

Differences in accountability types affecting Public Military and Private Military Actors.

The cases of the Haditha Killings and Nisour Square Killings



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Abstract

The use and deployment of private military companies (PMCs) operating alongside the public army has increased considerably last decades, especially with the U.S. government's continuous budget cuts. However, issues on how to hold them accountable for civilian deaths during armed conflicts in foreign countries have been the subject of much debate, media coverage and is poorly understood. Therefore, the present research aimed at investigating the differences in accountability types between public military and private military. Accountability is a contested concept as it is widely used and is based on the nature of the forum, actor, conduct and obligation. Based on Bovens accountability framework (2010), in this thesis these aspects of accountability are investigated for the involvement of U.S. public military (i.e. U.S. Marines) in the Haditha massacre (2005) and PMC (i.e. Blackwater guards) in the Nisour Square massacre (2007) in Iraq. These cases were selected on basis of their similarity, while having a clear different actor background, the U.S. Department of Defense (DoD) and PMC respectively. In total 262 newspaper articles, 1 press release and 7 official documents produced by the U.S. Courts, U.S. Marines Corps, UN Working Group, OHCHR Press Release were analysed. The present research makes clear that the major differences observed in accountability types between public military and private military are at the within the nature of the forum, especially within the legal and political domain. Additionally, the DoD initially failed to properly investigate the Haditha incident and the justice served to the soldiers held accountable for their actions failed to materialise. Although existing military laws attempt to restrict the actions of PMCs in some ways, much still needs to be done. Greater awareness and accountability from PMCs and the governments employing them is needed.

Table of contents

1. Introduction.....	6
1.1 <i>Research Question</i>	8
1.2 <i>Societal Relevance</i>	8
1.3 <i>Scientific Relevance</i>	10
1.4 <i>Research Objectives</i>	12
2. Theoretical Framework.....	12
2.1 <i>Accountability</i>	12
2.1.1 Based on the nature of the forum	13
2.1.2 Based on the nature of the actor	14
2.1.3 Based on the nature of the conduct	15
2.1.4 Based on the nature of the obligation.....	16
2.2 <i>What is private military?</i>	17
2.3 <i>What is public military?</i>	18
3. Research methodology.....	19
3.1 <i>Conceptual framework</i>	19
3.2 <i>Case studies</i>	22
3.2.1 Multiple case studies	22
3.2.2 Criteria Case Selection.....	23
3.2.3 Incidents involving U.S. military or PMC's	25
3.2.4 Selected Cases	26
3.3 <i>Data</i>	27
3.4 <i>Operationalization</i>	28
4. Analysis	31
4.1 Haditha incident.....	31
4.1.1 Nature of the forum	33
4.1.2 Nature of the actor.....	37
4.1.3 Nature of the conduct	40
4.1.4 Nature of the obligation	41
4.2 Nisour Square incident	43
4.2.1 Nature of the forum	44
4.2.2 Nature of the actor.....	49
4.2.3 Nature of the conduct.....	52
4.2.4 Nature of the obligation	53

4.3 Comparison	55
4.3.1 <i>Nature of the forum</i>	56
4.3.1.1 Political Accountability.....	56
4.3.1.2 Legal Accountability	56
4.3.1.4 Professional accountability	58
4.3.1.5 Social Accountability	58
4.3.2 <i>The nature of the actor</i>	59
4.3.2.1 Corporate accountability	59
4.3.2.2 Hierarchical accountability	59
4.3.2.3 Collective accountability.....	60
4.3.2.4 Individual accountability.....	61
4.3.3. <i>The nature of the conduct</i>	62
4.3.3.1 Financial accountability	62
4.3.2.2 Procedural accountability.....	62
4.3.3.3 Product accountability.....	64
4.3.4 <i>The nature of the obligation</i>	64
4.3.4.1 Vertical accountability	64
4.3.4.2 Diagonal accountability	65
4.3.4.3 Horizontal accountability	66
5. Conclusions.....	67
6. Discussion	69
7. Limitations and future research.....	72
References.....	76
Appendix 1. House Committee on Oversight and Government.....	91
Appendix 2. Data.....	106
Appendix 3. Initial Bureau of Diplomatic Security report on the Nisour Square incident	126
Appendix 4. Initial 2nd Marine Division report on the Haditha incident.....	129
Appendix 5. Watt report	130

The art of war is of vital importance to the state. It is a matter of life and death, a road either to safety or to ruin. Hence it is a subject of inquiry which can on no account be neglected.

- Sun Tzu, The Art of War

1. Introduction

'Accountable' is defined as "required or expected to justify actions or decisions" by the Oxford Dictionary of English (2010). Furthermore, 'account' is defined as "a report or description of an event or experience". Both definitions refer to reports or descriptions of actions or decisions that carry implications. The ability to hold someone to account applies to many social, political and legal facets of life, from finances to agreements between persons (Bovens, 2007; Grant & Keohane, 2005; Fox, 2007; Sartori, 1970, 1984, 1991). Accountability also applies to government and citizens, where citizens hold the government accountable for their actions and decisions. In turn, the government holds its employees accountable for their actions and decisions. As the definition of 'accountable' suggests, whenever an action is undertaken, or a decision is made, someone is required or expected to justify their action(s) or decision(s). Whether the government is accountable to the public or employees are accountable to the government, there is always accountability at play. This is also the case when a nation is involved in military operations in a foreign country. Although the use of private military companies (PMCs) in support of the regular armed forces is a widespread and accepted practise, the deployment thereof is especially adopted by the United States of America (McFate, 2014; Singer, 2011). However, the question raises who is accountable for the actions and decisions of the U.S. government, its subsidiaries and contractors in a foreign country, such as Iraq, especially when civilians are killed? Accountability is mostly used to act as a mechanism that allows for control over these actions and decisions, but what if things go wrong, who is accountable then and what are the implications of the accountability types in place? At present, despite the presumed important social, political and legal implications, research on accountability issues regarding PMCs in armed conflicts is scarce (Lam, 2009; van Meegdenburg, 2015). Moreover, systematic research on this topic tied to a theoretical framework on accountability types, such as proposed by Bovens (2007), is even completely lacking in the literature. Therefore, the problem of which accountability types apply to public military and private military actors in case of violent actions resulting in civilian casualties during extraterritorial armed conflicts (i.e. in foreign countries), and the differences therein, form the bases of the research described in this thesis.

People take sides with parties, groups or rulers for their own interests. For instance, being able to keep their own lands or being able to expand it. Other reasons to pick up arms could be of a religious nature or for personal material gain. These reasons could often be conflicting and result in people being loyal to multiple factions, rulers or groups (McFate, 2014). Additionally, people with money were able to hire contractors, or so-called mercenaries,

to aid them in besting their cause. These mercenaries were trained in fighting and would do so for the party that offered the most lucrative contracts. The use of force was not exclusively reserved to nation states, as mercenaries could only effectively deliver services by using force. Ever since the introduction of nation states with active standing armies the use of hired soldiers has declined as the market for force was effectively eliminated by national armies.

Through the privatization of tasks that were considered too expensive or unnecessary to maintain in military, the use of private parties that worked with armies returned. Most of these tasks are not considered core tasks of a national army, and can be done as effectively and efficiently by private parties. The prime example of a country shedding tasks of the military to the private sector is the United States of America (U.S.) (Singer, 2011). Most of the tasks that have been shed by the military consist of base support, transport and translating or interpreting. The aforementioned tasks do not require personnel to be armed. Providing security to transport and training people does require contractors to be armed, yet this only makes up for a small portion of the total contracts. In a move to further cut spending on the army, these contracts are also awarded overseas during extensive combat operations (Avant, 2005). Private parties are able to support the missions and operations without getting involved in the conflict at hand, by working far away in safe and secure zones.

The use and deployment of private companies operating alongside the public army has increase gradually since the Second World War. Where some technical support was provided by so-called “tech reps”. The first real large-scale use of contractors was during the Vietnam War, where contractors aided U.S. military operations (Davidson, 2000). As many as 80.000 contractors were hired to support U.S. military operations there. After operations in Southeast Asia came to an end, so did the need for contractors. Yet, this did not stop the resurgence of PMCs as Smith (2002) explains. The main reason the PMCs kept in business was due to the increase in both regional and intra state conflicts. These conflicts consequently resulted in failed states that were unable to provide security and internal order (Shearer, 1998). A void that was filled by PMCs that offered a range of services, from building a new professional army for the standing government to overthrowing a rebellion with only PMC personnel (Singer, 2011).

Ever since the U. S. invaded Iraq in March 2003 PMCs were part of the operations. Due to politics getting in the way of deploying more regular troops or calling on the U.S. Reserve troops, private military contractors were used (Singer, 2011). A 1:1 ratio of contractors to troops was the result in Iraq (Mcfate, 2014). A 2007 internal Department of Defense (DoD) census of the contractor industry in Iraq estimated that almost 180,000 contractors were employed, versus 160,000 U.S. troops (Singer, 2011). Yet, that number could be higher as a

number of big companies and non-governmental organizations (NGOs) were excluded from this consensus. The troops were mostly responsible for offensive courses of actions whereas contractors are responsible for services such as base support, transport of goods, security provision and translation/interpretation for persons and material. When PMCs did get into situations where use of forces was required for defensive purposes, they were allowed to do as much as necessary and what was stated in their contract. On the other hand, U.S. troops have to adhere to military law and will be tried if things go awry. When things go wrong for U.S. troops or PMCs different types of accountability apply. For the former this would be accountability to the U.S. Government, for the latter accountability to their manager and stockholders.

1.1 Research Question

What are the differences observed in accountability types between public military and private military in case of civilian casualties during armed conflicts in foreign countries?

This research question is formulated in such broad terms as this allows for thorough research into all data available around the selected cases. As the cases selected took place 9 and 11 years ago they have been thoroughly reported on, and possible judicial trials are likely to have been concluded.

1.2 Societal Relevance

A study into the dealings of a government involved in a foreign conflict is both interesting and important, since actions and decisions do not always end up working in the manner they were planned to. PMCs that work closely with state militaries during armed conflicts, pose a unique problem amidst the debate on accountability (Kalidhass, 2014). The use of PMCs has soared in the past decade, with little or no apprehension to the possible threat this posed to accountability for their actions (Mcfate, 2014; Singer, 2011). Recent allegations against U.S. public military and PMCs for crimes, including torture, war crimes, and crimes against humanity during the recent armed conflicts in Iraq, have sparked the debate on their accountability and the possible lack thereof (Cameron, 2006; Kalidhass, 2014; Mcfate, 2014). Although the U.S. is the prime consumer of private security services in armed conflicts, also

other countries, including European countries such as the Netherlands, are increasingly relying on private contractors in multilateral operations (Krahmann & Friesendorf, 2011). For instance, in 2004, the Netherlands was part of the so-called 'Coalition of the Willing', a multinational alliance of countries that would disarm Iraq. During the Dutch participation in this coalition it was involved in an incident that resulted in the death of an Iraqi civilian, caused by a Dutch Soldier (European Court of Human Rights, 2014). On the 21st of April 2004, a car approached a vehicle checkpoint manned by armed guards of the Iraqi Civil Defense Corps. A patrol of six Dutch Soldiers were investigating a prior shooting incident when the car was ordered to stop. The driver of the car failed to stop, which resulted in the leading officer of the Dutch patrol to open fire on the car. In the process firing 28 bullets at the rear of the car and killing the passenger that sat next to the driver. After an investigation by the Dutch Royal Military Constabulary, the public prosecutor determined that use of force was justified and no further legal action had to be undertaken. Yet in an appeal by the father of the victim to the European Court of Human Rights (ECHR), stating that under Article 2 of the European Convention on Human Rights a state has the duty to investigate suspicious deaths. The ECHR ruled that the Dutch investigation did not meet the standards required by Article 2 of the Convention. The Dutch prosecutor was fined for not delivering on the Article 2 procedural component of the duty to investigate. In turn the Dutch government has paid a compensation to the applicant of the appeal (i.e. the father of the killed Iraqi). In this case the Dutch government was held accountable for not properly investigating a death caused by a soldier of the Dutch state operating in a foreign country. Moreover, based on an incident in Afghanistan, research by the European Parliament acknowledged that a gap in accountability seemed to exist for dealing with violent incidents in which PMCs were involved: *'Usually armed forces and national courts have to believe private security guards accused of excessive use of force that they have acted merely in self defence. One example from the Netherlands suggests that, although a series of violent incidents by Afghan Security Guards (ASG), a company contracted by the Dutch forces in Afghanistan, had been reported to the Dutch authorities "in accordance with existing procedures", the conclusion was that ASG had "acted in accordance with the existing rules of engagement", which are based on the right of self-defence'* (Krahmann, & Friesendorf, 2011). Because of the recent involvement of the Dutch Royal Air Force in Iraq and Syria, the debate on accountability of public and private military is still very relevant. Since October 2014 the Dutch Royal Air Force have been flying bombing missions targeting Islamic State of Iraq and Syria (ISIS) in Iraq. This mission was further expanded to also bombing targets in Syria at the start of 2016. With this further expansion of mobbing in another country the chance of more

effectively battling ISIS increasing, additionally the chance of collateral damage and deaths of civilians increases greatly. If people were to die due to a Dutch bomb, who would the relatives be able to turn to seek redemption or justice? How would the Dutch government be able to determine who is a legitimate target and whether there will be any civilian deaths involved? All these questions revolve around the accountability of actions that are performed on a daily basis by states involved in conflicts. This suggests that the biggest challenge of accountability is comprised of the violent actions taken by a PMC extraterritorially in the name of a nation without corollary accountability to the people of that nation. Because much is unclear about these accountability issues, it is important to identify whether and when private and public military actions and activities fall through gaps in the existing laws (Kalidhass, 2014), and when a lack of democratic control and legal accountability, undermines positive contributions in humanitarian and military missions. Unlike military soldiers who have “all manner of traditional controls over their activities, ranging from internal checks and balances, domestic laws regulating the activities of the military force and its personnel ... and numerous aspects of international law” (Singer, 2003), it seems PMCs’ actions and activity are not regulated by any international legal instrument (Pattison, 2010). While it is important to determine their status because of the protection of their rights, like Cameron (2006) states: “individual criminal responsibility does not depend on a person’s status”. Given the industry's size and PMCs' critical role in sensitive operations, research is warranted (Lam, 2009).

1.3 Scientific Relevance

Accountability is a contested concept which has been widely used, and is defined by many scholars, yet it is unclear how it actually applies in different situations. Through its fast rise in prominence, accountability has been identified as one of the core values of democratic governance, putting it on par with freedom, justice and equality (Mulgan, 2003). Scholars have written about accountability in a range of contexts, such as political, legal and social accountability (Bovens, 2007; Grant & Keohane, 2005; Fox, 2007; Sartori, 1970, 1984, 1991). Fox (2007) offers a suitable definition of ‘accountability politics’ on the first page of the first chapter, by way of “the arena of conflict over whether and how those in power are held publicly responsible for their decisions”. This means that accountability is not only a collection of institutional mechanisms or a checklist of procedures, but also an arena of challenge, contestation and transformation. At present, there is little common ground on what the general

nature of accountability or its various types are relating to the use of PMCs. To operationalize the concept of accountability, it must be specified who is accountable to whom.

Historically and semantically, the word 'accountability' is closely related to accounting, in its literal sense of bookkeeping. Accountability refers to power relationships between actors and/or institutions. When decision-making power is transferred from a principal (e.g. the citizens) to an agent (e.g. government), there must be a mechanism in place for holding the agent to account for their decisions and if necessary for imposing sanctions, ultimately by removing the agent from power. The transfer of public security to the security industry has been cause for much debate, whether it occurred through responsabilization, commodification or privatisation of government functions to the private sector (Abrahamsen, 2009; Feigenbaum & Henig, 1994; Krahnmann, 2008). Private actors commissioned by the U.S. government are consequently responsible to them and can be held accountable for their actions. This applies especially when these operations are overseas and in combat situations. Additionally, PMCs are driven by money as they are private companies, this has often caused companies to cut corners to increase profits and as a result underperform or even breach contract (Singer, 2001). The proper accountability types have to be in place in order to perform effectively and to ensure the success of policies that have been put in place.

The essence of this thesis rests on the understanding that accountability is one of several methods of constraining power, and as such, it has a conceptual core. However, the variable structure of the concept in terms of its subtypes (such as political, professional, administrative, legal, social) requires a theory framework where differences have important methodological implications. The fundamental challenge of using science in the policy arena and the use of force, is to ensure that political (and indirectly PMCs) judgments match societal goals and remain accountable the public. To conceptualise a framework to study how certain elements can be construed into indicators that measure types of accountability types that are present is something that could validate the existing literature. This thesis aims at clarifying a few fundamentals about the usage of the concept accountability based on a widely recognized set of core features of accountability, and comparison thereof between the cases of the Haditha killings (2005) and Nisour Square massacre (2007). The difference in implementation of the concept of accountability between both cases is then analysed and the implications in terms of appropriate empirical strategies and distinctions are drawn.

1.4 Research Objectives

This thesis explores the accountability types that affect U.S. public military and private military involved in incidents in Iraq in the past decade. The focus is on the key concept of accountability and its types. Different accountability types apply to the actions and decisions of public and private military actors. How are the actors involved in the selected cases held accountable, through which types and are these measure adequate to meet the accountability standards set? Gaining insight in differences and commonalities can lay bare consequences of decisions and actions and possible implications for future missions.

2. Theoretical Framework

2.1 Accountability

Since accountability is the basis for this thesis, it is important to establish a definition and theory that will be used for further elucidation and analysis. Accountability is an ever-expanding concept, which “has come to stand as a general term for any mechanism that makes powerful institutions responsive to their particular publics” (Mulgan, 2000, 2003). Staying close to its etymological and historical roots, accountability can also be approached as a specific social relation or mechanism that involves an obligation to explain and justify conduct. Both the broader concept, in which accountability is seen as a personal or organisational virtue, and the narrower concept, in which accountability is defined as a social relation or mechanism, are useful for the study of, and the debate about, democratic governance. Accountability is essential because it is a means of ensuring more effective protection of rights by providing individuals with the opportunity to seek redress for rights violations. This usually involves not just the provision of information about performance, but also the possibility of debate, of questions by the forum and answers by the actor, and eventually of judgement of the actor by the forum. Judgement also implies the imposition of formal or informal sanctions on the actor in case of malperformance or, for that matter, of rewards in case of adequate performance (Bovens, 2010). As previously mentioned, accountability is a contested concept as it is widely used and can divided into several types based on the nature of the forum, the actor, the conduct and the obligation (Bovens, 2007). It revolves around “controls that were envisioned as a way to prevent the arbitrary exercise of power by leaders” (Salamon, 2002, p.524). Below I will go further into several different accountability types that actors can be held accountable to based on their actions, decisions and behaviour.

2.1.1 Based on the nature of the forum

The nature of the forum relates origin or type of the forum that holds the power to oblige an actor to give an account. In practical terms this forum can be a court of justices or a government that and the actor can be someone that is accused of a crime or a civil servant respectively. Bovens defines it as follows: “a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences” (Bovens, 2007, p.450).

Political accountability is a vital type of accountability within democracies, it ensures that the elected representatives can be held accountable for their choices by the public (Romzek, 1996). Within this political context decision-making power is transferred from a principal (e.g. the citizens) to an agent (e.g. government). In order to be able to hold the agent to account for their decisions and if necessary for imposing sanctions there must be a mechanism in place, that even allow the agent to be removed from power (Lindberg, 2009). In accounting, the concept’s long tradition is more limited in scope, referring to financial prudence and accounting in accordance with regulations and instructions (e.g. Normanton, 1966; Barton, 2006), but the principle of delegating some authority, evaluating performance and imposing sanctions is essentially the same. Accountability differs hugely between the police and the security providers that are just ordinary citizens. Crawford (2006) suggests a model of ‘steering’ and ‘rowing’, where the state implements rules and regulation (steering) for the industry to implement (rowing). What this type of control throughout the political accountability types show is the *vertical* hierarchy of accountably from agent down to principal.

Legal accountability is based on laws and regulations that are fixed, unlike the agent-principal relationship that can vary depending on the relationship and parties involved (Bovens, 2007). Legal accountability is about the forum that holds the formal authority to oblige the actor to give account (Bovens, Curtin & Hart, 2010). As the laws and regulations are fixed, legal accountability is the most explicit type of accountability. Where legal scrutiny is based on comprehensive legal standards prescribed by civil, penal, or administrative statutes. Legal accountability can be described as horizontal accountability because it applies to all citizens in the same manner. Legal accountability is of greater importance to public institutions.

Administrative accountability stems from administrative forums that exercise

independent and exterior administrative and financial supervision and control (Bovens, 2007). These forums operate on all levels of society such as international, national and local level. As well as inspection or audit offices, quasi-NGOs (quangos) and supervisory authorities. This type of accountability exerts no judicial power but is able to fine, punish and sanction where needed.

Professional accountability applies to all persons that operate in a professional environment and are expected to uphold standards that come with the profession (Bovens, 2007). These standards are upheld, supervised and enforced by fellow professionals and supervisory bodies on the basis of peer review.

Both judiciary and political accountability act as horizontal constitutional checks on the power of the executive. Meaning they are there to make ensure and check if everything is performed as agreed. When delineated, parliament holds the executive politically accountable the judiciary holds the executive legally accountable. Both institutions provide ongoing oversight in order to keep the government accountable throughout its term in office (Stapenhurst & O'Brien, 2007).

Social accountability is a form of accountability that lacks a hierarchical relationship between agent and principle. This also comes with that drawback that no formal obligation to render account is present (Bovens, 2007). Today many companies feel the need to inform not only their shareholders about their dealings, but also the public. In a search for more transparency and openness they provide information unasked and without obligation to do so. Furthermore, the internet has become a place where companies and individuals alike are able to put files and reports of inspections and assessments for everyone to see and scrutinize.

2.1.2 Based on the nature of the actor

The nature of the actor refers to the characterises of the actor that gives account. These characteristics are reflected in the corporate nature of an actor, the hierarchy related to the actors involved, whether on person bears all the responsibility and is accountable or every whether individual is called to account (Bovens, 2007). Actors within this context can be any person or institution that has to give account (i.e., give an explanation for their behaviour) to an institution that has the power to call for this account or explanation of behaviour.

Many public companies and organisations are organised in corporate bodies with their own independent legal status (Bovens, 2007). *Corporate accountability* therefore applies to that corporate entity, not to a specific person. For any wrongdoing or misconduct the corporation will be held liable, instead of the actual wrongdoer or person that was involved with the misconduct.

Leaders of an organisation can call subordinates to account by means of hierarchical rank or title. The process of *hierarchical accountability* starts from the top and works its way down through the organisation and its employees (Bovens, 2007). Within hierarchies the chain of command structure allows for superiors from all ranks to call to account their subordinates. This type of accountability structure is most found in public organisations and traditionally organised corporations.

Collective accountability implies that accountability that affect public organisations can be directed to just one person within that organisation (Bovens, 2007). This allows for direct accountability to someone who is at fault. Yet, this form of accountability is often thought of as not morally appropriate and holding one person accountable for a mistake does not mean it is his or her fault. A wrong decision could have been made much higher up and the person called to give account might have just been the one that executed the order.

Individual accountability strives for proportional liability throughout the public organisation (Bovens, 2007). Each individual is judged on the basis of their actual input instead of on the basis of their title or position within the organisation. Individual officials are in this way stripped of any possibilities to cower behind the backs of their superiors or organisation as a whole.

2.1.3 Based on the nature of the conduct

The nature of the conduct is about the conditions on and justifications of the actors' behaviour. An example of the nature of the conduct of an actor might be an audit into the financial statements of an actor, an inquiry whether certain procedures were followed or whether a product or service meets the standards it is required to meet (Bovens, 2007).

When looking at what aspects of the conduct the accountability applies to, *Financial accountability* can be one of the first things that springs to mind. As accounting is often related to finances and a monetary way of indicating whether someone can be called to account on

financial grounds and his or her conduct on those grounds.

Lerner and Tetlock (1999) define *procedural accountability* as the expectation of someone to explain how a certain decision or process played out. Certain choices and their consequences can be the cause and justification for a call to account of a persons' behaviour or actions.

The end product or service can as well be cause for a call to account. When a product or service does not meet the requirements a forum or organization expect it to be, a call to account can be voiced to the organization or individual that is responsible for it. This type of accountability is outlined as *product accountability* by Bovens (2007).

2.1.4 Based on the nature of the obligation

The nature of the obligation refers principally to two possibilities: the first possibility being the actor is, or could be, forced to give account and the second being that the actor voluntarily gives an account (Bovens, 2007). This means that a person can be forced to explain why he or she acted in a certain way by the police or a court, since he or she is required to by law. Additionally, companies are required to provide financial statements on a timely and accurate basis, when questions arise on the provided information the company is required to explain why and how that information came to be.

Vertical accountability refers to the situation where the forum formally wields power over the actor. This may be due to the hierarchical relationship between actor and forum, as is the case of the U.S. Department of the Army, the U.S. Department of the Navy and the U.S. Department of the Air Force, which are accountable to the DoD or (over the head of the minister) to parliament (Office of the Director of Administration and Management, 2012). The majority of political accountability arrangements, which are based on the delegation from principles to agents are forms of vertical accountability. Also in most cases of legal accountability, the forum has the formal authority to compel the actor to give account, based on laws and regulations. Likewise, in most cases of professional accountability too, the same goes for disciplinary committees.

Diagonal accountability is an intermediary (indirect) form of accountability. Administrative accountability relations are usually an intermediary form: ombudsmen, audit offices, inspectorates, supervisory authorities and accountants. Although these organisations stand in no direct hierarchical relationship to public organisations and have little power to

enforce their compliance, the majority of these administrative forums ultimately report to the minister or to parliament and thus derive the requisite informal power from this (Bovens, 2007).

Horizontal accountability is the obligation felt by agencies to account for themselves to the general public is usually moral in nature. Mutual accountability, another form of horizontal accountability, is between bodies standing on equal footing. In horizontal accountability, the hierarchical relationship is generally lacking between actor and forum, as are any formal obligations to render account. An example of horizontal accountability is giving account to various stakeholders in society since this occurs basically on a voluntary basis with no intervention on the part of a principal.

2.2 What is private military?

A typology put forward by Singer (2011) differentiates PMCs into Military Provider Firms, Military Consulting Firms and Military Support Firms. Their tasks range between protection/defence, deterrence, assault and intelligence (Mandel, 2002). Furthermore, Singer (2011) defines PMCs as “private business entities that deliver to consumers a wide spectrum of military and security services, once generally assumed to be exclusively inside the public context”. Avant (2005) adopts a different way of defining the industry, she divides it in external and internal security. Where external security stands for combat operations, military training and advice and the provision of logistical support, internal security covers policing, intelligence services and static defence (Mcfate, 2014). PMCs often operate in areas where the government is not seen as an authority anymore by a large part of its population, so-called failed states. Furthermore, PMCs work strictly on a contract basis. When the contract expires the company will stop its operation until a renewal is offered. PMCs work for the public sector and the private sector. The public sector often hires them for external security whereas the private sector has a much larger interest in local, closer to home, services offered by the PMCs. PMCs fall under international law, this is a grey area still which is still in its developing phase and it is often used by the PMCs to avoid accountability. Private actors that perform military tasks are often seen as mercenaries. They fulfil tasks many nations would not dare to, United Nations (UN) peacekeeping missions, stabilizing conflicts through force. This mostly applies to external security, as military equipment and personnel is not a sight often seen in the western countries.

The use of PMCs has been a contested choice, especially since negative incidents have been reported, like in case of the South-African company Executive Outcomes, which has repeatedly been hired by the UN and is linked with illegal natural resources exploitation in the Democratic Republic of Congo (Ballesteros, 1999). On the other hand, the UN has had a successful working relationship with IDG Security to provide armed protection for its facilities in Afghanistan since 2009 (Pingeot, 2012). As it turned out, local security forces are often ill-equipped or do not possess the capacity to provide sufficient protection. With the wide deployment of private military and security companies (PMSC) in Iraq many tasks were outsourced and as a result the direct control over these tasks was lost in the process. The U.S. spent eighty-five billion U.S. dollars for services provided by PMSCs in Iraq between 2003 and 2007 alone (Congressional Budget Office, 2008). Additionally, between 2001 and 2010 the expenses on private contractors surpassed that of uniformed personnel by 50 billion U.S. dollars. This is important to note, as the U.S. DoD has spent more on PMSCs than on its own army. This does not mean that the PMSCs deliver the same level of service as the DoDs own personnel does. In fact, many PMCs have been under little scrutiny by their employer. This meant the government did not only fail to use these contracts to save money, this situation also ensured that the PMCs were able to make as much money off the contracts as possible (Singer, 2004). Singer continues stating that the use of regular DoD personnel instead of PMCs could have had a greater political cost as the presidential campaign season was coming up. Leaving out civilian (contractors') deaths, the number of forces killed seemed much lower and more favourable. Apart from the saving of political face, the PMCs have operated in Iraq in a jurisdictional grey area caused by the transnational character of the PMSCs (Michaels, 2004, Stinnett, 2005). In essence, this led to an accountability-free environment, where contractors operated on edges of international, military and domestic laws (Minow, 2004). The largest PMCs that operated in Iraq during the American occupation were: Blackwater, Triple Canopy, Dyncorp, Erinys International, KBR, Control Risk and Aegis Defense Services.

2.3 What is public military?

The public sector that lies at the foundations of the private industry in the U.S. is the DoD. The DoD is headed by the Secretary of Defense and is responsible for the coordination and supervision of all the agencies within the U.S. government that are involved with national security and the U.S. Armed Forces. It actively employs more than 2.13 million people, with an additional 1.1 million people that are in reserve (Harrison, 2012). The DoD provides

coordination and supervision over three subordinate military departments; the U.S. Department of the Army, the U.S. Department of the Navy and the U.S. Department of the Air Force (Office of the Director of Administration and Management, 2012). Correspondingly, the Department of the Army is responsible for the Military Service of the U.S. Army, the Department of the Navy is responsible for the Military Service of the U.S. Navy and the U.S. Marine Corps and the Department of the Air Force is responsible for the Military Service of the U.S. Air Force. Plus, the Joint Chiefs of Staff that are in charge of the Combatant Commands. Additionally, the Office of the Secretary of Defense provides further oversight over the DODs' Defense Agencies and Field Activities. For the sake of relevance, the focus of this section will be on the U.S. Army and the U.S. Navy. These departments required further scrutiny in their role in regards to their involvement during the invasion of Iraq in 2003. Furthermore, the way money is spent is very telling for the type of operations that are going on. The amount of money that is being put into the private sector in Iraq is enormous. With a DoD budget request in 2012 that totalled at \$676 billion, a substantial amount allocated for contracts awarded to PMCs about fifty percent of the total budget went to contractors (McFate, 2014). To indicate just how much money is going into DoD sanctioned contracts; it is an amount seven times the United Kingdom's entire defence budget.

3. Research methodology

In the following chapter I delineate my empirical approach to the cases that have been selected for this research, how this selection came about and on what bases the cases and data have been selected.

3.1 Conceptual framework

The present research is qualitative in nature, meaning it will be descriptive in nature (Hancock & Algozinne, 2006), seeking to give insight in the accountability types surrounding both public and private military actors (i.e. PMCs and the DoD). The reason for choosing qualitative research, instead of quantitative research, is due to the nature of the data at hand. Newspaper articles have been researched on their content and the subsequent analysis is based on the content of these articles. Quantifying such information would be problematic as the essence of such articles might be missed through automated analysis based on keywords or other means of data selection and analysis. Consequently, the qualitative research method of case studies was chosen, as it lends itself perfectly for newspaper content analysis.

Miles and Huberman (1994) note that the conceptual framework serves several purposes: (a) identifying the units that will (or will not be) included in the study; (b) describing what relationships may be present based on logic, theory and/or experience; and (c) providing the researcher with the opportunity to gather general constructs into intellectual “bins” (Miles & Huberman, p.18). According to Baxter and Jack (2008), the conceptual framework serves as an anchor for the study and is referred at the stage of data interpretation.

The constructs that are included in this research the types of accountability that are based on:

- a) the nature of the forum: political accountability, legal accountability, administrative accountability, professional accountability and social accountability;
- b) the nature of the actor: corporate accountability, hierarchical accountability, collective accountability and individual accountability;
- c) based on the nature of the conduct: financial accountability, procedural accountability, product accountability;
- d) based on the nature of the obligation: vertical accountability, diagonal accountability, and horizontal accountability (Bovens, 2007).

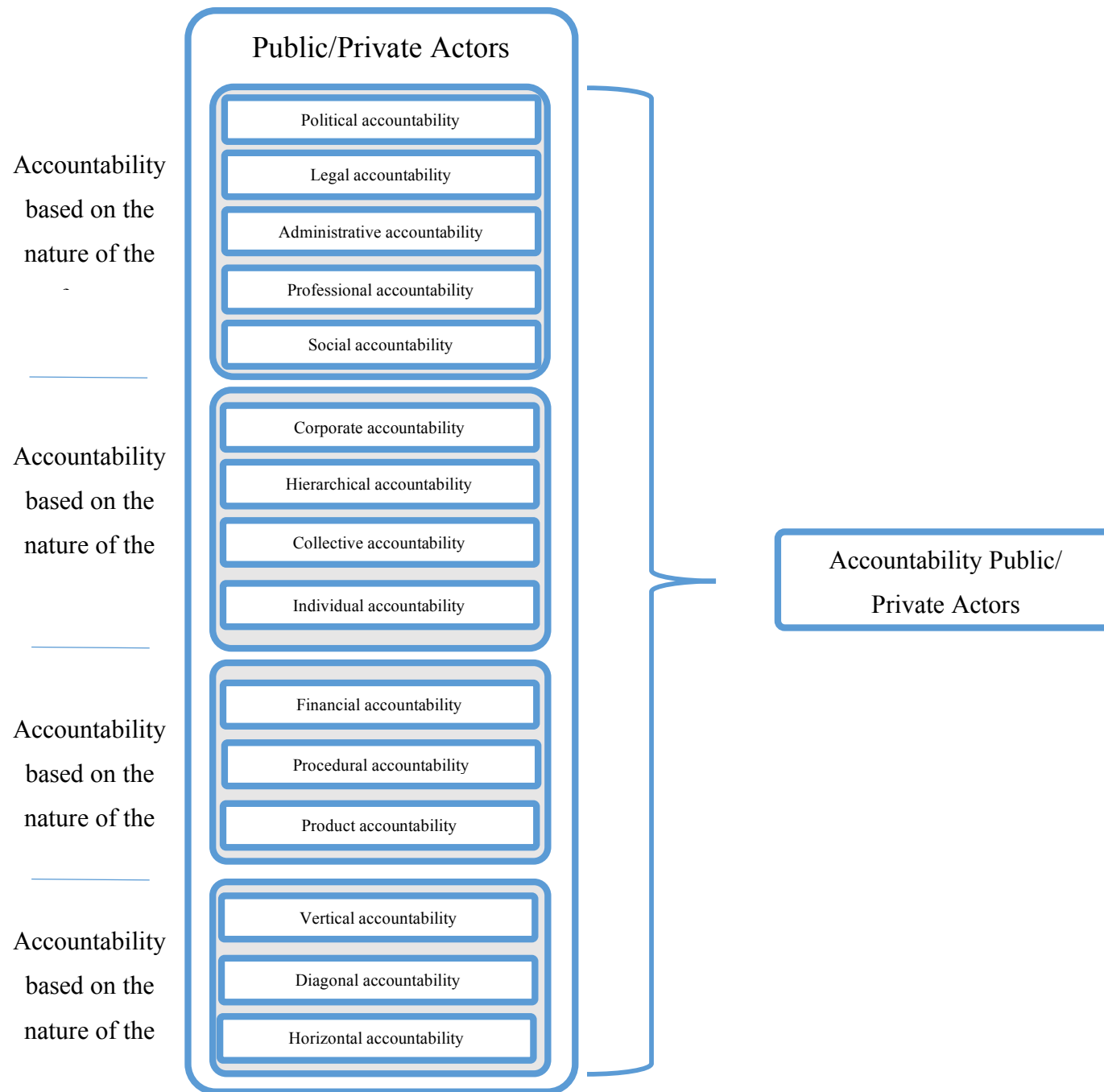


Figure 1: Framework of types of accountability and indicators based on Mark Bovens' (2007) "Types of Accountability" (p.461)

3.2 Case studies

This approach is valuable for public administration science research to develop theory and evaluate programs, because of its flexibility and rigor.

A case study is an intensive study of a small number of cases, and according to Baxter and Jack (2008) the qualitative case study methodology provides tools for researchers to study complex phenomena within their contexts. Moreover, this methodology allows for exploring organizations, simple through complex interventions, relationships, communities, or programs (Yin, 2003) and supports the deconstruction and the subsequent reconstruction of various phenomena.

According to Yin (1994, 2003) case studies are the preferred strategy when: (a) the focus of the study is to answer “how” and “why” questions; (b) it is impossible to manipulate the behaviour of the actors or individuals involved in the study; (c) you want to cover contextual conditions because these are thought to be relevant to the phenomenon under study; or (d) the boundaries are not clear between the phenomenon and context. Moreover, according to Yin (1994) a case study design should be considered when no other descriptive method is possible or will not result in the desired level of description (Zucker, 2009). Therefore, to provide a comparison between accountability types that apply to the actions and decisions of public and private military actors, and to investigate “how” they differ therein, the case study method is used in this thesis.

3.2.1 Multiple case studies

Yin (2003) categorizes case studies as explanatory, exploratory, or descriptive. He also differentiates between single, holistic case studies and multiple-case studies. The research aim of this study is addressed through the use of an embedded multiple case study design. Embedded case studies are studies in which different levels or sources of data are collected (Yin, 2003). The logic of adopting a multiple case study design is that the selected cases are either replicating one another, or produce results that contrast each other hereby allowing for comparison and compelling interpretations (Lee, 2006, Merriam, 1998). Baxter and Jack (2008) point out the possible benefits of an embedded case design highlighting analysis within subunits separately, between different subunits or across all subunits. The multiple case study methodology allows to analyse the role of the context in each of the cases. In a multiple case

study, several cases are examined to understand the similarities and differences between the cases. According to Baxter and Jack (2008) this type of a design has its advantages and disadvantages. They state that overall, the evidence created from this type of study is considered robust and reliable, but it can also be extremely time consuming and expensive to conduct. Nevertheless, the multiple case study methodology enables to explore differences within and between cases. The goal is to replicate findings across cases. Because comparisons will be drawn, it is imperative that the cases are chosen carefully so that the researcher can predict similar results across cases, or predict contrasting results based on a theory (Yin, 2003).

A case is defined by Miles and Huberman (1994) as, “a phenomenon of some sort occurring in a bounded context”. The case is, in effect, “your unit of analysis” (p.25). Since this thesis aims at “analysing” the difference in accountability types applying to public and private military actors, two cases are selected for analysis: one case involving a PMC and one involving the DoD.

Several authors including Yin (2003) and Stake (1995) have suggested that placing boundaries on a case can prevent the common pitfall of attempting to answer a question that is too broad or a topic that has too many objectives for one study. According to Baxter and Jack (2008) a case can be bound by: (a) time and place (Creswell, 2003); (b) time and activity (Stake, 1995); and (c) by definition and context (Miles & Huberman, 1994). Binding the cases will ensure that the research remains reasonable in scope (Baxter & Jack, 2008). The boundaries indicate what will and will not be studied in the scope of the research project. According to Yin (1994, 2003 p.47) each case must be selected so that either case predicts similar results (a literal replication), or produces contrasting results but for predictable reasons (a theoretical replication).

3.2.2 Criteria Case Selection

It is important to obtain all relevant incidents, because loss of incidents can lead to bias in the study (Schmidt & Hunter, 2014). All incidents that involved U.S. Military or U.S. PMC in Iraq since the invasion in 2003 until the withdrawal of army forces in 2011, that are recorded in the database ‘Iraq body count’ (IBC, www.Iraqbodycount.org) and WikiLeaks' Iraq War Logs were considered. The database IBC is widely considered as the most reliable database of Iraqi civilian deaths (Steele, 2010). In order to avoid bias, database searches should be augmented with hand searches of library or news resources for relevant papers, articles, books, abstracts, etc. Crosschecking of references, citations in articles and papers, are important methods used

to provide a comprehensive search (Schmidt & Hunter, 2014). Therefore, in parallel, the WikiLeaks' Iraq War Logs are used to double-check if any cases (that involve U.S. military and/or PMC) are missing in this extensive database (<https://wikileaks.org/irq/>). Moreover, since PMCs were not involved in air forces, air raids and attacks, cases that could be categorized as such were excluded from further analysis. Therefore, the following exclusion and inclusion terms for selecting cases and incidents that involved U.S. actors, from the database IBC and WikiLeaks' Iraq War Logs were applied:

Exclusion: 'U.S. air strikes'; 'U.S. air raids'; 'bombs'; 'air attack'

Inclusion: 'shot dead by'; 'killed by'; 'U.S. forces'; 'U.S. Marines'; 'Blackwater'; 'Triple Canopy'; 'KBR'; 'DynCorp'.

Subsequently, to be able to compare incidents involving U.S. military or PMCs involvement, selected incidents have to share several characteristics. Therefore, the following binding criteria were applied:

- The cases of unjustifiable manslaughter in combat zones in Iraq had to be comparable (i.e., the nature of the act, number of injuries or deaths among civilians; weapons used);
- Documentation had to be available for analysis (i.e. news, official reports, reports on prosecution, jurisdiction, or reports on not to prosecute), setting the time frame for the cases between 2003-2011. Furthermore, this chosen timeframe coincided with the U.S. military forces withdrawal in 2011.
- The incidents had to have had place within the same decennium (time period of max 5 years between the two cases), in order to avoid differences in legislation and policy (at national and international level) between the cases.
- Furthermore, reports on *direct* recorded involvement by actors of U.S. military or PMC's had to be available, meaning civilian deaths reported in hospitals were excluded.
- And importantly, the incidents had to concern the intentional killing of non-combatants, since this is prohibited by modern laws of war derived from the UN Charter, The Hague Conventions and the Geneva Conventions, and constitutes a war crime.
- In sum, only incidents involving U.S. military or PMC involvement that have been verified by the DoD are considered in this thesis. The cases had to be well

documented by international news sources, and official documents by the DoD on these incidents had to be available.

Next, to crosscheck the reported incidents in these two sources, also international media reports of violence leading to these deaths are used. In this way, it is possible to map all recorded deadly incidents and the individuals killed in them since the Iraq invasion in 2003. It is important to note however, that casualty and incident monitoring in Iraq between 2003-2011 present significant challenges. The IBC and international news reports on alleged strikes and casualties were done in good faith, but it was not always possible to follow up or to verify the claims that were being made. As a result, in this thesis, only reports on incidents involving U.S. military or U.S. PMC involvement are used, when the alleged incidents are confirmed by the U.S. government. This means that the federal government of the U.S. has acknowledged the incidents, and has accepted that U.S. military or U.S. PMC are involved in the killing of non-combatants in a particular incident, meaning official DoD reports had to be available.

To answer the research question, potential non-combatant, civilian deaths or injuries from U.S. military actions or PMC's, from a wide range of sources were assessed from the invasion of Iraq in March 2003 to December 2011 when the U.S. officially withdrew from the country. The sources include 1) the online database IBC and/or WikiLeaks' Iraq War Logs, 2) international news agencies, as well as 3) official documents by the DoD.

3.2.3 Incidents involving U.S. military or PMC's

According to the extensive database IBC and WikiLeaks' Iraq War Logs, since the 2003 invasion, several violent incidents have been reported, in which the U.S. military or PMCs were involved. Making use of the databases mentioned above, a total of 8 incidents in which U.S. military or PMCs were involved were to be considered (IBC; WikiLeaks' Iraq War Logs):

1) an incident near Najaf, Iraq on March 31, 2003 (confirmed by sources such as the Guardian, March 31, 2003, New York Times, March 31, 2003, and Reuters, 31 March 2003), 2) an incident near Tal Afar, January 2005 (Steele, 2010), 3) the Mukaradeeb wedding party massacre on May 19, 2004 (McCarthy, 2004), 4) the Ishaqi incident'' on March 15, 2006 (IBC; WikiLeaks' Iraq War Logs), 5) the Abu Ghraib scandal in 2003, 6) the Haditha massacre in 2005, 7) the Mahmudiyah killings in 2006, and 8) the Nisour Square massacre in 2007.

This makes clear that there are several cases that have been reported where U.S. troops killed innocent Iraqi civilians at checkpoints, or on Iraq's roads or during raids on people's

homes (IBC; WikiLeaks' Iraq War Logs). The victims include dozens of women and children. Nevertheless, the U.S. DoD rarely admitted their deaths publicly, and many of these incidents do not meet the requirement of “intentional killing of non-combatants” and/or not documented as such by the DoD or American administration. For this reason, the cases 1-4 are excluded for further analysis. However, violent incidents with civilian casualties involving U.S. DoD or PMCs between 2003-2011 that do meet the three criteria of 1) being recorded in the ‘Iraq body count’ database and/or WikiLeaks' Iraq War Logs, 2) being well documented by international news sources, 3) being acknowledged by DoD, and 4) meet the requirement of “intentional killing of non-combatants” (i.e. considered to be a war crime) are: The Abu Ghraib scandal in 2003 (Clemens, 2010; Hersh, 2004; Stanley, 2013), the Haditha massacre in 2005, the Mahmudiyah rape and killings in 2006, and the Nisour Square massacre in 2007.

3.2.4 Selected Cases

The cases of the Haditha massacre (2005) and Nisour Square massacre (2007) in Iraq have been selected for further analysis because these cases share many similarities very similar, while having a clear different actor background, the U.S. DoD and PMC respectively. Both cases are comparable regarding the nature of the act, the number of injuries or deaths and the weapons used (i.e., the deaths of 24 unarmed civilians vs. the deaths of at least 14 unarmed civilians respectively, by the use of heavy machine fire and grenade launchers gunfire). The cases of the Mahmudiyah rape and killings (2006) and the Abu Ghraib scandal (2003) were excluded for further analysis, because of the fact that the natures of the acts (i.e. rape and torture) differed too much with other cases, to safeguard a fair and sound comparison between cases. Lastly, the selected cases happened within a time frame of five years, and both were well-documented by different international news sources, and legislation and jurisdiction was available. For a short overview of the selected cases and important dates, see box 1 and 2.

3.3 Data

The sample of data used for this research stems from information gathered through extensive desktop research exploiting primary and secondary data. In order to obtain as much information, a wide variety of sources have been accessed to provide a balanced and structured analysis. Data used in this thesis is comprised of academic literature, articles for newspaper and magazines, press releases, court documents, books and quarterly and yearly reports. This broad range of sources of information allows for a thorough and complete analysis of both selected cases and the accountability types at play. Being able to go through a larger amount of data in search of specifics that the documents might hold, offers a clear and general overview of what has been written on the selected cases.

The use of multiple data sources enhances data credibility (Baxter & Jack, 2008, Patton, 1990; Yin, 2003). According to Baxter and Jack (2008) potential data sources may include (but are not limited to): documentation, archival records, and interviews. In case study, data from multiple sources can be converged in the analysis process rather than handled individually. According to Baxter and Jack (2008) this convergence adds strength to the findings as the various strands of data are braided together to promote a greater understanding of the case.

Comparing primary data such as press statements and policy documents with secondary data such as newspaper articles and online articles enables a thorough analysis of information available in the gathered data. The analysis of content of official documents, articles and other information media offers an objective and neutral way of counting the mention of specific items that are researched (Berelson, 1952). The data analysed in this thesis has been collected in two main ways. First, through a comprehensive analysis of news outlet (i.e. Reuters, Associated Press, Huffington Post, CNN, Washington Post, Time Magazine, Al Jazeera, The New York Times, The Guardian, Courthouse News Service). Another body of data was drawn from examining official reports produced by the U.S. Courts, U.S. Marines Corps, UN Working Group, OHCHR Press Release; and other publicly available documents mentioned in these reports.

Data is gathered from a mixture of resources. Newspaper articles from the largest western (American) international newspapers have been gathered through the online newspaper repository Lexis Nexis. Additionally, news items from news agencies have been obtained via the online search queries. A series of search queries have been run through the Google search engine using queries such as: “Haditha” AND “marine corps”, “Haditha” AND “court”,

“Haditha AND “press release”, “Nisour Square” AND “Blackwater”, “Nisour Square” AND “court”, “Nisour Square” AND “press release”.

This resulted in a dataset of 271 documents. A total of 140 documents were gathered on the Nisour Square incident and 131 documents on the Haditha incident. Furthermore, newspapers constitute 263 articles of which almost half (125 articles or 47%) of the documents originated from the Associated Press. Followed by the New York Times (38 articles or 14,4%), the Los Angeles Times (30 articles or 11,4%), the Washington Post (27 articles or 10,2%) the remaining 51 articles originated from Reuters, Huffington Post, CNN, Time Magazine and Al Jazeera. The 7 official documents originated from the Bureau of Diplomatic Security (appendix 3), Department of the Army, DoD, U.S. Army, U.S. Congress, UN Working Group and the United Nations General Assembly.

3.4 Operationalization

Accountability type	Operationalization
<i>The nature of the forum</i>	
Political accountability	<ul style="list-style-type: none"> - Political leaders (Ministers, military leaders, policymakers, United States Government officials) are called to account - Political leaders (Ministers, military leaders, policymakers, United States Government officials) are removed from power
Legal accountability	<ul style="list-style-type: none"> - Persons or organisations go on trial - Persons or organisations prosecuted - Persons or organisations are forced to give account to a court (in any country) - U.S. Military/contractors hired by the U.S. government are tried under U.S. criminal law while overseas
Administrative accountability	<ul style="list-style-type: none"> - A superior within the DoD or Blackwater calls to account an employee/subordinate for its actions - Administrative bodies exercise independent and exterior administrative and financial supervision
Professional accountability	<ul style="list-style-type: none"> - Blackwater adheres to code of conduct put forward by themselves/the private military industry in Iraq and are held accountable accordingly - U.S. Marines and U.S. military adhere to code of conduct put forward by the U.S. DoD and are held accountable accordingly - Industry supervisors monitor and enforce standards - Blackwater/U.S. military follows rules for reporting and investigating serious incidents

Social accountability	<ul style="list-style-type: none"> - Blackwater reports on their actions to their stake-holders - Blackwater voluntarily provides information to the public about its conduct - The U.S. military voluntarily provides information to the public about its conduct
<i>The nature of the actor</i>	
Corporate accountability	<ul style="list-style-type: none"> - Blackwater is held accountable for any wrongdoing or misconduct that has occurred - The U.S. military is held accountable for any wrongdoing or misconduct that has occurred - Blackwater is held collectively accountable for the collective outcome of its actions - The U.S. military is held collectively accountable for the collective outcome of its actions - U.S. Government implements changes after an incident, such as reforms in law policy
Hierarchical accountability	<ul style="list-style-type: none"> - Superiors call to account subordinates for its actions - Superiors remove subordinates from office/reduce rank - Superiors constrain tasks of subordinates - Financial compensation is adjusted due to actions of the actor
Collective accountability	<ul style="list-style-type: none"> - A single person is held accountable for the incident rendering other actors free of accountability - A person is held accountable for events due to the rank/title and the supervisory role he/she had over the persons involved
Individual accountability	<ul style="list-style-type: none"> - All persons involved are held accountable on the basis of their role and involvement in the event
<i>The nature of the conduct</i>	
Financial accountability	<ul style="list-style-type: none"> - Blackwater is called to account for on financial grounds - Blackwater is called to account for financial obligation as stated in the contract with the U.S. Government - The U.S. military is called to account for on financial grounds
Procedural accountability	<ul style="list-style-type: none"> - The U.S. army/Blackwater is called to account to explain how a process played out - Blackwater employees/U.S. soldiers have to give account for the judgements and/or decisions were made
Product accountability	<ul style="list-style-type: none"> - Blackwater is called to account for its quality of service delivered in relation to its contract - The U.S. army is called to account for its quality of service delivered
<i>The nature of the obligation</i>	
Vertical accountability	<ul style="list-style-type: none"> - The forum (U.S. Government) formally wields power over Blackwater and calls it to account - The forum (U.S. Government) formally wields power over the DoD and calls it to account
Diagonal accountability	<ul style="list-style-type: none"> - An intermediary that reports to the U.S. government calls Blackwater to account - An intermediary that reports to the U.S. government calls the U.S. army to account
Horizontal accountability	<ul style="list-style-type: none"> - Blackwater accounts for its actions to the general public, as if on equal footing as the general public - The U.S. army accounts for its actions to the general public, as if on equal footing as the general public

Table 1. Operationalization of concepts for analysis of data.¹

¹ The accountability types and their subsequent indicators and operationalization are based on Bovens' (2007) theoretical framework and adapted to the cases at hand. As there was no prior operationalization of accountability types on either public or private military actors.

The operationalization of political accountability is concerned with people that have political influence both inside and outside of the U.S. government. The accountability type that affected actors in regards to the selected cases is measured through the indicators mentioned in table 1.

The operationalization of legal accountability is constructed in such a way that it measures any indicators that have to do with people or organisations being held accountable in legal ways. This ranges from people being accused of wrongdoing, to people being convicted of a crime.

The operationalization of administrative accountability is about measuring administrative functions within the U.S. government and the private military company Blackwater that calls to account their subordinates. As well as, other institutions might also have the power to call to account the actors involved in the cases.

The operationalization of professional accountability is about the professional standards the actors involved in the cases and industry supervisors uphold, put into practice and monitor. The indicators measure whether the actors are held accountable accordingly when things are not in line with said standards.

The operationalization of social accountability and the indicators stated in table 1 are based on the way the actors inform their stakeholders about their behaviour. In the case of Blackwater, the stakeholders are the people that have shares in the company as well as the U.S. government that hires Blackwater. For the U.S. government the stakeholders are the general public, as they pay for the comings and goings through taxes and should be informed accordingly.

The operationalization of corporate accountability revolves around the company Blackwater or the U.S. military being held accountable for their actions and any misconduct or wrong doing that might have happened as a consequence. It is based on holding accountable Blackwater or the U.S. military accountable as a whole, instead of individuals or employees. Furthermore, any changes that might have come from the misconduct can be seen as an indicator of corporate accountability as it is a mechanism that seeks to improve accountability of the actors involved.

The operationalization of hierarchical accountability measures through a series of indicators whether people involved of different ranks or with different responsibilities are held accountable by their superiors accordingly.

The operationalization of collective accountability is based around the fact that a single actor (i.e. the company Blackwater as one entity, the U.S. military as one entity or a single person) is held accountable for the actions of all actors involved in the case. He or she might will consequently render other involved free of account. Additionally, an actor can be held collectively accountable due to his or her rank.

The operationalization of individual accountability is constructed around the given that a person is solely held accountable based on their role, input and output in the case.

The operationalization of financial accountability is based on the actors having to explain their behaviour and choice concerning certain financial issues such as costs, expenditures and contractual agreements that might not have been met.

The operationalization of procedural accountability concerns the fact that actors give account about their behaviour, choices, judgement and decisions during and following the incidents described in the cases. The indicators show whether actors explained how the incident played out and what their role and consequent choices were.

The operationalization of product accountability was constructed as indicators that determined whether the actor was called to account for quality of the product/service they provided met the set standards.

The operationalization of vertical accountability is constructed around the forum, being the U.S. government, having power over the actor and calling it to account.

The operationalization of diagonal accountability is constructed around an intermediary that reports to the U.S. government, and because of this lending its authorities' powers, calling the actor to account.

The operationalization of horizontal accountability stems from the fact that both Blackwater and the U.S. army might voluntarily inform the general public on their actions. In doing so, putting them on the same level as the general public.

4. Analysis

In this section, a brief description of the selected cases is given. Furthermore, a short overview of the selected cases and important dates is provided in box 1 and 2. Thereafter, the accountability types are analysed for each case. Lastly, the two cases are compared with respect to the accountability types. The first case that is discussed is the Haditha incident, followed by the Nisour Square incident.

4.1 Haditha incident

On the morning of November 19, 2005, a roadside bomb struck a Humvee carrying U.S. Marines from Kilo Company, 3rd Battalion, on a road near Haditha, a town in western Iraq. The bomb killed Lance Corporal Miguel Terrazas (20). On November 20, 2005, a Marine communique from Camp Blue Diamond in Ramadi reported that Terrazas and 15 Iraqi civilians were killed by the blast and that "*gunmen attacked the convoy with small-arms fire*" prompting the Marines to return fire, killing eight insurgents and wounding one other". However, based on an investigation by Time Magazine reported Tim McGirk, the details of what happened that morning in Haditha were more disturbing, disputed and horrific than the military initially reported (McGirk, 2006). According to McGirk's investigation and report, the civilians who died in Haditha on November 19, 2005 were killed by the U.S. Marines themselves, and not by a roadside bomb. According to eyewitnesses, the U.S. Marines killed 15 unarmed Iraqis in their homes, including seven women and three children (McGirk, 2006). In fact, five Iraqi men, were ordered out of their car and shot dead in the street by Staff Sgt. Frank Wuterich. Shortly after this event, Lt. William T. Kallop arrived on the scene (White, 2007). Subsequently, the U.S. Marines reported receiving small-arms fire, which they attributed to a nearby house, and the order is given "*to take the house.*" Eventually, Nineteen Iraqi civilians were killed in three adjacent houses which U.S. Marines entered, throwing in grenades and shooting with semi-automatic rifles (McGirk, 2006).

McGirk's questions prompted the United States military to open an investigation into the incident. On March 19, 2006, U.S. military officials confirmed that, contrary to the initial report, U.S. Marines, not Iraqi insurgents, killed the Iraqi civilians ("Pentagon sources: Civilians likely killed without provocation," CNN. May 27, 2006). Subsequently, investigations are opened (e.g. by army Col. Gregory Watt, "the Watt report"), and fairly

quickly it became evident that a full criminal investigation by the Naval Criminal Investigative Service (NCIS) into the Haditha incident was warranted (i.e. the Maj. Gen. Eldon A. Bargewell's 104-page report on Haditha). For further developments in this case, the reader is referred to Box 1.

Overview important dates, Haditha incident:

Nov. 19, 2005: An U.S. Marine and Iraqi civilians are killed in Haditha, Iraq (Reid, 2006).

Nov. 20, 2005: The Marines release a preliminary report claiming that an improvised explosive device killed 15 Iraqis and one Marine in Haditha on November 19, 2005 (see appendix 3).

Nov. 22, 2005: The DoD formally announces the death of Marine Lance Cpl. Miguel Terrazas (20), in Haditha on November 19, 2005 (Reid, 2006).

Feb. 10, 2006: A Time magazine reporter (Tim McGirk) contacts military sources in Baghdad, Iraq, about the Haditha incident (McGirk, 2006).

Feb. 14, 2006: Army Lt. Gen. Peter W. Chiarelli, commander of multinational forces in Iraq, appoints Army Col. Gregory Watt to head a preliminary investigation into the Haditha deaths (the Watt investigation report (2006) see appendix 5; Reid, 2006).

March 3, 2006: Col. Watt completes a preliminary report, and recommends further investigation (the Watt investigation report, 2006 see appendix 5).

March 9, 2006: Lt. Gen. Chiarelli receives the findings of Col. Watt's preliminary report and directs further review (Bargewell, 2006; Ricks, 2006; White 2007).

March 10, 2006: Secretary of Defense Donald Rumsfeld and Gen. Peter Pace, the chairman of the Joint Chiefs of Staff, learn of the Haditha investigation (Reid, 2006).

March 12, 2006: The top Marine commander in Western Iraq, Richard Zilmer, requests the Naval Criminal Investigative Service (NCIS) to proceed a full criminal investigation into the Haditha incident (U.S. DoD, news article, <http://archive.defense.gov/news/newsarticle.aspx?id=2499>).

March 13, 2006: The initial NCIS team arrives in Haditha (The Washington Times, June 1, 2006).

March 17, 2006: At a press conference, Lt. Gen. Peter W. Chiarelli summarizes the events at Haditha and the preliminary investigation into Marine involvement in the deaths (U.S. DoD, news article, <http://archive.defense.gov/news/newsarticle.aspx?id=15140>).

March 19, 2006: After receiving final recommendations from Col. Watt, Lt. Gen. Chiarelli appoints Army Maj. Gen. Eldon Bargewell to investigate two major aspects of what happened in Haditha: training and preparation of Marines prior to the engagement and the reporting of the incident at all levels of the chain of command (Ricks, 2006).

May 28, 2006: Rep. Murtha appears on ABC's This Week and discloses that U.S. Marines made condolence payments to the families of Iraqis killed in Haditha — at a time when the Marines' official explanation for the deaths was a roadside bomb (O'Keefe, 2006).

May 31, 2006: President Bush makes his first public comments about the deaths in Haditha, promising that "If in fact, laws were broken, there will be punishment. (CNN, June 1, 2006, http://edition.cnn.com/2006/WORLD/meast/05/31/haditha/index.html?section=cnn_topstories).

June 1, 2006: Lt. Gen. Peter Chiarelli, commander of Multinational Corps Iraq, ordered American commanders to conduct core values training with all troops on moral and ethical standards on the battlefield. President George W. Bush stated: "This is just a reminder - for troops in Iraq or throughout our military - that these are high standards expected of them and that there are strong rules of engagement" (Raum, 2006).

June 16, 2006: The report by Maj. Gen. Bargewell is forwarded to Lt. Gen. Chiarelli, the top U.S. commander in Iraq. The report finds no evidence of a cover-up, but instead finds that officers failed to ask the right questions or press the Marines about what happened (CNN, July 10, 2006, <http://edition.cnn.com/2006/WORLD/meast/07/09/haditha/index.html>).

August 2006: Lt. Gen. James Mattis is briefed on the Haditha investigative report by officials from the NCIS (Bennett, 2007).

Dec. 21, 2006: The Marines file charges of unpremeditated murder against Staff Sgt. Frank Wuterich, Sgt. Sanick Dela Cruz, Lance Cpl. Justin Sharratt and Lance Cpl. Stephen B. Tatum. Charges of dereliction of duty charges for failing to investigate are filed against Lt. Col. Jeffrey Chessani, Capt. Lucas McConnell, Capt. Randy Stone and 1st Lt. Andrew A Grayson. Grayson also faces charges of making a false official statement and of obstruction of justice (Navarre, 2006).

April 2, 2007: Charges are dismissed against Marine Sgt. Sanick Dela Cruz. He is granted testimonial immunity (Graham, 2007a).

Box 1. Overview important dates of the developments regarding the Haditha incident (2005).

4.1.1 Nature of the forum

4.1.1.1 Political Accountability

In the aftermath of the incident, condolence payments, which amounted to \$2,500 for each person killed, were authorized by the battalion commander, Lt. Col. Chessani. Condolence payments were not normally made when insurgents killed civilians and this anomaly became a factor in determining what members of the chain of command may have been aware of the (initial) false reports, or should have exercised greater diligence to determine if the initial reports were false (Karl, 2006). As soon as it became clear that numerous Marine officers in the chain of command in Iraq knew about the civilian deaths almost immediately but did not launch an investigation for months, not only the Marines involved at the scene, but also commanders and higher-ranked officers went before the military equivalent of a grand jury on charges that they failed to investigate the Haditha killings. However, the then existing system, which in theory embraced the command responsibility doctrine but in practice did not, proved to be ineffective in addressing command failures. Like already mentioned, U.S. military investigations concluded that multiple commanders either knew or should have known about the killing of civilians in Haditha, and that they failed to prevent or punish these violations. On December 21, 2006, charges of dereliction of duty charges for failing to investigate were filed against Lt. Col. Jeffrey Chessani, Capt. Lucas McConnell, and Capt. Randy Stone (Navarre, 2006). Although a judge dismissed a case against Lt. Col. Jeffrey Chessani (the highest-ranking of the eight Camp Pendleton Marines) in 2008, he was forced into retirement. Before the Haditha killings, Lt. Col. Chessani seemed destined for promotion and greater responsibility (Spagat, 2010). The above suggests that the command responsibility doctrine was not invoked in the Haditha case, and eventually no commander stood trial for charges directly stemming from these alleged command failures. However, a major general and two senior officers have been disciplined for their roles in investigating the deaths of 24 Iraqi civilians in the town of Haditha in 2005. Maj. Gen. Richard A. Huck, former commanding general of the 2nd Marine Division, received a letter of censure from the secretary of the Navy for the "actions he took and failed to take" in response to the killings. Col. Stephen W. Davis, the commander of a regimental combat team that was in charge of the infantry battalion involved in the Haditha episode, and Col. Robert G. Sokoloski, who was the division's lawyer and the chief of staff to General Huck, also received letters of censure. The letter of censure is the highest

administrative punishment an officer can receive (Spagat, 2007). The censure can end the officers' military careers by keeping them from promotion. Their military ranks can also be reduced when they retire because of the censures, meaning a reduction in retirement pay. To conclude, the above makes clear that although no commander stood trial for charges directly stemming from the alleged command failures in the Haditha incident, this accountability type (i.e. political accountability) was at play considering the actions and decisions of the public military actors.

4.1.1.2 Legal Accountability

In November 2005, U.S. Marines were involved in the deaths of Iraqi civilians in Haditha, Iraq. Because military commanders are charged with establishing an appropriate command climate that ensures adherence to the law of war and swiftly punishes any violations, most war crimes are not only individual acts of atrocity (Mills, 2010). The marines involved in the incident, members of the chain of command, and a serving Judge Advocate were heard under Article 32, and charged with criminal offenses under the US Military's Uniform Code of Military Justice (UCMJ). On December 21, 2006, the Marines filed charges of unpremeditated murder against Staff Sgt. Frank Wuterich, Sgt. Sanick Dela Cruz, Lance Cpl. Justin Sharratt and Lance Cpl. Stephen B. Tatum. As already mentioned above, charges of dereliction of duty charges for failing to investigate were filed against Lt. Col. Jeffrey Chessani, Capt. Lucas McConnell, Capt. Randy Stone and 1st Lt. Andrew A Grayson. Grayson also faced charges of making a false official statement and of obstruction of justice (Navarre, 2006). On May 8, 2007, the military's equivalent of a grand jury proceeding, known as an Article 32 hearing, began at Camp Pendleton, California, U.S., for Capt. Randy Stone, a military attorney (Watkins, 2007, von Zielbauer, 2007). The same month, Marine Lt. Col. Jeffrey Chessani faced a military hearing on charges that he failed to report the Haditha killings. Nevertheless, the charges against all involved persons, except Frank Wuterich were dropped (Perry, 2008, 2009). The final court-martial was not completed until January 2012, over six years from the date of the incident. On January 23, 2012, Frank Wuterich took responsibility for the killings and pleaded guilty in a military court to dereliction of duty. He was demoted to private and technically sentenced to 90 days confinement but, by the terms of the plea deal he made, he did not have to serve any time in prison. The sentence means none of the marines accused in the Haditha incident had to face time in prison (Perry, 2012; Slosson, 2012). In sum, this accountability

type (i.e. legal accountability) was at play considering the actions and decisions of the public military actors.

4.1.1.3 Administrative Accountability

The U.S. military officer overseeing the investigation into the Haditha incident concluded in July 2006 that Marine leadership failed multiple times, including in pre-deployment training, in the tone set by commanders, and in how information was reported up the chain of command. Army Lt. Gen. Peter W. Chiarelli, found that commanders and staff at the regimental and division levels were negligent in how they conveyed orders about how to deal with Iraqi civilians and also in how they responded to conflicting reports they received from units about the Haditha incident (the Watt investigation report, 2006, see appendix 5) (Reid, 2006). In combination with another investigation, by Maj. Gen. Eldon Bargewell, this report is used to call the involved U.S. Marines to account for their actions (Bargewell, 2006; Ricks, 2006; White 2007). Moreover, another example of administrative accountability and its consequences can be seen in the letter of censure (i.e. the highest administrative punishment an officer can receive), that was given to a major general and two senior officers involved in the Haditha incident (Spagat, 2007). The aforementioned indicates that this accountability type (i.e. administrative accountability) was at play considering the actions and decisions of both the administrative forum and the public military actors.

4.1.1.4 Professional Accountability

The UCMJ is a statutory code that governs U.S. soldiers and military tribunals (court martials). When the U.S. command in Baghdad receives photos of dead women and children from a Time Magazine reported in February 2006, Lieutenant General Chiarelli, the Commander of Multi-National Corps-Iraq appoints an inquiry (the Watt investigation report, 2006, see appendix 5) (Reid, 2006). In March 2006, the military initiated a full criminal investigation conducted by the Naval Criminal Investigative Service (NCIS). There was also another administrative investigation, the Bargewell investigation (Bargewell, 15 June 2006). Bargewell had pursued two lines of investigation: not only whether falsehoods were passed up the chain of command, but also whether senior Marine commanders were derelict in their duty to monitor the actions of subordinates.

In reaction to the Haditha incident, in the summer of 2006, a renewed emphasis of training in the Rules of Engagement and the Laws of Armed Conflict had been publicly made by commanders at each level of the chain of command, including the Commander in Chief, President George W. Bush. President George W. Bush stated that if an investigation would turn up evidence of wrongdoing, "*those who violated the law, if they did, will be punished*". On June 1, 2006, Lt. Gen. Peter Chiarelli, commander of Multinational Corps Iraq, ordered American commanders to conduct core values training with all troops on moral and ethical standards on the battlefield. President George W. Bush stated: "*This is just a reminder - for troops in Iraq or throughout our military - that these are high standards expected of them and that there are strong rules of engagement*" (Raum, 2006).

Moreover, during the war-crime hearings in the summer of 2007, the rules of engagement were discussed in court. These rules of engagement govern when Marines can use deadly force. The defence attorneys asserted their clients were following the rules of engagement when they shot 24 Iraqi civilians, in Haditha, Iraq, in November 2005 (Perry, 2007). Concluding, the above indicates that this accountability type (i.e. professional accountability) was not immediately apparent in the actions and decisions of public military actors.

4.1.1.5 Social Accountability

The U.S. Marines report to the DoD. and the DoD reports to the general public. When the results from the Watt investigation and Bargewell investigation were in, defense officials, such as army Lt. Gen. Peter W. Chiarelli made public that Marine leadership may had failed multiple times, including in pre-deployment training, in the tone set by commanders, and in how information was reported up the chain of command (Ricks, 2006). And although there are some other incidents where the U.S. Military voluntarily provided information to the general public, the overall tendency is however, not to disclose information concerning the Haditha incident to the general public. The Marines refused to comment on the specifics of the investigation, but on May 20, 2006 a Public Affairs Officer gave TIME a first official statement related to the Haditha controversy: "*The recent serious allegations concerning the actions of Marines in combat have caused serious concern at the highest levels of the Marine Corps. As the Commandant has written, those allegations should concern all Marines. That said, the investigations are on-going, therefore any further comment at this time would be*

inappropriate. All Marines are trained in the Law of Armed Conflict and our core values of honour, courage and commitment. We take allegations of wrong-doing by Marines very seriously and are committed to thoroughly investigating such allegations. We also pride ourselves on holding our Marines to the highest levels of accountability and standards. The Marines in Iraq are focused on their mission. They are working hard on doing the right thing in a complex and dangerous environment. It is important to remember that the vast majority of Marines today perform magnificently on and off the battlefield. Tens of thousands have served honourably and with courage in Iraq and Afghanistan" (Cooper, 2006). Moreover, findings from the Bargewell report were not made public officially (White, 2007). This fact that this was not publicly released had to do with the ongoing criminal investigations of three Marines on murder allegations and four Marine officers who allegedly failed to look into the case according to the DoD. To conclude, this accountability type (i.e. social accountability) was not apparent in this case.

4.1.2 Nature of the actor

4.1.2.1 Corporate Accountability

After Time Magazine presented military officials in Baghdad with the Iraqis' accounts of the Marines' actions, the U.S. opened its own investigation, interviewing 28 people, including the Marines, the families of the victims and local doctors. According to military officials, the inquiry acknowledged that, contrary to the military's initial report, the 15 civilians killed on November 19, 2005, died at the hands of the Marines, not the insurgents (McGirk, 2006). The matter was handed over to the NCIS. According to ABC news, Pentagon officials were worried the allegations would severely damage America's effort to win the hearts and minds of the Iraqi people. The only way to minimize that damage, according to officials, was to conduct a thorough investigation, hold a fair trial and to severely punish anybody found guilty (Karl, 2006). The U.S. military investigated what happened in Haditha, and eventually acknowledged that Marine leadership had failed multiple times (Ricks, 2006), and that a squad of U.S. Marines indeed killed the 24 civilians in Haditha (Barnes & Perry, 2006). However, the U.S. Marine in general was not held accountable for the massacre of 24 Iraqi civilians, and only a small number of people were held accountable. To be specific, only U.S. Marines that were directly involved in the incident and some members of the chain of command were heard under Article 32, and

charged with criminal offenses under the US Military's Uniform Code of Military Justice (UCMJ). However, all individuals involved were spared jail time (Slosson, 2012). In sum, this accountability type (i.e. corporate accountability) was of limited relevance to the actions and decisions of public military actors.

4.1.2.2 Hierarchical Accountability

The UCMJ vests military commanders with disciplinary powers that include powers to investigate and punish. Before the Bargewell report had been released and when it still was being reviewed by Army Lt. Gen. Peter Chiarelli, the Corps did not wait for Bargewell's findings and conclusions. In advance of the advice being made public, the Marines moved to overhaul their procedures. They began to discipline the officers who supervised the squad involved in the Haditha incident. In April 2006 Maj. Gen. Richard Natonski, commanding general of the 1st Marine Division, relieved the battalion commander and company commander whose troops were involved in the incident because of a "*lack of confidence in their leadership*" (Barnes & Perry, 2006). Moreover, the Washington Post and New York Times reported in June 2006, that three Marine officers had been relieved of command (White, 2006), including Captain McConnell, for reasons not yet made public (Broder, 2006). Colonel Chessani, the highest-ranking of the Marines charged in the 2005 killings of 24 civilians in Haditha, Iraq, was relieved of his command in April 2006 (Cloud, 2006). Additionally, he had been forced into retirement in 2010. Chessani was on his third combat tour in Iraq. Before the Haditha killings, he had a string of top-notch evaluations and seemed destined for promotion and greater responsibility (Perry, 2010). Moreover, Staff Sergeant Frank Wuterich, the Marine who was the unit leader on the ground that day in Haditha, was put on the Marine Corps list for promotion from sergeant to staff sergeant in October 2005, he was not promoted eventually (Donnelly, 2006). In all, the U.S. Marines which were directly involved in the incident, and the direct members of the chain of command were heard under Article 32, and charged with criminal offenses under the US Military's Uniform Code of Military Justice (UCMJ). The accountability type (i.e. hierarchical accountability) was at play considering the actions and decisions the public military actors.

4.1.2.3 Collective Accountability

Although not directly present at the scene of crime, Marine Lt. Col. Jeffrey R. Chessani, the commander of the 3rd Battalion, 1st Marines, was charged with three counts of violation of a lawful order and dereliction of duty. Likewise, Marine Capt. Lucas M. McConnell was charged with dereliction of duty, Marine Capt. Randy W. Stone with failure to follow a lawful order and dereliction of duty, and Marine 1st Lt. Andrew A. Grayson was charged with dereliction of duty, and making a false official statement and obstructing justice (Garamone, 2006). Moreover, like mentioned before, Maj. Gen. Richard A. Huck, former commanding general of the 2nd Marine Division, received a letter of censure from the secretary of the Navy for the "*actions he took and failed to take*" in response to the killings. Col. Stephen W. Davis, the commander of a regimental combat team that was in charge of the infantry battalion involved in the Haditha episode, and Col. Robert G. Sokoloski, who was the division's lawyer and the chief of staff to General Huck, also received letters of censure. (Spagat, 2007). To conclude, it is clear that several people were collectively held accountable for their role in the incident, thus the accountability type (i.e. collective accountability) was at play considering the actions and decisions the public military actors.

4.1.2.4 Individual Accountability

The UCMJ establishes processes to ensure individual accountability of military members. On December 21, 2006, a press statement said that the Marines would charge the following (Garamone, 2006): Marine Staff Sgt. Frank D. Wuterich was charged with unpremeditated murder, soliciting another to commit an offense and making a false official statement; Marine Sgt. Sanick P. Dela Cruz was charged with five accounts of murder and one charge of a false statement; Marine Lance Cpl. Stephen B. Tatum was charged with murder, negligent homicide and assault; Marine Lance Cpl. Justin L. Sharratt is charged with three counts of murder. In addition, Jeffrey R. Chessani, commander of the 3rd Battalion, 1st Marines, was charged with three counts of violation of a lawful order and dereliction of duty, Marine Capt. Lucas M. McConnell was charged with dereliction of duty, Marine Capt. Randy W. Stone with failure to follow a lawful order and dereliction of duty, and Marine 1st Lt. Andrew A. Grayson was charged with dereliction of duty, and making a false official statement and obstructing justice. The above indicates that the accountability type (i.e. individual accountability) was at play considering the actions and decisions the public military actors.

4.1.3 Nature of the conduct

4.1.3.1 Financial Accountability

In the aftermath of the incident, the U.S. military paid \$38,000 in cash to the families of 15 of the 24 victims. The relatives of each victim were paid \$2,500 for the loss of their loved one, and the military paid an additional \$250 to the parents of two children who were injured. These condolence payments were authorized by the battalion commander, Lt. Col. Chessani. Although the U.S. military or marines were not directly called to account for on financial grounds, condolence payments were not normally made when insurgents killed civilians and this anomaly became a factor in determining what members of the chain of command may have been aware of the (initial) false reports, or should have exercised greater diligence to determine if the initial reports were false (Graham, 2007; Karl, 2006). In all, the aforementioned indicates that the accountability type (i.e. financial accountability) was applicable or relevant in the actions and decisions of public military actors as payments to victims is no indicator for financial accountability.

4.1.3.2 Procedural Accountability

The way the Haditha incident occurred and played out, has led to holding to account those involved with the incident. In the researched articles the people involved were called to account more on the basis of their judgments and the decisions they made, than on the way the incident as a whole played out. Furthermore, the investigation following the incident, and the reporting on the incident, indicated that procedures were not followed and could even be seen as an attempted cover up. Following this conclusion, at first the accountability type (i.e. procedural accountability) was not apparent in the actions and decisions of public military actors. After Times Magazine broke the story the accountability type came into play considering the investigation, the actions and decisions of the public military actors.

4.1.4.3 Product Accountability

The U.S. army is not likely to be called to account for its output. Especially when investigations are ongoing and only happened months after the incident happened. The U.S. army trains repeatedly to maintain quality of its personnel and it therefore unlikely that any mention of

holding the army to account would make it outside of the army, let alone in the press or official documents. As the above point out, the accountability type (i.e. product accountability) was not relevant to the actions and decisions of public military actors.

4.1.4 Nature of the obligation

4.1.4.1 Vertical Accountability

Vertical accountability types were mostly derived from seniors in rank being responsible and able to hold accountable their subordinates. This is thoroughly embedded in U.S. army structures and needs little mention or further elucidation as was clear in the low number of the type at play. As mentioned in an ABC article by Karl (2006) superiors attempt to find out through holding lower ranked accountable for their actions, in this case trying to cover up the killing of innocent civilians. To conclude, the accountability type (i.e. vertical accountability) was at play considering the army structure and consequent actions and decisions of the public military actors.

4.1.4.2 Diagonal Accountability

In this case intermediary organizations, such as the NCIS, reported on the misconduct of U.S. Marines and the chain of command to the U.S. military officer overseeing the investigation. Like described in section 4.1.3. based on the Watt investigation report (2006) and the NCIS investigation led by Maj. Gen. Eldon Bargewell, Army Lt. Gen. Peter W. Chiarelli found that commanders and staff at the regimental and division levels were negligent in how they conveyed orders about how to deal with Iraqi civilians and also in how they responded to conflicting reports they received from units about the Haditha incident. On this ground, the involved U.S. Marines were called to account for their actions. In all, the above indicates that the accountability type (i.e. diagonal accountability) was at play considering the involved diagonal actors, the actions and decisions the public military actors.

4.1.4.3 Horizontal Accountability

After the incident, when Tim McGirk, a Time magazine reporter asked questions to the Battalion Commander, the battalion commander asked the company commander and his executive officer to draft a written response to the reporter's questions (McGirk, 2006). It is known that these officers' answers were inaccurate. Under greater pressure and scrutiny, the storyboard's false narrative came apart. In the final NCIS report by Major General Bargewell it was concluded that Kilo Company's initial reports were "untimely, inaccurate, and incomplete." He reported that many Marines at the company and battalion levels displayed "*questionable candor*" including the squad leader and a subordinate, who "*had on four separate occasions discussed lying about specific events related to their involvement in some of the killings.*" He faulted battalion and regimental leaders for failing "to adequately scrutinize information reported by Company K that was untimely and incomplete and of obvious questionable accuracy" (Bargewell, 2006). Meaning, directly after the incident had happened the U.S. Marines did not account accurately for its actions to the general public (i.e. the international press). Additionally, as previously mentioned, results from the Bargewell report were not made public officially (White, 2007). This had to do with the ongoing criminal investigations of three Marines on murder allegations and four Marine officers who allegedly failed to look into the case according to the DoD. Only during the statement during the legal trails, the U.S. Marines gave account for their actions and behaviour to the general public. These trials were under great media attention. Finally, in reaction to his sentence, Staff Sgt. Frank G. Wuterich gave a statement regarding his role and behaviour in the Haditha incident in 2005. According to CNN a U.S. military law expert said a public explanation was needed. "*The trial counsel and convening authority has a duty to explain this pre-trial agreement in order to safeguard public confidence in the administration of justice*" said Eugene R. Fidell, senior research scholar and a visiting lecturer at Yale Law School (Wilson & Martinez, 2012). In sum, the accountability type (i.e. horizontal accountability) was not apparent in the actions and decisions of public military actors.

4.2 Nisour Square incident

On September 16, 2007 a Blackwater USA security unit (i.e. PMC) returning to base after having dropped off the U.S. official it was guarding, opened fire at Nisour Square, near Baghdad's Green Zone. The caravan consisted of four armoured vehicles with machine guns on top. When the Blackwater convoy entered the square, the convoy proceeded to drive the wrong way on a one-way street. Then the convoy came to a halt, one Blackwater guard began to fire his weapon randomly (Scahill, 2007). One driver was instantly killed. People tried to help this man and his mother. However, because the young man's body was still in the driver's seat of the automatic vehicle, it began to roll forward. Now, also other Blackwater guards responded with opening fire on the vehicle, and other vehicles on the square. Eventually, it appeared that 17 Iraqis were shot dead by the Blackwater guards.

Within hours the news spread world over. The Iraqi Government reacted with outrage, while Blackwater and its patron, the State Department, claimed its forces had been "*violently attacked*" and that Blackwater "*acted lawfully and appropriately*" (Scahill, 2007). Within twenty-four hours of the shooting at Nisour Square, Iraq's Interior Ministry announced that it was expelling Blackwater from the country. The U.S. Military opened an investigation and subsequently a team of FBI investigators was dispatched to study the incident and form some recommendations as to whether the matter provides grounds for a criminal prosecution. For further developments in this case, the reader is referred to Box 2.

Overview important dates, Nisour Square incident:

Sept. 16, 2007: Iraqi civilians are killed in downtown Baghdad. U.S. Army's First Cavalry Division arrives at Nisour Square moments after the shooting (Scahill, 2007).

Sept. 16, 2007: The American embassy in Iraq produces a "spot report" that day claiming that Blackwater had come under fire from an "estimated 8-10 persons" who "fired from multiple nearby locations, with some aggressors dressed in civilian apparel and others in Iraqi Police uniforms. The team returned defensive fire..." The report was printed on State Department stationery. However, later it turned out to be written by a Blackwater employee (i.e., Darren Hanner) (for more see: Washington Post, <http://media.washingtonpost.com/wp-srv/politics/pdf/17sept07.pdf>)

Sept. 17, 2007: The Iraqi government revokes the license of Blackwater USA in lieu of the shooting incident (Partlow & Pincus, 2007).

September 28, 2007: The New York Times reports that during the incident at Nisour Square, some of the Blackwater security team continued to fire on civilians, despite urgent cease-fire calls from colleagues (Glanz & Tavernise, 2007).

October 2007: U.S. military reports from the scene indicates Blackwater guards opened fire without provocation and used excessive force. US Military reports appear to corroborate the Iraqi government's contention that Blackwater was at fault in the incident (Raghavan & White, 2007).

October 2007: The Federal Bureau of Investigation (FBI) announces that it would be taking the lead in the investigation of the shooting incident (BBC, October 2, 2007, http://news.bbc.co.uk/2/hi/middle_east/7023416.stm).

October 4, 2007: The US House passes a bill (the 389-30 vote) that would make all private contractors working in Iraq and other combat zones subject to prosecution by U.S. courts (Flaherty, 2007).

October 2007: Condoleezza Rice, then the secretary of state, names a special panel to examine the Nisour Square episode and recommend reforms (Risen, 2014).

October 11, 2007: Blackwater was sued by Iraqi civilians (CNN, <http://edition.cnn.com/2007/US/law/10/11/blackwater.suit/>).

October 23, 2007: Patrick Kennedy, the State Department official who led the special panel, tells reporters that the panel had not found any communications from the embassy in Baghdad before the Nisour Square shooting that raised concerns about contractor conduct (Risen, 2014).

November 2007: The United Nations (UN) released a two-year study stating that private contractors, although hired as "security guards", are performing military duties (UN, Press release, November 7, 2007, <http://www.un.org/press/en/2007/gashc3902.doc.htm>).

November 2007: The New York Times quotes FBI officials as saying that the killings of at least 14 Iraqi civilians had been unjustified (Johnston & Broder, 2007).

December 4, 2008: The Justice Department indicts five men who were Blackwater employees and members of Raven 23 at Nisour Square. They are: Dustin Laurent Heard; Paul Slough; Nick Slatten; Donald Ball; and Evan Liberty. The government brought civilian charges against six other Blackwater employees. One, Jeremy Ridgeway, pleads guilty to manslaughter, testifies against the others. Charges are dropped against another man, Donald Ball. Three other members of the Blackwater team are granted limited immunity by the government to testify

Box 2. Overview important dates of the developments regarding the Nisour Square incident (2007).

4.2.1 Nature of the forum

4.2.1.1 Political Accountability

Just after the shooting at the Nisour Square questions were raised over under what law the private military contractors were accountable. This question was a consequence of a law that rendered security firms and its employees' immune to Iraqi law. The prime minister of Iraq,

Nuri Kamal al-Maliki, expressed his anger over the deaths. In turn, in order to diffuse the situation, Secretary of State Condoleezza Rice planned to contact the prime minister to express her regret of the incident and announce a formal investigation (Tavernise, 2007). The State Department started an investigation assisted by the U.S.-led coalition in Iraq. Representative Janice Schakowski pushed for legislation that forced the Pentagon and State Department to provide account on their dealings with security contractors. Additionally, due to the U.S.-Iraq relation being severely strained by the incident, Iraq wanted to ban Blackwater. The chairman of the House Oversight and Government Reform Committee Henry Waxman pointed out that renewing the contract for at least another year was a mistake. Patrick F. Kennedy, the undersecretary of state for management commented that the U.S. could not operate without private security firms (Risen, 2008). The Blackwater contract was not cancelled. In relation to the case, State Department Inspector General Howard J. Krongard resigned from his position after his department accused him of thwarting investigations. This happened after having recused himself from the Blackwater investigation over claims of conflict of interest, as his brother recently joined the Blackwater board of advisory (Richter, 2007). Shortly after the Nisour Square event, the assistant Secretary of State for diplomatic security resigned, leaving the contract with Blackwater in Iraq unmodified in place (Zielbauer & Glanz, 2007). In December 2010, Blackwater, then renamed to Xe, sought the dismissal of the lawsuit as it claimed the U.S. government should be the ones that were accountable for the shooting in 2007 (Breen, 2010). Also important to mention is the fact that the founder and director of Blackwater, Erik Prince, was never prosecuted or convicted (i.e. never officially held accountable) for the murder of Iraqi civilians in the Nisour Square incident. Prince said his contractors were just following the rules dictated to them by the State Department, which he said stipulated that his guys had to drive "*washed and waxed Chevy Suburbans between point A and point B every day with lights and sirens on*" (Hsu & Martin, 2015). The above makes clear that the accountability type (i.e. political accountability) was at play considering the actions and decisions of the private military actor Blackwater.

4.2.1.2 Legal Accountability

Reports of investigations of the Nisour Square incident by the U.S. Army labelled the behaviour of Blackwater personnel 'criminal' (Raghavan & White, 2007). On October 11, 2007, Blackwater was sued by Iraqi civilians. It was filed in pat under the Alien Tort Statute, which allows for litigation in U.S. courts for violations of fundamental human rights committed

overseas. However, citing the firm's blanket legal immunity under Coalition Provisional Authority Order 17, an Iraqi judge rejected the case (Fainaru & al-Izzi, 2007). In addition, right after the incident happened questions on whether the private contractors could actually be brought to U.S. trial were posed. When Secretary of State Condoleezza Rice send a team to Baghdad, Iraq, led by diplomat Patrick Kennedy, to review the department's private security force in the aftermath of the incident at Nisour Square, the team returned with the conclusion that it "*is unaware of any basis for holding non-DoD contractors accountable under U.S. law*" (Scahill, 2007). Private contractors were freed of Iraqi jurisdiction through Order 17 of the Provisional Authority, as well as military jurisdiction as they were under with privately owned companies (Lardner, 2007). According to U.S. civilian law in 2007, the Military Extraterritorial Jurisdiction Act of 2000 provides for prosecution in federal court of U.S. contractors for crimes committed overseas. However, this law only applies to contractors working for or directly accompanying the U.S. military. At that time, Blackwater worked for the State Department in Iraq as 'diplomatic security' which is separate from military operations (Scahill, 2007). Moreover, regarding military law, in 2006, Sen. Lindsey Graham inserted an amendment in the Defense Authorization Act that placed all U.S. contractors under the Uniform Code of Military Justice, the court-martial system. However, until 2007 this option had not been tested, and the DoD showed no desire to use this option against any security contractors at that time (Scahill, 2007). Additionally, international efforts, such as the Montreux Document, are voluntary agreements, not an international treaty, making it impossible to prosecute a company or person under that. The Military Extraterritorial Jurisdiction Act (MEJA) (2000) extends non-military federal court jurisdiction, but only for 'persons employed by or accompanying the Armed Forces outside the U.S.' for crimes punishable by more than one year in prison (Military Extraterritorial Jurisdiction Act, 2000). However, no law enforcement assets were ever added to aid in implementing it and it relied on investigations by existing military investigators, because it was originally designed for persons that resided or worked overseas at military bases. However, MEJA, was successfully applied to contractors in a few cases in Iraq (Tiefner, 2009), and eventually to Blackwater in 2014 and 2015.

Nevertheless, the Blackwater CEO, Erik Prince, asked for stricter rules and regulation in the private security branch. He claimed that almost all contractors were prior military and law enforcement and were actually used to the accountability for their actions (Scott, 2007). There is a clear distinction between who was legally accountable and who was not; the legal accountability regarding the incident lay not with Blackwater, but with its contractors (Apuzzo

& Jakes Jordan, 2008). More than thirteen months after the incident, five guards were indicted for their role in the incident (Jakes Jordan & Apuzzo, 2008). The five guards were charged with 14 counts of manslaughter and 20 counts of attempted manslaughter.

The call for legal accountability might have been in vain, as many statements taken from Blackwater guards were rendered ‘tainted’. The statements made were compromised because the guard were granted immunity by the State Department officials that investigated the incident (DeYoung, 2007). This mistake by the prosecutors, among other mistakes, led to the dismissal of the case against five Blackwater guards (Apuzzo, 2009). In response to the dismissal Vice President Joe Biden announced the U.S. government would appeal the decision by the Judge (Abdul-Zahra, 2010). This turned out to be a successful appeal as the four Blackwater guard were sentenced. Nicholas Slatten, the person that started shooting and in doing so triggering his colleagues, was sentenced to life in prison. His three colleagues got 30-year jail sentences (Apuzzo, 2015). The fifth guard was sentenced to 12 months and a day in jail as he pleaded guilty and testified against his former colleagues (Hsu, 2015). In sum, the extensive legal proceedings following the incident show that the accountability type (i.e. legal accountability) was at play considering the actions and decisions of the private military actor Blackwater.

4.2.1.3 Administrative Accountability

Blackwater had its contract with the State Department’ Bureau of Diplomatic Security. This was the direct supervisor of Blackwater and their officials were the first to make sense of what had happened at the Nisour Square in Bagdad. The 2007 report by the Democratic majority members of the House Committee on Oversight and Government Reform literally states: “The State Department took a similar approach upon receiving reports that Blackwater shooters killed an innocent Iraqi, except that in this case, the State Department requested only a \$5,000 payment to *"put this unfortunate matter behind us quickly"*” (see section 4.4.1.). This means that rather than calling the responsible guards of Blackwater to account, the Department of State asked Blackwater to make monetary payments rather than to insist upon accountability or to investigate Blackwater for potential criminal liability. Moreover, it is common practice for investigators to grant immunity to witnesses in order to obtain statements in a timely and honest fashion. In doing so, the State Department unwittingly create a huge hurdle for prosecutors, who now lost access to the statements made and could not force Blackwater guards to provide additional statements (Ryan, 2010). It was the administrative function of the State

Department' Bureau of Diplomatic Security to exercise independent and exterior supervision. Yet, they allowed Blackwater to repair and repaint four of their armoured vehicles within days of the shooting (Jakes Jordan & Apuzzo, 2008). Furthermore, in the contract the State Department had with Blackwater, it did not allow documents to be shared without prior notification to the department. This led to a lot of delay when Blackwater was called to account as a contractor for the U.S. government (Simmons, 2007). Concluding, the accountability type (i.e. administrative accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.1.4 Professional Accountability

The UCMJ initially did not cover contractors, such as Blackwater (Shah, 2014). Moreover, at that time of the incident, no clear UCMJ jurisdiction was available. And an international effort, such as the Montreux Document, is a voluntary agreement, not an international treaty, making it extremely hard to prosecute a company or an individual under that. However, the State Department contract with Blackwater includes a provision about the use of force: *“Deadly force will only be used after all non-violent efforts are exhausted to stop a life threatening disturbance at any post manned by guards... The use of deadly force represents the last resort by a guard for the restoration of order”* (U.S. Department of State, 2005). In this document, convoys are not mentioned, even though protecting convoys was the major task of duty of Blackwater in Iraq. Moreover, the Defense Department issued a rule establishing procedures to ensure that security contractors are in compliance with Federal Acquisition Regulations (FARs) (U.S. DoD, 2006): *“It is the responsibility of the combatant commander to ensure that the private security contract mission statements do not authorize the performance of any inherent Governmental military functions, such as pre-emptive attacks, or any other types of attacks. Otherwise, civilians who accompany the U.S. Armed Forces lose their law of war protections from direct attack if and for such time as they take a direct part in hostilities.”* In sum, the above indicates that the accountability type (i.e. professional accountability) was at play in the actions and decisions of the private military actor Blackwater.

4.2.1.5 Social Accountability

Regarding the governance's shift of public functions, such as combat-zone security, to the private sector, implicates that 'the degree to which citizens can meaningfully affect policy and administration' are limited (Box et al., 2001). In return, Blackwater does not have to report to the general public. Blackwater only reports to the State Department, and not to the U.S. Army and Marines. Moreover, their location outside the traditional command structure of the U.S. military leaves oversight to the agencies and officials that signed the contract. The operational and political position of Blackwater in 2007 insulated it from effective public monitoring and review (Box et al., 2001). The aforementioned indicates that this accountability type (i.e. social accountability) was of limited relevance to the actions and decisions of the private military actor Blackwater.

4.2.2 Nature of the actor

4.2.2.1 Corporate Accountability

Reports of investigations of the Nisour Square incident by the U.S. Army and the Federal Bureau of Investigation (FBI) found Blackwater responsible for the deaths and injuries of Iraqi civilians (Johnston & Broder, 2007). On December 31, 2008, a status of forces agreement between the U.S. and Iraq went into effect. According this agreement "*Iraq shall have the primary right to exercise jurisdiction over United States contractors and United States contractor employees*" (U.S.-Iraq SOFA 2008). Although some changes were implemented by the U.S. government and the policy was changed, in practice little changes could be seen. Five weeks after this agreement, the Iraqi Interior Minister refused to give Blackwater a license to continue operating in Iraq, but the U.S. did not replace Blackwater and the company continued to guard convoys for another year (Williams, 2009). In September 2009, the State Department agreed to an extension for an indeterminate period of its contract with Blackwater in Iraq (Radia, 2009).

According to a report by Human Rights First (2010), the Nisour Square incident triggered several positive reforms in U.S. law and policy concerning private security contractors. According to this document, in the three years since the incident "*Congress has mandated greater agency oversight and coordination over private security and other contractors in Iraq and Afghanistan, and agencies have, among other things, defined their*

responsibility for contractor oversight, increased their coordination over contractors, and established common principles governing contractor conduct". For instance, regarding the legal accountability, shortly after the incident, the House passed by a vote of 389-30 the MEJA (2007), to clarify and expand criminal jurisdiction over contractors abroad. And maybe most crucially, on January 1, 2009, the Status of Forces Agreement between the U.S. and Iraq (SOFA, 2009) effectively reversed the presumptive immunity granted to contractors in Iraq pursuant to Coalition Provisional Authority Order No. 17. Moreover, regarding professional accountability, in reaction to the incident at Nisour Square, the Department of State and DoD established coordinated response for serious PMC incident reporting in Iraq, 2007 (Memorandum of Agreement, MOA, 2007) (for a complete overview of all implemented changes by the U.S. government after the incident, see Human Rights First, 2010). The above indicates that the accountability type (i.e. corporate accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.2.2 Hierarchical Accountability

Although the U.S. Secretary of State Condoleezza Rice ordered tighter controls on Blackwater including putting cameras on its convoys, and the State Department also planned to send diplomatic security agents to accompany each convoy protected by Blackwater guards, and the persons directly involved were charged in 2008 and eventually prosecuted in 2014 and 2015, contractors have no true 'commanders' and carry with them no internal law enforcement because they are nongovernmental (Kennedy, 2007; Report GAO-10-1, U.S. GOV. Accountability office, 2009). Moreover, an investigation by the House Oversight and Reform Committee in 2007 (see Appendix 1), revealed a very loose command structure for Blackwater, which is an organization with a military mission. The committee revealed that Blackwater personnel were not employees of the truncated corporation, but independent contractors hired for the term of the mission for which the State Department had hired the company. This means that the Blackwater security guards were in essence subcontractors. Indeed, also guards that were involved in the Nisour Square incident worked on this basis. The State and Defense Department were aware of these loose connection between corporate officials and armed guards when they hired Blackwater (Report GAO-10-1, U.S. GOV. Accountability office, 2009). This contractor arrangement can be seen as particularly troubling, because according to the investigation by the House Oversight and Reform Committee, as a condition of its contract

with its personnel, Blackwater prohibited the guard from disclosing any information about Blackwater to ‘any politician’ or ‘public official’ (Simmons, 2007). In sum, the accountability type (i.e. hierarchical accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.2.3 Collective Accountability

Since contractors have no true ‘commanders’ (see also section 4.2.2.) in the Nisour incident, no persons were held accountable for events due to ‘their rank’ or ‘supervisory role’. Like already mentioned in other sections (see 4.2.1. and 4.2.2.), although Blackwater is held responsible for the deaths and injuries at Nisour Square in 2007, a policy changes were made in reaction, in practice little changes were made as Blackwater was still in practice in Iraq in the years following the incident, and only the guards directly involved in the incident were prosecuted. Furthermore, the CEO Erik Prince was called to account for the several incidents that happened at the hand of the company he ran, yet he dismissed these claims as the risk of doing business in Iraq in combat situations (Lardner, 2007). The aforementioned makes clear that the accountability type (i.e. collective accountability) was no directly evident to the actions and decisions of the private military actor Blackwater.

4.2.2.4 Individual Accountability

The MEJA (2000) extends non-military federal court jurisdiction, and was eventually successfully applied to Blackwater guards involved in the Nisour Square incident. Three former employees of Blackwater, that were directly involved in the incident were sentenced to 30 years in prison and a fourth received a life sentence (Woolf, 2015). This clearly shows that the accountability type (i.e. individual accountability) was at play considering the actions and decisions of the private military actor Blackwater.

4.2.3 Nature of the conduct

4.2.3.1 Financial Accountability

According to the investigation by the Committee on Oversight and Government Reform of 2007, “*using Blackwater instead of U.S. troops to protect embassy officials is expensive and is a considerable cost to the U.S. taxpayers*” (p.3). Blackwater charges the government \$1,222 per day for the services of a private military contractor. This is equivalent to \$445,000 per year, over six times more than the cost of an equivalent U.S. soldier. In total, Blackwater has received over \$1 billion in federal contracts from 2001 through 2006, including more than \$832 million under two contracts with the State Department to provide protective services in Iraq. Nevertheless, Blackwater is not directly called to account for on financial grounds. In all, this accountability type (i.e. financial accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.3.2 Procedural Accountability

Blackwater was held accountable for the way the incident occurred. Yet, this was more with a focus in the employees of Blackwater, instead of the company as a whole. The contractors were held to account and gave account on their choices and decisions prior to, during and after the incident occurred. In the eyes of the Blackwater contractors, they saw no wrongdoing in their actions or behaviour and felt that they had followed the correct procedures. Concluding, this accountability type (i.e. procedural accountability) was at play considering the actions and decisions the private military actor Blackwater.

4.2.4.3 Product Accountability

In regards to Blackwater it is interesting to see that so little emphasis is on the quality delivered. This might be due to the confidentiality of government contracts. Or, since Blackwater boasted with its 100% safety guarantee of its services delivered, albeit with use of (excessive and) dominant display of force. The aforementioned indicates that the accountability type (i.e. product accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.4 Nature of the obligation

4.2.4.1 Vertical Accountability

Blackwater is hired by the Department of State, but the Department of State did not wield power over Blackwater to call the company to its account. However, the Department of State did have the ability to revoke the contract. Indeed, like already mentioned, the U.S. government decided it would not renew Blackwater's license to operate in Iraq in 2009 (Risen, 2008). However, the Blackwater contract was not cancelled, meaning Blackwater continued to guard convoys for another year (Briefing by Greg Starr, acting assistant secretary of state for diplomatic security, 2008). Additionally, inspection of official documents also suggests that the Department also not really intended to. For instance, the 2007 report by the Democratic majority members of the House Committee on Oversight and Government Reform concluded *"There is no evidence in the documents that the Committee has reviewed that the State Department sought to restrain Blackwater's actions, raised concerns about the number of shooting incidents involving Blackwater or the company's high rate of shooting first, or detained Blackwater contractors for investigation"* and *"The State Department took a similar approach upon receiving reports that Blackwater shooters killed an innocent Iraqi, except that in this case, the State Department requested only a \$5,000 payment to "put this unfortunate matter behind us quickly"*. This means that rather than calling Blackwater to account, the Department of State asked Blackwater to make monetary payments rather than to insist upon accountability or to investigate Blackwater for potential criminal liability. In sum, the above indicates that the accountability type (i.e. vertical accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.4.2 Diagonal Accountability

Immediately after the incident, the negative media coverage of Blackwater's behaviour in the incident and in Iraq in general, grew extensively. This eventually motivated multiple Congressional committees, such as the House Committee on Oversight and Government Reform (see Appendix 1), the Senate Homeland Security and Government Affairs Committee (Dickinson, 2008), the House Committee on Armed Services (U.S. Senate Committee on Armed Service, 2010), to hold hearings. Although the report by the House Committee on Oversight and Government Reform concluded that *"Blackwater's use of force in Iraq is*

frequent and extensive, resulting in significant casualties and property damage”, and the report also sharply criticizes the Department of State’s enabling attitude toward Blackwater’s behaviour in Iraq, the Department of State apparently did not call Blackwater to account. In contrast, after the Nisour incident, Blackwater was instructed by the Department of State to make monetary payments in order to “*put the matter behind us*” (House Committee on Oversight and Government Reform, 2007, Appendix 1, p.2). To conclude, this accountability type (i.e. diagonal accountability) was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.2.4.3 Horizontal Accountability

Regarding the governance’s shift of public functions, such as combat-zone security, to the private sector, implicates that ‘the degree to which citizens can meaningfully affect policy and administration’ are limited (Box et al., 2001). Moreover, their location outside the traditional military command structure leaves oversight to the agencies and officials that signed the contract (i.e. U.S. State Department and Blackwater). The operational and political position of Blackwater in 2007 insulated it from effective public monitoring and review (Box et al., 2001). In all, this accountability type (i.e. horizontal accountability) was of limited relevance in this case regarding the actions and decisions of the private military actor Blackwater.

4.3 Comparison

In Table 2, an overview is given of accountability types present in the documents that were included in the present research, that report on the listed accountability types for the Haditha incident and Nisour Square incident.

	Haditha	Nisour Square
<i>The nature of the forum</i>		
Political accountability	+	+
Legal accountability	+	+
Administrative accountability	+	-
Professional accountability	+	-
Social accountability	-	n/a
<i>The nature of the actor</i>		
Corporate accountability	-	-
Hierarchical accountability	+	-
Collective accountability	+	-
Individual accountability	+	+
<i>The nature of the conduct</i>		
Financial accountability	n/a	-
Procedural accountability	+	+
Product accountability	n/a	-
<i>The nature of the obligation</i>		
Vertical accountability	+	-
Diagonal accountability	+	-
Horizontal accountability	-	n/a
<i>Legend:</i>		
+ indicates the accountability type was present		
- indicates the accountability type was not present		
n/a indicates the accountability type was not applicable		

Table 2. Identified accountability types for the Haditha incident and Nisour Square incident

4.3.1 Nature of the forum

4.3.1.1 Political Accountability

From the analysis it became evident that this type of accountability seemed to be at play considering the actions and decisions of both the public military actors as well as the private military actor Blackwater. Nevertheless, considerable differences in political accountability were seen between the Haditha and the Nisour Square incident. To be specific, in response to the Haditha incident in 2005, not only the direct U.S. marines involved at the scene in Haditha were held accountable, but also military leaders in the chain of command (i.e. Maj. Gen. Richard Huck, Col. Stephen Davis and Col. Robert Sokoloski) were called to account and military leaders were also removed from power (i.e. they all received the most severe form of censure available). Gen. James Conway, the commandant of the Marine Corps, said sanctions were necessary: *"While these three officers have served their country and Corps exceedingly well for decades, their actions, inactions and decisions in the aftermath of the Haditha incident did not meet the high standards we expect of Marine senior officer leadership"* (Roberts & Gray, 2007). In contrast, with respect to the Nisour Square incident in 2007, it became clear that only the Blackwater guards that were directly involved at the scene at the Square were called to account. Individuals at the top of the private military organization were never officially held accountable (e.g. Blackwater's founder and CEO at that time, Erik Prince, was never prosecuted or convicted) for their role in the Nisour Square incident (Hsu & Martin, 2015). Nevertheless, because of criticism, the head of the Department of State's Bureau of Diplomatic Security resigned shortly after the incident. However, it should be mentioned that he was never officially held accountable. The above suggests that the effect of the Nisour incident on Blackwater's and State Department's chain of command was minimal, whereas the effect of the Haditha incident on the U.S. Marine's chain of command was considerable.

4.3.1.2 Legal Accountability

Both U.S. Marines and Blackwater guards were eventually prosecuted for their involvement in the Haditha incident, and Nisour Square respectively, and went on trial. Six years after the incident in Haditha, the U.S. military prosecution ended with none of the Marines sentenced to jail (Slosson, 2012). In 2012 Staff Sergeant Frank Wuterich was the only one who pleaded guilty. As part of his guilty plea, Wuterich accepted responsibility for giving negligent verbal

instructions to the Marines under his command when he told them to "*shoot first and ask questions later*" (Slosson, 2012). As a result, Sergeant Wuterich received a demotion to the rank of private, the lowest rank in the service. Intriguingly, compared to the verdicts in the Nisour case, the sentences in the Haditha incident were remarkably mild. Because, although the law enforcement was much more unclear regarding the criminal offenses committed by the contractors of Blackwater in the Nisour incident, in the Nisour trial eventually one Blackwater guard was sentenced to life in prison, and three other guards were sentenced to 30 years in prison. Additionally, it should be mentioned that in the Nisour Square case, only the low level foot-soldiers of Blackwater were being held accountable. Erik Prince, CEO at the time of the Nisour Square incident, and other Blackwater executives were not held legally or politically accountable, and are still active in the private intelligence industry (Scahill, 2014). To resume the results for legal accountability, none of the U.S. officials from the Bush administration, who were in the end responsible for hiring Blackwater and other PMCs, were held accountable. None of them was being forced to answer for 'their role in creating the conditions for the Nisour Square shootings' as stated by Scahill (2014). However, lower-ranking guards who were directly involved in the Nisour Square incident were convicted. In sum, this accountability type (i.e. legal accountability) was at play considering the actions and decisions of the public military actors, and of the private military actor Blackwater.

4.3.1.3 Administrative accountability

Administrative accountability comprised of a twofold of types, either a superior within the DoD or Blackwater calling a subordinate or employee to account or an administrative body that exercised independent and exterior administrative and financial supervision. From the analysis it can be concluded that in the aftermath of the Haditha incident, involved U.S. Marines were called to account for their actions on November 19, 2005. Administrative bodies exercised independent and exterior administrative supervision and investigation (e.g. the Watt investigation report, 2006; Bargewell report, 2006; the letters of censure) (Bargewell, 2006; Reid, 2006; Ricks, 2006; Spagat, 2007; White 2007). In contrast, as the previous section (4.2.1.3) suggested, this was not the case regarding the involvement of Blackwater guards in the Nisour Square incident. The State Department had the administrative function to exercise independent and exterior supervision over Blackwater in Iraq (Risen, 2010), however, it failed to do so, evidenced by the 2007 Democratic majority members of the House Committee on Oversight and Government Reform Report (Ryan, 2010). Concluding, administrative

accountability was apparent in the actions and decisions of the U.S. Marines and members of the chain of command that were involved in the Haditha incident (i.e. public military), whereas this type of accountability was absent in the actions and decisions of the private military actor Blackwater.

4.3.1.4 Professional accountability

Professional accountability is about adhering to the code of conduct and being held to account accordingly, as well as following the rules for reporting and investigating an incident. The analysis indicated that the U.S. military eventually followed rules for reporting and investigating serious incidents, and U.S. military supervisors monitor and enforce standards, despite the initial lack of interest to investigate the incident properly directly after the incident had happened (White, 2007). Moreover, the previous sections also made clear that the U.S. Marines claimed to adhere to the code of conduct put forward by the U.S. DoD. Nevertheless, there seemed to be a discrepancy between the training the marines received at that time and the rigidly enforcement of the rules of engagement. Additionally, looking at the facts, it can be concluded that the Marines' actions were completely outside the U.S. military's rules of engagement and codes of conduct (Savage & Bumiller, 2012). However, obviously, the Marines were not held accordingly in court, as it was concluded that they had to fight an 'unscrupulous enemy' that used unconventional warfare tactics (White, 2007).

Regarding Blackwater, the previous sections indicated that the accountability type (i.e. professional accountability) was not immediately apparent in their actions and decisions regarding the Nisour Square incident, since the UCMJ initially did not cover contractors, and no clear UCMJ jurisdiction was available at the time of the incident (Shah, 2014).

4.3.1.5 Social Accountability

No major differences were seen in this accountability type between the U.S. Marines and Blackwater. Both actors never reported voluntarily to the general public about the conducts. Moreover, regarding the actions of the PMC Blackwater, it seems that the outsourcing of public functions, such as combat-zone security, eliminates citizen oversight and accountability because citizens and U.S. military are not direct consumers or beneficiaries of the service being provided.

4.3.2 The nature of the actor

4.3.2.1 Corporate accountability

The previous sections indicated that the U.S. military acknowledged that U.S. Marine leadership had failed multiple times and that U.S. Marines were responsible for the deaths of Iraqi civilians in Haditha. Subsequently, procedures and protocol were followed to hold a trial. However, only U.S. Marines that were directly involved in the incident and members of the chain of command were heard under Article 32, and charged with criminal offenses under the US Military's UCMJ. Eventually, no one involved was sentenced to jail time (Slosson, 2012).

Regarding the Nisour Square case, the U.S. Army held Blackwater responsible for the deaths and injuries of Iraqi civilians. However, although Blackwater is held responsible for the deaths and injuries at Nisour Square in 2007 and policy changes were made in reaction, shortly after the incident, in practice little changes were made as Blackwater was still in practice in Iraq in the years following the incident. Moreover, no legal judgements were made against the company Blackwater (Human Rights First, 2011). Because the Nisour Square incident created a political firestorm in Iraq and in the United States, as a response positive reforms were made in U.S. law and policy concerning PMCs (Human Rights First, 2010, 2011).

In sum, this accountability type (i.e. corporate accountability) was of limited relevance to the actions and decisions of both the public and private military.

4.3.2.2 Hierarchical accountability

The hierarchical accountability type is about the ability to call to account subordinates for their actions, subordinates being removed from office and an employee having his tasks minimized or constrained. Analysis of the data shows that the U.S. military showed more hierarchical traits than Blackwater. The superiors within the DOD called subordinates to account and in some instances people were removed from office or rank and the U.S. military as well as constraining tasks of soldiers and officers (Zielbauer, 2007; Slosson, 2012). As mentioned in 4.3.1.2, throughout the chain of command people were called to account for their actions and decisions and render account on how they managed their subordinates. In contrast, Blackwater showed little hierarchical characteristics, even though it was mostly comprised of ex-military personnel. The Nisour Square incident involved a security detail of Blackwater that responded

to a threat, the incident was over within an hour and only contractors of Blackwater were involved. These contractors were hierarchically equal and bore no superiority over one another. Furthermore, they were mostly responsible for their own actions and decisions as Blackwater only hired them based on a contract instead of putting them on their payroll, avoiding direct accountability.

From the analysis, it can be concluded the structural makeup of the U.S. military ensures that disciplinary actions are available to the superiors. The accountability type (i.e. hierarchical accountability) is at play because of this structural makeup and the responsibilities that come with it. This seemed not to be the case with Blackwater. Blackwater, a private company, worked within the confines of its contract, and operated with its own standards and measure of punishment, if any. Moreover, the analysis has shown there is insufficient control carried out by the superiors or the people they work for, i.e., the State Department. In sum, the accountability type was not evident in the Nisour square incident.

4.3.2.3 Collective accountability

When looking at the collective accountability type, indicators are whether or not one person is being made solely accountable for any choices or decisions made and whether a single employee was held accountable, rendering others free of accountability. The structure of the U.S. Army automatically holds higher ranked personnel responsible for the actions of their subordinates. Consequently, they are called to account when incidents occur and are responsible for reporting and initiating an investigation into the incident. This was no different with the Haditha case, where Lt. Col. Jeffrey Chessani was not at the scene of the killings nor did he give the fateful order to "clear" the houses near the bomb explosion. Yet, he was charged with failure to conduct a thorough investigation, Perry (2010) reported.

On the other hand, the rank and role played in relation to the incident showed to be a dominant and important type at play indicating collective accountability. In the Nisour Square incident the collective accountability type was not as evident. Some mention was made in relation to Blackwater being held accountable as a whole as Mikkelsen (2007) writes: "The Iraqi government has accused Blackwater of deliberately killing the 17". Other mention was made in relation to the CEO, Erik Prince, being solely accountable as Markson (2009) states: "*The person responsible for these deaths is Mr. Prince*" Susan L. Burke, an attorney for the plaintiffs, said in U.S. District Court in Alexandria. "*He had the intent, he provided the weapons, he provided the instructions, and they were done by his agents and they were war*

crimes” she continued. In a different structure such the rank of an individual is the key type in being held collectively accountable the Haditha incident showed that role and rank was a collective accountability type at play.

In sum, the accountability type (i.e. collective accountability) in the Haditha incident through the structure of the army and the responsibilities that higher ranked officers hold over their subordinates. Furthermore, the accountability type was of not predominantly evident in the actions and decisions of the private military actor Blackwater or the calling to account by the U.S. government.

4.3.2.4 Individual accountability

The individual accountability type is about the role, input and output a person had in the incident. In both cases persons involved were individually held accountable for their actions and decisions. In the Haditha case the people involved were charged based involvement and outcome.

A similar picture can be discerned when analysing the Nisour square case, where the federal investigation revealed that two of the Blackwater guards did most of the shooting. And were consequently indicted as Apuzzo and Jakes Jordan (2008) stated: “*in a 35-count, the U.S. Justice Department charged the men with 14 counts of manslaughter, 20 counts of attempt to commit manslaughter, and weapons violations*”. The same applies to the people involved in the Haditha incident, where five years later, after all directly involved had relieved of any charges, Lt. Col. Jeffrey Chessani, the highest-ranking of the eight Camp Pendleton Marines was forced into retirement (Perry, 2010). The reason for this was that he had shown "substandard" performance and should be required to retire but with no loss in rank. Derived from the sections above, it can be concluded that each person directly involved in the Haditha and Nisour incident is held accountable on the basis of their role and involvement in the event. In sum the accountability type (i.e. individual accountability) was at play considering the actions and decisions the public military actors. Furthermore, the accountability type was also at play in the Nisour square incident.

4.3.3. The nature of the conduct

4.3.3.1 Financial accountability

Blackwater was called to account on financial grounds, while this was not the case when it came to the U.S. army. Nor were they, Blackwater, called to account on financial contractual obligations their employer, the government. The cost of a contractor was questioned in comparison to the cost of a regular soldier. During a hearing it was said Blackwater charges the government \$1,222 each day for a single security contractor, which works out to \$445,000 on an annual basis. That's six times the cost of a U.S. soldier, the report said Erik Prince, the founder and then CEO of Blackwater, "*disputed the math that concludes security contractors cost far more than American forces to protect U.S. diplomatic personnel.*" He continued: "*there's a large amount of expensive training for military personnel that the government pays for, but is not calculated in these unflattering estimates of what his company charges. That sergeant doesn't show up naked and untrained*" (Lardner, 2007). To conclude, regarding the Haditha incident in 2005 and the Nisour Square incident in 2007, both parties were not called to account for financial grounds. The accountability type (i.e. financial accountability) was not applicable to the public military actors involved in the Haditha incident. Furthermore, this accountability type was not immediately evident in the instances that financial grounds were used to call to account the private military actor Blackwater or its contractors.

4.3.2.2 Procedural accountability

When looking at the way procedures played out and when called to account for decisions and judgments made, both public and private military cases show that this accountability type (i.e. procedural accountability) is present. In both the Haditha incident and the Nisour Square incident, U.S. Marines and officers in the chain of command, as well as Blackwater guards were called to account to explain how and why things escalated and why they made the decisions they made. Since this was done in court, for the sake of brevity, the reader is referred to the sections 4.1.2, and additionally 4.1.1. and 4.1.4.

In the Haditha case, initially, little accounts were given on how the incident played out. Only after Time Magazine made inquiries about the incident people were called to account. In the initial inquiry by Tim McGirk, a Time Magazine reporter, it is evident that the people involved did not see what happened in Haditha as an incident or something worth investigating

further, especially since it might undermine the American War effort. An excerpt of the opening questions that led to the opening of the Haditha case as mentioned by Zielbauer (2007): *“Is there any investigation ongoing into these civilian deaths, and if so have any marines been formally charged? Memo: No, the engagement was bona fide combat action. ... By asking this question, McGirk is assuming the engagement was a LOAC [Law of Armed Conflict] violation and that by asking about investigations, he may spurn a reaction from the command that will initiate an investigation.”* After the lid was lifted on the Haditha marines involved in the incident did speak out and give account. An example of a U.S. Marine giving account on the way a part of the Haditha incident played out as stated by Hoffman (2007): *“In a statement dated March 19, 2006, Sharratt told investigators he believed the entire area was hostile and that he could therefore “use any means necessary and my training to eliminate the hostile threat.” He described entering a house after the blast and shooting an armed man in the face. Sharratt told investigators he then went into a bedroom, firing at a man holding an AK-47 rifle and subsequently shooting at others in the room after the armed man fell.”*

As with many judicial proceeding actors are called to account for the things they are accused of. This was no different for either the U.S. Army or Blackwater. What both cases had in common is that the actors held accountable saw nothing wrong in their conducts. Only later did the U.S. marines commit to seeing they were wrong and apologised for what they had done. In sum, at first the accountability type (i.e. procedural accountability) was not apparent in the actions and decisions of public military actors, due to it not being acknowledged as an incident where innocent human lives might have been lost. After Times Magazine broke the story the accountability type came into play considering the investigation, the actions and decisions of the public military actors. On the other hand, Blackwater, nor Xe or the Blackwater guards ever did apologise for their wrongful behaviour in light of how procedures were followed and investigations were conducted. The shooting incident is being scrutinized in at least three separate investigations (Fainaru & Raghaven, 2007). Furthermore, some U.S. officials questioned why the Blackwater team decided to evacuate the principal (i.e. person that they were protecting) and return to the Green Zone, rather than remaining inside the compound. According to Fainaru & Raghaven (2008) one U.S. official stated: *“It doesn't make sense, why would they go back out there when they were already safe?”* Concluding, this accountability type was also at play in the Nisour square case, save for the fact that Blackwater or its contractors never believed or acknowledged that they did something wrong.

4.3.3.3 Product accountability

The product accountability type refers to the quality of products or services delivered and when something is not up to scratch, the deliverer of said products or services can be called to account. The product accountability type got little mention in the dataset. Blackwater was called to account for its quality of services delivered. Blackwater's contract was about keeping diplomatic personnel safe, and in the end that is what they achieved. During a hearing by the House Oversight and Government Reform Committee, Lardner (2007) reported that, Rep. Henry Waxman said: "*Privatizing is working exceptionally well for Blackwater, [...] The question for this hearing is whether outsourcing to Blackwater is a good deal to the American taxpayer, whether it's a good deal for the military and whether it's serving our national interest in Iraq*". In doing so, questioning whether Blackwater's services delivered were worth the taxpayer's money. In contrast, the U.S. Army does not depend on contracts and enforces its own quality standards through repetitive and continuous training with a large workforce, something that is very unlikely to be questioned by any other actor than the Army itself. This was also evident in the accountability type (i.e. product accountability), as it was not relevant to the actions and decisions of public military actors. As for Blackwater, the accountability type was limited in its presence in the accounts provided. Concluding, as there was little mention of calling to or rendering account in regards to product quality, neither party was triggered to provide information on it by themselves.

4.3.4 The nature of the obligation

4.3.4.1 Vertical accountability

As the U.S. army is already a part of the government it was to be anticipated that vertical accountability type would be scarce in the articles regarding the Haditha incident. As the existing U.S. army structure is well established over many years, it is not surprising that little mention has made it to official documents or the press. An example of this accountability type (i.e. vertical accountability) at play is the letter of censure from the secretary of the Navy Maj. Gen. Richard A. Huck, former commanding general of the 2nd Marine Division, received a for his actions and inaction in reaction to the killings (Spagat, 2007). Blackwater, a privately

owned company, has no obligation to share any information with the public that might hurt the company's name. Even though public officials are often under a formal obligation to render account, this does not necessarily mean that that it happens. Even more so when it is such a sensitive case as the Haditha incident where a lot of human lives were lost. On the other hand, Blackwater was contractually obliged to take the heat for the incidents without actively seeking a way to respond to the allegations. It is remarkable how much Blackwater did communicate, the accounts they managed to render, were more than often coloured and in favour of the company or the conduct of their contractors that operated under the name of Blackwater. Furthermore, it is worth noting that even though the Iraqi government did not formally wield direct power over the comings and goings of Blackwater, it did seek to ban Blackwater at first and subsequently did not issue Blackwater its license to operate in Iraq (Salaheddin, 2009). According to Williams (2009) the Iraqi Interior Ministry spokesman Maj. Gen. Abdul-Karim Khalaf stated that *"Blackwater employees who have not been implicated in the 2007 shooting have the right to work in Iraq but must find a different employer."* Anne Tyrrell, a spokeswoman for Blackwater Worldwide, responded to the supposed ban and barring of Blackwater's services stating: *"we will respect the laws of Iraq and follow the direction of our U.S. government customers to insure that we are compliant with our contractual obligations as well as the rules of Iraq."* In sum the accountability type (i.e. vertical accountability) was at play considering the army structure and consequent actions and decisions of the public military actors. However, the accountability was not immediately apparent in the actions and decisions of the private military actor Blackwater.

4.3.4.2 Diagonal accountability

The diagonal accountability type refers to an intermediary reporting to a forum, the U.S. government in this case, on the Haditha incident and the Nisour square incident and hold the involved actors accountable, via authority derived from its duty to report to the U.S. government. The accountability type was at play in the Haditha case predominantly through the independent NCIS investigation, led by Maj. Gen. Eldon Bargewell. In contrast, the diagonal accountability type was not immediately apparent in the Nisour square case. Due to the Department of State hiring Blackwater, and consequently prohibiting Blackwater from participating actively in investigations without having consulted the Department of State first, certain investigations were hindered. Meanwhile, in the midst of several investigations into the

Nisour square incident, the contract with Blackwater was renewed for another year by the Department of State's Bureau of Diplomatic Security (Daragahi & Salman, 2008).

The above makes clear that formal structures do not always operate as intended, especially when they do not seem out of the ordinary when it comes to holding to account military personnel that have caused civilian deaths. This process of diagonal accountability was further diluted by the chain of command not taking responsibility for a proper investigation. Although intermediary organs reported to the U.S. government and criticized the performance of Blackwater in the Nisour Square incident in Iraq, these organizations lacked formal power to call Blackwater to account. Nevertheless, the reports were made available to the general public, increasing the pressure on the Department of State and the U.S. government in general to make reforms (see section 4.2.1.). To conclude, through the investigations of intermediary actors reporting to the government, the accountability type (i.e. diagonal accountability) was at play considering the involved diagonal actors, the actions and decisions the public military actors. Yet, the diagonal accountability type was not immediately apparent in regards to the Nisour square incident. Mostly caused by the contractual and mutual dependent relationship between Blackwater and the Department of State.

4.3.4.3 Horizontal accountability

The horizontal accountability type, where the actor communicates to the general public as if equals, was hardly present in the articles. When looking at the horizontal accountability type, regarding the public military actors, was not evident in the researched documents. This can be seen in the initial press release to the public, which does not point to any incident, merely a brief status report (Appendix 4). The press release read: *"A US marine and 15 civilians were killed yesterday from the blast of a roadside bomb in Haditha. Immediately following the bombing, gunmen attacked the convoy with small arms fire. Iraqi army soldiers and Marines returned fire, killing eight insurgents and wounding another."* On the other hand, the accountability type was of limited relevance in the Nisour square case. In a statement released by Blackwater and reported by Faiq (2008) it said: *"At the request of U.S. Embassy Baghdad, Blackwater has reached out to the families of those killed or injured in Nisour Square on September 16 as part of this condolence payment process."* On the one hand the company felt

the obligation to give account on their action, yet on the other hand they dismissed their actions as something that was set in motion by the U.S. Embassy.

Both Blackwater and the U.S. army were not inclined to hand out information to the public on these matters for pure informative reasons. Both actors were experiencing pressure from both the U.S. and Iraqi government not to jeopardise the U.S. enterprise in Iraq and further harm US-Iraqi relations. In sum, this accountability type (i.e. horizontal accountability) was of limited relevance regarding Blackwater. On the other hand, in the Haditha case the accountability type was not apparent all together due to the Army not seeing the need of actively explaining their actions to the general public.

5. Conclusions

This thesis aimed at answering the question “What are the differences observed in accountability types between public military and private military in case of civilian casualties during armed conflicts in foreign countries?” In order to do so, different aspects of accountability types were investigated with respect to the Haditha incident in 2005 and the Nisour Square incident in 2007. The present study demonstrated that especially regarding the *nature of the forum*, differences in accountability types existed between public military and private military, respectively the Haditha incident and Nisour Square incident. Moreover, research indicates that the different aspects of accountability are not separate entities but are related and do intertwine.

To be specific, compared to the Haditha incident in which the U.S. public military was involved, political, legal and administrative accountability types seemed to be malfunctioning or even absent regarding the Nisour Square incident (and its aftermath) in which PMC Blackwater was involved. Second, regarding the *nature of the actor*, differences in hierarchical accountability were seen between the U.S. public military and the U.S. PMC Blackwater. This hierarchical accountability type was functional in the Haditha incident (i.e. public military), whereas it was absent or malfunctioned in the Nisour Square incident (i.e. private military). Additionally, a similar pattern was seen for collective accountability. Moreover, the analysis made clear that aspects of the constructs *nature of the forum* (i.e., political, legal, administrative accountability types) and *nature of the actor* (i.e., hierarchical accountability and collective accountability) overlapped, resulting in concordant patterns in accountability types for each

actor respectively (i.e., the public military and private military). This current research indicates that especially the accountability types for the private military were poorly designed, regulated and adhered to when present. Furthermore, this research indicates that the severity of the punishment and justice served to civilians working for a PMC differed greatly from the punishment and justice served to the soldiers involved in the Haditha incident. Lengthy prison sentences were handed out to former Blackwater employees, whereas no prison time was served to the soldiers involved in the Haditha incident (Slosson, 2012).

Furthermore, the present research indicated that regarding the *nature of the conduct*, and the *nature of the obligation* similarities were seen between the public military and the private military. It seems the related accountability types had a smaller role in holding either the U.S. Marines or Blackwater accountable for their conduct in regard to their respective incidents. Regarding the nature of the conduct, both private and public military gave extensive accounts of the procedures followed, decisions made and actions taken. Moreover, both Blackwater and the U.S. Marines were held horizontally accountable by their superiors and diagonally accountable by other government institutions.

In conclusion, the major differences observed in accountability types between public military and private military are at the legal and political domain. To be specific, with respect to the private military involvement in the Nisour Square incident in 2007, these mechanisms in place did either not work properly, or were even non-existent. As for the Haditha incident, no thorough investigation into the killings was performed until Times Magazine published its article. In the subsequent investigations and enquiries, it was uncovered that the U.S. army command structures lacked the correct investigative functions and the incident was seen as a collateral damage that was part of the Iraq war. The political and legal consequences following the Haditha incident signify the failed accountability types in place, in the end no one was put in prison for the killing of 24 Iraqi civilians. Whereas the Blackwater contractors got jail sentences of thirty years to life, which shows the grave discrepancy and gap between the accountability of American civilian contractors and American soldiers (Hsu & Martin, 2015). Moreover, the political blowback regarding the Nisour Square incident, and use of contractors in general, was said to counter and hamper the winning of the hearts and minds of the Iraqi people, whereas the Haditha incident had no such political repercussions (Avant et al., 2009).

6. Discussion

As has become clear, there are differences in accountability types between public military and private military, especially in political, legal and hierarchical accountability. As stated in the introduction, the nature of the forum relates to the origin or type of the forum that holds the power to oblige an actor to give an account. Meaning, this forum can be a court of justices or a government that and the actor can be someone that is accused of a crime or a civil servant respectively (Bovens, 2007). However, this thesis made clear that a major obstacle in holding the PMC Blackwater accountable for their involvement in the Nisour Square incident was the fact that the private contracts with Blackwater were confidential and shielded from the general public (Singer, 2003). Accountability based on the nature of the forum is further hampered because the military chain of command was not straightforward, resulting in actions and activities of PMC that could not be transparently observed and regulated by public authorities. Second, regarding accountability based on the nature of the actor, the corporate structure of Blackwater made an accountability deficit almost unavoidable. Supposedly, when the U.S. State Department' Diplomatic Security service contracts a company, in this case Blackwater, it should be able to hold that company to account. However, as the current study made clear, there was also no legal accountability in place at the time of the incident. Additionally, to further complicate matters, Blackwater in turn hired contractors. In the end the U.S. State Department' Diplomatic Security was left with Blackwater that also hired personnel in a foreign country, which was by Order 17 of the provisional government immune from Iraqi law. Legally, the Blackwater contractors were 'civilians' and could therefore not be tried under military law. This thesis exposed the failure of the U.S. government to control the actions of PMCs or hold them criminally responsible for acts of excessive violence and abuse in combat zones overseas, in this case Iraq (2003-2011). Obviously, the U.S. government failed to establish a workable accountability mechanism. Through the increased government budget cuts and the resulting privatization of government jobs oversight, up-to-date regulation and laws overview of the contracting situation were lost in Iraq. Furthermore, it seems that through this privatization and large government contracts much of the democratic control is lost. Where the U.S. army in the end is still in service of the people, private security companies and their contractors do not seem to be so. When a contract is signed, it is very often for at least a year, and within the contract the executor is free to come up with ways to ensure the quality is delivered to the customer. To illustrate, in the case of Blackwater, they operated with a

‘cowboyish’ attitude, which undermined the U.S. army effort to win over the Iraqi people. Additionally, the failure to establish a meaningful system of accountability for these private military contractors has undermined U.S. national security interests. Nevertheless, with large black armoured vehicles, a gun turret on top, Blackwater made sure their ‘principle’ would make it safely to the destination.

The discussion of the Haditha incident and the Nisour Square incident also suggests there are commonalities. In both incidents it seemed as lower-ranking officers and guards were taking the fall for senior leaders and more seasoned combat veterans. Regarding the Haditha incident, it is beyond doubt that Sergeant Frank Wuterich was directly involved in the killing of the Iraqi civilians (Slosson, 2012). Nevertheless, it is remarkable that none of the other persons directly involved or within the chain of command were prosecuted, especially keeping in mind that Wuterich was only serving his second tour of duty when the incident occurred. Likewise, in the Nisour Square incident, only the lower-ranking Blackwater guards (who were beyond doubt first handed responsible for the deaths of Iraqi civilians) were prosecuted and eventually convicted. As a result, the founder and CEO of Blackwater at that time, Erik Prince, and other top Blackwater executives were relieved of being forced to answer for their role in creating the conditions for the Nisour Square shootings and other deadly incidents involving private contractors (Scahill, 2014).

Even though the present research revealed that the Nisour Square incident triggered several positive reforms in U.S. law and policy concerning private security contractors, yet many significant gaps in oversight, accountability and jurisdiction over contractors who commit serious violent crimes seemed to remain. In 2010 Human Rights First published a report on the functioning of private security contractors in Iraq, including strong recommendations for the U.S. government on how “*to hold its private contractors abroad criminally responsible for violations of international humanitarian and human rights law*”. They recommended, among other things, that MEJA (i.e., the relevant law for the majority of cases of contractor abuse) should be amended and resourced, and indeed MEJA, was successfully applied to contractors in a few cases in Iraq (Tiefler, 2009), and eventually to Blackwater contractors in 2014 and 2015. Moreover, in their report, Humans Rights First also recommended that the DoD should develop regulations and amend the Manual for Courts-Martial to implement the 2007 expansion of the UCMJ jurisdiction to civilians serving with or accompanying the military in time or war or contingency operations. Although in 2007, U.S. Congress amended the UCMJ to subject private contractors to the system of courts-martial

should they engage in misconduct, few individuals have been prosecuted under these provisions (Shah, 2014). Nevertheless, these reforms went some way toward bringing U.S. military contractors under U.S. law. These developments are very relevant seen the expanded use by the U.S. of private security contractors in not only Iraq, Afghanistan but also elsewhere (Morrison, 2015). These accountability issues described in this thesis are not thought to be unique to Iraq, and they most likely will continue in other war zones around the world where PMC are hired (McFate, 2014; Østensen, 2011).

What is interesting about the articles that were included in the present research is the tone of news reporting on both incidents. Blackwater is portrayed as a ‘cowboyish’ company, full of ex-military personnel. Whereas the U.S. Marines are portrayed as battle hardened soldiers that got involved in a situation that could have happened to any soldier in Iraq. The demeanour of the PMC in a combat incident verses that of the Army in a similar situation is treated very differently in the news articles. Another interesting point of view on the difference in political and public consequences of both incidents is provided by McFate (2014). He states that the powerful stigma against private military companies and mercenaries is also a cause for the international outrage following the Nisour Square incident. Whereas there was little outrage over the Haditha incident.

The Haditha incident led the Defense Department to publish a report (30th of May, 2013) on investigations and prosecutions of U.S. troops implicated with abuse or murder of civilians in war zones. One of their recommendations was that instead of allowing the chain of command to handle it, such incidents should be handled by the senior commander in the theatre of combat operations, circumventing the biased soldier’s military branch. A further review of U.S. civilian law was mentioned in several articles. It was suggested that contractors could be tried under the Military Extraterritorial Jurisdiction Act of 2000, yet this came with a lot of jurisdiction issues when it came to civilians having committed crimes overseas (Snukal & Gilber, 2015).

An initiative of the U.N. in combination with large private military and security companies saw the light in the Montreux document (Tougas, 2014). The “Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict” laid out state obligations when dealing with companies like Blackwater under existing international law. Human Rights First (2010) recommended the integration of the good practices of the Montreux Document in U.S. law and policy. Thus, promoting the implementation and adoption of the

Montreux Document and showing that as a prime consumer of private security it is showing the way to good governance in that sector. Yet, it is important to note that agreements like the Montreux Document is on a voluntary basis and only applies to PMCs that are allowed to fire a weapon, it does not, for instance, apply to PMCs that provide training on how to fire a weapon.

The practical implications of the results that stem from this thesis can be directed toward the political and legal accountability mechanism that should be in place before a mission into hostile territory is undertaken. The international community should be certain that the country that operates outside of its borders is held accountable for its actions, as well as for the actions of the people that work for them or the people that are hired to do the bidding of said country. Without proper accountability structures the accountability for the loss of innocent lives cannot be avoided. Furthermore, the people that were involved in situations of loss of innocent life should be subject to direct and effective measures to hold them accountable and punish them accordingly. In order to achieve this, a mission should be thoroughly planned and studied before embarking to avoid such fundamental missteps as has happened in the unfortunate cases of Haditha and Nisour square.

7. Limitations and future research

A major limitation of the present research is the use of a limited database, Lexis Nexis. This database has shown that several articles were non relevant for the scope of this research. Moreover, several search queries did not yield results that were of much use.

Secondly, the chosen framework is based on the accountability framework of Mark Bovens. Although complete and broad several accountability types showed very little presence in the analysed documents. This research might serve as a basis for future research, as well as an indication on which types are worth looking into.

Thirdly, the selected cases are very similar and have been selected with great care, this does not mean that they are alike on every aspect and accountability type. These gaps might be investigated and research through a thorough analysis of the cases that were deemed unfit for this research. In doing so, a more complete landscape on the incidents in regards to PMCs and the regular army can be created.

As is the case with many corporate branches, the private security industry looks very different today than it did in 2007, when Blackwater was the biggest player in the field of

private security. Nowadays, Academi, the follow up of Xe, which was the rebrand of Blackwater, was taken over by the Constellis group. A company that also acquired Triple Canopy, the then one of the biggest competitors of Blackwater in Iraq. This might change the way the companies under the Constellis group operate and are held to account. It could be that a larger organisation is able to standardise and incorporate best practices in its companies.

In addition to accountability based on the nature of the forum, actor, conduct and obligation, accountability can be subdivided in three separate phases. Bovens (2008) put forward three phases of accountability as a means of chronologically identifying accountability. This model was further developed by Brandsma and Schillemans (2012) into the 'Accountability Cube' as a means to measure accountability. Both Bovens and Brandsma and Schillemans identify that at the heart of accountability lies the process of assessing *information* provide by one actor to another actor or forum. In doing so the actor allows others to scrutinize his or her operations and show that it is sound and transparent. When any questions arise the actors can be called to account and justify its actions and decisions. This calling to account and justification of actions and decisions allows for both parties to exchange views with one another and *discuss* the implications that the actions and decisions might have for both parties. After the forum has received information and the actions and decisions of the actor have been discussed, either by the forum, with the actor or by other parties, the *consequence* phase follows. In this phase the forum will pass judgement on the behaviour of the actor and consequently the actor will be either penalized, corrected or rewarded for its behaviour. The makeup of the accountability elements provides a clear division between phases of accountability as well as the ability to appoint data to a certain phase for purpose of clear insight into what happened in what phase. Brandsma and Schillemans (2012) do indicate that accountability does not always run this chronological course proposed in as the three-phase elements seem to indicate. An actor can provide information after a discussion has taken place or a discussion can erupt after a verdict has been made public, prompting the actor to take action. Although the investigation of these phases was thought not to be essential for answering the current research question, data on this was collected and analysed. The accountability phases mostly showed the way the incidents played out. Where the phases are structured chronologically with the information phase first, followed by the discussion phase and completed by the consequence phase, it does not mean that they happen chronologically. The Haditha case showed that there was a very short information phase as the incident came to light over half a year after it happened. Almost directly after Time Magazine published the article,

legal and judicial processes sprang into action. Whereas the Nisour Square cases showed a more complete information phase with several actors commenting on the incident and the forum judging the information given by Blackwater and its contractors. Moreover, the accountability phases merely served as a means to unravel the incidents and pinpoint what happened and what was written. Within the present research it served no supporting function to the research question and was consequently left out of the analysis. It would certainly be interesting to see how the accountability phases could be useful in future research on accountability types.

What is also worth looking into in future research is the other actors that make use of PMCs, such as the UN and EU. Even though the U.S. might be the prime consumer of the services of PMCs, it certainly is not the sole consumer. The UN has often made use of contractors to avoid bloodshed in their name in Africa, and will likely continue to do so. The American judicial system is not comparable with that of the European Union, let alone that of the Netherlands. Nevertheless, a recent report of European Parliament suggests that a similar accountability gap exists regarding the extraterritorial use of PMCs (Krahmann, & Friesendorf, 2011).

Lastly, not only can a lack of control over PMCs result in civilian casualties, as the Nisour Square incident has indicated, it can also result in deaths of the PMC contractors themselves. In the U.S. Army, soldiers and marines are forced to work under strict safety standards, but regarding PMCs such standards are not straightforward. For example, in 2004, civilian contractors working for Blackwater were killed when the plane they were flying - not military grade, but a standard civilian air taxi- crashed into the Afghan mountains (Wald, 2004). It turned out that neither military, nor Federal Aviation Administration standards were observed during this flight. Likewise, in 2004, four Blackwater guards were killed in Fallujah, Iraq. Despite very dangerous conditions, Blackwater officials sent contractors into the city without adequate protection, such as armoured vehicles or the use of rear gunners. Blackwater also failed to provide its contractors with equipment, such as maps of the city, which were essential for safe navigation (Parker, 2007). Additionally, unlike the practice with military casualties, no official reports are made on the circumstances surrounding the deaths of civilian security contractors (Parker, 2007). From these examples it can be concluded that accountability types work both ways, and are also in interest of the PMC contractors themselves. Future research should investigate how, or if, PMC contractors can be protected

from unnecessary risk and reckless management. In this way improvements can be made into the regulation of how armed contractors operate.

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