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## Defining 'Inherently Governmental' and Role of Contractors in U.S. War Fight

By Joe Davidson

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Where should Uncle Sam draw the line for the hired guns protecting his interests in war zones?

Or, put more politely, "are private security contractors performing inherently governmental functions?" asked Christopher Shays, co-chairman of the Commission on Wartime Contracting in his statement opening two days of hearings on Friday.

It's a question with a huge scope and no easy answer. The commission's search for one is an indication of the tricky time the Obama administration is having: It is attempting to define "inherently governmental" during efforts to find the right balance between work, in a variety of areas, that should be done by federal employees and tasks that can be farmed out to contractors.

The questions posed, about the use of private security in Iraq and Afghanistan, are far more complicated than the ones domestic agencies usually face. Private security personnel in those countries put their lives on the line for Sam and may be called to kill in his name. Hiring 40,000 contractors means, as Shays said, "private security contracting is a big business."

"Business" is part of the problem for Danielle Brian, executive director of the Project on Government Oversight, a nonprofit government watchdog group. Businesses seek profits, and the profit motive can be in conflict with the national interest, she warned.

With so many people working for private employers, doing many jobs with life and death consequences, the notion of "privatizing war" is a concept that seems applicable.

"While it is easy to assume that the enormous private security presence in the war zone resulted from some intentional policy of 'privatizing war,' in truth it resulted directly from the nature and scope of the multiple missions being undertaken," said Stan Soloway, president of the Professional Services Council, which represents contractors.

Both Soloway, a supporter of the "high level of propriety and professionalism" that he said contractors display in the war zones, and witnesses who are more critical of them agree that contractors have come to play a huge role in the way the United States wages war.

Allison Stanger, a Middlebury College professor of international politics and economics, said that the contingent of private security contractors in Iraq and Afghanistan has reached the point where they undermine public interest. "In the simplest of terms, armed security contractors enable us to wage two wars simultaneously while avoiding the necessity of a draft," she said.

Stanger zeroed in on contractors who provide moving security, such as those guarding convoys. She said they have crossed the line into the realm of inherently governmental work that should be reserved for people directly on Sam's payroll.

"It seems clear that taking up arms to defend the interests of the United States, whether remotely pulling triggers on drone flights or to guard government personnel as they travel in war zones, would seem to constitute active involvement in defending the nation against foreign enemies," she said.

If defending the nation against foreign enemies isn't inherently governmental, what is?

A federal law that defines inherently governmental functions as those "so intimately related to the public interest as to require performance by a federal government employee" merely begs the question.

The Obama administration is trying to better define what the term means. The sooner a working definition is in place, the better, because the use of private security in war zones is slated to increase.

The ongoing withdrawal of U.S. military forces from Iraq means many of the security duties now conducted by the Defense Department will be transferred to the State Department. "State will need more security contractors, many of them with special skills," Michael Thibault, commission co-chairman, said in his statement at Monday's session.

After visiting Iraq last month, Thibault returned worried about the State Department's takeover of security responsibilities. The weaknesses already found in the government's oversight of private security contractors "may get bigger and more costly in the months ahead," he said.

Even contractors want greater government oversight.

Ignacio Balderas, chief executive of Triple Canopy, said in his statement to the commission that his firm has "protested awards to companies that do not possess the proper security clearances," only to have government officials dismiss their complaints.

Thibault warned that "the dramatic expansion of State's security responsibilities in Iraq could lead to weakly managed contractors performing inherently governmental functions in a combat zone." The "bottom line," he added, "appears to be that lack of timely and effective coordination between Defense and State could undermine the progress achieved by the U.S. military, embolden insurgents and jeopardize the safety of Americans left in Iraq."

That's not a pretty picture.

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