercising ultimate control over the acquisition, use, or disposition of US property [...].⁴⁵⁴

According to the circular, "an activity may be provided by contract support where the contractor does not have the authority to decide on the course of action, but is tasked to develop options or implement a course of action, with agency oversight⁴⁵⁵". Moreover, as "[t]he long standing policy of the federal government has been to rely on the private sector for needed commercial services⁴⁵⁶", every tasks which has been defined as commercial can be performed by a government agency only if in a competition process it has proven to be the most cost effective or otherwise the best possible option⁴⁵⁷. These notions seem to prove that economic has occupied some space that political used to

451 For example, Avant 2005, 26–30.

452 About surfaces of emergence, see pages 64–65.

453 OMB Circular A-76, Annex A, B.1.a.

454 OMB Circular A-76, Annex A, B.1.a (1)-(4).

455 OMB Circular A-76, Annex A, B.1.c.

456 OMB Circular A-76, 4.

457 See OMB Circular A-76, 4.d.

rule. Nonetheless, in the dispositive of outsourcing of the tasks of state armed forces the stance is not this straightforward as the struggle over whether some of the outsourced tasks actually should or should not be outsourced indicates.

There are meaningful notions that the criteria of OMB A-76 establishes for an inherently governmental function. Firstly, the task has to be related to the public interest. In the dispositive of outsourcing of the tasks of state armed forces security is both a public good related to public interest and a private commodity⁴⁵⁸. Secondly, the consequences of the task have to bind the United States to some actions. As this thesis shows, the actions of Blackwater in Iraq on September 16, 2007 bound the United States to several actions in Iraq and in the United States; in intra-agency sphere as well as between the state agencies; between civilian and military. However, the security services that PSCs provide for DoS have not been defined as inherently governmental. The September 16 shooting reactualised the question of whether they should be. It was asked whether the actions of PSCs tie the US government to some course of action to an extent that the services they provide should not be outsourced. This question was discussed in the House Committee hearing, and has led US administration linked research institutions to do their studies on it⁴⁵⁹. Nonetheless, and like it has been noted above, the common stance in the United States starts to be that the services provided by PSCs are not to be seen as inherently governmental. This re-establishes the civilian-military line by differentiating the tasks PSCs do from the core tasks of US armed forces (defined unquestionably as inherently governmental) do and reserves war-fighting as a function monopolised by the state armed forces.

8.3.2. DoD investigations

As said, the main response of different instances was to investigate. DoS began its investigations immediately as did the US armed forces⁴⁶⁰. US soldiers were asking questions from the eye-witnesses on the day of the shooting and on the days following it⁴⁶¹. They were also able to continue investigations even, when DoS personnel was blocked into the International Zone due to the temporal suspension of security convoys⁴⁶². This guaranteed a speed advantage to the armed forces in knowledge production. US military investigations finally came to a similar conclusion that the Iraqi investigation had come earlier: “the Blackwater convoy did not take fire and the shootings

458 See chapters 2.2. and 2.3.

459 For example, Luckey et al. (2009).

460 The New York Times, 20.09.2007; 11.10.2007a.

461 The New York Times, 20.09.2007.

462 The New York Times, 23.09.2007.

were unprovoked”, “there was no imminent threat” and “things were taken to a level very quickly when it was not necessary”⁴⁶³. That US armed forces condemned the actions of Blackwater was a grave blast against the company and DoS because the armed forces is recognised as the most professional and experienced actor in a conflict zone. In addition, now the criticism towards Blackwater and DoS was spoken with American voices and from within the US state structure. DoD was also internally active by sending a memorandum to its personnel worldwide to make sure that DoD contractors were operating under the Rules of Engagement that were consistent with those of the armed forces.⁴⁶⁴ In other words, DoD had to secure its backyard and thus, legitimate its own use of PMSCs.

What is remarkable is that DoD and the US armed forces were also conducting an investigation in an incident that they were not involved in. It does seem natural because the September 16 shooting took place in a conflict zone, but neither armed forces’ personnel nor DoD personnel or DoD contractors were involved and US armed forces have not the highest policing authority in Iraq. However, the incident was estimated to influence the overall US led mission in Iraq and therefore, DoD had an invested interest in it. As much as there has been eagerness to draw a line between civilians and military, in relation to the September 16 shooting the armed forces wanted to retain the overall control over the operational area and were investigating an incident conceptualised as civilian. They also were less restrained in their investigation since they had their own units to provide security for investigators. Their investigatory results backed up the US related truth production, even if the findings were contrary to initial DoS statements and even if they were not in themselves strong enough to declare the authoritative truth. They were still the first published US investigatory results and contributed to the overall US truth production. This shows how truth production can include statements that are contradictory or in tension. Afterwards, when the agreement between DoD and DoS about the use of private security contractors in Iraq was signed, clearer guidelines were given which instance was to investigate which incident⁴⁶⁵. This division reinforced the civilian-military division, even if the agencies were to cooperate in investigations. The division aimed at decreasing duplication, but also served as a forum for interagency power struggles on the civilian-military borderline.

In the weeks following the September 16 shooting, the US Secretary of Defense sent a team to examine the overall use of security contractors in Iraq⁴⁶⁶. This practice was similar to DoS’s

463 The New York Times, 11.10.2007a; 13.10.2007.

464 The New York Times, 27.09.2007; 28.09.2007b. Also Human Rights First 2008, 18.

465 DoD-DoS MOA 2007, Annex A., article VII.

466 The New York Times, 27.09.2007.

response. The team was to discuss with top US commanders in Iraq about the rules governing contractors and to make recommendations how to improve the situation. After the team's report was submitted, DoD began to take the actions recommended. Especially, it sought to execute existing military legislation to punish the DoD contractors in cases which required it and to make sure that the contractors were not just fired and sent back the United States without any further punitive actions⁴⁶⁷. Executing military legislation with regard to DoD contractors reinforced the civilian-military borderline by differentiating DoD contractors from contractors working for other, civilian agencies. DoD was also in a fortunate position when it had a clearer legislation on which it was able to base its actions. As it was discussed in several occasions in The New York Times, government report and Human Rights First report, military legislation was not perfect – far from it – but it was more up to date with regard to PMSCs than civilian legislation.

The Defense Secretary also pushed for a decision that would bring all the contractors operating in Iraq under one authority, most probably that of the armed forces. According to DoD, this would mean enhanced coordination between the contractors and the US armed forces as well as greater visibility on the work and on the movements of PMSCs. DoS was said to oppose this plan and to prefer holding on to the authority over the its contractors. Inter-agency power struggles are, again, clear and observable. DoD wanted to gain a stronger position in the dispositive while DoS resisted this takeover. Secretary level discussions were to be organised on the matter before possibly addressing the president about the matter.⁴⁶⁸ After these discussions, the state armed forces were to control all DoS security convoys in Iraq, not only Blackwater. This included control over training, movements, the rules for the use of force and employment standards.⁴⁶⁹ By this, DoD strengthened its position in the dispositive. Even if there has been the will and practices to separate DoS contractors from DoD contractors, these arrangements tied DoS contractors closer to the military sphere and further blurred the civilian-military borderline. This also reinforced the adoption of military procedures and models into the civilian sphere.

Later on, officials from both agencies travelled to Iraq for implementing the stricter supervisory framework and for coordinating their agencies' actions⁴⁷⁰. A result from this meeting was an agreement between the agencies which purpose was “to clearly define the authority and responsibility for the accountability and operations of [United States Government (USG)] Private

467 Gates, Robert M., Defense Secretary, according to The New York Times, 06.10.2007.

468 The New York Times, 17.10.2007. Similar remarks came from DoS later on (The New York Times, 23.10.2007).

Also The New York Times, 26.10.2007; 31.10.2007b.

469 The New York Times, 31.10.2007b.

470 The New York Times, 12.11.2007.

Security Contractors [...] in Iraq⁴⁷¹”. It clearly stated the authorities who were responsible for the security of which US government element in Iraq and set the conditions for cooperation between these authorities⁴⁷². It declared DoS's and DoD's commitment to “reduce the number and strategic impact of serious incidents involving PSCs” by investigations, transparency of information, intelligence sharing, coordination of security convoys and joint engagement with the Iraqi government⁴⁷³. This agreement reinforced the position of both DoS and DoD as authorities of delimitation and showed the importance of authority structures in the dispositive⁴⁷⁴. The agreement required all US government PSCs to abide the same rules for the use of force. These rules stated, for example, that the use of force was permitted only for the defence of self or others or in designated cases for the defence of the US national security assets, and that the use of force continuum should go from warning to the use of non-lethal force to the use of lethal force, and to be based on the totality of circumstances⁴⁷⁵. The agreement set the standards for personnel background checking, security clearance, training and other qualifications as well as for weapons and ammunition types. It required all security convoys to coordinate their movements with either the US embassy's or the Multinational Forces' operational centre, and the operational centre to coordinate the immediate response to serious incidents as well as the further investigations⁴⁷⁶. Practices the agreement applied for knowledge production and governing were similar to those suggested in Secretary of State's panel's report as well as in the two MERO reports: individualising knowledge production and surveillance.

Altogether the agreement codified the supervisory arrangements that had been agreed upon after the September 16 shooting and condemned any misconduct⁴⁷⁷. Especially discourse is similar to the aforementioned DoS reports; the production of truth parallels to the DoS reports and also the following effects on power relations. The agreement both blurs and strengthens the civilian-military borderline. The former it does by merging practices on civilian and military spheres, the latter by individualising and differentiating DoS and DoD as well as DoS contractors and DoD contractors in the dispositive. There seems to be some regularity in the dispositive in this point: not only are unity and coherence produced, but simultaneously the production of difference and dissonance takes place. PMSCs are produced as a category, while difference within that category is also established. In addition, the outsourcing is produced as taking place similarly at inter-agency level, but also as

471 DoD-DoS MOA 2007, article I.

472 DoD-DoS MOA 2007, articles III and V; Annex A, articles I; III; VI; VII; VIII and IX.

473 DoD-DoS MOA 2007, Annex A, article III.

474 About authorities of delimitation, see pages 64–65.

475 DoD-DoS MOA 2007, Annex A, article IV. Also *The New York Times*, 05.12.2007.

476 DoD-DoS MOA 2007, Annex A, articles V; VI and VII. Also *The New York Times*, 05.12.2007.

477 DoD-DoS MOA 2007, article VII; Annex A, articles VIII and XI. Also *The New York Times*, 05.12.2007.

being something different in designated agencies.⁴⁷⁸ Both unity and difference seem to be important in the dispositive, which is reflected in the incoherent non-discursive practices. The high commander of the US armed forces in Iraq was to report in three months how the DoD-DoS agreement was implemented.⁴⁷⁹ “It will help ensure that all personal security contractors there are operating in a manner that is consistent with our mission to secure Iraq by winning the trust and confidence of its people⁴⁸⁰”. In other words, the agreement was expected to decrease the above described tensions in the dispositive as well as to settled disputes in the international.

The agreement was criticised by PSC managers for not giving clear guidelines how to fulfil the new requirements.⁴⁸¹ PSCs thus accepted the new regulations, but were unsure how to comply with them and pushed part of the responsibility for future misinterpretations on the shoulders of state agencies in advance. A Blackwater employee's interpretation of the new practices was that “[DoD and DoS] want us to assume more risks”, which was also confirmed by a DoS official⁴⁸². As said, risks and risk transfer are at the heart of discussion about outsourcing and, in addition to security in warfare – thinking, establish the cognitional framework in which the outsourcing of the tasks of state armed forces has become possible⁴⁸³. Risks of death and injury can be transferred from soldiers to PMSC’s employees. This has had an influence at least to the statistics of killed or injured soldiers, which again affect the legitimacy and acceptability of conflict operations⁴⁸⁴. Financial risks, which include, for example, the loss of equipment or labour, can also be transferred from the state to private entities⁴⁸⁵. However, it needs to be mentioned that, for example, around 90 per cent of Blackwater’s income in 2007 came from the US government contracts⁴⁸⁶. The difference is that the amount of money that went to contractors was not shown in the expenses of the US armed forces or in war budgets. Risk of angering the Iraqis can also be transferred to the private sector, but this has become a problem point as the September 16 shooting shows: PMSCs are not always distinguishable or are not differentiated in the people’s minds and for the majority of the still represent only the occupying force. Therefore, the consequences of PMSCs’ actions do not only affect PMSCs, but the overall operation in Iraq as well as the international. Freedom and flexibility gained by the use of contractors have their counter-effect – of which most of the speakers in the

478 About forms of specification, see pages 64–65.

479 The New York Times, 05.12.2007.

480 Morrell, Geof, DoD press secretary, quoted in The New York Times, 05.12.2007.

481 The New York Times, 05.12.2007.

482 The New York Times, 05.12.2007.

483 See chapters 2.2., 4.1.2. and 4.2.2. about risks.

484 For example, Tierney, John F., transcript of the House Committee hearing, 17; Shays, Christopher, transcript of the House Committee hearing, 68.

485 Prince, Erik, transcript of the House Committee hearing, 81.

486 Prince, Erik, transcript of the House Committee hearing, 80.

dispositive are afraid of⁴⁸⁷.

8.3.3. DSS / FBI investigation

In order to coordinate the multiple investigations a joint commission between the US and Iraqi governments was established. It was to give policy recommendations how to improve the US and Iraqi procedures with regard to the use of PSCs⁴⁸⁸, but in several occasions the Iraqi counterparts complained that the US side was not sharing information related to the DSS investigation, not letting the Iraqi investigators to interview Blackwater personnel or not up-dating them about what was going on with the investigation⁴⁸⁹. This seems to be in line with the secrecy that was laid over what was said to the public about the investigation. It also sets the Iraqis to a subordinate position in comparison with the authorised US speakers of truth. Nevertheless, DoS officials claimed that cooperation was taking place, DoS personnel and Blackwater guards just were not authorised to talk directly to Iraqi investigators⁴⁹⁰. Thus, the access to some of the sources of truth claims was denied from Iraqi investigators. Similar complaints about withholding information came from the US armed forces⁴⁹¹. These complaints were also related to DSS investigation, the aim of which was said to be “to determine what exactly happened” on September 16 and whether these findings would lead to judicial processes and thus, to the involvement of DoJ⁴⁹². With the exclusion of DoD DoS showed that it wanted to keep the incident stronger within the civilian sphere.

DoJ got involved when, at the beginning of October 2007, the FBI sent its investigatory team in Iraq to compile evidence for possible criminal prosecution⁴⁹³. As said, this was the point in which law and rights entered the dispositive more strongly and the civilian-military dichotomy got an additional dimension as DoJ is a civilian entity. The FBI’s investigatory team soon took over the DSS inquiry⁴⁹⁴. Prior to the September 16 shooting, no US contractor had been charged on crimes made in Iraq, but DoJ was already getting involved in another Blackwater shooting case⁴⁹⁵. With the involvement of DoJ another meaning for evidence emerged in the dispositive. Evidence as something that strongly suggests for approving certain claims of truth was accompanied by criminal

487 About the function of fear in security dispositive, see page 36.

488 The New York Times, 19.09.2007; 20.09.2007; 22.09.2007; 28.09.2007b; 29.09.2007. Quite interestingly, it is never reported in detail what the then valid procedures with regard to PMSCs were, only that there needs to be changes. 08.10.2007a it was reported that the first meeting of this commission had been held.

489 The New York Times, 23.09.2007; 28.09.2007a; 08.10.2007a; 11.10.2007a.

490 The New York Times, 23.09.2007; 11.10.2007a.

491 The New York Times, 11.10.2007a; 13.10.2007; 17.10.2007.

492 The New York Times, 29.09.2007.

493 The New York Times, 02.10.2007; 06.10.2007; 11.10.2007b; 17.10.2007; 23.10.2007.

494 The New York Times, 05.10.2007; 11.10.2007a; 30.10.2007.

495 The New York Times, 23.09.2007; 27.09.2007; 29.09.2007; 14.11.2007.

evidence. Different incidents were used as examples of PMSC behaviour and as evidence of Blackwater's and other companies' wrongdoings. For example, a Majority Staff Memorandum compiled as a background buffer for the House Committee hearing described and compared several incidents as did The New York Times, the Iraqi investigators and Human Rights First report as well as the research literature on the outsourcing of the tasks of state armed forces does. With the help of examples, a behavioural pattern for PMSCs' conduct can be produced. This pattern guides how we orient ourselves towards PMSCs. It functions as a prior knowledge according to which we direct our evaluations of and attitudes towards the outsourcing of the tasks of state armed forces.⁴⁹⁶ The possible prosecutions in all judicial cases were expected to be difficult under either US civil legislation or US military legislation as the September 16 case later demonstrated⁴⁹⁷. This point will be discussed more in detail later in this thesis, when some of the initial responses turn to long term transformatory processes within the US administration.

The final investigatory conclusions came by mid-November 2007 when the FBI's findings began to become public. After the US state armed forces investigation had come to the conclusion that all the killings were unjustified and potentially criminal and the Iraqi investigation concluded that the September 16 shooting was a deliberate murder, the FBI found that "at least 14 of the shootings were unjustified and violated deadly-force rules in effect for security contractors in Iraq⁴⁹⁸". This quotation serves two further notions. Judging the shooting unjustified was indirectly done on the basis of human rights and thus, of the notion of individual security⁴⁹⁹. In addition, stating that Blackwater personnel had broken its contract, that is, broken the regulations, indicates that sanctioning is to be done – or at least should be done. The agency concluded that five Blackwater employees had fired their weapons in the shooting and that there was no evidence of the convoy having been attacked. When evidence was denied, the statements of Blackwater and its employees as well as initial DoS statements were ridiculed and proven untrue. The FBI continued that three of the killings may have been justified under the rules of the use of lethal force that govern PMSCs in Iraq, because given the situation they may have been seen as a response to a situation interpreted as an imminent threat⁵⁰⁰. These conclusions led DoJ prosecutors to assess whether to seek Grand Jury indictments, and whether to test the existing legal basis and its adequacy to the case. US Congressmen, enraged by the inadequate supervisory measures of DoS, sought DoJ to hold

496 About the functions of a priori, see chapters 4.1.1. and 6.2.

497 The New York Times, 05.10.2007; 11.10.2007b.

498 The New York Times, 14.11.2007.

499 See chapter 2.3. about different notions of security.

500 According to the rules of the use of force, interpreting a situation as an imminent threat authorises PSC personnel to use violence; in other words, actions taken can then be seen as defensive.

someone accountable for the shooting.⁵⁰¹ “Just because there are deficiencies in the law, and there certainly are [...] that [cannot] serve as an excuse for criminal actions like this to be unpunished⁵⁰²”.

Even if speculations about judicial processes had taken place earlier, this authoritative declaration of truth closed the discussion about the details of the case and locked the focus on legislative and regulative issues. It became accepted that Blackwater employees had acted against their order, but the problem from then on was could they be made accountable for their behaviour. It was not enough that the FBI said that Blackwater personnel acted wrongfully for making the employees guilty; neither was it enough to make the whole phenomenon a bad practice even if more accountability was asked for. However, yet another mechanism applied in order to produce knowledge about the outsourcing of the tasks of state armed forces has to be discussed before presenting the consequences of the discussed investigations.

9. The House of Representatives Committee on Oversight and Government Reform

9.1. Preparation for the hearing

Investigations also took place in the United States. Partially alerted by the September 16 shooting, on October 2nd, 2007 the House of Representatives Committee on Oversight and Government Reform held a hearing titled “Blackwater USA: Private Military Contractor Activity in Iraq and Afghanistan”. Before the hearing the committee tried to obtain information from Blackwater and from DoS, but was initially unsuccessful. This prompted the committee's chairman write to Secretary of State to accuse DoS from blocking the committee's investigation by ordering Blackwater not to provide documents without prior DoS approval. DoS's response acknowledged the occasion as a misunderstanding and confirmed that all the required information was in the process of being delivered to the committee.⁵⁰³ However, the accusations of the withholding of information were repeated in the hearing⁵⁰⁴. This political disarray indicates that even within the US administration there were no clear guidelines stating who was entitled to get information on what in relation to the outsourcing of the tasks of state armed forces. It also testifies to inter-agency power struggles which, in this case, took the form of secrecy and blocks in information circulation. In other words, not only is increasing the circulation of truth claims a power resource, the jamming of

501 The New York Times, 14.11.2007; 20.11.2007.

502 Price, David E., representative, quoted in The New York Times, 14.11.2007.

503 The New York Times, 26.09.2007a; 27.09.2007; 28.09.2007b.

504 Cooper, Jim, transcript of the House Committee hearing, 149; Waxman, Henry A., transcript of the House Committee hearing, 153.

this circulation can also be used in this way. Similar techniques are in operation all over the dispositive of outsourcing of the tasks of state armed forces, which can be seen, for example, in the difficulty of obtaining research data and in the difficulty of obtaining information about on-going investigations.

On the basis of delivered information (almost 440 internal Blackwater documents and internal DoS correspondence), the Committee's Majority Staff produced a memorandum for the hearings on Blackwater⁵⁰⁵. Its aim was to introduce Blackwater to the members of Congress as well as to provide them information and direct their questioning in the hearing. Through its repetition in the hearing, the memorandum fulfilled its task to guide the committee's questioning. As the hearing was open to media it also produced knowledge to be disseminated wider in the United States as well as internationally and hence, participated in the production of the outsourcing of the tasks of state armed forces into our general understanding.

The Majority Staff Memorandum was first summarised in The New York Times on the day of the hearing. The newspaper pointed out that according to the memorandum, Blackwater tried to cover up shootings by paying the victims' families. Here, political and economic are suggested to intertwine in a criminal manner. DoS had approved the payments in order to keep people quiet about the shootings and the agency had also helped Blackwater to transport its employees involved in incidents out of Iraq within hours of the incidents⁵⁰⁶. By escaping from the country the company's employees were suggested of having avoided any proper sanctioning. Thus, Blackwater and DoS were objectified as partners in crime; both associated with the murky business of the outsourcing of the tasks of state armed forces which exists somewhere on the grey area between legal and illegal. This shows first, how intertwined their production is in the dispositive and second, how the production takes place on several domains which can be contradictory to but also inter-dependent on each other.

Blackwater was also accused of engaging “in offensive operations alongside uniformed American military personnel in violation to their [...] contract, which state[d] that Blackwater guards [we]re to use their weapons only for defensive purposes” and of acting primarily in a pre-emptive way; in other words, of shooting first.⁵⁰⁷ This seems to point to two different notions of “defensive”. Shooting first is used to indicate that a more aggressive than defensive stance has often been taken by Blackwater employees in order to annul the wider notion that the tasks of PSCs are defined as

505 The New York Times, 28.09.2007b.

506 The New York Times, 02.10.2007.

507 The New York Times, 02.10.2007. Majority Staff Memorandum, 2; 6; 8–9.

defensive per se. This tension is similar to that which the state armed forces are involved with and is often compressed into the problem of defensive/offensive manoeuvre. When warfare has transformed towards its current way⁵⁰⁸, this differentiation has become one of the foci of discussion. How can the difference between offense and defence be established in conflicts that are fought for security and in which all conventional dichotomies, organising categories and borderlines seem to have become blurred? In the discourse around the outsourcing of the tasks of state armed forces, establishing tension between defence and offense seems to function as a tactic to prove the point that PSCs are unaccountable and dangerous. The belief is that PSCs will resort to offensive action if it serves their interests. Moreover, the memorandum described Blackwater's use of force as "frequent and extensive, resulting in significant casualties and property damage"⁵⁰⁹. Not only was it possible that PSCs might slip from their contractual obligations, but there was proof that they had done so. By slipping they have occasionally merged with the armed forces what, again, endangers the conventional categories with the help of which we organise the world in our general understanding.

This is not an uncommon way of presenting Blackwater in the discourse. On the contrary, the company is most commonly produced through a small range of company details followed by statistics about its growth, assumed political affiliations and accusations of inadequate corporate culture with regard to the use of force. The common use of seemingly scientific proof is to back up the accusations.⁵¹⁰ Evidence about high level of violent incidents is also used to depict the circumstances in which PSCs in Iraq operate and thus, to prove how difficult work they do. The accusation of Blackwater having contracted thanks to its political contacts is yet another interesting contact point between political and economic. An actor, who is primarily expected to act in the economic sphere, is accused of corruption, if fear of its too deep involvement in politics exists. The accusations of corruption were directed towards both Blackwater and the Bush administration, which, again, tells about their mutual production in the discourse.

Blackwater USA, based in Moyock, North Carolina, was established in 1997 and has grown to become one of the world's largest providers of private military services, offering a diverse range of services including personal security details, military training services, aviation support, K-9 services, and its own line of armored vehicles. Prior to the war in Iraq, the company primarily offered training services for law enforcement and military personnel. But during the past six years, the business has expanded and diversified to include private military contracting.

Blackwater's government contracts have grown exponentially during the Bush Administration, particularly since the start of the war in Iraq. Blackwater went from having

508 See chapter 4.2.2. about transformation of warfare. Also the security dilemma in chapter 2.3.

509 Majority Staff Memorandum, 4; 6.

510 About the influence of scientific or quasi-scientific claims, see pages 33–34 and chapter 6.1.

government contracts worth less than a million dollars in 2001 to contracts worth more than half a billion dollars in 2006.⁵¹¹

References are often made to Blackwater's employees' reputation as “cowboys who are relentlessly and pointlessly aggressive, carry excessive weaponry and do not appear to have top-of-the-line training⁵¹²” and the company is seen as “a company that flaunts an aggressive, quick-draw image that leads its security personnel to take excessively violent actions to protect the people they are paid to guard⁵¹³”. These accusations get backed up by statistics according to which Blackwater has, unprovoked, killed Iraqis in seven different occasions in Iraq⁵¹⁴; it had been involved in a total of 56 or 57 shooting incidents in Iraq by the end of September 2007⁵¹⁵ and in the course of the preceding years, the company's employees had fired their weapons on a convoy mission twice as often as employees of the two other PSCs that provide similar services to DoS⁵¹⁶. The Majority Staff Memorandum noted that

Blackwater has been involved in at least 195 “escalation of force” incidents in Iraq since 2005 that involved the firing of shots by Blackwater forces. This is an average of 1.4 shooting incidents per week. [...] In over 80% of the shooting incidents [...] Blackwater reports that its forces fired the first shots.⁵¹⁷

In addition to this, “Blackwater reports more shooting incidents than the other two contractors combined. Blackwater also has the highest incidence of shooting first, although all three companies shoot first in more than half of all escalation of forces incidents”.⁵¹⁸ All this information is organised into tables that enable the reader to come to the same conclusion and make comparisons between the companies.

All this detailed information does not only aim at introducing Blackwater, individualising it and establishing a negative pattern of its operations. It also identifies the points of concern and thus

511 Majority Staff Memorandum, 3.

512 The New York Times, 19.09.2007. Also 02.10.2007; 01.11.2007; Majority Staff Memorandum 2007, 6; Waxman, Henry A., transcript of the House Committee hearing, 51.

513 The New York Times, 27.09.2007; 10.05.2008. Also 12.10.2007; 31.10.2007b; 01.11.2007 and, for example, Kucinich, Dennis J. “Blackwater's outrageous behaviour that has killed countless innocent Iraqis” (transcript of the House Committee hearing, 21).

514 The New York Times, 20.09.2007. Also 23.09.2007; 24.09.2007; 29.09.2007. This is the Iraqi government's figure stating the number of occasions in which Blackwater should be held criminally accountable.

515 The New York Times, 28.09.2007b. Also 29.09.2007; 02.10.2007. 56 is a figure given by Deputy Secretary of State John D. Negroponte's statement and corrected to 57 by Majority Staff Memorandum, 7. Negroponte's statement, which was quoted in The New York Times on 28.09.2007, was said to be the first time that DoS or the Bush administration made such data public. Therefore, the Majority Staff Memorandum, which was published on 01.10.2007, was most probably the first report giving statistical details about the performance of PSCs.

516 The New York Times, 27.09.2007. This point has sometimes been explained by factors like that Blackwater protects some of the most top-ranking US officials in the most dangerous parts of Iraq and therefore, naturally its incident figures are higher (The New York Times, 27.09.2007; 06.10.2007).

517 Majority Staff Memorandum, 1–2; 6.

518 Majority Staff Memorandum, 2; 7.

justifies the use of control mechanisms to cut off the suggested misconduct. The descriptions presented in previous paragraphs suggest that Blackwater and its employees act unprofessionally and if not properly controlled, they will take an advantage of the situation and act in an unnecessarily violent manner. In other words, Blackwater is identified as pathological amongst its kind and its behaviour needs to be normalised; to be brought in line with what is accepted as normal in the US society – or if this does not happen, it needs to be annihilated. It is suggested that the company has had a chance to prove its righteousness and professionalism, but its self-disciplinary mechanisms have not been successful. Therefore, the state should use its coercive power to correct or to kill the company. However, not only is Blackwater to be corrected or annihilated in the discourse, the whole industry is under threat – as will be discussed later in this thesis. Requirements for either to bring the companies in line or to annihilate them follow the Foucaultian theory of power and, especially, what has been written about bio-power in chapter 4.1.2. The same chapter introduces different forms of power that are widely present in the dispositive of outsourcing of the tasks of state armed forces. The aforementioned claims about, for example, PSCs' unprofessionalism are to weaken the position of the companies in the dispositive, which is commonly feared to have become too strong. Thus, in the discourse the state strengthens its traditional sovereign position. The question is whether this is going to happen in the non-discursive practices as well.

When incident cases are discussed or comparisons between different companies are made, a pattern for Blackwater's and for its employees' behaviour is established. Similarities are searched from the cases and as a conclusion a highly negative (violent, arrogant, neglectful and disrespectful) pattern is produced. This is done without regard, for example, to the reporting procedures that produce only certain kinds of information from certain kinds of events. This has incited a defensive response from Blackwater, DoS officials and other government representatives. In the discussion in the House Committee hearing several congressmen and -women thanked the company for their services⁵¹⁹;

Blackwater has protected dozens, if not hundreds, of Members of Congress including myself and members of this committee when they travel to Afghanistan and Iraq. I, for one, am grateful for their service. Not one single Member of Congress has been injured nor killed under Blackwater protection, and for that I am grateful.⁵²⁰

519 For example, Shays, Christopher, transcript of The House Committee hearing, 67–69; Burton, Dan, transcript of the House Committee hearing, 20.

520 McHenry, Patrick T., transcript of the House Committee hearing, 18.

DoS representatives highlighted the necessary service the company provides and how professionally Blackwater employees do their job⁵²¹. These kinds of descriptions greatly differ from the ones introduced in the previous paragraph. This contradiction reflects well the power struggles involved in the objectification of the phenomenon⁵²². In a simplified manner it could be said that in the discourse Blackwater is seen as either dangerous and threatening or as necessary and efficient provider of security.

According to The New York Times, the Majority Staff Memorandum was also very critical towards DoS, whose restraint or supervision over the company had been virtually non-existent⁵²³. Here, again, DoS is mutually constituted with its PSCs. It was noted that the only sanction that had been applied to contractors for misconduct had been the termination of their individual contracts⁵²⁴. In other words, Blackwater as a company had not been held responsible, only its employees⁵²⁵. It was asked, how the company which was supposed to guide and control its employees could go unpunished, when its employees acted wrongfully? DoS, which was monitoring Blackwater, should the latest have intervened in this practice.⁵²⁶ The contractual terminations were said to have been surprisingly frequent. The most common reason for a termination was a weapons-related incident. DoS's primary response to incidents had been to ask Blackwater to make payments in order to "put the matter behind [them]".⁵²⁷ With regard to Blackwater DoS believed the company was doing an "exceptional job under very challenging circumstances".⁵²⁸

For the hearing the House Committee had set out the following questions:

521The New York Times, 03.10.2007a; 24.10.2007. Also The New York Times, 18.09.2007 referred to the US ambassador to Iraq, Ryan C. Crocker's appraisal for the PSCs in his speech on 11th of September, 2007; the same speech was referred to by Prince, Erik in the House Committee hearings (transcript of the House Committee hearing, 26–27).

522 About the objectification of phenomena, see pages 32–33.

523 The New York Times, 02.10.2007.

524People working for Blackwater were not directly the company's employees, but independent entrepreneurs contracted to work for the company. This is a rather common practice among PMSCs. The companies do project type of work for different customers according to the customers' demands, in other words, their income is neither stable nor predictable. Therefore, it does not make sense for the companies to maintain large reserves of personnel, but to contract people to work for them separately for each project. This "flexibility" feature has been one of the competitive edges the companies have had in relation to the state armed forces.

525One of the reasons that may explain this is Blackwater's, and often other PSCs' as well, recruitment policy. Most of the employees are not listed as employees of the company, but as "independent contractors" to whom the company sub-contracts the tasks outsourced to it. Basically, the companies do not have large standing personnel, but a wide database of potential employees who they contact and sub-contract to when they need personnel to carry out tasks outsourced to them. In this way, the companies save in personnel costs, but can quickly build up personnel required in order to carry out their contractual obligations.

526This point was discussed continuously in the House Committee hearing.

527Majority Staff Memorandum, 9; 13. Quotation marks original. Cf. Secretary of State Panel's report which acknowledged the monetary compensations to Iraqi victims as being a part of the Iraqi culture and custom.

528 Anonymous DSS official, quoted in Majority Staff Memorandum, 11.

(1) Is Blackwater's presence advancing or undermining U.S. efforts in Iraq? (2) Has the State Department responded appropriately to shooting incidents involving Blackwater forces? And (3) What are the costs for U.S. taxpayers of the reliance on Blackwater and other private military contractors?⁵²⁹

In this thesis, I focus on the first two questions, but do not leave the third one totally aside. This demarcation also guides my reading of the hearing's transcript. As will be shown in this chapter, the aforementioned questions framed well the discussion in the House Committee hearing. Blackwater operations were discussed firmly in connection with the overall US operation in Iraq, with the seeming lack of accountability that inadequate DoS oversight measures prompted and with the cost of the outsourcing of the tasks of state armed forces to the US tax payer. The hearing was divided into two parts. In the first part, Blackwater's practices were discussed and the company's then CEO Erik Prince was called to testify in front of the Committee. The second part focused on DoS oversight: its witnesses were Ambassador David M. Satterfield, Senior Advisor to the Secretary and Coordinator for Iraq; Ambassador Richard J. Griffin, Assistant Secretary of State, The Head of the DSS and William H. Moser, Deputy Assistant Secretary for Logistic Management. Following custom each witness swore to the committee before his testimony, which was expected to symbolically force them to speak truthfully. However, during the discussion it was pointed out that “[t]his is not a court case⁵³⁰”. As DoJ had requested that the committee not touch the issue of the September 16 shooting since it was under investigation, the committee hearing discussed the outsourcing of the tasks of state armed forces around the incident⁵³¹.

9.2. Blackwater hearing

The committee chairman Henry A. Waxman opened the hearing by stating that

Over the past 25 years, a sophisticated campaign has been waged to privatize Government services. The theory is that corporations can deliver Government services better and at a lower cost than the Government. Over the last 6 years, this theory has been put into practice.

The result is that privatization has exploded. For every taxpayer dollar spent on Federal programs, over 40 cents now goes to private contractors. Our Government now outsources even the oversight of the outsourcing.

[...] What has been missing is a serious evaluation of whether the promises of privatizing are actually realized.

[...] Today, we are going to examine the impact of privatization on our military forces.⁵³²

529 Majority Staff Memorandum, 1.

530 Waxman, Henry A., transcript of the House Committee hearing, 106.

531 Waxman, Henry A., transcript of the House Committee hearing, 3–4; 51–52.

532 Waxman, Henry A., transcript of the House Committee hearing, 1–2.

Firstly, the quotation above frames the outsourcing of the tasks of state armed forces as a phenomenon related to the regulatory state's beliefs and theories which have been discussed in chapter 4.2.1. of this thesis. Secondly, it recognises the thus far neglected need to ask whether the expectations on the basis of which outsourcing has been executed have been met in practice. Thirdly, it associates PMSCs with the armed forces and assumes that Blackwater and other similar companies have an impact on the US armed forces. These assumptions and questions framed the discussion in the House Committee hearing.

What was to be scrutinised in the hearing was whether Blackwater, but also other contractors, met the professionalism and performance standards of the US state armed forces, and whether the services that PSCs provided could be done with a lower cost by the state armed forces. The US armed forces hence established the norm against which the functions of PSCs were to be evaluated, and the problem was set to the context of the basic problem in politics: how to allocate scarce resources efficiently and "in the right way". In the hearing, it was declared that the United States had "the best troops in the world"; dedicated service personnel, whose pay did not equal their value, but who did their work professionally and without complaint. The state armed forces were thus seen as a mechanism for providing a public good in the most efficient manner⁵³³. The average annual cost of a sergeant in the US armed forces to the federal government was said to be between \$ 50 000 and \$ 70 000 in comparison to the annual cost of a Blackwater employee, around \$ 400 000. The significantly better pay in the private sector was feared to lure active service members from the armed forces and to turn the armed forces into "a tax-payer funded training program for military contractors". This is a common discussion regardless of which state function is in question: a better pay in the private sector is feared to erode the public service. After the erosion of the public sector, the service would become a prerogative for those who are able to pay for it directly. With regard to security, this has produced a serious discussion around the ethical problems related to the issue. In addition, Blackwater was accused of acting unprofessionally, irresponsibly and morally wrong as well as of having employed inexperienced personnel.⁵³⁴

In response, Erik Prince said that the US state armed forces did not have the equipment or training to do some of the tasks that Blackwater was doing and therefore the company was filling an important operational gap.⁵³⁵ Therefore, Blackwater was not endangering the public service, but contributing to it. Prince was cautious about questioning the professionalism of the US armed

533 The public good problem is discussed in chapter 2.2.

534 Waxman, Henry A., transcript of the House Committee hearing, 2–3; 51–52. Also, for example, Clay, Lacy WM, transcript of the House Committee hearing, 81–82; Watson, Diane E., transcript of the House Committee hearing, 85–86; Prince, Erik, transcript of the House Committee hearing, 85.

535 Prince, Erik, transcript of the House Committee hearing, 53.

forces, but instead made it clear that having Blackwater to perform some of the secondary tasks would release members of the armed forces to fight the war⁵³⁶; in other words, to concentrate on their primary task. In the discourse, it is not possible to claim that PMSCs do a better job than the US armed forces⁵³⁷, but it is possible to state that the armed forces do not have the resources and should not need to do everything⁵³⁸. This claim coincides with theories of current warfare which call for higher specialisation alongside increased jointness⁵³⁹. Prince also questioned and ridiculed the cost comparison made between a US sergeant and a Blackwater employee by saying that: “I don't believe it is as simple as saying [that] this sergeant costs US this much because that sergeant doesn't show up there naked and untrained⁵⁴⁰”. Similar questioning was done by DoS representatives later in the hearing⁵⁴¹. Whether the financial comparison is based on actual costs or not⁵⁴² is not important for this thesis. What is important is that the statement and the comparison were made.

In the statement and the comparison, the civilian-military borderline is not straightforward but it exists. Even if the employees of PMSCs are portrayed as equal to soldiers, as they are in the cost comparison, they are also distinguished from soldiers as being people who work for companies, not for the state armed forces. This is the primary form of specification in the discourse⁵⁴³. PMSCs and their recruitment and financial programs are feared to risk and to endanger the functionality of state armed forces, that is, to compromise state security. Therefore, Prince was often asked about Blackwater's billing procedures, pay procedures and equipment acquisition programs⁵⁴⁴ and any hint of misconduct was raised on the agenda of the hearing and examined in detail. PSCs were feared to make it impossible to recruit enough personnel into the active military service and it was feared that the US government would in this way lose its ability to push for its foreign policy goals

536 Prince, Erik, transcript of the House Committee hearing, 24.

537 For example, Waxman, Henry A., transcript of the House Committee hearing, 3; 33; Maloney, Carolyn B., transcript of the House Committee hearing, 19; Prince, Erik, transcript of the House Committee hearing, 85.

538 Prince, Erik, transcript of the House Committee hearing, 85–86; Griffin, Richard J., transcript of the House Committee hearing, 143.

539 See chapter 4.2.2.

540 Prince, Erik, transcript of the House Committee hearing, 64.

541 Griffin, Richard J., transcript of the House Committee hearing, 139; Moser, William H., transcript of the House Committee hearing, 139.

542 In the House Committee hearing Erik Prince continuously challenged the cost calculations on basis of which his company was accused of overbilling or of being expensive to the government. As it came out, the government had not established proper accounting and cost calculation procedures and therefore, Prince advised the government to do profound activity-based cost studies in order for it to be able to answer to some of the questions he was asked in the hearing. (Transcript of the House Committee hearing, 64; 76; 107.) Similar comparison was made between the salaries of General Petraeus and Blackwater contractors (Duncan, John J. Jr., transcript of the House Committee hearing, 80).

543 About forms of specification, see pages 64–65.

544 For example, Hunter, Michael R., transcript of the House Committee hearing, 84.

and to defend the country⁵⁴⁵.

The image of a humble, heroic soldier was used as the ideal of a person serving his or her country. The noble features, commonly attached to the patriotic soldiers who risk their lives for their countrymen and -women⁵⁴⁶, were seen to become endangered when people do similar tasks in the name of a company and in order to produce profit. The humble soldiers who face the deterrence of a court martial are seen to turn into arrogant and greedy entrepreneurs who do not face the deterrence of proper sanctioning when they move from the military setting to work for private companies⁵⁴⁷. This follows from the prior understanding according which the economic is seen as a free sphere in which self-interest will produce the best possible end result. Therefore, the loss of soldier's ethos (which has been tightly related to the production of public good, not private) is feared to put an end to the apparatus of state armed forces and to compromise state security. The loss of obligation which ties personnel of the armed forces to state security is feared to have similar effect. Nevertheless, what is actually endangered is not the future of the state armed forces, but the existing power structure.

When security is turned into a market product, the right to use violence is moved from a closed circle of the political elite to a more open domain⁵⁴⁸. This right, which was preserved to the political elites and made an issue of security, is in danger of losing its status. When the right to use violence becomes a market product, all magic and secrecy around it disappears and violence turns into a more common-place asset. The role of violence in the dispositive of outsourcing of the tasks of state armed forces hence is, primarily, that of the main concern. The idea of violence being a market product is unnerving to the majority of discussants. It cannot be accepted that in addition to "passive means" for providing security (for example, surveillance, alarms and body guards), violence as "active means" could be made available to anyone. This would be strongly against the prior understanding which monopolises the legitimate use of violence as a means to the state.⁵⁴⁹ Violence is also the dimension that individualises PSCs from other PMSCs, and the product sold (capability to conduct military-like operations), marketed under the name of security. As PSCs are most commonly categorised as civilian (non-violent, victim) actors, the notion of military-like

545 See The National Security Strategy for the United States 2002, 2006 or 2010 where the concept of "defence" is explained.

546 About features of a heroic soldier see, for example, Elshtain, Jean Bethke 1995.

547 Sarbanes, John P., transcript of the House Committee hearing, 105–106.

548 About commodification of security, see chapter 2.2.

549 A priori related to our general understanding about the state is presented in chapter 2.3. The "passive"/ "active" means discussion comes close to the "offense"/"defence" problem presented in chapter 9.1. and to the security dilemma presented in chapter 2.3.

(violent, offender) is often required in the dispositive.⁵⁵⁰ Nevertheless, the question of where to locate PSCs on the civilian-military borderline resumes. When violence loses its special status, the rhetoric of security no longer serves the purpose it was built to serve – that is, to move issues from public discussion into the sphere of secrecy and elite decision making – but can also be used to justify the existence of PMSCs. Even if decisions about the use of PMSC services in conflict zones are still made inside the closed politico-administrative circle, the companies can also use the rhetoric of security to justify and defend their existence and operations. In other words, security becomes a marketing term for PSCs. This has prompted a heated discussion about the flow of control from the state to the companies⁵⁵¹.

To elaborate on what was said in previous paragraphs, not only do the US armed forces serve as a means for subjugating and producing docile people in Iraq, but also for subjugating and producing docile people within the US society⁵⁵². The idealised and heroic image of a humble soldier situates the personnel of the state armed forces under the unquestionable command of state related authorities as well as producing them as patriotic heroes; it makes them servants of a greater cause who are willing to sacrifice their lives for that cause. Therefore, they are people the whole nation should pay respect to. The same goes with the whole institution of the state armed forces. Its purpose is to serve the country without asking any further questions; it is subordinate to the political authority. The emergence of PMSCs challenges these power relations, their productive capacity and the order they constitute. PMSCs are not under the absolute command and control of any of the state structures, but they are private companies who, thus, have more freedom of action, more independence to make decisions and to think about the financial profitability of the company. This does not mean that they would not take the patriotic cause into consideration or that they would not use it to reason their existence and work. On the contrary, they are utilising the existing discursive and non-discursive practices to clear a way for themselves. In this process they also change the practices of and endanger the prevailing order. Therefore, as the historical narrative presented in this thesis shows, the main response to the shooting incident within the United States politico-administrative sphere has been an attempt to restore the existing order by subjugating PMSCs under more delicate monitoring and control. This does not only take place in relation to the behaviour and operations of PMSCs, but also in relation to the outsourcing processes.

In the discourse, the way Blackwater has won its federal contracts is often questioned. The company is accused of getting contracts without competition and, possibly, thanks to its close

550 About forms of specification, see pages 64–65; about the different notions of civilian, see chapter 8.2.

551 For example, Avant 2005.

552 See chapter 4.1.2. about bio-politics of population.

relations to the Republican Party and to the Bush administration⁵⁵³. In response Prince reaffirmed that everything had been done according to DoS guidelines and that DoS had some of the best guidance on this⁵⁵⁴. To an extent, Prince had to say this. By legitimating the practices of DoS from a professional's point of view, he also sought to legitimise the end result of those practices, that is, Blackwater protecting DoS personnel in conflict zones. The statement also pushed some of the responsibility to DoS's shoulders. If the details about Blackwater's growth had been presented in a common business setting, the attendants of the meeting might have congratulated the company for making such financially successful contracts. However, when it came to the outsourcing of the tasks of state armed forces, a company showing a growth in contracts and in money flow was a mainly negative sight. To me, it seems that it is not possible or at least, not morally acceptable to talk about PMSCs in the business setting without reservations. On the contrary, the outsourcing of the tasks of state armed forces should stay firmly in the politico-judicial sphere and remains morally dubious. However, when the discussion turns to Blackwater personnel and their rights as employees, it becomes acceptable to talk about Blackwater in a common business setting. For example, questions about employees' pensions or other social security benefits can be asked⁵⁵⁵. What this indicates is that depending on the detailed matter and point of view the rules of economic discourse are either to be rejected or applied. By rejecting or applying the rules participants in the discussion try to reset not only the borderline between civilian and military, but also between political and economic, as well as between economic and social⁵⁵⁶. Rejecting the economic rules creates space for the political in the dispositive, whilst applying them creates space for the economic.

As has been briefly indicated earlier in this thesis, in the discussion, Blackwater was made an exception. It was not seen to be like other PSCs, but to be somehow different from the majority of them. Concentrating on the actions of Blackwater in the hearing made it an exception; calling on only the Blackwater CEO to testify in the hearing made it an exception. Moreover, statements such as “[t]here may be no [f]ederal contractor in [USA] that has grown more rapidly than Blackwater over the last seven years⁵⁵⁷” or “[a]re there any other security firms in Iraq whose operation involves as much danger?⁵⁵⁸” made it an exception. Statistics were used to prove that the company is different. The exceptionality of Blackwater does not only come up in the House Committee hearing. For example, DoS saw Blackwater as the only company to be able to provide some of the

553 For example, Kucinich, Dennis J., transcript of the House Committee hearing, 65–66.

554 Prince, Erik, transcript of the House Committee hearing, 57. Also Davis, Tom, transcript of the House Committee hearing, 57.

555 Norton, Eleanor Holmes, transcript of the House Committee hearing, 118–199; Prince, Erik, transcript of the House Committee hearing, 118–119.

556 About the struggle between economic, political and social, see chapter 4.2.1.

557 Waxman, Henry A., transcript of the House Committee hearing, 2.

558 Davis, Tom, transcript of the House Committee hearing, 56.

services it required in Iraq⁵⁵⁹. Moreover, when the September 16 shooting became a widely acknowledged incident and a turning point in the US administration's approach to the outsourcing of the tasks of state armed forces, it made Blackwater widely known. Today, there are at least two books written about the company⁵⁶⁰, specific internet watch lists created for it⁵⁶¹, and academic works refer to the September 16 shooting as a case in point⁵⁶². These are practices which reinforce the status of Blackwater as an exception. Nevertheless, the discourse is not this straightforward. Blackwater is also objectified as an example of its kind. What happened on September 16 is seen as an example of the reckless behaviour of PMSCs and Blackwater is not the only company on which research has been done. For example, MERO has published a special report on both Triple Canopy and DynCorp⁵⁶³. What is said about Blackwater is also to be understood as something said about other PSCs. Interestingly, what is said about PSCs in general is often directly linked with Blackwater. For example, Blackwater's CEO Prince noted in the hearing, how what any PSC in Iraq does is often associated with Blackwater⁵⁶⁴.

Not only is Blackwater seen as different, but its CEO, who despite coming from a "wealthy and politically connected" family still served in the US state armed forces (in the Navy SEALs to be more exact) before establishing Blackwater⁵⁶⁵. During the discussion in the House Committee hearing, he was thanked for this service by several different congressmen⁵⁶⁶. Two things are worth noting in relation to Prince's military history and the discussion around it. Firstly, it attaches Blackwater more closely to the state armed forces and by doing this, it follows the custom of discussing PMSCs in relation to the state armed forces. Secondly, it proves Prince's and his company's expertise by indicating that Prince knows what he is doing as well as that his employees, of whom many have been employed thanks to Prince's personal military contacts, know what they are doing⁵⁶⁷. Prince's personal and family history came out in the Majority Staff Memorandum and it was discussed again in the House Committee hearing. For example, Prince's and his family's connections to the Republican Party were mentioned often as a factor that had assisted Blackwater in getting the federal contracts. Prince's response was to deny this and to add that no-one applying

559 For example, MERO-IQO-09-02, 7; 24.

560 Scahill, Jeremy, 2008. This book was mentioned in The House Committee on Oversight and Government Reform hearing (Watson, Diane E., transcript of the House Committee hearing, 85). Pelton, Robert Young, 2006.

561 Blackwater Watches at <http://www.blackwaterwatch.com> and <http://blackwaterwatch.net> Both visited 23.08.2010.

562 For example, Chesterman & Lehnardt, 2007, introduction.

563 MERO-IQO-09-03 on Triple Canopy and MERO-IQO-09-06 on DynCorp.

564 Prince, Erik, transcript of the House Committee hearing, 74–75.

565 Waxman, Henry A., transcript of the House Committee hearing, 2. Also The New York Times 27.09.2007.

566 For example, Platts, Todd Russell, transcript of the House Committee hearing, 72–73; Jordan, Jim, transcript of the House Committee hearing, 98.

567 About the importance of expert knowledge, see chapter 4.1.2.

for employment in his company had been asked about his or her political affiliations.⁵⁶⁸ This is an overt attempt to politicise the outsourcing of the tasks of state armed forces within the traditional political setting: party politics. The attempt does not only open discussion over the matter, but couples the existing outsourcing policy executed by the US administration with business. Fear for the military-industrial block functions as a conduit for party politics. In other words, PMSCs are not only an issue of foreign and security politics, but also of intra-state power struggles.

In the hearing, the ranking member of the committee, Representative Davis, continued with his opening statement, saying that

Security contractors have been working at U.S. diplomatic posts for more than 20 years, but their extensive use in the midst of ongoing military conflict raises important new questions about the ability of Government acquisition officials to manage and oversee those contracts, the vetting and training of security personnel, and how best to control and coordinate private security firms in a complex, highly dangerous battle space.

Contracts for the use of force in war also pose legitimate questions about the propriety of hiring private firms to perform such a public, some would say inherently governmental, function.

[...] Contractor personnel working in support of diplomatic and military activities abroad have become an inescapable fact of modern life.⁵⁶⁹

The quotation above frames problems with the outsourcing of the tasks of state armed forces as issues of oversight, quite differently to Waxman, who saw the phenomenon as a challenge to the state armed forces. Another clearly noticeable difference between the opening statements is that whereas Waxman was talking about military contractors, Davis discusses security contractors. This demonstrates well the importance of definitions in the dispositive: choosing a definition is an issue of knowledge production and power. Whereas Waxman wanted to frame PMSCs as an issue of warfare and thus, activate the archive of war, Davis related PMSCs to security.

Even if Davis recognised PMSCs as “an inescapable fact of modern life” and hence naturalised the phenomenon, he continued that the heavy reliance on armed contractors, foreign to Iraqis, had raised concerns among Iraqis as well as serving as a pretext for some people to resort to violence. Therefore, it was necessary that DoS got its supervisory procedures right “in someone else's sovereign territory”.⁵⁷⁰ Here, the legitimacy of Iraqi concerns is, at least partially, recognised, as well as the sovereignty of the Iraqi state, even if the right of Iraqis to resort to violence was

568 For example, dialogue between Prince, Erik and Issa, Darrel E., transcript of the House Committee hearing, 87–88; Prince, Erik, transcript of the House Committee hearing, 91.

569 Davis, Tom, transcript of the House Committee hearing, 13.

570 Davis, Tom, transcript of the House Committee hearing, 13–14.

denied⁵⁷¹. There seemed to be no way around PMSCs, especially when “even the Iraqi government concede[d] [them] a vital layer of security”. Thus, it was necessary to get the controlling measures at the right level in order to show that the United States was following its own doctrine about the rule of law and to cut off the possibilities for people to attack PMSCs' existence as such.⁵⁷² The United States was required to act in an exemplary manner to make its preaching believable.

Davis's opening statement is a strong effort to block out all questions of whether PMSCs should be working in conflict zones at all. It is a persuasive move to naturalise and to make it unquestionable to have PMSCs working for the US government. PMSCs are seen as a continuation of the state armed forces and it is also believed that the demand for their services will only increase when the US armed forces begin to withdraw from Iraq⁵⁷³. They are objectified as a surge capacity in order to respond to temporal needs in security related tasks⁵⁷⁴. PSCs are not accepted to be a standing force, but something regularly exceptional, that is, PSCs are not to become a norm, but the use of them under certain circumstance is to become a norm. Despite this discursive move, in the next opening statement it was questioned whether it made any sense to outsource in the first place. As waging a war had previously required the support of the nation, the outsourcing of the tasks of state armed forces was seen as a way for the government to get around this requirement without paying any political price for it. Subsequently, an intense attack against the war in Iraq was made by stating that the lack of regular troops was good enough evidence of the illegitimacy of the decision to go to war.⁵⁷⁵ Here, the archive of war and, especially, of just war is to question not only the existence of PMSCs, but also the overall US operation in Iraq. The use of PMSCs is seen either as a symptom of a disease or a malfunctioning cure to it. In either case it is argued that the use of companies in conflict zones should be given up. Again, PMSCs are discussed in comparison to the US armed forces. However, this time seeing them as additional capacity to the armed forces gains a negative tone. The illegitimacy of PMSCs is extended to the whole conflict in Iraq.

The struggle over the correct purpose of the hearing began in the following opening statements. After the question of whether it made sense to contract out at all, a suggestion was made that the House Committee should concentrate on reviewing the rules of contracting, examine whether PMSCs followed them, consider the legal ramifications and reassess whether the contracting procedures should be changed⁵⁷⁶. The next opening statement said that the Committee was to

571 About the sovereignty discussion in relation to Iraq, see chapter 7.1.

572 Davis, Tom, transcript of the House Committee hearing, 14.

573 For example, MERO-IQO-09-01, 18.

574 For example, MERO-IQO-09-01, 9.

575 Tierney, John P., (dem.), transcript of the House Committee hearing, 17.

576 McHenry, Patrick T., (rep.), transcript of the House Committee hearing, 18.

examine “the privatization of the military” and its drawbacks⁵⁷⁷, followed by a demand to evaluate and re-evaluate the procedures used in relation to the outsourcing in Iraq⁵⁷⁸. Then, it was suggested that the Committee's task was to examine whether the practices used were undermining the ability to accomplish the overall US mission in Iraq and how they could negatively affect foreign policy efforts in the whole Middle-East⁵⁷⁹. The Committee hearing was also seen as an attack against General Petraeus' patriotism⁵⁸⁰, as an investigation on “Blackwater's outrageous behaviour that had killed countless innocent Iraqis” and DoS cover ups of that behaviour⁵⁸¹ as well as a hearing to discredit the contractors⁵⁸². As can be seen, the struggle over the purpose of the hearing was starting to resemble a ping-pong game bouncing between whether the outsourcing of the tasks of state armed forces was a good but unregulated practice or whether it should be cancelled as a policy and more effort put into correcting the consequences of contractor misconduct. In the game, bordered by discourses of warfare, legality and justice and rights, US foreign policy and good governance as well as of the state, the struggles over the phenomenon were intense. This also showed how different positions and points of views the matter could be discussed from.

The last person to give an opening statement was the then CEO of Blackwater, Prince, who said that Blackwater had after 9/11 been proud to respond to the US government's call and that it operated under the direction and oversight of the US government. Thus, Prince began by attaching Blackwater's operations to the global battle against terrorism which the United States was conducting, that is, to the official US foreign policy. By doing this he introduced the rules of terrorism discourse in the House Committee hearing. In addition to stating that Blackwater's operations in Iraq were a US government initiated practice, Prince provided the Committee with a list of laws and regulations he though would apply to all PMSC employees operating in Iraq. He also stated that Blackwater shared the interest of ensuring the accountability and oversight of PMSC personnel. Whilst here it is important to note that by representing these laws and regulations Prince sought after acceptance and legitimacy, laws and regulations applicable to PMSCs will be discussed in detail later in this thesis. According to Prince, Blackwater was giving “an opportunity for military and law enforcement veterans with a record of honourable service to continue their support” to the United States. He defended the company's service provision by saying that PMSCs released more active US service personnel to fight the enemy and counted the around 1 000 “Blackwater

577 Maloney, Carolyn B., (dem.), transcript of the House Committee hearing, 19.

578 Burton, Dan, (rep.), transcript of the House Committee hearing, 19.

579 Cummings, Elijah E., (dem.), transcript of the House Committee hearing, 20.

580 Issa, Darrel E., (rep.), transcript of the House Committee hearing, 20. General David Petraeus was the chief commander of the US troops in Iraq at the time.

581 Kucinich, Dennis J., (dem.), transcript of the House Committee hearing, 21.

582 Mica, John L., (rep.), transcript of the House hearing, 22.

professionals” in Iraq as part of the nation's total force.⁵⁸³

Prince associated Blackwater and PMSCs more strongly with the state armed forces than had thus far been done in the hearing. Blackwater contributed to the nation's total force and its employees were veterans of the state's enforcement agencies, that is, people who had been trained and socialised to the norms and values of state bound security apparatuses⁵⁸⁴. Therefore, they would continue to operate along those norms and values even if their employer was the private sector, and therefore would continue to back up the network of power related to these norms and values. PSCs would continue the work of the state armed forces, not to challenge it. They were also only to supplement the work of state armed forces, not to replace the institution. Nationalism and patriotism exuded from Prince's opening statement. His speech was an attempt to bind PMSCs to the respected, unquestionable values attached to the state armed forces and to their job to secure and protect the country. Blackwater was securing and protecting the US dignitaries in Iraq, in other words, doing its part in the overall US mission and, thus, releasing more soldiers to do the core tasks of the armed forces, that is, to fight the enemy. Blackwater was doing this professionally and under US government oversight. It becomes possible to speak about PMSCs in a similar way as it is possible to speak about the state armed forces. PMSCs become less frightening and more legitimate when in the discourse they are simply substituted for the armed forces instead of portraying as existing in opposition to them. Therefore, it does not seem to change the power structure or the order of things so much if PMSCs carry out some of the tasks of state armed forces. As they are dedicated to reaching the same aims as the state armed forces it should not make a difference which actor does what work in Iraq. Moreover, as PMSCs are providing an additional tool for the US government, they are actually strengthening the overall effort. Therefore, “we should not go to the extent of undermining Blackwater's ability to perform as our team” “working in the trenches and in a war zone”⁵⁸⁵. These notions not only blur the civilian-military borderline, but also function as a good marketing strategy for PMSCs.

Prince continued his opening statement by saying that the areas in which Blackwater operated in Iraq were particularly dangerous and challenging. Nevertheless, in 2007 in three percent of missions weapons had been discharged, while in 2006 the percentage was around one percent. Therefore, the image given of Blackwater and of its employees as being excessively violent was challenged with the help of statistics. Prince made a point that Blackwater does not engage in offensive missions,

583 Prince, Erik, transcript of the House Committee hearing, 23–24.

584 About internalisation of a norm, see chapter 4.1.2.

585 Turner, Michael R., transcript of the House Committee hearing, 83.

but provides only defensive services and that he found every loss of human life tragic.⁵⁸⁶ In addition to expressions of empathy and recognition of human rights, this point made a use of the defence/offense differentiation to credit PMSCs instead of discrediting them. The New York Times reported in relation to the hearing that in the following discussion Prince disputed all the criminal accusations, that is, accusations of deliberate killings, fleeing from incident scenes and cover ups as well as accusing media and politicians of rushing into judgment without knowing all the facts. Thus, Prince tried to return the outsourcing into the realm of warfare. He pointed out that the company had taken measures against the wrongdoings, but that it could only do what the contractual framework authorised it to do. For example, as a private company Blackwater could only fire and fine its employees.⁵⁸⁷ The rest was up to DoJ⁵⁸⁸. Here, the notion of the private company differentiates and individualises PSCs. It differentiates Blackwater not from the armed forces, but from the police, which is a less common move in the discourse. In the hearing Prince also noted that even if the company employees were highly regarded professionals, “accidents happened in war⁵⁸⁹” and that the company would welcome⁵⁹⁰ more accountability⁵⁹⁰.

Prince's speech was very different from the statements preceding it, but even so, similar rules seem to guide his speech as those guiding the criticism towards Blackwater. For example, according to Prince the loyalty and honour associated with the state armed forces can be moved into the private sphere of action. People who question this, on the other hand, see the state armed forces as a unique entity; loyalty, honour and values collapse if people are allowed to use violence outside the military setting. The state armed forces serve a base norm in the discourse, even if it is recognised that what some PSCs, like, in this case Blackwater, actually do is not something that the state armed forces would traditionally have done. Nor is it something that the state armed forces would do, if the private security providers were banned from conflict zones⁵⁹¹.

[...] there is a huge difference from being a police officer or protective and being the military, a totally different role.

I have had no one in the military say to me, I want to guard all these civilians. The last thing you want is to have humvees and Army take civilians who are meeting other civilians like our State Department with that kind of precedent, and the military would not do it.⁵⁹²

586 Prince, Erik, transcript of the House Committee hearing, 24.

587 The New York Times, 03.10.2007a. Also Prince, Erik, transcript of the House Committee hearing, 30; 57; 63.

588 Prince, Erik, transcript of the House Committee hearing, 63.

589 Prince, Erik, transcript of the House Committee hearing, 52; 71. Similar notions were made by, for example, Issa, Darrel E., transcript of the House Committee hearing, 54; Burton, Dan, transcript of the House Committee hearing, 60.

590 Prince, Erik, transcript of the House Committee hearing, 106.

591 For example, Davis, Tom, transcript of the House Committee hearing, 76; Issa, Darrel E., transcript of the House Committee hearing, 86.

592 Shays, Christopher, transcript of the House Committee hearing, 68. Also Davis, Tom, transcript of the House Committee hearing, 76.

In the quotation, the police seem to function as a base norm for evaluations, not the state armed forces. In this argument, PSCs become more closely associated with the protective function of the police and with the civilian sphere than with warfare. This is a minority statement in the discourse, but shows that thinking differently is possible. Usually, PSCs have been differentiated from the police because of their heavy armament, use of military tactics and operations in conflict zones. Nevertheless, the question to be asked is, what is the difference between PSCs and special police units? In response, it was noted that since most of the PSC employees are former military personnel, the armed forces should be capable of doing what PSCs do, had they enough personnel⁵⁹³. Thus, PSCs were re-drawn to the military setting.

9.3. Department of State hearing

At the end of the day, we have to look to the Government who is contracting this out, putting down the rules of engagement, and they will be on our next panel⁵⁹⁴.

In the second hearing the House Committee questioned DoS officials about the department's outsourcing procedures and contractor oversight. In his opening statement ambassador Satterfield referred to PSC services as “a vital security” to DoS personnel and reminded the participants of the hearing that contracting security personnel was nothing new to DoS. In addition to Iraq, the department uses and had used PSCs in several places around the world.⁵⁹⁵ The latter point was repeated often in the discussion and has often been referred to in the secondary literature as well. PMSCs are nothing new; their services have been used since the 1980's. What is new is the scale of their operations in Afghanistan, and especially in Iraq. This discursive practice differentiated not only the use of PMSCs in Afghanistan and in Iraq, but also the overall conflicts in these countries from everything that had existed before. Thus, it functions as a break point⁵⁹⁶. Currently, conflicts, wars, political unrest and terrorism required the deployment of DoS personnel in dangerous areas and contracting PSCs had allowed DoS to carry out tasks without delays.⁵⁹⁷ This was proved, for example, by the statistics of growth in PMSCs' contracts and in the growth of the overall numbers of PMSCs operating in Iraq. In this way, PMSCs were portrayed as being nothing miraculous at the

593 Waxman, Henry A., transcript of the House Committee hearing, 76. Some congressmen also took the stance that they were not familiar enough with the matter “whether providing the sort of protective services that you do is something that isn't done by the military traditionally, or is (Sarbanes, John P., transcript of the House Committee hearing, 106)”.

594 Davis, Tom, transcript of the House Committee hearing, 75.

595 Satterfield, David M., transcript of the House Committee hearing, 123.

596 See chapter 6.2. about turning the September 16 shooting into an event.

597 For example, Satterfield, David M., transcript of the House Committee on hearing, 138; Griffin, Richard J., written opening statement that was not presented in the hearing, transcript of the House Committee hearing, 129–130; also in discussion 139.

same time as the situation in Iraq was objectified as being unique.

Iraq was made a special case which required special means to deal with. This stance was often repeated in the discussion, when it was said that rules for the use of force in Iraq were defensive in nature, “but taking the special circumstances in Iraq into consideration”, in other words, DoS was operating in Iraq in “an active war zone”. This meant a high number of daily attacks on PSCs, almost 208.⁵⁹⁸ The special circumstances were to justify some deviation from the norm which had been to keep military and security functions within the state agencies. However, this justification rose from the past, but was used to justify the current conduct. It did not comment on what the future norm might look like. In the discourse, the embassy in Baghdad was recognised as being unlike any other embassy in the world, being “the largest post and [...] in an active war zone”. This also meant special kinds of rules in the use of force, a higher frequency in PSC employees' weapons discharges and higher casualty numbers.⁵⁹⁹ Nevertheless, and as the WPPS contract clauses required, the use of force was only allowed when it was “necessary to address the imminent and grave danger” against those under PSC protection, PSC employees or other people⁶⁰⁰. Within this argument establishing Iraq as something unique excuses the high level of violence. Violence is seen as necessary under the given circumstances. It is naturalised and made acceptable. However, the state was still nominally in charge of the use of violence through the regulative network established by agreements with the PSCs. Violence was only to be used in extreme situations, but what does this mean in a conflict zone? Moreover, has the regulatory network been overseen adequately?

In his opening statement, Satterfield recognised PSCs as necessary because DoS had to have the broadest possible freedom of movement in Iraq in order to interact with its Iraqi counterparts and the Iraqi population, these interactions being “critical to the mission in Iraq”⁶⁰¹. This argument relies on the same practices as the argument that PSCs are endangering the overall US mission in Iraq. What is seen as necessary for the mission is to win the hearts and minds of the Iraqis, which is not possible if DoS does not move around in the country. PSCs are an enabler to the mission, not a threat to it. The high requirements in terms of professionalism and standards of conduct demanded of the PSCs and their employees were there to guarantee that PSCs were advancing the overall US mission, not hindering it. This was to be guaranteed by strict requirements and training, oversight by the embassy, clear standards of conduct set in place in the contracts as well as straightforward

598 Griffin, Richard J., written opening statement that was not presented in the hearing, transcript of the House Committee hearing, 134–136. Also in discussion 141; 154.

599 Tierney, John F., transcript of the House Committee hearing, 141; Griffin, Richard J., transcript of the House Committee hearing, 141.

600 Satterfield, David M., transcript of the House Committee hearing, 124.

601 Satterfield, David M., transcript of the House Committee hearing, 123.

incident reporting procedures.⁶⁰² These controlling measures were to guarantee the desired outcome – the stance is similar to what was taken in DoS related documents and in the agreement between DoD and DoS. Additional oversight was provided by DoS's High Threat Protective program office in Washington, which also engaged in discussions with the PSC management on a weekly basis, for example, in response to the shooting incidents⁶⁰³.

However, in the hearing the first question asked from the DoS representatives was “why DoS [had] respond[ed] to incidents mainly by asking [PSCs] to pay a compensation and helping the contractor to be sent out of Iraq?”. This looked more like an attempt “to sweep the incident under the rug” than scrupulous oversight and accountability.⁶⁰⁴ DoS was hence accused of having neglected its responsibilities. DoS's response was that “the area of what laws are available for prosecution is very murky” and that some of the cases had been referred to DoJ⁶⁰⁵. In other words, when clear guidelines on how to respond to the alleged misconduct did not exist, DoS tried to solve problems on practical ad hoc grounds. Incoherent oversight structure was hence justified by inadequate guidance from the lawmakers and seen as a larger problem than as an issue related to Blackwater and DoS. Both of these arguments come up constantly in the discourse around the outsourcing of the tasks of state armed forces. The situation is partially explained by the circumstances in which the original decisions to deploy PSCs in Iraq were made. There was a rush and DSS itself had neither the people nor the required skills to complete the work with its own agents. Currently, it is still recognised that what PSCs do is not a career-type assignment for a DSS agent, because what is required in conflict zones is surge capacity; not something that would be required to continue for 25 or 30 years.⁶⁰⁶ PSCs are objectified as a fast cure to an acute disease, not a medication to heal the whole body. However, the question is, for how long are temporary solutions adequate, and when do they turn into long-standing policy? PSCs have emerged as a temporary actor, but will they remain temporary? When does an exception turn into continuity? The current practices seem to strengthen the existence and standing of PMSCs rather than weaken them.

The question of whether the state armed forces should do the tasks of PMSCs was raised again in the hearing⁶⁰⁷. DoS's response was that the US armed forces could do the work of PSCs, if it had the

602 Satterfield, David M., transcript of the House Committee hearing, 123–124. Also Griffin, Richard J., written opening statement which was not presented in the hearing (transcript of the House Committee hearing, 131–135).

603 Griffin, Richard J., written opening statement which was not presented in the hearing (transcript of the House Committee hearing, 133); also in discussion 142.

604 Waxman, Henry A., transcript of the House Committee hearing, 137–138.

605 Griffin, Richard J., transcript of the House Committee hearing, 137–138.

606 Satterfield, David M., transcript of the House Committee hearing, 138; Griffin, Richard J., transcript of the House Committee hearing, 139; 150.

607 Tierney, John F., transcript of the House Committee hearing, 142; Watson, Diane E., transcript of the House

training which PSC employees have and if it was operating without uniforms and with a low profile presence. DoS preferred it that way.⁶⁰⁸ This is a rather radical suggestion and deserves more attention. Recognisability by uniform has been one of the important features of modern state armed forces and a requirement codified in international laws on warfare. On the battlefield uniforms have been the way to differentiate between a friend and an enemy, and they have been important in differentiating between a soldier and a civilian. In other words, uniform has been accepted as the mark of state armed forces. This point has been referred to in criticism targeted at the PMSCs as well, when problems in differentiating between US soldiers and PMSC employees have been discussed. PMSC employees wear clothing and carry armament which resembles those of the armed forces so much that visual differentiation is sometimes impossible. This does not mean that some units of state armed forces, especially intelligence units, would not have operated without uniforms before, but as a general rule uniform has been the mark of state armed forces. Suggesting that some units of armed forces would operate without uniforms, and under DoS's civilian command, is a radical move in this context. Making such a suggestion has become possible because the American way of warfare is transforming⁶⁰⁹. When the forms, modes and dimensions of warfare have multiplied and the opponent does not necessarily respect the requirement of recognition by uniform – but instead hides itself amongst the civilian population – it has become possible to suggest that US armed forces would operate in some circumstances without uniforms. This would further blur the borderline between civilian and military. Even if in the discourse such a suggestion was made more to emphasise the importance of PSCs to DoS and such a change was not even expected to happen, it shows how the transformation of warfare enables thinking differently.

It was also assumed that having the state armed forces protect DoS officials would bring some new problems. It was expected that the armed forces would still be responsible to military command and not to DoS and therefore DoS might be in danger of losing control of its security operations.⁶¹⁰ The prior authority structures were hence not expected to change dramatically. What would this mean for operations when inter-agency disputes enter them more intensively? The assumption is that security operations would become, for example, slower, less responsive to changes and more rigid due to different bureaucratic and authority structures in the agencies and to inter-agency power struggles. These kinds of developments are contrary to what are said to be the requirements of current and future conflicts as well as to how the armed forces want to see themselves in the future;

Committee hearing, 145.

608 Griffin, Richard J., transcript of the House Committee hearing, 143; 147–148; Satterfield, David M., transcript of the House Committee hearing, 148. Also Shays, Christopher, transcript of the House Committee hearing, 147–148.

609 About transformation of the American warfare, see chapter 4.2.2.

610 Griffin, Richard J., transcript of the House Committee hearing, 143; 147–148; Satterfield, David M., transcript of the House Committee hearing, 148. Also Shays, Christopher, transcript of the House Committee hearing, 147–148.

how DoS wants to see itself and what requirements, most probably, will be set to the agency in the future. Moreover, they are contrary to the image of dynamic state that we expect to regulate in the United States in the future.⁶¹¹ The authority question was also referred to in representative Shays's ending statement when he noted that the question seems to be whether the contractors or the state armed forces should perform protective tasks or whether DoS should have its own protective force⁶¹². Further questions emerge from this basis. What would it mean for the civilian-military borderline to have DSS's own security forces protect DoS personnel in war-like circumstances and in a warfare-like manner?

The New York Times also wrote about the House Committee hearing. In the newspaper, DoS testimony was described as giving "extensive praise for Blackwater's professionalism in Iraq" and as being a defence of DoS supervisory measures. It was noted that DoS saw Blackwater providing it with a critical service. In contradiction to this, the committee's chairman was reported as having accused DoS of protecting Blackwater from Iraqi investigations, helping it to cover up the shootings and therefore acting as Blackwater's enabler.⁶¹³ Truth claims which spread from the hearing to the general public were selected and partial. This shows how our general understanding consists of contingent selections made by reporters according to their own evaluations of what is important⁶¹⁴.

In both parts of the hearing, several pleas for further information were made by the committee members⁶¹⁵ and these pleas were repeated in correspondence between the committee, Blackwater and DoS, as can be noticed by examining the list of published documents related to the committee's investigations on Iraq reconstruction on its website⁶¹⁶. The committee also held another hearing, in which the then Secretary of State was called to testify⁶¹⁷. This shows how the need for information is continuous and how knowledge production is an ever on-going process. However, after having studied the intense knowledge production by investigations, it is time to scrutinise the consequences that seem to have followed from the September 16 shooting and from the knowledge production in which the shooting was formulated.

611 See chapter 4.2. about the transformation processes related to the state and to the armed forces; see chapter 4.1.2. about how bio-power is oriented towards the future.

612 Shays, Christopher, transcript of the House Committee hearing, 160.

613 The New York Times, 03.10.2007a.

614 About the role of contingency, see chapter 6.2.

615 See, transcript of the House Committee hearing.

616 http://oversight.house.gov/index.php?option=com_content&view=article&id=4489&catid=43, visited 21.04.2010. Chairman Henry A. Waxman also criticises in a letter DoS for not delivering some of the requested documents by the dead line (The New York Times, 23.10.2007).

617 The New York Times, 25.10.2007a.

10. The consequences of the September 16 shooting

10.1. *Blackwater's contract with DoS*

After the initial explanation about the September 16 shooting in which Blackwater stated that its personnel came under an attack in Nisour Square⁶¹⁸, the company remained silent for days⁶¹⁹. It declined to comment or to provide numerical information from its own records⁶²⁰, but confirmed that it had also been doing its own investigation into the September 16 shooting⁶²¹. Personnel involved in the shooting, were ordered not to speak about the incident⁶²². This was enforced with confidentiality agreements the company had done with DoS⁶²³. However, these confidentiality agreements effectively silenced Blackwater in the discourse. They made the company's voice unheard in public.⁶²⁴ This seems to have been an additional practice used by the US administration to control the production of truth and knowledge over the September 16 shooting. It did not give business actors a chance to explain or comment actions that were still widely perceived as governmental functions. For the company, silence did not make good; instead, it made Blackwater look suspicious.

After the House Committee hearing Blackwater changed its practices and, in addition to speaking in the hearing, the company's then CEO Prince gave several interviews in order to change the primarily negative image of the company in the media⁶²⁵. Blackwater wanted to get its voice and stance heard and thus, to occupy a position of a legitimate discussant in the dispositive. In the meantime, it was reported that Blackwater was under investigation due to accusations that it shipped unlicensed weapons and other military goods to Iraq⁶²⁶ and that it had handled another shooting incident in Baghdad in 2006 by simply firing an employee and sending him back to the United States⁶²⁷. By reading The New York Times news articles one comes soon to the conclusion that the intensification of information production has been a chosen policy in the paper: old, previously hardly noticed cases were brought into the spotlight alongside the September 16 shooting and incidents occurring after the shooting were paid wide attention to. Therefore, struggles

618 The New York Times, 18.09.2007.

619 The New York Times, 19.09.2007; 20.09.2007; 23.09.2007; 28.09.2007a; 02.10.2007; 13.10.2007; 24.10.2007; 25.10.2007b; 26.10.2007.

620 The New York Times, 27.09.2007.

621 The New York Times, 28.09.2007a.

622 The New York Times, 28.09.2007a; 25.10.2007b.

623 The New York Times, 01.11.2007.

624 See chapter 6.2. about the importance of silence in discourse.

625 The New York Times, 01.11.2007.

626 The New York Times, 23.09.1007.

627 The New York Times, 06.10.2007.

over the objectification of the company were intense. The main question seemed to remain whether to perceive the company as a trusted security provider or an unaccountable company causing trouble. Regardless of the negative attention and instead of packing its facilities, Blackwater seemed to be preparing for a long term stay in Iraq and making plans for a rapprochement with the Iraqis⁶²⁸.

A new turn related to the September 16 shooting came in mid-October 2007, when The New York Times reported suspicion and disagreement amongst current and former Blackwater employees about whether the shooting was justified or not. “I don't think there was criminal intent involved. [...] it was the application of the use of deadly force gone horribly wrong” as one of the employees was quoted in the newspaper. Still, a number of employees expected that criminal charges were to be raised in the US judicial system⁶²⁹. This was one of the first times when Blackwater was not presented as a unitary actor in the discourse. Instead of standing unanimously behind the actions of the employees involved in the September 16 shooting, the company's ranks were divided and of differing opinion regarding the incident. This became an influential form of specification in the discourse when disagreements inside the company were reported over and over again⁶³⁰. Looking divided made Blackwater a weaker actor in the dispositive. Struggles over the justifiability of the shooting penetrated the company and thus presented it as a fractional actor. This transition was reciprocal to the one presented to take place within the US administration. While the US administration was getting more united and centralised, the company was getting more fractured⁶³¹. Presenting these transitions simultaneously in the dispositive changed the power relations in it: the uniting US administration was gaining a stronger position while the fragmenting PSC was losing its position, which had been based on the practice of standing as a unitary actor possessing the truth due to its expertise, against the scattered US administration which lacked the necessary knowledge.

In the meanwhile, the company launched a support campaign by e-mailing its employees and suppliers, as well as other PSCs and political allies, to write to Congress for its support⁶³². Blackwater looked for power resources by uniting with the industry and with its affiliates. It also built up an impressive consultancy network of lawyers, lobbyists and advisers as well as PR-people for its support. It consistently denied all charges of wrongdoing related to the September 16 shooting and other similar incidents. According to the company's spokeswoman “There [is] still a

628 The New York Times, 08.10.2007a.

629 The New York Times, 25.10.2007b.

630 About forms of specification, see pages 64–65.

631 The trend continued in the discourse, when disputes within and resignations from the highest ranks of Blackwater were reported. The New York Times, 10.11.2009; 11.11.2009.

632 The New York Times, 26.10.2007; 01.11.2007.

lot of misinformation out there⁶³³”; now the company wanted to correct it. The company wanted to contribute to the production of truth over the September 16 shooting as well as over the whole phenomenon of outsourcing of the tasks of state armed forces. Parts of the campaign were to distance the company from its past by changing the name of the company's operating division from Blackwater USA to Blackwater Worldwide – that is, to make it sound more international – and the logo of the company to a softer edged one, to give a series of interviews and to release reports on two major incidents which had caused the company to be put under scrutiny.⁶³⁴ Later on, the company changed its name to Xe or Xe Services Ltd. in order to abandon the tarnished company name. At the same time Blackwater Lodge and Training Center was renamed the U.S. Training Center Inc., and the company said it was moving from protective security services towards training services.⁶³⁵ The new name also tied the company's training services centre closer to the notion of American hence emphasising the patriotic cause. By doing this, the company not only rebranded itself, but was also demonstrating change and transformation, which were required from it after the incident.

When the September 16 shooting proceeded to formal criminal investigation by the US federal prosecutors, Blackwater faced a situation in which the renewal of its contract with DoS the following spring became dependant on the investigatory findings and on the company's performance⁶³⁶. If not literally, then symbolically this became a question of life and death for the company, for the United States administration was Blackwater's biggest single client, who also had a chance to criminalise the company⁶³⁷. The US administration was thus exercising its customer's power to change a provider who might have broken a contract and who might not be able to deliver what it had agreed to deliver. However, the US administration's power resources were not limited to those of a customer. Because it had the right to investigate and to decide upon what was to be evaluated as criminal and wrongful, it was also exercising its sovereign right⁶³⁸. If the company had not acted rightfully and according to the contract, it could potentially face more severe criminal consequences than just losing a contract. In April 2008, DoS renewed the contract with Blackwater for a year, because “security needs [so] required”⁶³⁹. DoS did not seem find any alternative practice to protect its personnel and visitors in Iraq. According to The New York Times, “[o]fficials say only three companies in the world meet their requirements for protective services in Iraq, and the other

633 Tyrrell, Anne E., quoted in The New York Times, 01.11.2007.

634 The New York Times, 01.11.2007. Also 10.05.2008.

635 The New York Times, 13.02.2009.

636 The New York Times, 20.11.2007; 05.12.2007.

637 About demands to either correct or to kill the company, see chapter 9.2.

638 See chapter 4.1.2. about the functions of sovereign right.

639 The New York Times, 05.04.2008; 10.05.2008.

two do not have the capability to take on Blackwater's role in Baghdad". In other words, PSCs were necessary and Blackwater especially.⁶⁴⁰ Blackwater was still objectified as something irreplaceable; naturalised as an essential part of the US operation in Iraq and individualised even among its kinds⁶⁴¹. This attitude was criticised of being an indicator of an addiction: "[I]t points to the fact that the dependence on contractors is like a drug addiction. They just can't help themselves⁶⁴²". This statement activates legal discourse in the dispositive from a new starting point. The US administration is here seen as a patient or as a minor criminal being under the intoxicating influence of PMSCs. Once the administration cannot help itself, the substance it is addicted to should be criminalised, which is the responsibility of the lawmakers and of the institutions scrutinising the administration.

In December 2008, the first MERO report stated that it was likely that Blackwater would not be licensed to operate in Iraq anymore⁶⁴³. The company's licence application was still under consideration by the Iraqi government. When DoS was to decide again in April whether to renew Blackwater's contract it planned to examine other security options as well. Thus, by delaying the licensing process the Iraqi government was able to push the US government to rethink its security practices in Iraq. This is one of the practices of resistance which the Iraqi government was using against the occupying force. In the MERO report, it was also assumed that the lift of immunity might, again, raise the pay demands of the PSCs or it might make some companies leave Iraq, which might raise the costs of the WPPS program and in any case compel DoS to investigate different security arrangements.⁶⁴⁴ The presumption seems to be that fewer diplomatic exemptions would mean higher economic costs to the US government, when the loss of exemptions would have to be compensated to the companies. This would reduce the impact of the initial claim used to justify the outsourcing according to which PMSCs would provide security services with lower costs than the US state agencies could do – if not to annul the whole claim. It also serves as a good example of how the political, diplomatic and economic are intertwined and how diplomacy, as well as security, can be commodified into a market product. However, because diplomacy is not the focus of this thesis, I will leave this topic for others to study.

Eventually, Iraq denied Blackwater the operating license. Even before this denial, DoS had organised a meeting with Blackwater, Triple Canopy and DynCorp in which the companies were required to give proposals on how they would organise DoS security in Iraq. As DoS promised to

640 The New York Times, 10.05.2008.

641 See chapter 9.2. about how Blackwater was produced as an exception.

642 Singer, Peter W., scholar, quoted in The New York Times, 10.05.2008.

643 See chapter 8.3.1. to find out more about the report.

644 The New York Times, 17.12.2008; MERO-IQO-09-01, 6.

comply with the Iraqi government's decision, it sent inquiries to the two latter companies asking how soon they could take over Blackwater's operations. Blackwater commented on the matter only by saying that it had followed proper procedures to apply an operating license and that it had not yet received an official response.⁶⁴⁵ Some days later, DoS announced that it would not renew Blackwater's contract⁶⁴⁶ and that it would seek to reduce its dependence on all PSCs. Nevertheless, the department stated that it would probably not manage without contractors in conflict areas like Iraq⁶⁴⁷. DoS did neither give any explanation of how it planned to reduce this dependence. It seems still that in the face of pressure from Iraq, within the United States and internationally, the US government had to compromise. It gave up working with Blackwater, but did not stop outsourcing of the tasks of state armed forces. It removed a malfunctioning organ, but refused to operate on the whole body. PMSCs were still necessary – as the negotiations with two other security companies about the takeover of Blackwater's operations depicted – but a line had been established over which the companies could not step, even in a conflict zone, without severe consequences.

Triple Canopy received the previous Blackwater contract for five years onwards and many Blackwater employees in Iraq moved to work for the new employer⁶⁴⁸. This is a new approach in the dispositive in the context of Iraq: when previously only individual employees had been sanctioned, this time the correcting measure was applied to an entire contracting company. In this way, PMSCs as companies were introduced in the corrective realm of bio-power⁶⁴⁹. US officials seemed to be relieved that the personnel guarding them remained the same, which brought some continuity to the security operations. It was also noted that Triple Canopy could not otherwise find enough qualified personnel in time. Critics, on the other hand, were worried that the old personnel would bring their old working habits with them and thus the situation would remain the same. However, the rules of conduct for PSCs had been changed already and the effect of changes was said to begin to become visible. For the Iraqi government, it did not play a significant role who the employees were as long as they were obeying laws. It was speculated whether Blackwater or its affiliates would still profit from the deal, but the company denied this. Its aviation support contract in Iraq was not terminated prematurely, but stayed in effect until the next September when it was handed over to DynCorp.⁶⁵⁰ It was said that terminating contracts without cause would become very costly to DoS⁶⁵¹. The United States was thus comparable to any other customer who undertakes

645 The New York Times, 29.01.2009.

646 The New York Times, 30.01.2009.

647 The New York Times, 04.02.2009; 21.08.2009; 02.09.2009.

648 The New York Times, 03.04.2009; 21.08.2009.

649 About bio-power, see chapter 4.1.2.

650 The New York Times, 03.04.2009; 21.08.2009.

651 The New York Times, 21.08.2009.

business agreements: if the terms of contract are not fulfilled, financial sanctions are applied. The question is, what is the state like in this kind of situation? How can it be defined and identified? In September, DoS temporarily renewed the aviation support contract with Xe Services, because DynCorp was not ready to take over the contract yet.⁶⁵² However, the September 16 shooting had consequences beyond Blackwater. It led to regulative and legislative changes both in Iraq and in the United States. Some of these changes have been discussed in this thesis already, but will now be examined in more detail.

10.2. *Regulative and legislative changes*

10.2.1. In Iraq

A big part of the anger and concern over the outsourcing of the tasks of state armed forces both in Iraq and in the United States was that PMSCs were for a long period of time given de facto immunity under Iraqi law by the Coalition Provisional Authority's (CPA) Order No. 17⁶⁵³. This order stated that

[...] Private Security Companies and their employees operating in Iraq must comply with all CPA Orders, Regulations, Memoranda, and any implementing instructions or regulations governing the existence and activities of Private Security Companies in Iraq, including registration and licensing of weapons and firearms.⁶⁵⁴

Contractors shall be immune from Iraqi legal process with respect to acts performed by them pursuant to the terms and conditions of a Contract or any sub-contract thereto. Nothing in this provision shall prohibit [Multinational Force] Personnel from preventing acts of serious misconduct by Contractors, or otherwise temporarily detaining any Contractors who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Sending State. [...]⁶⁵⁵

These kinds of arrangements and the kind of behaviour they were said to provoke in PMSCs and in their personnel were not seen as fair⁶⁵⁶, but rather to be challenging Iraq's sovereignty⁶⁵⁷. When no

652 The New York Times, 02.09.2009.

653 The New York Times, 18.09.2007; 22.09.2007; 23.09.2007; 26.09.2007b; 27.09.2007; 08.10.2007a; 11.10.2007b; 12.10.2007; 13.10.2007; 30.10.2007.

654 CPA Order No. 17, Section 4, Article 2. Private Security Companies is here defined as “non-Iraqi legal entities or individuals not normally resident in Iraq, including their non-Iraqi employees and Subcontractors not normally resident in Iraq, that provide security services to Foreign Liaison Missions and their Personnel, Diplomatic and Consular Missions and their personnel, the [Multinational Force] and its Personnel, International Consultants and other Contractors.” (CPA Order No. 17, Section 1, Article 14.)

655 CPA Order No. 17, Section 4, Article 3. Iraqi legal processes are here defined as “any arrest, detention or legal proceedings in Iraqi courts or other Iraqi bodies, whether criminal, civil, or administrative.” (CPA Order No. 17, Section 1, Article 10.)

656 The New York Times, 18.09.2007; 19.09.2007.

657 The New York Times, 24.09.2007; 26.09.2007a; 31.10.2007a. This point is also referred to by ranking member

criminal proceedings could be undertaken in Iraq, the Iraqis felt that they were left with no authority over PMSCs and they stated their feelings⁶⁵⁸. Instead of accepting the position of a second order state in the dispositive, Iraq claimed its sovereign right to make decisions over its territory and population. It wanted to have its say in the use of contractors in Iraq. This sovereignty question was addressed better in chapters 7.1. and 7.2.

The Iraqi government began a legal effort soon after the September 16 shooting to overturn contractors' immunity. A draft law that would place US contractors under the Iraqi government's supervision and make them responsible under Iraqi law was submitted to a legal committee before the end of September 2007.⁶⁵⁹ The Iraqi cabinet voted for it in the end of October and it was then sent to the Parliament for approval. When executed this law would require all weapons used by PMSCs to be licensed by the Iraqi Interior Ministry, all equipment to be registered with the appropriate Iraqi agencies and all foreign employees to obtain visas.⁶⁶⁰ The approach that the Iraqi government took in relation to PMSCs was similar to that of the US government: more control and surveillance. This was done through practices that made it possible for the Iraqi government to establish a PMSC archive and to control who was operating in the country as well as reinforced the category of nationality as a basis for divisions in the dispositive. Control and surveillance are not actions of a sovereign, but of a governance actor⁶⁶¹. This indicates, again, the noted situation in which Iraq was subordinate to the United States and thus, how the means it could use were restricted.

With regard to the Order No. 17, it was also noted that even if the order granted immunity to contractors, this immunity was not absolute, since the order required that contractors respected Iraqi laws.⁶⁶² Nevertheless, these kinds of opinions soon faded from the discourse, and the order was commonly accepted to grant immunity to contractors. As the aforesaid indicates, what this immunity contained was not clearly or straightforwardly established, but yet another point of power struggle in the dispositive. What is important, again, is that such a practice was established and that it became an important and contested issue. In addition to the Iraqi point of view which condemned the order as an obstacle for its sovereignty, opinions both in the United States and in the international sphere were critical towards the immunity because it seemed to release PMSCs and

Davis, Tom, opening statement, transcript of the House Committee hearing, 14.

658 The New York Times, 19.09.2007; 22.09.2007; 24.09.2007; 31.10.2007a.

659 The New York Times, 25.10.2007a. Also 19.09.2007; 22.09.2007; 26.09.2007b; 27.09.2007; 25.10.2007a; 05.12.2007.

660 The New York Times, 31.10.2007a.

661 About sovereignty and governance, see chapters 4.1.2. and 4.2.1.

662 Bremer, Paul L. III, head of the Coalition Provisional Authority, according to The New York Times 11.10.2007b. Also Human Rights First 2008, 23.

their employees from any responsibility in Iraq. This was assumed to prompt misbehaviour. However, the official reasoning given for such an order to exist was that under the conditions in Iraq a fair trial to possible offenders could not be guaranteed. Here, the mistrust towards Iraqis, which was discussed in chapter 7.1. emerged again. CPA Order No. 17 did not directly comment on the civilian-military borderline in the dispositive of outsourcing of the tasks of state armed forces, but guaranteed a similar immunity to PMSCs and to their employees as the representatives of the US armed forces had – as well as the representatives of DoS and other civilian agencies had.

The Order No. 17 was finally revoked on November 17th 2008 when a new status of forces agreement was signed between the US and Iraqi administrations. The agreement came into force January 1st 2009. It was to provide a legal basis – negotiated with the Iraqis – for American operations in Iraq after a United Nations mandate expired by the end of 2008. Negotiations which took place before the signing were difficult and demands for Iraq's sovereignty came up on several points, one of them being the contractor immunity matter on which an agreement had already been reached during the negotiations process⁶⁶³. The agreement primarily discussed the US armed forces and their civilian component. Therefore, when it lifted the immunity of DoD contractors, the immunity of DoS contractors as well as of contractors working for, for example, other civilian US state agencies or international organisations was assumed to remain.⁶⁶⁴ This repositioned DoS contractors into the realm of diplomacy and the civilian rather than the realm of warfare and military; they were differentiated from DoD contractors as more distinctively civilian actors.

The possible lift of immunity concerned PMSCs and their employees in Iraq and left them to worry how their operations would change, how much personnel would leave the country and whether the Iraq's judicial system with its known issues would make recruiting difficult. It was expected that in the future PMSCs would have to do more recruiting in Iraq in order to meet the demands of the removal of immunity.⁶⁶⁵ The lift of immunity was thus expected to make business in Iraq more uncertain, less productive and difficult to do. It was also expected that recruiting Americans would become more difficult, which would lead to decrease in professionalism. The uncertainties PMSCs faced were similar to those of the US administration, that is, of the PMSCs' client: continuity of operations, challenges in recruitment and increasing costs. In other words, the interests of the companies coincided with the interests of the US administration, which strengthened the position of both the companies and the US administration in the dispositive. On the other hand, the lift of immunity made both the companies and the US administration dependent on the decisions of the

663 The New York Times, 14.06.2008; 02.07.2008; 03.07.2008; 30.11.2008.

664 USA-Iraq SOFA, Article 2; Article 12.

665 The New York Times, 14.06.2008; 02.07.2008; 03.07.2008; 30.11.2008.

Iraqi government. Signing SOFA, which was said only to be done between sovereign states, in itself was recognition of Iraq as a state from the US side. The agreement, thus, was one of the first documents to address the outsourcing of the tasks of state armed forces in the inter-state sphere in relation to Iraq. However, since the retroactive application of law is not possible⁶⁶⁶, the Order No.17 frames the case and its judicial processing in an important way.

When tighter rules for PMSCs were agreed upon, the Iraqi government announced that it was ready to confront the companies by violent means, if it looked like they were not complying with the new rules. This was said to set up a possibility of armed confrontation between the Iraqi security forces and Western armed contractors.⁶⁶⁷ It also emphasised the new power position of the Iraqi government who just found violence from its toolbox and could enforce the US government and PMSCs to submit to its will. The announcement created a possibility in which any violence by PMSCs would be confronted by violence by the security structures of the country in which the PMSCs operated; a possibility in which violence would be responded to by violence instead of submitting to it. Regardless of this threat, the Iraqi government stated that it would examine every company operating in Iraq and cancel the licenses of those who were in breach of the new rules in order to apply more control and discipline. In practice this meant inspections by the Iraqi security forces on PMSC facilities. A database was also established to track weaponry distributed in Iraq.⁶⁶⁸ In other words, an archive was to be established on the Iraqi side. Iraqi and the US archives were unlikely to be similar – discourse and dispositive certainly differ, as do the interpretations of the September 16 shooting. In this thesis I concentrate on the United States and therefore, will now examine the regulative and legislative changes in the United States.

10.2.2. *In the United States*

Soon after the September 16 shooting it became clear that not only did Iraqi law not apply to the contractors, but also that there was no clarity whether any US law would apply to the case and if any did, which⁶⁶⁹. When the murkiness of the US legislative and regulatory framework was recognised and the inadequacy of mere regulations was acknowledged, it prompted a heated discussion. When it began to appear that no law was applicable to PMCS working abroad for other US agencies than DoD and especially that there was a fair chance that the Blackwater employees involved in the September 16 shooting could go unpunished, something approaching a unity of

666 The New York Times, 05.10.2007.

667 The New York Times, 08.11.2007.

668 The New York Times, 08.11.2007.

669 The New York Times, 05.10.2007; 08.10.2007a.

opinion emerged in the United States stating that something had to be done. It would not be right or just, if the shooting went unpunished. In other words, Blackwater and its employees were judged guilty long before any trial. In addition to foreign policy concerns, recognition of human rights played a role in the demands for punishment. A response to these demands came in the form of legislative bills. Firstly, the Senate approved defence policy legislation which, among other things, asked for the establishment of “an independent commission to investigate private contractors operating in Iraq and Afghanistan”⁶⁷⁰. This legislation led to the establishment of a Commission on Wartime Contracting in Iraq and Afghanistan, which began its work in 2008.⁶⁷¹

Secondly, the September 16 shooting was referred to as an example when legislative processes were pushed forward in Congress. In the Senate, more accountability was required in attempts “to expand the jurisdiction of American law enforcement agencies to cover contractors overseas⁶⁷²” and to create “a special F.B.I. unit to enforce federal law”⁶⁷³. In these initiatives the use of unaccountable contractors were seen as a way of getting around the opposition of the US public to the wars in Iraq and in Afghanistan, and as a hindrance in the fight for hearts and minds⁶⁷⁴. At the same time, the House of Representatives approved legislation “that would bring all United States government contractors in the Iraq zone under the jurisdiction of American criminal law”. Also here, in the justifications for the legislation the September 16 shooting served as an example of the negative prevailing situation, in which the contractors were out of reach of US military and civilian law as well as of Iraqi law. This legislation would apply US criminal law to contractors working for all US agencies. Execution of this legislation required FBI investigation of any alleged breaches of law.⁶⁷⁵

In the dispositive US national law was preferred and it was to be applied to cases which occurred abroad as well. Instead of enhancing international law, the United States opted for creating its own laws for other to follow. This is a decision of a strong actor who believes the rest of the world would submit to its decisions. A US investigative agency was expected to investigate future incidents. This suggests that in relation to legislation the international was seen in the way which Cox labelled the American Empire⁶⁷⁶. Critics, including the White House, suspected that these laws would only make the situation even murkier and stretch the FBI beyond its capabilities as well as “interfere

670 The New York Times, 02.10.2007.

671 Commission on Wartime Contracting in Iraq and Afghanistan website www.wartimecontracting.gov, visited 13.01.2010.

672 A legislative initiative put forward by John Edwards, reported in The New York Times, 04.10.2007.

673A legislative initiative put forward by Barack Obama, reported in The New York Times, 04.10.2007. Also 05.10.2007; Human Rights First 2008, 21.

674 The New York Times, 04.10.2007. About the importance of the support from Iraqi population, see chapter 4.2.2.

675 The New York Times, 05.10.2007; 17.10.2007; 30.10.2007. Also Human Rights First 2008, 21.

676 See chapter 2.2. about Cox’s notions.

with crucial activities and operations”.⁶⁷⁷ The critics wanted to hold on to the flexible foreign policy option the use of PMSCs seemed to provide. The assumption that the suggested laws and FBI investigations would only interfere with operations reinforced the division between, on the one hand, the military and military-like and, on the other hand, the civilian. National, civilian law and law enforcement agencies were to be kept away from conflict zones abroad.

Thirdly, the Secretary of State in her testimony to the House of Representatives Oversight and Government Reform Committee admitted that “there was a 'hole' in United States law that had allowed Blackwater USA employees and other armed contractors in Iraq to escape legal jeopardy for crimes possibly committed there”. While DoS welcomed the new legislative attempts to bring PMSCs under US law, it had reservations about subjecting them to military law.⁶⁷⁸ Whether or not to subject civilian contractors to military law became one of the disputed points in the discussion. It seemed to be somehow unheard-of that civilians could be subject to military law. The archive of modern warfare, guided by laws of war, played an important role in this⁶⁷⁹. Since the military status subjected people under different legislation and judiciary than would be the case under “normal circumstances”, it was seen as an important distinction between not only civilian and military, but also, for example, between peace and war or normal circumstances and the state of emergency. It was desired that these distinctions be up-held, because enmeshing them seemed to endanger something that had been acknowledged as profound in our general understanding. However, it can be asked why it is acceptable that civilians operate in conflict zones and as a part of the war effort, but military law should not be extended to them? On the other hand, subjugating DoS contractors to military law could create a similar awkward situation to that discussed earlier in this thesis in relation to having US armed forces to protect DoS personnel. What would it mean to have civilian contractor working for a civilian agency subject to military law?

With time reports from The New York Times changed. In the immediate aftermath of the event more and more details about the incident were sought by attending press conferences held by both the US and Iraqi officials, by asking comments from the company and by interviewing Iraqi eye witnesses as well as investigators, both US and Iraqi. By mid-October 2007 the accountability and responsibility of PMSCs became the main concerns in reports; legal and control issues moved to the fore, especially when it began to look like that the Blackwater employees who fired their weapons on Nisour Square acted unprovoked⁶⁸⁰. Discussion turned to the applicability of different laws and

⁶⁷⁷ The New York Times, 05.10.2007.

⁶⁷⁸ The New York Times, 26.10.2007.

⁶⁷⁹ See chapter 4.2.2. about the rules of war; see chapter 6.2. about the importance of archive.

⁶⁸⁰ A big change to this direction happens, when in addition to the Iraqi investigations, the US investigations come to

regulations as well as to the lack of control that DoS, but also DoD and other US agencies using PMSCs and their services, seemed to have. This moved the case to the administrative-judicial sphere; to a seemingly less political sphere, albeit politics hardly ever remains in the formally political sphere. What happened on September 16 was condensed into a one or two sentence story, for example, “[...] a Sept. 16 shooting involving Blackwater guards in which at least 11 Iraqis were killed⁶⁸¹” or “[...] the Sept. 16 shooting in Baghdad involving Blackwater security personnel guarding a diplomatic convoy, which left at least eight Iraqis dead⁶⁸²” or “[...] a shooting on Sept. 16 in a Baghdad square that killed at least 17 Iraqis⁶⁸³” and the case's administrative and judicial aspects and expected changes in these spheres became the main focus of reporting. As The New York Times put it “[...] [the administration's changing response to the September 16 shooting] seems to signal that the State Department's leaders now recognize that the Blackwater issue is more serious than they had first thought [...]”⁶⁸⁴. Alongside the perspective in reporting the discourse changed: the war or incident discourse faded to the background when the justice and crime discourse stepped to the front stage. However, the main concern in the discourse remained as that of accountability and responsibility.

When in The New York Times the case became more strongly an issue of legality, specialists and experts were called in. In other words, the speakers of authoritative truth were called in. This did not mean that only legal experts were given a chance to speak, but also military experts and people from academia who had studied the outsourcing of the tasks of state armed forces. Holders of special knowledge – attained through experience or scientific study – were called in to tell the truth. The experts were believed to be able to give a more in depth analysis of the regulatory and legislative difficulties as well as of the difficulties faced on the ground if PMSCs and the armed forces were not cooperating or if the same rules did not apply to both.⁶⁸⁵ The September 16 shooting was said to highlight the legal uncertainties around the whole phenomenon of outsourcing of the tasks of state armed forces. Curiously, the legislation problem was always discussed in comparison with the legislation that binds the state armed forces. Thus, experts and specialists were to make their contribution to the placement of PMSCs somewhere on the civilian-military borderline, and they tied PMSCs to the military sphere.

the conclusion that the Blackwater employees acted unprovoked. The New York Times, 11.10.2007a; 13.10.2007; 14.11.2007.

681 The New York Times, 26.09.2007a.

682 The New York Times, 29.09.2007.

683 The New York Times, 04.10.2007. These examples are just a few of the several one to two sentence formulations that the story receives.

684 The New York Times, 28.09.2007b. Also 08.10.2007a; Human Rights First 2008, 19.

685 About the role of experts, see chapter 4.1.2.

In the discourse, the main point of concern seemed to be that

[i]f a private in the United States military fires on civilians, a clear body of law and a set of procedures exist for the military to use in investigating each incident and deciding in the evidence is sufficient to bring charges.

But when private security contractors do the same, it is exceedingly unlikely that they will be called to account. A patchwork of laws that are largely untested, and practical obstacles to building cases in war zones, have all but insulated contractors from accountability.⁶⁸⁶

The accepted stance seemed to be that there was either military law or no law at all. Contractors were again compared with the state armed forces and the lack of legislation to cover their actions was made explicit. Problems recognised in applying existing US laws – as shown above, US law was the preferred starting point – culminated around the following points. Firstly, PSC employees or private contractors PSCs had hired had status as civilians, not as soldiers. This would make the application of military legislation difficult.⁶⁸⁷ Secondly, Blackwater contractors were working for DoS, not for DoD, in other words, they could argue that their work was not tied directly to war operations⁶⁸⁸. Therefore, the chances for getting proceeding the case under civilian legislation seemed to be somewhat better. The first and second matters were discussed in detail in chapter 2.1. of this thesis.

However, under civilian legislation several problems occurred as well. Firstly, what guarantees were there that nobody had tampered with the evidence? Because the incident took place overseas, there was no US police force on the incident scene within minutes to secure the evidence. This problem rises clearly from the judicial sphere and acts as a new surface of emergence in the dispositive⁶⁸⁹. It activates the meaning of evidence, which was discussed in chapter 8.3.3., and the question of guaranteeing the rights of victims as well as those of the suspected offenders. Secondly, the shooting took place in another country, where US legislation, in principle, was not applicable. Here, sovereignty is not seen as definitional obligation and an issue of state credibility, but an obstacle for a legislation to apply in certain situations. Thirdly, because in the judicial proceeding the defendants have the right to cross-examine witnesses, those would have to be brought to the United States to testify in court. This again, would prompt logistical problems and a rise in the costs of the judicial proceedings.⁶⁹⁰ The problem of guaranteeing everyone's rights as well as the proceeding of judicial cases according to the guidelines and practices which establish trials as the supreme authority over right and wrong, legal and illegal, as well as legitimise the end results of the trials are the source of

686 The New York Times, 11.10.2007b.

687 The New York Times, 11.10.2007b; 30.10.2007.

688 The New York Times, 05.10.2007; 11.10.2007b.

689 About surfaces of emergence, see pages 64–65.

690 The New York Times, 11.10.2007b; 30.10.2007. Also 16.01.2008.

concern here. How to guarantee that trials as ritual findings of truth would not become jeopardised, if the applicability of US law was expanded outside US territory without a guarantee of being able to follow all procedures conditioning a just judicial proceeding? It seems that in the dispositive of outsourcing of the tasks of state armed forces not only is the order of warfare under threat, but also the order and credibility of justice. Remarkably, in this context references to the armed forces are not done. So, both US military and civilian legislations were thought of in the discourse, but the problems related to applying either of them seemed difficult to overcome. Interestingly, relying on Iraqi or international legislation and judiciary were not even seen as options in the discourse. In Iraq, having an impartial trial was not seen as possible; international legislation did not seem to have the needed clauses, while it was desired that PMSCs be differentiated from both the state armed forces and mercenaries⁶⁹¹.

A Human Rights First report addressed the complicated legislative matters⁶⁹², which were also widely discussed in The New York Times. It repeated the common notions that the US government had failed in controlling the actions of PSCs⁶⁹³ and that it had provided inadequate information on the matter as well as that even if the majority of PSCs carried out their tasks “in a professional manner, there [was] a widespread and disturbing pattern of illegality and misconduct by private security contractors [...]” that had been ignored.⁶⁹⁴ The report continued that so long as the operational environment of PSCs lacked clear standards, oversight, discipline and sanctions, “abuses by private security contractors [were] inevitable”. That is, the lack of norms and order prompted behaviour evaluated as wrongful. The report stated that the US government had the responsibility to ensure that actors working in its name complied with law and were held accountable.⁶⁹⁵ In other words, the US administration had an obligation to subject PMSCs more clearly and without deviation to its control and to the judiciary.⁶⁹⁶ As the search for responsible individuals is widely present in the discourse, the report demanded that DoJ get more involved and set the main responsibility for holding PMSCs accountable on DoJ’s shoulders⁶⁹⁷ – that is, on the shoulders of a department responsible for judicial matters. It also demanded that DoJ get more involved in the dispositive. While it is more common in the discourse to hold DoS responsible for the misconduct of its contractors, Human Rights First targeted its criticism towards DoJ and used the handling of the September 16 shooting as a prime example of inadequate, uncoordinated, ad hoc

691 International legislation applicable to state armed forces or to mercenaries does exist, but neither of these was to chosen to be applied to PMSCs.

692 The New York Times mentioned the report in its news article (The New York Times, 16.01.2008).

693 Human Rights First 2008, iii–iv; 3–4; 9–14; 23–31.

694 Human Rights First 2008, 1–2; 6; 15–17.

695 Human Rights First 2008, iii; 3–4; 6–9; 17; 23.

696 About the functions of power, see chapter 4.1.2.

697 Human Rights First 2008, iii; 30; 33.

investigations⁶⁹⁸. In other words, not only was legislation partial, but its implementation was unstructured and ineffective. Criticism towards DoJ is a new entry in the discourse and testifies about the transfer of the outsourcing of the tasks of state armed forces to the realm of justice in the discussed related to the September 16 shooting. In a more general context, I would assume that both forms of the discourse around the outsourcing – the one delimited by warfare and state armed forces and the one delimited by justice and judiciary – coexist alongside one another.

The report challenged the Secretary of State's point of view that there was a 'hole' in the US legislation. Even if there were serious gaps in the legislation, it still provided “a substantial basis for prosecuting *most* U.S. contractors in *most* circumstances”.⁶⁹⁹ The report began its search for applicable law by referring to the evolution of the law of war, and placed the main responsibility for control on the shoulders of individual states.⁷⁰⁰ Interestingly, albeit accountability, rights, justice and legislation were the beginning points of the report, it was not able to escape the military sphere. No other context than that of the military legislation was seen as influential enough to begin the search for legislation applicable to PMSCs with. The report continued by stating that since World War II a significant part of the US armed forces had been stationed outside US territory and, therefore, outside the jurisdiction of US civil courts and legal processes. The status of DoD civilian employees, contractors and other civilians accompanying the armed forces had been similar to that of the members of armed forces. Usually, these authoritative and legislative matters had been settled in Status of Force Agreements between countries.⁷⁰¹ It associated the international with the inter-state and again a close connection between military legislation and civilians working in conflict zones was suggested. The connection was proved and justified with the help of historical discourse about civilian employees working for US armed forces. Not only did the report begin its search for applicable legislation from the military sphere, but it also suggested that DoJ should follow military models when establishing accountability mechanisms for PMSCs⁷⁰² and that the existing legislation related to the armed forces should be extended to contractors as well. Thus, the report tied PMSCs closer to the armed forces again, even if the status of PMSCs' employees as civilians was recognised.

As the federal US legislation did not extend beyond US territory, it led “the federal courts [to be] unable to prosecute civilians for crimes committed abroad”. The US Supreme Court had also limited the applicability of the Unitary Code of Military Justice (UCMJ) to civilians accompanying

698 Human Rights First 2008, 1.

699 Human Rights First 2008, 20, italics original.

700 Human Rights First 2008, 23.

701 Human Rights First 2008, 24.

702 Human Rights First 2008, iii; 3.

the armed forces. Therefore, in cases where the host nation was unable to take judicial action there was a chance that some crimes might go unpunished.⁷⁰³ In 2000 the Military Extraterritorial Jurisdiction Act (MEJA) was extended to apply to “persons accompanying the armed forces”, that is, to DoD civilian employees, contractors and subcontractors. However, this led to PMSCs working for other US government agencies (for example, DoS) being outside the jurisdiction. In 2004 MEJA was re-extended to apply to employees and contractors of all US government agencies to the extent to which their work was supportive to the overall DoD mission. In Iraq, there seems to be no question about whether all the US government agencies and their employees and contractors work in support of the DoD mission. Nevertheless, this jurisdiction has never been tested in court.⁷⁰⁴

The report stated also that the USA Patriot Act / the Special Maritime and Territorial Jurisdiction Act, the War Crimes Act, the Torture Act as well as UCMJ could be applied to PMSCs in different cases. Out of these, especially the question of the applicability of UCMJ had often been raised in the discourse⁷⁰⁵. After to its extension in 2006, UCMJ became applicable to persons “serving with or accompanying an armed force in the field” during a “declared war or a contingency operation”⁷⁰⁶. Nevertheless, the question remained whether PSCs and their employees, who are not part of the armed forces, can or should be subjected to military jurisdiction and brought into courts martial. The basic suggestion seemed to be that DoJ followed models and partially applied the legislation of the military in the civilian sphere. The September 16 shooting had potential to become a test case for some of these laws as the following narrative about judicial processes shows.

11. Judicial processes

When the Iraqi government seemed not to proceed judicially in investigating the September 16 shooting, three estates of those killed in the shooting and an injured man sued Blackwater in a US civil court. On its part, this move anchored Blackwater and its employees to the civilian realm. Even if it seems natural that a US company was sued in a US court, the charge was not an ordinary one and the place where the alleged crimes took place was not the United States. In international law the primary legislation to be applied to the case was not US law, but resorting to it was possible when other legal proceedings were evaluated as impossible. The charge against Blackwater was of committing “extrajudicial killings and war crimes” by “creat[ing] and foster[ing] a culture of lawlessness amongst its employees, encouraging them to act in the company's financial interests at

703 Human Rights First 2008, 24.

704 Human Rights First 2008, 25–26.

705 Human Rights First 2008, 27–28.

706 Human Rights First 2008, 28, italics original.

the expense of innocent human life”⁷⁰⁷. Further claims related to assault and battery, to wrongful death, to intentional infliction of emotional distress, to negligent infliction of emotional distress and to negligent hiring, training and supervision⁷⁰⁸. In other words, the charge was quite far away from what companies are usually sued for in a customary business setting. A stance that the company was responsible for the actions of its employees – whether they were hired personnel or sub-contracted independent contractors or something else – was a relatively new approach in the dispositive. Blackwater disputed the stance. Another stance to be disputed was that a company could be held responsible for war crimes. Only a transformation of warfare and re-conceptualisation of the international had made it possible to suggest that a company could be charged of such crimes⁷⁰⁹.

In the complaint, Blackwater was said to provide “mercenary services” and its employees were referred to as “mercenaries”. The September 16 shooting was referred to as a “massacre” or “senseless slaughter” and seen only as the tip of the iceberg of contractor misconduct. The plaintiffs sought compensation for the families of the killed and for the seriously injured.⁷¹⁰ The mercenary claim, which is clearly a minority stance in the discourse⁷¹¹, derives its influence from another, but warfare related archive of mercenaries. In our common understanding mercenaries are often associated with immorality, brutal behaviour, untrustworthiness and other negative characteristics. This is a term which PMSCs and their customers try to avoid using because it highly labels the actors. However, in the charge the term was used to emphasise how badly mistreated the Iraqis felt as well as to associate PMSCs more closely with mercenaries and with other illegal actors in conflict zones. There was a strong suggestion that PMSCs should be outlawed and removed from conflict zones. A court charge brought the outsourcing of the tasks of state armed forces more firmly to the sphere of judicial matters than speculations about applicable laws had done. Not only was the issue a discursive problem: it had now taken form in judicial, non-discursive practices.

The complaint repeated the stance that “Blackwater had no legitimate reason to open fire on a crowd of innocent civilians” and that “[it] began firing without any provocation”⁷¹². It held Blackwater responsible for the actions of its employees and claimed that the company “acted negligently and wrongfully by failing to prevent [its] employees from engaging in foreseeable and predictable wrongful acts”.⁷¹³ Therefore, in the charge a strong responsibility link was established

707 Quoted in *The New York Times*, 12.10.2007; Complaint, case 1:07-cv-01831-RBW, 2; 11–12.

708 Complaint, case 1:07-cv-01831-RBW, 12–15.

709 About re-conceptualisation of the international, see chapter 2.2.; about transformation of warfare, see chapter 4.2.2.

710 Complaint, case 1:07-cv-01831-RBW, 2; 5; 11.

711 For example, in *The New York Times* news articles and in the House Committee hearing the word “mercenary” was mentioned only 14 times.

712 The discussion around justification of the shooting is presented in chapter 7.1.

713 Complaint, case 1:07-cv-01831-RBW, 4–5.

between Blackwater and its employees. This was something that Blackwater had contested in the House Committee hearing and in its recruitment practices by subcontracting the conduct of services bought from the company to independent contractors. If this had been an accepted practice before, the charge wanted to contest it. The complaint referred to the House Committee on Oversight and Government Reform hearing and interviews with US military personnel to build up a case against Blackwater. In other words, it used previously accepted truth claims and referred to recognised authorities to reason itself, which also serves as an example of the circulation of truth claims in the dispositive. It accused Blackwater of trying to cover up killings by minimal payments, for failing to report serious incidents and for willingness to kill innocent bystanders in order to keep the company's clean protection record and thus, its competitive edge.⁷¹⁴ The company's actions were said to harm the US national interest by luring employees from the state armed forces, by endangering the diplomatic relations with Iraq and by “its repeated and consistent failure to act in accord with the law of war, the laws of the United States, and international law”.⁷¹⁵ All in all, the complaint well summarised the accusations stated in the discourse. As said, this court case was settled outside the court room and the settlement has not been made public.

At the end of October 2007 The New York Times reported on immunity deals offered to Blackwater employees by DSS investigators. This was reported as having been “a potentially serious investigative misstep that could complicate efforts to prosecute the company's employees involved in the [September 16] episode [...]”. Firstly, DSS investigators were reported not to have the authority to make these kinds of deals and secondly, now the Blackwater employees could not be prosecuted for anything they truthfully said in interviews with DSS investigators. The FBI had since taken over the investigation and within DoJ the investigation had been moved from the criminal division to the national security division in order to avoid any potential legislative entrapment.⁷¹⁶ The offering of immunity for statements – even if actually having been built in the investigatory procedures rather than being offered by individual DSS agents⁷¹⁷ – faced severe criticism not only in news media, but also in Congress. DoS's response was that even if these kinds of deals were offered, they would not prevent prosecutions. DoJ took a similar stance.⁷¹⁸ Later, it was repeated that DSS “interviewed most of the Blackwater agents involved in the shooting under grants of immunity”, that these grants bound the FBI as well, and that some of the Blackwater employees had refused to cooperate with the investigation⁷¹⁹. Eventually, it was these investigatory missteps that

714 Complaint, case 1:07-cv-01831-RBW, 6–7.

715 Complaint, case 1:07-cv-01831-RBW, 8–10.

716 The New York Times, 30.10.2007; 31.10.2007a; 31.10.2007b; 14.11.2007; 16.01.2008.

717 Memorandum of Dismissal, 7–8. The whole document discusses the matter.

718 The New York Times, 31.10.2007b.

719 The New York Times, 20.11.2007.

led the District Court of Columbia to abandon the criminal charges against the Blackwater employees involved in the shooting.

At the end of November 2007, federal prosecutors in the United States issued grand jury subpoenas to some of the Blackwater personnel involved in the September 16 shooting. In other words, individual Blackwater employees would be charged in criminal court, not the company. This is a different stance from what the civil court complaint had taken. It follows the prior custom to charge only individual contractors and thus, acknowledges the view which Blackwater and other companies pushed for in the dispositive. Issuing subpoenas meant that the prosecutors believed that there was enough evidence to begin a formal criminal investigation into the case.⁷²⁰ Making the case as potentially criminal was a strong move in the dispositive. It responded to the Iraqi claims, created a chance to make PMSC personnel criminally accountable and brought the case – and the phenomenon – more strongly into the judicial sphere. The case became an issue of right and wrong, justice and legality, evidence and proof – unlike the majority of PMSC cases had previously been. It activated disciplines and sovereign right with a new determination in the dispositive⁷²¹. On the surface, it tamed the power struggles over the outsourcing of the tasks of state armed forces by moving it to a seemingly non-political sphere. However, struggles over the phenomenon continued in this sphere as well as in other fora. It was said that grand jury subpoenas did not necessarily mean prosecutions, because the case was so difficult and the legislative framework so unclear. There was not necessarily an adequate legal framework to prosecute in the case. Blackwater refused to directly comment on the matter, but stated that it would give its support to the judicial process, if it was to take place; it would submit to the US judicial system. At the same time, the sworn statements of Blackwater employees that were referred to in the newspaper gave contradictory accounts on the shooting; specifically on the issue of whether the convoy came under attack or not.⁷²² As said in chapter 10.1., reports about divisions within the company made it appear less united and a less powerful actor in the dispositive.

In the dispositive, individual security becomes more important parallel to the strengthening of judicial discourse⁷²³. At the same time, concerns of state security phase to the background. The more the discourse includes concepts and rules for speaking from the judicial sphere, the more focused on individual security it becomes – as well as on the actions of individual Blackwater employees and on the rights of individual Iraqi victims. The judicial realm thus takes the

720 The New York Times, 20.11.2007.

721 See chapter 4.1.2. about different forms of power.

722 The New York Times, 20.11.2007; 05.12.2007.

723 See chapter 2.3. about different notions of security.

individualising techniques even further than they were taken previously in the dispositive. Iraqi claims for the respect of their human rights seem less out of place in the discourse when the context of speaking is not directly that of warfare, but that of justice. As much as warfare has transformed to take the concerns of security in warfare into consideration, in the general understanding it is still closely associated with state versus state contestation⁷²⁴. An individual human being is less important in the realm of warfare than he or she is in the realm of justice; what in the realm of warfare could be calculated as collateral damage, is in the realm of justice an individual deprived of his or her basic right to live. In the dispositive of outsourcing of the tasks of state armed forces, the spheres of warfare and justice intertwine in a new way and whilst PMSCs are neither located firmly to the military, nor to the civilian, this new organisation of warfare and justice turns into fluidity along the civilian-military borderline.

In mid-January 2008, The New York Times reported that DoJ had informed Congress that there were “serious legal difficulties” involved in prosecuting in the September 16 shooting. The newspaper suggested that these difficulties were related to the applicability of any law and to the immunity deals, which were offered to Blackwater employees during the investigation. It was evaluated to be difficult to prove that evidence gathered did not stem from statements made by the Blackwater personnel after they were promised a limited immunity. Discussion had taken place in December 2007 after a federal grand jury had convened. Nevertheless, a conclusion that these difficulties were not insurmountable was drawn⁷²⁵ and the case was advanced in the United States judicial system.

The grand jury considered the case for almost a half of a year. In May 2008 it was reported that Blackwater as a company was unlikely to face criminal charges, but that some of its employees were likely to be prosecuted⁷²⁶. This followed the stance taken by the US prosecutors in November 2007. At the beginning of December 2008, DoJ obtained indictments against five Blackwater employees while a sixth employee was cooperating with the prosecutors and pleaded guilty⁷²⁷. In the guilty plea and the factual proffer in support of the plea, Jeremy P. Ridgeway verified that he had worked as an independent contractor for Blackwater in support of the DoD mission in Iraq and that he been a member of the Raven-23 team on September 16, 2007. He, amongst other Blackwater employees, had opened fire against unarmed civilians on Nisour Square. Ridgeway stated that he and his team mates knew that their rights for using lethal force were defensive and that they had

724 See chapter 4.2.2. about transformation of warfare.

725 The New York Times, 16.01.2008.

726 The New York Times, 10.05.2008.

727 The New York Times, 05.12.2008.

acted against their orders. He also acknowledged that the convoy had not provided sufficient warning before using lethal force and that it had not come under attack. Ridgeway noted that his behaviour was not reasonable.⁷²⁸ He pleaded guilty for voluntary manslaughter and attempted manslaughter. In the guilty plea, a reference to the special maritime and territorial jurisdiction act was made.⁷²⁹ Ridgeway's guilty plea set the model for what the other Blackwater employees involved in the September 16 shooting could expect in the course of the judicial proceedings. In other words, it framed the judicial process.

With regard to the issues of regulation and legislation discussed in chapter 10.2., two notions on the basis of Ridgeway's guilty plea are to be made. Firstly, he acknowledged of working for Blackwater "in support of the DoD mission", which was a requirement for MEJA to be applicable to the case. Secondly, he admitted of having acted wrongfully and testified that his co-workers had also acted wrongfully. Therefore, he acknowledged that sanctioning should follow from their actions. Interestingly, after the court's ruling which dismissed the case, both of the aforementioned points remained undecided.

The grand jury indictment made similar reference to the special maritime and territorial jurisdiction act as Ridgeway's guilty plea had done. It noted that the Blackwater employees, who were to be prosecuted, were acting against their orders when they began to shoot without provocation.⁷³⁰ On its own part, the grand jury hence closed the dispute about who shot first by claiming with judicial authority that the Blackwater employees had not become under fire on September 16th, 2007. It found the employees guilty of voluntary manslaughter, of attempted manslaughter as well as of using and discharging a firearm during and in relation to a crime of violence.⁷³¹ According to The New York Times, the prosecutors said that "the indictments were the culmination of one of the most complicated investigations in the history of [the FBI], involving 10 agents who interviewed hundreds of witnesses during at least four trips to Iraq".⁷³² Finding out the suggested truth had not been easy. When legislation applicable to the case was sought, it was noted that "those who have been briefed on the case said prosecutors could seek 30-year prison sentences under a Reagan-era antidrug law focusing on the use of machine guns in the commission of violent crimes".⁷³³ In other words, none of the most speculated-about laws were to be applied to the case, which is a disruption

728 The Ridgeway Factual Proffer, 2–5; The Ridgeway Guilty Plea 1–2.

729 The Ridgeway Guilty Plea, 2–3.

730 The Grand Jury Indictment, 1–6. About the importance of the discussion about who shot first, see chapter 7.1.

731 The Grand Jury Indictment, 1–6.

732 The New York Times, 08.12.2008.

733 The New York Times, 05.12.2008.

and contingency in the dispositive and hence, serves as a point for something new to emerge⁷³⁴. In response to the indictment, lawyers for the five men accused the US government of “overstepping its authority and recklessly staining the reputations of five decorated veterans who had honourably served their country”⁷³⁵. In other words, the state had penetrated too deeply the economic and while doing so, it had offended something important, that is, the heroism of former US soldiers to whom it was indebted⁷³⁶.

After the indictment a US prosecutor travelled to Iraq in order to discuss the situation with the victims and the victims' families. He briefed the families about how the investigation had been conducted, what was to happen during the trial, and how the families could make claims against Blackwater. There were also plans to fly some of the Iraqi eyewitnesses to the United States to testify in the trial.⁷³⁷ Thus, the United States tried to include Iraqis in the judicial processes, which was important in the fight for hearts and minds in Iraq. It can also be seen as a practice to subject the Iraqis under the US influence in a more gentle way⁷³⁸. After the meeting in which about 50 Iraqis, most of whom had been interviewed by the FBI already, were present, some of whom said they had been surprised when the US officials had contacted them. “It’s an old case, and I had lost hope[.] But now it seems the American administration will give us our rights.⁷³⁹” A reference to human rights was again made, which shows how prominent their presence in the discourse is. The Iraqis identified themselves through human rights, and not only their initial anger, but also frustration caused by the prolonging of the proceedings arose from that basis. Therefore, the prevailing feeling after the meeting was that of frustration: “Every time we asked about something, they tried to avoid it[.] [M]any victims and their relatives said that it was all useless and we came here for nothing⁷⁴⁰”. This seems to suggest that the Iraqis would not submit to the US proceedings without friction.

Like the investigators earlier, the US prosecutor briefed on the investigations only by saying that no evidence of the Blackwater team coming under fire on September 16th was found and instead “accused the guards of acting with blatant disregard for human life and the rule of law”. Clearly, not only did Iraqis make reference to human rights, but so also did, for example, the US administration,

734 See chapter 10.2. about the speculations about applicable law; chapter 6.2. about the importance of disruption and continuity.

735 The New York Times, 06.12.2008.

736 The military honour was discussed in chapter 9.2.

737 The New York Times, 07.12.2008; 13.12.2008.

738 About the functions of power, see chapter 4.1.2.

739 Hashem, Jassem Mohammed, a victim, quoted in The New York Times, 13.12.2008. About the importance of individual rights in the discussion around security, see chapter 2.3.

740 Umm Ghait, a victim's wife, quoted in The New York Times, 13.12.2008.

judicial authorities, politicians and The New York Times. This indicates that even if the concern for human rights is not explicitly expressed in the discourse, it is widely present and one of the main concerns around which the discussion revolves. In addition, the prosecutor said they were honouring the contractors for the important job they do in Iraq by holding the wrongdoers accountable and that 13 other Blackwater employees had acted professionally in the incident scene.⁷⁴¹ Separating malfunctioning actors and sanctioning them was important in order to justify and legitimate the existence of the actors evaluated as righteous and healthy. Pathologies were not to be allowed to damage the whole body.⁷⁴²

In the meanwhile, DoJ made the case public. The New York Times noted that the case was based to a large extent on Ridgeway's testimony and that the five defendants rejected the charges of manslaughter. They also tried to change the venue of the trial to another state, where the jury was seen more pro-military than in the state in which they were now being prosecuted.⁷⁴³ The charged Blackwater employees, thus, self-identified with the armed forces and assumed that their position would most likely be compared with that of the members of state armed forces. Therefore, they tried to maximise their chances in the case by changing the venue. According to the newspaper, these judicial moves “set the stage for the first test of the government’s ability to hold private security contractors accountable for what it considers crimes committed overseas” and that there were several others still to come. The case was said to be an unprecedented use of law; that in the case public opinion was to weigh heavily and that therefore, the guilty plea and attempts to change the venue were important.⁷⁴⁴ This shows how the seemingly neutral judicial sphere is occupied by similar power struggles over the outsourcing of the tasks of state armed forces that take place in other fora. It also shows how much importance was given to the September 16 case.

During the judicial process, the US prosecutors reported that they had established a pattern in the conduct of Blackwater employees who were charged for the September 16 shooting. The employees were reported to having shot often without any reason on the streets while driving. This continuity was seen as important evidence towards supporting the accusation that the employees deliberately tried to harm or kill people on Nisour square. Some of the employees were said to harass Iraqis more as a hobby or as revenge than for any reason.⁷⁴⁵ Here, the practice of establishing a pattern is not applied solely to the companies as it was discussed in chapter 9., but also to individual employees. A behavioural pattern is utilised to prove malicious intent. The practice of

741 The New York Times, 08.12.2008.

742 See chapter 4.1.2. about the importance of differentiating between functioning and non-functioning entities.

743 The New York Times, 08.12.2008.

744 The New York Times, 08.12.2008; 06.01.2009; 19.03.2009.

745 The New York Times, 13.09.2009.

individualising actors penetrated even Blackwater in order to produce knowledge about ever smaller units. Information was gathered about individual employees, so that the corrective measures could be targeted accordingly. Ever more detailed information made it possible to produce ever more distinct actors with certain, recordable characteristics and, hopefully, with a right or correctable way of behaving. This gave the promise of improved control of actors. However, these allegations also refreshed doubts of the inadequacy of DoS oversight. If the pattern could now be established unquestionably, why had DoS not done it in an earlier stage of Blackwater's involvement in Iraq?

In addition to the employees' wrongdoings, it was reported that according to former Blackwater officials the company had tried to pay Iraqi officials to keep quiet after the September 16 shooting. This action was said having caused a rift inside the company and finally having led to resignations. Again, Blackwater was produced as a divided company over norms and over conduct. The company dismissed the allegations as "baseless"; DoS commented that it was not aware of any payments.⁷⁴⁶ Iraqi officials began an investigation on the basis of these allegations⁷⁴⁷ and the Congressional Foreign Relations Committee studied a chance to start another investigation⁷⁴⁸.

In November 2009, DoJ dropped the charges against one of the five Blackwater employees. It reserved the right to recharge him later on.⁷⁴⁹ In December 2009, the federal district court judge dismissed the charges against all five Blackwater employees. This decision was made on the basis of misuse of the employees immunized statements and "brought to a sudden halt one of the highest-profile prosecutions to arise from the Iraq war". This misuse of the statements was judged to violate the defendants' constitutional rights and it was also judged that the tainted evidence and witnesses statements could not be used in the judicial process.⁷⁵⁰ According to the Memorandum opinion of the dismissal of charges, the statements were given under a threat of job loss and therefore, should be categorised as compelled statements. The use of compelled statements when they are self-incriminatory is illegal according to US law. Not only did the US prosecutors build their case upon these immunised statements, but they also failed to safeguard the evidence as well as the members of the grand jury from being tainted by these statements. Therefore, the charges against Blackwater employees were dropped.⁷⁵¹

746 The New York Times, 10.11.2009.

747 The New York Times, 11.11.2009.

748 The New York Times, 18.11.2009.

749 The New York Times, 20.11.2009.

750 The New York Times, 31.12.2009; 02.01.2010. Memorandum of Dismissal, 1-3.

751 Memorandum of Dismissal. The whole document discusses this matter.

The decision angered the Iraqi people leading to questions like “What are we - not human? [...] Why do they have the right to kill people? Is our blood so cheap?”⁷⁵² Human rights functioned, again, as the basis for demands for justice. The rights of the Iraqis seemed to have been stepped over in order to secure the rights of US citizens – in this case, the rights of the charged Blackwater employees. In the rights discourse there are parallels to the security discourse: the question of whose rights are important coincide with the question of whose security is important⁷⁵³. The prosecution was seen as a test case for US democratic principles and the functionality of its judicial structure and therefore, the Iraqi government found the judgment regrettable.⁷⁵⁴ However, because the case was considered in a civilian court, it included DoJ more firmly in the production of outsourcing of the tasks of state armed forces and located the phenomenon more tightly to the civilian sphere.

12. Conclusion

This thesis has described and discussed the discursive and non-discursive practices in which the outsourcing of the tasks of state armed forces was produced in the United States in the context of the September 16 shooting in Iraq. Specifically, it has examined the location of the phenomenon on the civilian-military borderline. By discussing the discursive and non-discursive practices in the United States this thesis has elaborated the power struggles taking place in these practices. In other words, it has elucidated the power struggles that take place in the production of knowledge and of our general understanding about the outsourcing. The historical narrative presented in this thesis has indicated the importance of the case examined for the production of the outsourcing of the tasks of state armed forces and suggests that at least some of the practices described in relation to the case can be generalised to the whole outsourcing. In this conclusion, the overall argument is drawn together and the relationships between the outsourcing of the tasks of state armed forces, commodification of security, state transformation and changes in the international as well as transformation of the American warfare are discussed one more time.

As argued in the thesis, the outsourcing of the tasks of state armed forces takes place in a conjunction of several overlapping and interconnected processes of transformation. While in our general understanding the use of legitimate violence has primarily been preserved as a function monopolised by the state, transformations of both state and warfare have created new space for

752 Abdul Wahab Adul Khader, a victim, quoted in The New York Times, 02.01.2010.

753 The discussion about whose security is important is presented in chapter 7.1.

754 The New York Times, 02.01.2010.

processes such as commodification of security and outsourcing of the tasks of state armed forces to emerge. Transformation of the American warfare has often been used as reasoning for – as well as presented as a consequence from – private military and security companies' emergence. State transformation has been seen as something closely intertwined with the transformation of warfare; ideas of what the state is and will be change what its violent arm looks like – and vice versa. When some of the tasks that previously were taken care by the state armed forces have been outsourced to companies, the state has re-established itself not only as a direct commander of the armed forces, but also as an indirect regulator – which tries with the help of various guidelines, regulations and recommendations – to control the actions and behaviour of the companies working in its name. Not only has the state found it necessary to re-establish itself, but also the state armed forces face a similar task. Whilst it is impossible – and needless – to determine which processes followed from which transformation, it needs to be kept in mind that these processes are mutually constitutive, reinforce one another and establish parallel structures of power and knowledge. Close reading of data selected for this thesis has enabled me to describe and discuss the aforementioned transforming processes – and more importantly, their impact on our general understanding – in relation to the September 16 shooting in Baghdad in 2007.

The discursive and non-discursive practices – the latter of which investigations, hearings, reporting, agreements and treaties as well as judicial proceedings are especially influential in the dispositive and therefore, have been given plenty of attention in this thesis – in which the September 16 shooting and the outsourcing of the tasks of state armed forces altogether have been produced into our general understanding have served many functions in the dispositive. Firstly, on the one hand, they have established the state governments and administrations as well as PMSCs as the main actors in the dispositive. With regard to truth production about the incident, PMSCs were for a long time efficiently silenced in the discourse, which gave the state related agencies – especially to the representatives of the United States – almost an uncontested position as the speakers of truth. On the other hand, the Iraqi eyewitnesses, and the Iraqi government as their representative, played a key role in questioning the initial statements of Blackwater and of US government representatives, who claimed that the shooting had been an act of self-defence. This discursive move, which resisted the normalising power that sought to depict the incident as a normal course of events in a conflict zone, quickly politicised the shooting. The question of justifiability of the shooting soon became an axis around which the discourse about the incident span. The New York Times as the representative of media had its own say in the dispositive, as did Human Rights First as the representative of associations not directly linked to the US administration. When generalised to the whole outsourcing of the tasks of state armed forces, states remain as the main sources of truth claims and

are also efficient in disseminating their claims. Media is the main channel for disseminating the claims to our general understanding, but in addition to states PMSCs and their trade associations, scholars and other experts as well as representatives of (global) civil society occupy acknowledged speakers' positions in the dispositive.

Secondly, in the discourse Blackwater and PSCs altogether were soon established as twofold actors. On the one hand, they were depicted as efficient security providers for their clients and seen as protecting their principals with an exquisite record. They were thus seen as bringing security and order to the chaotic circumstances in Iraq. Individuals in Blackwater's custody were well protected and this further contributed to the state security of the United States, for those individuals were hence able to work for the diplomatic or reconstruction efforts in Iraq. On the other hand, in their operations PSCs tended to forget bystanders as well as the overall US led operation and therefore, ended up being a risk factor and a threat to the order in Iraq. PSCs, which were seen as agents of order and security, were feared to turn into agents of further disorder and confusion as well as of insecurity for the Iraqi population and indirectly for the United States and in the United States. When this tendency and the fears related to it were acknowledged, controlling measures were applied not only to PSCs, but also to other kinds of private companies working for different US state agencies in Iraq, in the forms of increasing surveillance, monitoring and reporting as well as of additional standards, regulations and guidelines with strengthened sanctioning measures related to them. The aforementioned controlling measures were practices of disciplines and bio-politics of population as it has been established in chapter 4.1.2 of this thesis. They focused on influencing the behaviour and the ways of thinking of individual employees as well as of the PMSC industry in total in order to bring them in line with the norms accepted in the wider US society. In relation to the September 16 shooting, Department of State as a customer and supervisor of Blackwater was objectified as an agency which had not established adequate structures and practices to guide and control the company. Its failings were seen of having resulted in the misconduct of Blackwater and its employees. In other words, the outsourcing became framed in terms of accountability, responsibility and trust, which are some of the main characteristics of the security dispositive.

The September 16 shooting became a question of security somehow automatically. Suggestions that the incident would have been framed as a question of warfare were quickly rejected and concerns of security became the key defining factors in the dispositive. Therefore, the discourse over the matter revolves around questions about, for example, the right level of violence used in situations like the September 16 setting; the amount of risks that PSC employees have to be willing to take in relation to being able to protect not only their principals, but also the bystanders in circumstances such as in

Iraq; the guarantees of being able to protect their principals while enhancing the US state security that PSCs have to provide; the right costs of insuring the representatives of the US administration against different risks in conflict zones; and, most importantly, whether PSCs are trustworthy actors in conflict zones while the obligations of patriotism do not bind them in the same way as they bind the members of the state armed forces. When some of the tasks of state armed forces have in this way been set in the context of security (described above in Foucaultian terms⁷⁵⁵) rather than in the context of warfare and thus, when some of the tasks previously associated with perennial threats have been re-defined as manageable risks, it has become possible to estimate and calculate costs for the provision of these tasks and to outsource them to companies. Calculability, predictability and economic rationalism altogether have made it possible to evaluate the risks and seek different kinds of insurances against these risks at different costs, that is, to commodificate security – as the discourse around the September 16 shooting has shown. It has been argued strongly that by re-defining some of the tasks that were previously carried out by the state armed forces as tasks of security, the state has gained additional freedom of action and flexibility in its policies which aim at ensuring state security and security of its citizens.

Thirdly, and as established in chapter 2.3., security and warfare are not seen as contradictory concepts and realms, but they have been acknowledged as intertwining tightly, as constituting one another, and as enmeshing with justice in novel ways in the dispositive of outsourcing of the tasks of state armed forces. As said, the September 16 shooting took place in the realm of risks and probabilities where the fear of getting hurt triggered action. The incident was seen as an issue of individual security as well as of state security, and these approaches were seen as somehow contradictory as well as complementary. While state security has commonly been defined as a matter of security through warfare and individual security has been highlighted in the arising notions of security in warfare, the need to legitimise – both in the United States and in Iraq – the overall US led operation in Iraq has made it clear that the two notions cannot be separated from one another. In order to establish security through warfare, one has to ensure security in warfare which was the point questioned with regard to the use of PMSCs, especially, of Blackwater in the aftermath of the September 16 shooting. In relation to the incident, war was not only a denominator for the circumstances in which the shooting took place, but its structures and discourse were also increasingly occupying space in the dispositive of outsourcing of the tasks of state armed forces when additional, military-like regulations, legislation and guidelines were demanded to be followed, military models were suggested to be copied, and military and military-like control and command links were extended to the outsourcing. Whilst PMSCs were acknowledged as civilian actors – in

755 About Foucaultian notions about security, see chapters 4.1. and 2.2.

the September 16 case Blackwater was also working for a civilian agency – the whole phenomenon was increasingly drawn to the military sphere. This coincides well with what Foucault has written about the relationship between war and society: that war is always present in the society, which copies its models for organisation from the sphere of war and maintains the tensions of war under the pacifying surface of the society. On the other hand, the conflict in Iraq as a moment of rupture enabled something new to emerge – in this case, PMSCs as financially driven actors in conflict zones that are in the process of becoming legitimised in our general understanding.⁷⁵⁶

In the dispositive of outsourcing of the tasks of state armed forces, justice is highlighted in relation to the September 16 case and also in relation to security and warfare. Not everything can be acceptable in conflict zones, but rules need to be in place to govern the conduct of armed forces as well as of other actors in these zones. These rules are designed to secure that the rights of civilians as well as those of soldiers are guaranteed in conflict zones. As it was established in the aftermath of the September 16 shooting, the then existing regulatory and legislative framework was either inadequate or there was not enough common will to enforce it in relation to PMSCs. Our general understanding of warfare being guided by shared rules still demanded for such a framework to be established. Security in warfare was emphasised in this context and human rights were used as reasoning for taking not only the security of US citizens, but also the security of the Iraqi population into consideration. When the actions of Blackwater employees on September 16 were increasingly evaluated as having been unjustifiable and potentially criminal, the importance of the judicial sphere gradually grew in the dispositive.

Similarly, the incident was gradually transferred from the realm of warfare to the realm of justice, rights and crime. The discursive and non-discursive practices of warfare did not disappear, but moved to the background in the dispositive while the practices of the judicial sphere occupied more space. Because our prior understanding of the consequences of criminal action in the civilian sphere demands for an alleged crime to be examined by the judicial system, to be tested in court and possibly to be sanctioned by that court, the transfer of the incident to the judicial sphere seems somehow natural. However, the power struggles described in this thesis over whether the shooting was a crime or not and if it was, whether civilian or military legislation should apply to it, need to be kept in mind while estimating the naturalness of the transfer. By transferring the incident to the judicial sphere it was depoliticised, for the judicial sphere is associated with justice and notions of right and wrong rather than with political power struggles. This depoliticisation was merely apparent for the struggles over whether Blackwater or its employees acted criminally, which law

⁷⁵⁶ About Foucaultian notions about society/war relationship, see chapter 4.1.1.

would be applicable to the case and whether to hold the company or only its employees responsible for the shooting continued in the judicial sphere. What the transfer achieved more successfully was domestication of the September 16 shooting and the outsourcing of the tasks of state armed forces altogether. Instead of depicting the incident as something that happened far away, on a foreign soil and within conflict the judicial proceedings brought the shooting to the US soil and into US structures and practices. It located the incident in a more robust way in the United States (here referred to as a mental structure in our general understanding rather than a territorial state) and anchored the phenomenon to the awareness of the Americans.

Fourthly, the intertwining of security, warfare and justice have resulted from, as well as contributed to, the blending of national and international. There are no clear lines between national and international, which in regard to the September 16 shooting meant, for example, that the FBI as an intra-United States agency conducted criminal investigations in a conflict zone abroad and that the US legislation was eventually applied to the actions of Blackwater personnel who were operating in a foreign country, whilst the development of international regulatory and legislative framework was seen as dragging behind and non-important. Nevertheless, the fluidness of the categories of nationality and state does not mean that these categories would not be important. On the contrary, they are amongst the main prior existing categories which are utilised in organising the truth claims around the September 16 shooting in our general understanding. This is indicated, for example, in the doubtfulness that the representatives of the United State show towards the representatives of Iraq; in the claims coming from the Iraqi side that their rights and lives are not valued as important as those of the Americans; in the incomplete statehood granted to Iraq in the dispositive as well as in the practice of The New York Times to report on the incident mainly in its international or world section. The importance of categories of nationality shows how stable and staunch some of the prior categories in our general understanding are and how power operates through them: in this case, the notion of American subjugated the notion of Iraqi on all aspects.

Fifthly, not only was the state's position reinforced in the dispositive of outsourcing of the tasks of state armed forces as the source of unquestionable truth, but it was also able to centralise its actions and policies, increase control over PMSCs, expand regulations and legislation as well as to bring the September 16 shooting and hence, PMSCs to US court rooms. This does not change the situation in which the state acts primarily as regulatory in the dispositive, but reinforces the position of the state in relation to other governance actors, such as international organisations, PMSCs and their trade associations, international legislators and courts. The September 16 shooting testified that when the regulatory practices cannot establish strong enough norms that would enforce self-

regulation, and when these practices do not seem to be strong enough to control misconduct in any other way either, the state is the sole actor who can exercise the sovereign right to outlaw some behaviours and conducts while rewarding and legitimising others. However, the strength of the state, state security and nationalities in the dispositive can also be seen as an obstacle for international regulations and governance over the outsourcing of the tasks of state armed forces to develop. As it has been stated several times in this thesis, the United States preferred its national legislation over the international legislation partially because by doing this it was able to uphold its status as an 'Empire'. The United States still does not act in a vacuum, but in a world where no clear division lines between national and international, inside and outside can be established. Therefore, the strengthening of the state does not mean that other forms of government would not be expanding or gaining steadier status at the same time.

Sixthly, the emergence of PMSCs and the outsourcing of the tasks of state armed forces as a policy challenge existing networks of power and structures these networks form not only internationally, but also in the United States. For example, the outsourcing changes the positions that states have in relation to one another and to other international actors, but it also changes the positions that different US state agencies have in relation to one another, to US citizens and to the representatives of the economic sphere. Therefore, it would be naïve to claim that the state which strengthens its position in the dispositive is the same state which existed before the outsourcing policies were introduced. This transformation of the state is closely related to the transformation of the armed forces. When the shield of the armed forces, which has been seen as a corner-stone of the modern state, has been penetrated by commercial actors and thus, by the economic sphere, fears have arisen regarding whether there is a way to resist the growing encroachment of the latter sphere into the state and the political realm. Whilst the economic sphere is seen as a domain of egoistic conduct, the political, the state and, especially, the armed forces are seen as a domain of altruistic conduct and of common good. The emergence of PMSCs, which are categorised as representatives of the commercial and economic, is seen as an unfortunate development and conquering space which the state as the guardian of common interest previously occupied. Therefore, PMSCs and the US administration that uses services of these companies are accused of corruption, excessive secrecy and misleading the US citizens, that is, their financiers and principals. In our general understanding, democracy means that the rules and their representatives are to obey the will of the people on behalf of and for whom they govern.

However, the excesses of the state are to be resisted as well, given that in the United States the freedom of the economic sphere is one of the founding principles of the state and thus, much

appreciated and well guarded. Therefore, in the dispositive Blackwater was established as an example of what will happen to actors who overstep their legitimate ground, while the policy of outsourcing of the tasks of state armed forces was not interrupted or annulled. Blackwater was treated as a unique actor as well as a representative of its kind – and thus – acted as a warning example to the rest of the industry. By associating the industry closely with the state armed forces, which has been ossified into our general understanding for a long period of time, the armed forces was established as a norm for the industry to follow and to obey. Nevertheless, the state was not trying to restore the monopoly of the state armed forces as the sole legitimate actors in conflict zones, but concentrated on increasing regulation and control. Therefore, the outsourcing to financially driven actors was accepted as a policy and the economic was allowed to enter the realm of the state armed forces, while practices of knowledge production were activated to establish PMSCs as legitimate and naturalised actors to our general understanding.

Seventhly and as mentioned, an increasing amount of the tasks that used to be taken care by the state armed forces have been outsourced to PMSCs. Therefore, it should come as no surprise that the tasks which PMSCs are currently carrying out are similar to what had been allocated to the transformed and transforming US armed forces. For example, in discourses revolving around both the state armed forces and PMSCs, the professionalism of the employees is emphasised as being the main factor which guarantees success in current and future contestations. In particular, special operations style skills have stepped to the spotlight. Flexibility and increased levels of jointness are required from both of actors, as the discourse around the September 16 shooting well established. One of the main sources of criticism towards PMSCs from the military side was that the companies rarely informed the appropriate operational centres of the coalition forces in advance about their operations. If PMSCs were to be recognised as a part of the US total force – as it has been argued in the discourse – they had to learn to co-operate with the armed forces. Both actors operate in conflict zones where no clear divisions between civilian and military can be done, and their operations often take place amongst civilian population. The circumstances in which they operate are hence prone to produce also civilian casualties, even if high numbers of casualties – either civilian or military – are something to be avoided as much as possible in current and future conflicts.

Similarities at the level of the challenges and problems that both the state armed forces and PMSCs as well as at the level of the responses they provide to these challenges and problems, make it seem natural that PMSCs are most commonly compared with the state armed forces. These similarities also make it seem natural that the state armed forces function as a norm towards which PMSCs are guided and forced. However, they are not the same actor and the main borderline between them is

namely the civilian-military division – regardless of how blurred that borderline might be. A good example of the blurriness of the civilian-military borderline is DoS’s engagement in Iraq. As the conflict in Iraq is simultaneously labelled as warfare and as reconstruction, practices of both dispositives overlap on the ground. Therefore, DoS – a civilian agency responsible for the reconstruction effort in Iraq – has found itself operating in an overt conflict zone and in need of military-like security services. Since the US armed forces is not seen as the appropriate entity to protect US civilians working in or visiting Iraq, DoS has found its protection from the commercial sphere. This development has not only led to the potential militarisation of DoS, but also reinforces the transformation processes taking place within the state armed forces. The final part of this concluding chapter will concentrate explicitly on the civilian-military borderline, but before that two further notions are to be made.

The first notion is that in the dispositive, PSCs are not only compared with the state armed forces, but also with police. Comparisons with police emphasise the security and protective side of PSCs and enclose the companies firmly into the civilian sphere. Nevertheless, for most of the time PSCs are discussed in comparison with the state armed forces, namely because they operate on a conflict zone; because they operate abroad; or because their actions, behaviour and appearance remind more those of the armed forces than those of police. Comparisons with police – regardless of how significant these arguments are in the dispositive – indicate that the power relations established in relation to the outsourcing of the tasks of state armed forces which tie the phenomenon to the state armed forces have not gained a monopolistic position. However, thinking differently and establishing different structures is possible. These claims are also reinforced by the practices which occasionally locate PSCs closer to the sphere of diplomacy than to the sphere of warfare, for example, by agreements which differentiate PMSCs working for DoD clearly from PSCs working for DoS.

The second notion is that as much as the US armed forces are currently fighting against enemies other than states, so are PSCs claimed to be operating against terrorists or insurgents. This statement objectifies PSCs as part of the US total force and uses the terrorism discourse to legitimate the outsourcing of the tasks of state armed forces by indicating that the state related actors as well as the commercial security providers are fighting the same enemy. The main purpose of the use of terrorism discourse is to activate fears related to it. When terrorists have been established as purely evil actors, all available means to counter-act them seem to be legitimate as such – including the use of PMSCs. In this way, the work of PMSCs is associated with the threats of peril and linked directly to state security. Interestingly, in relation to the September 16 shooting, the terrorism discourse was

also used against Blackwater. The Iraqi government accused the company of terrorism and of deliberate murder. In this statement, the company was accused of terrorising the Iraqi population. In other words, as convincing as the discursive practices of terrorism discourse are and as successfully as they relate the September 16 shooting to wider knowledge structures present in the United States, they can be used for both glorifying and criticising PMSCs.

Now, in the final part of this conclusion, I will discuss the civilian-military borderline which has been on focus in this thesis. The emergence of PMSCs in conflict zones is further blurring the civilian-military borderline, which today seems to exist mainly because of our general understanding – influenced by the archives of warfare, security and state – wants to maintain it against the threat of losing a possibility of order. An easy option would then be to state that the civilian-military borderline has become blurred to the extent that it does not make a difference anymore. However, as the consequences of the September 16 shooting described, this would be a false conclusion. The borderline makes a difference to the structures that we live in, practices we have as well as to our ways of thinking. Another question then is, whether the borderline should be firmly established or not? Or is it better to accept a fluid and flexible borderline that can and has to be renegotiated time after time?

As a primary conclusion, this thesis suggests that the location of PMSCs along the civilian-military borderline is not firmer after the September 16 shooting than it was before. Even if the court cases related to the shooting anchored PSCs working for other US state agencies than DoD more firmly to the civilian sphere than they had previously been, they did not constitute a unitary truth about the matter. Debates over whether to locate the phenomenon more tightly to the civilian sphere or to the military sphere have not come to a closure, but rather, they have intensified alongside the increased knowledge about the outsourcing of the tasks of state armed forces. These debates and power struggles take place, for example, within the US administration, within the US judiciary, between the civilian and military spheres, in the media, in academia, between states and their representatives, more widely in the international and finally, in our general understanding. The attention which the September 16 shooting raised merely made power struggles clearer and more visible as well as introduced the phenomenon of the outsourcing to many people who previously were unaware of it. Therefore, even the Montreux Document – the first agreement said to address the phenomenon in the international – leaves the civilian-military question open by stating that

The status of the personnel of PMSCs is determined by international humanitarian law, on a case by case basis, in particular according to the nature and circumstances of the functions in which they are involved.⁷⁵⁷

If they are civilians under international humanitarian law, the personnel of PMSCs may not be the object of attack, unless and for such time as they directly participate in hostilities.⁷⁵⁸

The personnel of PMSCs: [...] are protected as civilians under international humanitarian law, unless they are incorporated into the regular armed forces of a State or are members of organised armed forces, groups or units under a command responsible to the State; or otherwise lose their protection as determined by international humanitarian law;⁷⁵⁹

[or] are entitled to prisoner of war status in international armed conflict if they are persons accompanying the armed forces meeting the requirements of [...] the Third Geneva Convention[.]⁷⁶⁰

It seems that depending on the specific case PMSCs and their personnel are to be perceived either as civilians or as military-like actors. Both of the aforementioned categories – civilian and military – bear a load of historical, commonly accepted understandings. These understandings guide our categorisations in each case, even if novel understandings of the categories and actors set in them are produced in the context of changing circumstances. Therefore, what our prior general understanding of a civilian is guides and contradicts with the understanding of a civilian carrying a gun in a conflict zone – produced by the outsourcing of the tasks of state armed forces and emergence of PMSCs on the battlefield. On the other hand, as our prior general understanding of military is tightly related to the state armed forces, the state's outsourcing of some warfare and security related tasks to PSCs makes us wonder whether we can call PSCs and their personnel military either. Thus, as it has been noted in this thesis, power struggles over objectification of the whole phenomenon are fierce and visible.

However, increasingly PSCs and their personnel are categorised as civilian actors carrying out military-like tasks. A clear indication of this was when Blackwater employees involved in the September 16 shooting were brought to civilian courts and charged under civilian legislation. Even if the dispositive of outsourcing of the tasks of state armed forces is primarily governed through regulatory practices, bringing the outsourcing to be tested in courts codified the existence of civilian-military borderline in the dispositive and located actors in the dispositive along this borderline. Categorisations and understandings receive their confirmation through legal evaluations; they receive the influence of law to back them up – and alongside it, the potential of being enforced by coercive practices such as probation or imprisonment. When the September 16 shooting –

757 The Montreux Document, Part One, E 24.

758 The Montreux Document, Part One, E 25.

759 The Montreux Document, Part One, E 26.b

760 The Montreux Document, Part One, E 26.c

alongside other similar incidents – seemed to testify that regulatory practices were not strong enough to guide and control the actors in the dispositive, practices of the sovereign power, that is, law and sanctioning were called in. Whilst criminalising some actions in the dispositive, the practices of sovereign power also justified some other. In other words, prohibition does not only produce the negative, banned behaviour, but also the righteous behaviour that is to be encouraged. Nevertheless, as legitimacy is not received in the judicial sphere, but in the society, what is seen as normatively correct and acceptable may not coincide with court decisions, and gaining popular support for this outsourcing policy may prove to be even more difficult than getting it accepted in the constituted in the judicial sphere.

As this conclusion has stated, theories about state transformation, transformation of American warfare and commodification of security seem to be able to explain the outsourcing of the tasks of state armed forces. They create an explanatory triad which can naturalise, normalise and reason the outsourcing. They also establish relationships of power by producing knowledge, establishing actors and objectifying phenomenon as well as by relating these subjects and objects to one another in the dispositive of outsourcing of the tasks of state armed forces. This thesis has described and discussed these relationships and their constitution. However, state transformation, transformation of American warfare and commodification of security are not the only explanations given to the outsourcing and suggested to be the context in which the phenomenon should be discussed in. In other words, as conflicting claims are rather a rule than an exception in the dispositive and as unstable as the position of PMSCs in our general understanding still is, politics has revitalised itself in the dispositive and can resist the normalising power of government. Therefore, examining the discursive and non-discursive practices in which the outsourcing of the tasks of state armed forces is produced is important, because knowing these practices enables us to influence what is produced in them.

Bibliography

Data

The Coalition Provisional Authority, *Order No. 17* (Revised). Available at http://www.cpa-iraq.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf.

Issued 27.06.2004. Visited 14.01.2010.

Congress of the United States, House of Representatives, Committee on Oversight and Government Reform, Hearings *Blackwater USA: Private Military Contractor Activity in Iraq and Afghanistan* transcript. Available at <http://oversight.house.gov/images/stories/documents/20071127131151.pdf>.

Hearing held 02.10.2007. Visited 13.01.2010.

Congress of the United States, House of Representatives, Committee on Oversight and Government Reform, Majority Staff *Memorandum. Additional Information about Blackwater USA*. Available through The New York Times internet site <http://graphics8.nytimes.com/packages/pdf/national/20071001121609.pdf>. Published 01.10.2007.

Visited 05.09.2009.

Human Rights First (2008): *Private Security Contractors at War. Ending the Culture of Impunity*. New York. Also available at <http://www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf>. Visited 05.04.2010.

“U.S. Contractor Banned by Iraqis Over Shootings”. News article. The New York Times, 18.09.2007.

“Iraqi Report Says Blackwater Guards Fired First”. News article. The New York Times, 19.09.2007.

“Maliki Alleges 7 Cases When Blackwater Killed Iraqis”. News article. The New York Times, 20.09.2007.

“Blackwater Resumes Guarding U.S. Envoys in Iraq”. News article. The New York Times, 22.09.2007.

“Security Firm Faces Criminal Charges in Iraq”. News article. The New York Times, 23.09.2007.

“Iraqi Premier Says Blackwater Shootings Challenge His Nation's Sovereignty”. News article. The New York Times, 24.09.2007.

“Blackwater Inquiry Blocked by State Dept., Official Says”. News article. The New York Times, 26.09.2007a.

“Iraq Drafts Law on Security Companies”. News article. The New York Times, 26.09.2007b.

“BLACKWATER TOPS ALL FIRMS IN IRAQ SHOOTING RATE”. News article. The New York Times, 27.09.2007.

“Blackwater Role In Shooting Said To Include Chaos”. News article. The New York Times, 28.09.2007a.

“State Dept. Tallies 56 Shooting Involving Blackwater on Diplomatic Guard Duty”. News article. The New York Times, 28.09.2007b.

“State Dept. Starts Third Review of Private Security in Iraq”. News article. The New York Times, 29.09.2007.

“REPORT SAYS FIRM TRIED COVER-UPS AFTER SHOOTINGS”. News article. The New York Times, 02.10.2007.

“Chief of Blackwater Defends His Employees”. News article. The New York Times, 03.10.2007a.

“From Errand to Fatal Shot to Hail of Fire to 17 Deaths”. News article. The New York Times, 03.10.2007b.

“New Rules for Contractors Are Urged by 2 Democrats”. News article. The New York Times, 04.10.2007.

“HOUSE'S IRAQ BILL APPLIES U.S. LAWS TO CONTRACTORS”. News article. The New York Times, 05.10.2007.

“State Dept. Plans Tighter Control of Security Firm”. News article. The New York Times, 06.10.2007.

“Blackwater Shootings 'Murder,' Iraq Says”. News article. The New York Times, 08.10.2007a.

“U.S. Military and Iraqis Say They Are Shut Out of Inquiry”. News article. The New York Times, 11.10.2007a.

“Blackwater Case Highlights Legal Uncertainties”. News analysis. The New York Times, 11.10.2007b.

“Blackwater USA Is Sued by Iraqis”. News article. The New York Times, 12.10.2007.

“New Evidence That Blackwater Guards Took No Fire”. News article. The New York Times, 13.10.2007.

“Pentagon Sees One Authority Over Contractors”. News article. The New York Times, 17.10.2007.

“Reports Assail State Department on Iraq Security”. News article. The New York Times, 23.10.2007.

“State Department Use of Contractors Leaps in 4 Years”. News article. The New York Times, 24.10.2007.

“State Dept. Official Resigns; Oversaw Blackwater and Other Private Guards”. News article. The New York Times, 25.10.2007a.

“Under Siege, Blackwater Takes On Air of Bunker”. News article. The New York Times, 25.10.2007b.

“Rice Says 'Hole' in U.S. Law Shields Contractors in Iraq”. News article. The New York Times, 26.10.2007.

“Immunity Deals Offered to Blackwater Guards”. News article. The New York Times, 30.10.2007.

“Iraqi Cabinet Votes to End Security Firms' Immunity”. News article. The New York Times, 31.10.2007a.

“U.S. Military to Supervise Iraq Security Convoys”. News article. The New York Times, 31.10.2007b.

“Blackwater Mounts a Defense With Top Talent”. News article. The New York Times, 01.11.2007.

“Iraq Plans to Confront Security Firms on Guns”. News article. The New York Times, 08.11.2007.

“Security Guard Fires From Convoy, Killing Iraqi Driver”. News article. The New York Times, 12.11.2007.

“F.B.I. Says Guards Killed 14 Iraqis Without Cause”. News article. The New York Times, 14.11.2007.

“U.S. Prosecutors Subpoena Blackwater Employees”. News article. The New York Times, 20.11.2007.

“Accord Tightens Control of Security Contractors in Iraq”. News article. The New York Times, 05.12.2007.

“Under Fire, State Dept. Watchdog Quits”. News article. The New York Times, 08.12.2007.

“Justice Dept. Cites Obstacles in Blackwater Case”. News article. The New York Times, 16.01.2008.

“U.S. Renews Blackwater Deal”. News article. The New York Times, 05.04.2008.

“Iraq Contractor in Shooting Case Makes Comeback”. News article. The New York Times, 10.05.2008.

“Talks With U.S. on Security Pact Are at an Impasse, the Iraqi Prime Minister Says”. News article. The New York Times, 14.06.2008.

“U.S. Concession on Immunity for Contractors”. News article. The New York Times, 02.07.2008.

“Iraq Hints at Delay in U.S. Security Deal”. News article. The New York Times, 03.07.2008.

“End of Immunity Worries U.S. Contractors in Iraq”. News article. The New York Times, 30.11.2008.

“5 Guards Face U.S. Charges in Iraq Deaths”. News article. The New York Times, 05.12.2008.

“Lawyers Say U.S. Reckless in Charges for 5 Guards”. News article. The New York Times, 06.12.2008.

“U.S. Prosecutor Goes to Iraq to Work on Blackwater Case”. News article. The New York Times, 07.12.2008.

“Plea by Blackwater Guard Helps Indict Others”. News article. The New York Times, 08.12.2008.

“Iraqi Victims and Families Meet U.S. Prosecutors”. News article. The New York Times, 13.12.2008.

“Iraq May Ban Blackwater”. News article. The New York Times, 17.12.2008.

“Guards Plead Not Guilty in '07 Killings in Baghdad”. News article. The New York Times, 06.01.2009.

“U.S. Looks for Blackwater Replacement in Iraq”. News article. The New York Times, 29.01.2009.

“No Pact for Blackwater”. News article. The New York Times, 30.01.2009.

“Clinton Tries to Reassure a State Dept. in Transition”. News article. The New York Times, 04.02.2009.

“Blackwater Changes Its Name to Xe”. News article. The New York Times, 13.02.2009.

“Ex-Blackwater Workers May Return to Iraq Jobs”. News article. The New York Times, 03.04.2009.

“U.S. Still Using Security Firm It Broke With”. News article. The New York Times, 21.08.2009.

“Contractor to Continue Work in Iraq Temporarily”. News article. The New York Times, 02.09.2009.

“Prosecutors in Iraq Case See Pattern by Guards”. News article. The New York Times, 13.09.2009.

“Blackwater Said to Pursue Bribes to Iraq After 17 Died”. News article. The New York Times, 10.11.2009.

“Charges Prompt Iraqis to Look Into Blackwater”. News article. The New York Times, 11.11.2009.

“Fine and Inquiry Possible for Blackwater Successor”. News article. The New York Times, 18.11.2009.

“Dismissal of Case for Guard in Iraq”. News article. The New York Times, 20.11.2009.

“Judge Drops Charges From Blackwater Deaths in Iraq”. News article. The New York Times, 31.12.2009.

“Iraqis Angered as Blackwater Charges Are Dropped”. News article. The New York Times, 02.01.2010.

“Former Blackwater Guards Charged With Murder”. News article. The New York Times, 08.01.2010.

The United States Department of Defense. *Memorandum of Agreement (MOA) between the Department of Defense and the Department of State on USG Private Security Contractors*. Available at [http://www.defense.gov/pubs/pdfs/signed MOA Dec 5 2007.pdf](http://www.defense.gov/pubs/pdfs/signed%20MOA%20Dec%205%202007.pdf). Signed 12.05.2007. Visited 16.01.2010.

The United States Department of State and the Broadcasting Board of Governors, Office of Inspector General. Middle East Regional Office, MERO-IQO-09-01. Released in 18.12.2008. *Status of the Secretary of State's Panel on Personal Protective Services in Iraq Report Recommendations*. Available at <http://oig.state.gov/documents/organization/113469.pdf>.

The United States Department of State and the Broadcasting Board of Governors, Office of Inspector General. Middle East Regional Office, MERO-IQO-09-02. Released 09.01.2009. *Review of Diplomatic Security's Management of Personal Protective Services in Iraq*. Available at <http://oig.state.gov/documents/organization/113916.pdf>.

The United States Department of the State, *Report of the Secretary of State's Panel on Personal Protective Services in Iraq*. Available through Military Education Research Library Network (MERLN), <http://merln.ndu.edu/archivepdf/iraq/state/94122.pdf>. Published October 2007. Visited 16.01.2010.

The United States District Court for the District of Columbia. Indictment, Criminal No. CR-08-360, Grand Jury Original, United States of America v. Paul Alvin Slough, Nicholas Adeam Slatten, Evan Shawn Liberty, Dustin Laurent Heard, Donald Wayne Ball. Available through The United States Department of Justice internet site <http://www.justice.gov/opa/documents/grandjury.pdf>. Visited 17.01.2010.

The United States District Court for the District of Columbia. Information and Factual Proffer in Support of Guilty Plea, Criminal No. 08-341-01 (RMU), United States of America v. Jeremy P. Ridgeway. Available through POGO's Federal Contractor Misconduct Data bank <http://www.contractormisconduct.org/index.cfm/1,73,222,html?CaseID=1032> Dated to 12.05.2008.

The United States District Court for the District of Columbia. Complaint, Dismissal and Law Firm Press Release, Estate of Himoud Saed Atban, Estate of Usama Fadhil Abbass, Estate of Oday Ismail Ibraheem and Talib Mutlaq Deewan v. Blackwater USA and all of its affiliated companies and divisions, including Blackwater Security Consulting, LLC, Blackwater Lodge and Training Center, Blackwater Security Consulting, Blackwater Canine, Blackwater Armor and Targets, Blackwater Logistics, Blackwater Airships, Raven Development, Aviation Worldwide Services, Presidential Airways, Inc., Greystone Limited, Total Intelligence Solutions LLC, and any other corporations or companies doing business under the Blackwater name, 1650 Tysons Boulevard, Suite 800, McLean, Virginia 22102; The Prince Group LLC, 1650 Tysons Boulevard, Suite 800, McLean, Virginia

22102; Erik Prince, McLean, Virginia 22102. Available through POGO's Federal Contractor Misconduct Data bank <http://www.contractormisconduct.org/index.cfm/1,73,222,html?CaseID=820> Dated to 10.11.2007.

The United States District Court for the District of Columbia, *Memorandum Opinion. United States v. Paul A. Slough et al.*, Criminal Action No. 08-0360 (RMU). District Judge Ricardo M. Urbiana. Related to the dismissal of charges against Blackwater guards. Available through The New York Times internet site <http://documents.nytimes.com/memorandum-of-dismissal-of-charges-against-blackwater-guards>. Issued 31.12.2009. Visited 17.01.2010.

The White House, Office of Management and Budget. Circular A-76. Available at http://whitehouse.gov.omb/Circulars_a076_a76_incl_tach_corrction/. Visited 14.01.2010.

Literature

Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq. Signed 17th of November 2008. Available at http://graphics8.nytimes.com/packages/pdf/world/20081119_SOFA_FINAL_AGREED_TEXT.pdf. Visited 18.08.2010.

Alhanen, Kai (2007), *Ajattelu ja käytännöt Michel Foucault'n filosofiassa*. Helsinki: Gaudeamus.

Ashley, Richard (1989), "Living on the Border Lines: Man, Poststructuralism and War" in James Der Derian & Michael J. Shapiro (eds.), *International/Intertextual Relations. Postmodern Readings of World Politics*. New York: Lexington Books, pp. 259–321.

Avant, Deborah D. (2005), *The Market for Force: The Consequences of Privatizing Security*. Cambridge: Cambridge University Press.

Axtman, Roland (2004), "The State of the State: The Model of the Modern State and Its Contemporary Transformation" *International Political Science Review* 25(3), pp. 259–279.

Berndtson, Erkki (1996), *Politiikka tieteenä. Johdatus valtio-opilliseen ajatteluun*. Helsinki: Edita.

Bigo, Didier & R.B.J. Walker (2007), "Political Sociology and the Problem of the International" *Millennium* 35(3), pp. 725–739.

Binnendijk, Hans (2002), "Introduction" in Hans Binnendijk (ed.), *Transforming America's Military*. Washington DC: National Defense University Press, pp. xvii–xxxi.

Bussolini, Jeffrey (2010), "What is a Dispositive?". An unpublished paper, presented in The Foucault Circle at Morgan State University (Baltimore, MA) 11.04.2010.

Buzan, Barry (1991), *People, States and Fear. An Agenda for International Security Studies in the Post-Cold War Era*. 2nd edition. New York: Harvester Wheatsheaf.

- Buzan, Barry; Ole Wæver & Jaap de Wilde (1998), *Security: A Framework for analysis*. Boulder: Lynne Rienner.
- Booth, Ken (1991), "Security and Emancipation" *Review of International Studies* 17(4), 313–326.
- Booth, Ken (2005), "Critical Explorations" in Ken Booth (ed.), *Critical Security Studies and World Politics*. Boulder: Lynne Rienner, pp. 1–20.
- Booth, Ken & Nicholas J. Wheeler (2007), *The Security Dilemma. Fear, Cooperation and Trust in World Politics*. Basingstoke: Palgrave Macmillan.
- Chesterman, Simon & Chia Lehnardt (eds.) (2007), *From Mercenaries to Market. The Rise and Regulation of Private Military Companies*. Oxford: Oxford University Press.
- Chevrier, Yves (2004), "Postface: Privatisation and the Historical Paths of the Political" in Béatrice Hibou (ed.), *Privatising the State*. London: C. Hurst & Co. pp. 241–257. English translation by Jonathan Derrick.
- Clausewitz, Carl von (1998), *Sodankäynnistä. Ensimmäinen kirja – Sodan luonteesta*. Smedjebacken: Art House. Finnish translation by Heikki Eskelinen.
- Collins, Alan (2007), *Contemporary Security Studies*. Oxford: Oxford University Press.
- Cordesman, Anthony H. (2003), *The Iraq War. Strategy, Tactics, and Military Lessons*. Westport CT: Praeger Publishers; Washington DC: Center for International and Strategic Studies.
- Cox, Robert W. (2007), "'The International' in Evolution" *Millennium* 35(3), pp. 513–527.
- Creutz, Katja (2006), *Transnational Privatised Security and the International Protection of Human Rights*. Helsinki: The Erik Castrén Institute of International Law and Human Rights, University of Helsinki. Research Report 19/2006.
- Czarniawska, Barbara (2004), *Narratives in Social Research*. London: Sage.

- Der Derian, James (2000), "Virtuous War/Virtual Theory" *International Affairs* 76(4), pp. 771–788.
- Dillon, Michael (1996), *Politics of Security. Towards a Political Philosophy of Continental Thought*. London: Routledge.
- Dillon, Michael (2008), "Underwriting Security" *Security Dialogue* 39(2-3), 309–332.
- Dillon, Michael & Julian Reid (2009), *The Liberal Way of War. Killing to make life live*. Abingdon: Routledge.
- Edkins, Jenny (1999), *Poststructuralism and International Relations. Bringing the Political Back In*. Boulder: Lynne Rienner.
- Elshtain, Jean Bethke (1995), *Women and war*. Chicago: University of Chicago Press.
- Evans, Richard J. (2000), *In Defence of History*. Second edition. London: Granta Books.
- Flinders, Matthew (2006), "The Boundaries of the State" in Colin Hay; Michael Lister & David Marsh (eds.), *The State. Theories and Issues*. Basingstoke: Palgrave Macmillan, pp. 223–247.
- Foucault, Michel (1984a), "What is Enlightenment?" in Paul Rabinow (ed.), *The Foucault Reader*. Harmondsworth: Penguin Books, pp. 32–48.
- Foucault, Michel (1984b), "Nietzsche, Genealogy, History" in Paul Rabinow (ed.), *The Foucault Reader*. Harmondsworth: Penguin Books, pp. 76–100.
- Foucault, Michel (1984c), "The Body of the Condemned" in Paul Rabinow (ed.), *The Foucault Reader*. Harmondsworth: Penguin Books, pp. 170–178.
- Foucault, Michel (1984d), "Rigth of Death and Power over Life" in Paul Rabinow (ed.), *The Foucault Reader*. Harmondsworth: Penguin Books, pp. 258–272.
- Foucault, Michel (1988), *Madness and Civilization. A History of Insanity in the Age of Reason*. New York: Random House Inc. English translation by Richard Howard.

Foucault, Michel (1991a), “Politics and the study of discourse” in Graham Burchell; Colin Gordon & Peter Miller (eds.): *The Foucault Effect. Studies in Governmentality*. Chicago: University of Chicago Press, pp. 53–72.

Foucault, Michel (1991b), “Governmentality” in Graham Burchell; Colin Gordon & Peter Miller (eds.), *The Foucault Effect. Studies in Governmentality*. Chicago: The University of Chicago Press, pp. 87–104.

Foucault, Michel (1998), *The Will to Knowledge. The History of Sexuality: Volume One*. London: Penguin Books. English translation by Robert Hurley.

Foucault, Michel (2002), “Truth and Power” in Michel Foucault: *Power. The Essential Works of Foucault 1954-1984*. Vol. 3. Edited by James D. Faubion. London: Penguin Books, pp. 111–133.

Foucault, Michel (2004), *Society Must Be Defended. Lectures at the Collège de France, 1975–76*. London: Penguin Books. English translation by David Macey.

Foucault, Michel (2005), *Tarkkailla ja rangaista*. Keuruu: Otava. Finnish translation by Eevi Nivanka.

Foucault, Michel (2007), *Security, territory, population. Lectures at the Collège de France, 1977–78*. Basingstoke: Palgrave Macmillan. English translation by Graham Burchell.

Foucault, Michel (2009), *The Archaeology of Knowledge*. Abingdon: Routledge. English translation by Tavistock Publications Limited.

Freedman, Lawrence (2002), “A New Kind of War” in Ken Booth & Tim Dunne (eds.), *Worlds in Collision: Terror and the New Future of Global Order*. London: Palgrave Macmillan, pp. 37–47.

Gansler, Jacques S. (2003), *Moving Toward Market-Based Government: The Changing Role of Government as the Provider*. Arlington VA: IBM Endowment for The Business of Government. Report in New Ways to Manage Series, June 2003.

Gray, Colin S. (2005), *Another Bloody Century. Future Warfare*. London: Weidenfield & Nicholson.

Hammes, Thomas X. (2004), *The Sling and the Stone: On War in the 21st Century*. St. Paul: Zenith Press.

Hansen, Lene (2006), *Security as Practice: Discourse Analysis and the Bosnian War*. London: Routledge.

Harrod, Jeffrey (2001), "Global Realism: Unmasking Power in the International Political Economy" in Richard Wyn Jones (ed.), *Critical Theory and World Politics*. Boulder: Lynne Rienner, pp. 111–125.

Hibou, Béatrice (2004), "From Privatising the Economy to Privatising the State: an Analysis of the Continual Formation of the State" in Béatrice Hibou (ed.), *Privatising the State*. London: C. Hurst & Co. pp. 1–46. English translation by Jonathan Derrick.

Holsti, Kalevi J. (1996), *The State, War and the State of War*. Cambridge: Cambridge University Press.

Hook, Derek (2001), "Discourse, Knowledge, Materiality, History: Foucault and Discourse Analysis" *Theory & Psychology* 11(4), pp. 521–547.

House, Jonathan H. (2001), *Combined Arms Warfare in the Twentieth Century*. Lawrence (KS): University Press of Kansas.

Hyvärinen, Matti (2006a), "Kerronnallinen tutkimus" Pdf -file, published on the author's internet site in February 2006. http://www.hyvarinen.info/material/Hyvarinen-Kerronnallinen_tutkimus.pdf, visited 28.03.2010.

Hyvärinen, Matti (2006b), "An Introduction to Narrative Travels" in COLLeGIUM, vol. 1. http://www.helsinki.fi/collegium/e-series/volumes/volume_1/001_02_hyvarinen.pdf, visited 28.03.2010.

Hyvärinen, Matti (2006c), "Towards conceptual history of narrative" in COLLeGIUM, vol. 1. http://www.helsinki.fi/collegium/e-series/volumes/volume_1/001_04_hyvarinen.pdf, visited 28.03.2010.

Hyvärinen, Matti (2007), "Kertomus ja kertomuksen rajat". *Puhe ja kieli* 27(3), pp. 127–140. Available at the author's internet site <http://www.hyvarinen.info/material/pk0307hyvarinen.pdf>, visited 28.03.2010.

Hyvärinen, Matti (2009), "Narrative Analysis" Pdf -file, published on the author's internet site 27.01.2009. http://www.hyvarinen.info/material/Hyvarinen-Narrative_Analysis.pdf, visited 28.03.2010.

Isenberg, David (2009), *Shadow Force. Private Security Contractors in Iraq*. Westport (CT): Praeger Security International.

Jackson, Richard (2005), *Writing the War on Terrorism. Language, Politics and Counter-Terrorism*. Manchester: Manchester University Press.

Kaldor, Mary (2006), *New & Old Wars. Organized Violence in a Global Era*. 2nd edition. Cambridge: Polity Press.

Kinsey, Christopher (2006), *Corporate Soldiers and International Security: The Rise of Private Military Companies*. Abingdon: Routledge.

Krahman, Elke (2008), "Security: Collective Good or Commodity?" *European Journal of International Relations* 14(3), pp. 379–404.

Krause, Keith & Michael C. Williams (1997), "From Strategy to Security Studies: Foundations of Critical Security Studies" in Keith Krause & Michael C. Williams (eds.), *Critical Security Studies. Concepts and Cases*. London: UCL Press, pp. 33–60.

Krishnan, Armin (2008), *War as Business. Technological Change and Military Service Contracting*. Aldershot: Ashgate Publishing Ltd.

Kugler, Richard L. & Hans Binnendijk (2002), "Choosing a Strategy" in Hans Binnendijk (ed.): *Transforming America's Military*. Washington DC: National Defense University Press, pp. 57–97.

Kunelius, Risto; Elina Noppari & Esa Reunanen (2009), *Median vallan verkoissa*. Tampere: Tampereen yliopisto. Tiedotusopin laitos, Julkaisuja A: 112.

- Leander, Anna (2005), "The Power to Construct International Security: On the Significance of Private Military Companies" *Millennium* 33(3), pp. 803–826.
- Levi-Faur, David (2005), "The Global Diffusion of Regulatory Capitalism" *The ANNALS of the American Academy of Political and Social Science* 598, pp. 12–32.
- Lipschutz, Ronny D. (1995), "On Security" in Lipschutz, Ronny D. (ed.), *On Security*. New York: Columbia University Press, pp. 1–23.
- Longsdale, David J. (2004), *The Nature of War in the Information Age. Clausewitzian Future*. London: Frank Cass.
- Luckey, John R.; Valerie Bailey Grasso & Kate M. Manuel (2009), *Inherently Governmental Functions and Department of Defense Operations: Background, Issues, and Options for Congress*. Washington DC: The Congressional Research Service. Available at http://assets.opencrs.com/rpts/R40641_20090914.pdf. Modified 14.09.2009.
- Lyotard, Jean-François (1984), *The Postmodern Condition: A Report on Knowledge*. Theory and History of Literature, vol. 10. Manchester: Manchester University Press. English translation by Geoff Bennington & Brian Massumi.
- Maguire, Richard (2006), "Guilt by Association? The Hazards of Linking the Concept of the State with Violence" *European Review of History – Revue européenne d'Histoire* 13(2), pp. 293–310.
- Mandel, Robert (2002), *Armies without States. The Privatization of Security*. Boulder: Lynne Rienner.
- McInnes, Colin (1999), "Spectator Sport Warfare" *Contemporary Security Policy* 20(3), pp. 142–165.
- Mockler, Anthony (1985), *The New Mercenaries. The History of the Mercenary from Congo to the Seychelles*. London: Sidgwick & Jackson.
- Moisio, Sami (2007), "Valtiomuutoksen tuottaminen Suomessa. Poliittisen maantieteen näkökulma" *Politiikka* 49(4), pp. 229–247.

The Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict. Federal Department of Foreign Affairs of Switzerland and International Committee of the Red Cross. Published on 17.09.2008. Available at [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/\\$FILE/ICRC_002_0996.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/$FILE/ICRC_002_0996.pdf) Visited 05.08.2010.

Murray, Williamson & Robert H. Scales Jr. (2003), *The Iraq War. A Military History*. Cambridge MA: The Belknap Press of Harvard University Press.

Neumann, Iver B. & Ole Jacob Sending (2007), “The International’ as Governmentality” *Millennium* 35(3), pp. 677–701.

“Afghan Leader Sees Plan to Ban Private Guards”. News article. The New York Times, 16.08.2010.

“Karzai Orders Guard Firms to Disband”. News article. The New York Times, 17.08.2010.

Ortiz, Carlos (2009), *Private Military and Security Companies. Misconceptions, Reconceptualisations and Regulation*. Brighton: Centre for Global Political Economy, University of Sussex. Working Paper No. 6.

Pelton, Robert Young (2006), *Licensed to Kill: Hired Guns in the War on Terror*. New York: Random House.

Perelman, Chaïm (1977), *Retoriikan valtakunta*. Jyväskylä: Vastapaino. Finnish translation by Leevi Lehto.

Peters, B. Guy & Jon Pierre (2006), “Governance, Government and the State” in Colin Hay; Michael Lister & David Marsh (eds.), *The State. Theories and Issues*. Basingstoke: Palgrave Macmillan, pp. 209–222.

Poynton, Cate & Alison Lee (2000), “Culture & text: an introduction” in Alison Lee & Cate Poynton (eds.): *Culture & Text. Discourse and Methodology in Social Research and Cultural Studies*. Lanham (MD): Rowman & Littlefield Publishers Inc, pp. 1–18.

Rantapelkonen, Jari (2000), *Konfliktin, konfliktinhallinnan ja turvallisuuden käsitteet kylmän sodan jälkeen*. Helsinki: Maanpuolustuskorkeakoulu, Strategian laitos. Julkaisusarja 1, No 17.

Reid, Julian (2006), *The Biopolitics of the War on Terror. Life struggles, liberal modernity, and the defence of logistical societies*. Manchester: Manchester University Press.

Ridell, Seija (1994), *Kaikki tiet vievät genreen: tutkimusretkiä tiedotusopin ja kirjallisuustieteen rajamaastossa*. Tampere: Tampereen yliopisto. Tiedotusopin laitos, Julkaisuja A: 82.

Rimmon-Kenan, Shlomith (2006), "Concepts of Narrative" in COLLeGIUM, vol. 1. http://www.helsinki.fi/collegium/e-series/volumes/volume_1/001_03_rimmon_kenan.pdf, visited 28.03.2010.

Rose, Gillian (2001), *Visual Methodologies: An Introduction to the Interpretation of Visual Materials*. London: Sage Publications Inc.

Salminen, Mirva (2008), *The New York Times valtion rakentajana yksityisiä turva-alan yrityksiä koskevissa kirjoituksissa*. B.Soc.Sc. thesis. Department of Political Science and International Relations, University of Tampere.

Scahill, Jeremy (2008), *Blackwater: The Rise of the World's Most Powerful Mercenary Army*. London: Serpent's Tail.

Shearer, David (1998), "Outsourcing War" *Foreign Policy*, Fall98(112), pp. 68–81.

Shaw, Martin (2005), *The New Western Way of War*. Cambridge: Polity Press.

Singer, Peter W. (2003), *Corporate Warriors. The Rise of the Privatized Military Industry*. Ithaca: Cornell University Press.

Sørensen, Georg (2004), *The Transformation of the State. Beyond the Myth of Retreat*. Basingstoke: Macmillan.

Sørensen, Georg (2006), "The Transformation of the State" in Colin Hay; Michael Lister & David Marsh (eds.): *The State. Theories and Issues*. Basingstoke: Palgrave Macmillan, pp. 190–208.

Tangredi, Sam J. (2002), “Assessing New Missions” in Hans Binnendijk (ed.): *Transforming America's Military*. Washington DC: National Defense University Press, pp. 3–30.

Teivainen, Teivo (2002), *Enter Economism, Exit Politics: Experts, economic policy and the damage to democracy*. London: Zed Books.

Threadgold, Terry (2000), “Poststructuralism and discourse analysis” in Alison Lee & Cate Poynton (eds.): *Culture & Text. Discourse and Methodology in Social Research and Cultural Studies*. Lanham (MD): Rowman & Littlefield Publishers Inc, pp. 40–58.

Tomes, Robert R. (2007), *US Defense Strategy from Vietnam to Operation Iraqi Freedom. Military Innovation and the New American Way of War, 1973-2003*. Abingdon: Routledge.

The United States Government Accountability Office, GAO-05-737. Modified 05.08.2005. *Rebuilding Iraq. Actions Needed to Improve Use of Private Security Providers*. Available at <http://www.gao.gov/new.items/d05737.pdf>.

The United States Government Accountability Office, GAO-06-865T. Released 13.06.2006. *Rebuilding Iraq. Actions Still Needed to Improve Use of Private Security Providers*. Available at <http://www.gao.gov/new.items/d06865t.pdf>.

The United States Government Accountability Office, GAO-09-19. Released 01.10.2008. *Contingency Contracting. DOD, Steta and USAID Contracts and Contractor Personnel in Iraq Afghanistan*. Available at <http://www.gao.gov/new.items/d0919.pdf>.

The United States Government Accountability Office, GAO-09-538T. Released 01.014.2009. *DOD, State and USAID Are Taking Actions to Track Contractors and Contractor Personnel in Iraq and Afghanistan*. Available at <http://www.gao.gov/new.items/d09538t.pdf>.

The Universal Declaration of Human Rights. Available at <http://www.un.org/en/documents/udhr>. Visited 13.01.2010.

Weber, Max (1994), “The Profession and Vocation of Politics” in Peter Lassman & Ronald Speirs (eds.): *Max Weber: Political Writings*. Cambridge: Cambridge University Press, pp. 309–369.

Wood, Jennifer & Clifford Shearing (2007), *Imagining Security*. Portland: William Publishing.

Internet sites

The House of Representatives Committee on Oversight and Government Reform website on investigation on Iraq reconstruction. http://oversight.house.gov/index.php?option=com_content&view=article&id=4489&catid=43, visited 21.04.2010.

The Coalition Provisional Authority (CPA). http://www.cpa-iraq.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority_.pdf Visited 14.01.2010.

The Project on Government Oversight (POGO). <http://www.pogo.org/about> Visited 17.01.2010.

The Project on Government Oversight (POGO) on Federal Contractor Misconduct, internet data base. <http://www.contractormisconduct.org> Visited 17.01.2010.

Human Rights First. http://humanrightsfirst.org/about_us/about_us.aspx and http://humanrightsfirst.org/about_us/charter.aspx Visited January 15.01.2010.

The United States Department of State and the Broadcasting Board of Governors, Office of Inspector General. <http://oig.state.gov/c25804.htm> Visited 14.01.2010.

The United States House of Representatives, Committee on Oversight and Government Reform. http://oversight.house.gov/index.php?option=com_content&view=article&id=2227&Itemid=20 and http://oversight.house.gov/index.php?option=com_content&view=article&id=4464&catid=43 Visited 13.01.2010.

The White House, Office of Management and Budget. http://www.whitehouse.gov/omb/organization_role/ Visited 14.01.2010.