

Private security companies and the state monopoly on violence: a case of norm change?

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Private Security Companies and the State Monopoly on Violence: A Case of Norm Change?

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Summary

The proliferation of private security companies has received increasing public and academic attention in recent years. From the involvement of private security firms in Sierra Leone and Angola to the capture and killing of Blackwater security contractors in Iraq, the emergence of an international private security industry raises new questions with regard to the legitimacy of the private use of armed force. One aspect often missed in the public debate has been the pervasiveness of private security contractors. While most reports focus on the controversial actions of private security firms in international interventions, most notably Afghanistan and Iraq, domestic private security sectors in Europe and North America have been expanding since the 1970s. The emergence of a global private security industry thus appears to be part of a broader trend that suggests the growing acceptance and use of commercial security firms at the national *and* international levels. The recent signing of the *Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict* has been a further expression of the increased legitimacy of private security contractors. In the document, seventeen states - Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, Ukraine, the United Kingdom and the United States - have resisted pressures to strengthen the international regulation of private security firms by reiterating the applicability of existing international humanitarian and human rights law and by recommending that firms adopt a voluntary code of good practice.

In response to these developments, this report raises the question of whether the growing recognition of private security companies marks a fundamental shift in the norm of the state monopoly on violence in Western democracies. Arguing that this ideal has shaped the provision of security in Europe and North America for much of the past century, this report investigates in how far the proliferation of private security contractors and the responses of governments and the public indicate the emergence of a new normative order. To do so, the report is structured into five parts. The first part discusses the conceptual origins of the norm of the state monopoly on violence. It argues that at the centre of this norm is the notion that the prohibition of the private use of armed force by individual citizens forms the condition for the establishment of domestic zones of peace. Expectations of non-violence which allow for the conduct of social relations and commerce can only emerge under these conditions. Thus the state's monopoly on the legitimate use of armed force does not only entail ensuring the control of armed force, but serves primarily to prevent violence among its citizens. Although there have always been limitations to the practical implementation of this norm, the centralization of armed force within domestic police and national armed forces became a key feature in Europe and North America during the twentieth century. The second part of the report turns to the question of how norm change can be observed in order to measure its potential transformation. It outlines two main strategies. One strategy examines to what extent a norm has been implemented in national and international practice, institutions and laws.

The other investigates whether actors have challenged or accepted a norm by analyzing public discourses and government responses. The third part of the report employs both strategies to examine to what degree the use of armed force by private security contractors has become recognized and legitimized at the national and international levels, suggesting a transformation of the norm of the state monopoly on violence. While this transformation appears to be most advanced in the United States and the United Kingdom, this part of the report illustrates that the proliferation and acceptance of private security firms is a general phenomenon throughout most of Europe and North America. It notes that in particular countries such as Poland, Turkey, Germany, France and Spain have sizeable and growing private security sectors. Moreover, many Western countries are host to international private security firms and use private security contractors in international interventions. Part four discusses the implications of the changing norm of the state monopoly on violence. It contends that these implications differ at the national and international levels. At the national level, the proliferation of private security guards appears to have no consistent negative or positive impact on public security or fear of crime across Europe and North America. However, considerable consequences can be observed regarding the control and accountability of security providers. To be specific, the proliferation of private security has meant that, in a growing number of instances, private rather than collective decisions form the basis for the use of violence; legal rather than political considerations define their legitimacy; and accountability is shifted from parliaments and publics to private clients who buy between 70 and 80 percent of commercial security services. At the international level, the transformation of the norm of the state monopoly on violence has both positive and negative consequences. A positive effect has been that global security firms can contribute to ending conflicts, protecting humanitarian aid operations and securing international business investments. Negative consequences have included the proliferation of small arms and light weapons, the exacerbation of conflicts and the undermining of public security. The most important challenge, however, has been to the laws of war, which have largely been based on the presumption of the state monopoly on armed force. Thus, the report notes that private security firms typically operate outside the remit of existing international humanitarian law because they work in areas where there is no declared war, are often employed by private actors, and do not engage in offensive military action, making it difficult to decide whether they are 'combatants'. In addition, like at the national level, there is the question of the political accountability of private security contractors. The report draws two main conclusions and recommendations from these observations. First, it argues that countries in Europe and North America need to recognize that the proliferation of private security firms is transforming the normative foundations and practices of the provision of security, requiring a reconsideration of existing national and international laws. Second, the report concludes that there is a need for a public debate on the political desirability and legitimacy of the private use of armed force.

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1. Introduction

In September 2008, one year after Blackwater contractors killed 17 innocent civilians in a shootout on the streets of Baghdad, seventeen states signed 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*.¹ The document was the outcome of two years of consultations initiated and led by the Swiss government and the International Committee of the Red Cross (ICRC) in response to the growing role of private security companies (PSC) in international conflicts.² The objectives of the Swiss-ICRC consultations were the clarification, and possibly the strengthening, of international law and national regulations with regard to PSCs. However, the resulting Montreux Document did not go beyond a reiteration of existing international humanitarian and human rights law and voluntary “good practices” drawn from the codes of conduct of PSCs and their industry associations.

What makes the Montreux Document interesting is not its failure to ensure the international regulation or prohibition of the private military and security industry, but the question of whether this failure signifies a transformation of the norm of the state monopoly on violence. The tension between old and emerging norms with regard to the legitimate use of armed force inherent in the two-part structure of the document appears to give some indication of such a potential transformation. The first part rests on the old norm of the state monopoly on the legitimate use of collective force embodied in international humanitarian law. The second part hints at the rise of a new norm which considers the commercial use of violence as legitimate and advocates a voluntary self-regulation of the private military and security industry (Cockayne 2009: 404).

In short, this report is about norm change. What is the empirical evidence for a transformation of the norm of the state monopoly on armed force among Western democracies? And what, if any, are the potential implications of such a norm change? To answer these questions, this report is structured into four parts. The first part outlines the relevance of the norm of the state monopoly on the legitimate use of armed force for national and international security. The second part investigates the theory of norm change and discusses the problems of measuring the transition from one norm to another. The third part examines the empirical evidence for the transformation of the norm of the state monopoly on violence and the emergence of the commercial use of force for private protection as a new normative standard. Finally, the fourth part uses select examples to discuss the potential consequences of such a transformation.

1 The states included Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, Ukraine, the United Kingdom and the United States.

2 This report takes the term private security companies (PSCs) to define all commercial security providers.

2. The norm of the state monopoly on violence

Before one can ask whether the norm of the state monopoly on violence is indeed in the process of changing and what implications this might have, it is first of all necessary to understand the origins and content of this norm. The modern norm of the state monopoly on the legitimate use of physical force dates back as far as the seventeenth century (Hobbes 1651). Its origins can be found in the theory of the social contract according to which citizens give up their right to employ force in return for protection by the state (Krahmann 2010). The aim of this contract is the elimination of the purposive and regular use of armed force by citizens, and the creation of national zones of peace and stability. At the same time, the state monopoly on armed force seeks to outlaw violence among groups of peoples across national borders and aims to contain organized conflict in the international arena. It is, thus, erroneous to assume that the social contract merely proscribes state *control* of the legitimate use of armed force as suggested by Max Weber (1994: 310-11). Its main objective is the prohibition of the private use of violence by the citizens, which is achieved by granting the state the *monopoly* on armed force in order to enforce it. In short, the norm or ideal of the state monopoly on violence proscribes that the state should be the only legitimate actor wielding force for purposes other than immediate self-defence.

Although always imperfect in its implementation, academic research has demonstrated the progressive impact of the norm of the state monopoly on violence on national and international affairs over the past three centuries (Avant 2000; Percy 2007; Thomson 1994). These studies illustrate through changes in the practices and laws of Western countries that the legitimate use of armed force became increasingly monopolized by state actors in Europe and North America. The emergence of the nation-state and modern democracies played a major role in this transformation. Specifically, they provided the capabilities and legitimization for the centralization of armed force within the institutions of the modern democratic nation-state such as the public police and national armed forces. In the view of many, the state monopoly on violence peaked in the Western world during the twentieth century, also described as the “golden age” of the nation-state (Leibfried et al. 2008). The definition and implementation of the norm of the state monopoly on the legitimate use of violence during this time is, therefore, taken as the basis on which this report seeks to assess whether this norm is (again) in the process of changing in Europe and North America.

From the report’s twentieth-century view, the definition of the state monopoly on the legitimate use of armed force contains at least three aspects. First, it determines *who* is permitted to use force, namely the democratic state and its agencies. Second, it involves an agreement on what is considered the *legitimate* use of violence and on what basis, such as the outlawing of torture and the proportionality of force. Finally, the definition proscribes under which *circumstances* and for what *purposes* state actors may employ force, including public security and national defence. The issue of who is permitted to use armed force is of central importance. The norm of the state monopoly on violence rests on the assumption that a general expectation of peaceful cooperation and conflict

resolution can only develop among all citizens if private individuals are prohibited from using armed force to further their own interests. At the same time, it contends that the state needs to retain a minimum of force in order to protect its citizens against domestic actors who ignore this prohibition as well as against international threats.

The unique legitimacy of the state use of collective force derives from several factors. Foremost has been the definition of the circumstances and objectives for which the state may use armed force through democratic decision-making processes. These processes seek to ensure that the use of armed force against citizens only occurs with their prior consent (input-legitimacy). Another factor is the collective nature of these decisions. Whereas the private use of force may serve the self-determination of the particular citizen who employs violence to further his or her aims, it does not normally involve the permission of those against whom it is directed. The democratic control and accountability of the state agencies which wield force in the name of the collective such as the police and the armed forces supply further legitimacy. In contrast to private armed forces, which are controlled and accountable exclusively to their employers or shareholders, the accountability of public violence is towards the collective and ensured through representative bodies such as elected governments and parliaments.

Clear normative guidelines and legal stipulations which set out the contexts and purposes for which a state may use armed force safeguard not only its legitimacy, but also offer protection against unnecessary violence from the police or armed forces. In the domestic arena, these laws include police acts and army regulations for a wide variety of situations, ranging from provisions against alcohol-related disorderly behaviour to combating organized crime and terrorism. For the use of armed force in the international arena, they subsume international humanitarian law such as the Geneva Conventions and national guidelines for the armed forces such as the US Army Field Manual 27-10 'The Law of Land Warfare' (Dinstein 2004; Elsea 2001).

3. Norm change and measurement

In order to examine whether and how the rise of the private security industry impacts on the norm of the state monopoly on the legitimate use of violence in Western democracies, it is necessary to establish the meaning of norms and how they evolve. International Relations Theory commonly defines norms as informal and formal rules and beliefs which set "appropriate standards of behaviour" (Finnemore/Sikkink 1998: 891). Norms provide guidance for desirable behaviour, even if they are not always implemented perfectly. Norms influence the praxis in two ways. On the one hand, a norm can constrain and prevent actions. On the other hand, constitutive norms can enable and legitimize particular forms of behaviour. However, norms change over time. Two complementary theoretical approaches help to explain how norms develop.

The first approach focuses on the role of norm entrepreneurs in the promotion of norms or norm change (Payne 2001; Nadelmann 1990; Finnemore/Sikkink 1998). According to this model, norms develop in three stages: norm emergence, norm cascade

and internalization. At the first stage, norm entrepreneurs attempt to persuade others to adopt new norms. At the second stage, imitation takes a major role as norm entrepreneurs seek to socialize others into the new norms. Finally, norm internalization occurs when norms “acquire a taken-for-granted quality [and] are no longer a matter of broad public debate” (Finnemore/Sikkink 1998: 895-905).

The second approach promotes an evolutionary explanation which puts less emphasis on the active contribution of norm entrepreneurs than on structural factors which facilitate or inhibit norm development and change (Florini 1996; Boyd/Richerson 1994). It argues that norms emerge or transform when a norm causes actors to behave in such ways that their norms are more likely to be adopted by others. Three factors encourage the emergence of new norms: prominence, coherence and environment. Prominence refers to the ability of norms to gain acceptance, including the support of norm entrepreneurs or role models. Coherence applies to the “fit” of a norm with regard to other dominant norms. Finally, the external environment such as the distribution of power among actors which endorse particular norms plays an important role. Norms spread if “actors see others behaving in a certain way and copy those behaviours” (Florini 1996: 378). The more actors behave according to a norm, the greater the probability that others will emulate them (Paluck 2009).

While the preceding theoretical arguments suggest an emerging understanding of the development of national and international norms, the empirical measurement of norm change is not without its problems. Since norms by definition concern ideal standards of behaviour, there is often a differential between a norm and its implementation in the political and social praxis. There might be a global norm against homicide, for instance, but this does not prevent occasional murder in most societies. It follows that a norm can only be assessed in terms of degrees. Some norms might be strong, reaching nearly universal application; others might be weak, implemented only in certain situations or by certain actors. This poses particular difficulties for the examination of norm change. When can it be determined that a norm has been adopted or abandoned? It can be assumed that there will often be an intermediary phase where two or several competing norms coexist within a select group of actors.

Despite these problems, a growing range of scholars have attempted to examine the development of norms. They have used several approaches to study the acceptance and strength of a norm (Kacowicz 2005: 13; Percy 2007: 373). One way is to investigate the recognition of a norm in national and international law. A second way is to examine the implementation of a norm in formal institutions. A third way is to analyse the effect of a norm on social and political customs and practices. And a fourth way of measuring the existence and strength of a norm is to observe the responses of state and societal actors to its violation. While the first three approaches focus on observable institutions and behaviour, the last focuses on political and social discourses. In the context of the evolution of the norm of the state monopoly on the legitimate use of violence, these approaches suggest two investigatory strategies for this report. First, the report will examine to what extent the norm of the legitimate use of violence by private security firms has come to define the practices, institutions and laws shaping contemporary

security provision in Europe and North America. Second, it will analyze how governments and populations have responded to the proliferation of the private use of force by security companies in the national and international arena. The aim of the report is to establish whether a significant and growing acceptance of the private use of armed force can be observed across some or all of these measures. Although this evidence might not count as definitive proof of a transformation of the norm of the state monopoly on legitimate violence, it can illustrate the plausibility of a norm change in this area.

4. The transformation of the norm of the state monopoly on violence

Since the late 1970s, Europe and North America have seen the exponential growth of commercial security providers such as private military companies, private policing firms and security consultancies. In 2004, the Confederation of European Security Services (CoESS: 2004: 4) estimated that the domestic private security sector in Europe employed about 1 million people with an approximate turnover of €12 billion. In the USA, there were about 1.2 million security guards, generating revenue of about \$11 billion (Parfomak 2004: 5). As Iraq and Afghanistan have demonstrated, the private security industry not only provides private and corporate security, but also military support for national and international armed forces (Isenberg 2009). While in the first Gulf War in 1991 the proportion of military contractors to soldiers was one in fifty, in the latest Iraq war private security personnel already outnumbered soldiers. In short, the private security industry has developed in two areas. One area has been the increase in private security firms providing domestic and corporate security within the territorial and jurisdictional boundaries of Western states. The other has been the emergence of private security contractors who operate transnationally in armed conflicts and areas of limited statehood. Although both areas are in the process of merging as domestic security firms explore new markets or acquire subsidiaries abroad, this section will maintain the analytical distinction in order to investigate how they affect the norm of the state monopoly on the legitimate use of armed force in the two arenas. It specifically examines the following questions: (1) Who provides and uses collective means of violence? (2) Who controls the application of force for the provision of collective and individual security? (3) Have Western governments attempted to delegitimize or prohibit the private use of armed force through national and international laws? And (4) How have citizens and corporations reacted to the proliferation of private security?

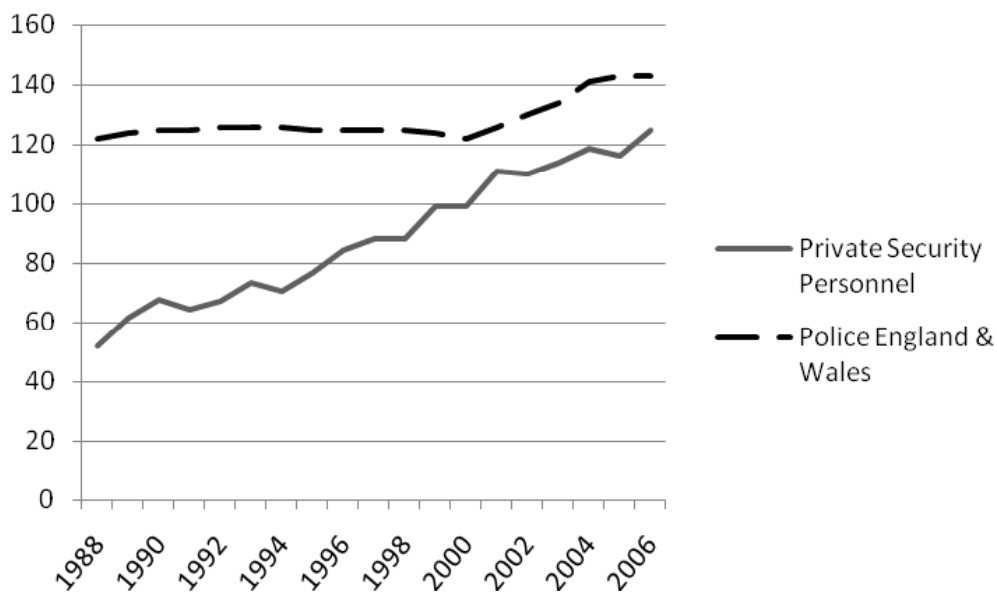
4.1 Domestic industry

The domestic security industry in Europe and North America dates back to the 1970s and has seen growth figures of an average of 10 percent per year. Nevertheless, few citizens and politicians in Western democracies are aware of the scale of the private security industry. Two dimensions regarding the institutions and practices of security provision give an indication of whether there has been a transformation of the norm of the state

monopoly on the legitimate use of armed force. The first dimension refers to the proportion of public police forces to private security contractors. The second dimension concerns the existence and spread of privately secured spaces in Europe and North America.

In the first dimension, there is clear evidence of a changing balance of private security personnel to public police forces. Statistics from the UK show that, while the number of police staff has remained largely stable since the late 1980s (with a minor increase after 11 September 2001), the private security sector has been characterized by a steady growth in employment figures [Figure 1]. Moreover, the UK is no exception. Comparable developments can also be observed in other Western nations such as Germany.³ Significant is the decreasing gap between the numbers of public and private security forces. In some countries, this has even led to a reversal in the balance with more private security guards than public police officers.

Figure 1. UK Private Security and Police Personnel⁴



In the UK, Poland, the USA and Turkey, for instance, the number of private security personnel is nearly twice as high as that of the public police forces. In France and

3 www.bdws.de/cms/index.php?option=com_content&task=view&id=28&Itemid=57&limit=1&limitstart=1 (19.11.2009).

4 Data from: www.bsia.co.uk (19.11.2009); www.parliament.uk/commons/lib/research/rp2001/rp01-028.pdf (19.11.2009); www.parliament.uk/commons/lib/research/briefings/snsg-00634.pdf (19.11.2009). Please note that the figures for private security personnel include employees of BSIA members only.

Germany, the private sector is about two thirds of the size of the state police. Most of these countries, including the USA, Poland, Germany, Turkey and Spain, permit the carrying of firearms by private security guards. Moreover, these guards may use these firearms not only in self- defence, but also for the protection of their clients. Only the UK prohibits any use of weapons such as firearms, batons, pepper spray or handcuffs by private security personnel. France allows exceptions for transport security services.

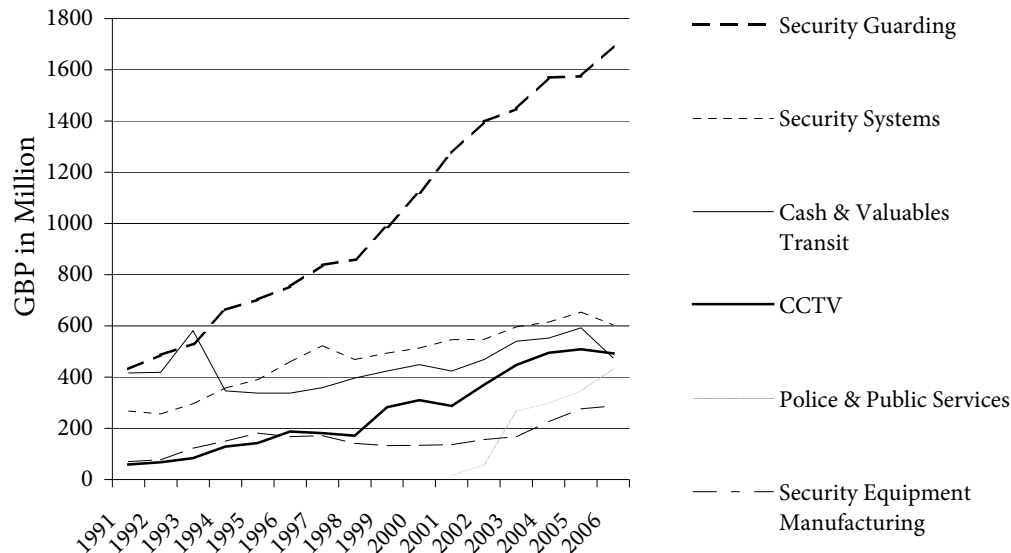
Table 1. Domestic Security Providers (2008)⁵

Country	Public Police	Private Security Personnel	Armed Security Guards	Ratio Police/ Private Security
United Kingdom	141,398	250,000	-	0.6
Poland	100,000	165,000	No data	0.6
United States	861,000	1,200,000	No data	0.7
Turkey	145,000	218,660	35,263	0.7
Germany	250,000	177,000	10,000	1.4
France	250,000	159,000	-	1.6
Spain	223,000	92,000	20,000	2.4

Private security guarding has the greatest potential for the use of armed force against citizens and has seen the largest expansion among all sectors of the private security industry. Industry turnover statistics from the UK reveal the scale of private security guarding. They show that security guarding has more than quadrupled in the past fifteen years from £431 million to £1,692 million [Figure 2].⁶ Indeed, the private patrolling of shopping malls, university precincts, train stations, airports, office buildings and inner cities has become so commonplace in Western industrialized countries that people hardly take note of it anymore.

5 CoESS (2008) *Private Security in Europe – CoESS Facts and Figures 2008*, at: http://www.coess.org/pdf/-CoESS_Facts_Figures_2008.pdf (19.11.2009). The US figures for 2008 are from the United States Bureau of Labor Statistics (2008) *Occupational Outlook Handbook 2008/9*, at: <http://www.bls.gov/oco/ocos160.htm> - (19.11.2009).

6 British Security Industry Association, at: www.bsia.co.uk (19.11.2009).

Figure 2. UK Security Industry Turnover

Another development that can be taken to assess the strength of the norm of the state monopoly on the legitimate use of armed force within its territory is the extent of privately secured spaces in Europe and North America. The proliferation of “mass private properties” such as gated communities, shopping malls, business parks and amusement districts has been a widely observed phenomenon over the past decades.⁷ According to the Community Association Institute, about 45 million US citizens lived in self-governed residences in 2000. By 2008, this number had already increased to nearly 60 million, i.e. 20 percent of the total population.⁸ More than 17 million housing units in the USA are physically protected from their neighbourhood through gates, walls, fences and private security services (United States Census Bureau 2008: 66). In the UK too, the number of gated communities has expanded. In 2004, there were about 1,000 gated communities in England, many located in the wealthy South East (Atkinson/Flint 2004: 879). Smaller increases in privately secured residences have occurred in France, Turkey and Spain (Glasze 2005: 222). And even in Germany, the first gated communities have emerged in Potsdam and Leipzig (Heissler 2009).

Despite these numbers, the pervasiveness of privately secured territories is often underestimated because gated communities are only one example of mass private properties. Beyond private housing and residential areas, corporations and public institutions such as businesses, hospitals and universities are increasingly hiring private

7 The term “mass private property” was first used in Shearing/Stenning (1983).

8 Communities Associations Institute, at: www.caionline.org/info/research/Pages/default.aspx (19.11.2009).

security guards to protect their premises. Moreover, private protection has extended to (semi-)public spaces. The most extreme development has been the private guarding of inner city districts and public streets in the UK and the USA. In the UK, this has taken two forms. One has been the “outsourcing” of public responsibility for policing streets with a high density of bars and clubs to these establishments themselves. Another has been the private leasing of public spaces such as London’s Chinatown and 42 acres in Liverpool’s city centre by commercial developers (Kingsnorth 2008). In both cases, citizens retain public rights of way, but security is provided jointly by private guards and the public police. Such cases might be the exception. However, the proliferation of private security guarding at airports, train stations, shopping malls, department stores and other semi-public spaces has been a universal phenomenon across Europe and North America.

Notable is also the fact that Western governments have not attempted to prevent or delegitimize the private use of armed force for personal or corporate protection. On the contrary, some governments such as the UK have actively encouraged the increased reliance of citizens and corporations on private security firms. British government recommendations regarding an attack by terrorists using weapons of mass destruction, for instance, have been “skewed towards the individual – ‘what can you do to protect yourself and your community against risk’” (Mythen/Walklate 2006: 134). Thus, following the London attacks, national police advised businesses to step up safeguards to their premises through “physical barriers near the entrance to buildings, increased security checks of visitors and underground car parks, and restricting the number of entry points to ensure adequate cover by security staff” (Financial Times 2005).

In addition to the changing practices of the use of armed force in Europe and North America, Western governments also appear to support the legitimization of private security services through increased national regulation (CoESS 2004). On the one hand, the licensing and regulation of private security firms certainly contributes to asserting public control over the private use of armed force by commercial security suppliers. On the other hand, however, it also indicates a general acceptance of the private use of collective force. In the wake of media reports of private security firms killing civilians in Iraq, the private security industry and its associations thus actively lobbied for national and international regulations in order to increase the legitimacy of private security companies. Similarly, some non-governmental organizations which were consulted in the course of the Montreux Document negotiations opposed such regulations because they feared that this would further undermine the norm of the state monopoly on the legitimate use of violence. At a minimum, the licensing and regulation of private security firms seems to illustrate a shift in the interpretation of the state monopoly on violence. In the mid-twentieth century this understanding implied the monopoly on the actual deployment of armed force by state actors, as attested by the efforts to outlaw mercenarism. Today, the interpretation of this norm appears to have been transformed into the belief that it is sufficient if the state retains the monopoly on the legal control of the actors who wield armed force to protect others.

The populations in Europe and North America seem equally unperturbed by the use of private security forces in domestic affairs. The popularity of private security services

illustrated by the growth in industry turnover indicates that citizens and corporations are not only willing to tolerate the private use of armed force for individual protection, but also that they respond positively to the ability to take control of their own security. Whether this response originates primarily from normative changes or is a reaction to the perceived inability of governments to provide adequate levels of security is unclear. Atkinson and Blandy (2007: 448) note that public opinion in the UK has changed in favour of the private use of armed force against criminals. A Sunday Telegraph survey in 2004 found a 71 percent majority in favour of the “unqualified right to use force, including deadly force if necessary” against a burglar (Atkinson/Blandy 2007: 448). In a different article, however, Atkinson and Flint (2004: 884) report the following statement from the resident of a gated community which seems to suggest government failure as a key motive for supporting private force: “Ideally no development should have a gate. This requires greater policing or resolving the crime problem, which may require putting up taxes, but people are reluctant to accept this, but gating can be seen as the final resort when all else has failed.” Notwithstanding the difficulties of identifying the reasons behind this support, which is not the object of this report, the absence of major public opposition to the proliferation of private security contractors appears to attest to their growing acceptance.

4.2 International industry

In contrast to domestic security, the market for international private security services has only emerged since the 1990s. Promoted by the interventions in Iraq and Afghanistan, it has expanded at even greater rates. Table 2 illustrates the scale of the use of military contractors and private security staff in the international interventions in Iraq and Afghanistan. In 2009, the US Department of Defense (DOD) alone employed 148,050 private contractors in Iraq as compared to 142,000 uniformed soldiers, while in Afghanistan there were 73,968 US military contractors compared with 78,200 professional soldiers. A comparison with previous interventions illustrates the growth in private security services in international conflicts. According to US government figures, “the ratio of about one contractor employee for every member of the U.S. armed forces in the Iraq theatre is at least 2.5 times higher than that ratio during any other major U.S. conflict” (CBO 2008: 1).

Table 2. US Department of Defense Contractors to Soldiers

Country	US Soldiers	Total DOD Contractors	Armed DOD Contractors	Ratio Soldiers/ Contractors
Iraq (Feb 2009)	142,000	148,050	8,701	1
Afghanistan (Jul 2009)	29,950 (ISAF) 48,250 (non-ISAF)	73,968	5,165	1.1

Table 3. Private Security Contractors to Police

Country	Public Police	Private Security Companies	Private Security Personnel	Ratio Police/Private Security
Iraq (Federal Police)	250,000 (42,000)	60	48,000	5.2 (0.9)
Afghanistan	68,000	39	23,000	3

Armed security guards play a major role in international interventions and areas of limited statehood. In 2008, an estimated 25,000-30,000 armed security guards worked for US agencies such as the DOD and the State Department in Iraq. Reconstruction firms, international organizations, NGOs and private businesses employed another 48,000 private security guards. In Afghanistan, the US military hired 5,165 armed security contractors in 2009.⁹ In addition, the Afghan Ministry of Interior licensed 39 private security companies which employed about 23,000 security guards with 17,000 weapons.¹⁰

The globalization of the private security industry has simultaneously led to its expansion in three ways. The first concerns the increasing interest of national security firms in Europe in selling their services across the whole of the European Union. The decision of the European Commission to include private security services under the third pillar and to create a regime of mutual recognition of national licences for private security companies has helped this development (Krahmann 2006). In addition, CoESS and

9 Department of Defense, at: www.acq.osd.mil/log/PS/hot_topics.html (19.11.2009).

10 Jeremy Scahill, "The Nation: Blackwater Armed and Dangerous in Iraq," National Public Radio (NPR), 17 August 2009.

national security business associations such as the British Security Industry Association (BSIA) support European exports. BSIA has also created a special council on exports which also promotes exports to other regions such as the Middle East and the Caribbean.¹¹

The second area of expansion involves private security companies which have become transnational corporations through the acquisition of national security firms around the globe. These companies operate through local or regional subsidiaries and are transnational primarily in terms of their ownership structure. The main examples in this group are G4S and Securitas. G4S has subsidiaries in 37 countries, provides security in 110 states and counts a total of 570,000 employees worldwide. Securitas has subsidiaries in 24 countries and operates in more than 30 with a total staff of about 250,000. Not only have these companies become truly global forces, they also often dominate domestic markets due to their size and reach. Thus, Securitas has a global market share of 12 percent.

The third field of expansion regards the transnationalization of Western private security companies through the opening of offices and the conduct of operations in states or regions with weak or corrupt state security forces. They include American firms like CSC, L-3, Guardsmark and CACI, as well as the British companies Control Risks, Janusian, Olive and Global. Typically, these firms sell and control their services through regional offices in Europe, Asia, the Middle East and Latin America, but are international in the conduct of their operations. While the first two groups of companies principally protect private clients within their home state or region, in the case of the EU, the second group typically provides security services for states, international organizations, NGOs and business corporations engaged abroad.

11 British Security Industry Association, at: www.bsia.co.uk/exporting (19.11.2009).

Table 4. International Private Security Companies¹²

Company	Subsidiaries, Offices and Operations	Employees
G4S (incl. ArmorGroup, Wackenhut, Ronco)	Subsidiaries in 37 countries; operations in 110 countries	570,000
Securitas	Subsidiaries in 24 countries; operations in more than 30	250,000
CSC (incl. DynCorp)	US-based; offices in 29 countries	92,000
L-3 (incl. MPRI, Titan)	US-based; offices in US, UK, Germany, Australia, Canada	60,000
Guardsmark	US-based; offices in UK, Canada, Puerto Rico, France, Singapore	18,000
CACI	US-based; offices in UK, Germany	12,500
Control Risks	UK-based; offices in 21 countries	No data
Janusian	UK-based; offices Russia, Saudi Arabia, Dubai, Netherlands; operations in 100 countries	No data
Olive Group	UK-based; offices in US, Saudi Arabia, United Arab Emirates, Iraq, Afghanistan, Kuwait, Qatar, India, Nigeria; operations in 30 countries	No data
Global	UK-based; offices in US, United Arab Emirates, Saudi Arabia, Nigeria, Iraq, Afghanistan, Singapore, China, Japan	No data
Secopex	France-based; operations in Northern, Western and Central Africa, South Asia and the Middle East	Database of 2000
Ultra Services	Turkey-based; operations in Iraq	No data

The response of Western states to this proliferation of international private security contractors in zones of conflict and instability has been even more restrained than with regard to domestic security services. Indeed, as in the national arena, governments in Europe and North America have played a major part in promoting the global private

12 Data from Parfomak (2004); Allied Barton, at: www.alliedbarton.com/about/index.aspx (19.11.2009); Guardsmark, at: www.guardsmark.com (19.11.2009); L-3, at: www.l-3com.com (19.11.2009); G4S, at: www.g4s.com (19.11.2009); Secopex, at: www.secopex.com (19.11.2009).

security industry both through their custom and by responsabilizing foreign citizens and transnational corporations for their own security. Many Western militaries, including the USA, UK, Canada and Germany, rely on the support of private military contractors in contemporary international interventions (Avant 2005; Krahmamm 2010). Moreover, intervening countries no longer necessarily accept their legal responsibility for the protection of the civilian populations in zones of conflict enshrined in Article 43 of the Hague Regulations (Sassoli 2005: 663). For example, following the collapse of the Iraqi government, the US military refused to ensure public security, forcing citizens, transnational reconstruction firms, international non-governmental organizations and even other US government agencies to hire private security firms for their own safety. According to the US armed forces, ensuring the safety of the civilian population was “not part of the U.S. military’s stated mission” (GAO 2005: 10). In addition, the US government has increasingly accepted the private use of armed force for military purposes. In 2006, a little-noted interim rule in the US Defense Federal Acquisition Regulation Supplement (DFARS) stipulated that US military contractors were permitted to use “deadly force” against enemy armed forces in self-defence or “when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract” (DOD 2006: 34826).

Another indicator of the transformation of the norm of the state monopoly on the legitimate use of force in international affairs has been the failure of Western states to attempt to outlaw international private security companies through new legislation or a revision of international laws such as the UN Convention against Mercenaries. Instead, governments such as the USA and South Africa have created legislation which controls, and thus also legitimizes, the export of private security services. Standards for the supervision of private contractors working for national militaries during the Iraq intervention evolved only slowly, such as the extension of the Uniform Code of Military Justice to civilians accompanying the US forces during “contingency operations” in 2006.¹³ As the Montreux Document shows, states appear to be unwilling to reassert their monopoly on the legitimate use of collective force in international affairs.

The reaction of the European and North American public to the deployment of armed force by private security contractors is harder to gauge. News reports of private security guards shooting and killing civilians in Baghdad and Kabul have raised doubts about the legitimacy, accountability and control of private security firms, but there are no systematic surveys of public opinion on PSCs. Some newspapers create the perception that citizens in Europe and North America are against the use of armed force by private contractors in international interventions.¹⁴ They specifically refer to the decline in US public support for the missions in Iraq and Afghanistan following key incidents and reports about private security contractors such as the slaughter of contractors in Fallujah, the killing of Iraqi civilians by Blackwater employees, and the Central Intelligence

13 National Defense Authorization Act for Fiscal Year 2007, *Public Law* 109-364, 17 October 2006, 109th Congress, 120 STAT. 2217.

14 Zachary A. Goldfarb, “A Tougher Line on Government Contracting,” *Washington Post*, 8 October 2007.

Agency's (CIA) hiring of Blackwater to locate and assassinate Al Qaeda leaders.¹⁵ Academic research, however, has revealed that US citizens feel equally saddened by the deaths of soldiers or military contractors in international operations, suggesting that Americans do not *per se* question the legitimacy of PSCs (Avant/Sigelman 2008: 30-32). Detailed interviews further suggest that US citizens attribute the motivation of private security contractors not to greed, but to financial need (Avant/Sigelman 2008: 34-35).

4.3 Explaining norm change

Altogether, the preceding analysis provides some evidence of a transformation of the norm of the state monopoly on the legitimate use of armed force among Western democracies. Foremost is the challenge to the norm demonstrated by the massive expansion of the private security and military industry at the domestic and international levels of analysis. The empirical evidence shows that this increase is not merely due to a general expansion of private *and* public security provision, but to the growing popularity of PSCs *over* the public police. The changing proportions of private security contractors in relation to public police and of private military contractors to international soldiers illustrate the degree to which the state monopoly on the legitimate use of collective violence has diminished since its peak in the 1960s. Although this monopoly has never been absolute even among Western states, the proliferation of private security guards and private protection indicates a marked reversal in the progressive centralization of control over armed force and the strengthening of the norm against mercenarism over the past three centuries (Thomson 1994; Percy 2007). The responses of Western governments and citizens towards the growing role of PSCs provide further evidence of a transformation of the norm of the state monopoly on violence. Instead of attempting to delegitimize and prohibit the private use of armed force for the provision of individual and corporate security, they suggest a widespread acceptance of, and even active support for, the shift from public to private forces.

Arguably, these findings do not imply that the norm of the state monopoly on the legitimate use of violence has disappeared. Existing institutions, practices and laws attest to the continued influence of this norm. The state police and national military forces still play a, if not the, main role in providing public and national security in Europe and North America. National and international laws still tightly regulate the private application of armed force. Nevertheless, the four indicators of norm change identified in academic literature also provide evidence of a transformation of this norm. In addition to the growing legitimacy of private security contractors, this transformation has involved a change in the ideal role of the state from a monopoly provider of security to a manager of the legal context in which public and private actors may legitimately employ armed force.

15 Sue Pleming, "Blackwater Under Spotlight Over Fallujah Incident," Reuters AlertNet, 27 September 2007; Jennifer Agiesta and Jon Cohen, "Public Opinion in U.S. Turns Against Afghan War," Washington Post, 20 August 2009.

Several conditions help to explain this transformation of the norm of the state monopoly on armed force and the growing acceptance of the private use of collective violence in Western societies. According to the theory of norm change, they include the increasing prominence of PSCs, their discourses and services; the consistency of the new norm with the predominant Neoliberal paradigm; and the conducive security environment following the end of the Cold War. The increasing support for the norm of the private use of armed force follows directly from the expansion of the private security sector in Europe and North America over the past decades. In the UK, the number of private security employees listed with the BSIA has more than doubled in the past fifteen years [Figure 2]. Even without active norm entrepreneurship, the scale of the private security sector, the pervasiveness of its discourses, and the ubiquity of its technologies and services have enhanced acceptance of the private use of armed force. The hiring of commercial security guards by role models such as celebrities, politicians and even high-ranking military personnel like the head of the Coalition Provisional Authority in Iraq, Paul Bremer, also helps to understand why citizens and corporations might assume that the private deployment of armed force for their own security has become the new “norm”.

The consistency of the privatization of armed force with the predominant Neoliberal paradigm in Europe and North America is another factor. Compared to the norms of collective defence, community and mutual responsibility which have rested on the ideal of the state’s monopoly on the legitimate use of armed force within its territory, the private provision of security has the advantage that it conforms better to contemporary Neoliberal ideals. Key to Neoliberalism is its normative commitment to the protection of individual rights and freedoms, the delimitation and fragmentation of state power, and the competition between the state and the market (Friedman 1962: 2-4). The rise of the private security industry fits the Neoliberal paradigm with its preference for the small state, free market and maximizing consumer choice. In fact, it is a direct result of the application of Neoliberal principles to domestic and international security. The contribution of the private security sector in this respect lies in promoting the transfer of Neoliberal norms from other sectors to the field of defence and security and in reinforcing these norms through their own discourses and practices.

The changes in the security environment associated with the end of the Cold War and the terrorist attacks of 11 September 2001 have played another role in increasing the influence of the private security industry on the evolution of the normative foundations of contemporary security policy. Foremost, the new security environment has improved the conditions for the proliferation of PSCs due to the availability of ex-military personnel as the result of massive reductions in the size of the armed forces on both sides of the Atlantic. Cuts in security spending and the conversion of military forces in accordance with new demands in terms of international interventions have also strengthened the role of PSCs which claim to be more cost-efficient and offer valuable expertise in new security technologies. Increased security spending by both state and non-state actors following the attacks of 9/11 has largely benefited the private security sector. Moreover, the rise of transnational terrorism has appeared to illustrate a shift from state to individual security threats. Instead of interstate wars, personal or corporate dangers such as terrorism,

organized crime, cyber attacks and the proliferation of biological or chemical weapons have risen to the top of the security agendas in Europe and North America.

The next section turns to the question of how the transformation of the norm of the state monopoly on the legitimate use of armed force might affect the national and international provision of security.

5. The consequences of the private use of armed force

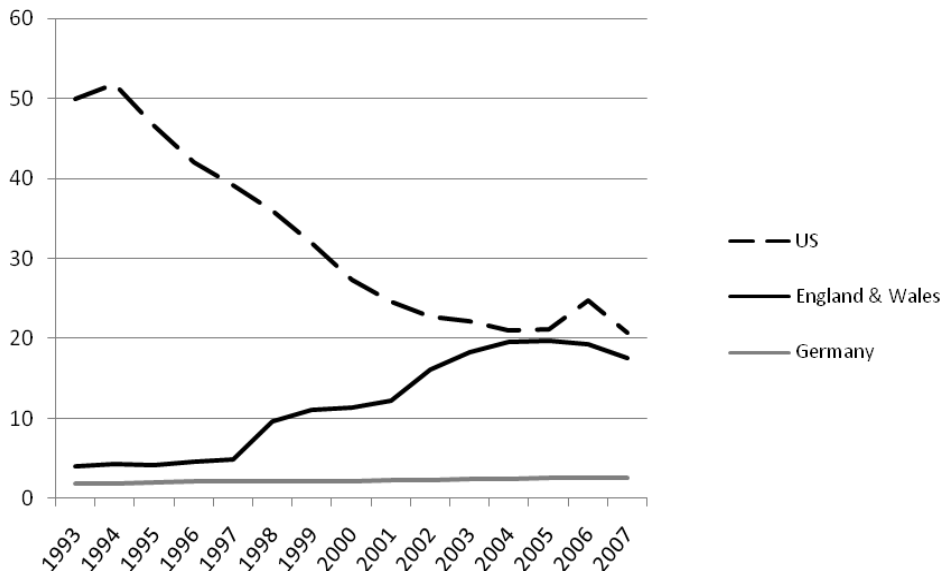
In accordance with the definition of the state's monopoly on the legitimate use of armed force within its territory and in international affairs, this section examines the potential practical and political implications of the transformation of this monopoly in three areas. The first area relates to the legitimization of the private use of violence and the consequences of the proliferation of private armed contractors. The second area concerns what forms of security provision are regarded as legitimate and why. The third investigates how the legitimization of PSCs can affect the conditions and objectives of the use of armed force. Rather than attempting to provide a comprehensive overview, the aim of this part of the report is to illustrate through select examples what consequences the legitimization of private armed force *can* have without claiming that these effects necessarily describe future trends or are applicable to every state in Europe and North America.

5.1 Domestic security

There has been little debate in Europe and North America on the growing legitimization of the private use of violence by security contractors. To a large degree, this appears to be due to the fact that there have been few negative consequences directly attributable to the proliferation of private security guards. It could be assumed that this proliferation would lead to a reversal in the trend towards eliminating the use of physical violence amongst private citizens and the emergence of domestic "zones of peace" in Western democracies. There have certainly been increases in gun ownership in countries such as the UK, Turkey and the USA which have high levels of private security personnel compared to public police.¹⁶ However, there is no statistical data on the number of armed guards over the past decades which could be used to assess whether private security firms play a direct role in the renewed proliferation of privately owned arms.

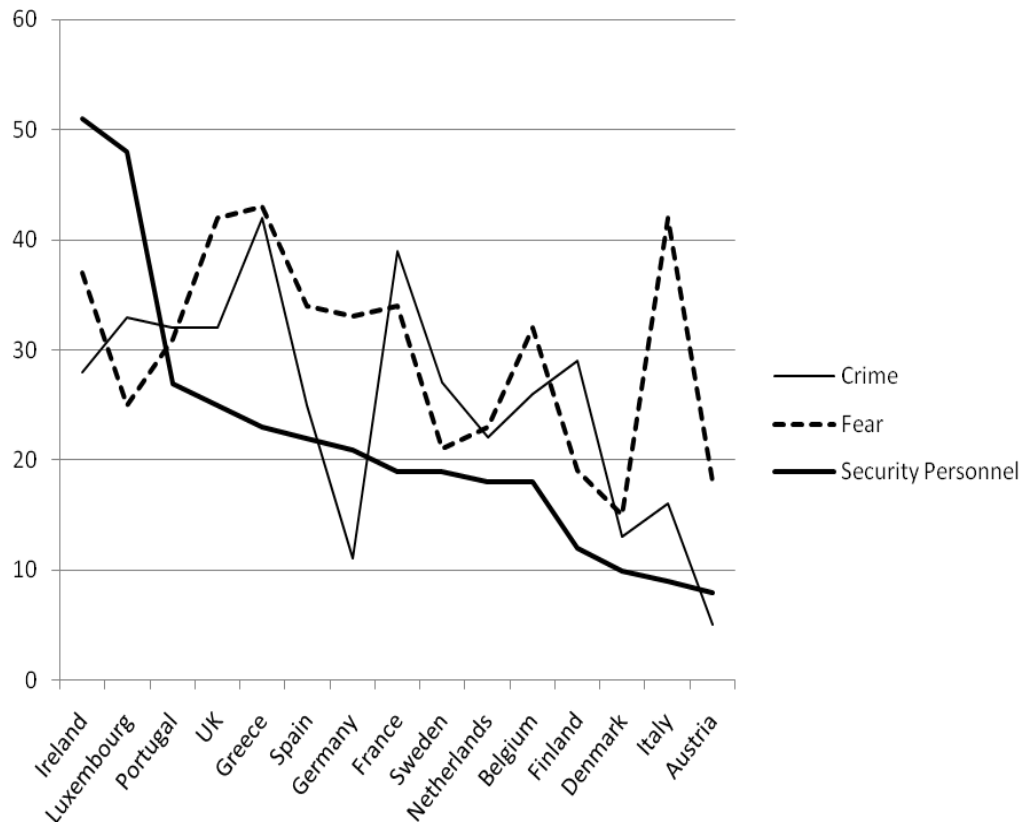
¹⁶ Home Office Statistical Bulletin (2007); "Gun Ownership on Rise in Turkey", Today's Zaman, 29 September 2008; Al Baker, "A Nation Challenged: Personal Security; Steep Rise in Gun Sales Reflects Post-Attack Fears," New York Times, 16 December 2001.

Figure 3. Violent Crime per 1,000 Persons over 12 (USA)/over 16 (UK)/- Inhabitants (Germany)¹⁷



In addition, there is no statistical indication that the availability of small arms and light weapons in Western democracies is threatening domestic security. According to Figure 3, the number of violent crimes against persons, including homicide, manslaughter, rape, violent robbery, violent assault and kidnapping, has followed very different trends in the USA, the UK and Germany, despite the growing importance of the private security industry and the spread of small arms in all three countries. In the USA, the number of violent crimes has been decreasing steadily from relatively high levels in the mid-1990s. In the UK, by contrast, the count of “violence against the person offences” has been rising, even if one discounts changes in the types of crime included under this category between 1997 and 1999. Finally, in Germany, levels of violent crime per 1,000 inhabitants have remained fairly stable.

¹⁷ Please note that the statistics from the three countries are *not* directly comparable because of different definitions of violent crime and the overall population. See Bureau of Justice Statistics 2007: Criminal Victimization, Washington, D.C.; Home Office 2009: Crime in England and Wales 2008/08, p. 36, London; Bundeskriminalamt 2007: Polizeiliche Kriminalstatistik 2007, Wiesbaden; Bundeskriminalamt 1999: Polizeiliche Kriminalstatistik 1999, Wiesbaden.

Figure 4. Violent Crime, Fear of Violent Crime and PSC Personnel¹⁸

The availability of private armed forces also appears to have no negative impact on public perceptions of security in Europe. While a high visibility of private security personnel can lead to increased fear of crime, public threat perception has been decreasing, at least in the three countries named above. In the UK, the percentage of people who worry personally about a violent attack has declined from 25 percent in 1998 to 14 percent in 2009.¹⁹ In Germany, personal concern about general crime has been decreasing from about 50 percent in 1999 to about 35 percent in 2002.²⁰ A comparison of violent crime victimization rates, fear of violent crime and the number of private security personnel per 10,000 inhabitants in Europe shows no consistent correlations or trends [Figure 4]. Luxembourg has one of the highest numbers of private security contractors per inhabitant in Europe, but only average levels of fear of crime, while in Italy the opposite is the case.

18 Bundeskriminalamt 2006: Periodischer Sicherheitsbericht, Wiesbaden, p. 511, at: www.bka.de/lageberichte/ps/psb2_kap_5.pdf (19.11.2009); CoESS 2004: Panoramic Overview of the Private Security Industry in the 25 Member States of the European Union, at: www.coess.org/studies.htm (19.11.2009).

19 Home Office 2009: Crime in England and Wales 2008/08, p. 113.

20 Bundeskriminalamt 2006: Periodischer Sicherheitsbericht, p. 520.

In Sweden, fear of crime is among the lowest, but the proportion of private security staff to the overall population corresponds to the European average. It is also noticeable that the proliferation of private security personnel seems to be in no relation to actual victimization levels regarding violent crime. In France and Greece in particular, high levels of violent crime are juxtaposed with average numbers of about 20 private security staff per 10,000 inhabitants. In Germany, by contrast, very low rates of violent crime have not prevented the expansion of the private security industry to similar proportions. It is, therefore, equally difficult to attribute positive or negative effects to the legitimization of the private security industry.

The strict legislative controls on the private security industry in most Western states are one explanation for the lack of negative consequences resulting from the legitimization of the use of armed force by private security guards. As outlined in a list of country reports by CoESS (2004), contemporary regulations on the private security sector in Europe include the licensing and registration of private security firms; detailed stipulations regarding the training of their employees; and laws concerning the permissibility, registration and safekeeping of small arms. The scope and detail of these regulations have increased progressively over the past decade, also as a result of the expansion of the private security industry. Also the UK and the USA, which for a long time favoured the self-regulation of the private security sector, have tightened their legislation on private security contractors. A major step was the Private Security Industry Act of 2001 which proscribes the regulation and licensing of private security firms in the UK.²¹ Similarly, in the USA a growing number of states have adopted new or tighter controls on private security companies. Today, about 40 US states regulate private security services, including licensing and training requirements, and the US Congress has passed national legislation which enables private security firms to check the criminal records of prospective employees.²² In short, although Western states no longer have the monopoly on the legitimate use of violence, they tightly control who is permitted to use armed force for protective purposes within their territorial boundaries.

More far-reaching effects can be noted with regard to the legitimization of the use of collective force in Europe and North America. Whereas the state use of armed force is legitimized through collective and democratic decision-making procedures, the parliamentary control and accountability of the public police and armed forces as well as legislative and constitutional constraints, the private deployment of armed force receives its legitimacy through other means. Specifically, the growing public legitimacy of private

21 For further information consult the website of the Security Industry Authority (SIA), at: www.the-sia.org.uk/home (19.11.2009).

22 Testimony of Joseph Ricci, CAE Executive Director, National Association of Security Companies (NASCO) before the House Homeland Security Committee 2007: Hearing on 'The Direction and Viability of Federal Protective Service,' 1 May, p. 2. See for instance, Code of Virginia 2004: Laws Relating to The Regulation of Private Security Services Including Special Conservators of the Peace, 1 July; California Business and Professions Code, Chapter 11.5. Private Security Services; Act to Permit Reviews of Criminal Records of Applicants for Private Security Employment, 108th Congress, 1st Session, S 1743, 13 November 2003.

armed force can involve three transformations. First, with the proliferation of commercial security providers, private rather than collective decisions can form the basis for the legitimate use of violence. In these instances, the customer determines unilaterally, within the framework of the law, whether private security guards are equipped with firearms, batons or no weapons at all. Moreover, clients can define the circumstances and objectives for which private security guards employ force. This regards in particular the operation of security contractors on mass private properties such as shopping malls, gated communities, train stations and airports which is subject to private law. In the case of the forceful expulsion of “undesirable” persons, for instance, private security guards and their employers cannot only decide who is expelled or excluded from a property, but also on what grounds.

The second transformation is that increasingly the use of collective force by private security contractors can be considered legitimate on the basis of legal rather than political considerations (Stennings 2000; Joh 2004; Glasze 2005). The state monopoly on violence has rested on the belief that political debates should decide who or what should be protected by the threat of the collective use of armed force, what means of violence are politically acceptable, and who may employ armed force to achieve these ends. It includes political discussions as to what are the primary security threats; collective debates over the proportionality of armed force in relation to the threat or the desirability of public displays of firearms or light weapons; and the appointment or, in the USA, even the election of law enforcement officers. Private security contractors can depoliticize the legitimate use or the threat of the use of armed force (Loader 1999). Private security firms and their clients can define individually what they regard as threats to their person or property, ranging from vandalism and theft to terrorism and industrial espionage.²³ They can also decide whom they consider the most likely suspects, and they can take preventative measures by excluding possible offenders from entering gated communities or other privately protected spaces. As Adam Crawford (2006: 127) observes of private security firms,

“The most routine form of exclusion is the ejection of perceived ‘undesirables’ from the premises on the basis of private property rights asserting a civil trespass order. Those who are not ‘good for the image’ of the [shopping] centre are ‘asked to leave’ as a type of pre-emptive exclusion of those who are not seen to ‘belong’.”

Arguably, exclusionary practices are not necessarily confined to the private security industry. The police in Europe and North America are increasingly using banishment orders or area bans to exclude drug users, homeless people or alcoholics from public areas (Das et al. 2007). In contrast to the actions of private security companies, however, these practices are the outcome of political decision-making processes. In addition, the state use of armed force such as in demonstrations or hostage situations is subject to intense political and media scrutiny. Private security guards are not subject to the same attention. While little noticed, abuses of violence by private contractors are not unknown. As the Swiss section of Amnesty International (2007: 120) reports, there have been repeated

23 See for instance Elite Security Group, at: www.elitesecuritygroup.co.uk (19.11.2009).

accusations of human rights violations against Securitas employees in Switzerland. In one instance, guards locked up asylum seekers for up to five days. In another a guard broke the arm of an asylum seeker. Usually, in these cases the disproportionate use of force by private security contractors is considered a legal rather than a political issue, affecting only those who are directly involved.

Finally, the legitimization of private force can involve a change in whom those who use violence for protective purposes are accountable to. Between 70 and 80 percent of commercial security services in Europe and North America are sold to private customers. Large numbers of private security personnel are thus primarily accountable to individual citizens or companies. Incorporated private security firms such as G4S and Securitas are also accountable to their shareholders. Both groups of clients have distinct interests. Foremost is their concern with the cost of private security. As a result, the private security industry is one of the lowest paid sectors in Western countries. In Germany, a private security guard earns between €6.00-8.40 per hour. This is less than a cleaner who has a minimum wage of €8.15-10.80 per hour.²⁴ In the USA, security guards are paid on average \$12.42 per hour; slightly more than “maids and housekeeping cleaners” who earn \$9.76.²⁵ The quality of the personnel and training matches their salary. According to Amnesty International, the Swiss police agree that the insufficient training of private security guards is a problem which can escalate violence and lead to human rights abuses (Amnesty International 2007: 123).

The transformations mentioned above can also affect the contexts and purposes for which armed force is used, with considerable implications for domestic security. Three possible consequences will be discussed here: the creation of new spaces of security and insecurity; the growing division between those who can afford private protection and those who cannot; and the enforcement of private orders within commercially protected properties. By only protecting paying customers, commercial security guards can produce private zones of security and, sometimes, displace crime to neighbouring public spaces (Atkinson/Blandy 2005: 180). Both can contribute to increasing citizens' expectations of violence in public areas with the result that wealthy citizens in particular are withdrawing from these spaces and from wider social interaction (Monahan 2006: 173). Decreased social contact with citizens from a broad range of cultural and socioeconomic backgrounds can further intensify fear. British residents of gated communities, for instance, often view “the surrounding neighbourhoods as crime-prone localities, despite the fact that they had very low crime rates” (Atkinson/Flint 2004: 879). As Georjeanna Wilson-Doenges (2000: 600) argues, fear of crime among domestic populations “has just as real consequences as actual crime does. Fear negatively affects quality of life over a long period of time, leading people to unnecessarily secure themselves, remove themselves from social activities, and increase levels of distrust of others”. Moreover, private security features such as gates, fences and barriers can hinder public security provision because they restrict police access to private territories (Atkinson/Flint 2004: 882). At the same time,

24 www.rechtsrat.ws/tarif/ (19.11.2009).

25 Bureau of Labor Statistics, at: www.bls.gov/oes/2008/may/oes_nat.htm#b33-0000 (19.11.2009).

citizens who remain outside private spaces view them as alien bodies within their community. Gated residencies rarely benefit their neighbourhoods because their wealthy members commute to work by car and buy at large supermarkets and shopping malls rather than local stores (Atkinson/Flint 2004: 885). Within private territories there can be the added impact of the enforcement of “frequently intrusive rules and regulation” of members, visitors or neighbours (Kennedy 1995: 761). Such private orders can impose restrictions on freedom of speech, freedom of movement and engage in racial and class discrimination or random searches and surveillance. David J. Kennedy (1995: 763), therefore, describes residential associations as “a form of semiprivate government”. The legitimization of private violence to enforce these regulations plays a major part in enabling these new forms of government. Private guards routinely decide on who will be permitted to enter, and those who are prevented from doing so have little ability to challenge these decisions since they concern private properties. In some countries, such as Canada and the USA, national laws further endorse the private government and use of armed force on private properties, including permission to detain, search, interrogate and arrest people with respect to criminal offences perpetrated on the property, or the ejection of unwanted trespassers (Stenning 2000: 331, 333). In the USA, private police operating on many university campuses have “peace officer” powers (Joh 2004: 64) and civil recovery laws allow private security guards to “recover from apprehended shoplifters a civil penalty in place of arrest” (Davis et al. 1991: 396).

5.2 International security

In international relations, the state monopoly on the legitimate use of force has sought to outlaw the private use of armed force between the citizens of different countries. While its implementation was never as successful as at the national level, it became a guiding norm in the twentieth century, shaping the UN Charter, the international laws of conflict and the UN and African Union conventions against mercenarism. The potential consequences of the transformation of this norm for international security may be even more profound than at the domestic level because fewer attempts have been made to control the private use of armed force. The Montreux Document provides an illustration of the failure of states to respond to the transformation in the norms and practices regarding the international use of collective force by private security contractors. By reasserting existing international law, the document neglects the fact that these laws are based on the premise of the state monopoly on the legitimate use of violence and the primacy of interstate wars. Both no longer describe many contemporary conflicts with the result that large sections of the global private security industry and their operations are exempt from legislative controls at the international level. Since Western states have tightened the regulation of private security firms working within their domestic boundaries, the consequences of the proliferation of PSCs at the international level are likely to primarily concern so-called “areas of limited statehood”, where such legislation is missing or not effectively enforced. Countries split by internal conflicts such as Iraq and Afghanistan, but also weak states such as Sierra Leone fall into this category.

The consequences of the increased availability and acceptance of private armed force in international affairs may be positive or negative. On the positive side, PSCs operating internationally can help to re-establish peace in countries with weak indigenous military or police forces, protect NGOs which seek to help people in conflict regions, and permit transnational corporations to invest and operate in areas of limited statehood. In addition, PSCs are playing a growing role in security sector reform programmes, i.e. in training national military and police forces in order to create the foundations for a functioning state monopoly on the legitimate use of violence in these countries in the first place (Krahmann 2007). Nevertheless, the benefits of using PSCs can be dubious. A clearer picture of the effects of legitimizing private armed forces in international affairs appears to be emerging in the light of the interventions in Iraq and Afghanistan. One danger regards the proliferation of small arms and light weapons. Although scholars agree that PSCs are only one factor, the legitimization of private armed contractors can contribute to the small arms trade and related transfers (Makki et al. 2001; COST 2006). In most cases PSCs bring their own weapons with them to fulfil their contracts, in others they obtain them locally. In Afghanistan, only the government, foreign militaries and embassies are permitted to import weapons, but the lack of public security has created a huge demand for armed guards. According to Swisspeace (Joras/Schuster 2008: 14), this has created a major dilemma with the result that PSCs have variously hired local staff and “turn a blind eye to the source of their weapons”, or buy arms on the black market. The organization estimates that a private security guard in Afghanistan owns on average 3.5 weapons, suggesting that there could be about 43,750 small arms in the possession of PSCs in the country (Joras/Schuster 2008: 15). However, there have also been instances such as in Sierra Leone and Papua New Guinea where PSCs have acted as arms brokers. In Sierra Leone, this caused a major scandal because the exports circumvented a UN arms embargo and took place with the knowledge of the UK government.

In addition, the private use of armed force does not always contribute to security within areas of limited statehood. As the interventions in Iraq and Afghanistan have demonstrated, private security guards can also exacerbate conflicts and undermine public security. The US company Blackwater (now Xe) has repeatedly made it into the headlines by engaging in reckless shootouts with perceived attackers, including one that led to the killing of 17 civilians in Baghdad in September 2007 (Isenberg 2009: 79). Other PSCs such as Unity Resource Group, Custer Battles and Triple Canopy have also been accused of shooting at or killing innocent bystanders (Isenberg 2009: 80, 90, 103). In 2005, a “trophy video” was published on the internet which showed four clips of security guards targeting other drivers from a car on “route Irish” leading up to Baghdad airport (Rayment 2005). In Afghanistan, President Hamid Karzai even accused private security guards working for the coalition forces of killing a provincial police chief and several of his officers (Guardian 2009).

Public threat perception in areas of limited statehood can also respond negatively to the private use of armed force. One reason for this is that private security contractors are hired to protect their paying clients and thus have little interest in providing public security. Another is the presence of armed guards and the behaviour of private security contractors. In Afghanistan, focus groups told Swisspeace (Joras/Schuster 2008: 27) that

PSCs had at best little positive impact on their security, at worst decreased it because they “are armed, block the road, are badly behaved and seem to attract trouble”. Over all, the Afghan population has been wary of private security guards because they make a living with weapons. It does not consider the industry a legitimate business sector. The “widespread use of armed PSCs guards” was a major reason for the “negative image” of the industry and the “feeling of insecurity” among the people interviewed by Swisspeace (Joras/Schuster 2008: 28).

The consequences of the changing conception of legitimacy with regard to the private use of collective force can also be more severe at the international than at the domestic level. The most important consequence appears to be the challenge to the laws of war which have largely been based on the presumption of the state monopoly on the legitimate use of violence and attempts to outlaw mercenarism (Chesterman/Lehnardt 2007). Although international humanitarian law includes detailed stipulations for contractors accompanying state militaries as well as for non-state combatants, these are often inapplicable for three reasons. First, PSCs typically operate in areas where there is no declared war, such as in Afghanistan and Iraq today. Second, many PSCs work for private organizations, businesses or individuals and not for national armed forces. Third, PSCs do not engage, or at least claim not to engage, in offensive military action and it is therefore not clear whether they are “combatants” who “take part in hostilities”. In the absence of applicable international laws, the regulation of PSCs by their home states, i.e. the states where a PSC is registered, or the states where a PSC is operating, is particularly important. However, only the USA and South Africa have laws which control the export of private security services abroad, and the countries where PSCs are deployed often lack the capabilities to enforce local laws on private security contractors.

In addition to their weak legal legitimacy, the international use of private armed force can also inhibit the political accountability of PSCs. As at the domestic level, the main cause of this problem is the primary accountability of PSCs to their clients and shareholders and not to the people who are otherwise affected by their actions. In international affairs, the difficulties of holding private security guards politically accountable can be exacerbated if the contracting parties are not based or living in the country of operation. Foreign intervention forces often have status of armed forces agreements which exempt their soldiers and private contractors from local political and legal accountability. This creates the impression with local populations that criminals are being “whisked away”.²⁶ As a Kabul-based journalist reports, this “rankles an Afghan population with no means of pursuing justice”.²⁷ In short, while PSCs have at least legal legitimacy in Europe and North America, in international affairs their perceived legitimacy is neither legal nor political. It is rather practical considerations that legitimize the private use of violence. The main arguments put forward for the legitimacy of the use of armed force by

26 Afghan TV Program Debates Role, Operations of Foreign Private Security Companies Excerpts from the “De Owonay Bahs (Weekly Discussion)” program; National TV Afghanistan, Thursday, 9 July 2009, 19:14.

27 Mojumdar, Aunohita 2009: Afghanistan: Private security contractors become a source of public scorn, 7 August, at: www.unhcr.org/refworld/docid/4a8414f52d.html (19.11.2009).

PSCs in zones of conflict or limited statehood are the failure of local governments or the international community of states to ensure public security, forcing individuals to resort to self-defence with the assistance of armed security guards.

Finally, the private use of armed force can affect the contexts and purposes for which violence is deployed in international affairs. In contrast to states which are only permitted to deploy military force either against or in other states in exceptional circumstances such as self-defence, the protection of international peace and to prevent genocide, private actors can hire and use international PSCs across national borders without any other restrictions than the ability of the host states to regulate and control their operations. As a consequence, NGOs and transnational corporations have become less dependent upon local governments or Western militaries for protection in zones of conflict or areas of limited statehood. Within these regions, NGOs and transnational corporations can use private protection to implement their own agendas or interests. In the NGO community, this has facilitated a merging of the development and security agendas (Duffield 2001). With the support of PSCs, NGOs are able to take more “proactive” stances towards providing aid in conflict regions. Instead of relying exclusively on local acceptance and support for their role in areas where violence is commonplace, NGOs have moved towards deterrence and protection by means of private security guards (Spearin 2006: 235). Nearly one third of NGOs use armed security guards today (Buchanan/Muggah 2005: 9). The hiring of PSCs has been even more widely accepted among transnational corporations. Extractive companies in the oil and mining sectors, in particular, rely extensively on private security to protect their installations in countries such as Nigeria, the Democratic Republic of Congo, Angola, Sierra Leone and Iraq. Despite the emergence of the concept of corporate social responsibility, the contexts and purposes for which private guards are employed in these countries have not (yet) evolved to significantly benefit the larger community (Feil et al. 2008: 29). In some cases, PSCs and transnational corporations collaborate with and support corrupt national police forces, as in Nigeria. In other countries, they install themselves as an independent police force competing with local agencies, like in Afghanistan where citizens feel harassed by private security guards who set up road blocks, search pedestrians and “interfere with the lives of everybody” (Joras/Schuster 2008: 27). In sum, even where the clients of PSCs seek to benefit their host country, the interests and security of the customer remain the primary goal of private security guards.

6. Conclusion and recommendations

The state monopoly on the legitimate use of violence rose to become a key norm with regard to the national and international provision of security over the past three centuries. Today, this norm appears to be put into question by the proliferation of private security contractors. Remarkably, this proliferation has been witnessed with widespread acceptance in Western democracies. While during the twentieth century states attempted to outlaw the private use of collective force through national legislation and international conventions against mercenarism, today Western governments not only tolerate, but also

actively encourage the growing role of PSCs in the provision of personal and corporate security. The private use of armed force has become widely accepted also among the populations in Europe and North America. Private security guards in public or semi-public areas are hardly noticed anymore because they have become a regular part of contemporary urban landscapes. To understand the implications of these developments, this report has distinguished between two areas of operation: PSCs working in Europe and North America, and PSCs registered in industrialized nations but with global operations. In both areas, it has observed changes with regard to the actors that legitimately use armed force, the legitimization of the use of force, and the circumstances and purposes for which armed violence is employed. This report has argued that the impact of PSCs in both areas is likely to be different because of the diverse abilities of states to regulate national and international PSCs and thus control the private deployment of force for protective purposes.

In Europe and North America, the licensing and regulation of PSCs have helped to determine who may legitimately deploy armed force in domestic affairs. This appears to have limited negative consequences for the use of small arms in public, victimization rates and the public threat perception. Potential negative implications are primarily political and normative, related to changes in the legitimization of the use of violence, and the contexts and purposes for which force is employed. The first relates to the danger that the legitimization of collective force in Western democracies may become a legal rather than a political issue. It suggests that there is a potential for private decisions to replace collective decision-making as to what should be protected by armed force and against whom; for laws rather than governments to define which forms of violence are permissible; and for public accountability and control to be replaced by the interests of shareholders and clients. The second implication concerns the contexts and purposes of private violence. Here, three developments deserve particular attention. The first is the possible fragmentation of the domestic sphere into public and private spaces of security and insecurity. The second is the growing differentiation between citizens who can afford private protection and those who depend on public police forces. The third development is the emergence and enforcement of private regulations and orders within privately protected spaces.

In international relations, the consequences of the “norm-alization” of private armed force concern to a large extent weak states and areas of limited statehood, which only have ineffective legislative and police authorities or armed forces. In these regions, the proliferation of armed security guards can contribute to the proliferation of small arms, public violence and feelings of insecurity among the broader population to a greater degree than in Western countries. In Iraq and Afghanistan in particular, the presence of PSCs has exacerbated the spread of small arms and light weapons and caused public outrage over the aggressive behaviour of some security guards. Private security guards can contribute to increasing (feelings of) insecurity ranging from the “subliminal message that the security situation in Afghanistan is worse than it is in reality” to the actual killing of innocent civilians (Joras/Schuster 2008: 27). The consequences for international relations can also be considerable with regard to the legitimization of private violence for personal and corporate security. A main problem is the lack of suitable stipulations in international

law which can be applied to the operations of PSCs in areas of limited statehood. Since much of international humanitarian and human rights law has developed on the basis of the norm of the state monopoly on the legitimate use of armed force and the primacy of interstate wars, it only controls the private use of armed force in local conflicts or insecure regions in exceptional circumstances. As a result, the legal constraints which ensure the legitimacy of PSCs at the domestic level in Western democracies are missing from the international arena. Moreover, where PSCs operate across national borders, political accountability can be impeded by the fact that both employers and security companies may be based in another country. Instead of legal and political legitimacy, the private use of armed force in international affairs thus gains its legitimacy primarily from practical reasoning. The divergence between the client's and the contractor's main base and their host country can also affect the contexts and purposes for which private armed force is deployed. In addition to the three problems identified with regard to domestic security, this means that, at the international level, the creation of spaces of security and insecurity, the division between the protected and the unprotected and the emergence of private orders can be defined by the interests of foreign actors, creating impressions of new forms of colonialism.

Two main conclusions and recommendations can be drawn from these observations: First: states, citizens and corporations should recognize that their practices may be contributing to the transformation of the norm of the state monopoly on the legitimate use of violence in domestic and international affairs. It is, therefore, unhelpful if governments pretend that existing international law which focuses on states suffices to control the use of collective force. Instead, states, citizens and corporations should accept their responsibility for creating new legal structures which help to ensure that PSCs do not contribute to the proliferation of small arms, the killing of civilians and increasing public perceptions of insecurity.

Second: states, citizens and corporations should engage in a public debate over not only the security implications, but also the political consequences of the private use of armed force. Specifically, they should consider whether the legal control of PSCs is sufficient to ensure their legitimacy; whether private and corporate accountability are suitable with regard to decisions that can lead to the application of armed force against citizens not participant in these decisions; and whether the fragmentation of national and international territories into publicly and privately protected spaces, orders and citizens should be tolerated.

7. References

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8. Abbreviations

DOD	Department of Defense (USA)
CoESS	Confederation of European Security Services
UN	United Nations
NATO	North Atlantic Treaty Organization
ICRC	International Committee of the Red Cross
PSC	Private Military and Security Company
DFARS	Defense Federal Acquisition Regulation Supplement
BSIA	British Security Industry Association
UK	United Kingdom
US/USA	United States of America
CIA	Central Intelligence Agency