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WHY REGULATE MANNED PRIVATE SECURITY?

A report on the reasons and requirements for private security regulation as expressed by representatives of governments, industry associations and academia.

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WHY TO REGULATE MANNED PRIVATE SECURITY?

A study report on the reasons and requirements for private security regulation as expressed by representatives of governments, industry associations and academia.

1 EXECUTIVE SUMMARY

This report comprises a structured summary presentation of the 'reasons and goals' argumentation used by different interest groups to support statutory regulation of private manned security services. The results show that even if the private security regulation is diversified and the practical execution of rules differs considerably from country to country, the main reasons for and goals of the industry-specific statutory regulation are to some extent identical globally. Primarily strong constitutional, public and institutional interests have been and still are the driving forces behind this sort of legislation in societies. The reasons and goals can be grouped into three main categories:

Firstly, there are the constitutional requirements, such as protection of individual human rights, maintaining the state monopoly on violence and the definition of the public/private division of labour in security work.

Secondly, there are the public interest requirements, such as exclusion of unsuitable elements from the industry, guaranteeing of security providers' accountability and control of weapons in private security work.

Thirdly, there are professional requirements, such as the elimination of 'cowboy' companies from the business, the setting of minimum ethical and quality standards for the industry's activities, the organising of industry-specific training, and the guaranteeing of proper terms of employment for security officers.

The actual, 'real life', trends pushing for new and modernised private security regulation in today's society seem to be connected to the general changes in governance: the gradual development of private security into a provider of public security, the outsourcing of security duties by public authorities and the privatisation of industries and services belonging to societies' critical infrastructure and which need a new model of protection. The summary results of the report are presented in a table form on the following pages 4-5.

WHY REGULATE?	COMMENTS/ARGUMENTS EXPLAINING THE NEEDS.
To define the constitutional and other legal boundaries and the powers of private security providers in their work in order to:	
Protect the inviolability and privacy (constitutional/human rights) of persons interacting with private security actors.	Private security work includes tasks in the line of work – bodily searches, investigations, operating in areas involving confidential information – which may offend the confronted individuals or be a risk for companies or private persons. Electronic and other private security monitoring may breach the privacy of the object of surveillance or a third party.
Prevent private military or strong-arm activities connected with politics, strikes and demonstrations.	There is a history of private security organisations being used for political bullying or to control strikes and demonstrations.
Define the physical spheres and objects where private security is allowed to carry on its trade.	The division between the public and private domains is important when defining the competences of different security actors. The growth of private security has made it a visible and a principal security provider in society. The new tasks performed by the industry make it a provider of security services in public places, often displacing the police. Privatisation and outsourcing of public institutions and other activities has meant new private security tasks, for example, in the protection of national high security objects and functions.
Define the roles, co-operation and division of labour between the public authorities (police) and the private security actors.	The question of principle – whether private security is a business or a substitute for law enforcement activity complementing the police and other security authorities - is problematic. The participation of police departments or police officers holding an office in private security business as owners or operational personnel may create a conflict of interest. Controlling of non-official co-operation of ex-security personnel and authorities in office is needed.
Enable identification and clear visual separation of private security actors from public authorities (police) by the public.	The public is entitled to identify clearly the role and authority of different security providers. Accountability requires personal ID number/card. The use of police or other clothing and badges resembling those used by public authorities needs to be controlled.
Define and control the (extra) powers approved and used by the private security actors.	There is a history of private security actors exceeding their authority by abusing citizen's or extra powers granted to them. There is a risk of unnecessary violence or malfeasance.
Give extended legal protection to private security personnel in their work.	Private security actors may face more violence because of their work than other citizens. Private security actors may need to breach the inviolability or privacy of individuals in their work as a safety measure.
To screen and control private security providers in the name of public interest in order to:	
Exclude criminal and other unsuitable persons (with bad character) from acquiring 'a position of trust' as employees in the private security industry.	The clients and the public need to be protected from malfeasance by private security companies and employees. Persons with a previous history of offences related to private security work form an obvious risk to the customers and the public if they are allowed to work within the industry. A private security company is a lucrative business disguise for organised crime.

Guarantee the accountability of the private security companies and employees.	A model for handling complaints regarding private security functions is needed.
Guarantee equal treatment of security providers and security officers.	There is in some countries a challenge to guarantee even-handed treatment of security employees regardless of their ethnic, racial and gender background.
Steer the possession and use of non-lethal weapons and firearms in private security work.	Unnecessary possession of firearms by security personnel should be prevented. There is a need for heightened control of weapons use (as working tools) in the private security context. Weapons are a genuine extended risk to outsiders and security officers because of the nature of the work.
Enable effective control of private security companies and private security officers by the authorities and the public.	Criminal background checks and enforcement of rules are only possible by public authorities. Accountability, including the handling of complaints by clients and the public, requires an official structure. Compliance with rules is not possible without regular checks by authorities with adequate industry specific legal powers.
Control multinational security companies.	There is a need to protect national knowledge (espionage). Private security has been considered a part of law enforcement and a need has thus been perceived to keep it nationally controlled. A need exists to protect local private security companies from global operators (competition).
To set industry-specific requirements on the private security business in order to:	
Guarantee minimum training of security officers.	Private security officers need knowledge of their rights and responsibilities and skills to face enforcement (violence) situations so that they do not exceed their powers and do not jeopardise the objects of their actions or themselves. Training is one way to improve the quality of private security officers' working skills. Standardised requirements and supervision by the authorities is required to guarantee the quality of training and trainers.
Eliminate 'cowboy' companies from the industry and the market.	Preconditions need to be set to have fair competition. Protection is needed for customers, especially in B to C situations. This is an expedient to prevent uncontrolled work (tax evasion). This is one of the prerequisites to guarantee (improve) security officers' conditions of employment.
Improve the status, image, overall credibility and standards of the industry and the security officers.	Minimum ethical and quality standards are needed to guarantee general quality of the services. Standardised contractual terms are needed to protect the clients and private security companies in criminal cases concerning business discrepancies. (poor service) Guarantees of security companies' ability to compensate clients for losses in cases of liability and infidelity are especially important in the private security business.
Set minimum terms of employment (and wage) for security officers.	A way to improve the quality of personnel and the services.
Increase the government income through licensing fees.	An extra tax on the industry. A way to finance the licensing and controlling bureaucracy.

2 INTRODUCTION

Regulation has been supported with many different arguments through the times depending on the interests of the persons or groups expressing their opinion. At the end of the day the basic reason for regulation is, however, quite simple. Tombs has spelled it out in the following way:

> *"Most fundamentally, regulation exists because in its absence, as historical record demonstrates, the result is the wide scale production of death, injury and illness, destruction and despoliation, not to mention systematic cheating, lying and stealing."* [2]

A more practical and academic opinion on the justification for regulation in general has been presented by Breyer when he explains the rationales in steering economic activities. He is also emphasising the political nature of regulation which sometimes overtake the reasoned argument:

> *"The justification for intervention arises out of an alleged inability of the market- place to deal with particular structural problems. Of course, other rationales are mentioned in political debate, and details of any program often reflect political force, not reasoned argument. Yet thoughtful justification is still needed when programs are evaluated, whether in a political forum or elsewhere."* [3]

These two quotations also apply to the private security industry and most of the countries in the world have national statutory regulation to define, steer and control the activities of commercial private security companies and private security personnel. In the private security regulation processes the knowledge and understanding of the reasons for regulation should be a requirement. When there is a clear answer to the question: why regulation? - there will also be an understanding of what interests and whose interests should be protected and supported by the regulation. A rational assessment can then be made to determine if these interests are important enough to require state intervention by legislation. At the same time, by answering this question carefully, a solid platform for the actual regulation work has been set. The understanding of the reasons to regulate will later on also help to find and to decide the topics to be included in the industry-specific regulation and to choose an administrative implementation and control model that fit in with the existing national or transnational governance structure.

There is also the question of the need to have separate statutory regulation for private security functions. Could they not be steered and controlled by existing general legislation? Sarre and Prenzler, who have researched this matter, are very explicit in their opinion, stating: "A reasonably competent and ethical security industry will depend very much on the right mix of different types of law and their enforcement, but specific industry regulation is now clearly a basic requirement".[4]

This study focuses on the traditional and national commercial manned private security services (guarding) and on the reasons for their statutory regulation. The various arguments against regulation, for example, growing costs to customers[5], limitations of free competition[6],

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[2] S. Tombs (2002:115)
[3] S. Breyer (1998:59)
[4] R. Sarre & T. Prenzler (2005:213)
[5] Centre for International Economics (2007:26-27); Cully (1996:5); Ambrand Dot Com (2006); J. Kerr (2006:29)
[6] L. Zadner (2006:281); B. Forst & P. K.Manning (1999:37)

giving the industry legitimacy and authority it does not need or deserve[7], over-reaction of authorities[8] and even opinions that statutory regulation "…,pose a substantial threat to the employment opportunities of people with criminal records and…"[9] are not commented on in this context.

Manned private security services are regulated in some way in the majority of countries. A study covering this subject showed that over 90% of regulatory regimes had some kind of special legislation concerning the industry.[10] This high figure implies that governments have had and have a need to regulate formally private security activities. But, if one asks on a general or detailed level why this kind of statutory regulation was issued, no simple and straightforward exhaustive answer can be found today. This subject has been touched upon by some scholars as well as in various laws, bills, explanatory notes, government papers and committee reports. Most of these documents, however, handle the matter from a national perspective, taking up the special needs for statutory private security regulation of one specific country or regulatory regime. Very little transnational research exists that deals explicitly with the similarities and patterns in national argumentation in support of this sort of regulation. Some of the fragmented knowledge has been collected and organised in this study with the aim of improving understanding of this many-faceted entity. This study tries to bring to light whether there are common denominators in the reasons for and goals of regulation and what are the actual factors triggering legislation in real life. This article also aims to show that there is a general rationale for private security regulation which can be presented in a structured way and that certain factors are universal (dominant) irrespective of the regulatory regime and its historical, political, legal or cultural environment. This kind of information is thought to be helpful to all relevant interest groups when writing and debating on the future of private security regulation.

3 REPORT DESIGN

Why regulate private security? Some general answers to this question have been presented, mostly during the last 30 years. They do not include theories or models which could be utilised as such in this study. Most explicit comments and information on this subject are to be found scattered in the documents of those countries and states where private security has been regulated or at least the case of regulation has been debated. In this study regulation has been seen partly also in terms of risk control. Risks related to private security are perceived here as creating a platform for the needed responses.[11] The material used in this report was collected as part of a wider study on private security regulation at City University, London.

The study was carried out as a documentary analysis. Firstly, references were collected from articles and books on the general reasons for regulating private security. Secondly, explicit comments on the need to regulate were 'coded' from the available articles and official documents in order to get a representative sample for analysis. The focus was on texts and comments connected especially to the reasons for regulation. In the first phase, the data were organised in groups according to the similarity of reasons given. In the second phase, these groups of reasons were analysed and compared to find a structured way to present them. The data search was limited by language barriers, as the texts and documents had to be in a lan-

[7] M. Button & B. George (2006:566)
[8] D. Cotterill (2006:4)
[9] Emsellem, M. (2006:2); (USGovernment: 2004:41-48)
[10] J.Hakala (2007:6)
[11] See: R. Baldwin & M. Cave (1999:138-149); B. Lange (2003:412 & 417); See also: R. Baldwin, B. Hutter & H. Rothstein (2000)

guage accessible to the researcher (original or translation). Anglo-American documents and regulations from the United States, Canada and Australia would have been available in abundance but because of their similar legal environment and argumentation only a small sample of them were included. In sum, a limited sample of texts pertaining to only 43 specific countries or regulatory regimes[12] could be utilised in the study.

The report has been structured around four main sub-chapters. The first one (4) looks at the general opinions given of private security regulation. The three following ones (5.1-5.3) present the specific argumentation divided into groups according to the interests they are based on under the following headings: constitutional, public interest and professional requirements. Many of the reasons and goals overlap but a model grouping has been created in order to present them in an understandable and readable way. The core of the report is in the summary table on pages 4-5.

4 GENERAL ARGUMETS GIVEN FOR REGULATION

Almost 30 years ago, Stenning and Shearing took up one basic question concerning private security regulation by stating: “If private security personnel are in reality no different from ordinary citizens, a law which treats them alike seems most appropriate. But if in reality they are not, and the law still treats them as they are, it comes inappropriate”.[13] The same scholars later gave their opinion on this matter: “In treating private security personnel as if they are no different from ordinary citizens, the general law in all jurisdictions has failed to keep pace with the modern development of private security”.[14] Even though the researchers focused on private security personnel here, their comments can well be extended to cover security companies as well. The fundamental dilemma of both researchers and governments is made very clear: can private security be ignored by society or is it, as Shearing and Stenning argue, a special profession and activity in society that needs to be regulated accordingly? When handling the same question again 20 years later, Stenning repeated the opinion that private security is a special case and must be regulated. This time he even summarised more explicitly that there is an unfortunate, inadequate understanding of the roles, powers and accountability of private police, and the legitimate concerns of such matters as liberty, privacy and equity, and sometimes even national and international security[15].

In commenting on the need for regulation, South has touched upon this phenomenon: “Private security guards are not ‘the general public’, who after all do not as a rule guard payrolls, safe-deposits, night clubs or computer facilities; rather they are a very specific case”.[16] Similar conclusions have been drawn by de Waard, who insists that “Governments will realise that security is not a commodity purely to be bought and sold, and therefore it needs good governance. Governments will increasingly regulate the development and operations of the private security industry”.[17] Button is one of the few researchers, if not the only one, who has really asked the question: Why do governments regulate the security sector? He even gives a summarised explanation ending with an emphasis on the police-like and other special functions performed by the industry, and the abuse of power by security officers. He adopts the

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[12] Documents used concerning private security regulation in: ACT, AU, BE, BR, BU, CA, CL, CN, DK, EE, ES, FI, IE, IN, IS, JP, KE, KR, MT, NL, NO, NG, NSW, NT, NY, NZ, QC, QLD, PK, PL, RU, SCT, SE, SG, SL, SK, SW, TR, UG, UK, YU, USA & ZA
[13] P. C. Stenning & C. D. Shearing (1979:263)
[14] C. D. Shearing & P. C. Stenning (1981:235)
[15] P. C. Stenning (2000:347), see also C. D. Shearing & P. C. Stenning (1995:193)
[16] N. South (1989:126)
[17] J. de Waard (1999:161)

reasoning of Shearing and Stenning, noting that "Therefore to treat such (*security*) personnel as ordinary citizens would not seem appropriate. Advocates of regulation argue for mechanisms to control their activities to ensure appropriate structures of governance exist".[18] Irish has listed in the South African context her view of the crucial issues where the regulation of private security is concerned. She focuses on the division of labour and co-operation between the industry and the police, the elimination of elements involved in illegal activities and practices, and protection of the private security operators who interact with the public.[19] Gumedze has made some general remarks when writing of the new threat that the private security sector presents at national and regional level in the turbulent African environment. He asks if they are creating a security problem or solving it? His conclusion is that the security situation is not getting any better despite the sector's involvement and therefore effective regulation is needed. He makes a summary comment: "The private security, per se, is not a threat, but the absence of an effective regulatory mechanism for its operation presents many risks, which then make it a threat".[20]

Greenwood has looked at the matter from the industry's point of view by writing: "Licensing therefore, represents recognition of the role played by the industry within the community and the importance of ensuring its integrity is protected".[21] Also Zonneveld, as a representative of the EU Commission, before the Commission changed its opinion, was very clear on the subject: "It is recognised that the industry will not develop successfully without a well defined regulatory framework.[22] The Council of Europe has recommended that governments "…enact, revise and if necessary, complete regulations governing initial authorisation, periodical licensing and regular inspection, by public authorities at the appropriate level, of security companies, or encourage the profession to adopt its own regulations".[23] The legislators Mega and Dugan, two sponsors of the State of New York Security Guard bill have emphasised that the increasing use of security guards as a means of protecting the public necessitates legislation to protect the public interest, and that current provisions do not adequately ensure public safety.[24] Australian scholars have summed up the situation as follows by stating: "Indeed, there is a strong case for government engineered licensing, and there appears to be a keen industry demand according to US and Australian research"[25]

The European private security industry has made clear its position on licensing and regulation by a joint opinion of the Sectoral Social Partners stating that "…effective regulation based on legislation is a necessary pre-condition to achieving high levels of professionalism, good standards of service to the client and high quality employment…"[26] and in two other joint texts they go on to argue that "CoESS and UNI-Europa hold the view that strict licensing and regulation of the private security industry throughout the European Union are essential foundations to a high quality industry"[27] The industry's opinions have also been mapped out by an internal CoESS survey where 28 national associations from different European countries representing local private security industries and members of CoESS all considered

[18] M. Button (2006:565)
[19] J. Irish (1999:18)
[20] S. Gumedze (2007:4)
[21] G. Greenwood (2007:11)
[22] H. Van Zonneveld (1996)
[23] Council of Europé (1987:preamble)
[24] J. Mega (2006:1); E. C. Dugan (2006:1)
[25] T. Prenzler, T. Baxter & D. Draper (1997:31); See also: R. Sarre & T. Prenzler (2005:210)
[26] CoESS & Euor-fiet (1996:2)
[27] CoESS & Euro-fiet (1996a:3); CoESS & UNI-Europa (2004:1)

some sort of statutory regulation necessary and useful.[28] The US employer federation NASCO, after noting that: "…citizens have expectations that security personnel in uniform are properly screened and trained to help protect company assets and people…", continued that "NASCO believes that legislatures must create higher standards in all 50 states to ensure better training, institute background checks, …[29] This sample of statements from scholars and different interest groups worldwide supports the opinion that private security represents something special as a business, making its regulation indispensable.

In his thesis on private security regulation in South Africa, Siebrits has approached the need to regulate from a different angle, proposing that instead of asking "Why regulate?", we should ask: "Is regulation for the protection of the industry or for the protection of the public?" [30] He argues that when this is determined, all the subsequent steps will follow logically. This argument can be widened to another sort of why-question: Is the need to regulate private security in the first place based on public, interest group or institutional interest? This is a fundamental question because the answer to it will probably also reveal the respondent's opinion on the question: Should private security be considered pure business or a kind of semi-public law enforcement (police) related activity with industry specific regulation requirements? The debate on the European level of the role and need of regulation for private security is presently focused on clearing up this discrepancy. The European Commission's (EC) original opinion[31] that the industry is no different from any other service business and should have no special national or harmonised rules disrupting the free market has now been 'softened' in the final Services Directive, from which manned private security services have been excluded for a three-year period.[32] The industry's European Social Partners (CoESS and UNI-Europa) [33] and the authorities[34] in many EU countries have taken the view that private security is a special activity needing statutory regulation and control.

Examples from different cultures and different times can be found that illustrate the general argumentation of governments or governmental committees on statutory regulation. The UK Government has supported regulation by emphasising that there will be a reduction in offences by private security personnel and an overall increase in the quality of service provided, promoting confidence in the industry as a whole as well as protecting the public. Thus the whole community would benefit, including members of the public and businesses.[35] In their reports, a Danish law committee and the Irish Consultative Group both considered amongst other things that substantial benefits would flow from the regulation of the industry and from society's point of view it is not an uninteresting industrial activity and this alone speaks for regulation private security. The Group's view was also that development of a statutory regulation function for the industry would be in the public interest.[36] In Norway a similar committee expressed that because of public interest it supports statutory regulation of private security companies.[37] In New York, state legislators argued that "…the legislature

[28] H. De Clerck, J. Hakala & L.Van Sand (2007:17)
[29] Ricci, J. (2006:39)
[30] Louis Siebrits (2001:125). The comments are based on the situation in South Africa when the new Security Industry Regulation Bill (No. 12, 2001) was still in reading and its implementation principles open.
[31] CoESS Newsletter (2002:1-2); European Commission (2004); H. Born, M. Caparini & E. Cole (2006:8-9)
[32] The European Parliament and the Council of European Union (2006:Article 16/3-4); European Commission (2007:15)
[33] CoESS & UNI-Europa (2004:2)
[34] See for example: Finnish Government (2004:6-12)
[35] United Kingdom Government (1999: Appendix 1 (4i))
[36] Danish Government (1985:17, 19); Irish Government (1997:7, 47 & 64)
[37] Norwegian Government (1987:3 & 5)

hereby finds, and declares that because of the large number of unregulated and unlicensed security guards who may lack sufficient training and their nexus to the general public, the state should establish uniform standards for … security guards and the industry within the state".[38] South African law-makers have defined the state's reasons to regulate private security activities in a more comprehensive way. They emphasise the general social role of the industry and the introduction to the law includes the following statement:

> *"The protection of fundamental rights to life and security of the person as well as the right not to be deprived of property, is fundamental to the well being and so to the social and economic development of every person and the security service providers and the private security industry in general play an important role in protecting and safeguarding the aforesaid rights."*[39]

In this text, the South African legislators have taken the argumentation one step further by making private security officially a part of the general security and safety structure of the society, not just a private business activity needing regulation. This idea has been supported on a more general (African) level, for example, by Bearpark & Schultz when they state: "Most importantly, governments have to develop and enforce effective regulation for their national private security sector in order for the industry to contribute meaningfully to the creation of a secure and stable environment".[40] Also, the UK Security Industry Authority (SIA) sees the future role of a regulated industry in a wider social perspective - as a supporter of a fundamental Government objective: "…reducing of crime and the fear of crime".[41] All these examples share the idea that private security has in general a special role to play in society and that there is an obvious public interest in having it regulated.

There are others who have not started to theorise the reasons for regulation but have gone straight to the point by listing the problems to be solved. For example, Jones and Newburn give as their opinion that: "The major issues which underlines calls for regulation concern low pay, levels of training in the industry, reliability of private security personnel, standards of service, and the protection of privacy".[42] Draper's statement in the conclusions of her book *Private Police*, already 30 years back, logically and clearly summarised the reality and the future need for regulation which we actually face today. She wrote:

> *"One thing is beyond doubt. The intrusion of private security forces into the fabric of our modern society can no longer be ignored, and the consequences of this intrusion must no longer be swept under the carpet. Whether we like it or not, the reality of the situation is that the private sector occupies an increasing role in crime prevention. This must be recognised by the authorities, and they should act accordingly."*[43]

It is important to notice that many of the general arguments in favour of statutory regulation emphasise as a major reason the police-like work performed by private security. This shows that there is some kind of blind spot, that is, an "inadequate knowledge base of the scale, scope and nature"[44] of private security and its major activities. Police-like work is still a minor part of the whole business, in some countries even a marginal part where both personnel

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[38] State of New York (2006)
[39] South African Government (2002: introduction),
[40] Bearpark & Schultz (2007:86)
[41] United Kingdom Government (2004:2); See also: R. Sarre & T. Prenzler (2005:199)
[42] T. Jones & T. Newburn (1996:105).
[43] H. Draper (1978:167)
[44] E. McLaughlin (2007:1); See also: P. C. Stenning (2000:347); A. Minnaar (2007: 131-132)

and revenue are concerned and thus it is doubtful if it can be a rational starting point for the demand for statutory regulation of the whole industry.

From a practical point of view the question - why regulate? - can be considered somehow academic because in real life most governments have regulated the private security industry with or without any deeper analysis or explanation why it should be regulated. The fact that a majority of countries and regulatory regimes in the world have statutory private security regulation proves in itself that there is a need for regulation.[45]

5 SPECIFIC ARGUMENTS GIVEN FOR REGULATION

In addition to the general arguments, more explicit reasons are needed to flesh out the answer to the question: why regulate? This information can be found in a variety of documents, which help to give a more structured picture of the specific needs for regulation. The following summary leaves the acquisition of knowledge to the readers' deeper study of the references. The reasons are presented here divided into three categories:

> The first group comprises constitutional and other legal needs to define and restrict private security activities, based primarily on public and institutional interests.
>
> The second group comprises reasons to control private security companies and persons working within the industry, based primarily on the public interest.
>
> The third group comprises primarily professional reasons to set industry-specific'rules' to steer and control private security as a business activity based on mixed public, institutional and interest group interests.

5.1 Constitutional requirements

5.1.1 Human rights and constitutions

Existing texts show that there is a universal human rights and a constitutional aspect to private security regulation. Both companies and individual security officers operate in a sensitive area where the rights of the subjects of their activities and also those of third parties can be jeopardised. Today the universal individual human rights declarations and corresponding local legislation have received increasing attention not only in the stabilised, mostly western democracies, but also in societies in transition and the states without a basic functioning legal or governmental structure This increased focus nationally and internationally on human rights has made the behaviour of the private security companies and officers, because of the changing nature of their work, a target of interest to the media and the public. Breaches of personal integrity and privacy are getting increasing coverage. The challenges connected to private security versus human and constitutional rights differ from one regulatory regime to another and range from very fundamental topics to everyday operational problems. Some states routinely take into consideration the constitutional perspective in regulation processes and point out the need to act in terms and observing the principles of the constitution in private security work, emphasising, for example, that private security activities must not endanger the basic rights of the citizens, such as physical inviolability, freedom of movement and the right to assemble.[46]

[45] J. Hakala (2007:6)
[46] Finnish Government (1976:2 & 1982:1); South African Government (2002: introduction)

The private security regulation discussion in the USA called into question whether constitutional safeguards apply to private security activities. According to some present interpretations of the Constitution, private security officers have more freedom to act in situations like searches and seizures than the police. This without doubt affects one of the principles of democracy, that is, whether individual rights may be breached by those who are not officially acting in a public capacity.[47] In Canada, similar worries have been expressed concerning human rights in relation to private security activities and regulation. It has been argued that generally private actions implicate the Charter[48] rights of individuals when safeguards for citizens against intrusion by private security personnel with ostensibly considerable authority are not always available given the personnel's status as 'non-governmental' actors.[49] Gumedze has mentioned a similar problem when looking at the African situation generally. He argues that the absence of regulatory mechanisms in matters relating to search and seizure, debt collection and private investigation are considered to make the private security industry dangerous, especially where the rights of citizens are concerned.[50]

In societies under transition the main constitutional problem seems to be private security taking over and using in a governance vacuum powers traditionally seen as belonging only to the state and state authorities. Volkov has analysed this problem as it evolved in Russia after the collapse of the Soviet Union. A huge number of former state security personnel, after losing their jobs, created a previously non-existent private security sector, which acted in many cases as a public force, using powers only permitted to public law enforcement. To control the situation somehow a law on private protection was adopted. In Volkov's opinion it is a successful example of legal development whereby informal practices, in this case the private use of force and coercion, acquired legal status and became subject to state regulation.[51] A similar development and a process of 'cleaning' and 'legalising' private security by bringing it under constitutional state control through regulation has taken place also in other post-communist countries[52]. China's challenges as a communist country were somewhat different. There were problems creating regulation which would fit the emerging private security business into the totalitarian control mechanisms of the state.[53] The latest news tells, however, that in the very near future, the Chinese Government will introduce new legislation that: "…will open up its private security to foreign investment". Even an opinion has been expressed that it is time "…to turn public security departments from operators to regulators".[54]

The examples presented here include various constitution related aspects supporting the need to regulate private security. Some of the aspects are routine audits, some practical solutions in 'crisis' transition circumstances, some related to the interpretation of the constitution, and some more general concerning liberty and human rights matters at large. All, however, have a common denominator: they support statutory regulation in order to protect society and to guarantee that the basic constitutional and human rights of citizens are not jeopardised. In this context, the arguments which Richards and Smith have used when writing about security sector reform programmes can be used to summarise the above-mentioned needs. According to them the goal is:

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[47] J. Pastor (2003: 4 & 14); S. Gumedze (2007:15); B. Forst & P. K. Manning (1999:53-54)
[48] Canadian Government (1982) - Canadian Charter of Rights and Freedoms.
[49] K. Stockholder (1997:1); Canadian Government (2002:11).
[50] S. Gumedze (2007:15)
[51] V. Volkov (2000:483 & 2001:1)
[52] M. Łos (2002:174-175); P. Gounev (2006:112-114); S. Gumedze (2007:7)
[53] H. Fu, (1993:35)
[54] G4S International (2007:6-7): See also: R. Stemman (2007:26)

"…the development of institutions capable of providing security to a state's citizens in a manner consistent with human rights and the rule of law, and an effective system of democratic regulation and oversight of security actors. This...concern is particularly important with respect to the private security industry: effective private provision of security requires that considerable legislative, regulatory and oversight safeguards be put in place and regularly interviewed."[55]

5.1.2 Breaches of privacy and secrecy

The discussion of privacy and secrecy breaches has traditionally focused on private investigators and precognition agents, whose work consists to a significant extent of information gathering and often involves the 'gray' areas in privacy.[56] The new integrated security services with electronic aids have widened the 'risk' group within the industry and have triggered a need for more comprehensive regulation on privacy protection in all private security activities.[57]

In their work, private security professionals are in a position where they unintentionally become privy to private and secret details of the clients' lives or businesses. This happens, for example, during consultation on and planning of security systems, while performing static guarding and beat patrol, in contacts with the client's employees, when operating electronic surveillance systems and on call outs. On the other hand, there can be intentional actions as a part of the security work where the security professionals breach the privacy of the customer's employees or common citizens. This happens in the case of routine access identity checks, entry or exit (bodily) searches[58] for prohibited items, and information gathering[59] or specific control using electronic devices like CCTV[60]. In 'normal' work, the challenge is to preserve secrecy in general. When performing tasks that include different sorts of personnel control, the need is to know the limits of one's rights and responsibilities, and the general statutory rules of information storage and use. Opinions have been voiced that the essential nature of private security work is such that it includes the possibility for covert surveillance to gather personal and other information and accordingly it is fair that the citizens can demand protection against surveillance and control from private security actors.[61] Proposals have been made in many different forms for general protection against the invasion of privacy.[62]

In some instances, industrial and even classic espionage has been seen as a threat, especially also because today private security companies are sometimes multinationals with foreign ownership and control. These sorts of risks have been used specifically as a reason to regulate private security personnel and activities, for example, by imposing on them requirements concerning ownership, nationality and confidentiality[63].

[55] A. Richards & H. Smith (2007:3)
[56] United Kingdom Government (1972: Cmnd 5012/Ch 16); T. M. Scott & M. McPherson (1971:287-288); United Kingdom Government (2007)
[57] United Kingdom Government (1979: Ch III/52); See also: J. Unijat (2007:26); B. Milosavljević (2006:21); New Zealand Government (2001)
[58] J. Hentula (2005:6); See also: P. C. Stenning (2000:334-335)
[59] M. Button (1998:14-15)
[60] H. Born, M. Caparini & E. Cole (2006:10-11); See also: Finnish Government (2007)
[61] Danish Government (1985:18); K. Stockholder (1997:1); See also: H. Born, M. Caparini & E. Cole (2006:36)
[62] H. Draper (1978:148)
[63] Swedish Government (1990:§33); Slovakian Government (2005:§43)

5.1.3 Prevention of 'private armies' and strong-arm support

The monopoly on violence traditionally lies with the state. In the case of private armies and strong-arm security, three different sorts of private security activity are seen as a threat to the societies involved and thus in need of regulation. Firstly, there is the risk that private security companies take on tasks which include 'protection' and crowd control in strikes and demonstrations or harassment of ethnical minority groups. Secondly, one must address the threat that internal political, ethnic or criminal groups organise themselves using private security firms as a cover to promote their goals or businesses.[64] Thirdly, one can cite the risk of transnational military activity where governments and private interest groups hire private security companies, or actually private military companies (PMCs), to carry out armed coups or other military/police/protection operations on their behalf. The first two threats can be regulated by national legislative measures but the addressing the third risk is primarily a task for regional and international organisations, although some countries have passed laws restricting locally registered companies and citizens of the countries from engaging in private military activities. A separate matter in this context is vigilantism which is welling from the incapability of the states to provide protection, and sometimes resembles a lot private security activity thus needing also regulatory control. Vigilantism has been handled as a form of justice privatisation in sub-chapter 5.1.7.2.

Private security companies have been used to control or even to break 'legal' strikes and demonstrations. Probably the most frequently cited case is the infamous involvement of private security guard forces in situations of labour unrest in the late 19th and early decades of the 20th century in the United States and other jurisdictions. These incidents and related activities constituted a watershed event in the US that led to (federal) handling of the role of private security agencies in labour conflicts. This process prompted over 20 US states to pass corresponding legislation, some of which is still in force today.[65] Although a change occurred in this matter during the years of World War II[66], private security is still used in labour conflicts in different parts of the world in questionable ways depending much on the local labour dispute history, legislation and culture. Private security companies have been involved in confrontations concerning land disputes of indigenous people, harassment of ethnic minorities, building site demonstrations, student unrest and in industrial strikes protecting 'scab labour' and company property. In some of these situations, 'tough guys' have been hired as security officers, which has triggered violence and caused actual injuries to innocent victims. These incidents have generated media publicity and in many cases have also negatively affected the image of the private security industry, prompting a discussion of its role in such situations and the need for extended statutory regulation.[67]

In the course of its history, private security has occasionally been used as a front to organise armed formations for internal political purposes. In most of these cases private security companies have acted as private police forces or paramilitary groups using violence against 'dissident' groups in society.[68] The need to prevent the formation of illegal entities under the

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[64] See: M. Page et. al. (2005:6)
[65] C. D. Shearing & P. C. Stenning (1981:230-231); J. D. Horan (1968: 321-350); C. P. Nemeth (2005:10, 12); R. D. McCrie (1988:30); M. Lipson (1988:20); J. D. Stees (1998:7); See also: C. D. Shearing (1992:404-405)
[66] J. D. Stees (1998:8)
[67] S. Miyazawa (1991:249); N. Freehill (1997:247); N. Yoshida (1999:247); A. Lavelle (2002:98-99); P. Gounev (2006:118); H. Draper (1978:146); D. Baker (2005:99-100, 120); H. Padwa (2001:1); Amnesty International (2007); Amnesty International USA (2007); Amnesty International (2005:Romania & 2007b:Czech Republic); N. Yoshida & F. Leishman (2006:225)
[68] See for example: R. van Steden & L. Huberts (2006:18-19)

cover of a security company continues to be one of the grounds for regulation in different countries today. [69] The risk is tangible mainly in states with a history of 'ethnic' conflict, where private security companies may be abused against ethnic as well as political rivals.[70]

This threat to democracy has been controlled in some societies by special legislation.[71] This legislation has, however, proved unsuitable in the control of the present day business-oriented private security activities.[72] The industry in Europe considers this threat still to exist and in a joint position paper the Sectoral Social Dialogue partners of private security have named one of the objectives of an authorisation scheme to be avoidance of private militias.[73]

A sideline in this sort of regulation is the legislation in USA where guards are only allowed to organise themselves in trade unions which represent security employees only. The original purpose of regulation was to prevent a situation where during a strike security officers and strikers represented the same union. This law has turned out to hinder unionisation within the industry and is probably one of the reasons for the relatively low number of organised security officers in the US.[74]

5.1.4 Changing roles in policing / law enforcement

The division of labour between public and private security providers has become more blurred than ever and it is thus no wonder that the changing roles of the public and private actors providing security have been and is one of the main topics in the discussion of private security regulation. The discussion has focused on the growth, size and new segments of activity of the industry, as well as the diminishing possibilities of the public authorities to meet the emerging demands of security in the fast-changing society. Scholars' interest has focused on the changes, specifically how they have originated and how they have affected the production of security services. In this context especially the more visual and active role of private security as a public security provider has been noticed by academics, legislators and other interest groups. This phenomenon was mentioned already 35 years ago in the minutes of the Cropwood Round-table discussion in a note stating: "It was suggested that the work of the security industries in public places was the aspect which more than anything else brought up the question of control".[75] The Council of Europe Committee of Ministers has agreed in connection with regulation "…that the increased use of private security companies for policing activities merits serious attention".[76] Over the years, academics and legislators have emphasised in their comments in the same way the similarities between police and private security work by using the term 'private policing' when explaining the need for industry-specific regulation. There is an experience that the differences in the tasks performed, in public visibility and in the use of enforcement powers have become smaller.[77]

In many countries, changes in crime patterns and the 'war on terror' have meant a new allocation of police resources and a need to assess whether private security could be utilised more widely to support to state-run security. Of all the industries changed by the spread of

[69] Finnish Government (1940:1251); Swedish Government (1974:35); United Kingdom Government (1979: Ch III/33); See also: B. Milosavljević (2006:21)
[70] A. Richards & H. Smith (2007:9): See also R. van Steden (2007:63)
[71] B. George & M. Button (1997:191)
[72] J. de Waard (1999:148)
[73] CoESS & UNI Europa (2004:2)
[74] H. Padwa (2001:3); US Government (2005)
[75] P. Wiles & F. H. McClintock (1972:61).
[76] Council of Europe (2005:§ 8)
[77] C. D. Shearing & P. C. Stenning (1981:231); M. Button (2005:5); United Kingdom (1999: Foreword)

terrorism none have been considered to be as profoundly affected as the security industry.[78]. However, a prerequisite for expanding the role of private security providers in this context is an improvement of security officers' screening, training, and opportunities to co-operate with authorities.[79] An example of this can be seen in the security arrangements of big international conferences and sports events today, the security requirements of which are so huge that without private security the police cannot handle them. Special laws have been seen as one solution to handle such situations.[80] It seems that without the use of private security resources, the expanding terrorism-related, protection needs in societies cannot be met properly, meaning that new regulation is required.[81]

5.1.4.1 Growth of the private security industry

The security industry's personnel and revenues, and the ratio between police and private security officers are often referred to in texts dealing with private security topics. Legislators and academics alike have been using these figures to support statutory regulation of the industry. The problem is that a majority of the figures describing the size of the industry and the comparisons with police strength are not based on any systematic research or methodology and thus do not give a reliable starting point for analyses or conclusions.[82].

The reasoning and argumentation for regulation which is based on the size of the industry is very similar in different regulatory regimes. The ever-growing number of private security companies and security officers, as well as the change of their roles, has in itself raised concerns about how these agencies operate and how they are controlled.[83] Hess and Wrobleski have stated simply in this context that since private security has become 'big business', efforts have been made to regulate it.[84] The police/private security personnel ratio has only rarely been used as an official justification for regulation, because as such it is clearly not a valid argument in this context. [85] It has been used all the more by different interest groups and academics in various connections to support the arguments for the growing importance and the 'threat' of private security in general.

The diminishing capability of the police and other authorities to meet the security needs of society and the companies' and citizens' increasing reliance on private security services are realities which governments have to take into consideration in their planning. As the role of private security has grown substantially under these circumstances, its regulation and control have become a more acute issue for governments.[86]

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[78] Australian Government (2007)
[79] J. E. Sheppard & J. O. Mintz-Roth (2005:1); Queensland Government (2006:15); Centre of International Economics (2007: 24)
[80] See: New South Wales Government (1999) specific security legislation concerning Sydney Olympics; See also: T. Prenzler (2006:86) and N. Yoshida & F. Leishman (2006:228-229) commenting the cooperation.
[81] US Government (2004) Opening speeches of legislators H. Coble (Subcommittee Chair) & R. C. Scott (subcommittee member); Singapore (2007:1)
[82] J. Hakala (2007:2); See also: L. Johnston (2007:27-29)
[83] Indian Government (2005: Prefatory Note); United Kingdom Government(1999: Foreword) & (2000: column 575); Quebec Government (2003:2).
[84] H. M. Hess & K. M. Wrobleski (1996:41).
[85] United Kingdom Government (1979:Ch III/33); W. C. Cunningham et.al. (1990:228-239); US Government (1996:Sec.2:2-3)
[86] Swedish Government (1974:16); United Kingdom Government (1979: Ch III/33). City of New York (1992:1); R. Matthews (1989:75) in the introduction text to chapter 4 written by N. South; State of New York (2006); United Kingdom Government (1999: Ch 1:1.1-1.4); D. Van Bibber (2000)

Scott and McPherson summarised already more than 35 years ago, in a way valid even today, the future needs for regulation that ensue from the growth of the industry:

> *"The rapid development of large nationally based private police agencies along with the pressures for increased professionalism emerging from within the public police system will require, sooner or later, changes in the laws involving functions, licensing and regulation of the private police".*[87]

The big change concerning the commercial private security industry has been the formal recognition that there is a security market, complicated and expanding, to be regulated. It has been a long and outdrawn process because the governments, politicians and authorities (police) have for different reasons been unwilling, incapable or afraid to admit that the general changes in societies have made it impossible to keep up an acceptable public order and security level meeting the needs of the businesses and citizens without private security contribution.

5.1.4.2 Privatisation and outsourcing.

Privatisation has been one significant factor in the growth of the commercial private security industry and its changing role in societies. Outsourcing of services, and especially public services, in the field of security has accelerated this development. The phenomena of privatising and outsourcing have been dealt with in academic texts, but primarily as a change in governance models, not necessarily as a reason for regulating private security. It has been abundantly clear in most of the countries surveyed that the privatisation of security work that focuses on objects of national security such as airports, courts, nuclear facilities or prisons is not possible without new statutory regulation which defines (extends) the powers of private personnel. What has received less attention is that the general privatisation of industries and services is also affecting national security and the regulation of security work. For example, the security arrangements of waterworks, power stations, telecommunication facilities, railways and so on, which are a part of societies' critical infrastructure, can be steered and regulated in a different way as long as they are under public authority. Under private ownership (control), the security measures have to be separately regulated if the authorities want to guarantee a certain level and quality of protection. Similarly, the status of the security providers has to be redefined, as they are no longer civil servants or the equivalent. In some countries, the governments have seen a need for special regulation concerning high-risk objects in order to maintain the authority to steer and control their security.[88]

There has been, especially in the US, cases where the entire police function of a small city has been privatised. These experiments have, however, failed in the long run because of police union opposition and legal interpretations. As such these private police forces have been argued to be more cost-effective than, and as high in quality as, public law enforcement.[89] In the traditional segments of private security work, the development has been more gradual and market driven. The speed at which private security has infiltrated new areas is, however, creating a steady pressure to supplement (amend) legislation.[90] The need for regulation constantly exceeds the actual regulation, and the political threshold for new legislation has been

[87] T. M. Scott & M. McPherson (1971:285)
[88] South African Government (2007); Swedish Government (1990); CoESS (2007:11-12); Polish Government (1997:Chapter 2); M. Button & B. George (2001:60-62); A. Abelson (2006:5)
[89] P. E. Fixler Jr. & R. W. Poole Jr. (1988); See also: W. C. Cunningham, J. J. Strauchs & C. V. Van Meter (1990:277-280) presenting privatisation of police duties in the USA.
[90] N. Yoshida (1999:249-250); CoESS (2007:16-17); V. Ellonen & J. Mikkonen (2007)

high, meaning that there is a permanent gray area where the rules and powers are blurred.[91] An example of this is the Japanese situation, presented by Yoshida when commenting on the need for extended regulation: "The focus of the industry had widened considerably beyond the scope of the original legislation. For example it had started to provide its services at airports and to guard transportation of nuclear substances". In China the establishment of special economic zones with foreign-owned industry with its own private security model put the police in an awkward ideological situation. The question was whether capitalists (foreigners) could have their own 'police', given that policing is a sensitive issue, fundamental to the country's safety. As a compromise solution a new entity - Security Service Company (SSC) - was established locally with dual control. There was a dilemma in justifying the creation of the SSC.[92] Yoshida has touched upon another aspect of change – the new equipment. In analysing the deployment of burglar alarm systems, he takes up the problems concerning new back-up personnel needed and the functioning of the totality: "As a whole, the alarm system did not work as designed and there was a perception that things could be improved by more careful regulation"[93]. The changing roles in security, based on the growth of the industry and the privatisation of public tasks, are undoubtedly significant factors supporting the writing and re-writing of industry-specific statutory regulation.

5.1.5 Division of labour between the public and the private actors

In the new situation with outsourcing and privatisation of public security tasks, a clear division of labour between the different security actors is more important than ever. The fundamental question is how to dismantle in a structured and controlled way the theoretical 'holy' state monopoly of violence carried out by the police and other authorities. The new governance models have caused this self-evident illusion to waver and private security has visibly entered this 'protected' domain. It has been stated simply: "The introduction of PSCs weakens the state's monopoly over the use of force, a trend that is enhanced in cases where PSCs are armed".[94] To keep the new situation under control different steps have been taken by governments. There are different viewpoints of the division of labour in this context: some consider private security primarily a 'junior' substitute partner to the police and one to be controlled by it, some see it in a wider perspective reaching far beyond the traditional police tasks and work. The role chosen and set by a society (legislators) for private security in a specific regulatory regime determines in many ways the model and content of local private security regulation and especially its implementation. It is very much up to the political history and the strength of the institutional interests of the administrative (police) organisations how progressive a government's approach is and can be in this matter.

The subtle distinction between the work of public and private security was well expressed already over 25 years ago in a Discussion Paper of the UK Government which actually predicts what has today materialised in the line of security work:

> *"He* (the common citizen) *may be searched, for example, before being allowed into a building or airport, or he may find himself faced by a security guard in a shopping precinct or walkway. These quasi-public activities are relatively new developments which bring the uniformed guard into a position seemingly akin to that of a police officer".*[95]

[91] United Kingdom Government (1979: Ch III/35);
[92] H. Fu (1993:35 & 37)
[93] N. Yoshida (1999:251); See also: N. Yoshida & F. Leishman (2006:227)
[94] M. Page et.al. (2005:5)
[95] United Kingdom Government (1979: Ch III/34).

Similar conclusions have been made later on by others pointing out that private security officers do arrest, detain and search individuals on a regular basis and that the division of labour has become blurred because private security has started to be more present and active in public places and within areas where public order is to be maintained.[96] In some cases the industry itself has come out with proposals such as "Let authorised security officers help police with controls and the keeping of public order".[97] For example Poulin & Nemeth consider this already happened by writing: "…security personnel have become not only primary service providers of prevention and protection but also the 'first responders' in many emergency situations".[98]On the other hand, it has been considered an alarming development, calling for regulation, if guarding companies become quasi-official police formations taking over some of the tasks given by society to the police.[99] Minnaar has also pointed out the emerging 'visibility' factor of different security providers. "The public in many of the more affluent neighbourhoods complain about the disappearance of 'visible' policing from their neighbourhoods, i.e. they only see the personnel of private security companies parked on the street corners while SAPS appear to be conspicuous by their total absence from residential neighbourhoods."[100] Even if this statement is made in a South African context, it is a general phenomenon which can be noticed in most of the countries all over the world.

The states have also created confusion by starting state-owned security companies based on special statutory regulation which gives them a semi-official privileged status as public security providers but also lets them operate in the free market for profit. Examples of such arrangements at different times are ABAB in Sweden, APS in Australia, SSC in China and SDO in Ukraine.[101]

Jones and Newburn have summarised these thoughts in commenting on the UK situation: "The growth of the private security industry, not only in terms of absolute size but also in the range of the 'policing' tasks it undertakes, raises questions about the need for regulation and control".[102] Noaks' comment when dealing with the official sanctioning of the expansion of, for example, private patrols into residential areas serves to sump this public / private relationship. He states categorically: "If the police are to enter into partnership with commercial bodies then they will require a greater degree of regulation of private organisations that is currently the case".[103] Whatever theoretical opinions are given on public - private partnerships, they are here to stay, and without them the states cannot meet the goals in providing adequate security for their citizens. This means that also more regulatory arrangements are needed in the future to steer these partnerships.[104]

In trying to make the question of public-private boundaries simple, it can be said that there are countries where they have been categorically defined, for example, in statements like "The prevention and solving of crime and the enforcing of public order and security is a police task and responsibility. Because of this a clear enough separation has to be set between

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[96] Canadian Government (2002:11). Finnish Government (2001b:1); Norwegian Government (1984:14); J. Hakala (2002:1); T. Prenzler (2005:267)
[97] L. Borg., R. Erixon, & A. Waldman, (1997:78)
[98] K. C. Poulin & C. P. Nemeth (2005:46)
[99] Finnish Government (1976:1-2)
[100] A. Minnaar (2007:131)
[101] See: Swedish Government (1981); H. Fu (1993); Profile (1997); Australian Government (2000); H. Born, M. Caparini & E. Cole (2006:19-20)
[102] T. Jones and T. Newburn (1996:105)
[103] L. Noaks (2000:156)
[104] See for example: A. Minnaar (2007:145)

the police and the activities run by others working in security"[105]or "An important goal of the bill is to define the boundary what security company can do and what should be the sole responsibility area of the police".[106] Not all countries, however, have stated this principle as clearly as the platform for their regulation, even though most of them have adhered to it. It may even be possible that some have intentionally left the matter to the 'market' to decide.

5.1.5.1 Sore spots in interaction and co-operation

Tensions between police and private security actors are not unknown. In principle, a common understanding exists that there should be smooth interaction between them.[107] A functioning working model is still missing and it seems to be difficult to achieve. There has-been tension already historically between public and private security and it has led to certain measures by states to control the situation. There has, for example, always been 'moonlighting' in private security by police officers holding a permanent position. Depending on the local rules and regulations, the police officers have been able to do this while maintain their authority or, in some cases, even wearing their police uniform and carrying their duty weapon. There are also regulatory regimes, for example in North America, where the police have been or are selling - individually or as an organisation - services on private markets for profit or for reasons of institutional and private interest.[108] In Nigeria the private security companies hire armed police officers from the police organisation for their operations, because the companies are forbidden to use firearms.[109] In China, the 'police-owned' SSC was equipped with police cars, uniforms and weapons, and also had all the police powers. Some of its entities also started to sell merchandise that was not security related and some even used their licenses to run totally other businesses.[110] Even today "… the industry is principally funded and operated by public security departments".[111] A similar system can be found in South Korea.[112] When police officers are working through different arrangements as a part of private security operations, there are always unclear points and risks related with the actual chain of command, corruption, liability and accountability. At its worst there can be a precarious balance between the authorities (police, army), private security companies and vigilante organisations which is bound to grow and create social tensions.[113]

In many regulatory regimes, the police are the administrative and controlling authority of the industry, which creates an obvious conflict of interest if they also take part in the business as owners or as active operators. In most regulatory regimes, the matter of individual police officers' 'moonlighting' has been solved by internal police administration rules regarding outside extra work. In some regimes, however, this dual role of the police has been seen as requiring specific regulation. Shearing & Stenning have come to the conclusion that the old 20th century regulations "…all appear to have been concerned to control competition between the contract guard and investigation industries and the growing public police forces".[114] The same idea has been kept alive 25 years later by Dupont, who argues that today's police or-

[105] Finnish Government (1982:1); See also: US Government (1995: Sec.2:3)
[106] Norwegian Government (1987:3)
[107] US Government (1996:Sec.2:4 & Sec.3:1-2)
[108] B. Dupont (2005:4); M. Massimiliano (2007); B. Forst & P. K. Manning (1999:37); See also: C. D. Shearing (1992:416-418); W. C. Cunningham, J. J. Staruchs & C. V. Van Meter (1990:289-295) explaining the different variations and trends of American police moonlighting.
[109] R. Abrahamsen & M. C. Williams (2005:11-12)
[110] L Fu (1993:39)
[111] G4S International (2007:6)
[112] M. Button, H. Park & L. Lee (2006:149)
[113] H. S. Simelane (2007:164)
[114] C. D. Shearing & P. C. Stenning (1981:230).

ganisations and unions actively support regulation which limits private security to more benign loss prevention tasks.[115] The Law Commission of Canada has noted that the current regulatory environment does not adequately reflect the reality of the networks of public and private policing in Canada. There is a need for defining what tasks the different actors - public and private - are entitled to perform and how the relationship between these two service providers should be organised.[116] Unijat has proposed in her article on Serbia that there should be a law prohibiting private security companies from hiring police personnel.[117] In Finland the Government has stated simply: "Because of the general responsibilities of the police and its role as the controller of private security activities, there is a conflict of interest when police officers work in or take part in the activities of a security company".[118]

There exits informal cooperation between the (police) authorities and the private security industry. This has been the case especially in those countries where there is a tradition of ex-police officers and other public security personnel taking jobs in private security. The informal co-operation and exchange of information which is a consequence of this has unquestionably positive results. There is, however, the possibility to use these contacts in a way that breaks the ethical codes.[119] Ex-police officers may bring some police work attitudes and assumptions with them which are not appropriate in private security work.[120] Richards and Smith have expressed themselves very categorically on the ties between present and former government employees: "There is potential for conflicts of interest to arise because of close ties between former and serving governmental officials and private security companies".[121] This is one of the key problems in the former communist countries, where many ex-state officials entered the industry, and were sometimes favoured in the licensing process.[122] This arrangement has created problems of there being too close relations between the state security and private security personnel. There is an obvious need for information sharing, but this can happen only in a structured regulated way to prevent malfeasance.[123]

To steer the informal relations and to support the general police work, some countries have tried to implement general public responsibilities and rules of public - private co-operation in their statutory private security regulation. In discussing the exceptional Spanish model of regulation, Giminez-Salinas Framis argues: "…by creating a formal means of communication between private and public sectors, one is also eliminating abuses and illegalities characteristic of informal relationships".[124] New York City Advocate recommends in her report a more formal public - private co-operation by writing: "As part of a new citywide protocol, the Police, Fire, and Emergency Response units and other first responders should all coordinate their emergency response efforts with private security firms."[125] Sometimes the co-operation between police and private security develops to such extent that statutory regulation is needed to stop it. In Denmark, one company historically hired local senior police personnel nationwide as their part time managers and operated in many cases from the same facilities as the police. This was stopped after 50 years by a law preventing police officers who

[115] B. Dupont (2005:3)
[116] Canadian Government (2002:32).
[117] J. Unijat (2007:25)
[118] Finnish Government (1982:4); See also: A. Abelson (2006:6); P. C. Stenning (2000:340)
[119] B. Milosavljević (2006:20)
[120] H. Born, M. Caparini & E. Cole (2006:34)
[121] A. Richards & H. Smith (2007:9)
[122] See for example: V. Volkov (2000:486 & 2001:3)
[123] See also: A. Minnaar (1999:4)
[124] A. Gimenez-Salinas Framis (2004:168)
[125] J. E. Sheppard & J. O. Mintz-Roth (13)

hold a permanent position from working in private security firms.[126] “There is serious potential for conflicts of interest to arise because of from close ties between former government officials and PSCs.”[127] As can be seen, there are several reasons to regulate the relations between the public and private security actors. Be its purpose to protect one of the parties, to control the misuse of informal co-operation and information change, to improve the use of private security in support of public security, or some other reason, a number of countries now consider regulation desirable. In analysing models of co-operation between public and private actors, Sarre and Prenzler have come to a positive conclusion: “There is currently a window of opportunity for all participants to see beyond a threatening situation to an opportunity for better and clearer co-operation, so long as the intersections are well theorised and better regulated”.[128]

5.1.5.2 The concept of ‘junior police’

In some regulatory regimes there is a tradition of private security being considered by the authorities as an auxiliary police function – a junior partner – which logically also means that the ultimate control of this ‘partner’ lies with the police. Even in countries where private security has been seen in a wider perspective than as a policing function, there have been and are pressures and needs to somehow harness it officially to support the diminishing resources of general law enforcement.[129] Shearing & Stenning have argued that in America the “…transformation of private policing from threat to an asset was accomplished by conceptualizing private police as junior partners in the business of policing, who were working to assist their senior partners, the public police, in keeping peace”.[130]

Gimenez-Salinas Framis has touched upon this topic within the Spanish administration model, where there was a constitutional dilemma as to how to make private security ‘legal’. At the same time, the very strong police institution of the country wanted – in their institutional interest – to keep the industry under its supervision. As Gimenez-Salinas Framis notes: “The only important question for them was how to control a sector that was quickly developing without adequate guidelines”.[131] In the Hallcrest Report (1985) Cunningham and Taylor stated in American context that: “….much of the resistance to private policing and privatization was simply a ‘turf war’ in which the public police were seeking to maintain their privileged position”. They even argued that this resistance based on partisan interests of the public police “…were undermining the ability of communities to respond to crime”.[132] In the Hallcrest Report II (1990) this matter of turfs had been dropped and it was just noticed that a shift of resources had already occurred from public to private security.[133] In China the police stressed that the ‘private’ security operators of SSC were, despite formal independence, under their tight control. As Fu observes: “The police have been portraying the SSC as a junior partner who is assisting the police in securing social order. Therefore, there is no reason to fear an abuse of power by the SSC”.[134] Ideas have been put forward also in the UK of regulation that would place the private security industry under the watch of the public police, im-

[126] Danish Government (1985:15); S. Söderberg (1979:24)
[127] M. Page et. al. (2005:6)
[128] R. Sarre & T. Prenzler (2000:106-107); See also: R. Sarre & T. Prenzler (2005:199)
[129] US Government (1995: Sec.2:4); Swedish Government (1990:1); Finnish Government (1999: §2)
[130] C. D. Shearing & P. C. Stenning (1981:220): See also: C. D. Shearing (1992:411)
[131] A. Gimenez-Salinas Framis (2004:161)
[132] C. D. Shearing (1992:415-416) referring and analysing W. C. Cunningham’s and H. T. Taylor’s Hallcrest report (1985).
[133] W. C. Cunningham, J. J. Strauchs & C. W Van Meter (1990:116-117)
[134] H. Fu (1993:38)

plementing in practice to the concept of a junior police force. This suggestion was based, amongst other things, on views such as the following: “Because police services can no longer provide the level of visible patrol that citizens demand the police should look to regulate and monitor the private security patrols that have stepped in to fill the void”.[135] The Japanese Act contains provisions “…which underline that private security sector is a ‘junior partner’ in policing activity”. This is also considered important because low quality of private security “…would tarnish the good image of the Japanese police as *de facto* regulators of the industry”.[136] In Finland, legislators have stated: “As a system supporting the police there could be a guarding company structure, well enough defined by regulation and well enough controlled by the authorities *(police)*”.[137] There is a debate going on in Sweden on the role of the security guard, who is, according to the new regulation, becoming more a kind of ‘reserve’ police officer with, for example, a general responsibility to report criminal acts to police. The different interest groups have diverse opinions on the effects and benefits of this trend.[138] At the same time, there are being made to subordinate crowd controllers in licensed entertainment facilities to the police.[139]

5.1.6 Identification and diversification in appearance

Physical appearance, uniforms, badges and ID numbers/cards are traditionally signs of authority in a society. Private security guards usually wear a uniform or are even obliged to do so when performing their tasks. If restrictive rules are not set, there is a temptation to wear uniforms, badges and shields resembling those of different authorities, especially the police.[140] The reason for this sort of behaviour is usually twofold: firstly to try to abuse the authority associated with a police outfit[141] and secondly the possibility to buy current standard uniforms at a bargain price. Stopping this kind of deception and protecting the average person from wrong assumptions are seen in many states as reasons for adopting regulation. The public must be able to differentiate a guard from a police officer or any other representative of public authority without difficulty. The personal identification of a security officer is considered a part of his or her accountability. The need for private security personnel to use a visible or available ID number or card, as well as the logo/name of the company, has been considered important.[142] Specific rules are needed to prohibit the subcontracted security officers from using the logos of the client company to avoid confusion regarding their actual status and role.[143] At different stages there has even been regulation in some countries requiring identical uniforms for all private security officers.[144] There is a similar need to regulate the appearance, texts and logos of the operational cars and vans used by the companies.

The conclusions drawn in the literature dealing with the diversity in appearance are quite similar. According to a comment by a Japanese researcher, people in the street might not be able to differentiate between the police and private security guards due to their similar ap-

[135] Canadian Government (2002:34) as quoting Ian Blair.
[136] N. Yoshida & F. Leishman (2006:228)
[137] Finnish Government (1982:1)
[138] Väktaren & Samhället (2007:8-11 & 14-15)
[139] Väktaren & Samhället (2007a:2-3)
[140] See: H. Born, M. Caparini & E. Cole (2006:27)
[141] See also: A. Minnaar (1999:5)
[142] Council of Europe (1987:preamble); See also; Finnish Government (2001:§ 34): Maltese Government (1996:§22:2): Estonian Government (2003:§26); Iceland Government (1997:§5); Pekin & Pekin (2005:59); Swedish Government (2006:§§ 9-10); New South Wales Government (2007: explanatory notes:2)
[143] B. George & M. Button (2000:55): Finnish Government (2002b:§9)
[144] Finnish Government (1982:§17); Pakistan Government (2004:§8)

pearance.[145] Correspondingly, it has been stated in Australia that it is not difficult to imagine that there will be perennial confusion among the general public in distinguishing between the two forces, private and public, given the similarities in dress.[146] In India the legislator sees a danger of private security agents wearing uniforms which resemble those of the police.[147] In Denmark there is a demand that citizens should in a normal situation be able to see that an employee works for a private security company and his or her clothing should also be distinguishable from police uniforms so that no mistakes are made.[148] The Swedish police have expressed their worry that the security officers often wear uniforms which make it difficult to distinguish them from police officers.[149] Similarly, Norwegian authorities have commented that it is not a favourable situation for the public that the police and private security personnel cannot be distinguished more clearly.[150] In the US, Congress has debated that issue of the public having difficulty in discerning the difference between sworn law enforcement officers and private security personnel. The Council of Europe has called for standards providing in particular that private security staff wear a uniform different from that of the police.[151] In light of these arguments, it is a straightforward conclusion that there is a case for regulating private security uniforms in order to protect the public from confusion.

5.1.7 Definition and control of (extra) powers and their use

The powers of private security officers are the object of a spirited debate in all societies. The need for extra powers through statutory regulation is reflected in a recommendation to vest private security officers with some governmental authority.[152] In some regulatory regimes, all, or certain categories of security officers have been granted extra powers in the private security legislation.[153] In most countries, this matter is considered a constitutional question, as the state monopoly on violence is broken by extending it, at least partly, to private actors. Even in situations where private security officers do not have powers exceeding those of a common citizen, they use these citizens' powers 'professionally' as part of their everyday work. Depending on the legal system and culture, these citizen's powers can be quite extensive, especially in the Anglo-American countries. Sarre has commented on this as follows: "Private policing derives its power from an admixture of the law of agency and contract (in certain situations), the law of property and industrial law. It is de facto power which (*by virtue of its apparent authority*) allows it to have the appearance of a force equal to public police".[154] Several scholars have emphasised that the 'uniform' and work status-based, unofficial powers of private security personnel, as experienced by the citizens, are very real and need to be defined and controlled in some way.[155] Hess and Wrobleski express this succinctly

[145] N. Yoshida (1999:248) as quoting M. Sato
[146] R. Sarre (1992:168).
[147] Indian Government (2005: Prefatory Note)
[148] Danish Government (1985:59).
[149] Swedish Government (1974:27)
[150] Norwegian Government (1987:6)
[151] Council of Europe (1987:preamble)
[152] ASIS International (2-V:23-42)
[153] See for example: Swedish Government (1980:§1) & (1990:§§11-14); Finnish Government (1999:§§6-9) & (2002:§28); Slovakian Government (2005:§50); Maltese Government (1996: §18); Belgian Government (2990:§6); Pekin & Pekin (2005:5)
[154] R. Sarre (1992:179); See also: P. C. Stenning (2000:329-333) analysing and comparing the public police's and private security officers 'tool-boxes' of powers.
[155] T. M. Scott & M. McPherson (1971:272); M. Button (1998:13-14); K. Stockholder (1997:1); See also: M. S. Mopas & P. C. Stenning (2001); H. Born, M. Caparini & E. Cole (2006:35)

and clearly: "…, private security personnel come into daily contact with the public as authority figures. Control of these contacts must be ensured".[156]

A Swedish committee report states categorically that it is self-evident that an authorisation is needed for all tasks which include some kind of extra powers, because such tasks can be considered as the exercise of some sort of official authority [157] In this context, The Security Officers Interim Board of South Africa explained in a Discussion Paper that the need for regulation owes to the following: "It is self evident that persons placed in such positions of relative power over other members of society should be closely regulated and monitored to ensure that members of society are not harmed by them. Persons who are not even their clients rely on their integrity and competency".[158] The Finnish Government has emphasised the general need to face the reality: "In taking over tasks related to maintaining public order from police, private security officers are more and more faced with situations where the powers they exercise cannot be considered based in the present legislation. The situation has to be corrected to correspond to reality. This includes the public - private area dichotomy"[159] The Law Commission of Canada has gone one step further in its Discussion Paper, stating that the growth of private security is based on consumers' demand, because the state may have failed to offer a suitable sense of security to its citizens. This observation prompted a far-reaching comment: "The position here is that government should not stifle the free market by imposing regulations and by monopolising legal designations for the public sector alone. Proponents of this position claim that it is perfectly reasonable to allow for-profit companies the powers of regular or special constables".[160] The San Francisco Police Commission's proposal for an amendment in the penal code to give arrest powers to the city's (private) Patrol Special Officers can be taken as an example of this development.[161]

The new growing awareness of the threat of terrorism has impacted the opinions of the role of private security.[162] An explicit example is Spain where new regulation extended the possibility to use private security. "Originally, (p*rivate)* bodyguards could not protect government authorities. However, terrorism against representatives of political parties other than Basque nationalists forced the administration to make this change, which has resulted in a growth in corporations and personnel dedicated to this activity"[163]

5.1.7.1 Unneeded and unauthorised use of violence

Use of violence is an increasing challenge in private security. In their work private security officers confront situations where they need to resort to force. These situations have traditionally been an integral part of the work of door supervisors[164] but are also becoming more usual in other guarding activities as the private security has taken over a number of 'police' tasks of public order maintenance and security in public or quasi-public places. As the number of incidents where physical force is used has increased, so have the risk of unintentional or intentional use of excessive force. This kind of misconduct by private security personnel,

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[156] K. M. Hess & H. M. Wrobleski (1996:41)
[157] Swedish Government (1995:180)
[158] South African Government (2000:41)
[159] Finnish Government (2001:25-26)
[160] Canadian Government (2002:32); See also G. S. Rigakos & C. Leung (2006:135-136)
[161] B. Wallace (1997:A17 &A22)
[162] US Government (2004) Hearing statements of top management representatives M. Kirkpatrick (FBI) & D. W. Walker (Securitas Inc., USA).
[163] A. Gimenez-Salinas Framis (2004:165)
[164] M. Button (1998:18-19); Scottish Executive (2004:1); New South Wales Government (2006: Article 36); United Kingdom Government (2000; column 576); K. Kunnas (2007:kotimaa); A. Tiainen (2007:A 12)

even if it is relatively minimal compared to the total number of incidents faced, is in most societies a serious matter and makes headlines in the media. In some countries the publicity of cases involving the use of excessive force has been one of the important 'political' reasons starting the regulation process of private security activities together with the general need to keep criminal elements out of the industry.

The State of Michigan is an example where within one year three persons were killed when proprietary security officers detained them in a retail environment. As one official noted: "These three deaths led to a call for action by area residents, religious leaders, state politicians and security industry professionals. To avoid and eliminate any further deaths, these groups attempted to establish mandatory, minimal training guidelines for security officers employed in Michigan."[165] In Australia the violent behaviour of private security personnel, especially crowd controllers, has been a major reason for regulation and the discussions on the need for it.[166] A Swedish bill too includes a comment on violence as a justification for regulation: "Also other criminality, for example the use of non-provoked violence, has been reported concerning the non-authorised companies".[167]

5.1.7.2 Privatisation of justice

The use of private detectives and consultants to investigate criminal cases or suspected crime has been one of the core private security services from the beginning. Already the infamous pioneers of the industry like Pinkerton and Burns were in the first place known of their success in solving crime cases and catching outlaws. They were hired mainly by private companies and persons to do this work. Even if the public police took over most of these tasks when the state law enforcement systems developed, there were still cases the police did not have legal powers, interest or resources to investigate. The development in police resources and the focus of their present activities have forced companies and private persons again to use ever more and more private services to help them with crime prevention and investigation. There are two fundamental questions to be considered in this context. Firstly employees and citizens are screened, shadowed and 'interviewed' by private actors which activities can violate their privacy and constitutional rights. Secondly the consequences and further actions following inquiries, if evidence of crime is revealed, are in most cases at the discretion of the buyer of the service who will decide how the situation will be handled. Will it be given to police (non-reporting) or will there be an internal punishment, a deal be made or the case dropped (bypassing public criminal justice). In this situation one can say that not only the investigation but also the justice has been privatised and the general (equal) norms are not followed.[168] This matter has been taken up in connection with private security regulation occasionally. But to handle this problem by industry specific legislation seems to be improbable because of the difficulties to define the boundaries of authority.

Another gray area where private security providers use their discretion is the public and semi-public places where they, for example, deny the entry or remove people from the guarded space. Mäkinen has in his study on the security control of the semi-public space in shopping malls concluded that the final norms concerning the level of drunkenness, activities

[165] J. J. Jaksa (2004:67); See also: G. S. Rigakos & C. Leung (2006:135) on a similar case in Ontario.
[166] Queensland Government (1992-93:3972-73 & 6408-27); Queensland Government (1995:8); New South Wales Government (2006:article 36:23048); See also: Northern Territory Government (2002:26) regulation history which started only with the crowd controllers.
[167] Swedish Government (1974:17).
[168] See also:W. C. Cunningham, J. J. Strauchs & C. W. Van Meter (1990:298-3002) presenting different aspects of private justice within business environment in the USA.

allowed, disorderly conduct, and so on, are set by the owners of the facilities and by the front line guards executing them. As a consequence of this the actual decision of acceptable behaviour in a public place has been privatised. Without doubt these actors are applying private justice which discriminates some citizens.[169] The control of the use of this kind of powers supports the regulation of in-house security in order to guarantee the persons exercising private justice are controlled in some way and have a minimum compulsory training on the legal norms to be followed. In general industry specific legislation is probably not a proper solution in this context because the breaches made here, if there are any, are matters related to general discrimination and human rights.

Vigilantism is one form of justice privatisation. It can be found all over the world when the state authorities cannot meet the citizens' security expectations. In some countries this kind of protection has locally become one of the main ways to provide justice. Sekhonyane and Louw have in their article noted that especially in South America and Africa the concern is that vigilante groups take on policing and justice functions, often using violent means to illicit confessions and mete out punishment. "As such, they function in opposition to the formal criminal justice system and threaten the rule of law - the foundation of any democracy." As an example of a well established vigilante organisation they take Mapogo-a-Mathamaga in South Africa with approximately 70.000 paying members. "It is unique in that it has support across race and class lines in both urban and rural areas in at least five of the nine provinces. Mapogo has the support of white farmers and business people, black business people, the rural poor, pensioners, teachers, and right-wing political supporters." The researchers explain that the support of Mapogo wells from the belief that it will deliver swift and harsh punishment and thus deter crime and in practice it presents an "…affordable and appealing alternative to the ailing criminal justice system and the continued high levels of crime."[170] Another example can be taken from Swaziland where in rural areas residents became impatient with the inefficiency and bureaucracy of state security institutions. As they did not have the possibility to buy private security as in urban areas, they took security in their own hands and formed a vigilante structure.[171] The punishments executed within vigilante activities are harsh and end sometimes in the death of the accused. This kind of private justice (security) is partly a substitute to state controlled private security and a challenge to any society. Alternative solutions and specific legislation are required amongst other things to control it.

5.1.8 The protection of security officers

The private security industry and especially the trade unions have an interest to have protection for security officers through regulation which defines their status and liabilities in conflict situations. In some cases there is also a need to regulate some of the equipment and procedures in order to protect the employees more widely than is required by occupational health and safety legislation.

Security officers, because of their work, are considered to be more probable objects of violence than workers in most other occupations and thus have a need for extended legal protection by regulation. In some regulatory regimes, this concern has been solved by legal statutes mandating that violence against a security officer brings a harsher punishment.[172] The need for a 'safety search' as a protection measure has in some cases been considered so important

[169] Mäkinen (2007:74-75); See also: I. Karisto & E. Mäkinen (2002:12-14)
[170] M. Sekhonyane & A. Louw (2002: introduction); See also: A. Sparks (2003:231-232)
[171] H. S. Simelane (2007: 161)
[172] Finnish government (1976:42 & 1982:5); Government of Malta (1996:§19)

that it has been granted to security officers in the law if they detain persons.[173] There is a need to train security officers sufficiently to give them the skills and knowledge to act in a proper way in all situations. This is important amongst other reasons to guarantee that their legal rights are not jeopardised because of a lack of information on these matters.[174] Minimum regulation requirements on communications, bullet-proof vests and so on have also been considered necessary in some countries.[175] Lately, especially in the cash-handling business, a need has arisen to improve the safety of the employees and to diminish the threat of attacks against valuable transports by more explicit regulation of crews, vehicles and other equipment.[176]

5.2 Public interest requirements

5.2.1 Exclusion of criminal and unsuitable elements from private security

Private security providers are widely considered to hold a certain position of trust. Thus it is no wonder that the exclusion of criminal and unsuitable elements from the industry is one of the most frequently mentioned reasons for regulation in different documents. There seems to be a common understanding regardless of the local political or legal system that states have a responsibility to protect businesses and citizens by implementing compulsory rules on background checks in order to guarantee a basic level of credibility of private security agents. This is also necessary because in all societies access to criminal records should be and is at least somehow a monopoly of the authorities.[177] When widening the concept of exclusion beyond criminal behaviour into more general assessments of unsuitability to work within the industry, the different regulatory regimes are more hesitant to implement such regulation.

5.2.2 Position of trust

It has been pointed out that the nature of security work is such that personnel often have access to property, documents or information of commercial value and that they are placed in a position of trust, which signifies that the industry must be regulated.[178] The Scottish Executive has expressed the same rationale more generally, seeing that a goal for regulation is that the organisations in the private security sector and their staff should be properly accredited so that business and the public can be reassured about their status, professional standing and personal integrity.[179] A UK Government representative emphasised in a Parliamentary debate that “Clients of the private security industry, by definition, give privileged access to those who provide their security, and these providers are placed in particular positions of trust, with inside knowledge of their clients’ weaknesses. This trust can be abused in ways which can have damaging or tragic consequences”.[180] When analysing the trust between a client and a security officer, Bigelow summarised the core of this relation as follows:

> *“Integrity lies at the very hart of security. It is the foundation upon which security is built. It is if you really think about it, the very cornerstone of security. When someone places their trust in you and gives you the responsibility of protecting their possessions,*

[173] Finnish Government (2001:26); Swedish Government (1990:§16)
[174] Finnish Government (1976:2); CoESS & Euro-fiet (1996a:§4); CoESS & UNI-Europa (2001:4); See also: UNI-Europa & CoESS (2004)
[175] Norwegian Government (1984:13); Swedish Government (2006)
[176] Belgian Government (2001); Swedish Government (2006:21)
[177] See: H. Born, M. Caparini & E. Cole (2006:12) commenting the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.
[178] United Kingdom Government (1999: Ch 1:1.14)
[179] Scottish Executive (2001:3 & 2004:1)
[180] United Kingdom Government (2000; column 574); See also M. Gill & J. Hart (1999:259)

> *loved ones, physical and intellectual property and so on, they do so expecting that the person in whom they have placed the trust will treat that responsibility with the outmost care and respect."*[181]

The general level of trust in private security providers is also related to historical development and the local 'confidence' culture. For example, in the Nordic countries it is a normal procedure that clients hand over all keys to a security company, whose personnel routinely enter the clients' premises during control rounds and call outs. On the other hand, it is more of an exception in the former communist countries that security companies have the keys or right of access to clients' facilities as a part of their work. These kinds of basic differences in trust affect the structure of the services performed and indirectly also the needs for regulation.

5.2.3 Control of crime and criminal elements within the industry

The most unchallenged reason for private security regulation is the need to keep persons and companies with a criminal history or with connections to criminal elements out of the industry. The authorities and the industry itself recognise that the private security business entails a risk of unlawfulness and that it is in their interest to implement adequate safeguards to keep the situation under control. [182] In this context, there are two risks to be controlled: firstly, property crimes and unauthorised violence committed by individual private security officers abusing their position of trust, and secondly infiltration or takeovers of security companies by organised crime in order to use them as a front for criminal activities.[183] General comments like "Few sectors of the British economy are as underestimated and lawless as private security…"[184] or "In fact it seems that the security gangster is alive and well…"[185] describe how some scholars who support regulation see the situation in the private security industry.

Arguments calling for tighter regulation on screening of personnel refer to security officers and other staff in the private security industry with connections to crime organisations, with criminal records or with involvement in criminal activities.[186] It has also been noted that this sort of control improves public safety.[187] The threat of terrorism has also changed the views on this matter. In the US Congress, during the handling of the Private Security Officer Employment Act, one legislator noted: "Without such checks, those entrusted to protect our citizens and critical infrastructure could be the very people the security guards are hired to protect against – that is, terrorists and criminals".[188] The special private security legislation for Northern Ireland sprung from the need to prevent terrorists from running or working with security firms.[189] In light of all these arguments, there is an obvious need for regulation, one which has been well summarised in a UK government document as a: "…need to ensure that convicted criminals who may be prone to commit the relevant offences are not employed in

[181] J. Bigelow (2006:14); See also: Northern Territory Government (2002:28)
[182] United Kingdom Government(1999: Appendix 1:2(i)); Danish Government (1985:18)
[183] M. Page et. al. (2005:6)
[184] J. Boothroyd (1988:1829)
[185] K. Livingstone & J. Hart (2003:166 & 167).
[186] S. Miyazawa (1991:249); N. Yoshida (1999:247 & 250); Swedish Government (1995:23); State of New York (1992:2); Indian Government: (2005: Prefatory Note); M. Button (1998:16-17); D. Maclean (1996:19); B. George & M. Button (1996:4); P. Wilson (1992:164)
[187] US Government (1995:Sec 2:9-10)
[188] US Government (2004) Opening statement of legislator H. Cole (Subcommittee Chair); See also Guardsmark (2004)
[189] B. George & M. Button (1996:4-5)

the industry".[190] To emphasise the historical perspective, a line of argument from over 65 years back supporting regulation is illustrative: "Thus could be prevented cases, which have occurred even with us, where former burglars have been hired by security companies, who in their work as security officers have turned out to be unreliable and have even started to carry on their previous criminal activity".[191] The text of a UK Bill goes straight to the point and summarises the common attitude of legislators on this matter: "Arrangements should be introduced to vet people working in the industry, again to ensure consistency and, in particular, to exclude criminal elements, who abuse positions of trust in which the industry places them by committing offences, and who as a consequence tarnish the image of the industry as a whole".[192]

Private security companies are the other group in this context requiring control. Their use by criminals and even organised crime as fronts for illegal activities has been seen as a serious risk. The focus in the extant arguments is on the protection of clients. The comments made in articles and official documents express concerns of private security companies being infiltrated, controlled or even owned by criminals or organised crime syndicates to cover their activities.[193] Some governments have been even more explicit, listing criminal activities performed by uncontrolled or un-authorised private security companies. Some of them are mentioned as operating as a cover for drug dealing, money laundering, stealing of client property and other illegal activities involving intimidation.[194] For example, in Bulgaria and Serbia the industry was infiltrated by organised crime to a noticeable degree.[195] This is all summed up by the Scottish Executive, which has stated that the public must be satisfied that all the companies within the private security industry are reputable and trustworthy.[196]

In most regulatory regimes, screening the criminal past of private security personnel as a part of the hiring process is a procedure which usually requires industry-specific legislation, because this sort of data is considered as a rule confidential. With the growing cross-border movement of labour, there is an additional problem of obtaining this information on those applicants coming from countries with unreliable or non-existing criminal records. In many cases not even the existing (unreliable) information is available because of national legal restrictions on releasing it. Although this part of the control at entry stage is organised in some way, the possibilities for follow-up screening of licensed personnel is in many cases minimal, if not non-existent, both locally and transnationally. The problems here are usually related to the basic weaknesses in the states' collection and storage of data, insufficient cross-departmental information exchange, different authorities' limited access to relevant databases, and an inadequate allocation of resources for this sort of work. Even if this is very much a "how to regulate?" matter, it cannot be solved without statutory regulation, because it is often connected to the protection of citizens' privacy. Few countries have focused on these matters despite their importance when writing private security laws. One exception is

[190] United Kingdom Government (1979:Ch III/42)
[191] Finnish Government (1940:1215)
[192] United Kingdom Government (2000:1)
[193] N. Yoshida (1999: 250); Irish Government (1997:17); New South Wales Government (2006); See also T. Anderson (2007:120 & 122) commenting on US Federal Bill H.R. 3068 which would prohibit a felon to provide contract security services to the government.
[194] Scottish Executive (2004:1 & 2001:3); Swedish Government (1974:17)
[195] P. Gounev (2006:112-114); P. Petrovic (2007:18-19); M. Page et.al. (2005:vi & viii)
[196] Scottish Executive (2004:1)

Finland, where the legislators have stated: “There is a need to improve the ongoing control of changes in criminal records covering real-time decisions of courts and police”.[197]

5.2.4. Exclusion of persons of unsuitable character or constitution

Not all persons without a criminal record are automatically suitable to be security officers. For example, inadequate medical constitution[198] or inclination to violent behaviour, relations to organised crime, alcoholism and an irregular way of life are often seen as risks which should disallow the right to a license. In principle this can be agreed upon but to regulate this kind of behaviour as a basis for license rejection is a complicated matter legally. It means that the licensing authorities need to be granted broad discretion, which creates problems in guaranteeing equal and just treatment of licence applicants and licensees. It is only possible to implement this kind of system in regulatory regimes with a certain sort of legal and administrative culture that traditionally allows authorities this kind of discretionary powers.

In the UK, the matter of unsuitability was touched upon during the private security regulation process and the Government made it clear that individuals whose background, not only criminal record, makes them unsuitable cannot be employed or cannot set up a business within the industry.[199] This was emphasised in a parliamentary debate where a government spokesperson put forward the conclusion: “A statutory framework is the best way to drive out the undesirable elements and thus increase public confidence in the industry and the services it provides”. [200] Button has made clear his own opinion: “In the contract guarding sector one of the most prominent arguments for statutory intervention has been the penetration by those with undesirable character into the industry”.[201] In the Australian Capital Territory the private security regulation is based on the need to check the suitability of private security personnel, largely because of incidents leading to injuries or even deaths of persons in contact with security officers or crowd controllers.[202] The Northern Territory licensing authority, in its absolute discretion, may also refuse to grant a licence to an applicant if the authority has grounds for believing that the applicant is likely to be of bad character. It is in the public interest to ensure that persons of bad character are not employed as security providers.[203] In New Zealand the financial position of the licensee also has to be stable.[204] During the drafting of the State of the New York Security Guard Act, the point was made that it is also important to have requirements for guards’ trustworthiness and good moral character in addition to a clean criminal record.[205] Other governments have been equally specific in their arguments on this matter. In New South Wales private security legislation was introduced to exclude those persons whose background makes them unsuitable to carry out security work.[206] The Norwegian opinion has been that there should be strict demands of a ‘clean’ background, integrity and trustworthiness for security personnel and that background controls are needed.[207] In the text of the relevant law expressed this by stating: “There must be a certain control to exclude untrustworthy persons or companies from offering guarding services”.[208]

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[197] Finnish Government (2001:25).
[198] See for example: New South Wales Government (2007:expalantory notes:1)
[199] United Kingdom Government (1999:Ch 1:1.15)
[200] United Kingdom Government (2000:column 575)
[201] M. Button (1998a:6)
[202] Queensland Government (2006:14)
[203] Northern Territory Government (1995:Section 15).
[204] New Zealand Government (1974:Part 2-27/1)
[205] State of New York (1992:3)
[206] Queensland Government (2006:14)
[207] Norwegian Government (1984:13).
[208] Norwegian Government (1987:3)

China can be taken as an example how different the problems requiring regulation are in different parts of the world. There the recruitment standard was compromised because new personnel had to be referred by police officers, and they only recommended their relatives and friends.[209] To emphasise again that we are not dealing with new ideas, this phenomenon was deliberated already over sixty-five years ago when regulating private security activities: "As precondition to this is, however, that the management of the company is in trustworthy and professional hands and that the security officers who according to the character of the matter have to be provided with a gun, are trustworthy and suitable for their occupation".[210]

5.2.5 Equality

Equality is one of the basic human rights. In this context there are various documents which expound the theory that private security services increase inequality because one of the basic commodities of every person, security, will be unequally shared in society. The argument goes as follows: "A market for security services can provoke differentials in security between the rich and the poor. In the worst case, state security agencies may be undermined by the private security market leaving security a preserve of the wealthy".[211] This theory or the one of inequality between urban and rural supply of security services are not dealt with or commented on in this study, but it can be argued that these inequalities, when they exist, could only marginally be reduced by private security regulation in a democratic and free market society.

Specific equality provisions concerning personnel are included in private security regulation in some countries. For example, in South Africa particular basic human rights principles are listed as goals for the industry specific law. Amongst these are the control and ownership of security businesses by persons historically disadvantaged through unfair discrimination, encouragement of equal opportunity employment practices and the empowerment and advancement of women in the industry.[212] It is, however, exceptional that such matters are emphasised in the industry-specific legislation. One equality and legal protection matter needing regulation in all regulatory regimes is having an internal avenue of appeal for licensees. This is emphasised in the Anglo-American legislation, where sometimes a significant fraction of the statute handles the matter.[213]

5.2.6 Possession of firearms and non-lethal enforcement equipment

The possession and use of firearms is almost everywhere regulated and controlled by special legislation. 'Cold', non- lethal weapons and equipment (e.g. batons, hand-cuffs and paralysers) are less regulated but more and more countries have started to set rules for their possession. In addition, many regulatory regimes have drawn up their own regulations concerning weapons in private security work.[214] The need for industry-specific regulation on possession, training and use of weapons has been explained by the need to protect citizens and prevent their mistreatment by security officers[215], and to prevent the creation of small private armi-

[209] H. Fu (1993:39)
[210] Finnish Government (1940:1215)
[211] A. Richards & H. Smith (2007:8); See also: S. Kirunda (2007:8); J. Isima (2007:11); A. Abelson (2006:4 & 9); R. Abrahmsen & M. C. Williams (2005:16-17); M. Page et.al. (2005:6); A. Bearpark & S. Schultz (2007:73 & 85); H. S. Simelane (2007:163); T. Prenzler (2005:275); J. Wood & N. Cardia (2006:160)
[212] South African Government (2001:chapter 2, section 3)
[213] See for example: State of New York (2006); Government of Malta (1996); New South Wales Government (2007)
[214] J. Hakala (2007:12)
[215] Finnish Government (1978:9 & 2001:27)

es[216]. Hess and Wrobleski have noted that if private security personnel carry weapons which can kill or inflict bodily harm, the use of such weapons must also be controlled.[217] Similarly, it has been argued that "the importance of securing strict regulation concerning the possession and use of firearms is evident. Indeed, firearms are 'tools of violence', which in the wrong hands may have severe consequences".[218]A most illustrative comment on this subject is that made by Livingstone and Hart, who write: "From hired hand to fired gun is a short step in the world of private security as the lack of guidelines, controls and regulation that generated the security "gangster" mean that, providing the required service is legal, you can have all the provision you can afford".[219] Weapons control is very much a cultural question, meaning that in different countries the rules and practices vary from a total ban on firearms to compulsory possession of them[220] when performing certain security tasks. If extended roles, for example, protection for key government sites or officials in combat areas or tasks related to the 'war on terror', are given to private organisations, it is obvious that also their right to possess and use firearms must be reconsidered.

In some countries, the possession of weapons has been seen to mark somehow the 'monopoly on violence' or division of labour between public and private actors. To preserve this 'monopoly' with the public authorities (police), industry-specific rules have been demanded for firearms.[221] Even 'cold' weapons have sometimes been seen as a police 'monopoly', with carrying a truncheon, for example, regarded as an unfortunate slide of the division of labour between the police and the private security toward more authority for the latter, and a ban on possession or use of such equipment should be regulated.[222] There is an unquestionable general need to have specific regulation to control the use of all kind of weapons.[223]

5.2.7 Accountability of private security operators

Accountability, whatever it is considered to mean in different sources, is a constant topic when discussing the activities performed by private security companies and private security officers. The main concerns presented are the poor control of the private security industry and that, given its new emerging role, there are inadequate mechanisms for handling complaints. An additional worry is the shortcomings of self-regulation, which has failed everywhere to provide adequate results in the control of private security activities. The concern about complaints handling often presented by academics and sometimes by police representatives seems to be more of a theoretical consideration, a problem in principle, not a 'real life' one that cannot be handled within the existing legal structures. No serious research has been published confirming that this is a problem in everyday private security work that concerns the clients or the public. Presumably because of this there have been only few regulatory regimes which have focused on a large scale on this specific matter in their private security regulation. An overall regulatory body, directed and managed by persons with adequate knowledge and legal powers, is, however, needed to secure proactively compliance with es-

[216] J. Unijat (2007:26)
[217] K. M. Hess & H. M. Wrobleski (1996:41) referring in the first place the US situation.
[218] H. Born. M. Caparini & E. Cole (2006:28)
[219] K. Livingstone & J. Hart (2003:158)
[220] L. Morre (2006:19)
[221] Finnish Government (2001:27)
[222] Danish Government (1985:65); See also R. van Steden (2007:62); N. Yoshida & F. Leishman (2006:228)
[223] M. Page et. al. (2005:iv)

tablished norms and standards of the industry.[224] The handling of complaints is a very appropriate task for this sort of authority.

This concern over accountability is not new. Already the 'Round Table' over 30 year sago mentioned it by concluding: "In particular the problem of accountability and the lack of adequate public machinery for complaints were noted".[225] It can be pointed out that as a consequence of strict regulation private security companies need to incorporate procedures for quality control, including the handling of complaints.[226] The attitude regarding private policing (written from a British perspective) has been more negative, emphasising that private policing has been the subject of increased negative attention during the last decade, with critics arguing, amongst other things, that commercial security has limited accountability.[227]

Even though the control mechanisms of regulation compliance are not the subject of this article, some comments on accountability can be cited here because of the importance of the subject. A typical argument regarding the accountability of the industry is that, unlike state security providers, private security companies are not directly accountable to the electorate or parliament but rather to a combination of often weak regulators, company boards and shareholders.[228] Another common type of argument is that market forces and general business prevail and the risk of a civil suit does not provide a satisfactory level of private security accountability, especially where a third party is involved.[229] A third point often made in this connection is that use of extra powers or 'professional' use of citizens' powers requires specially arranged (police-like) public accountability both for the companies and the security officers working in crime prevention.[230] Johnston has noted in this context that "[l]ittle attempt has been made to address the problem of accountability under conditions of security pluralisation"[231], and Abelson has argued that "…the government policy should assume responsibility for ensuring the accountability of private security personnel and firms"[232]. Actually accountability arrangements are an unsolved and much debated subject even within public police administrations. The effective accountability of the public police is frequently overstated and the effective accountability of private police is typically understated.[233] In private security the matter of accountability has not been given much attention in practice to date. Why? Maybe there is no acute problem in real life. Arguments have also been presented challenging the points of view seen in the discussion of private security accountability. For example, Stenning has presented strong arguments criticising unaccountability as a troubling myth because it misleads us about the public police as well as the private police.[234]

[224] J. Kamenju, (2007:11); See also: J. Unijat (2007:27); H. Born, M. Caparini & E. Cole (2006:37); New South Wales Government (2007:explanatory notes:1) where a bill includes special powers for police for random alcohol and drug tests on bouncers and crowd controllers.
[225] P. Wiles & F. H. McClintock (1972:61)
[226] J. de Waard (1999:161)
[227] L. Johnston (1999:175)
[228] A. Richards & H. Smith (2005:8-9): M. Page et. al. (2005:5)
[229] R. Sarre & T. Prenzler (2005:208); P. C. Stenning (2000:343); See also: R. Sarre & T. Prenzler (2005:209); R. Sarre (1992:177)
[230] United Kingdom Government (1979:Ch III/37-39); R. Sarre (1992:177); J. Hoddinott (1994)
[231] L. Johnston (2007:43)
[232] A. Abelson (2006:9)
[233] See: P. C. Stenning (2000:336-338 & 341-342)
[234] P. C. Stenning (1992:149); See also: H. Born, M. Caparini & E. Cole (2006:80)

5.2.8 Global reach of private security companies

In some accounts, the globalisation of the security business has been mentioned as the reason for private security regulation. In practice the threats seen in the growth of traditional multinational private security companies, not PMCs, have been tackled in many countries by setting terms which limit or totally prohibit foreigners to own such entities or to work as security officers. Historically restrictions set on foreigners running security businesses have been partly protectionist trade policy but they have also been justified by the risk of espionage. The argumentation of legislators on this matter is simple and similar. They emphasise that the subsidiaries of foreign, especially multinational security companies may create difficulties. If not properly regulated, they could lay hold of their clients' business information, which if transmitted abroad could have serious national security or business loss implications. [235] It has been even said that: "…factors such as nationalism, xenophobia and vested interests can hamper the evolution of transparent licensing regimes and prevent non-local companies from working, sometimes to the detriment of wider economic interest".[236]

Stenning has raised the question of the big multinational private security companies using their economic and legal powers to avoid locally their statutory obligations or to extract special treatment by threatening to withdraw operations, and the practical reluctance of regulators to fully enforce the regulations against economically powerful, often transnational private policing suppliers.[237] In today's world most of the multinationals in traditional security business (not PMCs) are public companies registered in stabilised democracies, their stocks officially quoted in respected stock exchanges, with a lot of institutional owners, and therefore very careful of their reputation, especially because their whole business is based on integrity and trust. On the other hand the national industry specific regulations are, at least in Europe, such that the companies need to have local registration and responsible managers. Misbehaviour or breach of rules will risk the license (and business) of a big as well as a small private security provider, and especially so if it is a foreign company. It must also be understood that service industries, including security, cannot take with them the business if they withdraw operations; they are at the end of the day domestic, support industries. There are no reliable research on this subject and very few cases to support the argument that this threat of multinational companies is a real, everyday problem.

The rapid globalisation of private security companies which started in the 1990s has caught the attention of some scholars, who all seem to be unanimous on the difficulty of developing transnational regulation. They observe that even if global trends call for much more active and explicit international co-ordination in the field of regulation, any general attempt to set, implement or enforce rules which transcend national and international boundaries would be difficult, as evidenced by the limited progress made in this area so far.[238]

In Western Europe, the obstacles connected to citizenship have disappeared due to new treaties on free trade and the free movement of labour but they can still be found in other parts of the world. As regards the prospect of implementing generally accepted transnational regulation of private security, it can be pointed out that not even federations like the US, Canada and Australia or a community like the EU have been able to harmonise their private security legislation. Something is, however, happening in the US and Australia because of the 'war on

[235] Finnish Government (1976:36 & 1982:3); Indian Government (2005:Prefatory note); See also: N. Dorn & M. Levi (2007:214 & 217); H. Born, M. Caparini & E. Cole (2006:36)
[236] G. Greenwood (2007:12)
[237] P. C. Stenning (2000:338-340)
[238] De Waard (1999:170); P.C. Stenning (2000:235); See also: R. Sarre & T. Prenzler (2005:216).

terror'. After long and intensive lobbying from the industry, a US federal law has been passed which grants the security industry indirect access to the criminal histories of employees and applicants.[239] In Australia, the COAG[240] failed in 2007 to agree on a nationally-consistent approach to regulation of the private security industry as a part of its counter-terrorism measures.[241]

There are two phenomena which may boost the willingness to start to look seriously at trans-national private security regulation: the first is terrorism, which has already led to globally harmonised arrangements in aviation and port security; the second is the global growth in the number and importance of private military companies (PMCs), which are in practice unregulated.[242] The effective regulation and control of these companies is indisputably an international task, as they can be steered only marginally by national legislation.

5.3 Professional requirements

5.3.1 Need to increase the status and quality of the private security industry

In addition to the general reasons to regulate private security, as well as those very much based on public and institutional interests, there are a group of reasons connected more closely to the professional interests of the security industry as a business. These are often aimed to increase the status of the industry and the competence of security officers, to improve conditions of service, to promote fair competition, to protect the clients as business partners and to guarantee credibility. In these areas, the public and private interests for regulation are mixed and seem in most cases to support each other.

A vast majority of the stakeholders in the private security industry support regulation[243], and there are similar opinions from other interest groups[244]. In its guidelines, ASIS International emphasises that regulation is needed to deliver effective security services to meet the clients' needs, to protect the nation's critical infrastructure and to fulfil demands associated with new homeland security initiatives, and that state regulation of private security is basic for effective private security officer legislation.[245] The industry has also called for proper regulation because it is tired of the situation where less scrupulous companies and criminals are tarnishing the image of the respectable companies who strive to offer a quality service.[246] The private security sector has lobbied strongly for statutory regulation in order to improve its image. This activity has been described for example by Giminez-Salinas Framis when she comments on the role of the industry in the regulation process in Spain: "The Law on Private Security was the result of a strategy designed by the big private security companies to improve the image of the sector under difficult circumstances, but, even more important, to gain more operational and legal space."[247] There is also an impact made by large well established security companies which have: "…taken the lead in encouraging governments to introduce licensing requirements for the sector. Their motives are professional and commercial and

[239] InfoMart News (2004); See also: US Government (2004)
[240] Council of Australian Governments
[241] Australian Government (2007); See also: T Prenzler (2006:177) commenting on the mishmash of the Australian licensing system.
[242] See for example: C. Holmqvist (2005); C. Talbot (2006); A. Barnett & A. Smith (2006); USA Today (2006); F. Schreier & M. Caparini (2005)
[243] CoESS (2007); T. Jones & T. Newburn (1998:92-93); Danish Government (1985:18).
[244] P. Flynn (1997:186-188)
[245] ASIS International (2004:11)
[246] United Kingdom Government (1999: Ch 1:1.13)
[247] A. Gimenez-Salinas Framis (2004:161); S. Söderberg (1979:45)

have largely been driven by trade associattions in which they play an active role".[248] In some countries, permanent private security advisory boards consisting of representatives from the industry's different interest groups and the authorities have been considered such important forums for information exchange and regulation development that they have been incorporated into the regulation models.[249]

The well-being and status of employees, especially the security officers, is in some countries mentioned as a reason for regulation.[250] The trade associations are the bodies which speak with the voice of the industry in these matters. Some of them, like the US employer federation NASCO, believe that legislatures must create higher standards which will ultimately lead to better wages and benefits for private security personnel and that the country's safety depends on it.[251] In the EU context, the Sectoral Social Dialogue Committee for private security in the EU has in its Joint Opinion on the regulation and licensing agreed that one of the social partners' common goals is high quality employment across the European private security industry.[252]

Button et. al., quoting D. Lee (2001) on the Korean situation, summarise well, even globally, the quality aspects of regulation needs:

> "*The quality of the industry has been criticized: with concerns over poor working conditions, low pay, the quality of training and the number of professional trainers to name some. To address these problems, legislation has been introduced to govern the industry, although for many the regulations fall short of those required to effectively enhance its quality.*"[253]

5.3.2 Need for training

Compulsory training of security personnel is one of the tools to realise the goals set for regulation. In some cases this need itself has been put forward as a reason to regulate. An opinion reflecting the common thinking has been put forward by Hemmens et. al.: "…there is reason to believe increased regulation of the private security industry might contribute to an increased professionalism and better-trained security officers".[254] The key question from society's point of view is to guarantee with adequate training that the private security personnel know their rights and responsibilities to avoid malfeasance.[255] Some countries have set also minimum general education requirements for private security guards, for example, the passing of certain national school exams. On the other hand, as a curiosity, it can be mentioned that there are also other opinions. Simelane has referred in his article on private security in Swaziland a senior security manager's opinion: "My experience has shown over the years that there is no need for having educated guards. The less educated the better. The uneducated ones tend to make better guards but they should be able to read and write".[256]

The legislators' arguments for the need of compulsory industry specific training seem to be quite unanimous in emphasising firstly the general, growing demands on professional skills,

[248] G. Greenwood (2007:12)
[249] US Government (1995:Sec.4:7); Finnish Government (2002:Sec.5)
[250] United Kingdom Government (1979: Ch III/50)
[251] J. Ricci (2006:39)
[252] CoESS & UNI Europa (2007) Joint Documents adopted by the European Social Dialogue Committee for Private Security
[253] M. Button, P. Hyeonho & J. Lee (2006:16) quoting D. Lee (2001)
[254] C. Hemmens, et. al. (2001:17)
[255] J. Hakala (2002:2); A. Abelson (2006:8); See also: M. Page (2007:iv-v)
[256] H. S. Simelane (2007:157) quoting the interview of Allan Fawcett

and secondly that all security officers should have a minimum knowledge of their legal powers and responsibilities when performing their duties. They have also indicated that the training should be specified and the trainers (and training institutions) certified to guarantee the quality of the content and execution.[257] A UK discussion paper notes: "It has been argued that new controls, for example over training requirements, would improve standards in security field and the relations between it and the police, so more crime could be prevented".[258] The New York City Advocate's report there is a strong emphasis on extended compulsory training of security officers which is considered inadequate. The recommendation is: "The State Legislature should adopt legislation requiring additional hours of pre-licensing instruction-…[259]The need to make minimum training compulsory before starting to work, in order to avoid malfeasance due to gaps in knowledge, has been recognised by a majority (90%) of the regulatory regimes with training requirements.[260] The EU Sectoral Social Dialogue Partners representing private security industry have in their joint paper expressed that it is particularly important that entrants to the industry receive a minimum training and that "…minimum standards of basic training must be integrated with a regulatory and licensing framework at the national level…".[261]

5.3.3 Eradication of 'cowboy' companies

In the private security business environment, the biggest problems are related to companies which do not comply with existing laws and regulations. The expressions used of these vigilante companies - cowboys, fly by nights, moonlighters, moms and pops, quacks, and so on - describe their character well. These companies tarnish the general image of the industry and reduce clients' trust in security providers. They also create problems in competition situations when law-abiding security providers lose contracts to cowboys who cut corners and costs by breaking the law. The corner cutting includes not only breaches of private security regulations but also 'black' salary payments[262] and 'social engineering' of legal revenue and social welfare costs, which causes losses to states and affects the status and well-being of employees (security officers). The eradication of these companies is more of a control than actual regulation problem. In any event, without regulation making control possible and effective there are no possibilities even to try to tackle this challenge. Geenwood describes the concerns by stating: "…formal controls governing the industry's operations remain uneven – often non-existent despite public and political concerns over the quality and nature of the services provided by some private security companies".[263] It has been said that statutory regulation is one of the state's tools to rehabilitate the industry, as less serious companies will not be able to fulfil the requirements set by the law. [264]

[257] Norwegian Government (1984:14); State of New York (2006:86); US Government (1995:Sec2:8); Finnish Government (2001:26)
[258] United Kingdom Government (1979: Ch III/45)
[259] J. E. Sheppard & J. O. Mintz-Roth (2005:2 & 13)
[260] J. Hakala (2007:11)
[261] CoESS & UNI Europa (1996:29)
[262] See for example: U. Åkerblad (2007:12-14)
[263] G. Greenwood (2007:11)
[264] Danish Government (1982:18)

In those countries where this 'cowboy' phenomenon has been taken up during the law drafting process the arguments are very similar.[265] Three main needs have been expressed:

> Firstly to exclude 'cowboys' from the marketplace to 'level the playing field' for reputable companies and to promote fair competition.
>
> Secondly to guarantee increased compliance with revenue and social tax laws to pressure 'cowboys' to move out of the black economy.
>
> Thirdly to improve conditions of employment within the industry and to guarantee the security officers a legal 'living wage', both of these measures being considered preconditions for reliable quality service.

The private security industry in Europe sees illegal cowboy activities as a main hindrance to healthy competition in the market.[266] The social dialogue partners, employer and employee associations have on national and transnational level experienced the problems caused by cowboy companies and undeclared work. They have actively lobbied separately and collaboratively for measures, also better regulation, to get rid of these problems and to fight against the growing illegal market.[267] De Waard's opinion can be used in this context to summarise the collective feeling: "Direct regulation is probably the most common method for reducing the number of 'cowboy firms' within the industry, and the most effective way to ensure the quality of the private security industry".[268]

5.3.4 Standards and the 'business' protection of citizens and clients

In the same way as the need to exclude the criminal and unsuitable elements from the industry and the abuse of powers by the security officers, there is a wider need to protect the public generally from quality-related misconduct. There are two separately defined groups in this category, firstly the individual citizens and secondly the clients, be they businesses or private persons. Efforts to achieve this protection often include standards and ethical codes which define the good and ethical service factors guaranteeing the minimum quality levels and minimum safeguards. The understanding of the concepts of statutory regulation and standards is mixed and blurred. They have not been collectively (transnationally) defined, which means that they are used to depict different things in different private security documents and discussions.[269] This is also partly due to the differences between languages, national regulation structures and local cultures. There is overlapping use of the terms even in research results.[270]

The need to protect clients has traditionally been put forward by many legislators as a reason for private security regulation. It has been considered reasonable to impose standards of reliability, competence and trustworthiness upon those delivering security services for a fee. It has also been expressed that in the absence of controls over security organisations, consumers are put in a vulnerable position, which may result in their receiving unsatisfactory ser-

[265] See: Irish Government (1997:7, 21 & 47); Swedish Government (1974:17); United Kingdom Government (2000;column 574); Security (2004:1): Professional Security (1996:15 & 18)
[266] CoESS (2007:37)
[267] A. Gimenez-Salinas Framis (2004:161); CoESS & UNI Europa (2006); See also: G. Greenwood (2007:11); R. Abrahamsen & M. C. Williams (2005a:16 & 2005b:18) commenting on the situation in Nigeria and Sierra Leone.
[268] De Waard (1999:170)
[269] CoESS (2007:32-35); State of New York (1992); United Kingdom Government (1979:Ch III/49)
[270] See for example: P. Flynn (1997:187-188); See also: T. Jones & T. Newburn (2006:2)

vice.[271] Because of this, in some countries even a formalised service contract has been made compulsory in the private security business context.[272] A variety of documents give examples of poor standards of services, underscoring the need for effective government regulation of security industries.[273] Button has even argued that poor standards of performance are the second most common strand to the arguments put forward for regulation.[274]

To take general quality factors as an argument for regulation is a contradictory matter. Whatever is argued, private security is primarily a business function in an open competitive market place, even if it is performing some public security tasks. The words ‘quality’, ‘standard’, ‘requirement’ and ‘performance’ are often used in the context of industry-specific statutory regulation without definition, which creates confusion of the real meaning of the different arguments. In general, to start to steer the quality of the private security business beyond the protection of the public interest by statutory regulation or statutory standards is a step toward classifying it as a state-like bureaucratic function and not a business. From here it is only a stone’s throw away to over-regulation and inflexibility, which in some countries has already started to hinder the normal development of the industry as a business.

In several countries, the state’s goal has been to make the regulation such that the quality of the services offered by security providers are guaranteed to take the interests of the client into consideration properly and to provide clients with higher standards of service.[275] Poulin & Nemeth have made it very clear: “Consequently as the security industry’s role escalates, regulations are needed to ensure the quality of performance.[276] In practice it is very simple, as Hess and Wrobleski observe: “…private security services are important and expensive, consumers should be assured that they are receiving the services they are paying for.[277]

Insurance is one aspect of consumer and client protection in the private security business. All clients and third parties affected need to be protected but so do the security companies’ businesses and their employees. The growing liability related to aviation terrorism and big cash handling robberies, for example, have prompted all the interest groups, including states to focus on this matter.[278] It has been a part of the regulation discussion for a long time. Also, the insurance companies have affected this discussion by tightening their demands on not only quality standards and controls in the private security business[279] but also the operational management’s personal liability in cases of infidelity[280]. Already over 65 years ago Finnish legislators stated: “There can be set some other reasonable requirements, for example that the (*security*) company must by taking out insurance or in some other way guarantee the possibility for compensation if the company or its employees are found liable”.[281] Another more recent example tells about the development of insurance liability legislation in the aftermath of 9/11 in the US. As additional impetus for the private sector to develop and deploy anti-terrorism technologies, Congress enacted the Safety Act as part of the Homeland Security

[271] United Kingdom Government (1979:Ch III/49); State of New York (1992); T. M. Scott & M. McPherson (1971:288); H. S. Simelane (2007:165)
[272] Finnish Government (2002:§8); Pekin & Pekin (2005:3)
[273] M. Button (1998:18); R. Sarre & T. Prenzler (2005:193); Centre for International Economics (2007:26): H. Born, M. Caparini & E Cole (2006:5-7)
[274] M. Button & B. George (2006:565).
[275] Swedish Government (1974:35); Finnish Government (1976:2); Security (2004:1)
[276] K. C. Poulin & C. P. Nemeth (2005:308)
[277] K. M. Hess & H. M. Wrobleski (1996:41)
[278] EASA (2007); CoESS Newsletter (2004:4)
[279] See also: L. Zadner (2006:276)
[280] C. Mrozek (2006:196)
[281] Finnish Government (1940:1215); See also: Pekin & Pekin (2005:3)

Act of 2002. The Act limits liability from claims brought as a result of an act of terrorism and encourages potential sellers to develop and commercialise technologies and services that, when deployed, could significantly reduce the risk or mitigate the effect of acts of terrorism.[282]

6 SUMMARY OF FINDINGS

Two references form the literature on the general need for private security regulation capture well the findings of this study and can be cited here as reflections of the core matters found in the answers to the question: why regulate?

> *"The private security industry should also be subject to a statutory regulatory system that applies to the wider industry, sets extensive standards and is administered and enforced by a truly independent body. This could address some of the many problems with the industry, raise standards and improve accountability. It might also improve the utilisation of private security in policing and crime prevention."*[283]

> *"Policy-makers must therefore learn to deal with the potentially serious implications of limited regulation and accountability of a market which continues to grow in both size and importance, and which is likely to be here to stay…"*[284]

The findings of the study have been summarised in the table on pages 4-5. The results show that throughout the sources referred to there is a wide consensus that the work private security companies and their personnel perform in societies differs from other business activities in a way that requires society's intervention in the form of special statutory rules. Researchers and most governments admit today that private security is a vital part in the realisation of national security services. There seems to be mutual understanding that the work is partly carried out within a somewhat grey border zone between the public and private which is hard to define and constantly changing. Some of the private security work includes tasks which routinely breach the inviolability and privacy of common citizens. Private security officers frequently have a need to resort to citizens' powers, and to extra powers possibly granted to them, to carry out some of their duties. Thus it is obvious that one part of the work overlaps with that of the authorities and an increasing number of the tasks performed can be considered private policing. The traditional private security carried out undisputedly in private areas and inside the 'factory gates' has seldom raised any special needs to regulate the industry. It is only now, when private security has started to a significant extent to perform visible duties in public or semi-public areas – tasks that may involve third parties - and when it has started to take over security and public order maintenance tasks previously carried out by the authorities (police), have governments and other interest groups woken up and started to see a need for regulation.[285] In real life, the wake-up calls triggering the law writing are from time to time single incidents like big robberies or severe acts of violence which make the politicians take action. Sometimes, unfortunately, private security regulation is drafted and passed in the heat of crisis, with public opinion breathing down the neck of politicians.[286] The actual law-making process is, however, in most cases a controlled and often also a long, drawn-out process.

[282] D. Walker (2006:36); US Government (2006b:33147-33168)
[283] M. Button (1998:23)
[284] A. Richards & H. Smith (2007:5)
[285] See also: G. Greenwood (2007:11)
[286] A. Abelson (2006:8)

Most of the reasons given for the statutory regulation of private security activities and personnel are primarily connected to the public interest. There are also institutional and interest group interests in regulation but they seem, according to this study, almost never strong enough on their own to make the legislators start writing industry-specific laws on private security. The emphases in the reasons given are:

> Firstly, a general social need to control a business activity which is gradually taking over a growing part of the visible public security tasks, and which is using to ever increasing degree enforcement powers that may interfere with the inviolability and privacy of citizens.
>
> Secondly, the increasingly pronounced position of trust the private security actors have in their new role, a trust requiring some kind of systematic assurance and control of the integrity and suitability of those holding this sort of position.
>
> Thirdly, a general obedience of the laws and a minimum guarantee of the private security companies' service quality.

The arguments and conclusions in the more general academic texts discussing the needs and reasons for regulation tally with the more explicit comments gathered in this study from other sources. It has to be noted, however, that there is a sort of gap between the ways the needs are expressed by scholars, legislators/authorities and security industry representatives. The emphasis in the academic texts is somehow estranged from real life and the rapidly developing and changing needs for private security regulation in different environments. A second observation is that there is a sort of challenge and discrepancy in a majority of regulatory regimes when national, quite inflexible and formal law enforcement organisations prepare and implement from their own points of departure rules on what is a fast-growing, flexible and profit-oriented business.

In preparation of this report most of the general theories and models explaining why an industry should be regulated have not been of much help. In the first place, they have been created to explain the needs to steer and control economic activities and the behaviour of the different interest groups in the business market environment. The core content of private security regulation, the definition and shift of (constitutional) state tasks and powers from public to private actors, and the protection of basic human rights, seems to be a 'special' case that does not fit existing theoretical models very well. The human rights and the monopoly on violence are not negotiable or flexible 'best practice' matters. On the other hand, the theories of how regulation arises, develops and declines tally quite well with the developments seen in private security. New ideas upsetting the status quo, pressures of various interests, changes in habitat, as well as bureaucratic failings, can all be found in the existing debate on private security regulation. The public interest, interest group, and institutional theories describe as well in many ways the present behaviour of different players in the work being done on private security regulation. It seems that on the theoretical level we are not talking about market failure or social justice, the main reasons usually given for this kind of regulation. Rather, we are seeing a failure on the part of the state to provide a basic commodity, that is, adequate and expected public security, which failure has led to an uncontrolled growing demand and supply of new 'public' private security services. The reasons for implementing regulation may be summarised as follows:

The states have failed to provide adequate security meeting the public expectations. This state of affairs has led to a partly uncontrolled commercialisation and privatisation of 'pub-

lic' security tasks, mainly over to private security actors. This transfer has created a governance challenge. The state's traditional role as a sole provider of public security and its monopoly on violence are seen to be endangered. It is mainly to bring this situation under control that states have felt obliged to impose industry-specific private security regulations.

This study reveals that there are some basic things which have been 'forgotten' or at least not taken into consideration well enough in the private security research on the need for regulation.

Firstly the impact of local history, the political system, compliance with the law, as well as the maturity of the administrative and business cultures are all defining factors impacting the private security activities in a regulatory regime. The fact is that the ideas concerning private security's role and regulation needs are local and fragmented from country to country.[287] Sometimes there seems to be some nonchalance of the basics in private security research, forgetting that this industry is a part of the society and that its regulation and business performance are tied closely to the general values and maturity of its social environment. Every regulatory regime is different and needs to find its own model of regulation. Durable and functional improvements can only be made in step with the general development of society.

Secondly there is a strong trend of 'verticalisation', which emphasises the segmentation, specialisation and differentiation of private security services. As societies and businesses have become increasingly complex, private security has been forced to develop its activities accordingly. All the parties - regulators, administrators, trade associations (employer/employee), and private security companies - are to an ever-increasing degree under pressure to organise themselves and their activities 'vertically', reflecting the ongoing diversification and specialisation of private security services. This trend is already affecting the industry's activities today, including regulation and regulation needs, and it will do so ever more in the future. Accordingly, this trend should be taken into consideration in all regulation (and research) work carried out. For example, the question "Why?" dealt with in this report should probably have been divided into more specific ones asking why there should be regulation of private investigation, cash handling, door supervision or alarm installation and so on. There are some common denominators but many of the specific needs differ. The time is past, if it was ever here, when private security could be understood and handled as one entity, be it state governance or operational business.

Thirdly there is the phenomenon of the growing transnational and inter-state reach of private security. 'Traditional' multinational private security companies with hundreds of thousands of employees all over the world, private military companies with their visible role in the trouble spots of the globe, and the pressure for free movement of businesses and labour in internal markets (also security officers) are challenging the international (federal) institutions in particular to create appropriate harmonised transnational and inter-state legislation to steer private security activities.

Based on this report, it can be 'conjectured' that the future needs for private security regulation and for amendments to existing legislation will be steered by:

The inevitable development of a wider privatisation of public, including police-type security tasks.

The specialisation and 'verticalisation' of private security work and organisations.

[287] H. De Clerck, J. Hakala & L. Van Sand (2007); J. Hakala (2007)

The transnationalisation and federalisation of the business.

As has been presented in this report, the need for private security regulation in its present form has been acknowledged and addressed by governments for over a century. Some of the topics, like protection of citizens' rights from acts performed by security operators, exclusion of criminal elements from the industry and the call for standardised quality have persisted through all these years. It seems that the basic and general reasons for private security regulation are quite permanent and the actual challenge is to guarantee that they are taken into consideration without unnecessary delay when rapidly developing new security products and services are entering the market and new spaces. It has been stated that "There is a tremendous need for regulatory innovation because the industry is growing fast and legislation cannot keep up".[288] The responsibility to deliver this innovation lies not only with the legislators and authorities but with the industry itself and its social partners, and definitely to an ever-increasing degree with the academics, who need to produce high-quality research to be used as a platform for decision-making.

[288] Institute for Security Studies (2007:11)

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