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Private Military Industry and the Laws of War

Mahmood Monshipouri
San Francisco State University

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Private Military Industry and the Laws of War

Abstract

The “war on terrorism,” according to Jeremy Scahill, has led to the most privatized war in the history of the United States of America: the war in Iraq, waged partially by private security contractors who are, for the most part, accountable to no higher legal-political authority. This brings us to an obvious question: Is this type of warfare an imperative part of counterterrorism?

Keywords

Human rights, United States, Iraq, Security forces, Privatization

Private Military Industry and the Laws of War

by Mahmood Monshipouri

The “war on terrorism,” according to Jeremy Scahill, has led to the most privatized war in the history of the United States of America: the war in Iraq, waged partially by private security contractors who are, for the most part, accountable to no higher legal-political authority. This brings us to an obvious question: Is this type of warfare an imperative part of counterterrorism? The privatization of war, together with the extended detention and questioning that have interrupted due process of law, have amounted to a clear violation of equal protection before the law and are both discriminatory practices. The “war against terrorism” has, seemingly, cost the United States moral ground—particularly with regard to human rights—and this moral crisis continues unabated.

The Bush administration, under the guise of counterterrorism, has violated countless human rights by [abusing prisoners](#) as a matter of policy, “disappearing” detainees into a network of [secret prisons](#), and abducting and [sending people for interrogation](#) to countries that practice torture, such as Egypt, Syria, and Morocco. This outsourcing of torture, military detention, security, and intelligence operations has fueled serious human rights abuses across the globe. [Amnesty International](#) has found that more than 25 American companies may have transported men detained by the U.S. government to nations with a troubling record on human rights. These companies, too, may be complicit in the U.S. government’s practice of outsourcing torture.

Similarly, the privatization of war by such companies as Blackwater USA, [some experts warn](#), has fostered and spurred the growth and creation of private companies who have benefited and stand to gain even further from an escalation of the war. This “war contracting system” has so invariably linked corporate profits to an escalation of war that these companies have no incentive to curtail their footprint in the war zone and every incentive to fuel it.

This war outsourcing has facilitated impunity for the private contractors and has undermined what remains of U.S. moral authority abroad. Consequently, many concerns have been raised about how to subject these private war contractors to transparency, accountability, and the rule of law. Private security companies have pressed the government to assume even more duties that are normally carried out by American soldiers. According to the U.S. Department of Labor, Scahill writes, at least 770 contractors had been killed in Iraq as of December 2006 along with at least 7,700 wounded. [These casualties](#) are not included in the [official death toll](#) that the U.S. government releases, helping to mask the human costs of the Iraqi war. More disturbing, however, is what this means for U.S. democracy: the widespread use of private forces that are accountable to no effective system of oversight or law. In four years there have been [no prosecutions](#) of the so-called private security contractors for crimes against Iraqi civilians and not even a single known prosecution of an armed contractor.

War outsourcing has also created the corporate equivalent of Guantanamo Bay—a virtual rules-free zone in which perpetrators of torture are unlikely to be held accountable for breaking the law. The U.S. criticisms of the governments of Uzbekistan, Colombian, and Russian for systematic human rights violations have been significantly muted. In the name of anti-terrorism, counter-insurgency or national security, private contractors, governments, and other perpetrators

appear to have evaded the law. A whole host of questions regarding private military firms in war zones must be answered, not the least of which is the question of regulation and inspection.

On June 29, 2006, the U.S. Supreme Court struck down the legality of military commissions at the U.S. Naval Base at Guantanamo Bay and it affirmed the protections of Common Article III of the Geneva Conventions that ensures fair trial standards, and also prohibits torture and other inhumane treatment. The [State Department has also demonstrated](#) concern that pursuing claims involving foreign government's human rights issues can potentially constrain the "war on terrorism." This may be the case in some ways, but many issues that relate to the "war on terrorism" entail human rights in a global perspective.

Bruce Ackerman, a leading American legal thinker, has proposed, in his 2006 book *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism*, an "emergency constitution" that will place new checks and balances on potential abuses of presidential power. While granting the government extraordinary powers to prevent another terrorist attack in the short run, it protects civil liberties from destruction over the longer run. "The greatest threat," Ackerman argues, "is the implosion of liberal democratic values in the heartland, not their destruction by hostile forces from the periphery" (2006: 169). Without well-developed emergency constitution, Ackerman points out, short-term emergency responses will transform into the long-run diminution of freedom.

It is imperative to differentiate, Ackerman continues, between threats to effective sovereignty and threats to our very political existence. While not minimizing the dangers of terrorism, we must refuse to confuse them with existential contests like the Second World War (2006: 173-174). We must, Ackerman concludes, reject the presidentialist logic of the "war on terrorism" and creatively build upon the extant system of checks and balances. The emergency constitution will, at a minimum, enhance greatly our chance to survive as a free people (2006: 174). Given that there is little prospect of creating international legislation that will prevent the existence of these private military firms, going back to our domestic system of checks and balances could be a proper recourse.

Dr. Monshipouri is a Professor in the Department of International Relations at San Francisco State University and currently a visiting fellow at the Yale Center for International and Area Studies. Dr. Monshipouri's publications include Islamism, Secularism, and Human Rights in the Middle East (Boulder, CO: Lynne Rienner Publishers, 1998), and, more recently, the volume Constructing Human Rights in the Age of Globalization (eds. Mahmood Monshipouri, Neil Englehart, Andrew J. Nathan, and Kavita Philip, Armonk, NY: M.E.Sharpe, 2003).