

Framing Private Military and Security Companies

– A Structure-Agency Approach



Master thesis written by:

Sasha Larsen Beckmann and Sofie Thaagaard Hyllested

Line of study: MSc. in International Business and Politics

Institution: Copenhagen Business School

Supervisor: Ove Kaj Pedersen

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Acronyms

CoC: Code of Conduct

DCAF: Geneva Centre for the Democratic Control of Armed Forces

DIIS: Danish Institute of International Studies

DK: Denmark

FAK: Forsvarsakademiet

ICRC: International Committee of the Red Cross

IHL: International Humanitarian Law

IHR: International Human Rights

IM: Impression Management

IOs: International Organisations

IPOA/ISOA: International Peace Operation Association/ International Stability Operation Association

LOAC: Law of Armed Conflict

NGOs: Non-Governmental Organisations

NPM: New Public Management

PMF: Private Military Firm

PMSCs: Private Military and Security Companies

POW: Prisoner of War

PPPs: Public Private Partnerships

PSC: Private Security Company

RMA: Revolution in Military Affairs

SMLF: State Monopoly on the Legitimate use of Force

SSG: Security Sector Governance

SSR: Security Sector Reform

UK: United Kingdom

UN: The United Nations

USA: The United States of America

Abstract

Episodes where Private Military and Security Companies (PMSCs) have caused death and destruction have underlined the need for an analysis of the role that PMSCs play in warfare. To use private military contractors in war is not a new phenomenon and has been taking place for centuries, nevertheless, to outsource or privatise military tasks is today a controversial area, both within the nation-state and at the international level. Outsourcing and privatisation of military tasks which do not involve weaponry has been initiated in Denmark and other places already. However, the scope of military areas that can be handled by PMSCs differ depending on the context and is further complicated by the new advances within weapon technologies, which have made warfare possible from a distance, thereby altering the concept of direct combat and the use of force. The debate on the use of private soldiers in military affairs has been characterised by changing conceptualisations and embedded in the discussion is the norm that prescribes the state's monopoly on the legitimate use of force.

A universal legal definition of a 'PMSC' is still in the process of being developed at the international level and there are still differing interpretations of the existing legal categorisations and where PMSCs should fit in the already established legal structures. The lack of clear legislation on the use of PMSCs works as a mist where the heterogeneous group of PMSCs operate and fulfil a range of military and security tasks. It translates into an arbitrary use of PMSCs by governments, the United Nations, national armies and other actors. Furthermore, the lack of clear definitions of what constitute PMSCs – and how they differ from what has previously been known as mercenaries – causes a reconstruction and on-going development of the structures that frame the context in which these firms operate.

By taking a constructivist approach to the structure-agency theory, the thesis aims to illuminate how the structures framing the use of PMSCs are reciprocally influenced and altered by the key actors making up the discourse. Hence, it is an attempt to show how the PMSCs are framed and interpellated into the discourse as it influences the judicial status of the PMSCs, as well as the people affected by the actions of the PMSCs. This will be further explored in relation to the Danish context, as the framing and use of PMSCs in the international sphere influences how Danish Officials and the Danish Defence engage with these companies. The paper thus focuses on the framing of categories or 'roles' - for example a 'combatant' or a 'private soldier' - and aims to show how a category may change in response to historical developments and differing institutional settings. Thus, the thesis is designed to challenge and analyse the legal and political conceptualisations that are often seen as being pre-given and objective in nature, in order to better understand the legal and political framing of PMSCs and how this affects the Danish Defence's use of such companies.

Chapter 1: Setting the Scene

The new millennium did not bring peace to the world, instead people around the globe have been affected by, or have at least witnessed, scenes of deadly destruction as a result of the numerous inter- and intra-state conflicts. Two wars have particularly been in the spotlight, namely, the wars in respectively Iraq and Afghanistan - both conflicts which have caused human casualties for all parties involved. The Danish Defence has been engaged in both wars and fought side by side with Western allies, such as the United States of America and the United Kingdom.

The soldiers fighting in Afghanistan are representing their country and many operate under the NATO unit ISAF (International Security Assistance Force), yet an increasing number of the soldiers are representatives of private businesses. During the last two decades the world has witnessed a rapid increase in the number of Private Military and Security Companies (PMSCs) globally (Leander, 2005b). The augmented use of PMSCs in military affairs is taking place both at a national (mostly in the USA) as well as at an international scale with PMSCs mushrooming in the industry. From 1990 to 1999 the private military sector doubled in size and the rate of private contractors compared to governmental was 1:60 in the 1991 Gulf War, whereas it more than tripled and became 1.3:1 in Iraq 2007 (Leander, 2010b). The inclusion of PMSCs in military operations has in many ways been one of the most controversial points, amongst many, in connection to the wars in Afghanistan and Iraq as it has been framed as the 'corporatisation of war', which challenges the monopoly of violence that has previously been the privilege of the state. It is a phenomenon which has been debated both at the international and national level, especially in the United States (Singer, 2003; Avant, 2004) but is still in many ways unexplored in a Danish context. Only a few field experts and academic researchers in Denmark have embarked upon an analysis of the Danish approach to the use of private contractors to fulfil military tasks relating to weaponry and direct combat – areas that are often referred to as 'core military tasks' or 'tip of the spear' operations (Henriksen, 2008). Still, the controversies surrounding the private military and security industry are manifold and stretch across continents as such companies are used in multiple ways and by many different state and non-state actors (Mandel, 2001). Thus, it is truly an international phenomenon as PMSCs exist in almost every country and are used by different actors in diverse corners of the world, but *"this new force in warfare, private military firms (PMFs), remain a poorly understood--and often unacknowledged--phenomenon."* (Singer, 2005).

How the individual state approaches and uses the PMSCs has varied substantially, where the USA has been one of the leading countries to introduce such companies in military operations, where Blackwater, now renamed as Academi, is one of the best known examples (BBC News, 2011). The American use of private contractors has been significant and *"in August 2008, the USA paid more than 100 billion dollars – approximately 500 billion DKK – to private companies in connection to the war in Iraq and according to*

Congress it is expected that in 2009 private companies account for 48 per cent of the American Defence's workforce in Iraq and 57 per cent in Afghanistan – in addition to this is the use of private parties by the other U.S. Departments and Agencies¹.” (Politiken (7), 2009). The PMSCs are hired for various purposes and provide a range of services (ISOA (1), 2012), however, incidents where private contractors have been involved in killing and torturing of civilians have sparked a debate on how such contractors may be used in warfare. The incidents in the Abu Ghraib prison work as an example of how private contractors have breached established norms and laws as *“the Army probe at Abu Ghraib prison found ‘numerous incidents of sadistic, blatant and wanton criminal abuses’ inflicted on detainees there [and] that civilian contractors were working at the prison as interrogators and interpreters, and shared responsibility for abuses.”* (CNN, 2004). Pictures of abused and humiliated prisoners from Abu Ghraib, with triumphing public and private soldiers posing alongside, circulated in international and national media. The pictures showed not only the horrors of war but are a tangible example of how PMSCs fulfil functions that for long has been framed as exclusively state army domains. The private *“contractors are now literally in the center of the battlefield in unprecedented numbers”* (Washington Post, 2009) and have besides the episode in the Abu Ghraib prison caused a number of civilian deaths such as the shooting of 17 Iraqi civilians - including a nine-year old boy, who was killed by a gunshot wound to his head - by Blackwater employees in 2007 (The Nation, 2010). The *“2007 shooting in Baghdad’s Nisour Square when military contractors for Blackwater killed 17 civilians”* has caused *“an image of contractors as trigger-happy mercenaries who were above the law”* (New York Times (6), 2012). The problem of holding PMSCs responsible is a major issue and is exacerbated by the *“mystery, myth, and conspiracy theory [that] surround them”* (Singer, 2005) and adds to the idea of PMSCs working as ‘invisible armies’ (Hansen, 2011). The negative view on PMSCs has not been improved by other unfortunate incidents in Afghanistan. As an example two former Blackwater contractors were convicted for shooting dead unarmed Afghan civilians in Kabul. The contractors said they feared for their safety, why they shot at a vehicle as it passed them near an accident on a dark road, killing the passenger and a man who was walking his dog (New York Times (5), 2012). In May 2009 they got sentenced to three years and one month in prison.

As the trend with the increasing use of private military and security companies in international conflicts has been followed by a number of civilian losses, the focus on the role of PMSCs is highly relevant as states and international organisations, such as the UN, are active in employing PMSCs. The use of PMSCs causes a number of legal and humanitarian issues which not only affect the persons who are injured or killed but affect entire families, communities and regions. The noteworthy examples of PMSCs taking part in killings

¹ Original quote: *”I august 2008 havde USA betalt mere end 100 milliarder dollar - omkring 500 milliarder kr. – til private firmaer i forbindelse med krigen i Irak, og ifølge Kongressen forventes private firmaer i 2009 at stå for 48 procent af det amerikanske forsvars arbejdsstyrke i Irak og 57 procent i Afghanistan - og hertil kommer alle de øvrige amerikanske ministerier og styrelser brug af private.”*

and torture has meant that *"lawmakers, too, have raised concerns about the cost of contractors and about outsourcing what have traditionally been government roles"* and stressed *"a need to define specific functions that are not appropriate for performance by contractors."* (Washington Post, 2009). To define the scope for 'appropriate and specific functions' that PMSCs may legitimately handle is in process and the attempt to make such definitions has opened up for a number of legal and political issues. Aspects of these issues and the legal and organising concepts that are embedded in the discussion concerning PMSCs will be the focus of this paper, where the concepts will be illuminated, examined and discussed.

The area of military affairs is in many ways an undisclosed world, where (dis)trust and secrecy are important ingredients in terms of the protection of the soldiers fighting as well as the national interests at large. Openness and transparency are therefore often not the main components of warfare, on the contrary, history has shown that military strategies and conducts are often kept from the public forum and to leak military secrets may result in serious charges and imprisonment of the persons involved in the leakage (Ritzaus Bureau, 2010). The heated political debate which took off as a response to the published book, *"Jæger - i krig med eliten"* by Thomas Rath sack, is a contemporary example of the intense focus on confidentiality of parties involved in military matters. The customs of concealment of military practices mean that research within the field is challenged by the unwillingness to share information. Thus, to investigate the army's use of PMSCs is not an easy task. Furthermore, the debate on the use of private soldiers in military affairs has been characterised by blurry definitions and political arbitrary statements. A universal legal definition is still in the process of being made at the international level and there are still differing interpretations of the existing legal categories and where PMSCs should fit in the already established legal framework. The forthcoming analysis will adopt the United Nation's terminology 'PMSC' as this is an internationally accepted term which is used in many contexts and in documents dealing with private military and security contractors in warfare (e.g. Montreux Document, 2008; 2009 UN Draft Convention on the Use of PMSCs; The ISOA Code of Conduct; the International Code of Conduct). Also, the term covers both *military* and *security* services related to international operations (Leander, 2010a), areas that cover armed tasks. That being said, there is no established consensus on which companies or persons fall into the category 'PMSC', as the scope of PMSCs range from large multinational corporations with corporate histories to much smaller and less organised, informal formations (Leander, 2007).

As will be discussed, the idea of using private soldiers is not a new phenomenon as societal leaders have bought military and security services in the private market for centuries (Thomson, 1996; Markusen, 2001). Nevertheless, whether or not to use private soldiers on the battlefield today is disputed and the legal grey zones existing when dealing with PMSCs cause arbitrary use of such companies. This means that the debate which spins around the use of PMSCs is characterised by inconsistency in how to approach the issue, and

diffuse definitions are used in different ways and for different purposes depending on which story is told. The aim of this project is to shed light on some of the implicit assumptions made in relation to the framing of the PMSC industry, and to show how the perception of the 'private soldier' has changed in relation to historical events. It is an attempt to analyse how the shifting discourse on the use of private parties in warfare is still undergoing a change and in many ways lack clear and substantive definitions and, additionally, how this affects the Danish military's use of PMSCs in international conflicts. In order to explore this, the thesis aims to answer the following research question;

"How are Private Military and Security Companies (PMSCs) legally defined in the international context, specifically in international conventions, and politically framed in a Danish context? And how does this affect the Danish military's use of PMSCs in international conflicts, especially in Afghanistan?"

With this research question as the point of departure, the project is an attempt to investigate how the changing perception and conceptualisation of the 'private soldier' translate into the current international legal framework, which is both affected by the existing legal and political structures but which also shapes the present approach to the use of PMSCs in warfare. Before we embark on such an analysis, the following section will provide further insight into the timeframe and the major historical events which has influenced the increase in numbers of PMSCs worldwide.

1.1 The Boom in the PMSC Industry

The market for private armed forces has existed for centuries (Singer, 2003). *"For much of human history, armies were privately organized (...). It is only with the rise of the nation-state that the twin notions of the state's right to the monopoly of force and the citizen soldier evolved"* (Markusen, 2001: 4). Appointing the state as one of the key players and the actor with monopoly on the use of force is central for the discussion on the use of PMSCs in military operations and points to the distinction between state actors and non-state actors. The perception of the PMSCs as non-state actors performing military services and the conceptualisation of what they do have changed according to the dominating norms and the environment in which they operate. Previously, *"in the eighteenth century, all the major European armies relied heavily on foreign mercenaries for troops"* (Thomson, 1996: 10) whereas mercenaries today are portrayed as illegal players according to the 1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989 UN Convention on Mercenarism). Whether the private soldier is referred to as a mercenary, professional soldier, combatant, non-combatant, or armed civilian all depend on the context in which this judgement is made. Of course, it also depends on the nature of the PMSC in question, as the actions of the agent in question also affect how they are viewed as the cases of Blackwater illustrate.

There seems to be an implicit consensus amongst the many authors who write about PMSCs that one of the core explanations for the increase in the numbers of PMSCs, during the last two decades, is to be found in the downsizing of large public armies which took place in the early 1990ies, as a consequence of the termination of the Cold War in 1989 (Avant, 2005; Singer, 2003; Maogoto, 2006; Mandel, 2001; Henriksen, 2008; Percy, 2009). When exactly the Cold War ended is a matter of opinion, but the forthcoming analysis will take point of departure in the timeframe set forth by scholars who write within the field that focuses on PMSCs and who use the early 1990'ies as a baseline for the analysis (Avant, 2005a; Singer, 2003; Maogoto, 2006; Mandel, 2001; Henriksen, 2008; Leander, 2005a; Markusen, 2001). The downsizing of public militaries, as a response to an *"absence of clear and immediate outside threat"* (Mandel, 2001: 131) resulted in an excess supply of soldiers, which meant a boom in the private military industry (Leander, 2010b; Avant, 2005a). A number of the military men who used to be publicly employed in the state army now joined the industry for private military companies and the PMSCs proliferated. It was further amplified by the number of local wars and *"sources of turmoil that presented themselves in the post-Cold War environment"* (Mandel, 2001: 131) where *"warfare in the developing world also became messier--more chaotic and less professional - involving forces ranging from warlords to child soldiers"* (Singer, 2005) - all challenges that the international community was slow to respond to and that *"did not appear readily containable through conventional military means"* (Mandel, 2001: 131). Other scholars such as Blizzard states that *"[t]he contractor support philosophy began to change with the Vietnam conflict. Business Week referred to Vietnam as a 'war by contract'"* (Blizzard, 2004: 6) why the use of private military contractors can be traced back to even before the end of the Cold War. Likewise, the 1960ies is also used as a benchmark, but often described as a time where *"soldiers of fortune ran riot over the African continent (...)* *[as] individuals or small ex-military groups that operated in the shadows"* (Avant, 2004: 20). So the discussion on the use of private parties in war has not a definite starting point. As mentioned, we will for the purpose of this analysis adopt the most often used timeframe which takes point of departure in the 1990'ies.

This rise of the PMSCs is at times described as problematic and dangerous (Markusen, 2001; Mandel, 2001) and in clinch with the ideas that predict the state's monopoly on the legitimate use of force. José L. Gómez del Prado (who is part of the UN Working Group that monitors and formulate regulations on the use of private military and security contractors) states that the PMSCs *"undermine the principle that the only proper use of force is that which is authorized exclusively by the government: the 'state monopoly on the legitimate violence'"* (Prado, 2009: 437). The quote points to the underlying assumption of states being the only actor who has the legitimate right to use force and is central in the debate on the outsourcing or privatisation of military tasks and will thus be explored in this paper as well.

It has been argued that a number of distinct dynamics have caused the proliferation of PMSCs internationally (Singer, 2005). The first of these dynamics has already been addressed, namely the increased number of PMSCs which followed as a result of the end of the Cold War. Secondly, Singer argues that we see *“transformations in the nature of warfare that blurred the lines between soldiers and civilians”* and lastly, there is a *“general trend toward privatization and outsourcing of government functions around the world”* (2005). This trend has also been called the ‘New Public Management’ (NPM) and was first discussed by the British professor Christopher Hood and has been framed as the ‘modernisation’ of the state. Especially two tendencies were to be found in the NPM; namely the tendency to administratively reform the public sector, which meant a decentralisation of state functions in an attempt to make the system more efficient, where the implementation of new IT systems is an example hereof. Secondly, the tendency of institutional reforms took place, where the state was divided into separate departments and there was an opening towards privatization and outsourcing to private actors (Greve, 2002). The new focus of NPM was on a modern management of the state rather than bureaucracy and hierarchy. The emphasis on ‘management’ was influenced by the business studies of management and leadership in private corporations, and concepts such as ‘contract management’ was introduced (Greve, 2002: 3).

The so-called dynamics that Singer and others point to create a framework for how to understand the privatisation in military affairs. The arguments set forward by Singer are not unique but are found repeatedly in various texts. Mandel for example also argues that *“the global spread of free-market values, promoting competitive privatisation as optimal in all spheres of human activity, supports the notion that security privatization is a progressive step forward”* (2001: 133). What is important to notice is the context in which Singer and others are working, when they identify these dynamics. Singer’s point of departure is in the American context, which frames his understanding of the norms and trends that, according to him, govern the rules of collaboration between public and private. Hence, it can be argued that his reference to the *“general trend towards privatization and outsourcing of government functions”* is framed by the political advocacy in the USA with regards to restricting government interference. Nevertheless, the arguments set forth by Peter Singer have been widely used internationally, including the Danish context in which military outsourcing takes place (Henriksen, 2008; DR (2), 2012).

One of Singer’s arguments is that a new world order came about as a result of the ceased bi-polar balance in the international system that was dominant during the Cold War (Singer, 2003). The new international order opened up for a restructuring of national (and international) armies. Governments strive to create and maintain an army which is qualitatively powerful and not necessarily quantitatively superior, as big armies are considered costly (Henriksen, 2008). This shift from large armies to small but specialised armies is often referred to as the Revolution in Military Affairs (RMA) (Singer, 2003). RMA describes the technological shift in how war is conducted as the parties now highly depend on weaponry and

technological advantages and not mere number of soldiers. It is not to say that technological advantages and the development of arms have not always played an important role in warfare – it certainly has and the size of armies is still important to some extent. An example of the importance of technological development is the automatic rifle or the nuclear bomb, which changed the possible impact that wars may have. The introduction of Weapons of Mass Destruction and other such deadly weapons have transformed the need from employing a large number of soldiers to focus on investments in high-tech systems that may trace possible attacks or launch new incursions (Singer, 2003; Henriksen, 2008). The traditional advantage of large states, with a large number of citizens to employ in the army, changed as a single bomb now could do as much, or even more, devastating damage. Though, the use of nuclear weapons is (luckily) not a commonly used method of attack and soldiers are in many ways still needed on ground. The Revolution in Military Affairs, from state-centred wars which demanded *“massive accumulations of soldiers, machinery and money”* to include conflicts where groups, such as Al Qaida, use alternative methods mean that *“small groups now possess the ability to wield massive power”* (Singer, 2003: 60-61). As military success is no longer mainly based on the size of armies, but highly dependent on the knowledge and access to weapon technology, it opens up for an engagement with actors who possess the required technological knowledge and skills. In an American context one of the key arguments is that the expertise and specialised skills *“often must be pulled from the private sector”* (Singer, 2003: 61). These specialised skills are provided by a range of different companies operating in different ends of the supply chain. Some PMSCs are specialised in handling direct combat situations, whereas other companies function as developers of weapons and thus work as weapon-technology support. Due to the wide span of support functions that PMSCs specialise in, it has proven difficult to determine which firms should be included in the PMSC typology. Scholars describe the PMSCs as ranging from small consulting firms to big corporations renting out jets and other military equipment (Singer, 2003; Leander, 2007) which underlines that there exists no ‘standard PMSC’. The industry is comprised of diverse business organisations, operating across sectors, trading in professional services linked to warfare and there is no consensus on whether companies which produce and sell weaponry and technological support relating to warfare should be categorised as PMSCs or not. From the debates internationally and in Denmark it seems as if there is a distinction between the production of weapons and the direct use of force, where the focus of the new UN Draft Convention on the Use of PMSCs (2009) is on private parties’ use of force namely the *“use of lethal as well as non-lethal weapons or techniques”* (Art. 2 in the 2009 UN Draft Convention). Generally, there is an unclear and undefined line for which military functions can be supported by private actors and a large number of terms and abbreviations conceptualising the group of private contractors that work within the military and security sector (Leander, 2007). Some scholars only focus on the security part of the services, why the companies are often referred to as Private Security Companies (PSCs) or likewise with firms providing military services (Private Military

Firms, PMFs). Furthermore, Deborah Avant and others have dissected the term, which has resulted in very specific conceptions of the different subfields that these companies provide, such as training the police and army, body guarding, intelligence, and securing for example government facilities, military camps, trucks, or strategic territorial borders (Avant, 2005b; Singer, 2003). We will not differentiate between the companies to the extent that Avant has done as that is not the purpose of this thesis, however, we will narrow the scope of the analysis to only focus on services that deal with military 'tip of the spear' operations. Central is that there is no consensus on which companies belong to the category 'PMSC' as *"some firms are clearly placed within one sector. However, similar to other industries (...) other firms lie at the sector border or offer a range of services within various sectors."* (Singer, 2003: 92). It is therefore difficult to classify which sectors should be included in the PMSC-realm, also because the Revolution in Military Affairs in terms of technological advances has changed how war is conducted and battles are fought. To differentiate between 'active' and 'passive' companies, which is one approach in the literature, is *"an antiquated division in an era when a person pushing a computer button can be just as lethal as another person pulling a trigger"* (Singer, 2003: 90). The blurry and unclear definitions that characterise what Singer calls the 'PMSC phenomenon', works as a point of departure for this project and shape the analysis in important ways. It will be argued that the diffusion and broad categorisation of PMSCs affect how the Danish military uses PMSCs, and the aim of the project is therefore not to come up with clear definitions on how to deal with PMSCs but to show and analyse how the diffusion is affecting the approach to outsourcing or privatising core military functions to PMSCs.

In the literature on private military and security companies, rarely a clear distinction is made between the concepts of 'outsourcing' and 'privatisation' and in order to avoid misunderstandings, a definition of the two concepts is here presented and discussed. The two concepts, 'privatisation' and 'outsourcing', are related to each other as they both address the process of decentralising areas previously handled by the state. However, there is a difference between the two, namely the aspects of ownership and responsibility. Privatisation is *"when ownership of production units changes from public to private"* whereas outsourcing covers the process where *"goods and services provided to the people by the public are bought in the market"* (Christoffersen & Paldam, 2006: 4). The aspect of ownership has proven important in the context of military services, as the responsibility can be placed accordingly. One of the main issues in relation to the use of PMSCs is the question of juridical and democratic responsibility and control over the operation, especially when incidents occur where civilians are killed or wrongfully harmed, such as the episodes in Iraq and Afghanistan described in the introduction. The aspect of how to hold PMSCs accountable for their actions in warfare is one of the most disputed issues and also one of the reasons why the Danish military has been hesitant in contracting PMSCs (Jørgensen, 2012). In this thesis 'privatisation' and 'outsourcing' are

used in order to describe the process of decentralising and handing over certain tasks to private (or non-state) actors. Often, the literature on PMSCs uses the concepts interchangeably and we will not distinguish stringently between the two concepts but describe the different implication which stems from introducing private parties in military operations. Essential is the schism where certain functions are (advocated to be) kept within the state domain whereas others can be handled by private parties.

Studies suggest that two conditions must be present for the private sector to deliver services more efficiently than the government: firstly; a competitive market, and secondly; contractor flexibility in fulfilling their obligations. There is no consensus on whether competition actually exists in the market where states may contract parties to fulfil certain functions, as it has been proven that *“governments frequently curtail competition to preserve reliability and continuity”* (Avant, 2004: 22). Practice shows that governments tend to reuse the same companies and sign long-term contracts with these parties, which decreases the opportunity for competitiveness and facilitate an oligopolistic market (Markusen, 2001) instead of a competitive one. Nevertheless, there are still those who advocate for an increase in the privatisation of military operations based on an efficiency aspect, and argue that because market actors are operating in a highly competitive environment it forces them to continuously improve and develop their products, in order to secure their market position and investment (Henriksen, 2008).

The second aspect which relates to flexibility is framed around ‘specialisation’ and the ability to act quickly to an appearing threat or crisis. Training and specialising soldiers is costly and time consuming, which creates a leeway for private actors to deliver customised solutions to problems that are immediate but which may not be permanent. Hence, by outsourcing assignments to private companies the military can act immediately without spending considerable time and money on developing the required skills on their own (Henriksen, 2008).

1.2 Private Military and Security Companies and the ‘Tip of the Spear’

The most common way of differentiating between the companies that specialise in warfare is by the services they provide and where in the supply chain they fit in. The model below depicts selected steps in a simplified and comprised version of a military supply chain and portrays how this project approaches and explores the scoping of outsourcing and privatising military tasks.

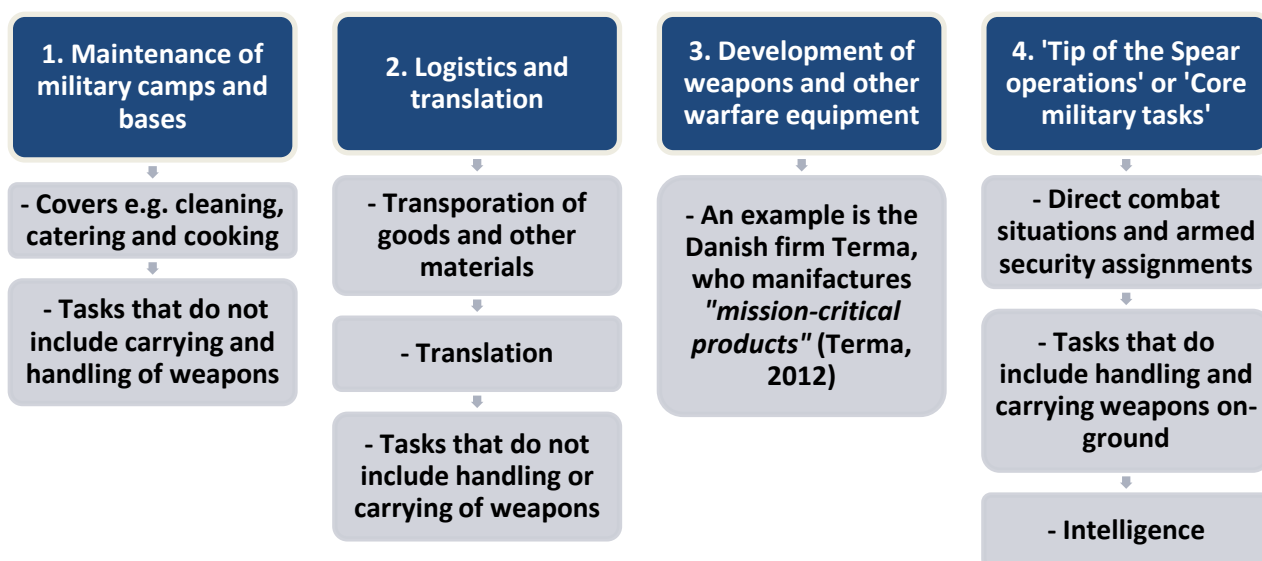


Figure 1 – The Simplified Military Supply Chain

In reality there are more steps involved in the process, which this model does not fully illustrate but it serves as a basic demonstration in order to further discuss how the outsourcing and privatisation of military tasks are debated and framed. In the low (left) end one will find services within the Danish army that are already being outsourced, namely maintenance of camps. Thus, *“private companies are already solving a number of tasks which were previously solved by Danish soldiers²”* (Henriksen, 2008: 6). At the other end is the ‘tip of the spear’ characterisation which is a metaphor used in order to describe the armed forces *“closeness to the actual fighting (the ‘front line’)”* (Singer, 2003: 91). Where the ‘frontline’ is today is difficult to determine as attacks can be launched miles away from the actual battlefield and is further blurring the lines of what is considered to be dealing with weaponry.

In Afghanistan the American army has outsourced a significant number of tasks to private companies and *“Denmark is also part of the tendency, as maybe not everyone is aware of. The Danish Defence outsources among other things cooking, laundry and certain mechanics tasks in Afghanistan³”* (Hansen, 2011). Thus, Denmark is also part of the trend and whether the PMSCs are used in situations demanding carrying and handling weapons is the focal point of this thesis and not whether they are used for cooking dinner for the soldiers or doing the laundry. As will be evident from the analysis, the privatisation or outsourcing of the ‘tip of the spear’ functions is by many perceived as controversial and underlines the need for research in

² Original quote: *“Faktisk løser private firmaer allerede i dag en række opgaver, der førhen blev løst af danske soldater”*

³ Original quote: *“Også Danmark er en del af tendensen, hvad alle måske ikke er opmærksom på. Det danske forsvar udliciterer blandt andet madlavning, tøjvask og visse mekanikeropgaver i Afghanistan”*

the often taken-for-granted concepts and norms that guide how PMSCs are used by state militaries.

1.3 Structuring Concepts and Blurry Lines

Many different concepts are presented in the academic literature and in international conventions in an attempt to define the PMSCs and their role in warfare. These concepts (or categorisations one might say) are used and analysed in this thesis and are therefore depicted below in order to create an overview and to show how they are interrelated. The categorisations outlined below are to be understood as constructed organising concepts that structures how one perceives the PMSCs. The structuring 'categories' or 'concepts' are not static - on the contrary they are in constant change and are interpreted differently depending on the time and space in which they are analysed. The main focus will be on the 'private soldier' and the definitions made hereof but in order to describe the role of the 'private soldier' other categorisations must be incorporated and discussed as well.

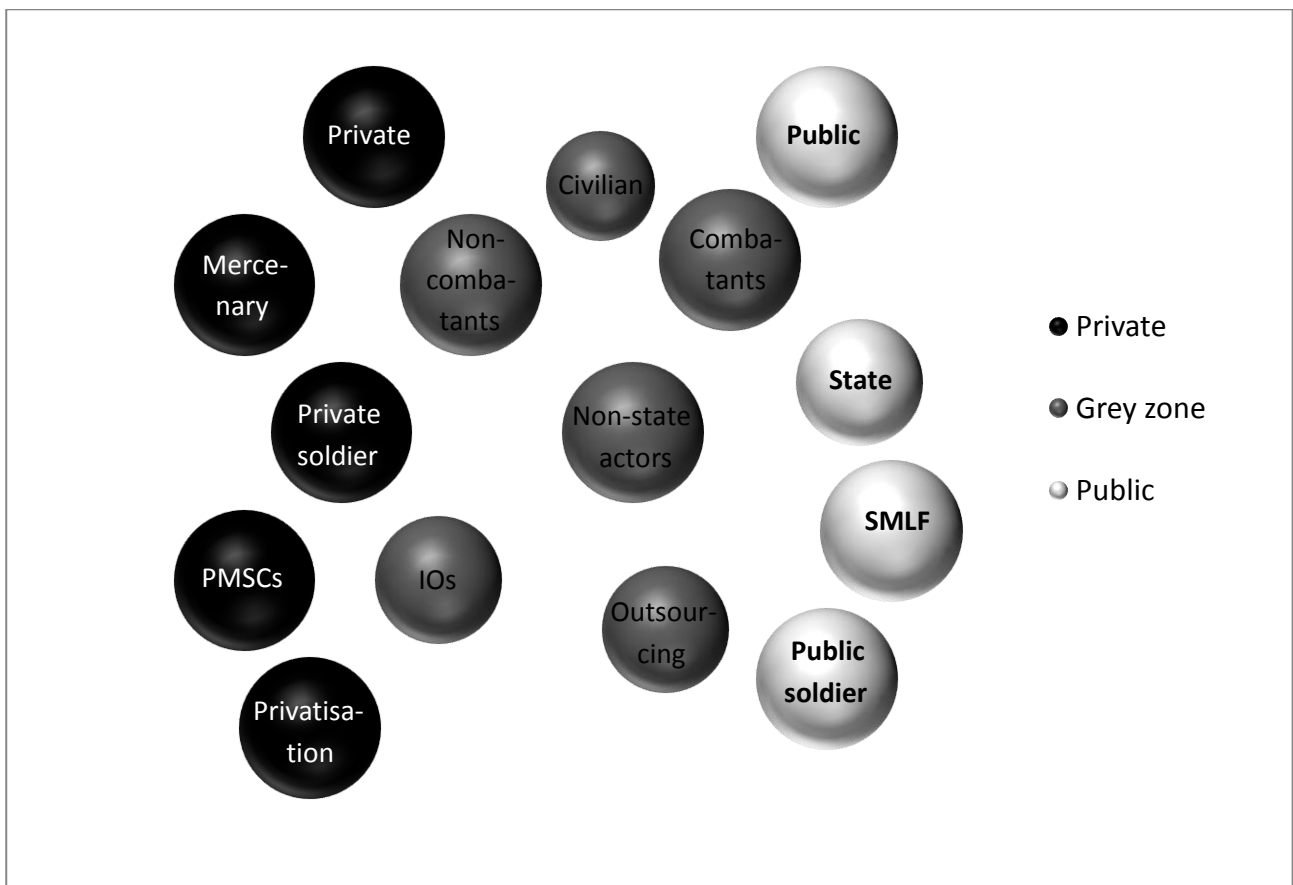


Figure 2: Structuring Categories Discussed in the Thesis

Categories are developing in response to the other categories and are here analysed as elements that influence the discourse in which they exist as “[d]iscourse, like any other term, is also largely defined by what it is not, what it is in opposition to” (Mills, 1997: 4). The notion of ‘discourse’ is here used as another

way of describing the overarching structures that make up the context in which PMSCs are legally defined and politically framed. Thus, the overall structures and the notion of 'discourse' here denote the same thing and are used in order to describe the constantly evolving framework in which agency acts.

How the categories are interpreted and used influence the other categories and are re-constructed as a result of the friction between them and causes the discourse to change. Examples hereof – which are all elaborated on in the coming chapters – are how the conceptualisation of 'public' and 'private' is defined in opposition to each other, or how a private soldier today is a diffuse concept which is both described as a 'mercenary' and a 'PMSC'. As the organising categories can be seen as structuring for the discourse in which PMSCs operate, it is the friction between these categories that causes the development of the discourse. Because the organising categories are constantly redefined and reconstructed *"discourses are constantly changing and their origins can be traced to certain key shifts in history"* (Mills, 1997: 26) – why we will include selected, and for the context important, historical developments in order to show how the discourse that frame PMSCs evolves. The understanding that discourses *"do not occur in isolation but in dialogue, in relation to or, more often in contrast and opposition to other groups of utterances"* (Mills, 1997: 11) is adopted in an attempt to highlight the opposing existing definitions. The discourse is therefore used as a term to describe the overall structures that together make up the socially constructed reality. Social structures can be seen as *"fundamentally ambiguous, incomplete and random systems of meaning"*⁴ (Howarth, 2000: 15), nevertheless, within the discourse one can detect patterns or a tendency to systemise categories in a certain way. We work with the assumption that the concepts presented are (re)constructed by institutions and agents in the discourse which opens up for a research design that undertakes a constructivist approach. Below we therefore outline the research design used in this thesis which will provide the framework for illuminating and understanding the structures and the reciprocal effect they have on the agents acting in the discourse. The following chapter not only outline our constructivist framework but also highlights the empirical findings and, lastly, presents the limitations which come from structuring the thesis in this way.

⁴ Original quote: "sociale strukturer som fundamentalt flertydige, ufuldstændige og vilkårlige betydningssystemer"

Chapter 2: A Constructivist Research Design

With newly launched initiatives to deal with the PMSC industry – such as the 2009 UN Draft International Convention on the Regulation, Oversight, and Monitoring of PMSCs – the time is ripe for an analysis of the structures that frame the PMSC phenomenon. In order to do that, the point of departure is a constructivist approach, where the logic of this choice is based on the consideration that the international legal definitions and statuses, prescribed in the international regulatory framework concerning the use of PMSCs, are not divinely pre-given but only exist as human constructs. The constructivist approach provides a theoretical framework to analyse the shifting discourse by illuminating the taken-for-granted categories that influence the use of PMSCs. In order to undertake such an analysis of the differing categories the structure-agency theory is introduced to highlight the overarching and changing structures that frame the context in which PMSCs are analysed. Furthermore, the structure-agency theory focuses on the actors that are central in the discourse in order to show how the structures and agents respectively influence each other. We accept the premise that structures are simultaneously both pre-existing, continuously produced and further reproduced as a result of historical developments and changing institutional settings (Cerny, 1990). As the structures are shaped and (re)produced on the basis of agents interacting, the international regulatory framework is constructed and is a reflection of the society that it tries to govern. In order to capture this, the analysis focuses on the historical and institutional developments within both the legal framework and the discursive changes in political debates surrounding the use of PMSCs.

Within the discourse agents advocate for different ideas and norms that may result in either tangible legislations (e.g. code of conducts, conventions etc.) or implicitly accepted principles that may become embedded in the discourse. These tangible and intangible rules are what influence and to a large degree constitute the structures. The sum of all this is what we see as making up the discourse, and we will thus use the words structure, discourse and system interchangeably to describe the social reality in which agencies act.

The following sections will explore and use a framework that accepts regulatory institutions as socially constructed and thus transformable. To put it differently, *“as long as one agrees that the existing reality of world politics is not divinely given and thus definite, the only alternative approach to this “reality” is that it is humanly constructed and thus transformable”* (Antoniades, 2003: 21). However, claiming that the sole alternative to a divine system is a constructivist stance would be dismissed by the realist, liberalist and other schools of thought, and should therefore not be seen as the golden rule. Instead it is one out of several differing approaches to describe the international system. The constructivist understanding of reality implies that even though there is a so-called ‘reality’ externally to the subject, this reality will only be approachable through social definitions (Antoniades, 2003). Scholars of constructivism are focused on

language as the means for expression, being the medium for interpretation. Language is thus the tool for understanding one's surrounding environment and the other agents and only via the language one can analyse and try to understand. This implies that the world is approached through mediums, such as the perception of the agent and language. Thus, there is no per se objective access to knowledge, which implies that humans actively create their knowledge about the world and each other and always include an element of interpretation (Bredsdorff, 2003). In other words, we can only approach the world around us via our perception and explain it to others through language, why reality becomes mediated. It is the social definitions and the agents' interpretations of these that this project aims to illuminate and analyse in order to discuss why PMSCs are seen as controversial and in some contexts depicted as illegitimate institutions. The constructivist approach has been described as consisting of an epistemological ontology (Bredsdorff, 2003) and is also the foundation for this paper. Though, this does not imply that reality only exists as a product of the human mind – things may exist independently from the observer.

Radical constructivists would claim that the world is completely constructed and that the mere existence of the planet could be disputed. More moderate constructivists would say that only the social world or parts of it are constructed (Collin, 2002; 2003). The latter is in line with our understanding of the world, why we will not discuss whether private military contractors exist at all but focus on the framing of them and how this framing influences the use and understanding of PMSCs by various agents in the structure.

John R. Searle explains this by differentiating between brutal facts and institutional facts in constructivism: *"Rocks in the moon are brutal facts. They exist independently of any human opinions. We need the institutions of languages for expressing their existence but they continue to exist even if human beings cease to exist. On the other hand, many facts in our social life are institutional in the sense that they require human institutions for their existence. We can play chess because there are rules of chess. We can count money because there is an institution of money. Some of us become criminals because there is an institution of legal punishment. Without these rules or institutions there are no chess players, no money, and no criminals."* (Searle, 1995: 2). In the context of this thesis one could say that; to kill another person is an act in itself and that the person dies is a brutal fact – but how (and if) the 'killer' is sanctioned depends on the rules and institutions in place. How the 'killer' is sanctioned is therefore not a brutal fact but framed differently dependent on the situation, as will be discussed at length throughout the thesis. For now, it serves as an example to show that some facts exist independently from the agent (such as moon rocks), where other institutional facts (such as legislation) only exist because they have been socially constructed and are only maintained as long as they are supported by agents.

We accept that there exist 'brutal facts' or an external reality to the subjects in the structure. This further implies that people exist as 'brutal facts' but how the surrounding community interprets their very being, and assign certain roles to the persons, can be seen as a social construction. Thus, a man on the street is

still there, even though nobody addresses him. But how one perceives what his role is in the structure is an ever-changing human construction.

It can be argued that the individual is not 'allowed' to construct just any understanding of the world as "reality kicks back", as stated by Karin Knorr Cetina. Her reference was laboratory studies and she notes that "[c]onstructionist studies have recognized that the material world offers resistances; that facts are not made by pronouncing them to be facts but by being intricately constructed against the resistances of the natural (and social!) order" (Knorr Cetina, 1995: 148). Therefore one cannot just construct facts and understand things as one feels like and make them into brutal facts as Searle puts it (1995), one need to construct them in a way that is acceptable to the environment, why a "wrong" construction will not be accepted (Latour, 1999). Following this argumentation an individual will be punished for a wrong understanding and as Kirk & Miller state; *"an empirical reality exists, which can be understood in various ways but the world does not tolerate to be understood in any way. A person, who has the understanding that you can put yourself in front of a train in motion and stop it with the bare hands without being hurt, risks to be punished for a wrong understanding."*⁵ (According to Elsass and Lauritsen, 2006: 196). We accept the notion of an existing reality whether this is approachable to agents or not, why we agree with the moderate constructivists' way of understanding the world.

While analysing the field, we are part of the structures ourselves as we can be seen as actors that are influenced by the Danish context as well as by our educational backgrounds. By using a constructivist research design, we accept that nothing is per se objective, but always socially constructed. This implies that we do not strive to conduct positivistic and objective research findings, as we as researchers are part of the field being analysed just by our mere presence. The social production of knowledge includes negotiations, where *"negotiation", more than other concepts, highlights the 'social' character of the process of knowledge production"* (Knorr Cetina 1995: 154) and this analysis can be regarded as a socially negotiated product. There is already an act of construction going on at a subjective level when we conducted our research (Latour, 1999) and how we have understood the terms 'mercenary' and 'PMSC' is therefore also a construction of understanding an already constructed idiom. As Bruno Latour states; *"interests, like everything else, can be constructed"* (1999: 259). There is therefore neither 'normality' nor 'objective facts' but only constructed terms subject for analysis and change.

The rights attributed to persons change as the law is transformed (Pedersen, 1989) and we are therefore using constructivism to highlight that the construction of facts, regulation, code of conducts, conventions, etc. is embedded in the process. *"Our argument is not only that facts are constructed. We also wish to show*

⁵ Original quote: "Der findes en empirisk virkelighed, som kan forstås på forskellige måder, men verden tolererer ikke at blive forstået på alle måder. En person, som har forstået det sådan, at man kan stille sig foran et kørende tog og stoppe det med de bare næver uden at komme til skade, risikerer at blive straffet for en forkert forståelse"

*that the process of construction involves the use of certain measures, where all traces of production are made extremely hard to detect.*⁶” (Christensen, 2002: 71). Thus, it is hard to separate the individual components from each other in the process of construction when categories are made up in the discourse. As we are interested in the relational process of structure and agency we do not focus on the origin of actors and structures but accept that they exist and reciprocally influence each other.

Within the psychological paradigm, there has been some conflation of the two different constructivist terms ‘social constructivism’ and ‘social constructionism’ but both are related to the discursive analysis and the idea that the language creates and constitutes the surrounding environment. What differentiates the two is the understanding of what is created by the language and how (Bredsdorff, 2003). In other words, constructionism is mainly focusing on how the language creates and does not to the same extent as constructivism look at “what is” and how culture is partly shaping the identity of the individual. The focus on language by constructionists is both the strength and weakness of social constructionism as other parts are neglected but language can be used to initiate processes of change. Social constructivism focuses more on the social context and culture but as mentioned previously, the two notions are used interchangeably in the academic literature why a distinction is not of utmost importance here. Therefore we will not differentiate between the two but use them interchangeably in the abbreviated term constructivism.

The analysis will take two aspects into consideration; firstly, the historic events that have influenced the development of the regulation of PMSCs over the last two decades (time), and secondly, the institutional setting within which this development has taken place (space). Our theoretical lens – the constructivist approach to explain the structure and agency – guides what we see (and do not see) as important for the analysis. It is one that gives attention to the agencies’ ability to (re)shape and to change the structures, instead of seeing those as naturally given. Considerable attention is also given to the framing structures, namely the international dominant (and sometimes conflicting) norms, rules and regulations that both constrain and enable a PMSC’s position and ability to act in the structure. The analysis will not only discuss the historical and contextual structures but also include how agents are integrated into the structures (Weldes, 1996). It expands the framework to include an analysis of “*under what conditions, and with what effect, a person is appointed as an agent and incorporated into the structure*”⁷ (Pedersen, 1989: 173), hence interpellated. The project aims to analyse and show how specific roles are created, such as ‘mercenary’ or ‘PMSC employee’, and how the different connotations affect the way that PMSCs are used - or not used -

⁶ Original quote: “Vores argument er ikke kun at fakta er konstruerede. Vi ønsker også at vise at konstruktionsprocessen involverer anvendelsen af bestemte foranstaltninger, hvorved alle spor af produktionen er gjort ekstremt vanskelige at opdage”

⁷ Original quote: “på hvilke betingelse og med hvilke effekter individer udpeges til aktører og sættes på plads i strukturer”

today by the Danish military.

2.1 Empirical Findings and Data Sources

As the academic literature is often focusing on the USA and the UK in terms of the privatisation of military affairs (Avant, 2005b; Singer, 2003, 2005; Leander, 2010; Markusen, 2001; Henriksen, 2008), a few examples of the trends within military privatisation carried forth by the USA and the UK are presented in order to discuss the Danish approach to the use of PMSCs. Denmark has been, and is, cooperating with the American and especially British military forces in the international operation in Afghanistan (Forsvarsministeriet (5), 2010) but there seems to be reluctance from the Danish side to privatise or outsource areas that have to do with the tip-of-the-spear tasks.

When analysing the use of PMSCs by the Danish Defence, we acknowledge that the Danish military is a complex organisation with three major streams; the Army, the Navy, and the Air Force. However, for the sake of simplicity, we refer to the Danish military as a unified, single agent, where the terms military, defence, and army all refer to the same. This is in line with the mission and vision statement of the Danish Defence which states that *“the Defence should be viewed as one single entity”*⁸ (Forsvaret (1), 2012). In order to investigate the Danish Defence’s use of and approach to PMSCs we interviewed the former Chief of Defence, Tim Sloth Jørgensen, as he specifically talks about how the Danish Defence could open up for a use of PMSCs (DR (2), 2012). The Chief of Defence works, together with the Chief of Defence Staff, as the leading and top management within the Danish Defence (Forsvaret (2), 2012) and the Chief of Defence also functions as the military advisor for the Minister of Defence (Forsvaret (3), 2012). Tim Sloth Jørgensen has previously expressed willingness to use PMSCs as a support to the Danish Defence (DR (2), 2012). Qua his former mandate he had the ability to influence the direction of the Danish military, why we chose to further question his motivations for including PMSCs in certain operations. At the time of writing, the position as the Danish Chief of Defence was vacant (Berlingske (2), 2012) which has made it difficult to conduct interviews with the successor.

We talked to representatives within the ‘Militærpolitiet’⁹, ‘Efterretningstjenesten’¹⁰ and ‘Forsvarsakademiet’¹¹ to get a better picture of the Danish military context. We have therefore focused on qualitative research methods and empirically we have collected our data during the full process of writing our thesis, why this has kept influencing our understanding of the researched field.

Additionally we have gathered both primary data, such as conventions and other legal texts, secondary

⁸ Original quote: “Forsvaret skal ses som én samlet virksomhed”

⁹ The Military Police

¹⁰ The Intelligence Service

¹¹ The Defence Academy

data in order to fully understand the international legal framework and the Danish political context and tertiary sources to scrutinize the researched field.

2.2 Delimitations

A delimitation of our analysis is that we only focus on the military operations relating to core military tasks or 'tip-of-the-spear' functions, including combat or services related to the carrying or handling of weapons, why we do not focus on every aspect of privatisation or outsourcing of military affairs. Our centre of attention on specifically Denmark, and to a lesser degree on the UK and the USA, means that we do not include failed or developing states in the analysis. To limit the scope of historical events introduced, this thesis mainly looks at events and developments after the 1990s, although, trends of private military affairs in prior history is included as well, in order to show the development in the division between public and private and other categorisations.

Furthermore, applying a structure-agency approach to analysing our field which is limited in its context, we only see fractions of the system meaning that we are not able to provide a universal picture, which is a deliberate choice enabling us to analyse a specific field but also constraining what we include.

Chapter 3: Outlining Theory

Before we embark on the discussion of how PMSCs are legally defined in the international system and politically framed in a Danish context, the subsequent section will illuminate the theoretical framework of structure-agency by which the research question is analysed. The section firstly outlines how we understand and use conceptualisations as well as the analytical approach to structure-agency. Afterwards we will outline role theory and impression management theory (IM) to show how expectations are bound to the role. How the role is ascribed to the agent will be highlighted by explaining the interpellation mechanism.

3.1 A Constructivist Approach to Structure-Agency

As mentioned in the previous chapter, this analysis takes point of departure in the constructivist framework. Building on this, it will here be argued that regulatory systems are socially constructed arrangements that are continuously reshaped as a result of historical developments and changing institutional settings. How these systems are reshaped is influenced by time and the agents in the structure. As Cerny puts it; *“structure cannot exist without history, and history takes place within – and reacts back upon – specific structural contexts”* (Cerny, 1990: 27). It builds on the premise that the relation between structure and agency is *“connected to particular institutional mechanisms”* and that the *“combination of structure-agency is neither constant nor unambiguous but constituted historically, and therefore not solely connected to institutional conditions but also historic development”* (Pedersen, 1989: 175). Hence, the interplay between structure and agency and their reciprocal influence is affected by both time and space. In the following, agency, agent and actor will be used interchangeably to describe the institutions and individuals that shape, and are shaped by, the legal and social structures.

Why use the structure-agency theory? Because it not only tells us how agency acts within a societal context, the theory also questions and describes the implicit structures that frame what agency sees as possible and realistic. In other words, it creates a framework where definitions, norms, and rules are not taken for granted but analysed as a dynamic process where structures work both as constraints and enablers of agencies' position and ability to act within the structure. In order to analyse how agency acts within the existing set of structures and to *“describe the structure of constraints within which actions takes place, then it is also crucial to have a theory of how structures change”* (Cerny, 1990: xi). Hence, the choice of theory creates a platform from which to analyse and identify the historic and current structures, as well as the on-going regulation that frame the interplay between the state and the PMSCs. Though, it is not enough to only look at the structures in the attempt to analyse the framing of PMSCs. The analysis also strives to show how agents affect the structures, as *“actions have structural consequences”* (Cerny, 1990: 57), in the sense that the actions of states, international organisations and PMSCs either reinforce or

change the established structures. In order to analyse and discuss the actions undertaken by actors in the discourse, we will in the end of this chapter outline aspects of role theory. By using role theory it will be possible to further discuss why the actions of private contractors are seen as different from traditional military soldiers and to understand how expectations influence the actions of agents.

Before we embark upon the discussion of the interplay between agency and structure a central epistemological question must be addressed, which has only been briefly touched upon so far, namely; are agency and structure 'pre-given' as external factors to our analysis? In the different approaches to structuration: *"there is an essential missing ingredient – a theory of how structures themselves originate, change, work, and reproduce themselves"* (Cerny, 1990: 15). As mentioned previously, we dismiss the theoretical stance that claims a divine interference in the construction of reality. Within the literature, one will find examples of scholars who argue that all individuals are born into a set of structures that create certain cultural and social understandings (Douglas, 1966; Cerny, 1990), which means that structures already exist when an individual is born into the world. Contrary to the scholars who claim that structures are predetermining the actions of the agent are those who emphasise that a reality would not exist without social interaction between agencies. It has been, and still is, widely debated whether structures are *"independent from the actions and perceptions of the agents"* (Antoniades, 2003: 23). Common to both strands within the literature of structure and agency is the acceptance of a pre-existence of structures that institutions and individuals act within, which is also in line with our take on the theory of structure-agency. The question of the origin of the societal structures and how these are produced in the first place can be hard to establish from the existing literature and it would be beyond the scope of this research to answer the questions of how structures emerge. Instead, what can be said is that structures are presented not as 'static edifies' but as processes of structuration, where *"structuration implies a process of continuing interaction between agent and structure, in which structures which are generally constraining can also change and be changed in certain conditions"* (Cerny, 1990: xi). This further implies that not only do *"structures set boundaries for, but also enables, how the agent or agency act"* (Bo Rothstein in Pedersen 1989: 175) why the actions of the agents is a key aspect of the structure-agency theory. Thus, there are two points to make; firstly, structures and agencies affect each other reciprocally in an on-going manner, which will be elaborated in the subsequent sections. Secondly, and important for our research, is the analysis of how agents are appointed in the structure and recognised as players. In order to answer our research question, which inter alia focuses on how PMSCs are legally defined and politically framed, we will here use some of the analytical tools from what Althusser and others refer to as 'interpellation' in order to describe the *"dual process whereby identities or 'subject-positions' are created and concrete individuals are 'hailed' into (Althusser, 1971: 174) or interpellated by them"* (Weldes, 1996:

287). Thus, the process both entails a construction of a role or a subject-position, e.g. a 'private soldier', and a process where the actor is 'hailed', or addressed, by the other agents in the structure and thereby given the role as a 'subject-position' in the structure. This thesis will use the word 'subject-position' (Weldes, 1996) to describe the constructed role that agents may be hailed into. In relation to this one must note that *"subjects only exist insofar as they are supported by a concrete individual"* (Blunden, 1971: 25), which is in line with our epistemological understanding, outlined in the previous chapter. Furthermore, to hail an actor presupposes that there already exist agencies in the discourse who can hail new players. The way we construct our structure-agency analysis leads to an acceptance of multiple structures existing in society, like *"a range of different games with different rules, stakes, and distribution of resources of players, being played simultaneously"* (Cerny, 1990: 4). It would be beyond the scope and purpose of this thesis to illuminate and discuss all the facets of the structures that frame how PMSCs are viewed. Instead, we will try to show the dynamic interaction between the different norms, code of conducts and regulations that together make up the discourse which frames the international and Danish debate on the outsourcing of core military areas.

Structures, depicted in e.g. regulations, exist and are reconstructed through social interaction and organising agents, who then again are influenced by the dominant discourse. This means that the actions of agents are limited by the existing distribution of resources *"and rules in a particular game (or games) in which they are enmeshed (and by their perception of these conditions); by the agents' own perception of which game they are playing within the complex of games"* (Cerny, 1990: 4). In this on-going process agents are influenced by the outside structures and then in return influence these by behaving in accordance to, or in violation of, the existing structures where social structures are both the medium and the outcome of the practices they recursively organise (Antoniades, 2003). Althusser describes this process as; *"the existence of the ideas of his [a person's] belief is material in that his ideas are his material actions inserted into material practices governed by material rituals which are themselves defined by the material ideological apparatus from which derive the ideas of that subject."* (in Blunden, 1971: 22). What Althusser points to here, is the connection between material actions or practices and the belief of an agent. In other words; the idea or belief of an individual becomes materialised through his or her actions as a person. The simple gesture of greeting another person shows that a stream of thoughts, a recognition of another person from previous times, is taking place and materialise through rituals, for example the action of greeting another (e.g. a handshake or waiving to the other person). Thus, the perception or belief of the agent is transformed into certain actions, which then again is affected by the structuring norms or rules – i.e., to stay with the example, whether the greeting norm is to kiss on the cheek or shake the person's hand. Following the line of reasoning set forth by Althusser, it will here be argued that the belief of an agent, what it sees as

possible within the given structure, is translated into certain actions. These actions are shaped by the agencies' perception of the role (subject-position) and the structure in which it exists. This does not mean that the agent will only act in compliance with established (tangible or intangible) rules but even if the agent acts against the customary guiding principles it will be done within the perceived reality. The question is whether the agent will experience sanctions if it does not act in accordance with the established rules.

What is considered 'right to do' depends on the contextual norms, which may become tangible through written legislation and regulations. Thus, structures thereby infer certain behaviour, which is either legitimate or illegitimate depending on the actions of the agent and the context in which these actions are assessed. If an agent exhibit illegitimate behaviour sanctions are expected to occur, according to role theory. These sanctions may vary in nature but what is central is that the sanctions can occur when behaviour is not considered socially acceptable. What is considered illegitimate changes as the discourse evolves and the changes are to be analysed as an on-going process and should therefore not solely be deducted linearly as a response to historical events. Change is to be understood as a dynamic process and in the context of the respective institutional settings, where agents hold different forms and levels of capital depending on the situation. This is not to say that agency is the dependent variable – on the contrary. It must be stressed, that 'agency' and 'structure' are both independent variables that affect one another reciprocally as they are intertwined in the same dynamic process: *"Neither the players – the actors or 'agents' – nor the structures – the pattern of constraints and opportunities for action and choice – determines the other"* (Cerny, 1990: 4). This also implies that the social structures are neither static nor unaffected by the actions and perceptions of their agents (Antoniades, 2003).

Norms can be used as an example of this reciprocal relationship between structure and agency. There are various definitions of what the term 'norm' covers. One possible definition speaks of the *"behaviour [of an agent] defined in terms of rights and obligations"* (Percy, 2007: 371). This definition does not explain the difference between formal and informal rules, why we expand the notion of norms to a *"catch-all term to cover any explicit or implicit 'ought-proposition' that is supposed to play this judgemental role in somebody's practical thought"* (MacCormick, 1998: 303). Thus, norms can be seen as underlying values, moral and ethical standards that can be both implicitly and explicitly present in society. Norms are therefore not static, but changing according to the context in which they are valued and are reflected in the structures that frame the actions of agents. What is essential is the common – or mutual – understanding of what is expected of the situation. MacCormick exemplifies this by using the example of people standing in a queue (1998). Often where queues are formed, people stand in line based on a common understanding that the person in front of me has (in most cases) the unwritten right to receive the requested service before me (MacCormick, 1998). The obedience of the rule, which is often unspoken, has its roots in a

common understanding, the norms, that guide the person to do 'the right thing' – in this case wait in line. If a person jumps the queue the others might sanction him by getting angry, or telling him that what he's doing is wrong etc. as there are expectations related to the norms. In relation to this, two things are important; firstly, which norms should apply is not always evident, as there are many different interpretations of which norm should be dominating. Secondly, often there are different interpretations of the same norm or value, as we will see in relation to the norm which prescribes states as the sole executer of violence (cf. chapter four).

There is a difference between formal and informal rules, where norms, seen as values and ethical standards, are referred to as informal rules. Formal rules are depicted in national and international law, conventions and legal documents. Thus, formal rules are explicitly stated legislation and regulation which both can be binding or non-binding to parties in the structure. The Montreux Document is an example of a non-binding legal document that is formal in nature, as it recalls previously determined legislation. Thus, in the international discourse it can be hard to agree on how things 'ought' to be from a normative perspective as norms are constantly revised due to historical developments and changing institutional settings, why the analysis does not discuss what should be the appropriate levels of outsourcing or privatising military tasks but focuses on how these norms are shaped and how they change over time.

3.2 Roles and Expectations

Role theory can be used in order to explain the actions of agents in the contextual structures and why they have the respective roles. Role theory is about which roles a person has and why. For example, some roles are deliberately chosen, while other roles are based on what society and people around the person expect from him or her. *"A role is the sum of expectations and norms, which is bound to a status or position in a social system. [...] Whether and how well you manage your role, has great importance compared to your self-perception and the perception others have of you. This management is rated on behalf of own and others expectations and demands to the respective role"*¹² (Plate, 2000: 30-31).

Often the role an individual has is maintained via different ways of sanctioning, why one would be inclined to do what is socially acceptable in order to avoid sanctions. How an actor manages the role is important for its position in the community and other's perception of the actor. Managing this role and living up to the expectations from the surrounding society and the other players in the structure is very influential for people's perception of themselves (Plate, 2000).

¹² Original quote: "En rolle er summen af de forventninger og normer, som er knyttet til en stilling eller position i et socialt system. Hvorvidt og hvor godt man behersker sin rolle, har stor betydning, i forhold til selvopfattelse og den opfattelse andre har af én. Denne beherskelse bedømmes på baggrund af egne og andres forventninger og krav til den givne rolle."

According to Callista Roy there are three different types of roles and role expectations (in Plate, 2000). The first category is the primary roles, which is bound to the development stages, age, gender and the behaviour one is expected to have. The primary role is, according to Callista Roy, not one you can choose but is something you “are”, for example 25 years old and male. By comparing similar individuals, the expected behaviour is derived from the standard of the group. It must here be emphasised that the social categories, ‘male’ and ‘age’ are, according to the epistemological framework that we use, constructed terms based on a common perception of time (25 years old) and gender and are in itself not objective categories. Furthermore, the categories have normative connotations attached to the role e.g. there are certain expectations connected to being a “man”. Nevertheless, they work as a good illustration of what is categorised as the primary role. According to Roy, the secondary role is the one a person has parallel to the primary role (in Plate, 2000). This could be ‘husband’, ‘aunt’ or ‘mother’. What is looked at here is how the person manages the role it is ascribed to. In other words, there is an underlying norm which prescribes the right thing to do or desirable behaviour relating to the role.

Working as a soldier, whether employed by the state military or a PMSC, there would be a perception of what is the acceptable behaviour or at least an understanding of what is not acceptable. Shooting civilians would definitely be perceived as illegitimate and not acceptable (cf. the Geneva Conventions), whether this is done by the state military and/or PMSCs.

The tertiary role is connected to the secondary role and is often deliberately chosen, temporary and hobbies (Plate, 2000). An example is being a football player. Every one of the different roles has a set of expectations bound to them often determined by society or people around you in relation to one’s own expectations. This goes for behaviour as well as appearance. What is important to note is that roles change throughout life and has to be adjusted accordingly but if a person does not live up to the expectations of the role, the surroundings will most often react as Plate mentions; *“Changes throughout life, does that your role changes and you have to as a person adjust to new roles – this adjustment might not be voluntary. When you get ill, you are often not able to live up to others or own expectations and demands. Therefore you can unwillingly be ascribed to a new role, which very much can affect your self-perception. The surroundings will typically react, if you’re not living up to your role”*¹³ (Plate, 2000: 32).

In general there is a normative and moral foundation for every role, why norms and rules are maintained in the network by the actors and their expectations to each other (Plate, 2000: 35). If the rules and norms of what is socially acceptable change, the roles will change accordingly. As mentioned, one can discuss

¹³ Original quote: “Skift gennem livet gør, at ens roller ændres og man må som person tilpasse sig en ny rolle – denne ændring er ikke nødvendigvis frivillig. Når man bliver syg, kan man ofte ikke leve op til andres eller egne forventninger og krav. Dermed kan man ufrivilligt blive tilskrevet en ny rolle, hvilket i høj grad kan påvirke selvopfattelsen. Omgivelserne vil typisk reagere, hvis man ikke lever op til sin rolle”

whether the norms and rules are established by the actors or whether the norms and rules are pre-existing and constraining the actors and deciding their actions in the pre-defined system. We see this issue as an on-going, dynamic process in which the actors influence each other, hence also the system and the system additionally mapping the actors' behavioural options.

A critique of Plate's theory of roles could be that she is mixing identity and roles. Some scholars do not think that roles can be the same as a person's identity but only superficial roles one can expel at any time. Althusser talks about 'identity' and 'subjects' (Blunden, 1971) but we refer to 'roles' and 'subject positions' (Weldes, 1996). The issue of whether there is a difference between identity and role is a long discussion, which we will not go into deeper detail about, why we only focus on role theory and to some extent behaviour and not theories of identity.

Another theory being helpful in explaining agents' roles and behaviour is Goffman's impression management using the theatre and stage, where the actors play, as metaphors of the society. *"Impression management (IM) is concerned with the behaviours, people direct toward others to create and maintain desired perceptions of themselves"* (Schneider according to Gardner & Martinko, 1988: 321).

Summarizing the theory; one only sees what the agents wish to reveal. They act on the stage, showing the public only what they wish to exhibit themselves. Behind the curtain all other things not suited for the public to know for various reasons are kept. This theory is relevant for us as Goffman depicts the society as constructed with selective revelations of what the actors want the public to know, which is highly applicable in the sphere of military affairs, renowned for secrecy. As Gardner and Martinko note: *"[...] if the depiction of organizational behaviour as a socially constructed reality is considered valid (Sanders, 1982) interpretive frameworks for understanding and explaining behaviour within social contexts are needed"* (1988: 321) why Goffman's impression management theory can be used to explain the actions of actors, in this case how Private Military and Security Companies act in the contextual structures that frame their playing field.

Altogether the actors are engaging in performances in front of audiences in various settings (Gardner & Martinko, 1988: 322). A lot of different variables are dependent on the outcome of the situation but what is central in IM is that the actors occupy roles and they act before an audience. These specific roles can be formed due to audience response, which can be related to Plate's idea of sanctioning, where the actors behave according to socially accepted norms. If audience response is positive, the role of the actor is expected to be maintained. Reversely if the audience response is negative, the role is assumed to change. Likewise if the actors experience a sanction, their behaviour is expected to change but if no sanction occurs, the respective behaviour and hence role is assumed to be maintained. Therefore role theory and IM are useful tools in helping to understand the actions of agents.

This chapter has outlined the theory which will be used as a tool for analysing the structures that make up the discourse in which PMSCs and other key actors are framed and analysed. The following chapter will take point of departure in the conceptualisations depicted in Figure 2 and discuss these in relation to each other and the theory presented. The distinction between public and private will be the outset for the forthcoming discussion.

Chapter 4: Categorisations and Conceptualisations

Now that the theoretical framework for the analysis has been outlined, the next step is to take a closer look at the previously mentioned concepts that influence the discourse in which PMSCs are interpellated.

A widespread use of the different terms entrenching private companies offering security and military services have been applied in the academic literature during the last decades. The multiple constructed definitions and interpretations of what the PMSCs are and actually do (or should do) reflect the blurred lines between the various services they provide and the different understandings thereof, as the quote by Prado shows; *"They recruit former policemen and soldiers from developing countries as 'security guards', but in fact they are 'militarily armed private soldiers', or mercenaries"* (2009: 429). The definitions and descriptions of PMSCs are influenced by the already existing normative connotations which are attached to the established conceptions. In other words, *"our descriptions and understandings of the world are linked to the social and cultural contexts and relationships we enter and participate in"*¹⁴ (Bredsdorff, 2003), hence whether the connotation 'private contractor' has a negative ring to it depends on the social and cultural context in which it is discussed. The attempt in the literature to link and correlate the conceptualization of a mercenary (as a person who solely shows loyalty to himself and focus on financial gains) with that of PMSCs is referring to already established norms about the use of mercenaries in warfare. As Mandel states the literature is *"full of polemical stereotypes and close-minded judgements both for and against this trend [of privatising or outsourcing military affairs]."* (Mandel, 2001: 129). Singer argues that the attempt to link mercenaries with the PMSCs is an attempt to advocate against the use of PMSCs (Singer, 2003). Clive Jones argues along the same lines when he states that; *"This 'one-size fits all' approach was more a reflection of the negative reactions the term mercenary invokes, than a wider appreciation of the types of activity that PMCs actually engage in"* (Jones, 2006: 358). Kofi Annan, the former UN Secretary General, has previously rejected the idea of *"employing PMSCs as part of a broader UN strategy"* (Jones, 2006) and said that *"there is no distinction between 'respectable mercenaries and non-respectable mercenaries'"* (Shearer, 1998: 68). However, the UN is using PMSCs today in (among other places) Afghanistan, where PMSCs support the military operation in the form of the UN-mandated International Security Assistance Force, ISAF (Shameem, 2010: 7). Scholars, such as Avant, have argued for a nuanced understanding of the role that PMSCs play both nationally and internationally (2004; 2005b). Thus, the many different approaches to and understandings of PMSCs in the academic literature is an example of how PMSCs are framed very differently depending on the pre-assumptions and interpretations of what PMSCs are.

In an attempt to grasp and capture the complexity and the diffusion that is embedded in the discourse, and more specifically between the different categories affecting the use of PMSCs in the 'tip of the spear

¹⁴ Original quote: "vores beskrivelser og forståelser af verden, knytter sig til de sociale og kulturelle sammenhænge og relationer, vi indgår og deltager i"

operations', the following section begins by taking a closer look at the public-private categorisation. It is a step on the way to understand how a PMSC, a non-state actor, is defined in contrast to the state. Thus, the first step is to show how the role of the state is framed, specifically focusing on the norm that predicts the 'state monopoly on the use of force' as this is central for why the use of PMSCs is perceived as problematic. The distinction of something being 'public' and 'private' - or state and non-state - presents a platform from which to analyse how PMSCs are conceptualised and framed in international conventions and other legal texts.

4.1 The Distinction between 'Public' and 'Private'

The distinction between 'public' and 'private' is linked to the understanding of the state and the non-state actor. In order to discuss 'privatisation and outsourcing' there must be a pre-acceptance of something belonging to the public domain per se. Hence, in order to analyse how PMSCs are politically framed and legally defined we must take a look at what is perceived to be within the public or state domain. In international law texts one will find references to *inherently state functions* which should not be transferred to private parties – a pre-assumption which is explored through our constructivist lens in order to question the biased statement. The notion of 'inherently state functions' is in the discourse framed in contrast to what can be handled by private and non-state actors, including PMSCs. Thus, the public sphere has to do with the expectations linked to the role of the state. The public-private distinction is in many ways taken for granted and ever since *"the rule by king was replaced by the bureaucratic state in the seventeenth century, there has been a give-and-take between the public and the private, with the line between the two constantly in flux"* (Singer, 2003: 7). One of the core elements in the distinction between public and private relates to what the government's role should be, which is here discussed from a historical and contextual perspective. In other words, the 'core state functions' may be hard to define in a situation where *"there is a growing sentiment in many parts of the world that the distinction between public and private in the security realm is becoming increasingly arbitrary"* (Mandel, 2001: 133). From a constructivist point of view it is impossible to determine the optimal conditions for where the line between the private and the public should be drawn, as this highly depends on the context in which it is discussed and by whom this claim is made. Hence, we will in this section try to look beyond and challenge the already established connotations such as 'public' and 'private'. This is done in order to discuss why 'privatisation' is such a debated political area, as Markusen for example has pointed to; *"outsourcing military training and operations is perhaps the smallest but in some ways the most controversial arena in which privatization is taking place"* (2001: 13).

4.1.2 The Public Domain and States

To conceptualise the modern state is very complex as *“States are no longer simply States, they are rogue, failed, quasi, democratic, legitimate, militarized, elite-based, post-modern, pre-modern, modern, etc. depending on what aspect of statehood one is interested in”* (Leander, 2006: 13). The state is both influenced by the internal developments which take place within the territorial borders, but is also simultaneously enabled and constrained by the norms, ethics, soft and hard law existing in the international environment. One of the guiding principles is *“the state monopoly on the legitimate use of force (SMLF) [which] is arguably at the heart of the organization of international security”* (Leander, 2010a: 204). The varying approaches to the principle of the ‘state’s monopoly on the legitimate use of force’ (SMLF) has been widely debated in response to the significant increase in the number of PMSCs who operated and still operate in respectively the wars in Iraq and Afghanistan (Leander, 2006; Avant, 2005b).

Looking at the state as an actor within the discourse works as a platform for analysing how the state plays a role in (re)establishing the structures that make up the framework in which PMSCs are working. What is of particular interest is how the state is intertwined in the process of politically but also legally defining PMSCs and the use hereof in times of war. The analysis is structured to show that the state is not an unchanged actor but influenced by the structures in which it operates. The constructivist approach allows for such an analysis, as *“constructivists’ have made and repeated the point that the meaning of the state has changed enormously in history”* in contrast to *“a number of classical texts where states are taken very much for granted and understood to be one common thing.”* (Leander, 2006: 12).

The state, although various definitions exist, is often in the classic literature on state-formation referred to as the nation-state and is what constitutes the international system together with International Organisations, NGOs, businesses and so forth. Like the other categories explored in this paper, the definition of the ‘nation-state’ has changed in response to historical developments and *“despite innumerable attempts, it has proven impossible to agree upon an ‘objective’ definition”* (Østergaard in Andersen and Kaspersen, 2000: 450). What can be said is that the existing sovereign states are different from each other and their political systems likewise. The intention is not to make a comparative analysis of the different state systems but to highlight the similarities in what is expected from states as actors and investigate how the role of the state is outlined in the international legal system on the use of PMSCs. According to role theory, expectations are central in understanding the role and in relation to the state there are various expectations to analyse, some coming externally from the international society others coming internally from the agents acting within the state, such as the citizens. One of the ways that the public and private distinction is made has to do with the aspect of payment and profit. Citizens pay to the state via taxes without getting an exact service immediately but they expect the state to care for them

eventually (Singer, 2003). This takes place in the 'public sector' and *"in contrast, in the private sector, individual citizens, known as consumers, purchase needed goods and services in an open market, (...) this market is made up of private firms motivated by profit"* (Singer, 2003: 7). The aspect of profit is of importance in the framing of *public* and *private* and translates into the legal framework on the use of PMSCs. The citizens contributing to the state, in terms of money and labour force, arguably have requirements for what the state is supposed to do for them in return. In the majority of Western democracies, the citizens expect the state to protect them from both internal and external threats (Thomson, 1996) but how this is done depends on the different national contexts. It builds on the assumption that *"the state organizes and guarantees public order domestically within a defined territory [and] all states together constitute the international system and, thereby, the global order"* (Schneckenner, 2007: 10). This implies that the state not only plays a crucial role in internal state affairs but is of central importance in the international context as well.

It has been argued by academics that the norm of whether or not to contract private parties in relation to warfare has changed significantly over the last centuries (Singer, 2003; Percy, 2007; Thomson, 1996; Mandel, 2001). What has changed is the perception of the respective domains of the state and the private soldier which has led to a changed attitude towards the use of private parties in warfare.

The rise of the state is often in international relations theory linked to the Peace of Westphalia where *"'Westphalia' constitutes the taken-for-granted template against which current change should be judged"* (Osiander, 2001: 251). Thus, the ideas linked to 'Westphalia' have consequences for how the role of the state is perceived and the quote support the notion that also the concept of the 'State' is a constructed categorical term. Also in the literature on PMSCs the Westphalian Peace is framed as an important turning point for how the state uses private soldiers, why a brief outline of some of the key aspects linked to the historic shift is illuminated. One of the essential aspects of 'Westphalia' is the idea of state sovereignty, which developed from the seventeenth century together with the construction of independent states and the belief evolved that no state shall control another (Dansk Røde Kors, 2007). Beginning in 1648, with the Peace of Westphalia, a steady concentration of power was transferred into the hands of the state (Mandel, 2001). Additionally the Westphalian system suggested that war was illegitimate and peaceful solutions to conflicts were preferable. Any state not adhering to these rules were subject to sanctions (Mandel, 2001; Dansk Røde Kors, 2007).

The perception of *"the state's conventional role as an entity holding the monopoly on the legal use of force"* took form in the early twentieth century, *"when most European states completely consolidated military monopolies within their territorial realms, replacing foreign mercenaries with national armed forces"* (Maogoto, 2006: 151). Hence, the birth of the state and the increased awareness of nationality changed the

use of private soldiers, where *“hired armies of foreigners began to be replaced by standing state armies made up of citizens”* (Singer, 2003: 29). Looking at the historical developments, private actors have previously been engaged in warfare and this process where state armies took over the functions previously fulfilled by foreigners can be seen as a historical de-privatisation or centralisation of military affairs. Thus, the domain of the state has changed throughout history and even though the state monopoly of violence constitutes the basis for much of international law it can be argued that *“the process by which national states acquired the monopoly of violence outside was the outcome of a series of individual, unrelated, interstate legal agreements directed against different non-state organisations: ‘the territorial organisation of violence was not inevitable or natural’”* (Larkins, 1995: 359). Following this, mercenaries have been gradually de-legitimised, regulated and eliminated by national states during the 19th century (ibid). As the developments which have taken place over the last centuries can be framed as a ‘de-privatisation’ or centralising of the military, scholars have argued that the legal and political conditions that frame the use of private soldiers can be seen as an ‘anomaly’ in a historical perspective; *“from a broad view the state’s monopoly of both domestic and international force was a historical anomaly”* (Singer, 2003: 39). By using the word ‘anomaly’, one implicitly accepts the notion of a stage of ‘normality’. Likewise, scholars have pointed to the ‘problem’ of seeing PMSCs *“as defying the central government’s normal monopoly of force and trying to divide it or steal it away”* (Bailes, 2007: 1). Again a stage of ‘normality’ is assumed. Instead, it can be argued that PMSCs are perceived and framed as a ‘problem’ because of the norm which evolved as a result of the formation of the state, which changed the perception of foreign and national armies. It will be argued here, that there is not necessarily a ‘normal’ stage for how violence should be controlled but instead a set of contextual structures that frame how violence is understood and subsequently dealt with. A dominating concept in this regards is the ‘state monopoly on the use of force’ which is discussed subsequently.

4.2 The State Monopoly on the Legitimate Use of Force

Often the concept of the ‘State Monopoly on the Legitimate use of Force’ (SMLF) is framed as a variable which can be measured, in the sense that states either have monopoly or are forced to share its ‘mandate’ with others. This is described as *“the increasing trend for states to share the monopoly of the use of force – willingly or unwillingly – with a range of non-state actors”* (Bryden & Caparini, 2006: 4). Instead of analysing the SMLF as a zero-sum game between actors of losers or winners, we will in this thesis refer to the SMLF as a norm or guiding principle, which influences how actors in the discourse behave. The focus is not on whether states actually hold the sole monopoly of violence, as this is not the purpose of this thesis – instead we focus on how the norm about SMLF is used in legal frameworks and political debates on the

privatisation or outsourcing of military affairs.

Generally, people across disciplines and across sectors (state, private contractors, academics) all refer to the idea of SMLF but how they frame and perceive the so-called 'state monopoly', depends on the structures in which they operate and how the analysis is developed. In the literature several scholars have questioned the state's monopoly on the legitimate use of force (Avant, 2005b; Krahmann, 2010; Leander, 2006 according to Leander, 2010b: 211; Mandel, 2001).

An example of how the concept is used is found in the responsum to the Danish Council on Outsourcing (Udlíciteringsrådet), where it has been stated that *"state functions which are associated with the use of physical force must be precluded a priori from the ideas of outsourcing."*¹⁵ and that *"the basic principle is that the state holds monopoly on the physical use of power"*¹⁶. (Henrichsen, 2004: 48). Here the concept of the SMLF is used as a guiding principle for why certain military tasks should not be outsourced or privatised. Furthermore, the values attached to the concept of SMLF are in the responsum from the Danish Council on Outsourcing based on the understanding that *"peace is facilitated by the state because of the monopolisation of violence."*¹⁷ (Alf Ross in Henrichsen, 2004: 48).

A different interpretation of the concept of the SMLF is presented by Mandel, who argues that *"from a historical perspective, there is no reason to believe that having national governments monopolize the instruments of security is best."* (2001: 132). Rothbard also stresses that *"the State is that organization in society which attempts to maintain a monopoly of the use of force and violence in a given territorial area"* (Rothbard, 2009: 11) but his view on the role of the state is far more negative as he points out that; *"If, then, taxation is compulsory, and is therefore indistinguishable from theft, it follows that the State, which subsists on taxation, is a vast criminal organization far more formidable and successful than any "private" Mafia in history"* (Rothbard, 1998), thereby portraying the state as a criminal. Furthermore, he highlights that *"the state exercises the monopoly of crime... It forbids private murder, but itself organizes murder on a colossal scale. It punishes private theft but itself lays unscrupulous hands on anything it wants, whether the property of citizen or of alien."* (Albert Jay Nock in Rothbard, 2009: 16). Thus, very different ways of using the same concept, namely the concept of the state's monopoly of violence, based on different perceptions of the value the norm is representing.

Implicit in the norm that describes the state as the sole agent with the legitimate right to exercise violence lies the assumption that the state per se has the obligation and right to protect its citizens. *"Governments are deemed successful to the extent that they simultaneously protect individuals from violent death and foster the social and economic conditions in which the collective good can strive."* (Owens, 2008: 981). This

¹⁵ Original quote: "Myndighedsopgaver, hvis udførelse er forbundet med anvendelse af fysisk magt, må på forhånd udelukkes fra overvejelser om udlicitering"

¹⁶ Original quote: "underliggende præmis er, at staten har monopol på fysisk magtanvendelse"

¹⁷ Original quote: "staten skaffer os fred på grund af voldens monopolisering"

role is further supported by the norm of SMLF and traceable in international conventions on the state's role in ensuring security. The legal and political role of the state both enable the monopoly but also uphold certain demands relating to the state's ability to ensure the promised protection (Bobbitt, 2002).

We now dive into the framework that portrays the state's monopoly on violence as transformed, in the sense that it is no longer a monopoly but start to include non-state actors and thereby the SMLF transforms into an oligopoly, with shared power between the state and other actors (Wulf, 2007). Some scholars portray the SMLF as eroded or undermined and *"depict a world where private international security has fundamentally undermined the SMLF by creating a world of legitimate security activities beyond the state; a 'new-medievalism' or coming anarchy where companies compete with states. However, most scholars prefer to discuss transformations"* (Verkuil, 2007 according to Leander, 2010a: 204). The extreme version predicts a scenario where war is privatised to the extent that PMSCs' commercial interests is the driving force for starting and prolonging war (DR (2), 2012). But as Anna Leander also points out, most scholars predict and describe a change in the expectations to the role that states and other parties play in warfare and not a complete alteration with PMSCs controlling violence and war. Bryden and Caparini also address the shift and advocate for a new understanding of the role of the state and its primary domains, where *"non-statutory actors have to be considered part of the de facto security sector governance at the national level"* (Bryden & Caparini, 2006: 4). This could open up for actors such as for example PMSCs and results in not only the state having a say in security sector governance, why one could argue that PMSCs will get a greater influence on national security matters (Leander, 2010c).

How the transformation of the state monopoly of violence is framed is important, as a change in the attitude towards the perceived monopoly may change the legal structures framed around SMLF and thereby affecting both the state and the non-state actors. In general scholars are concerned whether the changing SMLF and increasing privatisation will lead states to be more militaristic and war prone. The role of the state today is therefore closely linked to the idea of SMLF and sovereignty, which helps us understand the unwillingness to employ PMSCs for core military tasks by especially the Danish state. What can be concluded is that there are a lot of different academic views on the matter and there is no agreement on one specific definition. Nevertheless, it is a concept which is applied by multiple actors in a number of settings, both legal and political.

The distinction between 'public' and 'private', 'state' and 'non-state' actors becomes even more diffuse when we introduce the international component in the analysis. One of the players at the international stage is the United Nations, who is neither considered a non-state actor nor a state per se. It can be argued that the UN is *sui generis* and is a good example of the blurry categorisations which make up the discourse. Arguably, the United Nations play a key role in framing PMSCs by creating an international legal

categorisation why we will illuminate the UN and the respective UN Conventions which guide the use of private soldiers. Other non-state actors, such as the International Committee of the Red Cross (ICRC), will be included to show their supporting or at times interpreting role wishing to guide the use of PMSCs. The view of the business itself, represented by the industry association ISOA and the International Code of Conduct, developed by among others DCAF and the Swiss government, will furthermore be presented in order to understand how the PMSC-industry perceives them-self. Thus, we will now take a closer look at the international sphere, which also affects how the Danish military approaches and uses PMSCs.

Chapter 5: The International Framework

The UN, United Nations, can be seen as a norm-entrepreneur and a legitimate player in the global field. States and other actors often refer to the guidelines and code of conducts produced by the UN, why the organisation in this context is analysed as a standard setting agency. We acknowledge the fact that the UN is a huge organisation with various branches and subdivisions but for the purpose of this analysis we choose to look at the organisation as a single unified actor and will therefore use the abridged term the UN. The section illuminates how the UN and other actors take part in constructing and re-constructing the legal structures, which make up a legal framework in which the states and PMSCs act. Whether the states and private entities follow the regulations and guidelines developed by the UN is a question which has been debated at length in International Relations theory, especially in relation to the lack of sanctioning power by the UN. Furthermore, there has been a widespread debate on the issue of handing over parts of national sovereignty to the UN as the idea of the SMLF is arguably maintained today despite of the international political system, international organisations and inter-governmental agencies which have been established. As an example Moesgaard notes in her paper on the '2009 UN Draft Convention on the Use of PMSCs' that states are the ones to impose regulation on their domestic companies, or companies they contract, and that *"[i]t is up to the states to fill out the framework with the legislation they find appropriate"* (Moesgaard, 2011: 1). States are therefore central in deciding which laws apply and not only on exercising force. Because states are key stakeholders when it comes to ratifying and implementing the international legal conventions, it provides them with the power to either act in accordance with, or in violation of, the prescribed rules and thereby alter the existing structures, e.g. existing law. To put it differently, the established international system is organised in such a way that states play a major role in promoting or disclaiming both the already established laws but also whether new conventions are put into play through ratification. While the UN cannot enforce their guidelines and conventions without the states adhering to them, it will here be argued that the UN influences the norms and standards of conducting war or entering the battlefield. An example of how the UN is influential in defining international security and risks is illustrated by DCAF (the Geneva Centre for the Democratic Control of Armed Forces), where Ghebali notes; *"The UN also concluded that international peace and security were now endangered mainly by intra-state conflicts, that state collapse represented a regional and global security threat (...), that armed non-state actors were now able (through terrorism or organised crime) to put at risk the security and good governance of nation-states, and that the victims of post-Cold War conflicts were predominantly civilian populations"* (2006: 213). Furthermore, since the establishment of the United Nations there has been a norm and tradition of

Western states to only wage war when the UN endorsed such intervention – though, there are still examples of states not adhering to this norm¹⁸ (Justitsministeriet, 2012; Forsvarsministeriet (15), 2012).

It is not only states who are opening up for collaboration with PMSCs – the UN has itself changed its stand on PMSCs over the last years. As an example Kofi Anan –the former UN General, has refused to work with PMSCs and been quoted for saying “*we will never collaborate with such mercenaries*” (Jones, 2006) but the UN is working with a lot of different PMSCs today (Moesgaard, 2011; Shameem, 2010) and the discourse defining PMSCs has in many ways changed from that of a mercenary to include corporate legitimate players. Previously, the UN Special Rapporteur was responsible for the oversight on the use of private parties in conflicts. This mandate was created in 1987 by the United Nations to deal primarily with the activities of mercenaries “*in the absence of any procedure of mechanism in the world body to deal with this phenomenon*” (Prado, 2009: 430). The Special Rapporteur was in 2005 replaced by the ‘UN Working Group on the Use of Mercenaries’ (in the following the UN Working Group) which is a collective body of five members working to establish regulations on the use of PMSCs (Prado, 2009) which led to the 2009 UN Draft Convention which we will discuss in the following. Under the UN Human Rights Council, the UN Working Group has been established to monitor the activities of PMSCs in order to ensure they comply with human rights. As Prado states; “*The mandate focuses on human rights and on international humanitarian law. In addition to the international human rights instruments, the working group takes into account international standards such as the 1907 Hague Convention V, the UN Charter, Article 3 Common to the four 1949 Geneva Conventions, Protocols I and II, Additional to the Geneva Conventions of 1949 and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries*” (2009: 433) and therefore builds on existing legal frameworks and structures. The focus of the UN Working Group is twofold. It handles both the issues related to situations of violence committed by people recruited by PMSCs in armed conflicts but also considers the “*possible violations that those private security companies may commit to the ‘security guards’ they have recruited and employed*” (Prado, 2009: 433). Hence, the full responsibility is not solely with the private soldier, as the UN Working Group monitors whether or not PMSC employees are protected and fully equipped for the mission they are going out on. An example of the problem of weak legislation on the PMSCs’ internal procedures is the killings of Blackwater contractors in Fallujah, Iraq, in 2004 (USA Today, 2012). According to the UN Working Group, the incidence showed a lack in the safety that the Blackwater executives were supposed to provide in order to carry out the mission (Prado, 2009). Thus, the regulation of PMSCs is not only focusing on how private contractors act in

¹⁸ The war in Iraq was an example of states waging war without the consent of the UN, which was followed by a great deal of critique. The newly established Irak og Afghanistan Kommissionen is an example of this, as investigations are currently undertaken to ensure there was a legitimate reason for entering the war (Justitsministeriet, 2012; Forsvarsministeriet (15), 2012).

situations of violence in relation to conflict zones but incorporates standards on how the employer of the respective PMSC treats the employee. It stresses the understanding of the PMSCs as business units and not as individual private soldiers (i.e. mercenaries).

The UN is trying to establish international principles that encourage respect for human rights, which is in line with the Montreux Document as it strives to make PMSCs comply with International Humanitarian Law and Human Rights Law (Seger and Spoerri, 2009). The UN's attempt to create regulation guiding the use of PMSCs is closely linked to idea of the state being the sole executor of the legitimate use of force. The Working Group has since 2007 tried to formulate regulation, where both state parties and the UN are gathered *"to discuss the fundamental question of the role of the state as holder of the monopoly of the use of force, the responsibilities of different actors including PMSCs and eventually the adoption of additional controls and regulations at international level"* (Prado, 2009: 431). This shows that the UN is, to a large extend, accepting the guiding principle of SMLF and thereby reconfirms the structures where states are responsible for the use of force. One could discuss the lack of influence by the UN being a deliberate choice of the organisation as it is the sum of its member states and already using PMSCs to a great extent. Banning the collaboration with PMSCs is not the purpose of the 2009 UN Draft Convention on the Use of PMSCs but a clear definition of what is considered a legitimate partnership between PMSCs and other actors is still missing and as Moesgaard notes; *"[i]t is interesting to note that the UN itself lacks an adequate internal oversight system for its use of private military security companies"* (2011: 2). What is certain is that the UN has been active in trying to frame the use of private entities in warfare, whether these are termed as mercenaries or private military and security companies, which will be explored in greater detail subsequently.

5.1 Combatant or Non-Combatant - that is the Question

The legal status of persons involved in war is important for the sanctioning which follows if illegal action takes place. The status of PMSCs - how they are framed or hailed into the structure - influences not only what happens if they are part of military operations, but also whether such companies are used or not by other agents in the structure. Because there is no consensus on the legal status of PMSCs (Prado, 2009), actors in Denmark have been hesitant to use PMSCs in tip of the spear operations, as will be discussed in chapter six. The legal rights of respectively a state army soldier and a private military soldier vary to a great extent. The Law of Armed Conflict (LOAC) use different terms to frame the persons engaged in combat; combatants, non-combatants, and civilians – but a problem of legal status arises when a private soldier is carrying weapons, and maybe even use these, but not employed as a combatant (Blizzard, 2004).

Deciding who has a special status within the legal system is a human construction involving political

motives in the process of framing persons involved in armed conflict. Thus, the variety of soldiers employed in international armed conflicts are either combatants or non-combatants and hence given different legal rights according to their status formally written in their contract. When the Law of Armed Conflict (LOAC) states that a person is either a combatant or a non-combatant, this is not a way the respective person is born with certain personal traits but constructed terms that guide a person's (in this case a soldier's) behaviour. This includes both the actions in the battlefield as well as how individuals are later prosecuted for activities carried out during the war. Specific framings of persons, hence giving people different statuses can have severe consequences for their legal rights and treatment when involved in armed conflicts. The American soldiers fighting in Afghanistan were either privately or publicly employed, some fighting side by side but holding different legal statuses depending on their role as either public or private. A very common critique of using PMSCs is that there is a judicial and jurisdictional gap within the legal system regulating PMSCs (Prado, 2010). If the person working for a PMSC is classified as a non-combatant but in self-defence ends up shooting another person, should one be treated as a combatant or non-combatant based on the prior contract employing the person? For instance Blizzard exemplifies a consequence of giving soldiers different statuses within the legal system by saying that; *"[i]f a soldier kills in war and is captured, he is considered a prisoner of war (POW) and must be treated accordingly. A non-combatant who kills and is captured can be subject to trial and punishment as a criminal"* (2004: 10). Therefore the same action carried out during an armed conflict may have very different consequences depending on which contract the soldier initially signed. How contracts are designed between the state and the PMSC in question is therefore of importance as it both constrains and enables the actions of the private soldiers contracted and engaged in war.

In the 2009 UN Draft Convention on the Use of PMSCs it is stated that some functions are not to be outsourced or privatised. These inherently state functions include combat, engaging in war, carrying and handling weapons, why the act of carrying and handling a weapon should not, according to the definition outlined in the UN Draft Convention (2009), be undertaken by private soldiers. What is often stated as legitimate to use private entities for, in war, are services related to cooking, cleaning and safe guarding key locations and personnel. Therefore, an issue of the legal status of a private soldier arises when the person is contracted to carry and/or handle weapons, as it is the case with e.g. Blackwater, (today renamed as Academi after also previously been renamed Xe (BBC News, 2012)) by the American military (Singer, 2003). The current legislative framework is focused on ensuring that the mentioned 'inherently state functions' remain a state prerogative and *"does not discuss the legal status of the employees of the private military security companies"* (Moesgaard, 2011: 4). Thus, the question of how to frame PMSCs - as combatants or something else - is still present even though the UN Working Group was established in order to account for the lack of PMSC regulation. What has been framed as a 'legal gap' could alternatively be described as

confusion over the categorisation of legal subjects, as a result of blurry lines and changing meanings of the concepts used.

5.2 The Legislative Framework on the Use of PMSCs

In order to investigate how the framing of PMSCs has changed over the years, more specifically from the 1990ies till present day, attention is now given to the legal definitions of respectively a 'mercenary' and a 'Private Military and Security Company' in accordance with international law.

The assumption is that regulation can be seen as a 'tangible' reflection of the underlying norms in the regulating society, it being national or international (Percy, 2007), why we will try to show how the regulation of PMSCs reflects the contextual dominating norms, such as the SMLF principle and other values which exist in the discourse. The societal structures (here represented by the international regulation of PMSCs) both guide and are guided by powerful actors in the discourse. Because actors and structures are reciprocally influencing one another we need to incorporate both an analysis of the regulation of PMSCs – but also show how states and PMSCs themselves use and react on the law in place. The section therefore concentrates on illuminating the contextual and historical legislation of private soldiers. Furthermore, it will be discussed how the actor (in this case a mercenary or PMSC) is given a status as an agent in the structure (Pedersen, 1989) via international legislation, such as the 1989 UN International Convention against Mercenaries (Prado, 2009), referred to in the following as: the 1989 UN Convention on Mercenarism. The subsequent section first outlines the legal definition of a 'mercenary' in the 1989 UN Convention on Mercenarism then we explore how PMSCs are framed in the 2009 UN Draft Convention on the Use of PMSCs. Looking at the 2009 UN Draft Convention, we are aware of the fact that it is not a final version and therefore still open to amendments, nevertheless, it is the latest attempt to create a legal framework for the use of PMSCs internationally and it is broadly used as an internationally accepted reference point by academics, media, international organisations and other actors (Moesgaard, 2011; Prado, 2009; 2010; ICRC; DCAF; ISOA). Secondly, the section will discuss how some of the wording from the 1989 UN Convention on Mercenarism has been re-used in the 2009 UN Draft Convention on the Use of PMSCs and thereby illustrate the varying and continuously changing conceptualisation of a private soldier.

5.2.1 The Shift in International Law on the Use of Private Actors

The legal characterisations of respectively a 'mercenary' and an 'employee of a PMSC' are in some aspects very similar, as we will see below, but the social and legal sanctions that follows from the characterisations differ significantly for the mercenary and the PMSC. Scholars have argued that the reluctance of the international community, and especially Western states, to deal with mercenaries has meant weak and

unclear regulation on the use of PMSCs (Moesgaard, 2011; Percy, 2007).

It can be described as a shift in how private soldiers are framed in international law, more specifically in UN Conventions addressing the use of private soldiers. Because the legal definition of mercenaries is conceptualised as something different from that of PMSCs, the 1989 UN Convention on Mercenarism is not directly applicable to the PMSC-phenomenon and has been framed as “*practically impossible to apply to these new non-state actors*” (Prado, 2009: 440). This shift in the legal definition of a private military person/unit, from a mercenary to a PMSC, indicates that the framing of and approach to using private soldiers in warfare has changed over the last decades. Others have pointed to the same conclusion, saying that “[o]ver time, the Special Rapporteur realised that the problem of Mercenarism was changing and acquiring aggravating characteristics” (Bryden & Caparini, 2006: 215). Interesting are the varying interpretations of whether PMSCs “*in terms of scale and scope of services involved, (...) today are a wholly new phenomenon*” (Seger & Spoerri, 2009: 5) or whether they are still portrayed as ‘mercenaries’. In 1998, the UN Special Rapporteur, Enrique Bernales Ballesteros, advocated that “*given their very composition, PSC/PMCs are ‘mercenary companies which work with mercenaries and carry out mercenary activities’*” (Ghebali in Bryden and Caparini, 2006: 215), which is a perception that has translated into the new millennium.

The international legal instrument which directly addresses the use of mercenaries is the 1989 UN Convention on Mercenarism, which conceptualises and sets the standards for what can constitute as a mercenary. Article 1 of the 1989 UN Convention on Mercenarism presents the following legal definition;

A mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;*
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;*
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;*
- (d) Is not a member of the armed forces of a party to the conflict; and*
- (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.*

Additionally, the “Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977” explicitly states that a mercenary does not have the same rights as a combatant; “*Article 47.1 Mercenaries: A mercenary shall not*

have the right to be a combatant or a prisoner of war". Such legal categorisation of a mercenary and the title of the 1989 UN Convention on Mercenarism (International Convention *against* the Recruitment, Use, Financing and Training of Mercenaries) frame mercenaries as illegitimate actors that are not accepted parties in warfare and their ascribed legal role implies great constraints. Furthermore, because the underlying and contextual norms are influencing the wording of the law in place the different conceptualisations of a private soldier have implicit normative values attached to the definition, which are traceable in international law today. The word mercenary has "*certainly acquired an unflattering connotation. In the general psyche, to be "mercenary" is to be inherently ruthless and disloyal*" (Singer, 2003: 40). The description of a mercenary as disloyal and under no obligation other than to their own economics (Singer, 2003) is one of the reasons for a regulative framework that is *against* the use of mercenaries. Employees of PMSCs, like mercenaries, do not have the right to be treated as combatants and may not have the status as a POW, in case they are captured by the enemy (Blizzard, 2004: 10; Avant, 2005a: 127), which indicates that there is a difference between public and private armies that carries into the debate on PMSCs. Nevertheless, the change from private armies being categorised as 'mercenaries' to now include the category 'PMSCs' has meant a less dismissive stand on the use of private soldiers but in the discourse is an embedded norm that causes a conservative approach to the use of armed private parties in warfare.

Thus, to hire private soldiers has with the 1989 UN Convention on Mercenarism been framed as illegitimate and was therefore often done in secrecy by states (Avant, 2004). This has changed so that contracting PMSCs is now done in a less opaque manner, with the large number of PMSCs in Iraq and Afghanistan as examples hereof. Also, the Article 3.2 of the 2009 UN Draft Convention explicitly differentiates between actors covered by the 1989 UN Convention on Mercenarism and the 'new players', the PMSCs. In the 2009 UN Draft Convention it is stated that: "*The present Convention has no application with respect to those persons or entities covered by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries or by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.*" The article shows how the new 2009 UN Draft Convention differentiates between the concept of a mercenary and that of a PMSC. The different concepts and categorisations are sometimes overlapping and it creates a blurry picture of not only how to legally define a PMSC but also of the other actors (e.g. public and private soldiers), as these roles are often analysed in opposition to each other. For example, the distinction between a mercenary and a public soldier is based on a number of differing legal and economic logics. The UN Working Group states that there has been an "*expansion of the activities of private military and security companies (PMSCs) operating and absorbing the activities that till then had been those of individual*

mercenaries.” (Prado, 2009: 430). This means that the activities undertaken by respectively mercenaries and PMSCs do not clearly differ but the perception of the two actors does. Possibilities of acting as a PMSC therefore gives a more positive audience response compared to that of a mercenary.

Furthermore, *“The norm against mercenary use stems from the idea that mercenaries are financially motivated fighters”* (Percy, 2007: 371) but judging from the definitions made in the two UN Conventions from 1989 and 2009, this is not the whole story. The fact that mercenaries are financially motivated has an important role to play in why they are not seen as legitimate – and it is, as we will see in later chapters with respect to the political framing of PMSCs, framed as the characteristic that differentiates them from the state military. However, article 2(a) of the 2009 UN Draft Convention on the Use of PMSCs states that: *“A Private Military and/or Security Company (PMSC) is a corporate entity which provides on a compensatory basis military and/or security services, including investigation services, by physical persons and/or legal entities.”* The wording ‘compensation’ is used in both conventions. Arguably, the guiding norm on whether the act of ‘compensating private soldiers’ is considered legitimate or not has changed since 1989; in the case of mercenaries, compensation and financial gains are seen as illegitimate reasons for non-state military entities’ engagement in war. Furthermore, in the 1989 UN Convention on Mercenarism the issue of *“material compensation [being] substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party”* (Article 1(b)) is part of the legal framing of a mercenary). PMSCs today are known, in most cases, to be paid more than state soldiers (Jørgensen, 2012; Avant, 2004), which could be seen as the PMSCs being paid excess of that promised to combatants of similar rank in the public armed forces but PMSCs are not necessarily framed as illegitimate based on this excess payment like the mercenaries are. It shows that the perception and sanctioning of the two subject-positions (mercenary and PMSCs) differ, even though there are similarities in terms of financial compensation. An important aspect is the underlying values and norms that frame what is expected of a company or firm (PMSC) compared to that of mercenaries (individuals) and state military units. From the 2009 UN Draft Convention it is clear that there is a difference between the legal definition of a mercenary and a PMSC – and it is also clear that PMSCs are not to be accepted as public army soldiers, as; *“states parties shall define and limit the scope of activities of private military and/or security companies and specifically prohibit functions which are intrinsically governmental, including waging war and/or combat operations, taking prisoners, espionage, intelligence and police powers, especially the powers of arrest or detention, including the interrogation of detainees.”* (Article 8, UN Draft Convention).

Generally, it can be said that it is expected of a company to seek profit and thus focus on financial returns, as famously framed by Milton Friedman as the business of business is business (Friedman, 1970). The generally accepted understanding that companies are profit-seeking agencies is sometimes framed as a

problem in relation to warfare, as there is a strong norm against making a business out of killing others for the sake of financial gains (DR (2), 2012; Markusen, 2001). It can be argued that there has been a *corporatisation* of military services, why the PMSCs are not seen as illegitimate. Embedded in this argument is that implicitly in the structures there is an understanding that companies always seek to optimise the return on investment. In other words, it is not seen as illegitimate for a company to strive for increased revenue and financial gains as that is part of the structures that frame the act of conducting business. On the contrary, mercenaries are in the 1989 UN Convention on Mercenarism portrayed as individual profit-seeking agents, in comparison to public soldiers who are driven by ideals and national commitment (Thomson, 1996; Singer, 2003), which has resulted in a legal framework that frame mercenaries as illegal. In comparison, the 2009 UN Draft Convention depicts PMSCs as corporate entities (Article 2(a)), where profit is a natural component of conducting business, why the acts of PMSCs are perceived as more legitimate. The perception and framing of financial compensation has therefore changed giving the PMSCs a stronger position as a legitimate actor in the discourse, hence meaning a more positive audience response to the ascribed role as a PMSC. A related point can be made in connection to role theory, where assigning a specific status to the subject also means attaching expectations to the individual. Therefore how the private contractors of PMSCs are viewed depends on what is expected from them. Here there seems to be differing expectations to a PMSC compared to a mercenary, based on the 'corporate role' of the PMSC. So even though the PMSC is motivated by the financial gains this is not per se a disqualifying factor, as it is in the case of mercenaries.

Although there has been a shift from the perception of a mercenary as completely illegitimate (1989 UN Convention on Mercenarism) to the perception of PMSCs as less illegitimate, there is still confusion over the categorisation of the private soldiers. Whether or not PMSCs are allowed to kill the enemy in times of warfare has not explicitly been agreed upon, however, the American army hires PMSCs to do so (Avant, 2004) even though this is discouraged by the 2009 UN Draft Convention. A correlated issue is *when* it is legitimate to use force against others, as this varies depending on the contextual situation. Thus, it is not the act of killing in itself that determines the punishment – whether it is a crime depends on the circumstances in which the action takes place. An example of this is the concept of perfidy, described in Article 37, Prohibition of Perfidy; *"It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy"* from the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Thus, it is not per se the act of killing which is perceived as problematic in warfare, but the circumstances in which this action is taking place. The same line of reasoning can be traced in the

distinction between a 'public' soldier and a 'private' soldier fighting, where the private soldier is not entitled to the same legal rights as the public soldier; *"their private status also carries legal uncertainties. Under international law they risk being identified as illegal belligerents"* (Singer, 2003: 163).

As a result of the different interpretations and normative connotations of a private soldier it has proven difficult to agree on which legal category they should be subject to. The person hired by the Private Military and Security Company, as a private soldier, is regarded neither as a civilian nor a soldier (Prado, 2009). This means that they fall out of the constructed legal categories and a so-called 'legal gap' is created. Because employees of PMSCs often *"carry weapons and fulfil essential military functions in war-inflicted areas they cannot be characterized as civilians"* (Prado, 2009: 436). Thus, the perception of the role that PMSCs play in the structure is further complicated by the fact that the definitions of respectively a mercenary and a PMSC do not match the existing constructed categories of a 'combatant', 'non-combatant', or 'civilian'.

The titles of the UN Conventions (1989 and 2009) each indicate the shift in perception and use of private soldiers in armed conflicts. The 1989 UN Convention on Mercenarism speaks of regulation *against* such use, whereas the 2009 UN Convention focuses on *regulating, monitoring and oversight* of private soldiers. The distinction is important as the expectations towards the agent changes significantly, from being an illegitimate actor (mercenary) to an agent with certain judicial claims (a PMSC). There are therefore great constraints connected to the connotation 'mercenary'. The new legal framework, which portrays private soldiers as PMSCs, changes the expectations to the actor. PMSCs are in the 2009 UN Draft Convention introduced as legal players in the international environment and recognised as actors which should be *monitored and regulated*, like the way we talk about other legal players in the market (e.g. banking institutions). Nevertheless, it is *"necessary to perceive PMSCs as a highly specific field of exporting services which require constant supervisions by states, civil society and the United Nations and not merely as commercial exports"* (Prado, 2009: 438). This illustrates that the services provided by PMSCs in the security sector is framed by legislative groups, such as the UN Working Group, as special and important to monitor and regulate – but not necessarily as unlawful. This shift would according to IM theory entail that the behaviour of agents in the discourse could change as the audience response has altered from a negative stand towards private players in warfare to a more open approach. It means that actions that were previously regarded as illegitimate and not suited for the public to know, i.e. to use private soldiers, would now not be concealed from the audience but openly played out, due to the legitimization of the agents.

5.3 The 'Legal Gap'

An issue represented by the connotation 'the legal gap' relates to the missing agreements on which jurisdiction should apply when dealing with PMSCs in international conflicts. It has proven difficult to

determine which national law should abide when problems with PMSCs arise (Singer, 2003; Ghebali in Bryden & Caparini, 2006). The PMSC may be of a different nationality than the contracting state and the operations are in many cases carried out in countries that are foreign to both the contracting state and the PMSC. Which legal jurisdiction is natural to call upon? Is it the law of the contracting state, the country of residence of the private contractor, or the country where the conflict is taking place? There is no clear cut answer to the question but a lot of polemic discussion about it (Singer, 2003; Moesgaard, 2011) which has led to a framing of the regulatory framework as having a legal gap for PMSCs to operate in. The legal gap points to the lack of international standards and cohesive regulation on how to hold respectively PMSCs and states responsible for actions undertaken in combat by these private contractors. Moesgaard talks about the issue as a 'loophole' but regardless the definition, there are legal issues to deal with, why we in the following will talk about the 'legal gap'. To accommodate for the difficulties of aligning and determining which national law should apply, the international community – led by the UN Working Group – has tried to establish such international standards (Prado, 2009). Moesgaard describes this initiative as the *"latest of very few international attempts to curb the negative effects of the increased use of private companies in military and security operations"* (2011: 2). José L. Gomez del Prado, who is one of the five members of the UN Working Group, also stress the need for more clearly defined legislation: *"New international regulations, most likely in the form of a new UN Convention (...) are needed in order to bring PMSCs fully out of the legal 'grey zone' in which they have been operating"* (Prado, 2009: 429). The UN Working Group encourages the *"elaboration and adaptation of legally binding instruments at the national, regional and international level. [However] this (...) runs the risk of creating a responsibility vacuum – when responsibility is shared, no single actor is responsible."* (Moesgaard 2011: 1). This means that even though the legal gap is addressed it creates a problem of a responsibility gap, as no single actor is responsible. The problem is that the 2009 Draft *"UN convention does not apply to the private military security companies as such – ratification obliges states to impose regulation on their domestic companies or companies with which they make contracts"* (ibid). This addresses the overarching structures of the international legal system, where states act as the intermediary between the international community and the PMSCs operating. In the following it will be argued that the UN (especially the UN Working Group) acts in accordance with the established structures that centre on the role of the state in supporting the legal framework. The status and positions of respectively the state, the UN, and PMSCs in the structure are influenced by the formal and informal rules that make up the international system. To put it differently, the written regulation where agents' roles are legally defined influence how agents are able to act, as it guides what is perceived as legal or illegal. The legal framework thereby enables or constrains states, PMSCs and other agents' abilities to act. The majority of international conventions, and other international law texts, centre on the state's responsibility in assuring compliance with internationally established rules in relation to the use of PMSCs.

An example of this is the first article (Art. 1.1) of the 2009 UN Draft Convention on the Use of PMSCs, which states that; *“the purpose of the present Convention is to reaffirm and strengthen the principle of State responsibility for the use of force and to identify those functions which are, under international law, inherently governmental and cannot be outsourced”* (United Nations (2), 2009).

The fact that the 2009 UN Draft Convention restates and draws attention to the state’s responsibility shows that the UN accepts the state as a key legal player and re-confirms the state’s position as the enforcer of law in the discourse. The acceptance of the state’s role simultaneously enables its position in the structure. Instead of questioning the structures that enable the role of the state, as the legal intermediary and the agent who enforces law, the UN is questioning the way that states handle this responsibility. The UN is thus focused on trying to influence states in their way of behaving in relation to the monitoring and oversight of the PMSC industry. Hence, the legal framework for the use of PMSCs in military operations is embedded in the already existing structures, which entails state regulation, and shape how the international community deals with PMSCs. Furthermore, it has been argued that regulation at the international level may not be *“possible or even desirable”* (Moesgaard, 2011: 1) because of the different and sometimes conflicting political interests between the individual states (Jørgensen, 2012). Thus, it may be close to impossible to create universal definitions and legal standards for the use of PMSCs that all states would adhere to. This raises the important question, namely, whether international law can close the regulatory gap by addressing the state’s responsibility instead of creating a legal framework where PMSCs can be sanctioned by other parties than the state.

If the possibility of prosecuting PMSCs, in case they breach human rights, rests solely on the state, the UN depends on the states’ ratification of the UN Conventions and states adopting the established rules. This points to a discussion of the UN’s lack of sanctioning power, which is often framed as a zero-sum struggle between states and international organisations, and have been discussed at length by International Relations theorists. The idea of a zero-sum game between the member states and the UN will not be used in this framework. Instead we argue that the ability to affect the structures of the discourse has been highly in the hands of *both* states and international legislative and standard setting bodies, such as the UN and the ICRC. These organisations are active in constructing and (re-)affirming internationally governing norms and standards which all affect the structures that make up the regulative framework in which PMSCs operate. Thereby, the UN is an agent in its own right and not only subject to states’ acceptance and control. It opens for an analysis where the UN affects the international regulatory structures and thereby influences the definitions and framing of PMSCs. The UN is therefore not without influence, however, it does not possess the same means of sanctioning as available to states. We say this to stress that legislation is a construct, which reflects the dominating political and social norms, and that sanctioning should not be defined

narrowly as only including hard power means of economic or military sanctions. Instead, we here present a conceptualisation of 'sanctions' which is rooted in a constructivist understanding where sanctions both include a legal aspect but also the agent's perception of what is right to do and what will happen if one goes against the established norms and values, as described in relation to role theory.

The confusion over whether or not the established categorisations and legal definitions that exist are sufficient is further compounded by the differing interpretations of the existing law. As an example, the ICRC has a different view on the legal gap for PMSCs to operate in. They dismiss the notion of a legal gap as they say adequate law already is in place and instead talk about the need for reminding the international community of the existing legal obligations. They state; *"For the first time, an intergovernmental statement clearly articulates the most pertinent international legal obligations with regard to PMSCs and debunks the prevailing misconception that private contractors operate in a legal vacuum"* (Seger & Spoerri, 2009: 5).

Historically, the ICRC has played a role in the construction of the International Humanitarian Law, the Geneva Conventions, that ensures the rights of combatants, non-combatants and prisoners of war, and are related to Henry Dunant, who presented the ideas in 1862 (Dansk Røde Kors, 2007).

As the end of the Cold War changed the way war is conducted, the ICRC has been engaged in establishing new rules applicable to these new modes of asymmetrical wars with many being civil or intra-state wars. The activities of PMSCs *"particularly in Iraq and Afghanistan, which operated in situations of international armed conflict without accountability, galvanised the government of Switzerland and the International Committee of the Red Cross (ICRC) into launching a process of consultations engaging states, PMSCs and non-governmental organisations"* (Prado, 2009: 441). These consultations had the aim of demanding states under IHL and HRL to conform to good practices and govern the activities of PMSCs. The process resulted in the Montreux Document¹⁹ which addresses states and non-state actors, such as International Organisations, NGOs, the private military and security industry and other relevant actors. The Montreux Document, which is developed mainly by the International Committee of the Red Cross with the engagement of governmental experts from a range of countries (including USA and the United Kingdom of Great Britain), is an attempt to recall *"existing international legal obligations of states regarding private military and security companies."* (Seger & Spoerri, 2009: 11). It was presented at the UN Security Council in 2009 and the ICRC is working with the UN in conceptualising and influencing norms and regulations on the use of PMSCs. Because the Montreux Document is a document which 'recalls' hitherto established law it can be seen as a reframing of the already established regulation. In other words, the Montreux Document can be used as a source to analyse how the UN Conventions (and other documents which deal with the use of private contractors) are understood, interpreted and framed by actors in the international community.

¹⁹ The Montreux Document is also known as the 'Pertinent International Legal Obligations and Good Practices for Related States to Operations of Private Military and Security Companies during Armed Conflict' (Prado, 2009: 441)

A key issue is that not all countries, specifically Western states, have signed and ratified the UN Conventions dealing with respectively mercenaries and PMSCs – neither Denmark, the USA nor the UK, have signed or ratified these conventions (United Nations (5), 2012). This can be seen in the light of states having already surrendered some of their national sovereignty by signing the Geneva Conventions and other such documents and treaties, hence ratifying e.g. the 1989 UN Convention on Mercenarism could lead to a further loss of sovereignty, why one could argue that they would be inclined to avoid signing. In addition to the UN Conventions, the PMSC industry has created a voluntary code of conduct (Moesgaard, 2011), which can be understood as the business environment's response to the international regulatory framework and states might use this code of conduct as an excuse of already complying with established norms and guidelines.

There are various actors assigning different roles to PMSCs and the DCAF is an international foundation whose mission is to assist the international community in promoting good governance and contributes to enhancing security sector governance (SSG) through security sector reform (SSR). As DCAF states on their website; *"The Centre's work to support effective, efficient security sectors which are accountable to the state and its citizens is underpinned by the acknowledgement that security, development and the rule of law are essential preconditions for sustainable peace"* (DCAF (1), 2012). Like the UN and many other international organisations, the DCAF has no hard power to force states to abide to the established rules and regulations on the use of PMSCs. Though, it will here be argued that organisations such as DCAF are influencing the norms in the security discourse, as they assist legislative bodies in the UN with knowledge in the field of national security (ibid). Through DCAF's established Codes of Conducts, which was developed after the Montreux Document (ICoC (2), 2011), the organisation reemphasises the importance of International Human Rights, supporting the UN established norms. It has been stated that the use of PMSCs poses significant accountability challenges why the Swiss government has supported initiatives that aim to both clarify international standards for the industry, as well as to improve oversight and accountability of the industry. Since the Montreux Document was finalized, the PMSC industry embarked on a process to take standard-setting and oversight further by developing an International Code of Conduct (ICoC) for their services (ICoC (2), 2011: 2). Therefore the DCAF advocates for PMSCs to follow the established rules and norms in the international community, thereby interpellating PMSCs into the already existing structure by recognising them as an agent in the discourse. The role ascribed to PMSCs by DCAF therefore includes expectations of behaving in accordance with applicable law and codes of conducts (ICoC, (1), 2012). Giving persons involved in armed conflict a specific role also means expecting them to behave in a certain way. Aspects of role theory have been used in order to discuss why the actions of private contractors are seen as different from traditional military soldiers and to understand how expectations influence the

actions of agents. An example of this is how soldiers, who have previously been part of the state military and are now employed by Private Military and Security Companies experience a change in a more negative attitude towards them (Singer, 2003). Because of the incidents with PMSCs in e.g. Fallujah, Nisour Square, and Abu Ghraib in Iraq people have a negative view on PMSCs, which also affect their attitude towards soldiers employed by PMSCs. This underlines the different expectations that are bound to being a soldier in the public military and a private military contractor.

As the new 2009 UN Draft Convention not directly applies to the PMSCs (but addresses the state's responsibility) there has simultaneously been signed a voluntary code of conduct by 58 companies developed by the industry of PMSCs themselves. This code of conduct urges companies to respect human rights, train their personnel and report breaches of the code but critics highlight the point that it can be seen as an attempt to avoid further regulation (Moesgaard, 2011: 2). As Moesgaard notes, the 2009 UN Draft Convention on the outsourcing of military tasks may turn into an excuse for doing nothing as the *"UN Convention does not apply to the private military security companies as such – ratification obliges states to impose regulation on their domestic companies or companies with which they make contracts"* (2011: 1). It is therefore the states, and not the UN directly, who are responsible for enforcing the regulation on PMSCs. Nevertheless, the PMSC industry does play a role in the formulation of standards, why the following section will take a closer look at the PMSC industry. It will take point of departure in the International Stability Operations Association (ISOA), in order to illuminate how the industry itself portrays and interprets the role of the PMSCs in the discourse.

5.4 The Role of the PMSC Industry

We accept that the companies providing military and security services consist of a very heterogeneous group, both in terms of services they provide but also in relation to whether or not they follow the established Codes of Conducts and established rules of engagement (like the Montreux Document). We will here focus on one of the industry players in the discourse and try to show how the PMSC industry, through public statements and Codes of Conducts, asserts themselves in the established political and legal structures. The ISOA, formerly known as the International Peace Operations Association (IPOA), was established in 2001 and is a Washington-based group that represents more than 50 companies and aid organisations that work in conflict, post-conflict and disaster relief zones (ISOA (1), 2012). The ISOA can be seen as one of the key players from the PMSC industry when it comes to the formulation and development of a code of conduct for private military and security businesses (Singer, 2003). Furthermore, it has been argued that the market for private contractors has evolved from consisting of solitary mercenaries into a more sophisticated unified corporate player, acting in the market structures; *"Another sign of emerging*

market maturity is that a new industry trade association, International Peace Operations Association (IPOA), recently formed to lobby on behalf of the military firms” (Singer, 2003: viii). We do not claim that the organisation representing the PMSC industry, discussed in the following, is representative for all private military and/or security companies. Nevertheless, the organisations and associations that represent the private military and security industry, such as the International Stability Operations Association (ISOA), will be used as an example of how the PMSC sector is positioning itself in the structure – still acknowledging that not all PMSCs are covered by the ISOA.

According to the ISOA, the companies that are part of the Association are obliged to follow the IPOA (now ISOA) established Code of Conduct (ISOA (1), 2012).

Additionally there has been developed a multi-stakeholder International Code of Conduct (ICoC), including the industry, to make PMSCs comply with international standards such as IHL and HRL. To follow the International Code of Conduct you need to be a Signatory Company which means operating *“in accordance with applicable laws and regulations, and in accordance with relevant corporate standards of business conduct”* (ICoC (3), 2010: 3), respecting human rights, undertake transparency and being certified as a Signatory Company (ICoC (3), 2010: 4). Certification will most likely be based upon the International Standardization Organization (ISO) process and is *“the opportunity for companies to get credit for being responsible contractors”* (ISOA (4), 2011: 12). The focus is here on responsibility and has been a key aspect in outsourcing or privatising military tasks (Jørgensen, 2012), as *“the lack of rules governing the activities carried out by PMSCs created a culture of impunity”* (Shameem, 2010: 2), where responsibility and accountability for actions by PMSCs is part of that. The PMSCs that are signatory companies to the International Code of Conduct are just like the ISOA members described as *“a diverse group – ranging from small- and medium-sized service providers to the largest in the sector. Some specialize in governmental services as well as protection services for extractive industries”* (ISOA (4), 2011: 13). Thus, the PMSCs make up a heterogeneous group despite the similarity of being a signatory company by signing the International Code of Conduct.

The ISOA Code of Conduct and the ICoC are steps taken by the industry to mitigate the negativity that arises because of the problems of holding PMSCs accountable and responsible.

As the signatory companies follow the established Codes of Conducts one could argue that the members are those companies that strive to differentiate themselves as much as possible from the ‘mercenary’ categorisation. By explicitly showing that you are a member of the ISOA and/or adhering to the ICoC could therefore help improve the negative view on the PMSC industry and move away from the associated view of being an illegitimate mercenary. Furthermore, it differentiates the ISOA related companies from the ‘rouge’ PMSCs, being those companies that do not follow the established Code of Conduct, which creates a

pressure within the industry itself to comply with the rules outlined by ISOA and the ICoC. At present there are 464 Signatory Companies promising to respect the ICoC and human rights (ICoC (1), 2012).

5.4.1 PMSCs According to the Industry

The framing, or as Althusser would put it 'hailing', of PMSCs has been done by actors external to the PMSC itself, such as the United Nations, states, the ICRC, and DCAF. We now turn to an analysis of whether (representatives of) the PMSC industry complies with the 'role' that it has in relation to the established international framework on the use of PMSCs. The fact that the private military and security companies are hailed as legal entities, who have specific obligations assigned to their status as an agent can be seen as an empirical example of interpellation. It *"transforms' the individuals into subjects (it transforms them all) by that very precise operation which I have called interpellation or hailing, and which can be imagined along the lines of the most commonplace everyday police (or other) hailing: 'Hey, you there!'"* (Althusser in Blunden, 1971). By constructing a legal definition of the PMSCs, and thereby determining their responsibilities and boundaries, they are hailed, or interpellated, as subjects into the legal structure, where the notion of interpellation *"points to the fact that concrete individuals recognise themselves in these representations of the world"* (Weldes, 1996: 288). By looking at the ISOA Code of Conduct and the ICoC, it can be argued that the PMSC industry adhere to the role by behaving in compliance with the established norms, made tangible in written legislation. For example, in the ISOA Code of Conduct it is stated that; *"All Rules for the Use of Force shall be in compliance with international humanitarian and human rights laws"* (ISOA (1), 2012). Thus, the numbers of PMSCs that are represented by the ISOA recognise themselves in the representations of the world, which is part of a process where PMSCs are hailed as actors in the discourse. There are different views on whether or not an agent becomes a part of the structure if the agent does not itself acknowledge and accept the subject-position it is ascribed. Althusser and Weldes describe the interpellation as a dual process where the agent is hailed by other actors and then interpellated by the very action of recognising it is being hailed, and thereby becomes part of the structure (Althusser in Blunden 1971; Weldes, 1996).

In this context we have focused on the creation of subject-positions and hence the framing of an agent. The aspect of recognising the hailing is hard to verify, and would entail a series of interviews with the many and different companies in the private military and security industry. The ISOA is in this paper used as a representative of the industry but we acknowledge that some companies may not accept the role it has been assigned through international political and legal standards (e.g. the 2009 UN Draft Convention, Code of Conducts, Montreux Document etc.). The aim is not to establish whether or not PMSCs accept their role in the structure but on the international standards and legal definitions that frame PMSCs and how this affects the Danish military's approach to the PMSC industry in connection to international military

operations. Thus, we will follow the reasoning presented by Jakobsen in relation to role theory, who argues that roles stemming from what is termed as 'identity groups' (such as 'contractors' or 'soldiers') are based on the dominating discourse, which means that *"you are seen and treated as a representative of the groups you are a member of, whether you are aware of it or not"*²⁰ (2004: 110). Hence, whether the individual PMSC accepts its role is not the focus of attention, instead the persons employed by private military and security companies become representatives of the PMSC industry and thus ascribed certain traits.

So what does the industry say itself? The ISOA proclaims that it is based on *"a clear recognition that the private sector can play a larger, more cost effective role in fundamentally improving peace and stability operations worldwide"* (ISOA (1), 2012). The role of the private industry in supporting state militaries, which has been highly promoted by USA officials (Singer, 2003), is here captured and used as an argument for the continued and increased use of private contractors in military operations. The Association is thereby framing and emphasising the cost effectiveness of using private contractors in international military operations and encourages the use of PMSCs in what is referred to as *stability operations* worldwide. They thereby themselves try to define the scope in which they operate – not questioning whether or not they should play a role but what role they should play. It is further stated by the ISOA that the *"private services are just too valuable and cost-effective to ignore."* (ISOA (1), 2012) thereby trying to assert their importance in the discourse. In an attempt not to be ignored by the other agents in the structures that frame international military operations, they try to influence key decision-makers through advocacy work – *"ISOA is engaged with policy-makers and key government agencies on issues that affect the industry every day and all across the globe"* (ibid). The organisation not only develops Codes of Conducts but actively, like other players in the discourse, tries to influence the structures framing the use of PMSCs, by 'consulting' policy-makers.

As previously discussed in relation to role theory what the agent perceives as possible or not depends on the understanding it has of what is socially acceptable. The Association directly addresses the importance of 'acceptance' of an agent's presence and its work in a particular context by stating that *"Acceptance should not be assumed, as it is based on how an organisation is perceived more than on the tasks it performs"* (ISOA (2), 2012). The fact that the ISOA is not only active in defining code of conducts but also interested in the perceptions of PMSCs, referring to whether one accepts them or not, shows that the ISOA is not only concerned with the regulation of the industry but confirms that they are also occupied with how PMSCs are *perceived* by the other agents in the structure. Analysed in relation to role theory, the ISOA as an actor in the discourse tries to avoid sanctions that follow from being perceived as illegitimate actors,

²⁰ Original quote; "Det særligt interessante er, at man bliver set og behandlet som repræsentant for de grupper, man er medlem af, hvad enten man er bevidst om det eller ej."

who do not follow the established rules.

5.4.2 The International Code of Conduct

As previously mentioned, beside the ISOA Code of Conduct an International Code of Conduct has been developed as an industry-led multi-stakeholder approach by among others the Swiss government. The ICoC was established to fill the regulatory gap as *“the Montreux Document could only partially respond to calls from the PSCs themselves for better guidance and oversight of their activities on the ground”* (ISOA (4), 2011: 9). It is made up by the private security company industry, governments and civil society. As Nils Rosemann, who is part of the Swiss Federal Department of Foreign Affairs, states *“personnel of private security providers lose their civilian status by engaging in hostilities during armed international conflict and when properly incorporated into armed forces they may even fully graduate to combatant status, allowing them to enjoy impunity from both civilian and military law. The ICoC dissolves this legal gray area”* (ISOA (4), 2011: 14). Sarah Holewinski, the CEO of CIVIC working with innocent victims in conflicts, further argues that there is a need for a committee being the watchdog to monitor that contractors who have signed onto the ICoC are fulfilling their obligations and follow the rules. She states that; *“Some civilians become targets of rogue contractors, while others get caught up in the crossfire. It is easy to focus only on the former, because the solution is easy: a contractor has obviously violated not only the ICoC, but also domestic and international laws”* (ISOA (3), 2011: 29). The established ISOA CoC and International Code of Conduct represent a development, however, some of the actors in the discourse acknowledge that it is not a perfect solution (Colonel Christopher Mayer, former Chief of Civil Military Coordination for the UN Mission in Liberia (ISOA (4), 2011: 8)). The UN Working Group has also recognized the need for standard-setting rules for PMSCs (Jenkins, 2011) but on the other hand been very critical of the established Code of Conduct as; *“it cannot address the essential human rights issue of accountability for those PMSCs and their employees who commit human rights abuses. In addition, the voluntary nature of the Code of Conduct means that it cannot meet the goal of ensuring that all PMSCs are covered”* (United Nations, 2011: 3) which points to the issue of voluntary membership. This view is opposed by Nils Rosemann who states that *“[s]uggesting that these codes of conduct are “soft law” wrongly suggests that they do not bind those involved and that their violations have no consequences”* (ISOA (4), 2011: 14).

It can be argued that in an attempt to meet and circumvent the critique which depicts PMSCs as similar or equal to mercenaries, the ISOA developed the Code of Conduct in collaboration with NGOs and other stakeholders (Moesgaard, 2011). Moesgaard continues to argue that *“the establishment of the code [of conduct] is nothing more than an attempt to avoid further regulation, and it may have exactly that effect in the states that depend most on outsourcing”* (Moesgaard, 2011: 2). It is a statement which is hard both to validate and disprove. What is essential is that the formulation and persistent enforcement of the ISOA

Code of Conduct and the ICoC can be seen as attempts to be recognised as a legitimate player in the discourse, based on the ICoC and ISOA statements highlighted in this section.

Whether or not PMSCs are seen as legitimate is of great importance to the parties contracting them, why we in the next section will focus on the context of Denmark and how PMSCs are used here. We will in addition include an analysis of how PMSCs are used internationally and how this affects the Danish Defence's use of them as the military allies (the UK and the USA) are using PMSCs differently than Denmark.

Chapter 6: The Danish Context

How Danish politicians and non-state groups treat political issues is today largely embedded in an international setting, where actions and statements are no longer only made within the Danish territorial borders but have consequences internationally. The Muhammad Cartoon Crisis is one of the most vivid examples of how actions within a Danish context affect and are affected by the international sphere. The Danish commitment and engagement in the UN, international trade organisations, and peace alliances all affect how Danish politics is played out. Thus, Denmark is by no means isolated from the surrounding world but influenced by the international structures which are, to a large extent, recognised by actors in Denmark. An example is how the UN is described as *“the organisation that constitutes the framework for the international use of force, and functions as the agent that the countries in the world - including USA - go to when they wish to test the legality and legitimacy of military actions.”*²¹ (Radikale Venstre, 2003). Furthermore, the dominating norms and customs in the international community affect the structures that frame the legal categorisation of private soldiers, i.e. the differentiation between mercenaries and PMSCs, where the *“UN is the central framework for the development of an international judicial order”*²² (Forsvarsministeriet (2), 2004: 1). How PMSCs are legally defined in the international context, via the already discussed UN Conventions (1989 and 2009), and how other cooperating countries approach and use PMSCs, is therefore important to the Danish political framework and consequently for the Danish military’s arrangement with PMSCs. Looking at the international context and legal framework, the idea of SMLF and the distinction between public and private are important factors to keep in mind when understanding the framing of the use of PMSCs in the Danish political context.

As the military can be seen as a hard power means that the state is able to utilize, the political framework is essential for how PMSCs are used. Therefore, the Danish Defence will in the following be analysed as an agent that is subject to decisions made by the political parties as, *“the direction of the Danish Defence is controlled by political agreements”*²³ (Forsvarsministeriet (1), 2012), which are made tangible in the respective Defence Agreements²⁴. Likewise, it has been argued that *“the decision of privatising a military service basically is a political choice”*²⁵ (Henriksen, 2008: 31), why the political framing of PMSCs is essential to the analysis. However, qua the Chief of Defence’s advisory position to the Minister of Defence (Forsvaret (3), 2012) we here argue that decisions made in the Danish Defence Command (Forsvarskommandoen) reversely influences the political decisions having to do with military intervention. During the writing of this thesis, new and important political changes to the organisational structure of the Danish Defence have

²¹ Original quote: *“er den organisation, der sætter rammer for den internationale magtanvendelse og som verdens lande – også USA – går til, når de ønsker at få afprøvet legaliteten og legitimiteten i militære aktioner.”*

²² Original quote: *“FN er den centrale ramme for udviklingen af en international retsorden”*

²³ Original quote: *“i Danmark styres forsvarets udvikling af politiske aftaler”*

²⁴ Forsvarsforlig

²⁵ Original quote: *“en beslutning om at privatisere en militær ydelse grundlæggende er et politisk valg”*

been presented by the current Minister of Defence, Nick Hækkerup, who announced that a grand restructuring of the Danish Defence will take place, which implies that the Defence Command will become part of the Danish Ministry of Defence (DR (4), 2012). One of the reasons for the restructuring of the Danish Defence Command in its current form is in order to meet the budgetary cuts (TV2, 2012). The new structure may result in a closer collaboration between military representatives and politicians, but before the restructuring has taken place and has been implemented all such analysis will be speculative. Thus, this analysis takes point of departure in the current framework, which constitutes the Danish Defence Command as an institution different from the Danish Ministry of Defence.

An example of the collaboration between politicians, civil- and military representatives is the established Danish Defence Commission of 2008, which influenced the future direction of the Danish Military (Forsvarsministeriet (10), 2012). The Defence Agreement 2010-14 refers to the recommendations made by the Danish Defence Commission and states that *"the security political point of departure for this agreement is based on the security policy elucidation in the report made by the Defence Commission in 2008"*²⁶ (Forsvarsministeriet (3), 2009: 2). This implies that the Danish Defence is able to indirectly influence and affect the political decision-making process, even though the choice of whether or not to outsource core military tasks is a political one. The political structures will here be analysed by looking at different statements concerning the use of private soldiers, made by a number of Danish politicians and ministries and additionally include perspectives from the Danish Defence Agreements, especially the newest version that covers the period 2010-2014. The aim is to show, by building on the categorisations illuminated in the previous chapters, how the diffusion of concepts at the international level is also traceable in the Danish political context, especially relating to what constitute 'core military tasks' and how this affects the use of PMSCs by the Danish Defence.

6.1 The Political Framing of PMSCs in a Danish Context

*"It is completely out of the question to hire privates for combat actions"*²⁷ (...) *I don't think it should be legal at all to outsource tasks involving the carrying of weapons*²⁸ (John Dyrby Poulsen in Information (2), 2008).

The Danish debate on the use of PMSCs in international conflicts has in many ways been polemical and to a large extent adopted the 'for or against' dichotomy and focused on 'where to draw the line' (Henriksen, 2008). Historically, Denmark has not had as strong a 'privatisation culture' as in the UK and the USA and it

²⁶ Original quote: "Det sikkerhedspolitiske afsæt for denne aftale baserer sig på den sikkerhedspolitiske udredning i beretningen fra Forsvarskommissionen af 2008."

²⁷ Original quote: "Det er fuldstændig udelukket at hyre private til kamphandlinger"

²⁸ Original quote: "Jeg mener slet ikke, at det skal være lovligt at udlicitere opgaver, hvor man skal bære våben"

has been argued that Denmark is *“widely perceived as semi-socialist”* (Christoffersen & Paldam, 2006: 2). This means that the Danish state carries out activities which in the UK and the USA to a larger extent are handled by private parties and can be seen as being part of the New Public Management trend within the government (Greve, 2002). The health- and educational sectors have examples of this, but it is also the case within the sphere of national security where the USA is one of the leading countries when it comes to using PMSCs in military operations (Shameem, 2010), with Blackwater as one of the best known examples. Interestingly, Paldam and Christoffersen have argued that *“privatization is little researched in Denmark, and nobody has ever made a list of what has been privatized”* (Christoffersen & Paldam, 2006: 2). One possible explanation could be the fluid and overlapping use of the concepts capturing the aspect of decentralisation, where ‘privatisation’ is often (re)framed and discussed as a Public-Private-Partnership (PPP), and within military affairs, simply as a *“coordination of civil- and military actions in international operations”²⁹* (Forsvarsministeriet (9), 2004), which further proves the point of the blurry lines between public and private domains. Even though Denmark is not a pioneering country with regard to privatisation of perceived state domains, the announced budgetary cuts have sparked the debate on the use of PMSCs in military operations and could lead to an opening on the use of PMSCs which, amongst others, the former Chief of Defence Tim Sloth Jørgensen has advocated for. As a response to the global financial crisis the proposed financial bill, developed by the preceding government (DF, V, and K), declared a decrease in the spending directed at the Danish military with two billion DKK beginning in 2015 (Finansministeriet, 2011: 11). Since then it turned out that the budgetary cuts will be even more significant than previously announced, which means that the austerity will amount to three billion DKK over the coming years (Berlingske (1), 2011; DR (3), 2011). This means that the Danish military faces financial cutbacks and, at the same time, a political demand for ongoing military engagement internationally, as *“the demand for the Danish contributions in international operations will not decrease (...) which emphasises that the overall operational capabilities of the Armed Forces should be sufficiently robust and long-lasting to support and maintain a long-term international commitment”³⁰*. (Forsvarsministeriet (3), 2009: 3). Thus, international operations will over the coming years continue to be a central component of the Danish military agenda but with less money to meet the costs. In such a situation it may be necessary to introduce PMSCs in the portfolio as; *“you have a Defence which is capable of solving the majority of the tasks. But there comes a time when the demand increases (...) I think that is when it [the use of PMSCs] starts to get interesting -*

²⁹ Original quote: *“samtækning af civil og militær indsats i internationale operationer”*

³⁰ Original quote: *“efterspørgslen efter danske bidrag til internationale operationer ikke vil blive mindre (...) dette understreger behovet for, at forswarets operative kapaciteter samlet set bør være tilstrækkeligt robuste og udholdende til at understøtte og opretholde et langvarigt internationalt engagement”*

*because of the capacity constraint.*³¹ (Jørgensen, 2012). This will be discussed further in relation to how the Danish military approaches and uses PMSCs. Before we embark on such an analysis, the section below further elaborates on the political framing of PMSCs in Denmark.

In contrast to the strong comment set forth by the Social Democrat John Dyrby Poulsen, the Danish political party Radikale Venstre submitted a reform proposal in 2003, directed at the Danish government, focusing on how to optimise the organisational structures of the UN. The proposal opened for a state support of private military companies, or mercenaries, to fulfil military tasks connected to UN operations. In the proposal it is stated that; in situations where the UN member states fail to provide the needed military resources, it should be possible to *“engage (respectable) private military companies (PMCs) in peace operations until the regional organisations and the UN mobilise the capacity to solve the peacekeeping/-building tasks. Professional mercenaries in UN operations must be subject to strict criteria, international legislation, including the Geneva Conventions*³²” (Radikale Venstre, 2003: 4). Interestingly, Radikale Venstre uses both the terms ‘mercenary’ and ‘private military company’ in the proposal without differentiating between the two. An explanation hereof could be that the proposal was presented in 2003, and the international conceptualisation of a PMSC, presented in the UN Draft Convention on PMSCs, was not developed until 2009. Nevertheless, the fact that the proposal contains the word ‘mercenary’, would make it practically impossible to include private soldiers in such operations, as the use of ‘mercenaries’ was banned by the UN already in 1989 (1989 UN Convention on Mercenarism). The Radikale Venstre does therefore not distinguish between the different categorisations of respectively a mercenary and private military companies, which could explain part of the critique they received from this proposal by for example Jakob Næsager who claimed Radikale Venstre was desperate and abhorrent when proposing using private actors in warfare (Næsager, 2003). It further indicates that in the Danish political context there is, like at the international level, a haphazard use of the concepts that constitute the private soldiers such as mercenaries, private contractors, military contractors, security personnel and combatants just to mention a few. The lack of agreement on whether PMSCs are (new) mercenaries or a new phenomenon, is captured in the way the incumbent Minister of Development Cooperation, Christian Friis Bach, described the shift in the role of the private soldiers as *“since the end of the Cold War, some of the professional mercenary troops got new roles and assignment*³³” (Politiken (5), 2003). Furthermore, the pre-assumptions and expectations attached to the categorisations of state and non-state actors (e.g. who is allowed to conduct war or to carry

³¹ Original quote: “Man har et forsvar, der kan løse de fleste opgaver. Men der kommer et tidspunkt hvor kravet bliver større (...) der er det, jeg synes det begynder at blive interessant - fordi det er en kapacitetsbegrænsning.”

³² Original quote: “at engagere (anerkendte) private militære firmaer (PMCs) i fredsoperationerne indtil de regionale organisationer og FN selv får kapacitet til at løse de fredsbevarende/skabende opgaver. Professionelle lejesoldater i FN-operationer skal være underlagt skrappe kriterier, international lovgivning, herunder Geneve konventionerne”

³³ Original quote: “Siden den kolde krigs ophør har nogle professionelle lejetropper fået nye roller og opgaver.”

and handle weapons) blur the picture of what can be legitimately handled by PMSCs. The differentiation between public and private soldiers, on the basis of the expectations and values attached to the subject-position of each of them, is present in the Danish context where it is stated that *“when Danish soldiers go to war, they do so to defend liberty and democratic values. Therefore, I strongly condemn the use of mercenaries, where it is possible to hire private armies whose only goal is money and profit”*³⁴. (Næsager, 2003). The quote is an example of the agent’s normative perception of what is right and wrong which reinforce the political structures that frame private soldiers (it being mercenaries or PMSCs) as illegitimate. It symbolises how the established norms, prescribing mercenaries as illegitimate, guide the political discourse. Christian Friis Bach questions these assumptions and expectations connected to the public soldier as having higher moral standards than the private soldier, by saying that *“it is of no use to unreservedly trust that national troops are good and mercenaries are evil. The truth is much more complex”*³⁵ (Politiken (5), 2003). Thus, the political framing of PMSCs is not stringently negative but there is still reluctance by agents in Denmark to include private parties. Despite the opening from Radikale Venstre, the proposal was criticised by various parties and also from Dansk Folkeparti, where Peter Skaarup proclaimed that; *“we are definitely not in favour of state-approved mercenaries. It must be the responsibility of the states to deliver soldiers”*³⁶ (Politiken (1), 2003). Also Jakob Næsager (Konservative) very promptly replied to the proposal saying that *“to buy people to engage in war, and if necessary to kill other human beings, expresses a view on humanity which is appalling”*³⁷ (Næsager, 2003). The support of PMSCs, presented in the proposal from the Radikale Venstre (2003), is embedded in an interpretation of the structuring concept of state control, which constrains the UN to act immediately to e.g. genocide, as the UN does not possess the necessary military capacity to intervene. Radikale Venstre thereby questions the structures that make up the framework in which the UN and states operate, as these established legal and political structures constrain the ability of the UN to respond to armed conflicts. Christian Friis Bach, who also took part in formulating the proposal, said that *“the dilemma is that the UN has limited resources and it has proven difficult to get the UN member countries, particularly the Western countries, to send their own troops into the hotspots of the world”*³⁸ (Politiken (5), 2003). Thus, the overarching structures which enable a central position of the state has resulted in political voices in

³⁴ Original quote: “Når danske soldater går i krig, er det derfor for at forsvare frihed og demokratiske værdier. Derfor må jeg kraftigt tage afstand fra brugen af lejesoldater, hvor man kan hyre private hære, hvis mål er penge og profit.”

³⁵ Original quote: “Det nytter derfor ikke noget, blindt at stole på at nationale tropper er gode og lejetropper onde. Sandheden er mere indviklet.”

³⁶ Original quote: “Vi synes bestemt ikke om statsanerkendte lejesoldater. Det må være landenes opgave selv at stille soldater til rådighed.”

³⁷ Original quote: “Det er udtryk for et afskyvækkende menneskesyn, når man vil købe folk til at gå i krig og om nødvendigt slå andre mennesker ihjel.”

³⁸ Original quote: “Dilemmaet er, at FN har begrænsede ressourcer og det er ofte svært at få FNs medlemslande, og i særligt grad de vestlige lande, til at sende egne tropper til verdens brændpunkter”

Denmark advocating for initiatives that circumvent the state and support the use of PMSCs by the UN, as a supplement to state armies. Though, it must be said that Morten Helveg Petersen, who was the Defence Spokesman of the Radikale Venstre at the time, framed it as *“between the devil and the deep sea”*³⁹ (Politiken (1), 2003) to choose between contracting PMSCs and to do nothing. The use of private soldiers is therefore not the first priority but framed as a way to prevent that inter- and intrastate conflicts develop and also as an alternative way to stop actions of genocide (Petersen, 2003).

Five years after the proposal was presented, the Radikale Venstre, this time together with the political party Venstre, reopened the discussion on whether or not to use PMSCs; *“Both Venstre and the Radikale Venstre believe that it may be necessary for the Danish Defence to outsource combat operations to private, military companies.”*⁴⁰ (Information (2), 2008). Again the focus of attention is on the lack of resources, as there might be situations where *“there is a shortage of soldiers to solve a certain task”*⁴¹ (ibid). If the lack of resources is the structuring component which sparks the debate on the role of PMSCs in military operations, one could argue that the coming years, with reduced funds, could result in a larger intake of PMSCs in military operations. An important aspect in this regard is the type of tasks that the military operations will include. As the concept of core military tasks and which military areas can be privatised or outsourced are not perfectly clarified it has been *“recommended that at a political level, a fundamental stand is taken on which military services you are willing to privatise and which ones you are not”*⁴² (Henriksen, 2008: 3). In general it has been hard to find any specific guidelines for which areas of the state military can be outsourced or not, which was confirmed in our interview with Tim sloth Jørgensen, who stated that there is no fixed limit on what can be outsourced but the core military tasks such as attacking the enemy and conquer a specific village are in his view tasks not suitable for outsourcing to PMSCs as these are examples of a clear power demonstration (Jørgensen, 2012).

The role of the military in international operations has increasingly focused on not only direct combat but includes elements of rebuilding and stabilising conflict zones (Forsvaret (5), 2010). This means that areas that could be (and often have been) handled by NGOs and other non-state actors are today handled by the military, in an attempt to coordinate political and military success. The increased inclusion of functions which are not strictly related to combat actions builds on the assumption that *“in order to ensure future military and political success in international operations, the Defence must to a limited degree continue to*

³⁹ Original quote: *“Et valg mellem pest eller kolera”*

⁴⁰ Original quote: *“Både Venstre og De Radikale mener, at det kan blive nødvendigt for forsvaret at udlicitere kamphandlinger til private, militære firmaer”*

⁴¹ Original quote: *“At der mangler soldater til at løse en bestemt opgave”*

⁴² Original quote: *“anbefales det, at man på det politiske niveau tager principiel stilling til, hvilke militære ydelser man er villig til at privatisere, og hvilke man ikke er”*

*contribute to the reconstruction – especially in areas where civilian capacities of reconstruction are unable or unwilling to operate, due to the security situation. Typically, this will be the case in the transition period when the security situation impedes civil actors’ engagement*⁴³” (Forsvarsministeriet (3), 2009: 3). The emphasis on expanding the scope of the military operation is also evident in the slogan *“as military as needed – as civilian as possible*⁴⁴” which should characterise the military intervention in Afghanistan (Forsvarsministeriet (4), 2012). The use of the military as a political means is here evident and illustrates how the army is no longer only inserted to fight the enemy - the criteria for ‘winning a war’ now include other, less militaristic, factors as well. The Defence Command addresses the broadened strategy in the 2009 annual report and states that *“to fight and win requires a variety of tasks and skills. It may be to win in combat but it may also include winning the ‘hearts and minds’*⁴⁵” (Forsvaret (5), 2010: 4). The expectations to the military capacity change the perception of what may be termed as ‘military functions’. In other words, the strategy of aligning military and civilian goals, and to win the hearts and minds, can be seen as a centralisation of tasks that were handled by private parties in the past. As previously mentioned the PMSCs performing military tasks can have a negative spill-over effect on the state military personnel as it is argued that the PMSCs operate in a legal vacuum and are subject to impunity (Leander, 2010c), hence are able to avoid sanctions even if breaches of human rights occur. This negative view can have consequences for the strategy of the Danish state military with gaining the local inhabitant’s trust, as the differentiation between the respective soldiers are hard to distinguish for the local population (Shameem, 2010: 2) and actions carried out by PMSCs may be perceived to be done by the state military. In a Danish context the negative spill-over effect from e.g. British or American PMSCs may affect the Danish soldiers working in combat zones such as Afghanistan, which was confirmed by Tim Sloth in our interview (Jørgensen, 2012) as they cooperate in the international alliance (Forsvaret (7), 2012) which is currently focusing on rebuilding and stabilising the area.

The expansion of the task portfolio stretches the resources within the Danish military and some areas are therefore outsourced to private parties - also areas where PMSCs specialise. The reasoning behind this is that the military staff employed in conflict areas is limited – in Afghanistan the cap was 750 soldiers (Forsvaret (6), 2012) which is further decreased to 650 soldiers in the second half of 2012 (Forsvarsministeriet (6) 2011: 15). In an attempt to free up resources, the Danish Defence outsources the

⁴³ Original quote: “For at sikre fremtidig militær og overordnet politisk succes i internationale operationer er det derfor som udgangspunkt nødvendigt, at forsvaret fortsat i begrænset omfang også kan bidrage til genopbygning – især i operationsområder, hvor civile genopbygningskapaciteter ikke kan eller vil operere på grund af sikkerhedssituationen. Det kan typisk være tilfældet, hvor sikkerhedssituationen i en overgangsperiode vanskeliggør, at civile aktører kan operere.”

⁴⁴ Original quote: “Så militært som nødvendigt – så civilt som muligt”

⁴⁵ Original quote: “At kæmpe og vinde dækker over en lang række opgaver og evner. Det kan være at vinde i kamp, men det kan også være at vinde ‘hearts and minds’”

tasks that can be as efficiently handled by private parties, both civilians and businesses (Forsvarskommissionen, 2009). The Danish military has increased the spending on private contractors, which has to be seen in the context of the Danish engagement in Afghanistan and Iraq (Rigsrevisionen, 2008), and thus relates to the developments within the international community. The decision to increase the budget for private parties has not necessarily meant an increase in the number of PMSCs in the Danish military in connection to the participation in international operations but cover costs of 'low-end' services (Rigsrevisionen, 2008). However, even though the money has not been spent on financing and using PMSCs for assignments, which has to do with 'core military tasks' it signifies a willingness to use private parties to undertake *"a set of tasks previously reserved the Defence and its personnel"*⁴⁶ (Olsen, 2007: 6). It has been argued that because the private market is significantly bigger and more specialised than the state military, *"private companies may sometimes deliver specific services that the Defence itself may not be able to handle"*⁴⁷ (Henriksen, 2008: 14) an argument which resembles the American approach to role of the private market players and the NPM trend in regard to making the government more efficient (Greve, 2002). However, Tim Sloth Jørgensen has strongly argued that PMSCs do not possess specialised skills that are not already found in the Danish military, especially because many private contractors are former military soldiers (Jørgensen, 2012). Even though the PMSCs do not possess better knowledge or more specialised skills than the Danish Defence, there is an increasing trend of collaboration between the public military and the private sector – also termed 'civilians', such as NGOs, IOs or private companies. This is referred to as the integration, or joint planning, of civil-military competencies as the reconstruction and the stabilisation of conflict areas today are part of the military mission (Forsvarsministeriet (9), 2004). Due to the lack of safety the military must use resources to protect the civilians working – a solution which proves to be very costly, why Tim Sloth Jørgensen sees an opportunity for hiring PMSCs (Jørgensen, 2012). The introduction of private actors (businesses and NGOs) in conflict areas to help with the reconstruction process may thereby result in an opening for armed PMSCs to fulfil functions that were previously handled by the Danish Defence.

Despite the initial unwillingness from multiple parties in Denmark to use armed private actors, as just described, the Danish Ministry of Foreign Affairs has contracted and used PMSCs (Stepputat, 2009: 33). When representatives from the Danish Ministry of Foreign Affairs, who need protection while working in conflict areas, contract PMSCs to fulfil such protection duties it is often not framed as a use of PMSCs for military tasks but as an accepted practise. It is for example stated that *"the protection of the civil Advisors has in 2008 been provided by the Danish battalion battle-group, the British forces and the private security*

⁴⁶ Original quote: "Et opgavekompleks, der for få år siden var forbeholdt forsvaret og forsvarets personel."

⁴⁷ Original quote: "Private firmaer kan undertiden levere særligt efterspurgte ydelser, som forsvaret ikke selv kan levere"

*firm [PMSC] Armor Group International (AGI)*⁴⁸ (Forsvarsministeriet (8), 2009: 14). The critique of the use of armed private parties stands in contrast to the collaboration between the Danish Ministry of Foreign Affairs and the British PMSC Armor Group and shows that the use of PMSCs by Danish officials is taking place. Although the PMSCs in these occasions are not taking direct part in the combat (but protect stakeholders in the war zone) and due to the fact that they carry weapons and are assumed to use them in the case of attack, it can be argued that the Danish Ministry of Foreign Affairs contracts private security personnel for tasks that would otherwise be handled by the Danish Military. The Danish Ministry of Foreign Affairs writes that *“the Defence provides the protection of advisors representing Denmark, however, the protection may when possible and appropriate be handled by private contractors*⁴⁹” (ibid). Thus, the use of PMSCs could be interpreted as outsourcing functions that are otherwise fulfilled by the Danish military but is not framed as such in the political debate. Instead, the use of PMSCs has been framed around the international judicial problem, stating that contracting private soldiers *“would be extremely problematic in relation to the compliance with the Geneva Convention. Because what legal status does a private soldier have, who has performed an illegal act of war – for example killed a civilian. I believe we need to draw hard lines in such cases*⁵⁰” (Holger K. Nielsen in Information (2), 2008). Tim Sloth Jørgensen has, like Holger K. Nielsen, previously declared the judicial problems as one of the pivotal reasons for not using PMSCs and says that *“what has been the biggest problem [in relation to the use of PMSCs] has always been the legal perspective*⁵¹” (Jørgensen, 2012). The legal issues attached to contracting private parties are therefore not a minor detail but a serious predicament to carefully consider before entering into partnerships with such agents. The focus on the lack of resources within the Danish Defence and the compliance with the budgetary goals should thus not be the only consideration before contracting private parties.

6.2 The PMSCs and the Danish Military

The Danish Defence has used private firms to undertake security functions such as guarding military camps and key persons, because *“[i]n some cases it may be appropriate to let private entities perform protective tasks, as they are able to do that more discretely than the Danish Defence*⁵²” (Lars Sønderskov in Forsvaret (4), 2009).

⁴⁸ Original quote: “Beskyttelsen af de civile rådgivere er i 2008 blevet varetaget af den danske bataljonskampgruppe, de britiske styrker og det private britiske sikkerhedsfirma Armor Group International (AGI)”

⁴⁹ Original quote: “Forsvaret tilvejebringer beskyttelsen for rådgiverne udsendt af Danmark, men beskyttelsen kan dog, hvor det er muligt og hensigtsmæssigt, varetages af private firmaer”

⁵⁰ Original quote: “Det vil være dybt problematisk i forhold til overholdelsen af Geneve-konventionen. For hvilken retslig status har en privat soldat, der har udført en ulovlig krigshandling - eksempelvis dræbt en civil. Der mener jeg, at vi skal holde skarpe linjer”

⁵¹ Original quote: “Det som altid har været det største problem i det, har været den juridiske vinkel”

⁵² Original quote: “I nogle tilfælde kan det være hensigtsmæssigt at lade private varetage beskyttelsesopgaver, fordi de kan gøre det mere diskret end forsvaret”

The strategy of the Danish military is to train Danish state soldiers to perform core military duties (which have to do with weaponry, intelligence and other ‘tip of the spear’ functions) and hence outsource some of the tasks which can be as, or more, efficiently handled by civilians (Forsvarsministeriet (7), 2004). Due to the inconsistency of whether a PMSC constitutes as a combatant or not, the political and legal issues arise when PMSCs are hired for guarding tasks, such as the protection of important buildings, key locations and to body guard key stakeholders as all of these services include the carrying and handling of weapons. In a situation of attack it is expected that the PMSC would react to the threat and protect the client or the building in question (DR (2), 2012). It is therefore interesting that politicians in Denmark express reluctance to introduce PMSCs in areas that include the handling and carrying of weapons and at the same time use Armour Group to protect public officials in Afghanistan.

Another area which includes the handling of weapons is securing maritime trade from pirate attacks in the Gulf of Aden, where Denmark has contributed with the ship ‘Absalon’ to fight pirates and *“in periods can contribute with up to ten Staff Officers for a number of other executive functions connected to the international effort against piracy”*⁵³ (Forsvarsministeriet (14), 2012). In the Gulf of Aden the problems of piracy are manifold where *“[n]aval forces from more than 20 countries have been deployed; the United Nations has formed a contact group that meets quarterly; and private security contractors have offered their services to ships traversing the area”* (The Global Post, 2010) in order to combat piracy. In the Danish Parliament the discussion on piracy has centred on whether to use state military personnel to secure maritime trade or whether to employ private parties. Peter Skaarup, from the political party Dansk Folkeparti, has advocated for the use of state military on board Danish ships but due to the lack of resources within the Danish Defence the party could accept the use of PMSCs carrying out security services on the ships (Folketinget (2), 2012). Skaarup states that; *“If Dansk Folkeparti could determine how this proposal would have looked like, we would have preferred to arrange it in a way that, precisely because it is vital to Danish interests that we protect our ships against attacks and piracy, that it was Danish soldiers who were responsible for the safety needed on board the ships”*⁵⁴.

Furthermore he argues that an international criminal court should be established to prosecute pirates as he states *“I actually don’t understand that one – as part of a great maritime nation with many ships, that work for the Danish shipping industry – from a Danish point of view is not ready to establish an international court that will prosecute these pirates”*⁵⁵ (Folketinget (1), 2012). Although, allowance to employ security

⁵⁴ Original quote: Hvis Dansk Folkeparti skulle have bestemt, hvordan det her forslag skulle have set ud, så kunne vi godt have tænkt os, at man havde indrettet det på en sådan måde, at det, i og med at det netop er af vital dansk interesse, at vi beskytter vores skibe mod angreb og piratvirksomhed, var danske soldater, der varetog den sikkerhed om bord, som de skibe har brug for.

⁵⁵ Original quote: “jeg forstår egentlig ikke, at man – som en stor søfartsnation med mange skibe, som arbejder for danske rederier – ikke fra dansk side er parat til at etablere en international domstol, som får dømt de her pirater.”

guards (PMSCs) on board might be granted, the maritime companies who wish to employ PMSCs still need an official permission from the Danish government to employ such private parties (Bødskov, 2012; Christensen, 2011). Therefore protecting commercial ships from pirates, in terms of hiring and having PMSCs on board, is an example of an area within the Danish military portfolio that can and already is outsourced but that nobody talks about in public (Jørgensen, 2012). The use of armed civilians on board Danish commercial ships is an on-going and technical legal discussion, which is beyond the scope of this thesis. What is interesting in the context of our research is that there is an initial opening towards the use of private armed contractors in areas that concern the protection of Danish (national and commercial) interests. More specifically, the quote by Peter Skaarup shows that areas that are perceived to be within the state army prerogative are now outsourced to PMSCs. In line with what is a 'state army prerogative' Tim Sloth Jørgensen argued that although the Danish ship 'Absalon' has been active in the Gulf of Aden, it was politically agreed upon that fighting piracy could be outsourced to private companies in terms of undertaking this security function and hence not of vital interest for the national security of Denmark (Jørgensen, 2012). At the same time, it is important to note that the PMSCs should only be used in a 'defensive way' on the ships – and interestingly Tim Sloth Jørgensen framed piracy as “*pure crimes*⁵⁶” in opposition to terrorism in Afghanistan and another type of military task. According to Tim Sloth Jørgensen, the reason why the task of fighting piracy is handled by PMSCs is rooted in the issue of scarce resources within the state military (Jørgensen, 2012).

A related issue is that of the contractual arrangement and the scope of employment of the PMSCs by the Danish state. As briefly mentioned before, the contractual problems are by agents in the discourse framed as one of the central problems in relation to the outsourcing of Danish military tasks to PMSCs. Tim Sloth Jørgensen has stated that one of the reasons why the Danish military has not initiated outsourcing of core military tasks has a lot to do with the current legal gaps and legally inadequate contractual arrangements (Jørgensen, 2012). Examples of contractual relations between PMSCs and the state drawn from the American context, has caused a hesitant approach to PMSCs, as “*the preparation of contracts regarding the performance of military services can be quite complicated, and even a state such as the United States who has years of experience in the field sometimes get into trouble.*⁵⁷” (Henriksen, 2008: 33). Even if contracts are perfectly made, which seems unlikely within the current legal framework, the issue of perceived responsibility is not solved. The idea of the state as the responsible agent in warfare is embedded in the discourse, which means that “*even though a state makes a contract with a PMSC, the state will probably not be able to avoid the responsibility for the actions of the PMSC – no matter what type of contract you*

⁵⁶ Original quote: “det er ren kriminalitet”

⁵⁷ Original quote: “udarbejdelsen af kontrakter vedrørende levering af militære ydelser kan nemlig være ganske kompliceret, og selv en stat som USA, der har årelang erfaring på området, kommer undertiden i vanskeligheder.”

*make in the end. At least morally and ethically.*⁵⁸ (Jørgensen, 2012). This means that the *perception* of who ought to be responsible, regardless of whether the tasks are outsourced or privatised, in many cases are devoted to the state.

Coming back to the central issue of needing more resources in order to conduct military operations in line with the Danish activist political approach to international conflicts, one of the arguments set forth in the Danish debate on contracting PMSCs is based on the ability to act quickly when conflicts arise (Jørgensen, 2012; Henriksen, 2008; Olsen, 2007). This has been related to the issue of constrained resources as it takes a long time to build up the military capacities needed for engaging in international armed conflicts, why hiring PMSCs for non-combat actions would free up military resources within the Danish Defence.

Tim Sloth Jørgensen argues that using PMSCs (especially for security missions) facilitates a more flexible organisation, as the state military does not have the required resources to engage in all international conflicts and security operations (Jørgensen, 2012). Instead the Danish military may find the needed skills and know-how in the private market and terminate the cost when the services are no longer needed; *“with the certainty that the services are always available on the private market, the Defence is free from using its own staff, equipment and money to build up capacities which may not, or only limitedly, be needed in the future”* (Henriksen, 2008: 13). This line of reasoning is visible not only in Denmark but internationally and has been widely used in connection to the downsizing of budgets as a response to the global financial crisis. *“In times where budgets are cut, outsourcing may work as a way to meet the demands of downsizing and optimising the military”* (Tim Sloth Jørgensen in DR (1), 2012). The issue of budgetary cuts and lack of resources are thus central elements in understanding how PMSCs are framed in the Danish political context and why a possible opening for the use of them is to be found within the military and some Danish political parties.

Moving on to where the military resources are needed we will illustrate aspects of the international armed conflict in Afghanistan below, focusing on the Danish engagement and PMSCs.

6.3 The War in Afghanistan

The wars in respectively Iraq and Afghanistan are in the academic literature presented as empirical cases to illustrate the increased and broad use of PMSCs in warfare (Leander, 2005b; Avant, 2004; Singer, 2003).

Our focus is mainly on Afghanistan, as it can be argued that the war in Iraq has many unanswered legal and political questions relating to the justifications of entering the war. Additionally, *“the invasion-war in*

⁵⁸ Original quote: *“Selvom en stat laver en kontrakt med et firma, så vil en stat formentlig aldrig kunne afsige sig ansvaret for hvad det firma foretager sig - uanset hvad man havde af kontrakt i den sidste ende. Så derfor bliver man som stat, eller man risikerer i hvert fald altid at blive ansvarlig. Om ikke andet så moralsk og etisk.”*

Afghanistan, which was a direct consequence and a response to the terrorist attack on the WTC and Pentagon, has in many years – in contrast to the war in Iraq – been considered ‘the good war’, ‘the just war’⁵⁹ (Politiken (4), 2010). It has been argued that because *“the American military was deeply engaged in the war in Iraq the Americans willingly gave the responsibility of the war in Afghanistan to the Europeans⁶⁰”,* who *“not only wanted to conduct war – they wanted to conduct the good war⁶¹”* (Rasmussen, 2011: 13). The discussion of whether the Danish participation in the war in Iraq was legitimate is in many ways important but too detached from our research question, why we will not embark on such discussion. The war in Afghanistan has a lot of facets, and not all of them are captured in this section, instead, the focus here will mainly be on how PMSCs have been used in relation to the war in Afghanistan and what this means for the Danish approach to the use of PMSCs.

There are several reasons for choosing Afghanistan as a supporting empirical example. In many ways the war in Afghanistan is special. It is not a state-to-state war but a ‘war on terror’, where the groups of Al Qaeda and Taleban are the targets of the military efforts. Furthermore, the war is international in scope, with more than sixty countries engaged in the war (around 20 are only contributing in financial terms) (UM (3), 2012: 4) and a number of PMSCs work in the country. *“Afghanistan, together with Iraq, represents the largest theatre of operations for private military and security companies (PMSCs)”* (Shameem, 2010: 2). Additionally, the war in Afghanistan was backed by the UN and the NATO (UM (8), 2012; Forsvarsministeriet (13), 2012; Folketinget (3) 2006; Folketinget (4) 2008), when the UN Security Council unanimously adopted UN Resolution 1386 (2001) which authorised the International Security Assistance Force, ISAF (United Nations (3), 2001). An important aspect is also that the war is still taking place and the analysis is therefore trying to capture a phenomenon which has momentum and focus in the Danish and international political debate.

The Danish military has *“since January 2002, when 100 elite soldiers went to Kandahar in the search for Osama bin Laden⁶²”* been active in the region (Information (1), 2012). The Danish participation in the war has been evaluated by politicians throughout the years and in 2006 the majority of the Danish parties in the parliament (V, S, DF, KF, and RV) decided to increase the number of soldiers in the region (Folketinget (3), 2006). The Danish troops in Afghanistan have been employed under a UN mandate to fight the Taleban and to support the capacity of the Afghan National Army and Afghan Police (Udenrigsministeriet (7), 2012) in an

⁵⁹ Original quote: *“Invasionskrigen i Afghanistan, der var en direkte udløber og et svar på terrorangrebet på WTC og Pentagon, har i mange år – i kontrast til krigen i Irak – været betragtet som ‘den gode krig’, ‘den retfærdige krig’”*

⁶⁰ Original quote: *“det amerikanske militær [var] så hængt op i Irak, at de gladelig overlod ansvaret til europæerne.”*

⁶¹ Original quote: *“europæerne ville ikke blot føre krig – de ville føre den gode krig.”*

⁶² Original quote: *“Siden Januar 2002, da 100 jægere soldater tog til Kandahar for at deltage i jagten på Osama bin Laden”*

effort to *“secure Denmark. If we do not solve the problems in Afghanistan, the problems will come to us”*⁶³ (Forsvarsministeriet (12), 2012). The problems in Afghanistan have been manifold and stretched from economic poverty, lack of good governance, poor education, and security concerns (Udenrigsministeriet (7), 2012). Thus, the Danish engagement covers a broad variety of sectors and common to all of them is the need for a secure environment to operate in. A decade after the first elite soldiers arrived in Kandahar, it is proclaimed that *“the war against Taleban has ended, as the Danish soldiers no longer enter the green zone to provoke and fight the Taleban”*⁶⁴ (Information (1), 2012). One of the current priorities of the Danish military is to train the local Afghans, so that they can take over military and police functions, now provided and controlled mainly by the Western military units, and Christian Friis Bach has proclaimed that *“there will be units left who train and educate the Afghan army and military”*⁶⁵ (Politiken (6), 2012). In relation to the training and rebuilding of the Afghan police and military, the Americans have used PMSCs to do the job (Hansen, 2011). PMSCs therefore play a role in the rebuilding of the Afghan community. Nevertheless, the issue of insecurity and instability remains a factor of concern, which is also stressed by the ICRC Deputy Head of the region for South Asia, Yann Bonzon, who states that; *“despite improvements in the quality of life in certain sectors of the population over the past decade, the security situation in many areas of the country remains alarming. Insecurity and uncertainty have become permanent features of the Afghan landscape”* (ICRC (2), 2012). The unstable situation is a problem to both the local people and foreign stakeholders visiting the country, and the Danish Ministry of Foreign Affairs *“continue to use armed guards from the private security company GS4 to protect visiting journalists”*⁶⁶ (Information (1), 2012). Since the announcement of the withdrawal of the international troops by the end of 2014 the Danish military has changed its focus from combat operations to capacity building of the Afghan national army and police force (Forsvarsministeriet (11), 2012). The Afghanistan’s Minister of Foreign Affairs, Zalmay Rassoul, has called for on-going help from the international community and advocated for foreign troops to stay after 2014 (MetroXpress, 2012). The unsafe conditions in Afghanistan has created room for new players to enter the scene as state militaries are stretched because of the budgetary cuts and the political decision of withdrawing troops by the end of 2014 preventing more troops to be sent to the area. Thus, it seems as if there is still a role for the PMSCs in Afghanistan despite the fact that the Danish military is on their way out of the country.

Whether PMSCs working in Afghanistan are providing services related to Danish ‘core military tasks’ has been hard to find official data on. The concept of ‘core military tasks’ is often used in the Danish context,

⁶³ Original quote: *“sikre Danmark. Løser vi ikke problemerne i Afghanistan, så kommer problemerne til os.”*

⁶⁴ Original quote: *“krigen mod Taleban reelt slut. De danske soldater skal ikke længere ud i Green Zone og provokere Taleban til kamp.”*

⁶⁵ Original quote: *“Tilbage skal være enheder, der træner og uddanner den afghanske hær og militær”*

⁶⁶ Original quote: *“fortsat udstyrer besøgende journalister med bevæbnede vagter fra det private sikkerhedsfirma GS4”*

but the definition of which tasks are strictly reserved for the military is not clear, which reflect the ever-changing structures that frame the field. The span of core military tasks has been defined as; *"the core task of the Defence is to deliver deployable military capacities, to solve compulsory domestic operations, and to contribute to the united protection of society"*⁶⁷ (Forsvaret (6), 2012: 8). Based on this, it is hard to make any concrete conclusions on which areas should be considered a sole prerogative of the Danish Defence. Tim Sloth Jørgensen suggests that the difference lies in whether the operation is 'active' or 're-active' in nature and states that *"to attack the enemy or to conquer a village"*⁶⁸ would be considered a core and active military task (Jørgensen, 2012). Security and defence assignments, where the agent *"only acts if the other party attacks"*⁶⁹ (Jørgensen, 2012) is considered re-active and therefore different in nature. The tasks that only trick reactive responses are, according to Tim Sloth Jørgensen, the ones which could be outsourced to PMSCs (Jørgensen, 2012). In international law and from the political statements made by Danish politicians it seems as military tasks, which involve the carrying and handling weapons, should not be handled by PMSCs. However, as we have shown, the Danish ministries do contract PMSCs to provide such services. This causes an arbitrary approach to PMSCs and creates a hazy picture of which functions PMSCs are actually fulfilling today. This has also been stressed by the ICRC who addresses the *"extreme difficulty of determining whether the activity of a private security contractor is of civilian or military nature"* (Shameem 2010: 14). Generally, the PMSCs work both in Kabul as well as in 'active combat zones' (Shameem, 2010: 13), which stands as an empirical and current example of the complication that may arise in categorising the employees of PMSCs as either combatants or non-combatants.

The Danish troops have been working closely with other national armies in what is called 'combined forces' which implies that the force is composed of several nationalities (Forsvaret (7), 2012). An important aspect is the collaboration between the USA, the UK and Denmark in Afghanistan, as the inclusion of PMSCs by the USA and the UK affects the Danish army. The USA is the main employer of PMSCs in Afghanistan which also covers a number local Afghan PMSCs (Shameem, 2010: 13). Due to the international alliances that Denmark is part of, the Danish military is 'forced' to work with foreign PMSCs; *"the Minister of Defence reported to the Parliament on the 8th of February 2008 that the partners in Afghanistan have contracted private security companies and that these companies are part of the joint security of camps etc."*⁷⁰ (Rigsrevisionen, 2008: 12). Because the USA uses private contractors as complementary to the state military, Denmark is indirectly forced to collaborate with PMSCs who act as state military. Thus, even though Denmark has not opened up

⁶⁷ Original quote: "Forsvarets kerneopgaver er at kunne levere internationalt deployerbare militære kapaciteter, løse pålagte nationale opgaver samt bidrage til samfundets samlede beredskab."

⁶⁸ Original quote: "rene militære opgaver, som at angribe fjenden og erobre en eller anden landsby"

⁶⁹ Original quote: "kun gør noget hvis andre gør noget mod en"

⁷⁰ Original quote: "Forsvarsministeren oplyste den 8. februar 2008 over for Folketinget, at samarbejdspartnere i Afghanistan har kontrakt med private sikkerhedsfirmaer, og at disse indgår i den fælles sikkerhed omkring baser mv."

for outsourcing core Danish military functions to PMSCs, such as the American army has done, the Danish military is part of an international mission which includes PMSCs in combat.

The Danish PMSC, Guardian, writes in a press release that *"Danish ministries, firms and aid organisations in several cases contract American or British security companies for risk management and/or security tasks in connection to development- or aid assignments in countries where the security situation requires this"*⁷¹

(Guardian (1), 2007). Although core military functions are not handled by PMSCs there have been a lot of issues letting them handle security tasks, as stated by an American report from the Senate highlighting how corruption is maintained and the opposition has gained strength via the use of PMSCs in Afghanistan and that some PMSCs have directly worked against the coalition (Politiken (3), 2010).

Tim Slot Jørgensen believes that if Denmark opens for the use of PMSCs to perform 'tip of the spear' military tasks, the contract should be made with Danish PMSCs, as there would be less judicial contractual confusion when the company is under the same jurisdiction as the contracting state (Jørgensen, 2012). Furthermore, he states that Danish PMSCs are familiar with the norms that guide the Danish army soldiers which could prevent misunderstandings and decrease hazard behaviour.

⁷¹ Original quote; "Danske ministerier, firmaer og hjælpeorganisationer kontraherer i flere tilfælde amerikanske eller engelske sikkerhedsfirmaer til risikostyring og/eller beskyttelsesopgaver i forbindelse med udviklings- eller nødhjælpsopgaver i lande, hvor sikkerhedssituationen påkræver dette."

Chapter 7: Concluding Remarks

Throughout the thesis different schools of thought, among others Cerny's structure-agency theory, Althusser's interpellation theory, Weldes' idea of a subject-position, and aspects of role theory, discourse theory and Impression Management have been presented in order to analyse the legal definitions and political framing of PMSCs. The reason for not only using one theory but draw in different conceptualisations has been done in order to highlight the different facets of the research question.

As outlined in the very beginning of this thesis, there are brutal facts and constructed terms (Searle, 1995) which together influence the discourse in which PMSCs act. Private soldiers have been used for centuries in warfare, where the man (most often it is a male) can be seen as a brutal fact, but depending on the contextual structures in which he acts, his legal status and ascribed role may change. In other words, before the role of the nation-state was fully established it was not perceived as illegitimate to use mercenaries in warfare (Singer, 2003; Thomson, 1996), which stands in contrast to the present legal definition and categorisation of a mercenary (the 1989 UN Convention on Mercenarism). With the establishment of the nation-state, the ideas of national values and the norm of 'fighting for your country' evolved, which affected the framing and also the customs regarding the use of soldiers. The role of the state is therefore central in the debate on the use of PMSCs and the concept, or norm, of the state's monopoly on the legitimate use of force is maintained in many international legal texts framing the use of private militaries. The division between public and private has proven fluent and further complicated the distinction between core state functions and tasks which may be outsourced or privatised. The concepts outlined in the first chapter are therefore working simultaneously as structuring for the discourse, while also creating a blurry picture, as these concepts constantly change and undergo a reconstruction as they are used differently in different contexts.

How the PMSCs are framed is still to a certain extend connected to the idea of illegal mercenaries. Central in the debate is the analysis of the different motivations the soldier has when entering in war. The framing of the motivation of respectively a 'public soldier' and 'private soldier' has an effect on how soldiers are regulated. It is argued that in the state military, professional soldiers are *"bound by a code of ethics, serve a higher purpose, and fulfil societal needs"* (Singer, 2003: 8), whereas private soldiers (mercenaries) are motivated by *private gains*; *"a mercenary is a person who is motivated to take part in the hostilities essentially by the desire for private gain"* (Article 1.1.b. in the 1989 UN Convention on Mercenarism). Thus, there is a perception of a public soldier as a person who fights for a higher purpose and who is motivated by protecting the society which he is representing. To fight for personal gains is perceived as illegitimate and sanctioned by the international community and those who adhere to these established norms (i.e. the signatories of the 1989 UN Convention on Mercenarism). The focus on the motivation and the role of the

agent is therefore central for how soldiers are legally framed and thus become part of the established structures. The interpellation, or framing, of the PMSCs by the other actors is therefore a central point in understanding the position of 'the soldiers' in the structure, whether these are private or public.

Where mercenaries are illegal to use according to the 1989 UN Convention on Mercenarism, we now see a less dismissive stand towards the contracting of private military and security companies as the new 2009 UN Draft Convention on PMSCs does not ban the use of PMSCs but frame standards for how to engage with such companies. Whether mercenaries and PMSCs are considered to be the same group of people but with different names differs depending on the context in which it is discussed (Joachim & Schneiker, 2012), which the Danish political debate on the use of private actors in the tip of the spear operations is an example of. The fact that Radikale Venstre has proposed an opening towards both mercenaries and PMSCs shows the diffusion in terms of distinguishing between the two subject-positions. Furthermore, those who dismiss the use of PMSCs tend to link the (pre-assumed) negative attributes of mercenaries to PMSCs, thereby delegitimising PMSCs as an actor. As Bryden and Caparini mention; *"...there is an interesting contrast [...] between those who highlight the distinct nature of the PMC/PSC phenomenon and those who link them to a much longer tradition of non-state actors providing security-related services for profit."* (2006: 4-5). What is essential is that even though there are certain similar traits in the way that respectively mercenaries and PMSCs are politically framed they adhere to different legal standards. This implies that the UN, as a legislative institution, frames PMSCs and mercenaries as different groups. The PMSCs are therefore hailed, by the UN, into the structure and given a different subject-position than mercenaries - which shows that there has been a change in the approach to the use of private military contractors; *"while traditional mercenaries are banned under international law, modern private security or military companies usually act on a legalized and licensed basis."* (Schneckener, 2007: 12). The framing of the PMSCs thus have consequences for their legal and political status as an agent in the structure.

Organisations within the international community are working on creating a framework that ensures that PMSCs comply with the established IHL and HRL and that states bear a responsibility when they contract PMSCs. However, there are a lot of conflicting views on which types of companies to include in the PMSC category, what PMSCs can be used for and which areas can be outsourced to them. The use of PMSCs by the Danish government, and to some extent the Danish Defence, is an example of the disperse use and fragmented approach to include PMSCs in military operations. Denmark has initiated the contracting of PMSCs in security operations, including tasks that may include the carrying and handling of weapons but there is still disagreement on which tasks the PMSCs may be used for. According to Tim Sloth Jørgensen, there are potential benefits for opening up for the use of PMSCs by the Danish Defence but, concurrently, stress the need for clearer regulation (Jørgensen, 2012). The inclusion of PMSCs in security assignments in

Afghanistan shows that Denmark is part of the international trend of using PMSCs. Moreover, the announced budgetary cuts of military spending, which will take place over the coming years, may potentially open up for an increased use of PMSCs to fulfil tasks that were otherwise considered to be within the domain of the Danish Defence. The introduction of armed PMSCs in the fight against piracy is one example of an area where PMSCs are used, due to limited resources of the Danish Defence. Thus, the financial constraints affect the ability of the Danish Defence to respond to all threats which could lead to further use of private military and security contractors in military operations that involve combat and weaponry.

As a concluding remark, it can be said that *“despite the political disagreement, there is a willingness to make clear rules regulating the area”⁷² [of PMSCs]* (Information, 2008), where the 2009 UN Draft Convention is one step on the way. However, even if the UN succeeds in establishing clear rules that regulate the area, it does not solve the issue of voluntary ratification and the lack of states’ adherence to the final convention. This thesis has covered aspects of the PMSC-phenomenon and the Danish approach to such companies, nevertheless, the use of PMSCs in tip of the spear operations is still an underexplored area in Denmark and further research could lead to a more elaborate understanding of the role that PMSCs could potentially play in Danish military operations.

⁷² Original quote: “Trods den politiske uenighed, er der generelt stemning for at få nogle klare regler på området”

Chapter 8: Reflections

Acknowledging that our research design is just one possible option to analyse the sphere of privatising military affairs, this last chapter briefly presents some alternative views on what could have been done differently. Additionally, the chapter briefly discusses some of the weaknesses in the arguments presented and show where the theoretical and analytical framework used is incomprehensive in explaining how PMSCs are legally defined and politically framed.

The point of departure was a constructivist take on the structure-agency theory in order to analyse the role of the agents in defining political standards and regulations making up the structure. The paper examined the categorisations and conceptualisations that exist as structuring components and how they constantly change and evolve, which consequently affect how PMSCs are framed in the discourse. The structuration process also involves agency and it can be argued that there is an inadequacy in the way the term agency is used when analysing 'structure' and 'agency'. Agency refers to both individuals and organisations but the latter does not have a mind in its own, however, organisations can be seen as the sum of individuals making up the organisation. It is a weakness which is common in International Relations theory that organisations are presented as thinking actors, why we have tried to accompany for this shortage by applying role theory and Impression Management theory to analyse the agents within the organisations. The sphere of political science has therefore been mixed with that of the psychological. Furthermore, we have only looked at how the agency and structure simultaneously influence each other but not taking a perspective of power relations into play although this could have been justified, especially when we are analysing state institutions.

Furthermore, the issues that have been discussed and presented in this thesis build on the notion of a distinction between public entities and private entities. This division has been necessary to uphold in order to analyse how PMSCs have been framed in different contexts and what the various expectations are to respectively a private and a public soldier.

8.1 Empirical shortages

The 2009 UN Draft Convention on the Use of PMSCs is, as the name implies, a draft version which means that it could still undergo important changes and that it is not a version ratified by states. A point for criticism could here be that we treat the 2009 UN Draft Convention as an adopted convention ratified by states.

Furthermore, we have used the ISOA as the voice for the PMSC industry well knowing that they do not represent all PMSCs existing globally. Our focus of attention has been on the framing of the private soldiers and how this has affected the Danish approach to using them as partners in situations of international

armed conflicts. We have not interviewed the PMSCs in Afghanistan, or in another situation of international armed conflict, which would otherwise add to the collected empirical data and provide a more in depth understanding of the motivations of the PMSCs operating in war zones. Such in-depth empirical data collection of the motivation and self-perception of the PMSCs would give more support to, or maybe alter, the arguments presented in this thesis. The dual process of interpellation, where the subject-position is framed and hailed into the structure and, secondly, whether the agent recognizes this subject-position and acts in accordance with it, could be further examined if such interviews were conducted. We have as mentioned used the ISOA as the voice for the PMSC industry in order to analyse how they want to be perceived and what role they recognise as their own. One could argue that the ISOA has a political interest of its own and is not the sum of its members, which has not been embarked upon neither.

Bibliography

Paper based:

- Andersen, H. & Kaspersen, L. B. (2000): **Classical and Modern Social Theory**, Blackwell Publishers
- Antoniades, A. (2003): Epistemic Communities, Epistemes and the Construction of (World) Politics, **Global Society**, vol. 17, no 1, pp. 21-38
- Avant, D. (1998): Conflicting Indicators of “Crisis” in American Civil-Military Relations, **Armed Forces & Society**, vol. 24, no. 3, pp. 375-388, Sage Publications
- Avant, D. (2000): From Mercenary to Citizen Armies: Explaining Change in the Practice of War, **International Organization** 54, 1, pp. 41-72, Cambridge University Press
- Avant, D. (2004): *Mercenaries*, Foreign Policy, Think Again, July/August
- Avant, D. (2005a): Private Security Companies, **New Political Economy**, vol. 10, no 1, pp. 121-131, Global Monitor, Routledge Taylor & Francis Group
- Avant, D. (2005b): **The Market for Force, the Consequences of Privatizing Security**, Cambridge University Press
- Bailes, A. (2007): The Private Sector and the Monopoly of Force, *Policy Paper no 24*, Geneva Centre for the Democratic Control of Armed Forces (DCAF)
- Berling, T. V. (2011): Science and securitization: Objectivation, the authority of the speaker and mobilization of scientific facts, **Security Dialogue** 42 (4-5), Special issue on The Politics of Securitization, International Peace Research Institute, Oslo, Sage Publications
- Berndtsson, J. (2011): Security Professionals for Hire: Exploring the Many Faces of Private Security Expertise, Millennium – **Journal of International Studies**, 40: 303, Sage Publications
- Blizzard, S. M. (2004): Thinking about Logistics – Increasing Reliance on Contractors on the Battlefield, **Air Force Journal of Logistics**, Volume XXVIII, Number 1, USAF, Spring
- Blunden, A. (1971): “Lenin and Philosophy” and Other Essays, Ideology and Ideological State Apparatuses, (Notes towards an Investigation), Lenin and Philosophy and Other Essays, Monthly Review Press 1971; original text from Louis Althusser in 1970
- Bobbitt, P. (2002): The Market-State in **The Shield of Achilles**, p. 213-242, London: Allen Lane
- Bryden, A. & Caparini, M. (2006): **Private Actors and Security Governance**, Geneva Centre for the Democratic Control of Armed Forces (DCAF), LIT Verlag, Transaction Publishers
- Camacho, P. (2010): A Forum on Privatization With Comments on the Relevant Literature Found in Armed Forces & Society, Forum on Military Privatization, **Armed Forces & Society**, 36 (4), 647-659, Sage Publications

- Cerny, P. G. (1990): **The Changing Architecture of Politics – Structure, Agency, and the Future of the State**, SAGE Publications, Great Britain
- Christensen, G. (2002): **Psykologiens videnskabsteori**, Roskilde Universitetsforlag
- Christoffersen & Paldam (2006): Privatization in Denmark, 1980-2002, in **Privatization Experiences in the EU**, by Fehn, Sinn, H.-W. & Whally, J., MIT Press, Cambridge, MA, 2006
- Collin, F. (2002): *Kritik af diskursanalysens filosofiske forudsætninger*. I Larsen, B. & Munkgaard Pedersen, K. **Diskursanalyse til debat**. København, Nyt fra samfundsvidenskabernes
- Collin, F. (2003): **Konstruktivisme**, Frederiksberg, Samfundslitteratur
- Despret, V. (2005): Sheep Do Have Opinions, in **Making Things Public: Atmospheres of Democracy**, ZKM/MIT: Karlsruhe/Massachusetts, edited by Latour and Weibel, p. 360-369
- Douglas, M. (1966): **Purity and Danger – An Analysis of Concepts of Pollution and Taboo**, Mary Douglas Collected Works, Volume II, Routledge, Taylor Francis Group, London & New York
- Elsass, P. & Lauritsen, P. (2006): Striden om videnskabelighed i humanistisk forskning i **Humanistisk sundhedsforskning**, 159-174, Hans Reitzels Forlag.
- Forsvarskommissionen (2009): *Dansk forsvar – Globalt engagement*, Beretning fra Forsvarskommissionen af 2008, Hovedbind, marts
- Friedman, M. (1970): *The Social Responsibility of business is to increase its profit*, New York Times Magazine
- Gardner, W. L. & Martinko, M. J. (1988): Impression Management in Organizations, **Journal of Management**, vol. 14, no 2, Southern Management Association
- Greve, C. (2002): *New Public Management*, Nordic Cultural Institute, Copenhagen, the publication is part of the research project; "Nordisk Kulturpolitik under Forandring"
- Hansen, R. (2011): *Usynlige hæere*, Weekendavisen 6. maj 2011, #18, Interview med Christa Moesgaard
- Henrichsen, C. (2004): *Rammebetingelser for udlicitering af myndighedsopgaver*, Responsum til Udliciteringsrådet, Schultz Information, December
- Henriksen, A. (2008): *Principper for pragmatisme – Perspektiver for forswarets brug af private militære firmaer*, DIMS – Dansk Institut for Militære Studier (findes også online på: <http://cms.polsci.ku.dk/pdf/privatiseringsrapport.pdf/>)
- Jakobsen, P. (2004): Rolle og person, kapitel 6, i **Psykodynamisk organisationspsykologi**, redaktør Heinskou, T. & Visholm, S., 2011
- Joachim, J. & Schneiker, A. (2012): New Humanitarians? Frame Appropriation through Private Military and Security Companies, **Millennium - Journal of International Studies**, vol. 40(2), pp. 365-388 SAGE publications

- Jones, C. (2006): Private Military Companies as 'Epistemic Communities', *Civil Wars*, vol. 8, no. 3-4, pp. 355-372, Routledge
- Jordan, C. A. (2009): Who Will Guard the Guards? The Accountability of Private Military Contractors in Areas of Armed Conflict, *Criminal and Civil Confinement*, vol. 35, 309-346, New England
- Jørgensen, T. S. (2012): Interview with the former Chief of Defence Tim Sloth Jørgensen by Sasha Beckmann and Sofie Hyllested, see appendix i
- Kirschner, J. (1998): Political Economy in Security Studies after the Cold War, *Review of International Political Economy*, vol. 5, no. 1, pp. 64-91, JSTOR, Taylor and Francis
- Knorr Cetina, K. (1995): Laboratory Studies in S. Jasanoff et al. (eds.) *Handbook of Science and Technology Studies*, p. 140-166, SAGE Publications, London
- Krahmann, E. (2010): States, Citizens, and the Privatization of Security, *Book Review*, Cambridge University Press
- Kruize, P. (2005): *Det private sikkerhedsmarked – en undersøgelse af privat vagtvirksomhed og privat efterforskning*, Københavns Universitet, Det Juridiske Fakultet, Forskningsafdeling III
- Larkins, J. (1995): Book Review: Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe, by Janice E. Thomson, *Millennium - Journal of International Studies*, Princeton University Press, Princeton NJ, 214 pp.
- Latour, B. (1999): Give Me a Laboratory and I Will Raise the World, edited by Mario Biagioli, *The Science Studies Reader*, Routledge, p. 258-276
- Leander, A. (2005a): The Power to Construct International Security: On the Significance of Private Military Companies, *Millennium – Journal of International Studies*, 33: 803, Sage Publications
- Leander, A. (2005b): The Market for Force and Public Security: The Destabilizing Consequences of Private Military Companies, *Journal of Peace Research*, vol. 42, no. 5, pp. 605-622, Sage Publications
- Leander, A. (2006): *Eroding State Authority? Private Military Companies and the Legitimate Use of Force*, Centro Militare di Studi Strategici, Rubbettino
- Leander, A. (2007): *Existing International Instruments and Mechanisms*, paper presented at the Latin American and Caribbean Regional Consultation on the Effects of the Activities of Private Military and Security Companies on the Enjoyment of Human Rights: Regulation and Oversight, Organized by The UN Working Group on the use of Mercenaries / Special Procedures assumed by the Office of the High Commissioner on Human Rights, Panama 17th – 18th of December 2007, also found online at: <http://openarchive.cbs.dk/bitstream/handle/10398/6992/wp%202007-4.pdf?sequence=1>
- Leander, A. (2010a): The privatization of international security in *The Routledge Handbook of Security Studies*, Edited by Myriam Dunn Cavelty and Victor Mauer, London and New York

- Leander, A. (2010b): Commercial Security Practices in **The Routledge Handbook of New Security Studies**, Edited by J. Peter Burgess, London and New York
- Leander, A. (2010c): The Paradoxical Impunity of Private Military Companies: Authority and the Limits to Legal Accountability, *Security Dialogue*, vol. 41, no. 5, October 2010, SAGE Publications
- MacCormick, N. (1998): Norms, Institutions, and Institutional Facts, *Law and Philosophy*, Vol. 17, No. 3, Laws, Institutions, and Facts (May, 1998), pp. 301-345
- Mandel, R. (2001): The Privatization of Security, *Armed Forces and Society*, vol. 28, no. 1, pp. 129-151, Sage Publications
- Maogoto, J. M. (2006): Subcontracting Sovereignty: Commodification of Military Force and Fragmentation of State Authority, *Brown Journal of World Affairs*, vol. XIII, Issue 1, Brown University
- Markusen, A. (2001): *The Case Against Privatizing National Security*, Study Group on the Arms Trade and the Transnationalization of the Defense Industry Council of Foreign Relations, New York
- Mills, S. (1997): **Discourse – The New Critical Idiom**, Series Editor: John Drakakis, Routledge
- Moesgaard, C. (2011): *Weak International Response to the Use of Private Military Security Companies*, DIIS Policy Brief, March 2011
- Neil, B. A. (2011): Are Private Military Firms the Answer To The Expanding Global Crisis?, *International Business & Economics Research Journal*, vol. 10, no. 2, The Clute Institute
- Næsager, J. (2003): *Nej tak til købe-krig*, debate in the newspaper Politiken the 29th of October 2003 as a response to Morten Helveg Petersen
- Olsen, M. E. (2007): *Privatisering af Sikkerhed*, Forsvarsakademiet, Fakultet for Strategi og Militære Operationer, Syndikat Douhet, Stabskursus-11 2006/2007 af Kaptajn Mikkel Enemark Olsen
- Osiander, A. (2001): Sovereignty, International Relations, and the Westphalian Myth, *International Organization* 55, 2, pp. 251- 287, Spring, The IO Foundation & the Massachusetts Institute
- Owens, P. (2008): Distinctions, distinctions: ‘public’ and ‘private’ force? *International Affairs*, 84: 5, p. 977-990, The Royal Institute of International Affairs, Blackwell Publishing Ltd.
- Pedersen, O. K. (1989): Fra individ til aktør i struktur – Tilblivelse af en juridisk rolle, *Statsvetenskaplig Tidskrift*, no. 3, p. 173-92
- Percy, S. V. (2007): Mercenaries: Strong Norm, Weak Law, *International Organization*, vol. 61, no. 2, pp. 367-397, JSTOR, Cambridge University Press
- Petersen, M. H. (2003): *Benhardt valg mellem købe-krig og folkemord*, Debatindlæg af Morten Helveg Petersen i Politiken d. 1. november 2003, also found online at: <http://www.radikale.dk/cms/vis.aspx?aid=13596>, retrieved the 7th of July, 2012
- Plate, C. (2000): **Sociale netværk – et sundhedsfremmende perspektiv**, 1. udgave, 1. oplag, Munksgaard

- Prado, J. G. (2009): Private Military and Security Companies and the UN Working Group on the Use of Mercenaries, *Journal of Conflict & Security Law*, vol. 13, no. 3, p.429-450
- Prado, J. G. (2010): *Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*, UN General Assembly, Human Rights Council, 15th session, agenda item 3, 2nd of July
- Rasmussen, M. V. (2011): **Den gode krig? Danmark i Afghanistan 2006-2010**, Gyldendal forlag
- Rigsrevisionen (2008): *Notat til Statsrevisorerne om forsvarets brug af private aktører ved deltagelse i internationale operationer*, Rigsrevisors udvidede notat til statsrevisorernes, juni
- Ritzaus Bureau (2010): *Fakta om militære hemmeligheder*, article published the 2nd of February, 2012
- Rothbard, M. N. (1998): *The Ethics of Liberty*, Ludwig von Mises Institute, New York University Press, also found online at: <http://mises.org/rothbard/ethics/twentytwo.asp>, retrieved the 6th of July, 2012
- Rothbard, M. N. (2009): **The Anatomy of the State**, Ludwig von Mises Institute, Alabama
- Schneckener, U. (2007): *Armed Non-State Actors and the Monopoly of Force, Policy Paper no 24*, Geneva Centre for the Democratic Control of Armed Forces (DCAF)
- Searle, J. R. (1995): **The Construction of Social Reality**, The Free Press, New York
- Segeer, P. & Spoerri, P. (2009): *The Montreux Document*, On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, the Swiss Confederation and the ICRC
- Shameem, S. (2010): *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Human Rights Council, 15th Session, Agenda item 3, Advance Edited Version*
- Shearer, D. (1998): *Outsourcing War, Foreign Policy*, No. 112, p. 68-81, Washington Post, JSTOR Publication
- Singer, P. (2003): **Corporate Warriors: The Rise of the Privatized Military Industry** (Studies in Security Affairs), New York, Cornell University Press
- Singer, P. W. (2005): *Outsourcing War, Foreign Affairs*, Vol. 84, Issue 2, March/April, 00157120
- Stepputat, F. (2009): *Integrated National Approaches to International Operations*, The Cases of Denmark, UK, and The Netherlands, DIIS Report 2009: 14, The Civil-Military Agenda, also found online at: http://www.diis.dk/graphics/publications/reports2009/diis_report_2009_14_integrated_national_approaches_international_operations_web.pdf, retrieved the 2nd of June, 2012
- Thomson, J. E. (1996): **Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe**, Princeton Studies in International History and Politics, Princeton University Press, New Jersey

The United Nations (2011): *Why we need an International Convention on Private Military and Security Companies* (PMSCs), by the UN Working Group at the Human Rights Council, Geneva, 23 – 27 May 2011

Weldes, J. (1996): Constructing National Interests, *European Journal of International Relations*, SAGE Publications, September, Vol 2(3): 275-318

Wulf, H. (2007): The Future of the Public Monopoly of Force, *Policy Paper no 24*, Geneva Centre for the Democratic Control of Armed Forces (DCAF)

Web based:

BBC News – BBC Online: *Former Blackwater firm renamed again* (2011), <http://www.bbc.co.uk/news/world-us-canada-16149971>, retrieved the 15th of June, 2012

Berlingske – Berlingske Online;

(1) *Hækkerup: Forsvaret skal spare tre milliarder* (2011), article published in Berlingske, Politiko the 12th of October by Christian Brøndum, <http://www.b.dk/politiko/haekkerup-forsvaret-skal-spare-tre-milliarder>, retrieved the 8th of June, 2012

(2) *Borgerlige klar til at støtte sammenlægning i forsvaret* (2012), article published in Berlingske at page 10, the 20th of February by Christian Brøndum, <http://www.b.dk/apps.berlingskemedias.dk/nationalt/borgerlige-klar-til-at-stoette-sammenlaegning-i-forsvaret>, retrieved the 20th of May, 2012

(3) Krogh, K. & Frich, M. (2007): *Lejesoldater: De danske lejesvende*, <http://www.b.dk/kultur/de-danske-lejesvende>, retrieved the 7th of February, 2012

Bredsdorff, N. (2003): **Diskurs og konstruktion**, København, Forlaget Sociologi, excerpts of the book also found under *Socialkonstruktivisme og socialkonstruktionisme* at <http://www.leksikon.org/art.php?n=5014>, retrieved the 29th of May, 2012

Bødskov, M. (2012): *Betænkning over Forslag til lov om ændring af våbenloven og lov om krigsmateriel m.v.*, (Civile bevæbnede vagter på danske lastskibe m.v.), Betænkning afgivet af Retsudvalget den 24. maj 2012, <https://www.retsinformation.dk/Forms/R0710.aspx?id=142088>, retrieved the 18th of July, 2012

Christensen, J. (2011): *Justitsministeren og Danmarks Rederiforening skal mødes*, article published online at transportnyhederne.dk the 1st of November 2011, <http://www.transportnyhederne.dk/Print.asp?Id=43942>, retrieved the 18th of July, 2012

CNN (2004): *Private contractors who torture*, Physical Abuse, article published at CNN Justice the 17th of June by Joanne Mariner, <http://articles.cnn.com/2004-06->

[17/justice/mariner.contractors_1_civilian-interrogator-wanton-criminal-abuses-civilian-courts? s=PM:LAW](#), retrieved the 10th of July, 2012

Dansk Røde Kors (2007): *Folkerettens historie*, EMU – Danmarks Undervisningsportal:

<http://www.emu.dk/gym/krigensregler/tekster/folkerettenshistorie.pdf>, retrieved the 14th of May, 2012

DCAF – The Geneva Centre for the Democratic Control of Armed Forces;

(1) A centre for security, development and the rule of law, *Who we are*,

<http://www.dcaf.ch/>, retrieved the 16th of May, 2012

(2) *Programmes, Human Rights and the Rule of Law*,

<http://www.dcaf.ch/Programmes/Human-Rights-and-the-Rule-of-Law>, retrieved the 18th of May, 2012

(3) *Best Practices for hiring PMSC Personnel*,

<http://www.privatesecurityregulation.net/files/Best%20Practices%20for%20Hiring%20PMSC%20Personnel.pdf>, retrieved the 12th of June, 2012

DR – Danmarks Radio;

(1) Kvist, B. (2010): *OSCE genopstår efter ti år i dvale*,

<http://www.dr.dk/P1/orientering/indslag/2010/12/08/184401.htm>, retrieved the 2nd of February 2012

(2) *De falske soldater*, DR1 dokumentaren,

<http://www.dr.dk/DR1/Dokumentar/2008/1031093239.htm>, retrieved the 6th of February, 2012

(3) *Forsvaret skal spare tre milliarder* (2011), article published online at DR Politik the 13th of October by Lene Koogi, <http://www.dr.dk/Nyheder/Politik/2011/10/13/060330.htm>, retrieved the 10th of July, 2012

(4) *Forsvarskommandoen bliver nedlagt*,

<http://www.dr.dk/Nyheder/Politik/2012/06/07/151357.htm>, article published online by mette Mayli Albæk the 7th of June, retrieved the 23rd of July, 2012

(5) *Sikkerhedsfirmaer bliver i Afghanistan*,

<http://www.dr.dk/Nyheder/Indland/2010/10/17/141333.htm?rss=true>, retrieved the 25th of June, 2012

(6) *Private militære firmaer er kommet for blive*,

<http://www.dr.dk/P1/orientering/indslag/2008/11/13/171155.htm>, retrieved the 6th of February, 2012

FE – Forsvarets Efterretningstjeneste, <http://fe-ddis.dk/Pages/Default.aspx>, retrieved the 11th of February, 2012

Finansministeriet (2011): *Ny vækst og styr på pengene – Finanslovsforslaget 2012*,

http://fm.dk/Publikationer/2011/Finanslovspjece%20aug%2011/~media/Publikationer/Imp%20ortet/2011/Finanslovspjece%20aug%2011/ny%20v%C3%A6kst%20og%20styr%20p%C3%A5%20pengene_web.ashx, retrieved the 10th of July, 2012

Folketinget;

(1): *§ 20-spørgsmål S 3181 om retsforfølgelse af pirater* (2012), between the Minister of Foreign Affairs and Peter Skaarup,

<http://www.ft.dk/samling/20111/Spoergsmaal/S3181/index.htm>, retrieved the 18th of July, 2012

(2): *L 116 Forslag til lov om ændring af våbenloven og lov om krigsmateriel m.v.* (2012), by the Minister of Justice Morten Bødskov, meeting the 10th of April,

<http://www.ft.dk/samling/20111/lovforslag/l116/beh1/6/forhandling.htm>, retrieved the 23rd of July, 2012

(3): *B 64 Forslag til folketingsbeslutning om udvidelse af det danske bidrag til den internationale sikkerhedsstyrke ISAF i Afghanistan* (2006), by the Minister of Foreign Affairs

Per Stig møller, <http://www.ft.dk/Samling/20051/beslutningsforslag/B64/index.htm>, retrieved the 23rd of July, 2012

Forsvaret;

(1) Forsvarskommandoen: *Forsvarets mission, vision og strategier*,

<http://forsvaret.dk/FKO/Om%20Forsvaret/Mission%20Vision%20Strategier/Pages/default.aspx>, retrieved the 8th of July, 2012

(2) Forsvarskommandoen: *Forsvarets øverste ledelse*,

<http://forsvaret.dk/FKO/OM%20FORSVARET/FORSVARETS%20LEDELSE/Pages/default.aspx>, retrieved the 8th of July, 2012

(3) Forsvarskommandoen: *Forsvarschefen*,

<http://forsvaret.dk/FKO/OM%20FORSVARET/FORSVARETS%20LEDELSE/FORSVARSCHEFEN/Pages/default.aspx>, retrieved the 8th of July, 2012

(4) *Forsvaret samarbejder med private sikkerhedsfirmaer*, af Anders V. Fridberg the 19th of August 2009 as a response to an article in Politiken,

http://www2.forsvaret.dk/nyheder/overige_nyheder/Pages/Forsvaretsamarbejdermedprivatesikkerhedsfirmaer.aspx, retrieved the 9th of July, 2012

(5): *Forsvarskommandoens Årsrapport 2009*, underskrevet april 2010,

<http://www2.forsvaret.dk/omos/Publikationer/Documents/%C3%85rsrapport%202009.pdf>, retrieved the 9th of July, 2012

(6): *Forsvarskommandoens Årsrapport 2011*, underskrevet april 2012,

<http://www2.forsvaret.dk/omos/Publikationer/Documents/%C3%85rsrapport%202011%20laout%2018-04%20high.pdf>, retrieved the 10th of July, 2012

(7): Hærens Operative Kommando, *DANCON/ISAF hold 13*, February 2012, <http://forsvaret.dk/HOK/International%20Info/ISAF/Pages/default.aspx>, retrieved the 23rd of July, 2012

Forsvarsministeriet;

(1) *Forsvarsforlig*, <http://www.fmn.dk/videnom/Pages/Forsvarsforlig.aspx>, retrieved the 9th of July, 2012

(2) *Forsvarsforlig for 2005 – 2009* (2004), <http://www.fmn.dk/videnom/Pages/Tidligereforsvarsforlig.aspx>, retrieved the 9th of July, 2012

(3) *Forsvarsforlig for 2010-2014* (2009), <http://www.fmn.dk/videnom/Documents/Forligstekst%20inkl%20bilag.pdf>, retrieved the 9th of July

(4) *Baggrund for indsatsen i Afghanistan*, <http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Pages/Baggrundforindsatsen.aspx>, retrieved the 9th of July, 2012

(5): *Den Danske Indsats i Helmand 2010*, Helmand-planen 2010, Udenrigsministeriet og Forsvarsministeriet, udgivet april 2010, <http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Documents/DendanskeindsatsiHelmand2010.pdf>, retrieved the 15th of July, 2012

(6): *Helmand-Planen 2011-2012* samt afrapportering for den danske indsats i Afghanistan i 2010, Udenrigsministeriet og Forsvarsministeriet, udgivet februar 2011, http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Documents/Helmandplan2011_FINAL_web.pdf, retrieved the 15th of July, 2012

(7): *Effektiviseringsstrategi*, udbygget med 'Klare mål og mere åbenhed' december 2004, http://www.fmn.dk/SiteCollectionDocuments/FMN/Publikationer/Effektiviseringsstrategi_dec2004.pdf, retrieved the 15th of July, 2012

(8): *Den danske indsats i Helmand 2008*, Afrapportering 2008, Udenrigsministeriet og Forsvarsministeriet, udgivet februar 2009 [http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Documents/Afrapportering af Helmandplanen_2008.pdf](http://www.fmn.dk/temaer/afghanistan/baggrundforindsatsen/Documents/Afrapportering_af_Helmandplanen_2008.pdf), retrieved the 15th of July, 2012

(9): *Samtænkning af civil og militær indsats i internationale operationer*, Udenrigsministeriet og Forsvarsministeriet, 2004 <http://www.fmn.dk/SiteCollectionDocuments/FMN/Forsvarsforlig%202005%202009/Samt%C3%A6nkning.pdf>, retrieved the 16th of July, 2012

(10): *Forsvarskommissionen af 2008*, <http://www.fmn.dk/videnom/Pages/Forsvarskommissionenaf2008.aspx>, retrieved the 23rd of July, 2012

(11): *Fundamentet til det danske kursskifte i Afghanistan er færdigstøbt*, article published online the 8th of May,
<http://www.fmn.dk/nyheder/Arkiv/Afghanistan/Pages/Fundamentettildetdanskekursskifteerfaerdigstoebt.aspx>, retrieved the 23rd of July, 2012

(12): *Fakta om indsatsen i Afghanistan*,
<http://www.fmn.dk/temaer/afghanistan/Faktaomindsatsen/Pages/Faktaomindsatsen.aspx>, retrieved the 23rd of July, 2012

(13): *Indsatsen i Afghanistan*,
<http://www.fmn.dk/temaer/afghanistan/IndsatseniAfghanistan/Pages/DendanskeindsatsiAfghanistan.aspx>, retrieved the 23rd of July, 2012

(14): *Danmarks indsats mod pirateri*,
<http://www.fmn.dk/temaer/pirateri/Danmarksindsatsmodpirateri/Pages/Danmarksindsatsmodpirateri.aspx>, retrieved the 24th of July, 2012

(15): *Kommissorium for Irak- og Afghanistankommissionen*,
<http://www.fmn.dk/nyheder/Pages/Undersoegelseskommission.aspx>, retrieved the 26th of July, 2012

The Global Post (2010): *5 ways to stop a pirate*, published online by Stephanie Hanson the 24th of June 2010, <http://www.globalpost.com/dispatch/worldview/100623/piracy-anti-piracy-somali-maritime>, retrieved the 18th of July, 2012

Guardian – Global Business Security;

(1) *Pressemeddelelse*, <http://www.guardian-gbs.com/Presse/pmguardian170607.pdf>, retrieved the 7th of February, 2012

(2) *Sikkerhed er ikke en selvfølge*, http://www.guardian-gbs.com/DownloadMateriale/Folder2-flap_ebook.pdf, retrieved the 6th of February, 2012

ICoC – The International Code of Conduct for Private Security Service Providers;

(1): *About the ICoC*, http://www.icoc-psp.org/About_ICoC.html, retrieved the 4th of August, 2012

(2): *Fact Sheet* (2011), International Code of Conduct for Private Security Service Providers (ICoC), http://www.icoc-psp.org/uploads/Fact_Sheet_ICoC_November_2011.pdf, retrieved the 4th of August, 2012

(3): *International Code of Conduct for Private Security Service Providers* (2010)
http://www.icoc-psp.org/uploads/INTERNATIONAL_CODE_OF_CONDUCT_Final_without_Company_Names.pdf, by the Swiss Confederation 9th of November, 2010 retrieved the 5th of June, 2012

ICRC – The International Committee of the Red Cross;

(1): *The ICRC in Afghanistan*, <http://www.icrc.org/eng/where-we-work/asia-pacific/afghanistan/overview-afghanistan.htm>, retrieved the 17th of May, 2012

(2): *London: ICRC talks to policy makers about humanitarian situation in Afghanistan*, <http://www.icrc.org/eng/resources/documents/article/review-2011/irrc-afghanistan-2011-12-22.htm>, retrieved the 17th of May, 2012

(3): *International Humanitarian Law – Treaties & Documents*:
<http://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>, retrieved the 6th of June, 2012

Information;

(1) *Danmarks lange krig mod Taleban er forbi* (2012), article published in Information, *Moderne Tider* the 25th of May by Charlotte Aagaard, <http://www.information.dk/301858>, retrieved the 12th of June, 2012

(2) *V og R klar til at lade private deltage i krig* (2008), article published the 12th of November by Kristian Villesen, <http://www.information.dk/171678>, retrieved the 6th of February, 2012

ISOA – International Stability Operations Association;

(1): *Raising the Bar for Stability Operations Worldwide*, <http://stability-operations.org/index.php>, retrieved the 5th of June, 2012

(2): *From the Whiteboard*, http://www.stability-operations.org/whiteboard/2012/0306_Accept.pdf, retrieved the 5th of June, 2012

(3): *The Future of the Stability Operations Industry* (2011), in *Journal of International Peace Operations*, vol. 6, no. 5, March-April 2011, http://web.peaceops.com/pdf/journal_2011_0304.pdf, retrieved the 5th of June, 2012

(4): *International Code of Conduct for Private Security* (2011), in *Journal of International Peace Operations*, vol. 6, no. 4, Jan-Feb 2011, peaceops.com, http://web.peaceops.com/pdf/journal_2011_0102_hires.pdf, retrieved the 5th of June, 2012

Jenkins, L. (2011): *Why We Need an International Treaty on Private Military Contractors*, UN Dispatch, <http://www.undispatch.com/why-we-need-an-international-treaty-on-private-military-contractors>, retrieved the 5th of June, 2012

Justitsministeriet (2012): *Pressemeddelelse, Pressemøde om kommissorium for Irak- og Afghankommissionen onsdag kl. 16*, information published online Tuesday the 10th of April, 2012, http://www.justitsministeriet.dk/pressemeddelelse+M5bb08be70e8.html?&tx_ttnews%5Bpoinster%5D=3, retrieved the 26th of July, 2012

MetroXpress – metroxpress.dk

Afghanistan: 10 år med internationale soldater og nu er der demokrati,

<http://www.metroxpress.dk/nyheder/afghanistan-10-ar-med-internationale-soldater-og-nu-er-der-demokrati/KObkka!MKRA4emWFusiE/>, retrieved the 28th of May, 2012

The Nation (2010): *Blackwater's Youngest Victim*, published in the Nation the 28th of January by

Jeremy Scahill, <http://www.thenation.com/article/blackwaters-youngest-victim>, retrieved the 3rd of June, 2012

The New York Times;

(1) Kakutani, M. (2008): *Global Strategy or Grand Illusion?*

<http://www.nytimes.com/2008/03/18/books/18kaku.html?ref=nationalsecuritycouncil>, retrieved the 25th of January, 2012

(2) Shane, S. (2010): *U.S. Approval of Killing of Cleric Causes Unease*,

<http://www.nytimes.com/2010/05/14/world/14awlaki.html?adxnnl=1&ref=nationalsecuritycouncil&adxnnlx=1328983215-Msmwo/lj01kf4AFdvSzuag>, retrieved the 25th of January, 2012

(3) Sanger, D. E. (2011): *America's Deadly Dynamics With Iran*,

http://www.nytimes.com/2011/11/06/sunday-review/the-secret-war-with-iran.html?_r=2&pagewanted=1&ref=nationalsecuritycouncil, retrieved the 25th of January, 2012

(4) Dao, J., Schmitt, E. & Burns, J. F. (2004): *THE STRUGGLE FOR IRAQ: SECURITY; Private Guards Take Big Risks, For Right Price*,

<http://www.nytimes.com/2004/04/02/us/the-struggle-for-iraq-security-private-guards-take-big-risks-for-right-price.html?src=pm>, retrieved the 25th of January, 2012

(5): The Associated Press (2011): *Contractor Sentenced in Afghan Death*,

http://www.nytimes.com/2011/06/15/world/asia/15briefs-Blackwater.html?_r=2, retrieved the 28th of May, 2012

(6) *Flexing Muscle, Baghdad Detains U.S. Contractors* (2012), published in New York Times the 15th of January by Michael S. Schmidt and Eric Schmitt,

http://www.nytimes.com/2012/01/16/world/middleeast/asserting-its-sovereignty-iraq-detains-american-contractors.html?_r=2&ref=privatemilitarycompanies, retrieved the 2nd of May, 2012

Politiken;

(1) *R: Lejesoldater skal kæmpe for FN* (2003), article published in Politiken the 23rd of October by Laust Tuxen, <http://politiken.dk/indland/ECE71203/r-lejesoldater-skal-kaempe-for-fn/>, retrieved the 9th of June, 2012

(2) Ritzau (2011): *Afghanistan lukker sikkerhedsfirmaer*,

<http://politiken.dk/udland/ECE1224906/afghanistan-lukker-sikkerhedsfirmaer/>, retrieved the 25th of June, 2012

(3) Ritzau (2010): *Private sikkerhedsfirmaer betaler Taleban*,
<http://politiken.dk/udland/ECE1079249/private-sikkerhedsfirmaer-betaler-taleban/>,
retrieved the 25th of June, 2012

(4) *Er krigen i Afghanistan ofrene værd?* (2010), article published the 18th of March by Stig Dalager in Kroniken, <http://politiken.dk/debat/kroniker/ECE925105/er-krigen-i-afghanistan-ofrene-vaerd/>, retrieved the 28th of June, 2012

(5) *Lejetropper kan bruges fornuftigt i FN-regi* (2003), debate in Politiken the 6th of November by Christian Friis Bach,
http://www.friisbach.dk/Avisartikler.91.0.html?&cHash=7f5d532df173f3b3410b4c37a234a15a&tx_ttnews%5BbackPid%5D=42&tx_ttnews%5Btt_news%5D=48, retrieved the 9th of July, 2012

(6) *Afghanistan er godt på vej* (2012), article published in Politiken, Kroniken the 3rd of January by Christian Friis Bach, <http://politiken.dk/debat/kroniker/ECE1496327/afghanistan-er-godt-paa-vej/>, retrieved the 9th of July, 2012

(7) *De private hære spiller hovedrolle i USA's krige* (2009), article published in Politiken the 22nd of November, 2009 by Correspondent in New York Marcus Rubin,
<http://vejlebib.dk/ting/object/870971%3A33886446>, retrieved the 14th of July, 2012

(8) Kiærskou, P. (2007): *Hærens nye virkelighed*,
<http://politiken.dk/debat/kroniker/ECE220584/haerens-nye-virkelighed/>, retrieved the 14th of July, 2012

Radikale Venstre (2003): *FN i forvandling og forandring*, Christiansborg d. 24. oktober 2003,
Udenrigspolitisk Udvalg i Det Radikale Venstre, udspil behandlet og tiltrådt af den Radikale Folketingsgruppe, http://www.radikale.dk/upload%5Cfb_13168_5776_13234.pdf, retrieved the 1st of July, 2012

Retsinformation – retsinformation.dk

Hækkerup, H. (2000): Forslag til lov om forswarets formal, opgaver og organisation m.v.,
<https://www.retsinformation.dk/Forms/R0710.aspx?id=88653>, retrieved the 7th of February, 2012

TV2 (2012): *Forsvarskommandoen nedlægges*, <http://nyhederne.tv2.dk/article.php/id-50948567:forsvarskommandoen-nedl%C3%A6gges.html?ss>, article published by Keld Andersen online Thursday the 7th of June, retrieved the 23rd of July, 2012

UM – Udenrigsministeriet;

(1): Politik og diplomati → Fred, sikkerhed og international retsorden → Den humanitære folkeret, *Magtanvendelse og den humanitære folkeret*, <http://um.dk/da/politik-og-diplomati/retsorden/folkeretten/den-humanitaere-folkeret/>, retrieved the 3rd of February, 2012

- (2): Udførsel af våben og produkter med dobbelt anvendelse fra Danmark, 2010, http://www.sipri.org/research/armaments/transfers/transparency/national_reports/denmark/denmark0708, retrieved the 8th of February, 2012
- (3): Danida Publikationer, *Danmark i Afghanistan – Hvordan, Hvorfor og Hvor længe?*, <http://www.danida-publikationer.dk/publikationer/publikationsdetaljer.aspx?Pid=918b9494-05dc-4a60-b8d7-2d501fc8bc4c>, retrieved the 17th of April, 2012
- (4): Politik og diplomati → International politik → Globalt → Afghanistan, <http://um.dk/da/politik-og-diplomati/international-politik/globalt/afghanistan>, retrieved the 27th of May, 2012
- (5): Danida Publikationer, Afrapportering 2011, Den danske indsats i Afghanistan, <http://danida-publikationer.dk/publikationer/publikationsdetaljer.aspx?Pid=17848177-074b-41e1-906d-5f1b31134fd8>, retrieved the 27th of May
- (6): Danmark i Afghanistan, <http://dkiafghanistan.um.dk/>, retrieved the 29th of May, 2012
- (7): *The Danish Strategy for Afghanistan*, <http://afghanistan.um.dk/en/denmark%20in%20afghanistan/>, retrieved the 23rd of July, 2012
- (8): *Principles for the Danish engagement*, <http://afghanistan.um.dk/en/denmark%20in%20afghanistan/principles-for-the-danish-engagement/>, retrieved the 23rd of July, 2012

The United Nations;

- (1): *1989 UN Convention on Mercenarism*, International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 72nd plenary meeting, 4th of December 1989, <http://www.un.org/documents/ga/res/44/a44r034.htm>, retrieved the 23rd of July, 2012
- (2): *2009 UN Draft Convention on the Use of PMSCs*, Draft International Convention on the Regulation, Oversight and Monitoring Of Private Military and Security Companies, Special Procedures Assumed by the Human Rights Council, Office of the United Nations, High Commissioner for Human Rights, 13 July 2009, Final draft for distribution, <http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>, retrieved the 23rd of July, 2012
- (3): *SECURITY COUNCIL AUTHORIZES INTERNATIONAL SECURITY FORCE FOR AFGHANISTAN; WELCOMES UNITED KINGDOM'S OFFER TO BE INITIAL LEAD NATION Resolution 1386 (2001)* Adopted Unanimously <http://www.un.org/News/Press/docs/2001/sc7248.doc.htm>, retrieved the 23rd of July, 2012
- (4): Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, <http://www2.ohchr.org/english/issues/mercenaries/docs/A.HRC.15.25.pdf>, retrieved the 15th of July, 2012

(5): Treaty Collection,
http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-6&chapter=18&lang=en, retrieved the 15th of July, 2012

USA Today – What exactly happened that day in Fallujah?,
http://www.usatoday.com/news/world/iraq/2007-06-10-fallujah-deaths_N.htm, retrieved the 27th of May, 2012

Washington Post, (2009): *U.S. Command Considering Private Security on Afghan Front Lines*, published in the Washington Post Sunday the 26th of July, by Walter Pincus,
<http://www.washingtonpost.com/wp-dyn/content/article/2009/07/25/AR2009072501738.html>, retrieved the 9th of July, 2012

Appendix I: Interview

Empirical data in the form of a qualitative interview with the former Chief of Defence, Tim Sloth Jørgensen by Sasha Beckmann and Sofie Hyllested, conducted the 23rd of March, 2012 at Forsvarsministeriet, Holmens Kanal 42, 1060 København.

For the full interview please listen to the attached CD with the file.