Treath or Asset?

How Private Security Companies and Private Military Companies affect the US Monopoly on Legitimate Force

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Acknowledgements

I gained the interest for Private Military and Private Security Companies during my military service in KFOR1. Later, I learned that eating at Burger King in Camp Bond Steel and observing pickup trucks with KBR markings on the road in Kosovo was only top of the iceberg. The result of my interest concerning the subject is this thesis.

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1. Introduction

In 2004, on a rooftop in the Iraqi city of Najaf, a group of U.S. Marines became involved in heavy fighting as they tried to repel off an attack on the local Coalition Provisional Authority (CPA) office, conducted by several hundred insurgents. The U.S. Marines were supported by a group of men employed by Blackwater Security, a U.S. based Private Security Company (PSC) contracted to secure representatives of the CPA and its property in Iraq. As the fighting prolonged, Blackwater Security helicopters airlifted supplies to the soldiers and the PSC employees, and evacuated one of the wounded U.S. Marines (Priest 2004)¹. The Najaf incident exemplifies the capacity and resources held by a kind of non-state actor that has gotten increased attention, especially after the US invasion of Iraq in 2003, but that is often believed to have started to develop from the end of the Cold War (Singer 2003).

Despite of the growth of the Private Military and Security industries, and their involvement in security provision world wide, it is today still commonly accepted that “coercive power still resides within states” (Avant 2005: 1). Furthermore, the ability states have to monopolize violence is seen as tightly connected to whether it should be considered sovereign or not (Mandel 2002: 30). Monopolization of legitimate force has also been connected to the ability states have to provide security for its citizens (Rotberg 2004: 3). From these points of view, a state monopoly on legitimate force is still viewed as an important facet of state relations, both on the domestic and the international stage. Indeed, those favoring the state as the core producer of this public good, argue that privatization of security might endanger the state’s ability to exercise control and weaken the democratic process surrounding the use of violence (Avant 2005: 4). It has also been argued that hardliners and profit motives will be given more weight than state interests (ibid.). A consequence following when states open up for the involvement of PSCs and Private Military

¹ http://www.sandline.com/hotlinks/Wash_Post-Private_guards.html
Companies (PMCs) in the sphere where security is produced, can therefore be that the position of the state as a monopolist on legitimate force is challenged (Singer 2003: 18). The United States (US) for its part is a remarkable case here. In fact, the US has used PMCs or PSCs in every larger military operation since the end of the Cold War (Singer 2003: 16). This is illustrated by the fact that US based PSCs was awarded $300 billion worth of contracts from the Department of Defense (DOD) between 1994 and 2002 (Avant 2005: 8; Singer 2003: 15). The US also has a history of relying on private solutions in the military sphere even before the end of the Cold War. During the Second World War, Japanese forces captured 1150 contractors working for Morrison-Knudson Corporation alongside the US Marines Forces stationed on the Wake Island (Kidwell 2005: 1). After the end of the Cold War, the US has on occasions used PSCs and PMCs as proxies in order to reach foreign political goals. On the Balkans, Military Professional Resources Incorporated (MPRI) was hired by the US to train Croat and Bosnian forces in the 1990s (Avant 2005: 153; Singer 2003: 124-130). The US has also hired PSCs and PMCs to assist the US “Plan Colombia” supporting Colombia in its anti drug war (Singer: 132-133). During Operation Dessert Storm in 1991, the military operation aimed at throwing out Iraqi forces of Kuwait, 1 of 50 men deployed belonged to a PMC or PSC (Østerud 2005: 79). 12 years later, during Operation Iraqi Freedom, 1 of 10 deployed men was a contractor (ibid.). The following occupation of Iraq after the 2003 military campaign, toppling the regime in Baghdad led several US agencies, departments and parts of its armed forces to contract out support and supply tasks to a wide array of PSCs and PMCs to fulfill tasks related to intelligence collection, security provision and supply services (Isenberg 2006b: 6; Leander 2004). Hence, the US not only has a long history of allowing PSCs and PMCs to operate within their security structures, but it has also responded to foreign political challenges by using these actors. The extensive use of PSCs and PMCs in the US has offered these companies an important role in the sphere of security production, an area that it is commonly agreed that the state should be able to claim a monopoly on. Hence, the practice of allowing PSCs and PMCs to operate within the security providing structures of the state can be said to represent a challenge to the perception that the US is a monopolist on legitimate
force. The aim of this thesis is thus to investigate how the use of PSCs and PMCs affect strong states' monopoly on legitimate force, using the US as a case.

1.1 The research question

To investigate the consequences of the use of PSCs and PMCs related to the monopoly concept, the research question in this thesis can be formulated as: “How does the use of Private Security Companies and Private Military Companies by the US affect its monopoly on the use of legitimate force?”.

The formulation of the research question is thus meant to make it possible to take a different approach than those suggesting that PSCs and PMCs represent a weakening of the state monopoly on legitimate violence per se (i.e. Singer 2003: 18). Hence, this thesis will not accept that the existence and use of PSCs and PMCs automatically weaken state monopoly on legitimate violence. Instead, the formulation of the research question in this thesis is intended to make it possible to investigate this issue closer. This thesis will furthermore focus on the US between 2001 and early 2008. This is done not only to narrow the research approach, but also due to the notion that the use of PSCs and PMCs by the US especially in post conflict settings have gotten increased attention after 2001.

This thesis thus takes the starting point that the US holds a monopoly on the use of legitimate violence. This thus becomes the dependent variable where a possible change might be identified. The independent variables that may affect this become the PSCs and PMCs which the US has contracted. Furthermore, the core focus will be on US based PSCs and PMCs. To answer the research question, three hypotheses will be formulated to ease and structure the analysis. These hypotheses are intended to cover important aspects of the monopoly on legitimate violence concept as it have been formulated by Weber (Thomson 1994: 7).

The first hypothesis focuses on whether the use of PSCs and PMCs affects the functional ability the US has to produce security. This is important, because
functional ability of the state is tightly connected to the ability states have to pacify and produce security for its citizens (Rotberg 2004: 3). Furthermore, this is an important requisite in order to be defined as a strong state (ibid), thus connecting state ability to monopolize legitimate violence to sovereignty. Secondly, this thesis will create a hypothesis intended to investigate whether the PSCs and PMCs can be considered legitimate actors within the security providing structures in the US. It is thus expected that the impact the PSCs and PMCs have on the monopoly on legitimate force is dependent on whether they are considered as legitimate actors in the US. Thirdly, this thesis will investigate whether the US is able to exercise political control over those PSCs and PMCs that it has hired or have the US as state of origin. Such an approach is useful because it is commonly accepted that the ability states have to exercise control over those exercising violence is an important part of how states monopolize violence (Thomson 1994: 8). This also makes it possible to investigate two different roles held by the US, where one is as a client and the other as representing a monopoly on violence versus the existence of the market for services provided by PSCs and PMCs. This thesis will only include non state actor procurement of services from PSCs, such as Transnational Corporations (TNCs) when the given TNC is hired by the US. When TNCs or NGOs hire services from PSCs or PMCs when not contracted by the US, is therefore outside the aim of this thesis. The main reason for this is rooted in the belief that when a TNC or NGO operate outside US territory, they do not threaten the US monopoly on legitimate force per se.

The research question thus focuses on the consequences of using PSC and PMC in the US related to different aspects of the concept of a state monopoly on legitimate violence.

1.2 Research design and Methodology

When studying how the PSCs and PMCs affect the US monopoly on legitimate violence, different research strategies may be carried out. The first possibility is to
undertake a single study of the US and its PSCs and PMCs, thus loosing the possibilities to generalize from the findings. Secondly, the US can also be treated as a case study where the approach of the US towards the PSCs and PMCs can be used to generalize to other strong states that use or house these companies. From this approach, how the US have handled the challenges connected to PSCs and PMCs can be seen as representative for how other strong states have approached these companies and the consequences this have had for the monopoly on violence (Andersen 1997: 73; Gerring 2004: 342).

A commonly accepted advantage of the case study design is its ability to focus on one unit in order to illuminate findings that might be transferable to a larger set of units (Yin 2003: 13). Hence, by applying the case study design here, also opens up for the possibilities of focusing on special contextual factors that might affect the analysis (Gerring 2004: 344). A core challenge with using the US and its relationship to the PSCs and PMCs in order to investigate how these actors affect monopoly on state violence is, that the US can be said to be somewhat special. The country has a long history of relying on PMCs in supportive roles (Kidwell 2005:1), starting before the end of the Cold War, which is commonly accepted as the starting point of the blossoming of these industries (Singer 2003: 49). Furthermore, the country is today perhaps the biggest spender on services from these companies. After the end of the Cold War, the US also used PSCs and PMCs as proxies in order to achieve foreign political goals as is exemplified by the hiring of MPRI on the Balkans in the 1990s (Singer 2003: 124-130). Hence, few, if any other strong states have made so much use, and become so reliant on their Private Security Industry (PSI) and Private Military Industry (PMI), or allowed them to participate so much in the security sphere after the end of the Cold War, as the US. Furthermore, perhaps with the exception of the UK, who allegedly allowed Sandline to support certain groups in Sierra Leone in
the 1990s², few strong states have used a PSC or PMC as proxies in order to reach foreign political goals.

This thesis thus supports itself on Gerring (2004: 348) and will argue that the possibilities to generalize from the findings using the US, to other strong states when it comes to the use of PSCs and PMCs may be difficult. This does however not rule out the possibility that something can be learned from the findings, using the US as a case. Such a view roots itself in the fact that because the US has relied on PMCs for a long time, and uses them and PSCs extensively today. Hence, it might possibly have experienced more aspects and consequences of this practice than most other states that have declined to involve PSCs and PMCs in the “sphere of security” at an equal degree. From this perspective it can thus be argued that if other states follow the steps of the US by implementing private solutions into their security sphere, they may experience challenges equivalent to the US. Hence, the learning argument should hold some weight as the US can be considered a frontrunner in the case of using PSCs and PMCs.

The strategy of this thesis will thus be to investigate how the monopoly on legitimate violence held by the US is affected by its use of PSCs and PMCs. To investigate this, the focus will be on three pathways in which the concepts of monopoly on legitimate violence rests. Hence, a theoretical framework designed to grasp how PSCs and PMCs may affect the US monopoly on legitimate violence will be created. The analysis will consist of three parts investigating these pathways closer by applying the theoretical framework.

1.3 Theoretical Framework

This thesis will make use of several theoretical contributions to create a theoretical framework, which will be applied in the analysis of the overarching research

question. Creating an own theoretical framework has been undertaken in order to be able to investigate some core aspects of how PSCs and PMCs affect the monopoly on legitimate force held by the US. In order to avoid the view that the involvement of these companies automatically lead to a weakening of the US held monopoly on legitimate force, the aim of the theoretical framework is thus to identify core characteristics of the monopoly on legitimate force assumption that might be affected by the use and existence of PSCs and PMCs. Several different theoretical contributions have been used in order to achieve this goal. Criterions that have been used when these theoretical contributions have been selected include their relevance to the research question and to identifying the mechanisms that this thesis will focus on. Furthermore, contributions that provide alternative explanations have also been applied in order to be able to discuss the relevance of the core contributions. Another criterion here has been to choose amongst theoretical contributions that focuses on PSCs and PMCs related to the mechanisms investigated.

On a more general level, this thesis can be said to place itself within the area of the discussion of whether PSCs and PMCs weakens states functional abilities to produce security, whether the PSCs and PMCs should be considered as legitimate actors in the areas which they operate, and finally prospects of putting these companies under political control. Taken together, these areas arguably represent core challenges related to the role of the state versus non-state actors. Furthermore they are also areas that should be considered to have gotten increased attention since scholars got their interest in PSCs and PMCs.

In order to make the theoretical framework able to grasp these areas, the starting point will be a discussion of the monopoly on legitimate force concept and its relevance related to the US. Here, Thomson (1994: 7-10) and her discussion of different conceptualizing approaches of the state monopolization of legitimate force, together with the contribution of Rotberg (2004: 3) who connects the status of the state with the ability it has to produce security will be used to illuminate the connection between functionality and state monopoly on legitimate force. After this
relationship has been clarified, a closer investigation of some important aspects of legitimacy and how this can be connected to PSCs and PMCs will be investigated. Central contributions here include Jachtenfuchs (2005) who interprets the Weberian understanding of legitimacy to state monopoly on legitimate force and the emergence of non-state actors. Furthermore, this thesis will also support itself on Barker (1990), Clark (2005) and Tucker & Hendrickson (2004) in order to elaborate different aspects of legitimacy. Another contribution which is the one of Føllesdal (2004) will also play a most important role here. The last section of the theoretical framework chapter will focus on political control and challenges related to this, especially connected to PSCs and PMCs will also be elaborated. Avant (2005: 41-43) and her discussion of consequences and abilities of states, related to the exercise of political control will be central here, alongside Rasch (2000: 68-73) and his focus on agency-theory issues. Taken together, the intention is that these contributions can assist in investigating the research question.

1.4 Empirical Sources

This thesis will draw on a wide array of empirical sources in order to obtain empirical evidence. These are formal studies, which includes articles, books, reports, and newspaper and magazine articles. Furthermore, this thesis will also draw upon the findings in three surveys which illuminate aspects of the use of PSCs and PMCs in the US. Taken together, the different sources have been evaluated to provide me with enough material to investigate this thesis. The research approach in this thesis therefore fits well with what Fielding & Fielding (2000: 677) describes as “Secondary analysis”. Such an approach suggests that the qualitative data is examined in order to “pursue interests distinct from the original work” (ibid.). This is underlined by the core aim of this thesis, which is to analyze how the US monopoly on legitimate violence is affected by the PSCs and PMCs, thus differentiating from those contributions taking this for granted. This thesis will thus apply already existing
theoretical contributions in order to analyze how PSCs and PMCs affect the US monopoly on legitimate violence.

The selection of the different sources has been undertaken in order to be able to create a proper theoretical framework and to get empirical examples enough to undertake a well founded analyzing of the research question. Hence, there has been a focus on choosing from academic sources that have been considered as some of the most central related to the focus in this thesis.

According to Leander (2007), there is a “hype surrounding” the PSI and PMI. This is evident as the production of books, articles and papers have increased considerably since the late 1990s, the heydays of Executive Outcomes, perhaps one of the most famous PMCs in the world, after its involvement in conflicts on the African continent. Another goal has been to collect empirical evidences of what the PSCs and PMCs do especially related to how they affect what is being the core aim of this thesis, the monopoly on legitimate force.

Some books have been used as an academic basis for this thesis. Singer’s “Corporate Warriors” (2003) and Avant’s “A Market for Force” (2005) contributes with insightful analysis of the rise of the PMI and the PSI, especially focusing on the consequences related to classification of these actors and the consequences related to the ability to exercise political control over them. This is also true for Isenberg’s BASIC report (2004) focusing on PSC and PMC activity in Iraq. Schreier & Caparini (2005) provides another insightful contribution with their DCAF occasional paper. Furthermore, the report by Kidwell (2003) provide an important contribution in this thesis because connects the PSCs and PMCs with the US.

A wide variety of research institutions have also produced interesting and useful contributions. For example Center for Democratic Control of Armed Forces (DCAF) in Geneva, Norwegian FAFO, and Swedish SIPRI are some, but not the only research institutions this thesis have profited from using. Furthermore, several other scholars and news articles covers issues related to PSCs and PMCs, more generally have been
used. However, some challenges occur when selecting useful contributions is undertaken. The first is to avoid those being biased. The activity of PSCs and PMCs still kicks of controversy within some establishments. Attempts will therefore be made in order to avoid biased contributions if the aim is to provide facts. Some foreign news sources such as, but not limited to BBC and Washington Post are used in this thesis. This has been done in order to cover the US, and because these sources have proven to be amongst the first to report on news and developments in the industries together with political development.

An internet based forum, started by the President of the International Peace Operations Association (IPOA) situated in Washington DC, US, Doug Brooks has also been a source of knowledge and information. Writers in this forum include both proponents and opponents of the PSCs and PMCs and have been a valuable source for articles and news related to the industries. Members worldwide post links and discuss issues connected to the PSCs and PMCs. I had to write an email to Mr. Brooks in order to get access to this forum. Of course it can be argued that this practice might be used as a filter, where Mr. Brooks can deny access to those being most critical to what the PSCs, PMCs and IPOA does. However, several harsh comments towards PSC and PMC activity and IPOA being posted on the forum suggest otherwise.

Furthermore, one documentary has been assessed to hold value in order to obtain an understanding of the subject of PSCs and PMCs involvement in conflict zones on a more general level. This is “Shadow Companies - The Movie”. The film includes several interviews with employees of PMCs and PSCs, academics, former militaries and journalists and was endorsed as “powerful and fair” by the Amnesty International³.

³ http://www.shadowcompanythemovie.com/reviews_buzz.html
Attempts were made to get in touch with Norwegians that have worked within these industries, especially for PSCs and PMCs contracted by the US. I spoke to a high ranking employee of an international PSC with offices in Norway who promised to put me in touch with someone he knew had been to Iraq working for one of the larger US based PSCs. I never heard from him again. This might suggest that he did not know anyone or that those he knew was unwilling to come forward and speak to me. It can also be seen as a sign of the sensitivity surrounding the issue of PSCs and PMCs working in conflict zones or that policy of some PSCs and PMCs prohibit its employees to speak to others about their work. Hence, no interviews were conducted.

1.5 Validity and Reliability

The establishing of correct operational measures related to the concept that are being studied (Yin 2003: 34), is important in order to clarify if the sources that have been used to investigate the research question are trustworthy. In the section of empirical sources, both strengths and weaknesses related to this were addressed. Furthermore, the centrality of some of the core theoretical contributions was addressed. Hence, it can be argued that the theoretical contributions specifically focusing on effects of PSCs and PMCs should be considered as strengthening the construct validity.

Another issue here is concerning number of sources. According to Yin (2003: 34) it is important to use several sources in order to establish high construct validity. This thesis make use of a wide array of secondary sources which includes newspapers, internet sites such as forums and institutional websites, academic papers, books and a documentary. The importance and potential challenges of these sources was addressed in the part of this chapter addressing empirical sources, and should be considered as underlining their relevance. These sources can be considered as strengthening the construct validity. However, a weakness is that this thesis does not make use of interviews as a source of empirical data. Nevertheless, it can be argued
that the demand of several sources has been fulfilled and thus established high construct validity.

Internal validity is the ability to take into account other factors that might affect what is being investigated (Yin 2003: 36). In this thesis, it is therefore most important to specify the focus of analysis and clarify the position of the concept of legitimate violence related to other factors that might affect it. It will here be argued that the theoretical contributions and the discussion of these in the theoretical framework chapter clarify this. Hence the internal validity of this research design is secured by applying theoretical contributions that clarifies the role of the monopoly on legitimate violence as a widely accepted concept and its importance in the view of the sovereign state more generally.

External validity concerns if the findings in a study can be generalizable beyond the study itself to other similar cases (Yin 2003: 37). Hence, the question is whether the findings done when the US as a case is investigated might be generalized to other states. A strategy to heighten the external validity would be to include more cases, but this strategy has been abandoned in order to provide a more in depth analysis of the US. Furthermore, because the US may be considered a frontrunner in the implementation of market based techniques in the security sphere (Mandel 2003: 36), the consequences of this related to the monopoly on legitimate violence might be more visible than for strong states that have taken a more reluctant approach. From this view, the external validity is rooted in the notion that what the US has experienced, may be experienced by other states following equal strategies as the US in the future. However, due to the fact that this thesis will follow a single case strategy, the potential for learning from it findings should be emphasized.

Reliability is the ability to reproduce an already conducted case study. In this thesis all sources used have been documented thus making it possible for others to retrieve them. If anyone want to replicate this thesis, reliability also include that those doing this should be able to replicate the data I have used (King et al. 1994: 26). The list of authorities includes the sources of the data used. A core problem here is especially
related to the material that has been retrieved from the internet. Internet as a source can be troublesome because they are less constant than books and such. One example of this is the website of Blackwater Security which has changed both lay-out and content several times in a one year period. Furthermore, perhaps as a result of the fact that PSCs and PMCs are profit driven entities, they merge, shut down and rename themselves. The consequence is thus that some of the PSCs and PMCs used as examples in this thesis may have changed names, areas of operations and owners by the time this thesis is finished. However, the strategy to be followed in this thesis has been outlined in this chapter, and this should make potential reproduction possible.

1.6 Summary

This chapter has been dedicated at setting the stage for the forthcoming analysis of the consequences of using PSCs and PMCs related to the perceived US monopoly on legitimate force. Several methodological issues have been addressed here that are assumed to have consequences for the investigation of the research question which was formulated as “How does the use of Private Security Companies and Private Military Companies by the US affect its monopoly on the use of legitimate force?”.
2. Background

2.1 Introduction

The establishing of state monopolization of legitimate force came about after a historically lengthy process (Thomson 1994: 11). As a result of the development where the state consolidated its position as the center from which violence should be projected, the military and police became the preferred tools for states to control their citizens and their territory. The US has as this chapter will illustrate a long history of using of PMCs and PSCs both previous to and subsequent to the establishing of the expectation suggesting that modern states should hold a monopoly on legitimate force. Simultaneously, the US has during history evolved to become the possessor of the most modern militaries in the world. The relationship between the militaries and the people can also be described as being regulated via several mechanism held by the Congress in order to exercise checks and balances on them. Today, no other country spends more on their militaries than the US. Furthermore, the US militaries are today committed globally and play an important role as a foreign policy tool. The Global War on Terror (GWOT) initiated after the 9/11 2001 terrorist attacks on selected targets in the US, put even more workload on US forces. Simultaneously, it has been noticed that “Private security companies now provide more services and more kinds of services including some that have been considered core military capabilities in the modern era” (Avant 2005: 3). This is the framework for which this chapter will elaborate the development of the role of PSCs and PMCs as a participant in the US production of security for their citizens against outside threats.
2.2 Structure of Chapter

This chapter will provide a brief background on the political system in the US. It will continue by investigate the historical development of PSCs and PMCs and the US. The chapter will continue by providing an oversight and classification of contemporary PSCs and PMCs hired by the US.

2.3 The Political System in the United States

The political system in the US consists of the legislative, executive and judiciary branches. For this thesis it should be noticed that the role of Congress as legislative finds its legitimacy in Article I of the Constitution. The Congress in the US has been given a wide responsibility, including the right to make laws (Cummings Jr. & Wise 2005: 52). The Congress consists of the House and the Senate and can modify old legislations and undertake hearings (ibid. 406). The President of the US is the bearer of the executive powers and this is rooted in Article II of the Constitution (Cummings Jr. & Wise 2005: 52). The President has the power to veto Bills which is proposals of new laws from the Congress (ibid. 406). The President in the US is the ceremonial and symbolic head of state and government (ibid. 422). The role of the president also includes being Chief Executive and Commander in Chief (ibid. 423, 425). This brief review of the political system in the US underlines the important role of the Congress versus the Executive branch.

2.4 Historical Traits of Non-State Violence in the United States

Thomson (1994: 3) argues that “contemporary organization of global violence is neither timeless nor natural”, but is instead a distinct modern phenomenon. A quick review of history underlines this. Mercenarism has existed at least since 1294 BC, when the ruling Egyptian Pharaoh used them at the battle of Kadesh (Singer 2003: 20). In the US, contractors and Privateers were hired during the War of Independence
from 1775 to 1783 (Thomson 1994: 9, 25). The first known PSC, selling technical security solutions represented with the introduction of burglar alarms emerged in the late 19th century, and was promoted by US based ATM (Johnston 1992: 18). By then, PSCs such as the Pinkerton Group and the Wells Fargo Company had already been established (Johnston 1992: 20).

Eventually professional armies relying on conscripts and public police forces became preferred tools for producing security and pacifying citizens (Jachtenfuchs 2005: 38). Hence, from the 20th century, states considered modern, managed to make the historical traditional way of exercising legitimate violence illegitimate. Violence thus came from a single center, the state. The US did however not abandon the use of private contractors for their armed forces. This is exemplified by the fact that over 1000 employees of Morrison-Knudsen walked into captivity alongside the US Marines force defending the Wake Island that fell to Japanese hands in 1941 (Kidwell 2005: 1).

By the 1950s, several post colonial conflicts emerged on the African continent. This created a market for mercenaries. Individuals with dubious motives participated in coups and civil wars. For example “Les Affreux”, was accused of racism and hindering the stabilizing of the newly born African states (Singer 2003: 38). Their presence was internationally condemned and led to legal actions to de-legitimize and make punishable their activities. The US however continued to rely on contractors and hired approximately 245 000 civilians, spending over $1,522,925,000 on them during the Korean War (1951-1953), filling support and supply roles (Kidwell 2005: 15). As the US got military committed in Vietnam, PMCs such as Kellogg, Brown & Root (KBR) and Morrison-Knudson Corporation would play a significant role in supportive roles of the US armed forces including technicians and construction work close to the battlefield (Kidwell 2005: 16). This underlines that the US has a history of making extensive use of PMCs long before the end of the Cold War, which is commonly accepted as the start of the growing importance and size of PSCs and PMCs on a global scale (Singer 2003: 49).
2.5 The Global Corporate Turn and the United States

The consolidation of PMCs and PSCs after the Cold War can be explained by focusing on structural and political changes (Schreier & Caparini 2005: 4-6; Singer 2003: 49-70). Cheap weaponry and professional soldiers without work flooded the market, which led to easy access to qualified manpower and more or less advanced military equipment (Singer 2003: 53). In the US, the end of the Cold War led to a demobilizing and a restructuring of the armed forces (Kidwell 2005: 21). As bipolar superpower competition disappeared, the international system was affected. Many client states that had benefited from playing the superpowers against each others to protect national interests, found themselves in a situation where this was no longer possible (Brayton 2002: 308). Internal turmoil, civil wars or even total state breakdown coupled with unwillingness from the international society and the UN to respond to solve these conflicts, made private actors a feasible alternative for assistance (Brayton 2002: 308; Singer 2003: 58). Hence, a global market for PMCs and PSCs was created.

Ideological and market based techniques also emerged (Peters 2003: 25; Schreier & Caparini 2005: 7). Some states, such as the US went further than others and opened up for more extensive outsourcing and privatizing of parts of security related tasks (Mandel 2003: 36). Privatization thus came to suggest lesser public involvement in the production of public goods (Berndtsson 2006: 12), and in some states, such as the US this also included sovereign tasks meaning the production of security.

In the US, Business Executives for National Security (BENS), argued that a “Revolution in Military Business Affairs” (R MBA) to support the Revolution in Military Affairs (RMA) had to be introduced (Markusen 2003: 487). The emergence and impact of the RMA and the Revolution in Financial Affairs (RFA) further contributed to pave way for private actors in the military realm (Hartley 2001: 94). Hence, both rationalization and the need for readiness came to play important roles for the use of PMCs and PSCs in the US (Kidwell 2005: 20-21). Furthermore, many Western armies moved in a post modern direction recognized by downsizing,
diminishing of combat versus support roles, restructuring, more professionalizing, internationalizing and less public support (Moskos et. al. 2000: 2). The post Cold War situation thus created a viable market for private involvement in sovereign related tasks. In the US, the first umbrella contract concerning maintenance of 5 military bases was signed by the Department of Defense (DOD) in 1987 (Kidwell 2005: 18). In the aftermath of the 1991 Gulf War, a United States Governmental Accounting Office (GAO) report (1994: 39) recommended that the US militaries and the DOD should pursue measures to “ensure that military operational planning includes civilian support”.

2.6 Classification of the Companies

“It makes no sense to lump military logistics services firms like Kellogg, Brown & Root (KBR), in with the likes of Blackwater or ArmorGroup”

David Isenberg (2006a)

The evolution of companies involved in security provision or assisting in this process has taken several pathways and this thesis will therefore create a categorization that will be used in this thesis.

2.6.1 Private Military Combat Companies

On one hand, Private Military Companies (PMCs) focused on fighting wars evolved during a brief period in the wake of the termination of the Cold War. Heavily armed, tactically superior and often tightly connected to companies with economic interests especially focusing on the extraction of nature based resources, these companies took advantage of the easy access to advanced military equipment and highly trained soldiers⁴, and weak states need for easy accessibility to military strength. Their will

⁴ For example Executive Outcomes relied on veterans from 32.batalion (SADF), well known for its operations against Cuban forces in Angola in the 1970s.
to go public, their use of databases providing a pool of potential employees and their corporate structure should be noticed as core points separating them from ordinary mercenaries (Singer 2003: 73-87). In this thesis, these kinds of PMCs will be referred to as Private Military Combat Companies (PMCCs). This approach is rooted in two aspects. From a functional perspective, these companies where able to undertake full scale military operations without any outside support. They possessed all or most assets needed to undertake a military operation, often independent on military support from their client. Such companies can be considered as force multipliers thus implying that their participation increases the hiring state’s functional ability to pacify citizens or defend territory from outside threats. From a geographical perspective related to distance to the frontline, they operated in the frontline, in the proximity to the frontline and in the rear. Perhaps the best example of such a company is now defunct Executive Outcomes which originated out of South Africa in the 1990s. This PMCC is famous for its operations in Sierra Leone where they bolstered a fully functional private army with an air force, armored combat units and a fully functional supply service (Singer 2003). Their involvement and success in Sierra Leone underlined the agility and effectiveness of this breed of PMCs. It is however unclear how many PMCCs exist today.

### 2.6.2 Private Military Companies

A second kind of companies also emerged. These companies took a different focal point of business and focused on fulfilling the needs national armies had. These companies thus based their product line on the need for specialized skills and realization of non combat roles. Although being relied on in the US since the Civil War, their breakthrough on the international stage came in the late 1980s (Singer 2003). These companies would place most of their effort in offering services that would take care of the essential needs an army had, often in relation to the implementation of RMA components. Building and running of camps, transportation and maintenance were also amongst the first tasks these breed of companies would undertake in the US (Kidwell 2005). Hence, what Ken Hartley (2001: 95) describes
as “in house” tasks became the main area of business for these companies. Today, these companies have evolved and hold the capacity to fulfill most military related support functions. Hence, they involve themselves in everything from building military camps, taking care of the daily running of them, to training of troops, gathering of intelligence and providing of translators and advisory services. They provide Explosive Ordinance Disposal (EOD) teams and they are involved in psychological warfare operations. Companies focusing on supplying armies with fuel, spare parts and so forth are also found here.

Many of the main actors here have grown out of larger corporations which have focused on several areas of business. Furthermore, because of the complexity of new weapons systems, it has become more common amongst weapons manufacturers to include instructors for a given period of time available for the procurer (Brayton 2002: 311). Examples of such companies include large and well known actors such as MPRI which has trained Croat and Bosnian forces on the Balkans in the 1990s, working as advisors in Columbia and trained Iraqi and US forces in Iraq after the US invasion in 2003 (Singer 2003: 119-135). Former subsidiary of Halliburton, Kellogg, Brown & Root (KBR) has been involved in US military operations from the Vietnam War, holding a long track record of constructing and running camps in a wide array of different conflict zones (Kidwell 2003: 30). Today, this PMC is heavily involved in support and supply operations supporting US forces in Iraq. A core characteristic with these companies is that they are not designed to participate in actual fighting. Perhaps the best example of this notion is that MPRI, mentioned above often follow a no weapon policy, for example when they work in Iraq (Schumacher 2006: 147). Because PMCs often provides combat essential support such as munitions and fuel, it also puts them in a most important role. Sustainment and Stabilization Operations (SASOs) such as the one in current Iraq have put these companies in close proximity to the battlefield (Kidwell 2003: 32). How they perform can thus easily affect military operational outcome. In order to cover the wide array of different services these companies provide, they will in this thesis be referred to as Private Military
Companies (PMCs) to underline their tight connection to military related security production.

2.6.3 Low Intensity Private Security Companies

The development has however not stopped here. A third breed of companies has also consolidated their position. Private Security Companies (PSCs) commonly associated with the contribution of what Les Johnston (1992: finn) describes as “day to day security” strengthened their position in the post Cold War environment. Contemporary PSCs work for private clients including individuals, governments and Transnational Companies (TNCs)/Multinational Companies (MNCs). Private security can here be understood as:

“services other than public law enforcement and regulatory agencies that are engaged primary in the prevention and investigation of crime, loss, or harm to specific individuals, organizations or facilities” (Forst 2000: 23).

These companies guard shopping malls, corporate buildings and private homes. They regulate access to governmental property and they sell technical based security solutions such as alarms and surveillance cameras. The growth of these companies is according to Les Johnston (1999: 179) explained by for example public fear of crime and overburdened public police forces. The provision of technological equipment such as alarms and surveillance cameras or CCTV systems and other technological solutions has helped to bolster the economic growth of these companies. Today, the two largest PSCs, Securitas and Group 4 Securicor (G4S), together employ over 600 000 men and women globally (Companies Websites). Combined the two PSCs alone had a multi billon turnover last fiscal year (ibid.).

From a functional perspective, the core focus of these PSCs is to provide security by providing passive and active measures such as technology and manpower. Geographically they focus on the home market or within the territory of which they have a national branch. Even though some of the actors are global entities and others
are national companies without the ability or wish to extend their area of business outside their state of origin, they get their main income from operations in non conflictual settings, although some of these companies are known to have subsidiaries that also work in conflict zones. In this thesis these companies will be referred to as Low Intensity PSCs (LIPSC) due to their focus on work in non conflictual settings.

2.6.4 Private Security Companies

After the invasion of Iraq in 2003, attention has been drawn to a smaller category of PSCs that have focused on earning their profit in dangerous conflict zones. Some of these PSCs allegedly have ties to defunct PMCCs. One such example is British based AEGIS which is headed by Tim Spicer, the founder of now defunct Sandline International which became famous for its involvement in alleged weapons smuggling to Sierra Leone in the 1990s (BBC 1998: Website). Some core differences exist between these PSCs and the LIPSCs. First, it is often believed that PSCs hire mostly amongst ex Special Forces soldiers, other ex military personnel and ex law enforcement officers. Secondly, they work in areas were the threat level is high, Iraq and Afghanistan being such examples. Thirdly, they often adopt a policy of arming themselves as heavy as they are allowed to. In Afghanistan and Iraq this includes guns, assault rifles, and heavy machine guns, up armored vehicles, and airborne lift and fighting capacity. This has led to some confusion to whether they should be regarded as performing offensive military or more defensive security related tasks. This thesis will however argue that from a functional perspective, these companies are different from the PMCCs. This is because they are organized to protect and not to fight. Even if they possess lighter arms they do not have the capacity to conduct full scale military operations. They can however provide intelligence and other services equivalent to those provided by PMCs and they are able to respond if being attacked. Furthermore, they also work for armies providing local security. Well known actors here include Blackwater Security, DynCorp and Triple Canopy hired to protect members of the US State Department abroad (Fedspending.org). Other well
known PSCs originating from the US includes SOC-SMG and OSSI. Supported by the findings so far, this thesis presupposes that PSCs are hired to provide protection and not to fight wars. Geographically, they focus on missions in conflictual or post war settings as providers of security enhancing solutions for their clients. This suggests that they most often travel outside their state of origin and thus are exporters of security solutions. In this thesis these companies will be referred to as PSCs thus underlining that they differ considerably from the LIPSCs providing a guard at your local shopping mall.

2.6.5 Results of the Evolution

“I am not entirely sure. It started to creep into the vocabulary.... At the very beginning, in the Papua New Guinea incident it was still dogs of war.' Then it became mercenaries' and then subsequent to the Sierra Leone business the words private military company' crept into the vernacular.”

Sara Pearson, Spa Way (2002)⁵

The usefulness of separating between the different companies as this chapter has done can be seen in relation to the overarching research question. Being aware that different companies have different capacities, is important in order to investigate their functional consequences related to US ability to produce security. It is also important to separate between these companies, because throwing everyone into the same melting pot would leave us with little understanding of the complexity and different consequences the involvement of these companies may have on the different aspects of the state monopoly on legitimate force. Hence, the thesis will use the different terms to denote that the companies are different in what they do and where they do it.

This thesis will thus support itself on the wisdom of Schreier & Caparini (2005: 33) who argues that “[...]“the only unifying factor is that they offer services that fall

⁵ Quoted in Campbell (2002).
within the military and security privatization domain”. In defense of the approach taken by this thesis, it will be argued that it is challenging to create a classification of these companies, because of their fluid structure and involvement in several business areas. Hence, even though the approach taken here might not be the final solution, it is aimed at making it possible to investigate the overarching research question in this thesis.

2.6.6 Summary

A central aspect in this chapter is the illumination of the longstanding practice in the US of hiring PMCs to fulfill supportive roles in security production. Furthermore, PMCs and PSCs with corporate structures emerged in the US long before the end of the Cold War. The classification of the PSCs and PMCs based on functional capacity and geographical area of operation led to the creation of four different types of companies. The classification will be used in the forthcoming analysis.
3. Theoretical Framework

3.1 Introduction

The extensive involvement of PSCs and PMCs in the US production of security for their citizens might at first glance be taken to represent a great challenge to the notion that the US have been able to monopolize the use of legitimate force. By contracting out military related tasks, the US has opened up for private involvement in tasks that traditionally has been considered inherently sovereign. In relation to this, it should be taken into consideration that the US has used PMCs for 219 years, which thus may be taken to suggest that the US never had a monopoly on legitimate force in the first place. The overarching research question which was formulated as “How does the use of Private Security Companies and Private Military Companies by the US affect its monopoly on the use of legitimate force?” does however suggest that the US has a monopoly on legitimate force, and this chapter will create a theoretical framework which will be designated to help shed light on this issue.

3.2 Structure of Chapter

This chapter will start by discussing issues related to the monopoly on legitimate violence thesis. It will be clarified how this thesis will interpret monopoly, violence and legitimacy. How political control is to be understood, will also be investigated and connected to the overarching research question. It will continue by investigating what the state needs to put under political control in order to be able claim a monopoly on legitimate force. Agency-theory will be examined and used as a tool that can shed light on possible challenges states have to exercise political control over the PSCs and PMCs. This chapter will create three hypotheses that will be applied to structure the forthcoming investigation and support the investigation of the overarching research question.
3.3 State Monopoly on Legitimate Violence

From a historical perspective, the state has only been able to monopolize violence for the last 200 years (Thomson 1994). Perhaps the best known expression suggesting this is the one of Weber, who defined the modern state to be “a human community that would (successfully) claim the monopoly of the legitimate use of physical force within a given territory” (1991/1921: 78). Others such as Tilly and Giddens have also formulated somewhat different definitions of the modern state (Thomson 1994: 7). These differences become evident as Giddens talks about direct control over the means of internal and external violence, and Tilly speaks about controlling the principle means of violence (Thomson 1994: 7). Weber, for his part, talks about the monopolization of violence (ibid.). This thesis will apply Weber’s definition as a starting point because it contains the concept legitimacy, a term that is left out by both Tilly and Giddens due to its “normative implications” (Thomson 1994: 7). Legitimacy as a concept will be investigated closer later in this chapter and it is the core motivation for why this thesis will use Weber’s definition of the modern state as a starting point. This decision bases itself on the belief that legitimacy is an important aspect when the relationship between PSCs and PMCs and the US is investigated.

3.3.1 State Monopoly on Legitimate Force Today

A question that needs clarification in this regard is whether a definition of the modern state holds any relevance today. Today, warlords, rebels, terrorists, and organized crime organizations are all non state actors willing to use violence to reach their goals (Mair 2003: 12) Furthermore, intra state, low-intensity, local and regional conflicts have led to “new wars”, identified as sometimes being carried out by groups of non state actors using asymmetrical warfare strategies to deal with strong opponents (Kaldor 1999). The emergence of such conflicts has led to an internationalizing of the use of force such as the use of multi national coalitions to answer these threats (Wulf 2005: 19). Furthermore, globalization and the evolution of non-governmental organizations emphasize that the state and its position as a sovereign is challenged. It
has also been argued that the view suggesting that states have a monopoly on legitimate force has been widely overestimated (Avant 2005: 2). Taken together, the question is therefore whether Weber’s definition of a state monopoly on violence is useful for little else than “abstract theorizing” (Berndtsson 2006: 4). Hence, it may thus be asked how valuable it is to ask whether the US has a monopoly of legitimate violence in the first place.

As a starting point in defense of the Weberian definition of the modern state, it can be argued that the idea of the state as a monopolist on legitimate use of force is still widely accepted. This argument is supported by the observation that a state monopoly on legitimate force is essential in theoretical approaches aimed at analyzing state relations with a state centric view. For example, realists argue that states are monopolists of legitimate force (Legro & Moravcsik 1999: 13; Risse 2002: 260). Furthermore, it is often taken for granted that the consolidation of the PSCs and PMCs challenge the state monopoly on legitimate violence in one way or the other (Avant 2005: 3; Mandel 2002: ix; Singer 2003: 18; Wulf 2006: 92). As a result, it can be argued that by merely asking whether these companies challenge it, something has to be challenged. According to Clifford J. Rosky (2002: 886), supporters of the view that the state should be a monopolist of legitimate force are identified amongst “[scholars]: Judges, lawyers, politicians and pundits”. It may thus be argued that the belief in the existence of a monopoly on violence holds a rather unique position that have held its ground despite the emergence of globalization, new wars, and a growing importance of a wide range of non state actors.

### 3.3.2 Why Monopolization of Legitimate Force is Important

The motivation for why states should want to monopolize violence is, according to Jachtenfuchs (2005: 38), to protect and defend the state territory from outside threats and threats from within. Not only does this include pacification of citizens in order to make social interaction possible (ibid.). It is also important in relation to claim sovereignty and territorial control versus potential outside threats. State
monopolization of legitimate violence can therefore also be seen as connected to state making (Tilly 1985: 171-172), and according to some theoretical approaches, states ability to claim internal sovereignty (Thomson 1994: 11).

The importance of monopolizing legitimate force can also be connected to the character of violence itself. Wimmer (2003: 3) argues that because violence is everybody’s resource, and easily organized, it is most important for states to be able to control it. The consequences of failing at it can be brutal, as it may turn the state into a weak or failed one (Rotberg 2004: 3). From this point of view, the consolidation of, the PSCs and PMCs can be seen as a potential threat to the state, because they represent a form of organized violence that potentially compete with state organized violence and its ability to protect itself from inside and outside threats. Furthermore, this can also be seen as an argument supporting the view that monopolization of legitimate violence still holds an important position in today’s world more generally.

### 3.3.3 Interpreting What Monopoly Is

Berndtsson (2006: 13) suggests that a state monopoly implies that production, subsidising and control of a public good are the domain of the state alone. No other actors can, accordingly to this view, be involved in any aspects of the exercise of legitimate violence if a monopoly is to exist. Hence, from this perspective PSCs and PMCs can be said to challenge the notion that the US has a monopoly on legitimate force, because they are involved directly or indirectly in the production of the public good, security.

Wimmer (2003: 1) for his part suggests that monopolization of violence will not lead to a “society without violence”. Hence, “monopoly” should not be interpreted to hold an economic connotation (ibid.). This approach seems plausible as the task of total pacification of citizens in any given state appear difficult, if not impossible. Instead, it might be argued that monopolization of legitimate violence refers to “the publicly exercised violence” (Kössler 2003: 19). This point is underlined by the fact that most
states allow their citizens to perform violence in certain cases, such as self defense. Total pacification is in other words rarely possible or preferable in most states.

This thesis will therefore suggest that potential threats to the state monopoly on legitimate violence should be seen in relation to violence holding a certain degree of organization that have the potential of creating competing structures within the state. Such competing structures can be terrorist groups which organize violence with the goal of affecting politics (Scmid 2004: 200). Crime syndicates, warlords and equivalents are other organizations that have this potential in order to secure its interests by organizing violence. These kinds of violence are not only organized, but also hold the potential to undermine states ability to control their territory, which is a prerequisite for a state in order to claim monopoly on legitimate force (Weber 1991/1921: 78). PSCs and PMCs also have the potential to make the role of the state in security matters deprivileged (Singer 2005: 19). However, if it’s taken as a starting point that PSCs and PMCs are given permission by the US to exercise violence, it is also unclear if PSCs and PMCs threaten the US monopoly per se. In cases where the companies exercise violence, it may be interpreted to suggest that it comes from the single center of the state (Jachtenfuchs 2005: 37). Hence, this will be interpreted to suggest that there is no breach of state monopoly of violence as long as those actors performing violence is given permission to do it.

As a result, this thesis will interpret monopoly in a non economic fashion and hence, not support the view that PSC and PMC involvement in the security sphere destroys state monopoly on legitimate force per se.

### 3.3.4 The Functional Component of Monopolization

Weber’s view that modern states should hold a monopoly of violence also suggested a reorganization of it (Kössler 2003: 19). This reorganization is visible from a historical perspective as states abandoned the use of privateers, buccaneers, mercantile companies and mercenaries as accepted representatives of state violence,
and substituted these private actors with citizens’ or professional armies and national police forces.

The functional component to the monopolization of violence thus suggests that states must have the ability and capacity to pacify its citizens and to defend them from outside threats. This suggests that states must have proper institutions able and skilled enough to deal with those posing threats to its territory both externally and within. The success of the Napoleonic conscripted mass army in the Battle of Jena against Prussian forces largely made up of non Prussians may be taken as a historical evidence for the capacity and capability held by an army made up of citizens (Smith 2005: 45). Hence, it may thus be argued that monopolization of violence also implied expectancy of functional gain.

It may therefore be argued that the provision and production of security which is the responsibility of the state that has managed to monopolize violence, is also dependent on core functional abilities states must have in order to survive. This argument bases itself on the notion that pacification of citizens or competing structures must include state capability and ability to do this. Also the defending of states citizens from outside and inside threats suggest that states need capacity and ability to undertake this task. According to Rotberg (2004: 3), it is this ability to produce security that is the most core functional ability when different types of states are investigated. Monopolization of legitimate force therefore becomes a matter of functional capacity and capability for states.

Contemporary PSCs and PMCs hired by the US have the capacity to involve themselves directly or indirectly in most areas of security provision and production by offering a wide range of services (Krahmann 2005: 8-9; Schreier & Caparini 2005: 33). This implies that both PSCs and PMCs have the opportunity to affect the functional ability of states to produce security for their citizens if they are given access to these areas. If this access weakens the US ability to protect its territory and citizens from outside threats, it might also have consequences for the US monopoly
on legitimate violence. Hence, it might thus be asked whether PSCs and PMCs should be considered to increase or weaken the functional ability of the US.

In order to be able to investigate the overarching research question, a hypothesis focusing on the potential PSCs and PMCs have to affect functional ability of the US to produce security for its citizens will be formulated. Because the US has a long history of relying on PSCs and PMCs, this thesis will take as a starting point that the involvement of these companies will have a positive effect on the US ability to produce security. The hypothesis also supports itself on the fact that that contractors are seen as a central part of the total force designated to answer to the new security goals of the US and a central component in the overall war fighting capability of the US (QDR 2006: 16, 87).

\textit{H1: PSCs and PMCs hired by the US should be regarded to increase the functional ability of the US to produce security for its citizens against outside threats and therefore do not threaten the US monopoly on legitimate force.}

In order to illuminate aspects of the hypothesis, the focus will be on the effects PSCs and PMCs might have on the US functional ability to produce security for its citizens. This thesis will support itself on the view of Singer (2003: 170) who argues that the ability a state has to raise, maintain and operate a military force as the “ultimate symbol of sovereignty”. Particular focus will be given to how these companies affect the military capacity and capability of the US to produce security.

\textbf{3.4 Sources of Legitimacy}

A closer investigation of legitimacy will here be undertaken as this thesis bases itself on the Weberian definition of the modern state, which includes this term. The importance of including and clarifying legitimacy is done in order to make it possible to investigate if the PSCs and PMCs should be considered as legitimate actors when they are contracted by the US.
Both Grafstein (1981: 456) and Jachtenfuchs (2005: 38) draw on the Weberian understanding of legitimacy and argue that the state finds its legitimacy rooted in how the citizens perceive the state. This view is much in line with the notion that “legitimacy is rooted in opinion” (Tucker & Hendrickson 2004). Hence, state violence is legitimate as long as the citizens believe it to be so (Jachtenfuchs 2005: 38). How the citizens and the US perceive PSCs and PMCs can thus be considered part of how these companies can get legitimacy.

It should not be ignored that Weber has gotten much critique for his concept of legitimacy. One such critique suggest that Weber’s understanding of what legitimacy is, “is indifferent to the reasons which may exist for approving or disapproving of system of government” and legitimacy thus become “ethical[ly] unacceptable” (Barker 1990: 25). Furthermore, it has also been claimed that Weber’s understanding of legitimacy is “morally and relative and theoretically irresponsible” and is “simply a matter of fact” (ibid.). However, in defense of the Weberian understanding of legitimacy, it has been suggested that legitimacy is “a contributor to domination”, and “a justification of it”, thus giving legitimacy the role as a condition for the exercise of power and “a physical condition for the enjoyment of it” (Barker 1990: 59). Hence, it may be argued that legitimacy can serve as a strong source where PSCs and PMCs can get their existence and involvement in the security sphere justified.

### 3.4.1 Pathways to Legitimacy for PSCs and PMCs

According to Tucker & Hendrickson (2004), in the US, legitimacy is retrieved from decisions made by rightful authority, which does not breach with legal or moral norms. This approach is somewhat similar to Clark (2005: 4) who argues that legitimacy comes from values inherent in norms such as “legality, morality and constitutionality”.

Føllesdal (2004: 7- 9) for his part provides four conceptions of legitimacy. These are labeled legitimacy as legality, legitimacy as problem solving, legitimacy as compliance, and legitimacy as justifiability. The first one, legitimacy as legality
underlines the importance of laws as a source of legitimacy (ibid.8). Such an approach is much in line with Clark (2005: 4) who also emphasized legality as an important source of legitimacy on the international stage. This thesis will interpret these contributions to suggest that if the US has laws that are able to grasp the activities and regulating PSCs and PMCs, they may be seen as a source of legitimacy for the companies. The importance of laws is also discovered with Jachtenfuchs (2005: 37-38) who emphasized that states in the process of monopolizing violence would define the use of force by legal rules. The third one, legitimacy as problem solving stresses that something may be seen as legitimate if it is interpreted to represent a valuable alternative to the solving of a given problem (Føllesdal 2004: 7). This may be seen in connection to the notion that legitimacy is rooted in the “success of state institutions in cultivating and meeting expectations” (Fraser 1978: 118), which may be taken to underline the importance of problem solving related to legitimacy. Hence, it may be argued that PSCs and PMCs may be considered legitimate in the US if they are seen as the solution or part of it in solving security related challenges by the public.

The second and fourth conceptions (Føllesdal 2004: 7-8), legitimacy as compliance and as justifiability may be seen in connection. Both can be interpreted to suggest that legitimacy is connected to the considerations people make in order to see something as legitimate or not. However, the difference between the two conceptions should also be noticed as compliance suggests that people will comply either because they fear the consequences of not complying or because they are passive and do not care (ibid. 8.). Furthermore, legitimacy as justifiability for its part suggest that people intuitively sees something just and fair (ibid. 8). It may be argued that the two conceptions may be connected to how legitimacy has been associated with the opinion of the public and their subjective feelings as it was outlined by Tucker & Hendrickson (2004) and Fraser (1978: 118). The view linking Weber’s understanding of legitimacy to the will of the demos should also be considered as important here (Jachtenfuchs 2005: 38).
The starting point for investigation will be that the PSCs and PMCs should be considered legitimate actors in the US. This view roots itself on two aspects. Firstly, on a general level PMCs and PSCs “are having an apparent de facto legitimacy” because they are used by governments (Schreier & Caparini 2005: 83). Support for this view is also discovered with the long history the US has of using PSCs and PMCs (Kidwell 2005: 1). It may thus be argued that these companies indeed hold what Barker (1990: 31-33) refers to as a habitual legitimacy thus suggesting that hiring these companies is merely routine business. This is the starting point for the hypothesis which suggests that:

\[ H2: \text{The PMCs and PSCs are considered legitimate actors within the security sphere in the US and therefore do not threaten the US monopoly on legitimate force.} \]

In order to investigate this hypothesis the conception of legal legitimacy will be investigated focusing on both the international and US national level. The three other conceptions provided by Føllesdal (2004: 7-9) will be connected to public opinion. This is undertaken in order to include those theoretical contributions who argue that public opinion and legitimacy are closely connected.

### 3.5 Defining Political Control

The connection between political control and the US monopoly on legitimate force is rooted in the belief that lack of political control would suggest that PSCs and PMCs operate as a competitive structure of organized violence within or from the territory of the US. Hence, the ability to exercise political control over PSCs and PMCs might be taken as an indication of the position of the US monopoly on legitimate force. A question is thus whether the US has the ability to exercise oversight and control over the PSCs and PMCs they hire. An important contribution focusing on this is the one of Avant (2005: 40) who combines three dimensions to investigate whether PSCs and PMCs challenges political control of force. The three dimensions are labeled a functional, political and social.
3.5.1 The Functional Dimension

Functional control of force is measuring how successful the military can deploy force in order to defend the interest of the state (Avant 2005: 40). Another and important aspect of this is to take into account the relative costs of using PSCs and PMCs (ibid. 43). Hence, functional control of force is both a matter of whether the PSCs and PMCs affects the ability of the US militaries to deploy force, and how able the US is at monitoring the costs related to the hiring of PSCs and PMCs.

3.5.2 The Political Dimension

The second dimension, the political one, emphasizes that the projection of force in order to protect state interests should be done within existing political structures (Avant 2005: 40). If changes in political control occur, it can be identified by redistribution in power amongst institutions, individuals and organizations (ibid. 42). Hence, this dimension opens up for an investigation of whether the PSCs and PMCs have gotten more to say in the decision process in matters concerning security production in the US.

3.5.3 The Social Dimension

The third dimension, the social one, focuses on whether militaries operations and behavior are integrated within accepted social values in the society (Avant 2005: 40-41). This opens up for an investigation of whether PSCs and PMCs hired by the US adhere to norms and values seen as important to the US.

3.5.4 Identifying Problems Related to the Exercise of Political Control

Practical problems related to the exercise of political control of PSCs and PMCs can be illuminated by agency-theory. This theoretical contribution is useful when it is investigated whether bureaucracies will or can respond to political control (Whitford 2002: 168), but it can also be applied to investigate how for example contractual
arrangements and the delegation of tasks introduce new challenges to the ability for states to exercise political control over PSCs and PMCs. This view roots itself in the notion that states delegate a certain responsibility to these companies when they are hired. Such delegation of responsibility takes place when the principal does not have the capacity, competence or collective will to perform the given task (Rasch 2000: 68-69). This underlines the usefulness of agency-theory as PSCs and PMCs often are hired by the US for one or several of these reasons. Agency-theory assumes that agents often have skills and capabilities the principal does not have, which also suits the PSCs and PMCs well as these are often believed to be better at fulfilling certain security providing related tasks. PSCs or PMCs might thus embark on what Bjørn Erik Rasch (2000: 70-73) describes as *shirking behavior*, which occurs when the agent intentionally avoids doing what it is delegated to do. The possibility for this is rooted in the inherently different interest held by principal and agents (Rasch 2000: 69). PMCs and PSCs obviously have different interests from the state if it is accepted that they are profit driven entities. As a result of possible diverging interests, two *agent problems* might occur (Rasch 2000: 71). These include the provision of *asymmetrical information*, which refers to the belief that agents might not wish to share information it has access to with the principal, for example due to strategic reasons (Rasch 2000: 71). *Hidden actions* occur as a result of the principal’s lack of being able to monitor the behavior of the agent (ibid. 72).

The starting point for the hypothesis formulated is to investigate the US ability to exercise political control over the PSCs and PMCs after 2001.

*H3: The US has the ability to exercise political control over the PMCs and PSCs they hire and therefore the US monopoly on legitimate violence is not threatened.*

In order to investigate the H3 along the three dimensions provided by Avant (2005: 41-43) this chapter will start by investigating functional control. It will also explore different aspects of the outsourcing in the US by focusing on the competition between potential agents, the policy of outsourcing, strategy concerning outsourcing, and its ability to supervise the agents it is awarding contracts. The political dimension will in
this thesis be investigated by focusing on whether the relationship between the legislative and executive branches in the US has changed as a result of the use of PSCs and PMCs. Central issues here will include transparency, the addition of new actors, and the issue of the altering of resources (Avant 2005: 43). The social dimension will be investigated by focusing on whether the PSCs and PMCs have adhered to social norms and values important in the US. Agency-theory will be applied along these dimensions when possible.

### 3.6 Summary

This chapter has provided a theoretical framework that will be applied as a tool to investigate the overarching research question. The theoretical framework is designed to make it possible to investigate functional consequences related to US ability to produce security, whether the companies should be considered legitimate actors and finally whether the US is able to exercise political control over PSCs and PMCs. The findings in this chapter have led to the creation of three hypotheses’ that will be used to structure the forthcoming analysis into three parts. Together, they are intended to investigate the overarching research question which was formulated as “How does the use of Private Security Companies and Private Military Companies by the US affect its monopoly on the use of legitimate force?”.
4. Investigating Functional Effects

4.1 Introduction

The US is today the world’s only superpower (Avant 2005: 113). According to Preston (2005: 36) as of 2005, the US had “260 000 soldiers forwarded in more than 120 nations”, which made the US soldier “very busy”. Critical voices have drawn attention to the US militaries and their lack of proper military equipment, combined with the exhausting of their troops, which has come as a result of heavy commitments abroad (NSAG report 2006: 1). This is exemplified by the mobilizing of 95% of US National Guard Units since 9/11 2001, combined with failures to recruit new soldiers to its armed forces (NSAG report 2006: 2). The PSCs and PMCs for their part have been seen as representing easy access to skills and knowledge that the US either do not have or have to little of (GAO 1994: 2). The hypothesis in this chapter has been formulated as: PSCs and PMCs hired by the US should be regarded to increase the functional ability of the US to produce security for its citizens against outside threats and therefore do not threaten the US monopoly on legitimate force. Consequently, in order to illuminate the overarching research question, it is of importance to establish whether PSCs and PMCs indeed might be considered as a functional asset for the US is producing security for its citizens.

4.2 Structure of Chapter

This chapter will investigate whether PSCs and PMCs hired by the US indeed add to the functional ability of producing security for its citizens. First, the chapter will investigate whether in house capability is lost. Potential brain draining will also be investigated here. Secondly, it will be investigated if PSCs and PMCs add to the functional ability of the US by improving flexibility to respond to security challenges.
Thirdly, this chapter will investigate whether the US has become dependent upon their PSCs and PMCs

4.3 Affecting In House Capacity

In order to be able to produce security, the US needs institutions with the capability to do so. A negative interpretation of the functional consequences of relying too extensively on PSCs and PMCs suggests that the US militaries may lose the ability to undertake even the most basic in house tasks (Singer 2003: 160). Losing this ability may have serious functional consequences, as it in a worst case scenario may deprive the US from being able to produce security. A related consequence may thus be that it affects the US held monopoly on legitimate force. The US, has contracted out several in house tasks such as maintenance of military equipment, and supply services. Furthermore, it has also been noticed that in camp tasks, such as the building and running of military camps has been extensively outsourced and privatized in the US (Kidwell 2003: 30).

The trend of privatizing and outsourcing almost every aspect of supportive roles of security production has been so extensive that concerns were raised already in the 1990s, asking whether the US military would be able to provide essential emergency services, which were seen as necessary to answer to potential threats and security challenges (Singer 2003: 162). There are obvious negative functional consequences related to this concern, and it suggests that the extensive use of PSCs and PMCs may have deprived the US from being able to cope with the uncertainties that emerge in war or conflict. This may be considered to challenge functional ability to produce security. In turn this may be interpreted to weaken the hypothesis investigated in this chapter, which suggests that the PSCs and PMCs added to the functional ability to produce security.

One example that seems to confirm the worries stated in the 1990s has been identified by Condon (2006: 160). He noticed that KBR refused to drive supply convoys during
the summer of 2004 in Iraq, because the company did not see the security measures for its drivers as good enough. This happened as the insurgents focused on targeting supply convoys driving into Iraq from Kuwait, and in the end hampered the US militaries’ freedom of movement due to lack of fuel (Condon 2006: 160). In turn this led the US militaries, which had shrunk its Combat Support Service (CSS) units by 37% as a consequence of the outsourcing to KBR, to redirect military forces to baby-sit the KBR convoys (ibid). The example underlines the potential functional consequences of not having soldiers that are able to fill in the privatized voids (Singer 2003: 163). Hence, it may be argued that by contracting out supply tasks to KBR, and downsizing own CSS capacity, the US deprived itself from having proper access to a core functional capability necessary to conduct military operations thus affecting the ability to produce security. An argument supporting the notion of functional loss in this regard is underlined when it is taken into account that supply services is the most important component needed for an army in order to function well (Van Creveld in Kidwell 2003: 9). From a purely functional perspective, emphasizing the need for the US to have the ability to produce security in order to be able to monopolize legitimate violence, the outsourcing of US military CSS capacity may thus be interpreted to have serious negative implications for the hypothesis investigated in this chapter. Hence, it may be argued that the US may have jeopardized its functional ability to produce security when it outsourced military related supply functions.

Another example of consequences for in house capacity related to functional ability to produce security is discovered in relation to the outsourcing of military equipment maintenance to PMSCs. A GAO report (2003: 8) did for example uncover that the US Air Force (USAF) had sent its Predators, or Unmanned Arial Vehicles (UAVs), to combat units relying one hundred percent on PMSCs to maintain its data link system. Hence, the USAF did not have in house capacity in the first place, but still implemented the new weapons system. This illustrates the challenge lack of in house capacity represent in relation to the US functional ability to produce security. Hence, if those units using UAVs are working in operations where frontlines are fluid, the PMSC maintaining the drones may be targeted for attacks and choose to leave the
battlefield. The potential negative effect related to the hypothesis investigated in this chapter, may thus be that those units using UAVs may be left without important surveillance capacity, which again may affect their effectiveness on the battlefield.

Another discovery in relation to loss of in house capacity has been that DOD has failed to address the issue of what services provided by PSCs and PMCs it sees as essential (GAO 2003: 15). It may be argued that the negative functional consequences of failing at this may lead to contracting out tasks that if lost, may hamper the functional ability to produce security. This point is further underlined by the fact that DOD have had little or no backup planning if those companies contracted to fulfill certain essential in house tasks are failing at it (GAO 2003: 16). When challenges related to contractual relationships between the companies and the US, an issue that will be investigated in a later chapter, combined with the heavy involvement in SASO and MOOTW operations is taken into account, it may be argued that relying on contractors without any backup plans seems rather hazardous from a functional perspective. Indeed, this point is underlined by the GAO (2003: 17-18), who noticed that some US military missions abroad were endangered if the PMCs and PSCs involved left. Again, this may be interpreted to indicate that US functionality related to the production of security may be considered vulnerable by the extensive use of PSCs and PMCs. It may also be argued that this represent a challenge to the hypothesis in this chapter, which suggested that the companies should be considered to increase the functional ability of the US to produce security for its citizens against outside threats.

The findings made by GAO (2003) may easily be interpreted to suggest that the US, as a consequence of unstructured implementation of its own strategy of using PSCs and PMCs as a part of the total force, has deprived itself from the access to knowledge that is needed to undertake core in house tasks. This may again be taken to indicate that the US sometimes jeopardizes its functional capability and capacity to produce security for its citizens. Taking the hypothesis investigated in this chapter into account, it may thus be questioned whether PSCs and PMCs indeed should be
considered functional assets. The consequence may be that instead of adding functional capability, the PSCs and PMCs sometimes deprives the US of it. There are obvious negative consequences for the supposed monopoly of legitimate violence held by the US related to this. This can also be taken to suggest a weakening of the hypothesis investigated in this chapter.

4.3.1 Brain Draining

Another aspect of the potential loss of competency is related to those worrying that the PSCs and PMCs are draining especially militaries and law enforcement agencies for experienced personnel (NSAG 2006: 2). PSCs and PMCs are often believed to recruit extensively amongst ex soldiers with considerable experience, knowledge and skills offering them presumed high salaries (Singer 2003: 76). From a market perspective it may be argued that there is a kind of logic to this, as supply and demand may play a role. The negative functional consequences related to brain draining suggest that the US may lose skilled personnel to the PSCs and PMCs, thus weakening the ability of the US to produce security. This view support itself on the fact that the US has stretched its forces globally and is simultaneously experiencing problems with the recruitment of new soldiers in order to fill in the voids (NSAG 2006: 1).

To illustrate the potential functional loss by brain drain, the active recruiting of Special Operations Forces (SOF) in the US by PSCs and PMCs should be noticed. Much concern was raised on this subject in the US especially after the US led invasion of Iraq in 2003 (NSAG 2006: 2). SOF units are highly valued by the US and considered as an important component to battle future threats (QDR 2006: 43- 44). Furthermore, they have been given much priority in order to make them more able to deal with challenges related to this (Kensinger Jr. 2005: 127). US SOF personnel may thus be said to play an important role in relation to the capacity and ability that the US sees as important in order to respond to security threats such as terrorism. Hence, it may be argued that if the PSCs and PMCs are draining the US for experienced SOF
personnel, it also suggests a functional weakening of the US ability to produce security.

A GAO report (2005: 35-39) concerning the use of PSCs in Iraq, did however not identify enough evidence to establish a connection between PSCs and PMCs’ demand for ex SOF personnel and attrition rates amongst them in the US. Neither did it established a relation between attrition of US military personnel more generally and the PSCs and PMCs in the 2001-2004 period (ibid.). Instead, the report uncovered that for example ex SOF personnel would quit their job in their SOF unit respective, in order to take work for other US governmental agencies that needed their expertise in the wake of 9.11.2001 (GAO 2005: 43). This may be taken as evidence that blurs the notion that PSCs and PMCs are stealing the brains of the US militaries. The finding is important as it may be interpreted to blur the view that PSCs or PMCs are sucking the US authorities empty of important talent and brains. Instead, it may be argued that PSCs and PMCs from this approach do not weaken the state institutions in the US, which are involved in security production.

4.4 Adding Flexibility to Functional Ability

4.4.1 PSCs and PMCs as Proxies

There are several examples that the US has either allowed PSCs and PMCs to export their services or hired them to forward US interests, thus making them proxies. One known example of the first is Vinell Corporation’s training of Saudi Arabian Security forces, which started back in the 1970s, and is still present today even with military presence in the country as well (Vinell Website). The motivation for this was to connect the strategically important country closer to the US. Because it may have been considered to politically controversial to send military troops to train Saudi forces, the US allowed Vinnell Corporation to sign a contract with the Saudi Arabian King (Singer 2003: 13). PSCs and PMCs may thus function as a tool that assist in the building of relations between the US and countries it considers as important in order
to increase own security. Indeed, it may be argued that the above mentioned example support the notion that PSCs and PMCs represent an “alternative approach” for the solving of US security needs (Smith 2002: 114). The potential functional flexibility related to security production may also be seen in the notion that PMCs have the potential to participate in everything from UN operations and humanitarian missions to the handling of challenges represented by international criminal networks, terrorists and other forms of international crime (Smith 2002-03: 115). Hence, the notion that the companies amongst some policy makers are considered to be a more flexible foreign political tool in the toolbox should be noticed (Avant 2005: 152). Based on this, it may thus be argued that there are initial supports for the view that PSCs and PMCs improve the US functional ability to produce security for its citizens.

Some negative consequences related to the US functional ability to produce security may however be identified. One is that PSCs and PMCs sometimes are considered less prone to changes in political goals (Avant 2005: 154). A perceived consequence may thus be that a contracted PSC or PMC working as a proxy for the US may hurt the attempts to produce security rather than supporting them. One example is the notion that a US based PMC was contracted to train certain tribes in Afghanistan after the invasion. The problem was however that this tribe later proved hostile to the Karzai government. Despite of this, the PMC still fulfilled its contract (Avant 2005: 123). The flexibility PSCs and PMCs may represent may therefore also be considered to be a danger as it may lead US decision makers to make to rash decisions that may hurt US security in the long run. Another argument that emphasizes a pitfall concerning the use of PSCs and PMCs as proxies, suggest that they may undermine the need for building alliances (Singer 2003: 179). By having the ability to send a PSC or PMC, the US may not need to consider sending military troops designated to train or assist foreign militaries at all. The importance of military aid programs, sending US militaries to train foreign militaries have been emphasized as “a vital ingredient in the building of strong alliances” (ibid.). PSCs and PMCs represent the ability to circumvent this practice, which again may be seen as weakening the long term security production of the US. This may also be seen in connection to the ability
of conducting future combined military operations between US militaries and its allies. It may be argued that the only way different nations’ forces can cooperate is by practicing at it. PSCs and PMCs may harm this ability when they are used as proxies to train foreign forces, as they may be considered a short term less costly alternative both economically and politically. Hence, short term assessments concerning political costs and urgent needs may harm the functional ability of the US to produce security with its allies in the long run. The above stated arguments thus weaken the notion that PSCs and PMCs is a functional asset only, when used as proxies.

4.4.2 Avoiding Force Cap

Another aspect here is the fact that the US militaries today have military presences in several geographical areas where the size of US troop deployment is regulated either by law, bilateral or multilateral agreements often described as force cap (GAO 2003: 8). Such regulations might be interpreted to hamper the flexibility of the US forces put under force cap, as fewer operational troops available also suggest less functional ability to respond to local security threats or challenges. Initially this may be seen as weakening the US ability to produce security. However, this problem has effectively been circumvented by contracting out support functions (GAO 2003: 2). The tasks that have been contracted out include “a wide variety of services from food, laundry, and recreation to maintenance of military’s most advanced equipment” (GAO 2003: 6). More specifically, PSCs has and PMCs have for example been hired to provide security and firefighters in Kosovo (GAO 2003: 8). This practice has indeed opened up for the possibility for the US to have a steady representation of combat troops around the globe, also in areas where force cap is in effect. Hence, using PSCs and PMCs to do these tasks may be interpreted to add to the US functional ability to produce security. It may however also be argued that the functional gain earned by using PSCs and PMCs in such tasks have also been a reason for the depriving of in house capacity of US militaries. Because the US has forces stationed globally, the extensive use of PMCs and PSCs filling the voids may make the US over dependent on its contractors from a long term perspective. This may suggest a weakening of
functional ability to produce security if a conflict arises and the contractors choose to leave the conflict zone or battlefield. If the companies would choose to leave, it may indeed be considered to represent a challenge to the notion of functional gain. A related issue here suggests that if the US relies on the companies in a longer time frame, it may lead to a downsizing of own in house capacity that in the end may ruin the expertise and ability of the institutions that have been designated to participate in security production. This may be considered to weaken the hypothesis investigated in this chapter.

### 4.4.3 Quick Response Capacity

The last aspect that will be considered in relation to flexibility is the notion that PSCs and PMCs need a shorter period of mobilizing than militaries (Schreier & Caparini 2005: 80). Support for this view is discovered when it is taken into account that PSCs and PMCs managed to fulfill an estimated 2800 contracts in Iraq from 2003-2005 (Holmqvist 2005: 31). One example is related to the outsourcing of training of foreign police and military forces. PSCs and PMCs are often believed to have the ability to provide experienced employees on a short notice. One example of this was Vinnell Corporation’s ability to provide instructors with area knowledge for the new Iraqi police and militaries (Avant 2005: 121-123). The ability of the companies to design their contribution in order to fulfill a given contract on short notice is perhaps one of their greatest advantages. For example, area and linguistic knowledge are things that PSCs and PMCs often are considered to be able to provide more quickly than the armed forces (ibid. 123). Initially, the flexibility of the companies may be interpreted to represent a functional asset for the US, as they can design dedicated force contributions to unique missions on a short term notice. This may indeed make the US able to respond quickly to new security threats and it may be suggested that this adds to the functional ability of the US to produce security.

It is however also possible to argue that the many examples of negative behavior of PSCs and PMCs, for example in Iraq, underline the potential dangers that using these
companies may have for long term security goals. It has for example been noticed that when PSCs escort assets from the Green Zone to Baghdad International Airport (BIAP), winning the heart and minds of the people, is the least of concerns for the PSD on the road (Pelton in Shadow Company – The Movie 2006). Indeed, MOOTW or SASO where winning hearts and minds is seen important to reach long term goals, aggressive acting PSCs may hurt these efforts. Hence, even though it may be argued that PSCs and PMCs represent a functional asset to the US, because of their ability to provide designed solutions to most security challenges or security producing related areas, the warning forwarded by Avant (2005: 59) who suggests that hiring PSCs and PMCs results in short term maintaining of goals should be noticed as important. A consequence of this may be that the US militaries and other institutions involved in security production may not see it as necessary to obtain certain kinds of knowledge because they know that the companies can provide it quicker.

Again, from a short term perspective the functional consequences may be preferable, but from a long time perspective relying on the companies may hamper US efforts to obtain own capacity and capability. Hence, it may thus be argued that PSCs and PMCs provide a valuable alternative for the US because of the expertise and flexibility they represent. It may thus be argued that the PSCs and PMCs may increase flexibility of the US to be able to respond quicker to potential threats. The potential negative long term consequences do however blur the notion that there are only positive functional associations with the use of these companies. Hence, if taking a short term perspective, it may be argued that the hypothesis is supported, but this may not be true from a longer perspective as the companies may undermine the functional ability of the US to produce security for its citizens.
4.5 “..The US cannot go to war without contractors”

The clearest evidence of functional loss connected to the production of security would be if the US has become unable to produce security without its contractors. Hence, if the above quotation is true, the consequences for the functional ability of the US should be considered as grave. The issue is therefore whether the heavy involvement of PSCs and PMCs in the production of security in the US has also led the US to become dependent on the PSCs and PMCs. If this is true, it would suggest a serious challenge to the hypothesis investigated in this chapter.

An indication of US dependency upon the companies may be that PSCs and PMCs are seen as an integral part of the total military force in the US (QDR 2006: 75). It may also be argued that the extensive use of PSCs and PMCs that surfaced after the 9/11 2001 US military engagements in Afghanistan and Iraq is a result of a broader initiative to make more use of these companies. The GAO report (1994: 22-25) which emphasized the positive economic prospects of allowing more private involvement in the US supports this notion. What seems to support the impression of US dependency on its PSCs and PMCs, is that it has been noticed that “even the US army has concluded that in the future it will require contract personnel, even in the close fighting area, to keep its most modern systems functioning” (Adams quoted in Wulf 2005: 181). Examples of this include the maintenance of different helicopters such as the UH – 60 Blackhawk and AH – 64 Apache, the Guardrail surveillance aircraft and advanced communications equipment (GAO 2003: 8-9). Furthermore, US reliance on high technological equipment implemented as a result of the RMA, has made worried comments suggesting that “sometimes the people who built it are the only ones who know how to fix it” (Singer 2003: 64). This may be taken to underline the vulnerable position the US is in. Hence, this may thus be interpreted to suggest a weakening of

\[6\] (Avant 2005: 115)
the US functional ability to produce security if it is accepted that air capacity is an important contributor in military operations.

This may indeed be seen as weakening the hypothesis investigated in this chapter, as it suggests that the US would experience serious problems related to the production of security if they had to do it without those PMSCs contracted to maintain it. Also the view that US armed forces will need “huge levels of battlefield support from private firms” (Singer 2003: 63), underlines the extremely important role PSCs and PMCs have come to play in security production in the US. The earlier mentioned example of KBR and its halting of driving convoy’s in Iraq in 2004 (Condon 2006: 160), which hampered US militaries operational abilities can be considered to underline this point.

The above quotation also illuminates another important aspect. The US may have to rely upon their PSCs and PMCs not only in times of peace, but also when they fight wars. This may be considered as a serious change from the initial expectations of what tasks PSCs and PMCs should undertake. Furthermore, it emphasizes that the US functional ability to produce security may have become more dependent on the companies. This thesis will support itself on those who argue that the realities of PSC and PMC involvement in the US today is a far cry away from the initial US doctrine, which emphasized that the US militaries should only privatize those areas which are not considered “emergency – essential support functions” and should not affect wartime operations or impair with militaries ability to mobilize (Singer 2003: 162). Hence, this blurs the notion that the tasks that has been outsourced or privatized have been out of conscious choice. Furthermore, even if hiring PSCs and PMCs has been considered part of an overall strategy of shrinking the size of the state, there are signs that the potential negative functional consequences related to this have either been ignored or not assessed properly. The importance of this related to the thesis investigated, is thus that the extensive use of PSCs and PMCs have had some unfortunate effects on the US functional ability to produce security. This may be considered as a serious weakening of the hypothesis investigated in this chapter.
4.6 Summary

The findings in this chapter suggest that the functional consequences that the US has experienced when hiring PSCs and PMCs should be considered as mixed. On the positive side, flexibility, easier access to skills and knowledge and short term gain should be noticed. The negative effects include loss of in house capacity as a result of failure to identify essential tasks. The findings in this chapter thus suggest that the US are about to jeopardize its future capacity to produce security. This suggests a serious weakening of the hypothesis investigated in this chapter.
5. The Quest for Legitimacy

5.1 Introduction

A central issue concerning PSCs and PMCs and their potential effect on the US monopoly on legitimate force is whether they should or can be considered as legitimate actors. Militaries are often considered to be legitimate because they are motivated by ideals such as patriotism (Avant & Sigelman 2008: 29). PSCs and PMCs for their part are considered to be profit driven businesses, private entities, believed to be true to their board and stockholders only (Singer 2003: 47). This may thus be considered to affect whether the companies can be deemed legitimate actors. The hypothesis investigated in this chapter, which supported itself on those who argued that PSCs and PMCs may be considered legitimate as a result of habit (Barker 1990:31-33) or de facto legitimacy (Schreier & Caparini 2005: 83) was formulated as “The PMCs and PSCs are considered legitimate actors within the security sphere in the US, and therefore do not threaten the US monopoly on legitimate force”. This chapter will investigate if this is true, in order to illuminate the overarching research question.

5.2 Structure of Chapter

This chapter will start by approaching the question of whether the PSCs and PMCs should be considered legitimate actors, by investigating if the companies are legally legitimate (Føllesdal 2004: 7). Both the international and national legal levels will be investigated here, because Clark (2005: 5) sees these levels as connected. The next part of the chapter focuses on whether the public in the US perceives the PSCs and PMCs as problem solvers, related to production of security and lowering of political costs. This is done to cover legitimacy as problem solving (Føllesdal 2004: 7). Emphasizing that public opinion is an important source of legitimacy the focus will
be on public opinion when the conceptions of legitimacy are investigated, except the one of legality.

5.3 Legitimacy as Legality

5.3.1 The International Level

The international legal frameworks that have been developed in order to grasp non state involvement have traditionally focused on mercenary activity. This started in 1949 with the Geneva Conventions giving mercenaries Prisoner of War status if part of a legally defined armed force (Singer 2004: 526). Later, in 1968, the UN passed a resolution that in 1970 led to the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Amongst States also known as the 1970 Declaration (Singer 2004: 527). Later, the Additional Protocol I of the International humanitarian law, the 1977 African Unity Convention for the Elimination of Mercenarism in Africa and the Article 2 of the 1989 UN Convention on mercenaries were established (Cameron 2006: 577, 580; Singer 2004: 528-529).

In order to obtain legal legitimacy (Føllesdal 2004: 7), it may thus be argued that the activity of PSCs and PMCs should be grasped by these international legal frameworks. Related to whether the employees can be classified as mercenaries based on those conventions criminalizing mercenary activity, it has been noticed that existing frameworks are inadequate (Cameron 2006: 577- 578). However, it is also argued here that a case by case approach has to be undertaken. This may be interpreted to suggest that the existing international legal framework may grasp PSC and PMC legitimacy in some cases. Furthermore, it may also be interpreted to suggest that PSCs and PMCs may obtain legal legitimacy when approached by mercenary conventions. Such a view roots itself on the notion that if employees of PSCs and PMCs are not considered mercenaries, the US has not breached with any international norm by hiring them. Such a view supports itself on the importance of
norms as a source of legitimacy (Barker 1990: 31-33), and that laws represent accepted norms and values.

Interesting to notice in this regard is to approach this issue from the Article 47 of Protocol I of the Geneva Convention, where Cameron (2006: 581-582) applies Sub Para a, b, c, d, e and f of the Article 47 of Protocol I and makes a strong case for classifying all citizens not from the US or other states officially involved militarily in Iraq as mercenaries. This interpretation suggests that the US practice of hiring PSCs and PMCs that are employing non US national may fail to be considered as legally legitimate (Cameron 2006: 582). Another consequence of this may also be that those PSC and PMC employees from for example the UK and U.S working in Iraq may be considered legally legitimate. Hence, it may thus be argued that existing legal international framework to a certain degree are able to grasp the activity of the PSC and PMCs. The weakness of this argument is however identified in the notion that only a case by case approach can decide this individually.

The challenges are also underlined when all international legal frameworks that concern the subject are investigated. In relation to this, it has been argued that “it is unlikely that […] private military companies […] can be legally regulated by existing international law on mercenaries” (Cameron 2006: 594). This point is also emphasized by Singer (2004: 532) who suggests that the activity of PSCs and PMCs falls outside the domain of all international legal regimes focusing on mercenarism that exists today. It may thus be argued that this complicates whether it may be argued that PSCs and PMCs should be considered as legally legitimate on the international level. Such a view roots itself on the notion that legal legitimacy presupposes that there exist laws that can be broken (Føllesdal 2004: 7). Hence, if existing international legal frameworks fails to address the existence of PSCs and PMCs, it also blurs the notion that legal legitimacy have been obtained on the international level. This view also find support with Tucker & Hendrickson (2004) who suggests a connection between state action, laws and legitimacy. Hence, when it is taken into consideration that international law has been considered to primitive in
order to grasp the activity of PSCs and PMCs internationally (Singer 2004: 526), it may also be considered to weaken the assumption that the companies should be considered legitimate.

As a consequence of this, the hypothesis investigated in this chapter, suggesting that the PSCs and PMCs should be considered legitimate actors are weakened. This view is underlined by Singer (2004: 533) who argues that “There are no possibilities of threats of company fines or dissolution, as no international laws specifically recognize the existence of the firms”. It may thus be argued that it is doubtful that PSCs and PMCs should be considered legally legitimate on the international level.

5.3.2 The Domestic Level

The US is considered to have one of the more developed legal approaches to the PSCs and PMCs (Holmqvist 2005: 27). Initially, this may thus suggest that the companies should be considered as legally legitimate in the US. However, this is not to say that weaknesses and loopholes have not been identified in the national legal frameworks in the US as well. One such example is the US Neutrality Act, which forbids the recruiting of mercenaries on its territory. However, the sale of military services does not fall under this law (Singer 2004: 537). Another example is the International Traffic in Arms Regulation (ITAR) which is supposed to regulate contracts through a licensing regime when PMCs or PSCs export weapons or sell military related training (Singer 2004: 538; Holmqvist 2005: 51). This regime has however been considered as minimal and idiosyncratic which emphasizes the confusion concerning how the process works (Singer 2004: 539). It may thus be argued that the legal framework in the US concerning PSCs and PMCs that export their services is not able to grasp the variety of what the companies do. Hence, this suggests an undermining of the notion that the PSCs and PMCs should be considered legally legitimate. Such a view roots itself on the notion that if the US fails to apply laws that are intended to regulate certain aspects of what the companies do, they may also be considered to breach with the conception of legal legitimacy which
emphasizes that state action must be within nationally legally accepted boundaries (Føllesdal 2004:7). A related problem here surfaces if US based PSCs and PMCs choose to move their business abroad (Holmqvist 2005: 54). Not only would this suggest that controlling them would be more difficult, but it may also be considered to affect the legal legitimacy of hiring such companies. Such a view roots itself on the notion that if a given PSC or PMC choose to move abroad, the companies may be interpreted to avoid existing legal frameworks and procedures. The mere ability for PSCs and PMCs to move business to more “friendly” places may indeed be considered to weaken legal legitimacy, as it underlines how fragile national regulations are when assessing their ability to grasp PSC and PMC activity. Interesting to notice in this regard is that few US based PSCs or PMCs seem to have undertaken such actions as it has been considered to weaken prospects for future contracts (Avant 2005: 155). Initially, it may however be argued that the hypothesis investigated in this chapter is challenged when domestic legal legitimacy is investigated.

It has also been noticed that the extensive use of PSCs and PMCs abroad, for example in relation to the war in Afghanistan and occupation of Iraq, has contributed to the notion that PSCs and PMCs are running the risk of becoming extralegal in contemporary military operations conducted by the US (Holmqvist 2005: 27; Kidwell 2005: 51; Singer 2004: 541). This legal vacuum did however not occur as a result of the absence of laws. In fact a wide array of regulations existed in 2001 when the extensive use of PSCs and PMCs started. Examples of the legal frameworks that address the activity of PSCs and PMCs in the US include the Military Extraterritorial Jurisdiction Act (MEJA). This framework made it possible to prosecute employees of PSCs and PMCs hired by DOD, when operating on foreign soil (Avant 2005: 234; Kidwell 2003: 51). Another example of this is the Patriot Act which extended the law of US Federal Act to also include crimes committed by or against US citizens on both lands and facilities which were designated for use by the US government (ibid.). Employees of PSCs and PMCs may also be held legally accountable when they are
working in countries with functional governments depending on the State of the

Hence, it may be argued that the US has legal arrangements designed to grasp the
behavior and activity of the PSCs and PMCs, thus making them punishable for
violations. As a result, the companies may initially be considered to be legally
legitimate when hired by the US. Such a view supports itself on the wide array of
legal arrangements, which may suggest that the activity of PSCs and PMCs are
considered a normal procedure not breaching with any constitutional foundations in
the US. Again these facets are considered important in relation to legal legitimacy
(Føllesdal 2004: 7). However, even though the existence of these laws may be
considered to provide the US based PSCs and PMCs hired by the US with legal
legitimacy, it is also evident that those who have focused on the shortcomings of the
laws may be right. The weaknesses of these laws have been emphasized by Singer
(2004: 537), who has argued that the Uniform Code of Military Justice (UCMJ) only
applies to military and not civilian personnel that travel with the US militaries abroad.
However, UCMJ seems to apply to contract personnel in times of war only, even
though such practice for constitutional reasons may be challenged (Elsea & Serafino
2007: 19). The answer to fill the loophole of the MEJA 2000 was to modify it. The
problem here was however that it only covered civilian DOD contractors and not
those employed by other agencies such as the CIA or those hired by a foreign
government (Singer 2004: 537). Hence, initially this made for example Blackwater
Security employees that are hired by the US State Department to provide security for
diplomatic personnel in Iraq unaccountable to the MEJA.

Another aspect that may be considered more systemic than legal in nature that has
affected the legal frameworks has been the emergence of military operations such as
SASO or military operations other than wars (MOOTW) and the US military
involvement in these. First and foremost if the US militaries are embarking on a
MOOTW the UCMJ does not apply to PSCs and PMCs hired by the US militaries as
it was only applicable in times of war (Elsea & Serafino 2007: 19). Furthermore, as
have been pointed out by observers, even though several thousand employees of PSCs and PMCs have been working in for example Iraq since the invasion, very few have been tried for court due to unlawful behavior. It may be possible to claim that this is the result of the loopholes that existed in the legal frameworks applied in the US. Failure to grasp the activity of PSCs and PMCs would suggest that the PSCs and PMCs can not be considered as legally legitimate. This is because the US has failed to apply laws that would regulate behavior that breaches with values, norms and procedures that are grounded in the constitution of the US. Examples of the consequences of the legal loopholes are not hard to discover. Perhaps the most cited example to illustrate this is the Abu Ghraib prison scandal which surfaced in 2004 and uncovered the torture and killings of Iraqi prisoners in US custody. The failure to hold the employees of CACI International and Titan Incorporated legally responsible exemplifies this. Holmqvist (2005: 27) argues that the companies were found to be “directly or indirectly responsible for the abuses” by the investigators which underlines the challenges that has surfaced as a result of the US use of PSCs and PMCs. To underline how complicated the legal matters were in relation to the Abu Ghraib scandal, it was discovered that it was not the DOD, but the National Business Center of the US Department of interior that had hired both CACI International and Titan Incorporated (ibid. 28). The Abu Ghraib example does indeed emphasize the weakness of the MEJA that was mentioned earlier.

The failure to create a legal framework to grasp the activity of the PSCs and PMCs makes it an open question of whether these companies should be considered legally legitimate. This view roots itself on the notion that a connection between the laws that are defining when and for what purpose violence can be used, to the mere monopolization of legitimate violence (Jachtenfuchs 2005: 37-38). In turn the problems US laws have at grasping PSC and PMC activity, may be considered to pose a direct threat to the US monopoly on legitimate force. As a result, lack of a proper legal framework that covers PSCs and PMCs, may be considered as a serious challenge to the notion that these companies should be considered as legally legitimate. This view may also find support in the argument of who connect
legitimacy to the existence of laws that do not breach with “constitutional rules and procedures” (Føllesdal 2004: 8).

5.3.3 Restructuring the National Legal Framework

Despite of harsh and perhaps rightful critique it is important to recognize that the US has taken several steps to address the legal issues, especially in the wake of the occupation of Iraq. The question is thus whether this has been adequate enough to provide the PSCs and PMCs with legal legitimacy.

One example of the attempts to address the critique is the modifications of the Military Extraterritorial Jurisdiction Act of 2000 (MEJA 2000). The modifications have broadened its reach to apply to all civilians hired by US militaries or other agencies when operating abroad (Elsea & Serafino 2007: 18). The consequence of this move has thus been that one of the criticized loopholes identified earlier has been tightened. Another step taken by the US has been to broaden the UCMJ to cover activities of PSCs and PMCs, not only when war is declared, but also in contingency operations (ibid. 19). If contingency operations are interpreted to include SASO and MOOTW, it may be interpreted to represent a strengthening of the legal framework that existed before 2001.

Furthermore, Elsea & Serafino (2007: 16, 17) suggest that contractors may be prosecuted in Federal Courts in the US and that extraterritorial jurisdiction indeed applies to serious unlawful behavior such as the War Crime Act of 2006. Yet another sign that the US has indeed taken steps to clarify the legal status of employees of PSCs and PMCs hired by the US is discovered in the new interpretation of the international legal frameworks and conventions. This suggests that employees of PSCs and PMCs can be tried as criminals by an enemy government if they are engaged in hostilities (Elsea & Serafino 2007: 13). Another point here is that the Article 47 of Protocol I of the Geneva Convention has been interpreted to suggest that employees of PSCs and PMCs may be considered mercenaries if they are not national of the US or nationals of any other states involved in the conflict (ibid. 14).
One interpreted consequence may thus be that the US has taken steps to provide the employees of the PSCs and PMCs they hire with a legal cover. It may also be taken to suggest that employees and hence the companies hired by the US are considered legitimate participants when they work for the US. A less favorable consequence for the companies is however that it makes all foreigners with no connection to the given conflict mercenaries.

Not only does this indicate that the US authorities have identified the necessity for a clarification of the legal status of PSCs and PMCs operating abroad in order to reassure their legitimacy. It may also be interpreted to suggest that the US has taken steps to strengthen the legal legitimacy of the companies. The logic of this argument is rooted in the notion that the work of modifying the existing national legal framework has led it to be more able to grasp the activity of the PSCs and PMCs. The US practice of hiring PSCs and PMCs may thus now fall under the appropriate procedures deemed important by Føllesdal (2004: 7) in order to obtain legal legitimacy. It may also be argued that the steps taken to a certain degree has clarified the relationship between the US and the legal responsibility of the companies. This suggests that the US national legal frameworks intended to grasp aspects of the activity of the PSC and PMC hired by the US are more or less mirroring the norms and values discovered in the US society. This has been considered an important source of legitimacy (Clark 2005: 4). Another argument supporting that PSCs and PMCs may be considered legally legitimate is thus rooted in the notion that especially the legislative in the US now considers it necessary that the companies obey the regulations and that the behavior of PSCs and PMCs does not breach with constitutional regulations.

These actions taken by the US in wake of the Operation Iraqi Freedom and Operation Enduring Freedom may be interpreted as an attempt to cover loopholes in the legal frameworks that could be identified before 2001. Hence, when approaching the question of whether PSCs and PMCs should be considered as legally legitimate in the US, the above mentioned laws and modifications of them may be seen as a serious
attempt to answering the extensive critique that the regulations post 9/11 2001. This may thus also be interpreted to give some support for the hypothesis investigated, which suggested that the PSCs and PMCs are legitimate actors. It may however be argued that even with the modifications of various legal arrangement, the US have still failed to grasp the activity of especially PSCs. The unclear legal consequences of the Blackwater shooting of 17 Iraqi civilians in Nisoor Street, Baghdad on 16 September, 2007 underline this point (BBC Website 2007). Hence, if it is accepted that this example is illustrative for how the laws are applying to the PSCs and PMCs hired by the US, it may also be considered to weaken the notion that US laws are able to grasp the activity of PSCs and PMCs. It may thus be argued that it is less than clear that the efforts made by the US to improve legal accountability are effective enough to grasp the activity of the companies, which blurs whether the laws can be considered a source of legitimacy as legality.

5.4 The Impact of Public Opinion on Legitimacy

Commentators have noticed that the implementation of privatizing and outsourcing strategies in the US have been surrounded by political consensus. Evidences for this are identified in the fact that both Democratic and Republican administrations sought to implement these strategies after the end of the Cold War (Kidwell 2003: 28; Markusen 2003: 487- 488; Singer 2003: 67). Hence, initially it may be argued that the US public has agreed upon the necessity of hiring PSCs and PMCs thus suggesting that these companies should be considered as legitimate actors and participants in the US security production against outside threats. It may thus be argued that the public opinion accepted the role of the companies, because they are considered as solving security related problems.

5.4.1 The Solution to Security Challenges?

The systemic changes represented by the disappearance of an outside threat such as the Soviet Union is often cited to have weakened the public acceptance of the need to
spend vast amounts on militaries and other institution participating in security production (Moskos et. al: 2). Furthermore, when the Global War On Terror was initiated after the 9/11 2001 terrorist attacks, the PSCs and PMCs were given important supportive roles bringing them within the sphere where the production of security against outside threats takes place. Combined with the stretching of US military forces globally (NSAG 2006: 1-2), it may be argued that the companies may have gotten legitimacy, because the US public sees their involvement as essential in order to solve the security challenges faced by the US. This would imply that the PSCs and PMCs may be considered legitimate from the conception as problem solvers (Føllesdal 2004: 7).

In relation to this, it is interesting to notice that a survey conducted by The Center for a New American Security (CNAS) and the Foreign Policy Magazine (FP), where mainly higher ranking ex military personnel were asked, 76% responded positively to the claim that private contractors could provide logistical support for US personnel without direct military supervision, (CNAS & FP Survey 2008: 7). 11% agreed upon the claim that PSCs could protect DOD convoys, 60% agreed upon the claim that PSCs could provide security for State Department personnel, and 23% agreed upon the claim that PSCs could be used to guard the Baghdad “Green Zone” without direct military supervision (ibid). Even though this survey can not claim to be representative for the US populace because it is mainly male ex high ranking officers that have been asked (ibid. 10), it is interesting to notice that most of the respondents agreed that typical in house tasks such as supplies was a safe area to contract out but services such as escorting and guarding militaries were not. However, because 60% agreed upon the claim that PSCs could provide security for State Department personnel, it may be interpreted to suggest that this already existing practice in the US, may be considered as more legitimate than guarding of DOD convoys, if approaching it from the aspect of problem solving as a kind of legitimacy (Føllesdal 2004: 7) and public opinion as a source for it (Tucker & Hendrickson: 2004).
The survey undertaken by CNAS & FP (2008) may thus be interpreted to suggest that private solutions in supportive roles of warfighting are seen as acceptable in the US. Coupling this with belief that public opinion is an important source of legitimacy (Tucker & Hendrickson 2004), and problem solving potential (Føllesdal 2004: 7) it may thus be argued that especially PMCs are seen as a legitimate solution to US security challenges amongst retired male ex high ranking officers. It may also be argued that ex militaries have a better understanding of the process of producing security, and the challenges related to contracting out services based on own experiences. Another interesting finding in the survey, is that only 7% of the respondents agreed that creating a cadre of deployable force of civilians would increase the functional ability of the US to meet new security challenges (CNAS & FP Survey 2008: 8). This may be interpreted to suggest that PSC or PMC involvement is not seen as a solution to future security challenges. A point to be made here is thus that the plans of creating a civilian based USG force in the US, designated to participate in stabilization and reconstruction mission (Department of State report 2006) may be considered as having little public legitimacy. The findings in the CNAS & FP Survey (2008: 7-8) may thus be interpreted to partly support the hypothesis investigated in this chapter. It is also worth noticing that based on the findings in the survey PSCs may be considered less legitimate than PMCs as there was more support for contracting out military in house services than for contracting out security. Hence, it may be argued that the PMCs may be considered as being more legitimate than PSCs.

A core problem that was noticed earlier is however that the above mentioned survey included ex military personnel in the US only (CNAS & FP Survey 2008: 9-10). The next part of this chapter will draw upon another survey that may be considered as being more representative for the US populace in order to investigate legitimacy of PSCs and PMCs related to public opinion and its problem solving potential related to political costs.
5.4.2 Lowering Political Costs and Increasing Legitimacy?

PSCs and PMCs may obtain legitimacy because they make it possible for the US to put fewer soldiers in harms way. Such a view would see itself closely connected to the notion that using PSCs and PMCs may lower political costs of going to war (Singer 2003: 210). The legitimacy of the PSCs and PMCs may thus be retrieved from the public notion that they make it possible for the US to produce security without risking the lives of soldiers. It is however also possible to argue that the companies may be considered as less legitimate if this involvement is considered a breach of the public expectancy that war is a matter for the state, and that employees of PSCs and PMCs are motivated by material gain only.

A study undertaken by Avant & Sigelman (2008) illuminates this. 800 respondents were picked randomly and separated into a control group, reading a story focusing on growth of the American bureaucracy. The second group read a story concerning US soldiers deaths in Iraq, the third group also read this story, but here the dead ones was described as PSC employees. The last group read the story similar to the third, but with more information concerning PSCs (Avant & Sigelman 2008: 30). Subsequently, all respondents answered questions related to the motivation of the employees of PSCs and PMCs and the war in Iraq (ibid.). The study uncovered that the respondents saw soldiers as more patriotic than PSC employees regardless of what group they belonged to. The percentages viewing the PSC employees as motivated by material gain never reached above 34% and was discovered with the group given background info about the PSCs (Avant & Sigelman 2008: 31). If it is taken into account that a central definition of a mercenary is that he or she is motivated by material gain when participating in a conflict, it may be argued that the results of the survey suggest that PSC employees were considered legitimate.

Interesting to notice in relation to the question of legitimacy is also the fact that there were few differences when the respondents were asked how angry or sad they where when assessing the death of a soldier or a PSC employee (Ibid. 32). Differently said, the death of a PSC employee and a US soldier sparked similar negative emotions.
This may suggest that using PSCs or PMCs does not justify the loss of lives in war. Hence, it may be argued that the companies obtain little legitimacy from the perspective of solving the problem of lowering political costs of going to war. Furthermore, it also seems less evident that US involvement abroad is more justified by using PSCs or PMCs instead of the militaries. Hence, it may be a faulty assumption that political costs are lowered as a result of using PSCs and PMCs. This point is further emphasized by the finding in the survey which uncovered similar feelings amongst those who read about deaths of PSC employees and those that did not when they assessed how the war was going in Iraq (Avant & Sigelman 2008: 33). It may be argued that this weakens the argument suggesting that using PSCs and PMCs may be justified because it reduces political costs of war and hence the ability to solve this problem. It thus seems less than evident that the findings in the survey conducted by Avant & Sigelman (2008: 30-34) support the notion that PSCs and PMCs represent a problem solving potential related to political costs. What may be interpreted as a source of legitimacy is however that few of the respondents saw the employees of PSCs or PMCs as motivated by material gain only (Avant & Sigelman 2008: 31). Hence, it may be argued that the public may use this to justify the involvement of PSCs and PMCs in security production, because they are not considered to be “mercenary like” and motivated by money only. It may thus be argued that this represent an indication of an “upgrading” of the moral image of PSCs and PMCs in the US. When it is taken into account that morality is a norm and a source of legitimacy (Clark 2005: 4), PSCs and PMCs in the US may have obtained legitimacy from the public.

As a result of the above findings, PSCs and PMCs may not be considered legitimate actors because they do not solve the problem connected to political costs of war or conflict. It may thus be suggested that using PSCs and PMCs in order to reduce political costs of intervention only partly qualify the companies to be considered as holding a problem solving potential. This view supports itself on the notion that that the US public believe that the loss of employees of PSCs or PMCs as equally negative as the loss of US militaries (Avant & Sigelman 2008: 32). As a result, it may
be argued that these findings weaken the hypothesis investigated in this chapter, which considered the PSCs and PMCs as legitimate actors.

5.4.3 Public Compliance or Deliberate Choice?

The initial hypothesis investigated in this chapter suggested that PSCs and PMCs have retrieved their legitimacy in the US due to the practice of using them (Barker 1990: 31-33; Schreier & Caparini 2005: 83). It may also be argued that this support the notion that the companies may be considered legitimate as result of what Føllesdal (2004: 7) referred to compliance, thus suggesting that the public don’t care about the practice or fails to address it. The findings in the surveys conducted by CNAS & FP (2008) and Avant & Sigelman (2008) investigated earlier in this chapter, may be interpreted to suggest that when PSCs and PMCs are hired by the US, the public do have opinions regarding the subject if asked. This breaches with the view suggesting that PSCs and PMCs obtain legitimacy because of public compliance. It may of course be argued that because the population in the CNAS & FP (2008) survey consisted of ex military higher ranking officers, they may have personal experiences with how the PSCs and PMCs function alongside US military forces. From this perspective, it may thus be argued that they have more knowledge concerning the companies than the average US citizen would. However, it may also be argued that this suggest that those within law enforcement, international corporations, militaries and various departments in the US who have used a PSC or PMC or been trained by them also have some knowledge and experience related to these companies. It may thus be asked how many of the public that Føllesdal (2004:7) suggests should be apathetic or ignore the use of PSCs and PMCs by the US before it can be claimed that legitimacy out of compliance is achieved. What seems like a relevant approach to this question is to argue that because the PSCs and PMCs are so heavily involved in various areas of security production, a wide array of the public has also had experiences with their activities, thus suggesting that this may affect their opinion on the practice of using them.
What’s even more interesting in this regard is that the US practice of using PSCs in Afghanistan and Iraq has become an issue in the Presidential Candidate nomination Process amongst the Democrats. Hillary Clinton (D-NY) and Barrack Obama, the two candidates of the Democrats have positioned themselves rather differently to the subject. As Clinton supports a proposal for a law that will ban the use of PSCs in Afghanistan and Iraq, her opponent in the nomination process, Obama for his part will not rule out a role for PSCs also in the future (Scahill 2008). Hence, it may be argued that Clinton does not see the involvement of PSCs as legitimate in Afghanistan and Iraq. Another interesting point is that their Republican opponent, John McCain for his part has praised the job Blackwater has done in Iraq, although not officially taken a stand in the question of whether the extensive use of PSCs should continue if he is elected President (Roston 2008).

This may be interpreted to suggest that the public in the US may be inclined to take an opinion concerning the US use of PSCs and PMCs more broadly because being supportive for this practice, or not may contribute to who you support politically. It may also be argued that Clinton has taken this view because she thinks her potential voters dislike the US practice of using PSCs and PMCs abroad. In relation to this, Isenberg (2008) notices how “This looks like an attempt to outflank Obama on the left and pick up the support of those, […] who consider PMCs as mercenaries”. Another suggestion would be that there are enough voters in the US that have expressed worries concerning the practice of hiring these companies that it is seen as an interesting matter for the politicians. If this is true, it may also be argued that the US public is not complying with the US practice of using PSCs and PMCs as a part of military operations. From these points of view it may be argued that it represents a breach with the behavior that is needed if legitimacy as compliance is to be obtained, that following Føllesdal (2004: 7) occurs as a result of public passiveness or lack of caring.

Hence, this thesis will argue that PSCs and PMCs hired by the US can not be considered legitimate as a result of compliance, because matters concerning the use
of them have become an issue in the Presidential election, and have already become an issue separating the two Democratic Presidential candidate nominees. As a result of this it may also be argued that the practice of using PSCs has become an issue with politically laden connotations. Even though it may also be argued that not everybody care about this issue, as other issues may be considered more important, it may also be suggested that it may create a stronger public awareness concerning the practice of using PSCs performing security related tasks. This may suggest that the public in the US may have a possibility to affect the US future practice of using these companies. In turn, this may be interpreted to suggest that the public may be more motivated to take a stand concerning this issue. The consequence of the findings above related to legitimacy as compliance may thus be interpreted to weaken the hypothesis investigated in this chapter, who suggested that the involvement of PSCs and PMCs are legitimate actors in the US security production.

5.4.4 Summary

The investigation in this chapter has found that international legal frameworks are not able to grasp the activities of the US use of PSCs and PMCs abroad. It has also been established that national legal frameworks in the US have proven insufficient to grasp the activity of PSCs and PMCs when used by the US abroad. The attempts by the US to modify existing laws and regulation concerning PSCs and PMCs when used in military operations will be interpreted to suggest that they can be considered legally legitimate in the US. Other central findings in this chapter are concerned with US public opinion. This thesis will, based on the findings in this chapter suggest that it is not evident that PSCs and PMCs are considered legitimate actors by the US public. Overall, it may thus be questioned whether the companies can be considered legitimate actors in the US from the perspective of the public and this weakens the hypothesis investigated in this chapter.
6.  Signs of Political Control in the US?

6.1 Introduction

Being able to exercise political control over those that have been given permission to exercise violence on behalf of the state is considered a central aspect of the ability to monopolize legitimate force (Thomson 1994: 9). Indeed, failing at exercising political control suggests that there exists a competing structure exercising violence within the US territory. Not only would this suggest that PSCs and PMCs should be interpreted as threatening the monopoly of legitimate violence held by the US. From the perspective of Rotberg (2004: 4-6), it would also suggest that the US could no longer claim to be a strong state. The extensive role the PSCs and PMCs are playing in the US production of security may thus be interpreted to represent a great challenge if it avoids political control. In order to be able to illuminate the overarching research question, this chapter will investigate if the US has the ability to exercise control over the PSCs and PMCs along the three dimension forwarded by Avant (2005: 40-43) elaborated in the theory chapter. The starting point in this chapter is the earlier formulated hypothesis stating that: The US has the ability to exercise political control over the PMCs and PSCs they hire and therefore the US monopoly on legitimate violence is not threatened.

6.2 Structure of chapter

The first part will investigate political control of the PSCs and PMCs along Avant’s (2005: 41) functional dimension. In order to do this the investigation will focus on whether a functional market exists, the strategies and policies concerning the use of PSCs and PMCs and contractual arrangements as a tool to control the costs. The second part will apply Avant’s (2005: 42) political dimension of political control and examine if the extensive use of PSCs and PMCs has led to a redistribution of power
within the processes of decision making related to security in the US. The third part will explore the dimension of social control (Avant 2005: 43). The investigation will focus on whether the PSCs and PMCs are adhering to norms and values held by the traditional institutions in the US.

6.3 The Functional Dimension of Political Control

6.3.1 The Importance of a Functional Market to Improve Political Control

In order to avoid agency problems, the process of selecting agents is important (Rasch 2000: 74). This thesis will thus argue that a functional market is important because it provides the US with the possibility to select between a wider array of PSCs and PMCs which again may diminish the danger of negative agency behavior. The focus on competitive outsourcing has also been emphasized by Georg W. Bush as a way to “promote(s) innovation, efficiency, and greater effectiveness” (Kidwell 2003: 40). Hence, it can be argued that it is important to stimulate the creation of a functional market, because it will create an incentive for the PSCs and PMCs to deliver products that are most beneficial for the US needs. Indeed, “true and sustained competition” can thus be considered important not only in itself (Markusen 2003: 477). It has however been noticed that ”collusion among bidders is a real danger, because incentive structure of competitive bids is designed to benefit the contractee at the expense of the bidders” (Schreier & Caparini 2005: 100). Failing at creating a functional market may thus be assessed to play an important role in relation to the ability of the US to exercise political control as it is understood by the functional dimension outlined by Avant (2004: 43). Such a view support itself on the view that resources are an important part of functional control (ibid.).

As a result of the end of the Cold War, a globally identifiable market consisting of PSCs and PMCs occurred from the early 1990s (Singer 2003: 73, 83). The US has however chosen to hire almost exclusively amongst domestic PSCs and PMCs
although this changed after 2001 (Avant 2005: 130). Furthermore, it is less than
evident that the US has stimulated for the establishing of a functional domestic
market of PSCs and PMCs. For example Markusen (2003: 478) discovered in her
investigation of the defense sector procurement more generally that little if any real
competition existed. Indeed, the fact that of 3061 signed contracts by Pentagon from
1994-2002, two companies, the KBR and Booz Allen Hamilton was awarded 2000 of
them may be taken to illustrate this point (Wulf 2005: 187). The consequence of
failing to choose PSCs and PMCs from a well functioning market may thus suggest
that the US may not get the best provider both when it comes to functionality but also
when it comes to the potential for economic savings. A closer look at selected US
institutions in 2006, involved in security production against outside threats illustrates
the practice of ignoring the market. For example Department of Homeland Security,
where L-3 Communication was the eight largest contractor, did in Fiscal Year 2006
only award 18.1% of its contracts with full open competition. Furthermore, as shown
in figure 1, $5,866,066,183 worth of contracts was awarded without competition7.

Figure 1: Department of Homeland Security: Oversight over competition 2006.
Source: Fedspending.org

DOD for its part, where KBR is the sixth largest contracted company, awarded 34.4% with full open competition. As illustrated by figure 2, $79,416,026,058 worth of contracts was not competed for

![Pie chart showing competition rates.]

**Figure 2**: Department of Defense: Overview of Competition 2006.

Source: Fedspending.org

It is also interesting to notice that other agencies that are known to make use of PSCs and PMCs seem to have followed a similar policy. Department of State, which has hired well known PSCs such as DynCorp (owned by Veritas Capital), Triple Canopy and Blackwater Security, awarded 30.3% of its contracts with full open competition. Figure 3 does however illustrate that $1,513,089,153 worth of contracts was awarded by the Department of State without any competition

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Defenders of practicing non competitive bidding emphasize that urgent needs sometimes makes it impossible to undertake a full bidding round. From the aspect of functional ability to deploy force, it may be a relevant argument as urgent needs and the ability of selected PSCs and PMCs to respond quick may be taken as a sign that the functional ability of the US is improved. From the perspective of agency theory, it may however be argued that failures to stimulate to existence of a functional market may be considered to increase the possibility for negative agency behavior. Furthermore, it may also be argued that only very few PSCs or PMCs have the capacity that is needed available. One possible consequence is that the US will not be able to establish what Rasch (2000: 74) refers to as ex ante oversight. This suggest that the US will not have access to potential bidders for contracts which again makes it more difficult to choose the most suitable or best priced contract offer. An issue that may be considered both as a problem and an explanation in relation to this is the characteristic of the product sold by PSCs and PMCs. It has been noticed that the services sold by these companies represent a niche product which suggest that they are not many enough to constitute a free market (Schreier & Caparini 2005: 51). Regardless of whether this should be considered as a defense or an explanation for why the different US institutions has chosen their practice of not stimulating to more competition, it may be considered to affect the US ability to exercise functional control as it has been outlined by Avant (2005: 40). Indeed, the lack of perfect
competition makes the process of awarding a potential follow up contract even more complicated (Schreier & Caparini 2005: 53). It will here be argued that if it is accepted that the market of services provided by PSCs and PMCs is not functional, it also makes the companies more prone to provide asymmetrical information for example regarding costs or standards, because those hiring have few potential companies to choose from. Problems related to what has been described by Rasch (2000: 71) as asymmetrical information may thus occur.

A direct consequence of failures to establish a functional market related to the functional dimension of political control may thus be that functional ability to deploy force is negatively affected because the US can not choose amongst the best providers. Furthermore, lack of a functional market also suggests that the US may not be able to choose amongst those companies that are able to combine price and functionality. This thesis will argue that the US has failed to stimulate competition and a functional market, which should be considered to affect the ability of the US to exercise political control on the functional dimension. It will thus be argued that this weakens the hypothesis investigated in this chapter which suggested that the US is able to exercise political control over their PSCs and PMCs.

6.3.2 Contract as a Tool to Exercise Political Control

Holmqvist (2005: 28) notices that holding PSCs and PMCs accountable by contract is difficult. This view roots itself on the belief that trust is an important part of contractual arrangements. Rasch (2000: 74-75) emphasizes how the contractual arrangement is created and whether it creates incentive structures for the agent to fulfill its contractual commitments are of great importance for solving agency problems. Indeed, the very ability to monitor costs, quality and performance is perceived as a yardstick for whether outsourcing is successful (Markusen 2003: 479). Hence, when the hypothesis investigated and the approach of Avant (2005: 43) who suggested that functional control is connected to both ability to deploy and efficiency,
it should be expected that the contracts awarded are formulated in a way making functionality combined with efficiency most probable.

Traditionally, the US has applied two main practices when contracts concerning PSCs and PMCs have been awarded. The first approach has been to apply sealed-bidding, which is expected to ensure fair and reasonable price from the lowest bidder (Berrios 2006: 120). The second, the negotiated contract, suggests that the US will choose to negotiate a contract selecting amongst those providers it sees fit to answer to the given demand (Berrios 2006: 121). Furthermore, the US has also applied “fixed price” and “cost –reimbursement” contracts. Within the latter, the “cost plus” type of contract is located. The first kind of contract implies that the risk of economic loss is placed with the contractor. The second kind, places this risk of loss with the US government (Ibid. 121). When it is taken into account that a contract is supposed to create structures of incentives that maximizes the utility of both the principal and agent (Rasch 2000: 75), it may be questioned how effective the US practice of cost –plus contracts are. This view support itself on the notion that cost plus contracts places potential economic loss with the US and not the contracted company. Hence, it may be argued that this practice weakens US ability to exercise political control because cost-plus contracts breach with the notion that the contract provides incentives for the PSC or PMC to operate within given limits.

When it is taken into account that Avant (2005: 43) emphasizes efficiency with economic connotations as a part of the functional dimension of political control of force, it can be argued that the practice of awarding them challenges the ability of the US to exercise political control.

This point is underlined by the wide array of contracts awarded by the US after 9/11 2001 to PSCs and PMCs identified as “cost plus” type. For example Coalition Provisional Authority (CPA) led by Paul Bremer in Iraq awarded 10 contracts of the “cost plus, indefinite delivery/ indefinite quantity” kind with a value of $5,1billion to one single contractor in 2003 (Kidwell 2003: 42). Furthermore, a very good illustration of the negative consequences of awarding cost plus contracts is
discovered when the LOGCAP contract worth $8.6 billion awarded to KBR in 2003 is investigated. In relation to this contract, $813 million in questioned costs and $382 million in unsupported costs has later been identified (Berrios 2006: 126). Hence, applying cost plus contracts can be considered to weaken economic efficiency and thus also political control.

It may also be argued that cost plus contracts may lead the PSCs and PMCs to be more inclined to provide asymmetrical information that support rise in costs related to the given cost-plus contract. Such a view finds support in the characteristics of cost-plus contracts offering the freedom to the agent of cost overrunning (Berrios 2006: 127). It can thus be argued that imperfect information provided by the given PSC or PMC contracted, makes opportunistic and exploitive behavior, such as disguise of costs and quality, more possible (Schreier & Caparini 2005: 99). Indeed it may be argued that the cost plus contracts increase the probability for negative agent behavior because the process of estimating costs is left partly with the contracted. The example of US based PSC Custer Battles which was awarded several large contracts in post war Iraq is a good illustration of the potential for negative agency behavior. The PSC charged the US authorities for $157,000 for the building of a helicopter pad, which it hired subcontractor to do for $95,000 (Eckholm 2004). Furthermore, Custer Battles was later also accused of billing for the provision of a security detail that was to guard a convoy which it failed to deliver (ibid.). It may thus be argued that the existence of asymmetrical information and hidden actions as it has been outlined by Rasch (2000: 71-72) can be identified in the above example. Hence, this example helps to illuminate that the US practice of hiring PSCs and PMCs leads to problems and challenges that are grasped well with agency theory.

However, the functional dimension of political control is not only about efficiency with economic connotations, but also closely associated with how contracting out affects the US functional ability to deploy force (Avant 2005: 41, 43). Hence, an aspect of the practice of awarding cost plus contracts is that it is often done in order to cover “urgent needs” (Berrios 2006: 126). This may be considered to imply more
functional ability because the US is able to respond quicker and with more flexibility to new security threats. It will here be suggested that this puts higher demands on the US ability to exercise oversight over their contractual relationships with the PSCs and PMCs. Contracting out as result of urgent needs may make it difficult for the US to exercise what Rasch (2000: 75) calls ex ante oversight over the potential candidates. One example of this is the contracting out of security at the CIA station in Kabul, Afghanistan in 2002. One argument forwarded for why Blackwater was awarded the contract was simply put that they were considered the only ones able to leave for Afghanistan on a short notice (Scahill 2007: 45). Contractual arrangements such as the cost plus type may thus be considered preferable from a functional aspect if the ability to deploy force is the only criteria for success. However, because Avant (2005: 43) couples the functional dimension of political control with efficiency, the practice in the US surrounding contractual arrangements and PSCs and PMCs may be considered to weaken the hypothesis investigated in this chapter. The identification of the various problems identified by agency theory related to contractual arrangements between the US and PSCs and PMCs after 9/11 2001 support this view.

Interesting to notice in regard to the use of contracts is the fact that the US has taken steps to address the challenges related to contractual arrangements concerning the hiring of PSCs and PMCs. One approach has been to educate and dedicate more officers to oversee the contracted PSCs and PMCs in the field. One example of this is the “Contractors Accompanying the Force Training Package”, which was offered from 2007 to increase the knowledge amongst military officers on how to oversee their contractual arrangements with contractors (Contractors Accompanying the Force Training Package 2007). This may be seen as improving the system of exercising control.

Rasch (2000: 76) sees the capacity of the principal to address issues concerning the agent as one way of counteract potential agency problems. The question thus becomes how effective these moves are if the awarding of cost plus contracts continues. In relation to this it should be noticed that the US did as a response to
allegations of contractual misconduct of Halliburton and Bechtel in Iraq, increase the number of contract management officers in the country from the initial 4 in 2003 to 14 in 2004 (Schreier & Caparini 2005: 100). This may be seen as an important move to improve contractual oversight as it has been forwarded as a way of improving regulative oversight in the US (Isenberg 2004: 11). It may also be seen as change in the trend of downsizing its defence contractor manager force which can be considered a weakening of the ability to oversee contracts awarded. This trend started in 1997 and until 2002 the US increased the number of contracts with private defense contractors from $117.1billion to $167.7billion, but simultaneously downsized their force of defence contractor managers from 14353 to 11709 (Schreier & Caparini 2005: 52).

To this it should be noticed that many contractual arrangements between various US institutions and PSCs or PMCs often lack mechanisms related to both monitoring and oversight (Schreier & Caparini 2005: 52). It may thus be argued that it is too early to claim that this will improve the ability of the US to counter negative agency behavior. Hence, it is also less than clear that contracts, especially the cost plus type, is a proper tool for exercising functional control over the PSCs and PMCs. Instead, it will be argued that because negative agency behavior seem to be difficult to counter, when contracts are investigated, it will also be argued that it is less evident that the US is able to exercise political from the functional dimension provided by (Avant 2005: 41, 43). Hence, this suggests a weakening of the hypothesis investigated in this chapter.

6.4 The Political Dimension of Political Control

6.4.1 Shaping the Understanding of the World

In relation to the political dimension, it is also an interesting approach to argue that PSCs and PMCS may be getting undue policy influence because they have gotten an increasingly more important role in the provision of intelligence in the US. It has been noticed that close to 95% of all intelligence collected by the US today are
collected from open sources and a lot of it also comes from PSCs and PMCs (Leander 2004: 13). Indeed, the US has outsourced a wide array of tasks closely connected to collection to intelligence. Examples of this include the involvement Space Imaging and Digital Globe in Afghanistan and the AEGIS contract to provide both security and intelligence for the US Army Corps of Engineers in Iraq (ibid.). It may thus be argued that this development favors the PSCs and PMCs because they may exercise influence over the process where security policy is formulated more directly. This may be done either by providing data or by interpretation of them (Leander 2004: 14). According to agency theory, the PSC or PMC given the task of providing intelligence may use it as an opportunity to emphasize its own interests. For one it may hold back relevant information that may disfavor them, thus suggesting that “hidden knowledge” or “hidden information”, two aspects of asymmetrical information is possible (Rasch 2000: 71). If it is accepted that PSCs and PMCs are profit driven entities, and hence have a priori different interests than the US, they can use provision of intelligence in order to affect policies in the US to favor their future position. This should be seen in relation to the notion that intelligence plays a very important role as identifying threats and the making of decisions related to strategy and security (Leander 2004: 13). It may thus be argued that the PMCs and PSCs have been able to position themselves in a role where they have gotten access to a direct route to exercising influence on political decisions. It is however also possible to argue that collection and misinterpretation of intelligence by PSCs or PMCs may also lead to incidents that can have political consequences. Examples of this include the downing of a Peruvian civilian airplane and the bombing of Colombian civilians based on intelligence provided by US based PMCs in 2001 (Leander 2004: 14). Although it can be argued that state based intelligence also could have caused these mistakes, it may be suggested that privately based intelligence may be suspected to serve the interests of the companies.

Involving PSCs and PMCs as the US has done several times, may thus be said to have introduced a new actor into the policy decision process closely related to the deployment of force. Furthermore, it may also be argued that this practice has direct
Implications on the policy making decisions because it creates more (but perhaps not better) sources of intelligence for those making the given decision in the US. This view roots itself on agency theory which assumes that agents will often have diverging interests from the principal per se (Rasch 2000: 71). Privatization and outsourcing of intelligence related services may therefore be considered to have introduced a way where PSCs and PMCs can affect the political decision making process by more direct access to political decision makers. It can be argued that this weaken the ability of the US to exercise political control over the PSCs and PMCs. This view supports itself on the interpretation that it represents a redistribution of power between political decision makers and state institutions involved in security production versus the companies.

Another trait of PSCs and PMCs in the US is that they are eager to be considered as security experts. Leander (2004: 16) suggests that when these companies are able to maneuver themselves into the position as experts in security, they may also be able to take the debate of public security out of the public realm and into the private one. Such a development implies that the PSCs and PMCs have the potential of affecting the political debate surrounding concerns and issues connected to the deployment of force. By acting as experts, the companies may become more privileged as they may be able to give themselves a new and more important role in the process of producing security. Again, it is possible to draw upon agency theory and argue that occurrence of asymmetrical information may be likely, because the PSCs and PMCs per se may be considered to have diverging interests from the US. One consequence of this is that the role of the US Congress may become deprivileged (Leander 2004: 16). This view roots itself on the notion that if PSCs and PMCs are considered security experts by the Administration and the public more generally thus adding credibility to decisions made by the Administration. Posing as security experts may thus be considered to make the companies more able to exercise influence that will take care of their own goals.
The role PMCs and PSCs have come to play in for example the development of military doctrine via its involvement in Joint Warfighting Assessment Center and Army’s Training and Doctrine Command (TRADOC) in developing future concepts for warfighting (Leander 2004: 17), may be taken to illustrate the role of PSCs and PMCs as security experts. Also the contracting out of the writing of a report that was to assess how PMCs could be put to better use by the US in relation to supplying troops, which was awarded to well known PMSC Brown & Root in 1992 (Singer 2003: 142), may be interpreted to illustrate this. It may thus be argued that PSCs and PMCs to a certain degree have maneuvered to become an alternative actor where considerations concerning security production are undertaken. If the argument by Leander (2004: 16) suggesting that the role of the US Congress becomes deprivileged, it may thus also be argued that there is an inhibit danger that the PSCs and PMCs can pose and act as security experts unchecked. This may be interpreted to suggest that what Avant (2005: 43) described as a displacement of power has occurred. From the perspective of the political dimension of political control, the ability PSCs and PMCs have to shape the understanding of aspects related to security production represents a serious challenge to the US ability to exercise political control over these industries. Such a view roots itself on the notion that “shift in the power of different actors over the control of force” is deemed important in relation to the ability to exercise political control over force (Avant 2005: 42). This may be interpreted to suggest that a shift in power between legislative on the one hand, and executives and the companies on the other may be identified. Hence, a related consequence of this suggests that the hypothesis investigated in this chapter is seriously challenged by these findings.

It should also be noticed that for example in 2001, PMCs spent $44million on lobbying and political campaign donations (Isenberg 2004: 40). Indeed, one example of this is Crowell & Moring. This law firm has been hired by for example Blackwater, Erinys LLC. Triple Canopy and DynCorp International Inc to monitor and provide legal justification of the involvement of these companies in Iraq (Eviatar 2007). It has also been noticed that in 2001, 95% of political donations by
Halliburton were given to Republicans. The very same year, Republicans got 72% of the political donations from DynCorp (Isenberg 2004: 40). This illustrate that PSCs and PMCs in the US can draw upon many resources that may be interpreted as making them able to exercise influence on the legislative and executive branches in the US. Hence it may be argued that they have the potential to exercise influence on recruiting and selection mechanisms and other processes that may affect the use of PSCs and PMCs in the future. From the perspective of agency theory, it may thus be argued that the combination of personal links, lobbying and political donations represent a battery of possible combinations where PSCs and PMCs can exercise influence via new access points. It may thus be argued that this represent a redistribution of power that negatively affect the ability of the US to exercise political control. Furthermore, it can be suggested that the findings so far weaken the hypothesis investigated in this chapter.

6.4.2 Affecting Democratic Transparency

Another issue related to the political dimension, is whether using PSCs and PMCs has affected the transparency that surrounds the use of force. Civilian oversight over those performing violence on behalf of the state should be considered an important mechanism in strong democratic states. Hence, a change here, suggesting that the possibility to exercise this oversight is weakened may also be interpreted to suggest that the ability to exercise political control is weakened. Such a view roots itself on the notion that a change in the ability to get information and oversight suggest a shift in power between the PSCs and PMCs and the public, especially legislative part of the US.

6.4.3 Congress’ Ability to Oversee

Initially it has been noticed that the executive branch is gaining most when the US is contracting out. This view roots itself on Avant & Sigelman (2008: 15), who argue that because it is the executive branch in the US that is handling the process of
outsourcing to the PSCs and PMCs, it leads to a situation where they have the information and oversight concerning contractual arrangements. Indeed, the wide array of tools that provide the Congress with the ability to exercise oversight over militaries, such as restricting funding, setting vetting criteria’s for soldiers and its role as consultative organ when US militaries are deployed to war zones is more or less absent when PSCs and PMCs are considered (Avant & Sigelman 2008: 15-16). Not only does this suggest an undue displacement of power within the US, but it also suggests that the transparency surrounding the use of US militaries is not present when PSCs and PMCs are contracted. Hence, this may be interpreted to suggest a weakening of the hypothesis investigated in this chapter. This view is supported by the notion that there is no obligation for the Executive branch in the US to inform the Congress what PSC or PMC it contracts to train foreign militaries (Avant & Sigelman 2008: 17). Furthermore, the Congress only needs to be noticed if contracts concerning sale of military training services to foreign governments exceed $50million (ibid.). Perhaps the most central point when transparency is investigated in relation to the political dimension, is however that it is the executive branch in the US that hires PSCs and PMCs and not the Congress (Avant 2008: 15). Leander (2004: 16) notices that this leads the debate concerning security away from Congress, “into a restricted realm where the executive, the military, the secret services and PMCs can decide how issues should be defined and handled”.

Based on this, it may thus be argued that transparency surrounding the use of PSCs and PMCs is seriously challenged as a result of the above mentioned characteristics of the contracting out process. There are however signs that the Congress are about to address some of the challenges related to the lack of transparency. Three examples of new legislation illustrate this. The S.674 (Obama) – Transparency and Accountability in Military and Security Contracting Act of 2007, does for example require Secretaries of Defense, State, Interior, the Administrator of the USAID, and the Director of National Intelligence to provide information concerning the contractors and subcontractors working in Afghanistan and Iraq within 90 days of enactment (Elsea & Serafino Report 2007: 27). Furthermore, the H.R. 897, Iraq and
Afghanistan Sunshine Act requires that Secretaries of State, Defense, the Interior and the administrator of the USAID should provide Congress with copies of contracts and tasks that value more than $5 million (Elsea & Serafino 2007: 29). And thirdly, the H.Res 97 (Murphy, Patrick) established that DOD Inspector General and the Special Inspector General for Iraq Reconstruction must report to the Congress concerning the costs related to military and reconstruction funding (Elsea & Serafino 2007: 30). It may however be argued that it is premature to suggest that these steps will increase transparency.

Avant & Sigelman (2008: 19) suggest that the US Congress is satisfied with an approach to the issue identified as post hoc analysis, sometimes recognized by a “fire alarm” oversight, making it possible to avoid involvement in policy shaping. The above mentioned acts and resolutions forwarded by the Congress may however also be interpreted to suggest that it is indeed trying to bring itself back in. It has however also been argued that despite of efforts to increase transparency and oversight, even if improved, the Congressional oversight over PSCs and PMCs is rather miserable compared to the one they have over the use of US militaries (Avant & Sigelman 2008: 16). Not only does this underline that PSCs and PMCs may be considered a new important actor within the security producing sphere. The lack of transparency may thus be taken to represent a great challenge to the notion that any form of democratic control over the PSCs and PMCs is effective, thus suggesting a weakening of ability to exercise political control. Such a view roots itself on the notion that lack of transparency suggests a change in the relationship between the Congress and Administration in the US, disproportionately favoring the Administration. This may thus be interpreted to represent a serious challenge to the hypothesis investigated in this chapter.

### 6.4.4 Consequences for Public Transparency

This thesis will continue by arguing that transparency is not only a matter of whether the legislative branch in the US is able to exercise its role as a check and balance
upon the executive. It will also be assumed that the public in the US is important here, because the legitimacy of the executive and legislative branches in the US is firmly rooted within the public opinion (Tucker & Hendrickson 2004). Thus, it may also be argued that if the public have little knowledge or ability to obtain knowledge related to the US practice of hiring PSCs and PMCs, they may not be able to take it into consideration on Election Day or addressing concerns to their elected representatives. Hence, transparency also concerns the public level in the US, and may be considered as weakened if information is hard to get (Avant & Sigelman 2008: 20). Signs that the transparency towards the public is suffering when PSCs and PMCs are hired by the US are illustrated by the notion that the practice may avoid institutional mechanisms such as the Freedom of Information Act. Another issue is the notion that PSCs and PMCs limit information about their operations, clients and contracts due to proprietary terms (Avant & Sigelman 2008: 20-21). The consequences may thus be that the public do not have access to information considering costs related to the US hiring of PSCs and PMCs. When it is taken into account that Avant (2005: 43) considers the cost aspect as important when the political dimension of political control is considered, it may be argued lack of transparency concerning contractual arrangements represents a great challenge to political control. Lack of transparency also makes it easier for the executive in the US to deploy force below the public radar, which should be considered as a change from the traditional deployment of force using military forces. Hence, it may be argued that a displacement of power, favoring the executive and the companies has also occurred here. Such a view roots itself on Avant’s (2005: 43) understanding of the political dimension of political control. Initially this may be taken to support the notion that using PSCs and PMCs reduces transparency, which in turn challenges the hypothesis investigated in this chapter. Hence, it may be argued that this lack of transparency complicates the ability of the public to assess what the PSCs and PMCs do, which again may be interpreted to suggest the power of the public is weakened versus the companies and the executive branch. Such a view roots itself on the argument considering transparency identified in the Freedom of Information Act to
be an important asset of the political system in the US. The PSCs and PMCs may thus be considered to represent what Avant (2005: 42) described as a shift in power.

It has also been found that PSCs and PMCs get less cover in the media than the conventional US military forces do (Avant & Sigelman 2008: 21). By comparing the New York Post and the Saint–Louis Post Dispatch between 2003 and 2007, Avant & Sigelman (2008: 25-27) discovered that media coverage of PSCs and PMCs was almost absent in both newspapers in the four year period investigated. In the New York Times, second quarter of 2004, the peak of attention concerning PSCs and PMCs was identified. This came as result of the killings of the four Blackwater Employees in Fallujah in 2004, (Avant & Sigelman 2008: 25). Compared with numbers of articles dedicated to the US military, the same period, the 95 articles covering PSCs and PMCs was modest compared to the 1249 articles covering US militaries. In the Saint Louis Post Dispatch, 14 articles covering the PSCs and PMCs were discovered in the same quarter, compared to 238 related to US militaries (Avant & Sigelman 2008: 27). Overall, between 2003 and 2007, coverage of PSCs and PMCs versus US militaries was 1/27 and 1/47 in the Saint Louis Post Dispatch and the New York Times. Hence, this may be taken to support the notion that the public may get little access to information concerning what the PSCs and PMCs are doing. Worth noticing in relation to this is the notion that when information concerning the companies is publicly available it is often considered “more diffuse” and “harder to amass” than the one concerning militaries (Avant & Sigelman 2008: 20). It may of course be argued that two newspapers are not enough to draw conclusions but this thesis will never the less argue that it is useful for illustrating the point concerning media coverage.

It may thus be argued that there are several obstacles related to the ability of US citizens to collect information that makes it possible for them to make a sound assessment of potential problems and even misbehavior conducted by the PSCs and PMCs. As a result, it may be argued that this represents a weakening of the public’s ability to address problems via their elected representatives. The lack of transparency
thus suggests a great challenge to the practice of allowing for public oversight via the Freedom of Information Act, into most security related issues (Avant & Sigelman 2008: 20). Hence, it may thus be argued that hiring PSCs and PMCs have the undue negative consequence in the US of making the position of both the public and the legislative disadvantaged related to the executive and the companies when transparency is measured.

Taking Avant’s (2005: 42) political dimension of political control into consideration here suggests a serious weakening of the ability for the US to exercise political control over the PSCs and PMCs and a weakening of the hypothesis investigated in this chapter.

6.5 The Social Dimension of Political Control

According to Avant (2005: 42), who focuses on militaries in western states, including the US, societal norms and values such as respect for democratic principles, less use of force and respect for human rights and laws of war are important today. PSCs and PMCs may not automatically be expected to abide to these norms and values as they are private profit driven entities suggesting that thriving for new contracts may be considered most important. Failing to adhere to the norms and values accepted as important in the US would thus imply a weakening of political control from the perspective of the social dimension.

Initially it should be noticed that US based PSCs and PMCs are expected to adhere to the values held by their public counterparts (Avant 2005: 156). Defence of this view is discovered in the fact that these companies often rely on employees which have a background within US militaries or other institutions. Illustrative for this is US PMC, MPRI, which has bragged that they had more four stars generals per square feet than the Pentagon (Singer 2003: 119). PSC Blackwater founded by a US Navy SEAL and mainly staffed with ex elite military personnel and ex law officers is another example
here (Blackwater Website)\(^\text{10}\). Hence, if it is accepted that former military or law enforcement personnel bring their values with them, it seems plausible to support the notion that PSCs and PMCs adhere to values or norms. Another point in this regard is the notion that the PSCs and PMCs in the US often have an outspoken reference to “military professional values in their plans, advertisements and decisions“ (Avant 2005: 157). Furthermore, some PSCs and PMCs have been used to spread US values abroad. MPRI which have trained several foreign armies either on behalf of, or with the blessing of the US, underline this (ibid. 155). This may be considered to underline that US based PSCs and PMCs are bearers of values important in the US.

In relation to this, the US approach of considering the companies as a possibility and not a threat may strengthen the motivation for them to adhere to values and norms in order to increase the possibility for being awarded the next contract. A starting point is therefore to suggest that the PSCs and PMCs have adhered to values important in the US, thus suggesting political control along the social dimension. This may thus be interpreted to support the hypothesis investigated.

From the perspective of agency theory however, PSCs and PMCs can not be expected to have interests equal to the US. It may thus be expected that the companies will do everything possible to pose as being concerned with adhering to norms and values seen as important in the US as a result of strategic thinking. These views support themselves on Rasch (2000: 71) who suggest that the agent will have incentives to hide its preferences for the principal. Hence, it may be questioned whether the companies are attending to little more than window dressing in order to be awarded the next contract.

There are several reasons for why this may be a valid suggestion. The situation that occurred especially after the US led invasion of Iraq in 2003 created a huge demand

\(^\text{10}\) http://www.blackwaterusa.com/human_resources/HMR_Recruit_personel.html
for both PSCs and PMCs. Several consequences that may have affected the companies’ conformity of US values and norms can be identified. Firstly, increased demand for services provided by PSCs, such as site and convoy security made it more difficult to find experienced manpower in the US. This made some PSCs to start recruiting Third Country Nationals (TNCs) from the African continent (UNIRIF 2008). US based PSCs working in Iraq are also known to hire amongst Kurds, Iraqis and South Africans (GAO 2006: 5). One consequence has thus been that ex militaries with connections to former regimes well known for use of torture and other breaches of for example human rights were hired by US based PSCs to fill the manpower gaps. When it is taken into account that professional military background has been emphasized as important for what kind of values the PSCs or PMCs are bearers of, it will be argued that the practice mentioned above blurs the notion that all PSCs or PMCs adhere to norms and values held important in the US. From an agency theory perspective, the companies hiring ex militaries with a fuzzy past, may be inclined to deny or cover this up for strategic reasons.

The view that PSCs and PMCs are bearers of military professional values as a result of the background of their employees becomes even fuzzier when the vetting process of them is taken into account. For example regarding the PSCs and PMCs operating in Iraq, it has been noticed that the companies have few possibilities to uncover criminal backgrounds on employees regardless of them being US citizens, other Western nationals, Kurds or Iraqis (GAO 2006: 12-13). From an agency theory perspective of hidden knowledge, it can be expected that the companies may claim that they have acted within due diligence in the vetting process, even though their motive for profit may have been the reason for hiring TNCs or others with blurry pasts. Another aspect of this is that US based PSCs and PMCs have turned increasingly to sub contractors in order to be able to fulfill their contractual commitments. This may imply that even if US based PSCs or PMC have adhered to norms and values, there is no guarantee that their subcontractors will. From an agency theory aspect it may be suspected that PSCs or PMCs relying on subcontractors may choose to create an image of their subcontractors as adhering to
values important in the US, because agents according to Rasch (2000: 71) will hide information from the principal. When it is taken into account that PSCs and PMCs are profit driven entities, it may be argued that this practice is part of the overall strategy of being awarded new contracts. The worries stated by Elsea & Serafino (2007: 25) suggesting that increased demand for the products supplied by PSCs and PMCs may affect the quality of the companies’ employees related to professionalism and discipline should thus not be ignored.

Hidden actions or knowledge, identified as asymmetrical information by Rasch (2000: 71) may be hard to discover. After all, it can be suggested that it would not have been hidden if everybody knew. Interesting to notice in this regard is the findings of an investigation conducted by Peace Operations Institute (POI), an organization started by members of IPOA (POI webpage 2008). The survey asked questions concerning services offered, contracting entities, regions of operation, employment and finally standard and ethics of PSCs and PMCs (Messner & Gracielli 2007: 4).

In relation to the social dimension of political control, the question asked, concerned the internal and external standards of the companies are interesting. The answers here uncovered low adherence to codes such as Iraqi Theater Rules of Engagement (39%), the UN Code of Conduct for law enforcement personnel (22%), and the US Foreign Corrupt Practices Act (26%) amongst the respondents. Perhaps the most important finding for the investigation of the social dimension of political control was that only 23 out of 334 companies, identified as the target population responded to the survey (Messner & Gracielli 2007: 13). According to the report, the lack of will amongst the companies asked to participate can be explained by the sensitive nature of the question asked (ibid. 12). From an agency theory perspective it may however be suggested that the low rate of respondents can be explained by the wish by the PSCs and PMCs asked, to hide their preferences concerning attitudes related to codes of conduct. A question that asks whether a given company adhere or not to a specific code of conduct may indeed be considered to endanger reputation and uncover
motives unknown to future potential agents. It is also of interest to notice that even when the PSCs and PMCs asked were given guarantees about full anonymity, still only 6.10% responded to the survey. From this it may thus be suggested that the PSCs and PMCs are likely to adhere to agency behavior such as asymmetrical information. This can be considered to weaken the hypothesis investigated which was formulated to suggest that the US is able to exercise political control over PSCs and PMCs.

6.6 Summary

The findings in this chapter are approached political control from Avant’s (2005: 41-43) functional, political and social dimensions. Agency theory was used to shed light on different aspects of the dimensions. Lack of a functional market combined with extensive use of cost plus contracts is in this thesis interpreted to suggest that the US have limited their own ability to control economic costs when hiring PSCs and PMCs. Furthermore, it was also discovered that PSCs and PMCs have a wide array of possibilities to circumvent traditional pathways of influencing political decision makers. The chapter also discovered that it can be questioned whether all US based PSCs and PMCs have adhered to norms and values deemed important in the US. Taken together, this weakens the hypothesis investigated in this chapter.
7. Conclusion

The overarching goal in this thesis has been to investigate how the use of PSCs and PMCs by the US affects its monopoly on legitimate force. Chapter 4 investigated how the hiring of PSCs and PMCs by the US affects its functional ability to produce security for its citizens. The findings here suggest that the consequences are mixed. On the one hand, PSCs and PMCs add both flexibility and easy access to capacity and capability that should be considered as having positive effects on the ability of the US to produce security for its citizens. However, the chapter also uncovered that the US by relying on PMCs and PSCs also jeopardizes its own in house capacity. The consequences for the hypothesis, which suggested that PSCs and PMCs hired by the US should be regarded to increase the functional ability of the US to produce security for its citizens against outside threats and therefore do not threaten the US monopoly on legitimate force, are therefore mixed. From a short term perspective, hiring PSCs and PMCs can be interpreted to support the hypothesis. From a long term perspective however, the hiring of PSCs and PMCs weakens the hypothesis. It will thus be argued that the findings suggest that there are both positive and negative functional consequences related to whether the companies threaten the US monopoly on legitimate force.

Chapter 5 that investigated whether the PSCs and PMCs should be considered legitimate actors also provides mixed evidences. The hypothesis investigated here suggested that “The PMCs and PSCs are considered legitimate actors within the security sphere in the US, and therefore do not threaten the US monopoly on legitimate force”. As the international legal frameworks seems to provide little legitimacy as legality for the PSCs and PMCs hired by the US, the findings related to the US’ own laws are more mixed. Even though there are obvious flaws and weaknesses, the modifications to adjust existing laws will be interpreted to provide evidence for some legal legitimacy. The analysis, which focused on the public opinion in the US, does however indicate a weakening of the notion that the PSCs and PMCs are legitimate, when this is investigated in relation to their problem
solving potential. Based on this, it will thus be argued that the hypothesis investigated was seriously weakened.

Chapter 6 that investigated whether the US is able to exercise political control over the US based PSCs and PMCs that they hire, also provided mixed findings. The hypothesis investigated was formulated as *The US has the ability to exercise political control over the PMCs and PSCs they hire and therefore the US monopoly on legitimate violence is not threatened.* Lack of functional control related to costs, evidences of a displacement of power, and weak evidences supporting the notion that US based PSCs and PMCs adhere to US held values and norms, suggest a serious weakening of the hypothesis investigated.

The findings in the three chapters of analysis affect the research question. The analysis in chapter 4 suggest that PSCs and PMCs affect the US held monopoly on legitimacy positively from a short term perspective, but also that the long term strategy of contracting out in house capacity to these companies have inherent negative effects. This suggests that the extensive reliance on these actors, represent a challenge to the US held monopoly in the long run. Because the US, via the QDR (2006: 16, 87), has given the PSCs and PMCs an important future role in the security production against outside threats, this thesis will, based on the findings in chapter 4, argue that this represents a great challenge to the monopoly on legitimate force. The findings in chapter 5 also represent negative effects on the US held monopoly on violence. This view roots itself in the notion that it is less than evident that the US has laws that are able to regulate the activity of the PSCs and PMCs when they are used. Because the international legal frameworks are unable to cope with the activity of these companies, it will also be argued that it blurs the notion that the US practice of using them on the international level should be considered legitimate. Using these companies thus affect the US held monopoly on legitimate violence negatively. The consequences related to political control draw a picture of the PSCs and PMCs as actors that are willing to adhere to negative agency behavior on several levels. Furthermore, because the US seems unable or unwilling to answer to this by creating
mechanisms that can counteract this behavior, it will be argued that the US are only partly able to exercise political control over the PSCs and PMCs they hire. Again, this suggests that using these companies have negative consequences for the US held monopoly on legitimate force.

This thesis has applied a theoretical framework based on several contributions in order to analyse the research question by using secondary sources. Because the existence and use of PSCs and PMCs by the US have gotten increased attention especially since the invasion of Iraq in 2003, this thesis has been able to choose amongst a wide array of secondary sources of both academic and non academic character. This has provided a wide array of contributions that have made it possible to shed light on various aspects related to the US use of PSCs and PMCs and its consequences for the hypotheses investigated. Furthermore, it is not evident that primary sources would have provided this thesis with more useful contributions than the secondary sources have, because the subject can be considered to be connected to strong ideological connotations and secrecy.

A central point in this thesis regarding the conclusions in the different chapters is that they can be considered somewhat interconnected. This has been analytically challenging because it has, to some extent, been difficult to know where to separate between them. It will be argued that this have some consequences for the robustness of the conclusions made in the thesis. The first conclusion concerns functional consequences related to the hiring of PSCs and PMCs. These findings are considered robust because they support themselves on a wide array of sources that have investigated or have first hand experience with the issue. The analysis here supports itself on official investigations, but also on acknowledged scholars. The part of the analysis investigating the international and national legal legitimacy of the PSCs and PMCs is considered the most robust one because it has been a well investigated subject. The second conclusion connecting legitimacy to public opinion is considered less robust because it relied upon the survey from CNAS & FP (2008), which can not be considered representative for the US public. However, the survey conducted by
Avant & Sigelman (2008) adds to the robustness when investigating the US public, because the respondents here are more representative for the US public overall. The last conclusion is considered robust because it is investigated along the three dimensions provided by Avant (2005: 41-43), covering a wider aspect of political control. The strength of the findings is also rooted in the variety of sources applied.

This thesis has used a single case. This diminishes the possibilities to generalize. It can however be argued that the findings in this study can be drawn upon in order to investigate the effects of PSCs and PMCs and their effect on the monopoly on legitimate violence in other strong democratic states as well. This view support itself on the fact that the US has been a forerunner in allowing for private participation in supportive roles in security production. It may thus be argued that other strong states that may want to follow a similar pathway can identify potential challenges and pitfalls by looking at the US.

The findings in this thesis may be considered to contribute to the overarching discussion of the status and role of the state as a sovereign entity in wars and conflicts versus non state actors. The findings largely support those who claim that PSCs and PMCs challenge the existence of a Weberian state monopoly on legitimate force. The findings can therefore also be considered to undermine some of the foundation of those theoretical approaches emphasizing that states are the only relevant actors on the international stage. Another proposition is that the findings in this thesis support theoretical approaches such as security governance, who emphasizes the importance of non state actors in security related questions. This thesis also provides evidences indicating that the US has taken steps to answer to some of the challenges using PSCs and PMCs represent. The findings in this thesis also underline the importance and usefulness of separating between the various companies in order to be able to grasp the consequences of hiring them. Overall, this thesis places itself within the discussion concerning the role of non state actors and states. Furthermore, this thesis can also be placed within the debate concerning whether non state actors should be given permission to participate in sovereign tasks or not. These are some, but not the
only subjects concerning PSCs and PMCs that should be given attention by future research.
8. Table of Authorities


Group 4 Securicor Website. (March 28, 2008) [Online] URL: [http://www.g4s.com/](http://www.g4s.com/)


