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CONTRACTORS ON THE BATTLEFIELD: WHAT HAVE WE  
SIGNED UP FOR?

By

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## *Preface*

I am a career contracting officer. Over the past several years, I have seen a great change in our philosophy of business when it comes to how we relate to contractors. We have moved from an arms-length, often adversarial relationship, to one that is based on cooperation, teamwork and shared objectives. For the most part this has been a very positive transition, resulting in many acquisition improvement success stories. However, one thing this new relationship has done is blur the reality that contractors and the military have distinctly different motivations, responsibilities, and loyalties. Contractors are legally and morally responsible to their stockholders, they are contractually responsible to us. In the area of combat logistics support, I believe this blurred distinction has been used as a convenient means of compensating for the substantial reductions in military and DOD civilian logistics and support workforces. We have expanded traditional contractor functions to include some directly related to the prosecution of battle and have moved contractors onto the battlefield. They are now a vital and irreplaceable component in our ability to fight and win. Yet we have done this without addressing the critical legal and doctrinal issues this creates. We have simply closed our eyes and started treating contractors as we would any other soldier. Yet, while contractor employees are a supporting part of the team, they are not “soldiers.” It seems that rather than acknowledge that fact, and use that knowledge as input to strategic

decision making and doctrine development, the Services have chosen to ignore it. I believe this puts our field Commanders at risk.

I need to state emphatically, that the point of this paper is not to cast doubt on the integrity or patriotism of contractors or their employees. The paper's purpose is simply to highlight some of the challenges that this new relationship creates for both the contractor and the commander during crisis or hostile situations. These are challenges the Services seem to be ignoring or at least downplaying. While I do not have solutions, I believe it is important to realize that this is not "warfighting as usual," and that we must make sure all parties understand what "they are signing up for" before the crises begin.

I would like to pass on my appreciation to my research advisor, Colonel Mike Hogan, the Air Force Materiel Command Chair at the Air War College, for his guidance, ideas, and especially his patience. I must also thank the world's best and cutest editor, my wife Laurelle, for her suggestions, encouragement and especially her patience.

### *Abstract*

The role of contractors in warfare has changed dramatically. As the Services have drawn down, more and more of the duties formerly accomplished by military members are being performed by contractors. The military competency has been eliminated or drastically reduced. These duties run the gamut from the traditional base support functions to maintaining and operating fielded weapons systems on or near the battlefield. Yet instead of addressing the new challenges this change brings to Commanders who have come to rely on contractors as part of their warfighting team, DOD has ignored or downplayed them and thus, has blurred the distinction between “soldier and contractor.” The reality is, there are significant differences that both parties must understand and accommodate or risk the prospect of failure on the battlefield. In June 1991, the Department of Defense Inspector General reported: “DOD Components cannot ensure that emergency-essential services performed by contractors would continue during crisis or hostile situations. Such loss of contractor support on sensitive military equipment and systems would have a degrading effect on the Armed Forces capability in a protracted war effort.” That was before over a million people fell from DOD rolls, yet there is little evidence that the Services have done anything to address critical issues. Issues such as: the commanders’ authority to control and discipline, the contractors’ combatant status, force protection for contractor personnel, and the fact that contractors cannot be compelled to go into harm’s way. Today, it is vital that contractors be there for the fight. Wishing and hoping, however, may not make it so.



## **Chapter 1**

### **Introduction**

“When war broke out on the morning of January 17<sup>th</sup> as U.S. and allied aircraft bombed Iraq and Kuwait, the U.S. contractors did not leave Saudi Arabia; some industry personnel even remained on the front lines with U. S. troops.”<sup>1</sup> From now into the foreseeable future, when the United States Military deploys for combat, peacekeeping, or peacemaking efforts, Department of Defense contractor personnel, significant numbers of them, will deploy with the military forces. This is not such a startling revelation, since civilian contractors have accompanied troops to war throughout history. No, what makes this issue worthy of research is not the fact that contractors are supporting these operations, but the scope, location and criticality of that support. Non-military members are maintaining fielded weapon systems, supporting field operations, managing and operating information and intelligence systems, and thus, are accompanying troops onto the front lines of the battlefield. “Contractors and civilians have been participating in military operations since Vietnam [or earlier], but never at current levels.”<sup>2</sup> (This paper focuses on contractor as opposed to civil servant logistics support. There are many similar issues, but also some distinct differences which are beyond the scope of this paper.) Senior Army logisticians interviewed by the Logistics Management Institute for a post Desert Storm report were almost unanimous in their belief that contractors played a

vital role on the battlefield, especially in supporting high tech weapons systems.”<sup>3</sup> According to the Department of Defense Inspector General (DOD IG) in a June 1991 audit, “If contractors leave their jobs during a crisis or hostile situation, the readiness of vital defense systems and the ability of the Armed Forces to perform their assigned missions would be jeopardized.”<sup>4</sup> That finding was over seven years ago when there were some one million more personnel on the DOD roles.<sup>5</sup> Never before has there been such a reliance on non-military members to accomplish tasks directly affecting the tactical success of an engagement. This has blurred the distinction between soldier and civilian. This blurring is evident in the following passage from **Air Force Core Values**, regarding why we have core values: “The first reason is that Core Values tell us the price of admission to the Air Force itself. Air Force personnel—whether officer, enlisted, civil servant, or *contractor*—must display honesty, courage, responsibility, openness, self-respect, and humility in the face of the mission.”<sup>6</sup> “Air Force Personnel?” “Price of admission to the Air Force?” Contractor personnel may have all of these virtues, but they are not Air Force personnel! Their contract is their admission ticket, not an oath. Contractors are not Department of Defense employees, no matter how much the Services wish it to be so. This fact and our cultural differences cannot be simply ignored through inclusionism. On the other hand, this new reliance on in-theater contractor support is reality, and cannot be disregarded.

In a post war article entitled “Desert Storm and Future Logistics Challenges,” Former Army Chief of Staff, General Carl Vuono did not even mention the role of contractors in the war or, more importantly, a logistics challenge of the future.<sup>7</sup> We are facing a fundamental change in the way we conduct warfare and there is little evidence

that the players have been adequately prepared for that change. Both commanders and the contractors need to understand the legal and operational implications stemming from or escalated by DOD contractors' increasing operational role. The point is not to cast doubt about the patriotism or the loyalty of DOD contractor personnel, they have done the job when called. Rather, we must recognize and plan to accommodate the important differences in roles and responsibilities. If we do not, we will create significant operational and legal challenges for our field commanders, as well as for the civilian "operators." After providing some background on civilians in the combat environment, this paper will focus on the following critical issues: the contractors' responsibilities, Command and Control or the commanders' authority to discipline and direct, the contractor personnel's combatant versus noncombatant status and implications, and their effect on force protection requirements.

### Notes

<sup>1</sup> Hyde, James C. "Defense Contractors Serve on the Front Lines of Operation Desert Storm" *Armed Forces Journal International* (March 1991), 32.

<sup>2</sup> Peters, Kathryn McIntire. "Civilians at War" *Government Executive* (July 1996), 24.

<sup>3</sup> Dibble, George B., Charles L. Horne, III, and William E. Lindsay. *Army Contractors and Civilian Maintenance, Supply and Transportation Support During Operations Desert Shield and Desert Storm* (Volume 1: Study Report AR113-01RD1. Logistics Management Institute, Bethesda, MD: June 1993), IV.

<sup>4</sup> Department of Defense Inspector General, Audit Report on Civilian Contractor Overseas Support During Hostilities (Report Number 91-105), 26 June 1991, 1-30

<sup>5</sup> "Military Personnel Statistics and Civilian Personnel Statistics," Department of Defense Home Page and available at <http://web1.whs.osd.mil/mmids/military/miltop.htm> and <http://web1.whs.osd.mil/mmids/civilian/civtop.htm>

<sup>6</sup> United States Air Force Core Values, Department of the Air Force, 1 January 1997.

<sup>7</sup> General Carl E. Vuono. "Desert Storm and Future Logistics Challenges," *Army Logistician* (July-August 1991) 28-31



## **Chapter 2**

### **Background**

Throughout the history of warfare, “civilians” (until the Korean conflict, the literature does not differentiate between contractors and other civilian support) have traveled with armies and accomplished those functions that we now call logistical support.<sup>1</sup> The State’s employment of these civilians in this capacity has been recognized in the laws of armed conflict as defined by the Laws of the Hague in 1907 and the Articles and Protocols of the Geneva Conventions, last held in 1949. Civilian support to armies was accepted based upon a universal perspective that noncombatants could accomplish support tasks as long as those tasks kept them out of direct confrontation with the enemy. This would allow the soldiers to handle the business of warfighting and allow the private sector do what they do best. Today, we unquestionably accept that our use of civilian support remains “legal” yet the requirements of warfare have dramatically changed the scope and relevance of the support tasks they provide, thus making their distinction as noncombatants less obvious.

### **United States History**

In our own history, as far back as General Washington’s Continental Army, civilians were employed to drive wagons, provide architect/engineering and carpentry services, to obtain food stuffs (when not foraged), run telegraph communications, and to provide

medical services.<sup>2</sup> The Continental Congress believed civilians should accomplish these tasks so that the soldiers could be freed up to be with their units and focus on their warfighting responsibilities.<sup>3</sup> It made sense to use civilians to accomplish these logistical tasks because they were considered either to menial for soldiers, i.e. driving wagons, or were well established or specialized functions in commercial industry like telegraph operators.<sup>4</sup> This philosophy and thus the use of civilians in non-combat roles remained relatively unchanged from the War of 1812, through the Civil War and the Spanish American War, up through the Viet Nam conflict. In each of those conflicts significant numbers of civilians continued to accomplish basic logistics requirements in support of the soldiers, as shown in Table 1.

**Table 1. Civilian Participation in Conflict**

War/Conflict	Civilians	Military	Ratio
Revolution	1,500 (est)	9,000	1:6 (est)
Mexican/American	6,000 (est)	33,000	1:6 (est)
Civil War	200,000 (est)	1 Million	1:5 (est)
World War I	85,000	2 Million	1:20
World War II	734,000	5.4 Million	1:7
Korean Conflict	156,000	393,000	1:2.5
Viet Nam Conflict	70,000	359,000	1:6

The use of civilians in wartime was not without problems however. During the Revolution for example, a regiment of artificers was raised to work with civilian artificers supporting construction and ordinance requirements. A special report to Congress on the state of this regiment emphasized the disgruntled comments of the military members contrasting their wages with those paid to the civilians.<sup>5</sup> “It was difficult to persuade men to re-enlist after the expiration of their three-year terms.”<sup>6</sup> Sound familiar? Additionally, there was often a question of these “contractor’s” commitment and responsibility.

During the Civil War, “draft exemptions were sought for teamsters to encourage them to drive wagons to western posts; however, teamsters were not only difficult to find, they proved to be recalcitrant employees, so toward the end of the war, the tendency was to replace civilian drivers with soldiers who could not resign or “swear back” with impunity.”<sup>7</sup> The key point is that when problems with contractor support did arise, Commanders could turn the task over to military personnel who had at least some basic skill to perform the task. Additionally, the general policy of the military related to employing contractors was: “the closer the function came to the sound of battle, the greater the need to have soldiers perform the function because of the greater need for discipline and control.”<sup>8</sup>

With the Vietnam conflict the employment of “civilians” began to change. Business Week Magazine called Vietnam, “war by contract.”<sup>9</sup> “More than ever before in any U.S. conflict, American companies are working side by side with the troops. One big reason is that military equipment has become so complex.”<sup>10</sup> “Specialists in field maintenance checking on performance of battle field equipment, have dodged Viet Cong attacks on military bases at Da Nang and Pleiku.”<sup>11</sup> No longer were contractors away from the sound of battle. No longer were they relegated to basic logistic tasks. They were becoming the specialists in the tools of war. “There might have been a time in the past when the site of military operations was an exclusive club for those in uniform, but those days are waning.”<sup>12</sup> “When U. S. troops set foot on Saudi Arabian sand, many defense industry contractors were close behind. The contractors followed the military to the Middle East to help make sure that their multi-million dollar weapon systems functioned properly in the harsh desert environment.”<sup>13</sup> The trend is for an increasing number of

civilian “operators” in-theater to support logistics and, more importantly, combat operations. “One in 10 Americans deployed for NATO peacekeeping operations in Bosnia is a civilian. By contrast, one in 50 Americans deployed for the Persian Gulf war was a civilian.”<sup>14</sup> (Note that these figures are for contractors *deploying* with the troops, and should not be compared with the figures in Table 1 above.) That ratio will continue to shrink as more functions are being turned over to private sector through competitive sourcing, privatization and changing logistics practices such as life time contractor logistics support.

### **Why Has This Happened**

“Three factors have contributed to this trend: deep cuts in uniformed personnel, a push to privatize functions that can be done outside the military, and a growing reliance on contractors to maintain increasingly sophisticated weapons systems.”<sup>15</sup> Actually, there is a forth reason for the deployment of contractors into the battlefield, to provide flexibility in the face of Congressional, Executive Branch or host-country mandated troop ceilings.<sup>16</sup> For example, at the height of the Vietnam War we had over 80,000 contractor personnel supporting our war effort who did not count against troop ceilings set by President Johnson. Similarly in Bosnia, the United States military has been able to get more “tooth” (soldiers) in-theater by having over two thousand contractor personnel in forward locations above the Congressional limit of 20,000 U.S. troops. However, while this is certainly a benefit to DOD stemming from the increase reliance on contractors, whether this is a cause of the increased contractor participation or simply the result is open to argument.



## **Manpower Reduction**

Since the end of the Cold War, the Department of Defense has cut more than 700,000 active duty troops from the ranks.”<sup>17</sup> Additionally, over 300,000 DOD civilian positions have been eliminated. These cuts have occurred without a commensurate reduction in operational requirements. In fact, all of the services have experienced a significant increase in operations tempo over the past ten years while operating with about one third less force. The Air Force for example has an average of 12,000 airmen deployed on any given day, while ten years ago that average was around 2,000.<sup>18</sup> “The Army has had a 300 percent increase in mission commitments during the past several years, and they do not appear to be tapering off. During the same period, the Army has reduced the U.S. Army Materiel Command’s military strength by 60 percent and reduced the number of AMC depots by 50 percent.”<sup>19</sup> Out of necessity, there has been growing recognition that more and more of the jobs previously accomplished by military members must be accomplished by civilians. This move to greater reliance on non-military or organic support is recognized by all the Services. In the Air Force, it is articulated in **Global Engagement: A Vision of the 21<sup>st</sup> Century Air Force**. “The force will be smaller. Non-operational support functions will increasingly be performed by Air Force civilians or contractors.”<sup>20</sup> Two parts of this excerpt need to be scrutinized.

First, the reference to increased participation by “Air Force” civilians must be looked at with skepticism. While historically a significant portion of the competencies cut from the active duty forces were passed on to Department of Defense civilians, that is no longer possible. As discussed above, they like the active forces, have faced significant cuts since the Gulf War. Those cuts continue. According to Deputy Secretary of Defense John Hamre, 237,000 DOD employees will participate in public-private competitions

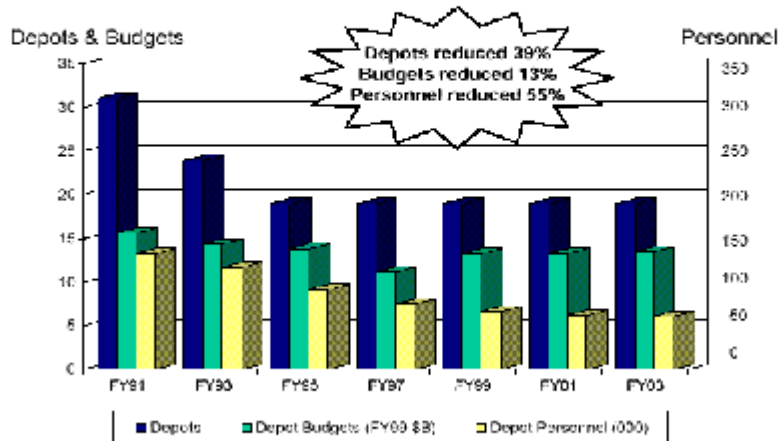
from 1997-2003.<sup>21</sup> Only a year earlier the **Air Force Times** had reported that service planners were considering giving private contractors more than 160,000 jobs now done by service members and DOD civilians.<sup>22</sup> Additionally, **Global Engagement's** statement regarding "non-operational support functions" is suspect. As cuts to the military forces and budgets continue, the skills being reduced or eliminated (i.e. the contracting out of precision measurement laboratories) are becoming more related to operations, as opposed to their historical base support focus. During Desert Shield and Desert Storm for example, contractors had maintenance teams supporting Army tracked and wheeled vehicles (anything from two-and-a-half-ton trucks to 65-ton M1A1 tanks); the "Fox" nuclear, biological, and chemical vehicles; and TOW and Patriot missiles.<sup>23</sup> The Air Force had contractors flying in support of the JSTARS, as well as performing in-theater organizational maintenance. During Operation Just Cause, a total of 82 contractors were in Panama to support aviation assets.<sup>24</sup> These certainly appear to be operational activities. They may even be considered combat operations. We are defining non-operational in terms of what we have or can privatize rather than by whether the function is core to warfighting.

### **Privatization and Contracting Out**

While declining manpower is directly placing more operational jobs in the hands of the private sector, the budget and manpower reduction is also forcing DOD to look at demilitarizing large areas of "core functions," generally accomplished at home, through privatization or contracting out. In the past, core functions were defined as those requiring a military or organic capability either because it was; combatant in nature, required potential deployment into harms way, or required the capability to be expanded

(surged) in times of crisis. They were specific skills, maintenance, and munitions handling for example. Today, there has been a move away from “functions” and toward a focus on more broadly defined “core competencies.” For example, the Air Force identifies its core competencies as; Air and Space Superiority, Precision Engagement, Information Superiority, Global Attack, Rapid Global Mobility, and Agile Combat Support.<sup>25</sup> Thus functions previously felt to be sacrosanct are now candidates for transition to contractors. The largest of these function, which is being rapidly transitioned is maintenance, most significantly, depot maintenance. Less than ten years ago, maintenance was considered to be a core logistics function. For years, the Pentagon has been after Congress to repeal the law requiring that 60 percent of depot weapons system maintenance be accomplished by government employees. They have recently succeeded in reducing that to 50 percent and are not through, yet.<sup>26</sup> Figure 1 provides a dramatic representation of the results of that success: the elimination of almost forty percent of the DOD maintenance depots and 55 percent of the personnel from 1991 to 2003.<sup>27</sup>

*Depot Maintenance – General*  
**DoD Depot Maintenance Downsizing**



**Figure 1. Depot Workload Reduction**

Another core function facing either privatization or contracting out is information and communications, i.e. the functions supporting Information Superiority. Information Superiority, which includes information warfare is identified as a core function in *Global Engagement* and emphasized in *Joint Vision 2010*. Yet, the Air Force has plans to reduce the communication-computer occupational field by 24 percent within the next five years.<sup>28</sup> There are many other examples. Where noncommissioned officers used to test and calibrate weapons, civilian technicians are now doing the work.<sup>29</sup> The Aerospace Guidance and Metrology Center, once the military facility responsible for the maintenance, repair and calibration of missile guidance systems and Air Force measurement standards, is now completely a contractor operation. New initiatives under consideration include contracting out of all software maintenance on the B-2 bomber and the total maintenance effort for the F-117 fighter. The Air Force is also studying the

possibility of outsourcing all of its precision measurement equipment laboratories. If implemented, the Services will eventually be devoid of the organic capability to support these systems and missions. In time of war, they will be completely dependent on contractors to provide whatever support needed whenever it is needed. A commander needs to ensure the contract supporting him accurately reflects and supports his peacetime and wartime requirements.

Outsourcing and privatization among the Services or even within each Service however, is not being accomplished in a standardized manner. In the Air Force Wing or Center, Commanders are strongly encouraged to contract out base support functions. However, there has not been a standard set of functions identified by higher headquarters as the ones to outsource. Some wings, for example, have turned the majority of their Civil Engineering functions over to contractors, while others have not. As the Air Force moves into the AEF structure, concern is growing over the lack of organic engineering skills at some locations.<sup>30</sup>

Two related outcomes of privatization are further reducing the availability of skilled DOD technicians. First, for those remaining military members in a career field that is being privatized there are fewer and fewer places they can be stationed. Often, the only place they can go is overseas or to a continental United States base which has significant deployment responsibilities, therefore reducing quality of life and retention. Second, privatization provides civilian job opportunities for skilled military members. “When a military repairman achieves journeyman status, he can easily be wooed to leave the Service and accept private employment at higher pay. Often these journeymen then work for contractors who support the military.”<sup>31</sup> On the other hand, in the long term, industry

is losing a primary sources of trained and uniquely skilled labor for the military systems it is now supporting. This most certainly will increase future contractor costs.

### **Support of High Technology Weapons Systems**

This situation is further exacerbated by our reliance on cutting-edge weapons systems technology. The Army's logistics after-action report from Operation Desert Storm said, "There is a role for contractors on the battlefield, particularly when the tasks are so complex that it is not economically beneficial for the Army to maintain needed capability within the force."<sup>32</sup> Continual and rapid technological change has made it uneconomical to keep soldiers technologically capable of maintaining, trouble shooting and in come cases, employing sophisticated weapons. This is driving the military to rely on contractor support at least during the initial fielding phase of a system, and possibly for its life, i.e. C-17 contractor logistics support. In the not too distant past, it was DOD policy that the Services establish organic support for the logistical sustainment of new weapons systems as soon as possible after fielding. DOD Directive 1130.2, Management and Control of Engineering and Technical Services required the military to achieve self sufficiency in maintaining and operating new systems as early as possible and limited the use of contractor field service to 12 months thereafter.<sup>33</sup>

The purpose of this directive was to ensure the military services did not come to rely too heavily on the use of civilian technicians to support their systems.<sup>34</sup> Today, that Directive is gone and the general philosophy has completely reversed. Congressional language now requires maintenance and repair for all new "critical" weapons systems shall be under contractor support for at least four years and for life for non-critical systems.<sup>35</sup> Once again, in the future when U.S. forces deploy there will be many

situations where a contractor employee is the only person with the technical skill to perform functions necessary for the employment of a weapon system.

Downsizing has made it a necessity that contractor personnel go to the front lines to support their weapon systems and thus perform functions the field commander needs to succeed in much the same manner as military members. We have, in effect, stopped trying to keep an organic ability thus creating a hybrid, not a military member, but not quite the historical “civilian who accompanies the troops,” and the ramifications could be significant to fighting and winning.

### Notes

<sup>1</sup> Major William W. Epley, “*Contracting in War: Civilian Combat Support of Fielded Armies*,” (Washington D.C.: U.S. Army Center of Military History, 1989) 1-6

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> James A. Huston, “*The Sinews of War: Army Logistics, 1775-1953*,” (Washington, D.C.: Office of the Chief of Military History) 1966,

<sup>5</sup> *ibid.* 38

<sup>6</sup> *ibid.*

<sup>7</sup> *ibid.*

<sup>8</sup> Epley. 1-6

<sup>9</sup> “Vietnam: How business fights the ‘war by contract,’” *Business Week*, no.1905 (5 March 1965): 58-62

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> Peters. “Civilians at War,” 24.

<sup>13</sup> Hyde. “Defense Contractors Serve on Front Lines,” 32.

<sup>14</sup> Peters. “Civilians at War,” 24.

<sup>15</sup> *ibid.*

<sup>16</sup> LtGen Joseph M. Heiser, “Civilian Combat Support in Vietnam Some Lessons Learned,” (McLean Va.: Logistics Management Institute, December 1990), 1-10

<sup>17</sup> Peters. “Civilians at War,” 24.

<sup>18</sup> Katherine McIntire Peters, “The Price of Peace,” *Government Executive Magazine*, March 97, 22.

<sup>19</sup> Major General Norman E. Williams and Jon M. Schandelmeier, “Contractors on the Battlefield,” *Army Magazine*, January 1999, 32-35

<sup>20</sup> *Global Engagement: A Vision for the 21<sup>st</sup> Century Air Force*. (Department of the Air Force, Washington D.C.), 19.

## Notes

<sup>21</sup> Brian Friel, "DoD downsizing, other reforms make progress," *Government Executive Magazine*, 9 Oct 98, p.1. available at [Http://www.govexec.com/dailyfed/1098/100998b1.htm](http://www.govexec.com/dailyfed/1098/100998b1.htm)

<sup>22</sup> Compart, Andrew, "Air Force to Study Contracting Out 60,000 Jobs," *Air Force Times* (31 March 1997), 10.

<sup>23</sup> Hyde, "Defense Contractors Serve on the Front Lines," 32.

<sup>24</sup> Heiser, pg. 8

<sup>25</sup> Air Force Basic Doctrine, *Air Force Doctrine Document 1*, Headquarters Air Force Doctrine Center, Maxwell AFB, AL, Sep 97, 29.

<sup>26</sup> Title 10, U.S.C., Section 2466. Limitations on the performance of depot-level maintenance of materiel, undated, n.p., available at [http://afmc.wpafb.af.mil/HQ-AFMC/LG/lgp/lgp\\_50\\_50.htm](http://afmc.wpafb.af.mil/HQ-AFMC/LG/lgp/lgp_50_50.htm)

<sup>27</sup> Depot Maintenance Fact Book available at:  
<http://www.acq.osd.mil/log/mp/factbook>, 23.

<sup>28</sup> Air Force Institute of Technology. *Information Superiority: Outsourcing an Air Force Core Competency?* (Wright Patterson AFB, OH.: December 1997), 1.

<sup>29</sup> Peters. "Civilians at War," 25.

<sup>30</sup> Air War College Distinguished Lecture Briefing on the AEF, 13 Jan 99

<sup>31</sup> Heiser, 6

<sup>32</sup> Dibble, g-6.

<sup>33</sup> Robert D. Kaiser and Richard M. Fabbro, *DoD Use of Civilian Technicians* (Washington D.C.: Logistics Management Institute, July 1990) iii

<sup>34</sup> *ibid.*

<sup>35</sup> "Outsourcing and Privatization", Extracted from 1998 Air Force Congressional Issue Papers, undated, available at <http://>



## **Chapter 3**

### **Issues**

The challenges or issues generated from increased reliance on contractors to perform combat support functions are not new to the Department of Defense or the Services. As far back as 1980 there have been several studies, audits and articles, highlighting the Services' increased reliance on contractors along with warnings of the risk that accompanies that reliance during crisis or hostile situations. The following is a compilation of and a more in-depth discussion of the most critical issues.

#### **Contractor Responsibility**

The greatest risk, at least from a field commanders' perspective is that the contractor will not be there to perform or will leave when hostilities break out. How great is this risk? It is really defined by four elements: the criticality of the missions being performed, the availability of alternative resources, the authority to direct compliance, and finally history. The first two elements were defined earlier. First, there is no doubt that the systems supported and the functions being accomplished are critical to the prosecution of the battle. The systems involved include JSTARS, Patriot, AN/GYQ-21 Data Processing Equipment and the Fox chemical biological system to name a few. Functions performed include maintenance and even systems operations. Second, as the result of downsizing,

privatization, and modernization there are no DOD resources available to fill potential voids.

Regarding the authority or capability of the commander or the Service; virtually every audit, study or article written on the subject say the same thing. The Services cannot ensure that the contractor will be there when hostilities begin. Legally, contractors cannot be compelled to go into harms way, even when under contract, unless there is a formal declaration of war. In 1980, the Logistics Management Institute published a study entitled: DOD Use of Civilian Technicians. The report summary stated: “continued reliance on civilian technicians means that maintenance skills are not being successfully transferred from the producer to the ultimate user of the system. Should civilians leave their job in wartime or other periods of heightened tension, the material readiness of key systems would be jeopardized.”<sup>1</sup> In November 1988, a related Department of Defense Inspector General Report expanded this perspective stating that there was, “no capability to ensure continued contractor support for emergency-essential services during mobilization or hostilities, no central oversight of contracts for emergency-essential services, no legal basis to compel contractors to perform, and no means to enforce contractual terms.”<sup>2</sup> The report recommended that all commands identify war-stoppers that should be performed only by military personnel and, those other services that could be contracted out if there was an adequate contingency plan that ensured performance if a contractor defaulted. DOD’s response concurred and responded with DOD Instruction 3020.37, Continuation of Essential DOD Contractor Services During Crises which simply lays the responsibilities for finding alternatives or accepting the risk on the commander. In June 1991, the DODIG completed a follow-up Audit

Report entitled, Civilian Contractor Overseas Support During Hostilities.” The report’s bottom line again was: “DOD Components cannot ensure that emergency-essential services performed by contractor would continue during crisis or hostile situations.”<sup>3</sup> The report goes on to say, “If the contractors leave their jobs during a crisis or hostile situation, the readiness of vital defense systems and the ability of the Armed Forces to perform their assigned missions would be jeopardized. Therefore it is necessary to seek ways to assure that civilian contractor support will continue during periods of greatest need.”<sup>4</sup> Their findings and recommendations for accomplishing this, along with the Department’s response to those findings, are summarized below:

**Finding 1:** DOD components can not assure the continuance of emergency-essential services during crises or hostile situation.

**Response:** DODI 3020.37 while published in November 1990, had not been completely implemented. That Instruction provides that the Heads of Components shall ensure annual reviews are accomplished to identify such services. Activities Commander shall “either obtain alternative personnel to perform the services, or prepare a plan to obtain the services from other sources, or accept the risk.”<sup>5</sup>

In reality, the Component Commander cannot compel contractors to perform, even under contract if it would force them to go into harm’s way. Additionally, the three options provided in the response are not realistic. There are no other available resources, the contractor intends to perform; thus the Commander has no real alternative other than to accept the risk.

**Finding 2:** Require identification of war-stopper services that should be performed exclusively by military personnel.

**Response:** Not necessary, DODD 1100.4, Guidelines for Manpower Programs, identifies those functions, which must be military.<sup>6</sup>

**IG Final Report:** DODD 1100.4 is 37 years old. It does not establish standard criteria for identifying these functions, without which, the

components will continue to identify a wide range of services.<sup>7</sup> (The report overall, implied the current reporting was ineffective.)

That now 44 year old regulation says: “Civilian personnel will be used in positions which do not require military incumbents for reasons of law, training, security, discipline, rotation, or combat readiness, which do not require a military background for successful performance of the duties involved, and which do not entail unusual hours not normally associated or compatible with civilian employment.”<sup>8</sup>

**Finding 3:** Require an annual reporting system identifying the number of contractors with emergency essential services and the number of contractors involved.

**Response:** The requirement for the components to conduct the annual assessment and to have contingency plans is sufficient. “The number of contracts is not the important factor; the need is to make sure we are able to carry out our mission.”<sup>9</sup>

**IG Final Report:** The number of contracts and contractors is valuable information. That is evident by the fact that the Assistant Secretary of Defense (Production and Logistics) requested that the IG provide data on the number of contractors and contractor personnel in-theater.<sup>10</sup>

This is important information. How do a Commander in Chief (CINC) or a field commander plan requirements without knowing who and how many personnel will be there, or what requirements are actually on contract? It is also a critical factor in determining force protection requirements, an issue discussed later.

**Finding 4:** Revise DODI 3020.37 to include “Provisions to safeguard personnel performing emergency-essential services during a crisis or hostile situation.”

**Response:** Not necessary, “the commander is charged by the Geneva Convention with protecting the lives of all noncombatants.”<sup>11</sup>

**IG Final Report:** The response to this finding will not afford the contractor employees with similar priority, rights and privileges accorded to DOD personnel. Geneva conventions deal with identification of noncombatants, not protection. “Only 1 of 67 emergency essential

contracts reviewed contained provisions to protect contractors against chemical and biological warfare.”<sup>12</sup>

The DOD response to this finding was incredulous. In Desert Storm, the coalition forces had to provide chemical and biological gear to Civilian Reserve Fleet pilots to ensure their continued operations into theater. Today, the United States will not allow the use of the Civilian Reserve Fleet, who provide approximately 33 percent of our heavy lift to travel into a chemical or biologically tainted field.<sup>13</sup>

In fact, the DOD response to all of the findings reflects that they either did not understand the issues or, worse, did not care. This is reflected in their policies. In addition to the Services being governed by a 44-year-old Instructive, we have a 13-year-old Directive, DODD 1100.18, Wartime Mobility Planning, which states that: DOD manpower utilization policy is to “encourage civilian employees who occupy emergency essential positions and contractor personnel who are performing critical support activities overseas to remain in the theater.”<sup>14</sup> How? Who? With what? DODD 1404.10, Emergency Essential Civilian Personnel, dated April 1992, says: “It is DOD policy: a) limit the number of emergency-essential civilian to those positions specifically required to ensure the success of combat operations or the availability of combat-essential systems.”<sup>15</sup> Yet, virtually every review and study related to the subject has stated emphatically, that civilian contractors are providing vital support to critical systems and their continued support to those systems in time of hostilities is crucial to mission success.

The final element defining risk is history. History has, for the most part, found contractor personnel doing their jobs during times of crisis or hostilities. However, in the previously cited LMI study, the authors proposed that: “It was questionable whether the

civilians would have remained when the bullets started flying. There were a few instances of contractor/Department of the Army Civilians wanting to leave the theater because of the dangers of war. However, many people have doubts about how long they would have stayed if the operations had been costly in lives.”<sup>16</sup> There have been a few examples to substantiate these fears. In South Korea, in the wake of the 1976 tree-cutting incident in the demilitarized zone, emergency-essential civilian contracting personnel fled their posts at the prospect of imminent hostilities.<sup>17</sup>

Additionally, in the wake of the desert conflict, several CRAF contractors reduced the percentage of systems they would place under the program. We have yet to see any major incident involving contractor personnel or equipment. It must be noted also, that in Vietnam and Korea, and to some degree in Desert Storm, the contractor personnel involved “normally had the advantage of at least some military training and were generally familiar with the tactical and operational levels of employment.”<sup>18</sup> They might be compelled to stay by their understanding of the mission or out of a feeling of camaraderie. This was not necessarily the case in Southwest Asia and in Macedonia, and will be even less likely in the future.<sup>19</sup>

Again, as reported by LMI in their after action report, Senior logisticians felt they (civilians contractors) were “vital” for Desert Storm.<sup>20</sup> That was eight years ago, when we had several hundred thousand more military and DOD civilian members. Today, even more functions, critical functions are in the domain of civilians. Contractor support on the battlefield at today’s level of dependence has not been tested in a real life-threatening hostile situation. Desert Storm cannot be held up as the way things will be. We need to prepare for the worst case and that case is where critical contractor personnel

leave their posts. The point is not that civilians would not stay. They may or may not. However, they are not combatants. The point is they do not have to stay, and DOD needs to work to minimize the risk that fact entails.

## **The Noncombatant**

“In ancient times, as evidenced by the laws of Manu, the old Testament or the writings of Kautilya on Sun Tzu, there was no attempt to identify those who were entitled to be treated as combatants. In former times, especially in small states, as soon as war was declared, every man became a soldier; the entire people took up arms and carried on the war.”<sup>21</sup> Warfare slowly evolved into the concept of professional armies and a distinction developed between the soldier and the non-soldier, or “noncombatant.” “In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to attack.”<sup>22</sup> The distinction between combatant and noncombatant is critically important to all parties as it defines the treatment of the individual in time of war and is shown in the matrix below.

**Table 2. Combatant v. Noncombatant**

	Military Target	POW Status	War Criminal
Combatants	Yes	Yes	No
Noncombatants	No	Yes	No
Illegal Combatants	Yes	No	Yes

The law of war related to this issue stems from both the Laws of The Hague, and from the Laws of Geneva. Section 1, Chapter 1, of The Law of The Hague,

18 October 1907, entitled “The Qualifications of Belligerents,” defines combatants as follows:

Article 1. The laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed, distinctive sign recognized at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.<sup>23</sup>

This description was further defined by Article 43 of Protocol I of the Geneva Convention, dated August 1949.

“The armed forces of a party to a conflict consist of all organized armed forces, groups and units which are under a commander responsible to that party for the conduct of its subordinates.... Such armed forces will be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.”<sup>24</sup>

Those who do not fit these descriptions, and DOD civilians and contractors do not, are considered noncombatants. The reasons contractors and DOD civilians cannot be considered combatants and thus cannot take up arms are:

- a) Neither category of civilian is subject to the commander’s internal disciplinary system (for US forces that is the Uniform Code of Military Justice).
- b) Neither is necessarily trained to conduct operations in compliance with the law of armed conflict.
- c) The contractor is not subordinate to the field commander.

The law of war however, has historically recognized the right of noncombatants to be present in a combat area: “and may even be aboard combat aircraft, vessels and vehicles on operational missions. They may provide technical support and perform other logistics functions.”<sup>25</sup> This international recognition is somewhat dated (reaffirmed by the Geneva Convention Protocol I of 1949.) As defined in Air Force Pamphlet 110-31, **Civilians Accompanying the Armed Forces**, a category of noncombatant entitled to



Prisoner of War status, includes “civilian members of military aircraft crews, supply contractors’ personnel, technical representatives of government contractors, war correspondents, and members of labor units or civilian services responsible for the welfare of the armed forces.”<sup>26</sup> It goes on to warn, under the heading of **Civilians**, that trends since World War I have tended to blur the distinction between combatants and noncombatants, including civilians, resulting in less protection for the noncombatant, because: “(a) growth of the number and kinds of combatant, including guerillas... (b) growth of noncombatants engaged in activities directly supporting the war effort, including armament production....”<sup>27</sup> The pamphlet is dated 19 November 1976, and as was discussed above, significant changes in weapons systems and operations have occurred making that distinction even more difficult.

While the Protocol and subsequently this pamphlet recognized the noncombatant status of civilian aircrews, it is extremely improbable that the authors of either document envisioned civilian technicians assisting in the collection of surveillance data during operational missions. Did they envision civilian maintainers providing battlefield maintenance of a TOW missile, or the M1A1 or the Bradley, or the Patriot Missile, as was evident during Desert Storm, when they accepted the “civilian accompanying the troops” philosophy? How about contractors supporting the gathering and interpreting of data from the Joint Air Forces Control Center and feeding intelligence and targeting information to operators. Were they the noncombatants described in these conventions? As we privatize the communications-computer field, will contractors who at least supplement our “information warrior” force be noncombatants?

In his legal opinion regarding the noncombatant status of having contractor/civilian operators for the Dark Stars remotely piloted vehicle, Mr. W. Darrell Phillips, Chief, International and Operational Law Division, Air Force Judge Advocate General School, at Maxwell Air Force Base, determined that the operator would risk losing their noncombatant designation, and could be considered an illegal combatant.<sup>28</sup> A person “cannot be a combatant and a noncombatant at the same time. However, by Article 51 (3) of Protocol 1, 1997, a non-combatant, that is to say a civilian who takes part in hostilities, loses his/her status under both the Protocol and Civilian Conventions and for as long as he operates in that capacity, becomes a legitimate object of attack.”<sup>29</sup> Additionally, “since they are not combatants (lawful), and not within the extremely restrictive category of *levee en masse* if they commit a combat act, (defined in the terms of the German manual as ‘participate in the use of a weapon system’<sup>30</sup>) then they are liable to trial as ‘unlawful’ combatants or war criminals.”<sup>31</sup> The implications are that by having a contractor accomplish their job, field commanders may be asking them to eliminate their protected status and even possibly to risk execution if captured. Additionally, there is certainly some question whether the commander is therefore violating the law of war by having a civilian noncombatant participate in combat. So why not just make them combatants? United States civil law precludes civilian contractor personnel from meeting the four criteria specified in Section 1, Chapter 1, Article 1 of the Laws of The Hague and the requirements of Article 43 of Protocol 1 of The Geneva Convention, which determine legal combatants. Additionally, irrespective of the inclusion in the **Air Force Core Values**, contractor personnel have not been held to the same standard that society holds its military members. The fact is, these personnel

are different from soldiers and these differences mean a great deal to a commander's pursuit of combat operations. If employed improperly, the commander could risk being liable for violation of the laws of war. Additionally, a commander could commit the U.S. Government to care and benefits for contractors commensurate with those of veterans.

## **Discipline and Control**

One of the key differences between contractor and soldier, and also one of the primary reasons contractors do not qualify under the definition of combatants, is that they are not subject to the military's internal disciplinary system, i.e., the Uniform Code of Military Justice (UCMJ), unless we have a declared war.<sup>32</sup> In an overseas deployment, contractor personnel cannot be disciplined by the military for violations of the UCMJ. In fact, generally the only recourse commanders have to punish contractors for crimes committed on post is, working through the contracting officer, to send them home and let their prospective chains of command or boss determine and administer punishment, if any. The military may, if the offense was of a criminal nature, refer charges to the Department of Justice to pursue. From the contractor employee perspective, "the most important thing contractor employees need to know are the terms of the contract they are working under and the Status of Forces Agreement (SOFA) between the United States and the country they are serving in. Depending on the SOFA, contractor employees may be subject to local and criminal laws of the country in which they are deployed."<sup>33</sup> In countries where justice is based upon the Talmudic code, e.g., an eye-for-an-eye, this could be an extremely important fact.

This issue of "contract" brings us to another key difference between military member and contractor and, another significant reason they are not and cannot be

considered combatants. A field commander needs to understand this concept of “terms of the contract” for contractor personnel. These personnel are not compelled by an oath of office, but rather by the terms of their employment contract. “One of the hardest things for military personnel to do is to learn to interpret a contractual agreement literally, to assume nothing.”<sup>34</sup> The contractor is authorized to accomplish only those tasks within the scope of the contract, and, is answerable for performance only to the contracting officer or his representative. The contract language directs that the contractor not take orders from other than the contracting officer or his duly appointed representative. The representative cannot direct action outside the scope of the contract. This is a fiscal and liability issue. Commanders risk personal liability for the cost of unauthorized work as well as for the cost of property that might be damaged by unauthorized workers.

Another important point for the commanders’ operational planning is that he can not command, “give orders” to these individuals as he does a soldier. It is also important to understand, that contractor employees enjoy the legal right to unilaterally terminate employment rather than accept the hardships and potential danger occasioned by exposure to combat operations.<sup>35</sup> The commander can not assume they will remain on the battlefield, or even in-theater, simply because of military necessity or personnel shortages, even though they knew the risks when they signed on. Civilians cannot be compelled to deploy, remain in a designated area, or to perform certain missions, and they are not subject to criminal punishment for refusal to do so.<sup>36</sup>

One final note. While not a “legal” issue in the vein of UCMJ or contract law, the laws of war require that combat be accomplished in accordance with the applicable laws of war. This implies a distinct understanding of the Conventions and the ability of the

State to define their operations in terms appropriate to those laws. The LMI study cited a couple of findings worthy of consideration. First, some of the people interviewed, “perceived a lack of clear command and control over contractors. Army units had difficulty determining who had management control over contractors.”<sup>37</sup> Couple this with their finding that, “our interviewees sensed that the contractors were not aware of the Commanders intent and the political consideration of their effort.”<sup>38</sup>

### **Force Security**

Since the Kohbar Towers incident where terrorists used a car bomb to severely damage the compound housing U.S. military members working at the base killing 19 and injuring hundreds of U.S. military forces, force protection has been one of the number one priorities and responsibilities of Commanders. What is not often discussed is the Commander’s responsibility to protect that growing number of contractor personnel performing functions at his location. That responsibility is, or at least should be expanding, as more contractors move into potentially hostile areas to perform necessary functions. In his article entitled, “Contractors on the Battlefield,” Lt General Williams, Vice Commander of U.S. Army Materiel Command, frames the issue: “Noncombatants require force protection resources.”<sup>39</sup> It sounds simple enough, but is not a simple matter. These personnel may not be living or performing their duty at the base or compound, they may have family members accompanying them, they are not, as presented earlier, required to observe the same restrictions that Commanders may place on military members.

In a potentially hostile situation there must be security forces available to escort contractor personnel to where they need to go to perform. For that matter, that security is

also required for those Government contracting personnel who oversee the contractors' performance. As previously discussed, contractors and other noncombatants cannot arm themselves other than for their own self-protection. Use of a weapon to defend their coworkers or their equipment change their status and could subject them to treatment as a combatant or possibly even a mercenary (subject to execution). Therefore, force protection is a requirement. This often requires the Commander to take some degree of risk regarding the effect on the security of his base or post by dividing his scarce force protection assets. It is a risk he will be reluctant to take if he does not understand the issue addressed above. In a brief to Defense Contract Command Western District Commanders, Lt Colonel Dan Krebs, who had commanded the Command's contract administration team in Haiti, stated that one of his greatest tasks was managing the security support for his team as they went to check fuel quality, or water shipments....<sup>40</sup>

One of the related "challenges" also identified in the Army Magazine article, was that; "Noncombatants cannot perform rear area security missions."<sup>41</sup> Force protection personnel are a scarce commodity. Often at overseas locations, other support personnel augment the force protection personnel. The Kobhar Towers after action report even recommended the use of other (non-force protection) personnel to augment the force protection mission.<sup>42</sup> As military support forces are "privatized," the resources for augmentation of the security forces dwindle. The result is longer shifts, more deployments and a severe drop in the retention rates further compounding the problem. It should be noted that one of the Air Force responses to the shortage and retention problems is to look to contract out some of the functions accomplished by those forces on CONUS bases.<sup>43</sup>

Finally, in long peacekeeping or even conflict situations, contractors often bring family members. The mass exodus of civilian technicians that resulted from the “tree-cutting” incident mentioned earlier was attributed to their fear for the safety of their dependents. After escorting their families to safety, most returned to their posts to fulfill their missions.

This force protection role may be the least understood, yet most important. The first time a Commander fails to provide the security necessary and that failure results in loss of life or capture, is the time we see how well we can operate on our own.

### Notes

<sup>1</sup> Kaiser iii

<sup>2</sup> DoD IG Audit Report, “Civilian Contractor Overseas Support,” 3

<sup>3</sup> *ibid.* i

<sup>4</sup> *ibid.* 1

<sup>5</sup> Christopher Jehn, Assistant Secretary of Defense Force Management and Personnel, memorandum for Director, Readiness and Operational Support Director, Office of the Inspector General, Subject Draft Audit Report on Civilian Contractor Overseas Support During Hostilities, 20 May 1991.

<sup>6</sup> *ibid.*

<sup>7</sup> DoD IG Report, 6-12.

<sup>8</sup> DoD Directive 1100.14, *Guidance for Manpower Programs*, August 20, 1954.

<sup>9</sup> Jehn letter.

<sup>10</sup> DoD IG report, 6-12.

<sup>11</sup> Jehn letter.

<sup>12</sup> DoD IG report, 6-12

<sup>13</sup> Air War College Distinguished Guest Lecturer 9 Jan 1999.

<sup>14</sup> DoD Directive 1100.18, *Wartime Manpower Planning*, 23 October 1986

<sup>15</sup> DoD Directive 1404.10, *Emergency Essential DoD U.S. Citizen Civilian Employees*, 10 April 1992.

<sup>16</sup> Dibble, IV.

<sup>17</sup> Kaiser, DoD use of Civilians.

<sup>18</sup> Larry L. Toler, “Civilians on the Battlefield,” *Army Logistician*, November-December 1994.

<sup>19</sup> *ibid.* 4.

<sup>20</sup> Dibble, IV.

<sup>21</sup> Green, L.C. *The Contemporary Law of Armed Conflict* (New York: Manchester University Press, 1994), 99-100.

<sup>22</sup> *Ibid.*, 108 restatement of article 44 of Geneva Protocol I.

## Notes

<sup>23</sup> *International Laws Concerning the Conflict of Hostilities: Collection of Hague Conventions and Some Other International Instruments*. International Committee of the Red Cross, 17.

<sup>24</sup> Sarnoski, LCMR Steven R. USNR. "The United States Law of Civilian Persons Serving with or Accompanying Armed Forces in the Field." *The Army Lawyer* (DA Pamphlet 27-50-260, July 1994), 29.

<sup>25</sup> Johnson, Colonel. "Background Paper on Civilian Operators." (HQ USAF/JAI, 6 March 1997), 1.

<sup>26</sup> Air Force Pamphlet (AFPAM) 110-31. *International Law—The Conduct of Armed Conflict and Air Operations* (19 November 1976), 3-4.

<sup>27</sup> Air Force Pamphlet, 3-4.

<sup>28</sup> Phillips, W. Darrell, Chief, International and Operational Law Division, Air Force Staff Judge Advocates School, Memorandum (13 April 1998), 1.

<sup>29</sup> Green, 102.

<sup>30</sup> Phillips citing *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, 1995, 1.

<sup>31</sup> *ibid.*, 2.

<sup>32</sup> *ibid.*

<sup>33</sup> "The Business of War and Peace." *Government Executive* (July 1996), 27.

<sup>34</sup> Hamlin, Mary B., Lt Col. "Privatization of Aircraft Maintenance: Maximizing Contract Effectiveness" (Maxwell, AL.: Air War College, May 1990), 10.

<sup>35</sup> Johnson, 2.

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*, g-5.

<sup>38</sup> *ibid.*

<sup>39</sup> Williams, "Contractors on the Battlefield," 34-35

<sup>40</sup> Lt Col. Daniel Krebs, "Haiti, Contract Administration Support," briefing to the Defense Contract Management Command District West Commanders' Conference, DCMC San Antonio, San Antonio Tx., 9 November 1994.

<sup>41</sup> Williams, 34.

<sup>42</sup> Proposed Responses to General Downing Report on the Kohbar Towers Bombing, undated, 2-16, available at <http://www.af.mil/cgi-bin/multigate/retrieve?u=z3950r://dtics11:1024/airforce!f691%3a.../htm>

<sup>43</sup> SSgt Michael Dorsey, "Air Force's 21<sup>st</sup> century vision includes security police changes," *Air Force New Service*, 3 July 1997 available at <http://www.af.mil/cgi-bin/multigate/retrieve?u=z3950r://dtics11:1024/news!F1377%3a9.../htm>



## **Chapter 4**

### **Recommendations**

I believe our civilian leaders have a mandate from the people of this country to build a smaller, more efficient military. (The fiscal reality stemming from their employment of this military is a topic for another paper). Therefore, the recommendation you will not see is for the Department of Defense to fight force structure cuts or downsizing efforts. The Department of Defense is already well down the road in privatization and competitive outsourcing efforts as it should be. However, it seems to have started the process without a coordinated master plan. My primary recommendation is to make sure core competency requirements are dictating what we outsource and not the other way around. What is required now is some forethought and planning in bringing about new reductions and, in-depth analysis of the effects of privatization and outsourcing efforts to date on our warfighting capabilities. We need to minimize the risk incurred by eliminating the unknowns and illuminating the risks, facts and issues.

A recent distinguished guest lecturer at the Air War College said that with the advent of the Air Expeditionary Force, the Air Force is looking at every job and skill, his example was civil engineers, at those AEF locations before authorizing outsourcing efforts. It is an excellent start. However, analysis needs to go beyond AEF and include actions taken already. Retention rates, deployment requirements, criticality of the

systems supported, private sector sources of supply, training time, all need to be addresses. Is AEF determining the support concept for weapons systems, i.e. C-17? We need a thorough review of all support specialties.

We have placed our commanders in a precarious position. They need these contractors in order to accomplish their mission but have been given no tools with which to work. Doctrine needs to be developed, a joint publication, focused specifically on contractors on the battlefield. Things that need to be considered include: contractor deployment and TPFDD applicability, force protection and self-protection responsibility, discipline, understanding contract scope and authority, liability and the law of armed conflict applicability.<sup>1</sup> This needs to be taught to officers early and emphasized just the way we teach officers how to lead their soldiers. After all from a strategic perspective, we are treating them as though they were soldiers.

The DOD IG recommendation that we develop a methodology and system for reporting the number of and requirements of each contract with emergency-essential responsibilities needs to be followed up. DOD Contracting Officers are required to have analyzed the requirements and determined whether they constitute emergency essential services. That information needs to be gathered and made available to CINC planners.

Finally, and admittedly a little out-of-the-box, we need to get with our lawyers and acquisition experts and define a methodology, which provides commanders with administrative and tactical command of contractor personnel during hostilities. Maybe a deputizing clause that, in times of Presidential declared crises makes contractors “reservists.”

We cannot stop the move to increased private sector involvement and, can no longer limit the involvement to base operations or simple supply. Those functions are already significantly private sector provided. What our leaders must do is drive further outsourcing not by how many military it removes, but based upon a risk assessment. The outcome of a wrong choice will be measured in lives and possibly battles lost.

### **Notes**

<sup>1</sup> “Contractor s on the Battlefield,” Minutes for the 26-27 October Contractor on the Battlefield Conference, 5 Nov 98, n.p., available at [http://www.cascom.army.mil/automation/combat\\_developer/.../combat\\_developer\\_98-29.ht](http://www.cascom.army.mil/automation/combat_developer/.../combat_developer_98-29.ht)

## **Chapter 5**

### **Conclusion**

The Department of Defense is gambling future military victory on contractors performing operational functions on the battlefield during hostilities. Contractors are becoming increasingly responsible for in-theater taskings previously accomplished by military personnel. This has occurred auspiciously due to significant and necessary cuts in force structures and the related need to transition, through outsourcing or privatization, “non-operational” functions to the private sector. However, not only are contractor numbers increasing in-theater and on the front lines, their support is directly related to combat operations. The function being accomplished by contractors today are not “non-operational” support functions. They include maintenance and even operations of vital warfighting systems, JSTARS, Patriot, M1A1 Dark Stars, to name just a few. In fact, fiscal policy has driven us to a point where there is, or will be, no organic military capability in many functions critical to weapons systems performance.

What this means is contractors need to be on the battlefield performing their job even when confronted by life-threatening hostilities, or we lose. The irony is the contractors legally cannot and possibly should not be compelled to remain in harms way and participate in hostilities, unless under declared war. They are noncombatants and risk extreme penalty if their actions are determined to be in violation of that categorization.

As the United States military has attempted to accommodate for the drawdown, we have conveniently blurred the distinction between military member and contractor support. This is placing our commanders and our civilian “operators” in a predicament regarding the laws of war, the terms of this new “soldier’s” employment contract, and the effect of these issues on the ability to perform the mission. While a transition of support function, maybe even operational functions, from military to private sector is required by budget necessity, it seems to be happening without a “master plan” or risk-based assessment. There is little evidence that the strategic and doctrinal implication of contractors on the battlefield are being addressed. We must be reviewing each new outsourcing effort and analyze past efforts based on its overall implication to our warfighting ability. Maybe logistics support philosophy can be adjusted to accommodate rear echelon or less risky support. We must provide our field commanders with information regarding the size and requirements related to contractor operations. Finally, if nothing else, we must provide field commanders and the contractors with a doctrinal based understanding of the challenges they face in times of hostilities.

The single deadliest incident during the Persian Gulf War occurred when an Iraqi scud missile hit barracks housing Army Reservists, providing water purification support, far from the front. Today, the military relies heavily on contractors for this support.”<sup>1</sup> If death becomes a real threat, there is no doubt that some contractor will exercise their legal rights to get out of the theater. Not so many years ago, that may have simply meant no hot food or reduced Morale and Welfare activity. Today, it could mean the only people a field commander has to accomplish a critical “core competency” tasking such as weapon system maintenance or communications and surveillance system operations, have

left and gone home. Warfare is changing. It appears, unfortunately, that rather than face this change, we are hoping that nobody notices.

#### **Notes**

<sup>1</sup> Peters. “Civilians at War,” 25.

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