

# Dogs of War: Inherently governmental?

DAVID ISENBERG

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WASHINGTON, May 9 (UPI) -- Amid all the polemics over the use of private military and security contractors by the U.S. government there are two words one rarely sees, but they lie at the very heart of the debate: "inherently governmental."

The main reason there is debate in the first place is that over time people have come to expect that certain functions are the exclusive domain of the government. As German sociologist Max Weber famously put it in a lecture in 1919, "The state is that entity which claims a monopoly on the legitimate use of physical force." Weber also said that the state may nonetheless elect to delegate the use of force as it sees fit, but that part is not nearly as well remembered.

But two recent events serve to remind us of its central role in the debate.

First, the Senate Armed Services Committee, in its version of the 2009 defense authorization bill last week, sought to limit the role of private security contractors in Iraq. It included two provisions related to contractors. One, effective when the bill is signed, would prohibit contract employees from performing "inherently governmental" security operations, including situations involving combat or extremely hazardous duties. The second would prohibit contract employees from conducting interrogations of detainees during or after hostilities.

Sen. Carl Levin, D-Mich., chairman of the committee, noted that the Pentagon already has a policy preventing private security contractors from being given combat-related work, but the State Department does not.

But if the State Department is not allowed to hire private guards, it is unclear who would become responsible for providing security for U.S. diplomats in combat areas. If the restrictions become law, the result could be an increased demand on Army and Marine personnel.

Second, on April 29 CorpWatch, an Oakland, Calif.-based group that investigates various corporate crimes, issued a report on L-3, a U.S. defense contractor that plays a key role in staffing and maintaining what was once considered an inherently governmental function: the acquisition and analysis of human intelligence during war. The company is now probably the second-largest U.S. contractor in Iraq, after Kellogg, Brown & Root.

The report found that "there are significant problems with L-3's Iraq contracts, notably with the hiring and vetting practices of both interrogators and translators, many of who are unqualified or poorly qualified for the work. This failure has the potential to seriously compromise national security."

While outsourcing of various military functions is now generally accepted as a given, some tasks, such as interrogation, are still considered to be a job for government, not private sector, employees.

After all, in the aftermath of Abu Ghraib it was reported that the use of private contractors as interrogators there and in other prisons in Iraq violated an Army policy that requires such jobs to be filled by government employees because of the "risk to national security." An Army policy directive published in 2000 and still in effect today classifies any job that involves "the gathering and analysis" of tactical intelligence as "an inherently governmental function barred from private sector performance."

A memo signed by Undersecretary of the Army Patrick Henry at the beginning of the Bush administration cautioned against shifting responsibility for intelligence work to private military organizations.

How then, did such jobs get outsourced? The full background is beyond the scope of this column, but consider just a few markers along the way.

Raymond DuBois, then defense deputy undersecretary for installations and environment, said in an Oct. 25, 2004, memo to defense agencies that in spring 2005 the annual inventory that marks jobs as inherently government or commercial would be used to identify military jobs that can be converted to civilian positions in addition to filling various reporting requirements.

In 2003 the Pentagon for the first time used the inventories to identify which military jobs would be given to civilians. The inventories are required each year of all federal agencies by the 1998 Federal Activities Inventory Reform Act.

The Senate Armed Services Committee in July 2004 witnessed Catch-22 linguistic acrobatics by Les Brownlee, acting secretary of the Army, when he was asked how the hiring of PMC personnel for interrogation could be justified under such a memorandum. "If these functions are performed by contract interrogators under an entity, which in this case was Central Command, or CGATF-7 specifically, then they would not be considered inherently governmental," he said.

Tim Shorrock, author of the just released book, "Spies for Hire: The Secret World of Intelligence Outsourcing," concludes there is "almost universal agreement ... that the task of military and CIA interrogations should only be carried out by government employees answering to a defined chain of command."

Shorrock says that in his research for the book, "I discussed this topic with dozens of people in and out of government. By an overwhelming margin, they agreed with the sentiments expressed by Eugene Fidell, the military lawyer ... that outsourcing interrogations is 'playing with fire.'"

Even Mike McConnell, the director of national intelligence, seems to have reached this conclusion, reports Shorrock. "I can't imagine using contractors for anything like that," he told Sen. Ron Wyden in 2007, when he was asked during his confirmation hearing if he would approve the hiring of private sector interrogators.

An interrogation, after all, is where the conqueror meets the conquered, where the invader meets the insurgent, where the American meets the face of his or her enemy. It's bad enough that the CIA has reverted to torture in its questioning of terrorist suspects and covered up the evidence by destroying the tapes; but it's even worse to hand these tasks over to private companies operating under classified contracts that are themselves illegal to disclose and who are answerable only to their stockholders. So let's paint a thick black line there: no private interrogators.

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(U.S. Navy veteran David Isenberg is a military affairs analyst. He is an adjunct scholar with the Cato Institute, a correspondent for Asia Times and the author of a forthcoming book "Shadow Force: Private Security Contractors in Iraq." His "Dogs of War" column, analyzing developments in the private security and military sector, appears every Friday.)