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Contingency Contracting and Contracted Logistics Support: A Force Multiplier

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature:

12 May 2003

ABSTRACT

Historically, the U.S. military has made use of civilian personnel and contractors to perform Combat Support (CS) and Combat Service Support (CSS) functions. The trend today is towards increasing this use with the intent of transitioning limited uniform military positions from "tail to tooth." The trend is also being driven by strategic initiatives related to privatization and outsourcing as well as a need to utilize contractor specific knowledge skills in maintaining increasingly complex military systems.

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INTRODUCTION

The Principle of War of Economy of Force drives a military commander to use combatant forces only for functions related directly to combat with an adversary. Certain positions and functions at times performed by military personnel, specifically those functions associated with providing logistical support, life support, sustainment, or assistance to operational forces, can be viewed as secondary and not an appropriate use of uniformed combat-capable personnel. The principle of Economy of Force would suggest a better objective for these functions would be to have them performed by non-combatant personnel.

In support of achieving this Economy of Force, there is an ever-increasing trend within the Department of Defense (DoD) towards relying on contracted Combat Support (CS) and Combat Service Support (CSS) functions during contingency operations.[i] This trend is being driven by personnel "downsizing" and restrictions in the use of uniformed military and civilian manpower; the focus on privatizing the jobs associated with "non-core" functions; and the ever increasing level of technical complexity associated with new weapons systems. This transformation can act as a force multiplier for the operational commander. Unfortunately, this multiplier comes at a cost. In this case, the cost is an additional level of complexity added to the commander's contingency planning resulting from the presence of and reliance on large numbers of non-combatant contractor personnel in the theatre of operations. Addressing this complexity requires a level of awareness that recognizes and addresses issues associated with the Operational Functions of Command and Control and Operational Force Protection.

A BRIEF DISCUSSION OF CIVILIANS AND CONTRACTORS AT WAR

The use of contracted support is a subset of the overall issue of civilian support and civilians in the battlespace.[ii] The preference for performing non-core military functions using

civilian personnel is authorized in Title 10 Section 129a. The statute requires the Secretary of Defense (SECDEF) to "use the least costly form of personnel consistent with military requirements and other needs of the Department." In addition, it requires the SECDEF to "consider particularly the advantages of converting from one form of personnel…to another for the performance of a specified job."[iii] The DoD preference for using civilians to perform "non-core" functions was stated in the 1954 DoD Directive 1100.4. The directive requires the use of civilian personnel for positions that do not specifically require a military incumbent for reasons of "law, training, security, discipline, rotation, or combat readiness" and "which do not require a military background for successful performance of the duties involved…."[iv] In accordance with the directive, historically DoD has relied on the use of civilian personnel. Just looking at two years, in 1989 civilians made up 33% of the DoD workforce. In 2001, after uniformed military and civilian downsizing, civilians still made up approximately 33% of the total active duty DoD workforce.[v]

Historically DoD has used a civilian/contracted workforce to perform functions that did not require uniformed military personnel. This use of contracted support goes back to the founding days of the U.S. when the Continental Army employed civilians to drive wagons, provide construction and medical services, and to obtain food when it could not be foraged.[vi] The U.S. military continued to rely on civilian and contracted support through the War of 1812, the Mexican/American War, the Civil War, the two World Wars, and in the conflicts in Korea and Vietnam.[vii]

Just as there are today, there were problems with the contractor workforce. During the Revolution, a regiment of craftsmen was raised to work with civilian craftsmen supporting construction and ordinance requirements. A report to Congress on the state of the regiment emphasized disgruntled comments from the military members contrasting their

wages to the wages paid to the civilians.[viii] During the Civil War, draft exemptions were provided to teamsters to encourage them to drive for the military. Towards the end of the war, military commanders often found themselves replacing these difficult to manage civilian drivers with soldiers who could not resign or disobey orders.[ix]

Interestingly, the level of civilian/contracted support in a theatre of operations tends to be a factor of the level of overall mobilization. Where the country has fully mobilized to fight an unlimited war (World Wars I and II for example) the level of military manpower allows the commander the opportunity to use uniformed personnel to perform "non-core" functions. Where, for host nation or political considerations, there is a limitation on the mobilization or the number of troops in theatre, operational commanders become more reliant on making up the shortfall with contracted support.[x] This is a trend that was displayed in the conflicts in Korea and Vietnam and continues to be more pronounced in today's very limited and highly political contingency operations.

CURRENT TRENDS

During the 12 years between the end of the Cold War and the year 2001, the DoD has cut approximately 35% of its uniformed military positions. Going along with this reduction in uniformed personnel, during the same period DoD has cut slightly more than 37% of its civilian workforce.[xi] These force reductions occurred during a period in which the U.S. military deployed 63 times, over 6 times the number of deployments that occurred during the 40 years of the Cold War.[xii] The National Guard and the Reserve force were also subject to the same type of reductions. Between 1989 and the year 2000, the Guard and Reserve were reduced from 1.8 million positions to 876,000. During this same period, they performed 13 times more man-days of service per year than they contributed before the collapse of the Soviet Union.[xiii] Given that a large portion of his potential CS/CSS support currently resides

in the Guard and Reserve, this reduction impacts the options open to the operational commander.[xiv]

Some conflicts and operations come with restrictions or limitations on the deployment of uniformed military personnel. A historic example is the Vietnam Conflict. During the conflict, due to political considerations, President Johnson was reluctant to call up the Reserves, and congressionally mandated ceilings were placed on the number of soldiers that could be deployed by commanders in the theatre. Employing over 80,000 contractors during the peak of the war, in part, made up the force deficits.[xv] A more recent example was President's Clinton's commitment to support the operations in Bosnia while limiting U.S. forces in the theatre to fewer than 20,000. Depending on the author you read, these uniformed forces have been supplemented by somewhere between 2,000 and 20,000 contractors providing the commander with the flexibility to employ his limited uniformed personnel on jobs requiring an actual soldier while leaving non-military functions to contracted civilian personnel.[xvi]

In part, the downsizing of DoD and the increased use of contracted services during contingency operations are being driven by strategic initiatives to privatize and outsource jobs. The Quadrennial Defense Review (QDR) Report for 2001 notes "most private sector corporations have moved aggressively away from providing most of their own services. Instead they have concentrated efforts on core functions and businesses." The QDR proceeds to spell out a process that commits the DoD to assessing it functions to separate the core from the non-core functions, with a core function being one that is linked to warfighting. For those functions "not linked to warfighting and best performed by the private sector, DoD will seek to privatize or outsource entire functions or define new mechanisms for partnerships with private firms or other public agencies."[xvii] There are several demonstrations of this

initiative. First, SECDEF Donald Rumsfeld recently submitted to Congress a package of DoD reform initiatives titled “Defense Transformation for the 21st Century Act." Embedded within this 204 page document is a proposal that keeps the uniformed strength of the military constant at 1.5 million and at the same time turns over as many as 300,000 jobs now performed by military personnel to outside civilian contractors.[xviii] The intent of this initiative is to increase the fighting strength of the military by transitioning existing uniformed personnel from "tail to tooth."[xix] Second, the Army is currently in the process of a privatization program called the “third wave.” This represents the third and largest wave of privatization of both uniformed and civilian Army jobs. This third wave is looking into a public private sector competition for upwards of 200,000 jobs related to non-core functions. Of these jobs, uniformed Army personnel are currently performing 58,000. In addition, and of importance to an operational commander, 55,000 of these 200,000 jobs are related to Acquisition, Logistics and Technology. Of these positions, 18,000 are uniformed military.[xx]

DoD expends $60 billion a year to sustain its weapons systems, accounting for 70% of its logistics budget. The department is in the process of implementing 400 separate plans aimed at reducing these logistics and maintenance expenses.[xxi] Some of these plans involve transferring the responsibility for maintaining weapons from DoD uniformed military or civilian personnel to contractor responsibility. In addition, the U.S. is deploying weapons systems that continue to increase in complexity. This tendency has increased over time to the point where contracting for logistics support has become necessary to maintain these systems.

The trends towards privatizing support for cost savings and the growing dependence of DoD on contractors for sophisticated maintenance support has resulted in an increase in the need for an operational commander to rely, in some cases solely, on contracted support

for CS/CSS activities. During Operations Desert Shield and Desert Storm, contractor maintenance teams supported Army tracked and wheeled vehicles; the Fox nuclear, biological, and chemical vehicles; and TOW and Patriot missiles. The Air Force had contractors flying in support of JSTARS as well as performing in-theatre organizational maintenance. In total, there were some 9,200 contractors supporting the military forces in the Persian Gulf.[xxii] During Operation Just Cause, a total of 82 contractors were in Panama in support of aviation assets.[xxiii] Defense contractor TRW's experience in the Balkans showed that 70% of the maintenance on the Hunter UAV was performed by the contractor.[xxiv] Although the final numbers are certainly not in, as of early May 2003, there were 8,700 contractor employees supporting Operation Iraqi Freedom.[xxv]

TYPES OF CONTRACTED SUPPORT

Doctrine discusses three basic broad categories of in-theatre contracted support. These are, Internal Theatre Support, External Theatre Support, and Systems Support. The first two are generally considered Contingency Contracting and the last represents a long-term DoD logistics and/or maintenance relationship with a system development contractor. These categories are defined as follows:[xxvi]

Internal Theatre Support – Supports deployed operational forces with contracts arranged within the mission area or through prearranged contracts through Host Nation (HN) and/or regional businesses and vendors. Contracting personnel with the deployed force working with either a joint contracting chief or a service component award and administer the contracts. Internal theatre support contractors provide goods and services and minor construction normally from the local vendor base. The intent of this type of contracting is to meet the commander's immediate operational needs and to bridge the gap between when deployment starts and when dedicated service support can be deployed. Since the workforce

and supply base is local (normally located in the theatre), this type of contract support reduces the theatre dependence on CONUS supply support, provides a better initial response time, and reduces the required logistics airlift/sealift deployment requirements allowing the operational commander to more quickly deploy his initial tactical units.[xxvii]

External Theatre Support – Supports theatre requirements through contracts awarded primarily under the command and procurement authority of supporting headquarters outside of the theatre. The contractors may be U.S. or third country businesses and vendors. The contracts are normally prearranged, but may be awarded or modified during the mission based on the commander's needs. For example, DynCorp has a seven-year $30 million-dollar-per-year contract to maintain the Air Force war reserves in Oman, Qatar, and Kuwait.[xxviii] In East Timor, the U.S., working under an Australian command, contracted its support commitment for heavy lift helicopters to DynCorp. DynCorp provided four helicopters, constructed the two helipads they used, and ultimately ended up moving over 6,400 passengers and 845 tons of cargo. Contracted participation allowed the U.S. the political advantage of participating in this non-U.S. lead operation without actually having to maintain a commitment of uniformed U.S. forces.[xxix]

Systems Support – Logistically supports deployed operational forces under prearranged contracts awarded by acquisition system Program Managers or by military service component logistics commands. The support is provided for specific systems throughout the system's life cycle across the range of military operations. In general, there are two types of this support, Interim Contractor Support (ICS) and Contractor Logistics Support (CLS). ICS is a temporary arrangement for contractor support during the initial fielding of a weapon system; CLS is for long-term support for a selected material system.[xxx] Two additional useful categorizations for this type of contract support are Mission Enhancing

and Mission Essential. Mission Enhancing being support from a contractor Field Service Representative (FSR) that enhances organic capabilities; Mission Essential being support that provides contractor maintenance for systems the U.S. military cannot maintain itself.[xxxi] The operational commander should be aware of the distinction between the two since, in a pinch, uniform or DoD civilian personnel cannot replace Mission Essential contractors.

System support contracting is a specific challenge to the operational commander because the personnel awarding and administering the contracts do not deploy to the theatre with the supported units.[xxxii] The relationships, especially with CLS arrangements, tend to be "habitual" with contractor personnel deploying with their support units.[xxxiii] Since the acquisition community can develop a system's maintenance concept and award logistics support contracts independent of an operational commander's influence and without regard for logistics support in the theatre of operations, contractor personnel can arrive in theatre to maintain critical equipment without the knowledge of the operational commander or his staff.[xxxiv]

The military services have been transforming their contracting practices from awarding many individual External Theatre Support contracts with a multitude of contractors to awarding a single large individual contract with a single contractor who in turn awards subcontracts. The current service programs along these lines that are available to the operational commander are the Army Logistics Civil Augmentation Program (LOGCAP), the Air Force Contract Augmentation Program (AFCAP), and the Navy's Construction Capabilities (CONCAP). A brief description of each program is as follows:[xxxv]

<u>LOGCAP</u> – The program is managed and administered by the Army Material Command (AMC). LOGCAP was established in 1985, but was not used until 1988 when the Army contracted for the plan to construct and maintain two petroleum pipeline systems to

support contingency operations in Southwest Asia. The first umbrella contract was issued to Brown and Root (now Kellogg, Brown, and Root [KBR] a subsidiary of Halliburton) in August 1992 and activated to support operations in Somalia. DynCorp began performing on the program in 1997 with their contract expiring in 2002. KBR won the follow-on effort with a cost-plus-award-fee (CPAF) contract for one base and nine option years. Under the program, the contractor is required to maintain a database of support providing for facilities, supplies, services, maintenance, and transportation.

AFCAP – The program was awarded to Readiness Management Support LC (RMS) in February 1997 for one base and four option years. RMS also won the contract rebid in February 2002 earning a CPAF contract for one base and seven option years. AFCAP also requires the contractor to plan for and provide a given set of services.

CONCAP – The program was started to enhance the Naval Facilities Engineering Command's ability to respond to global contingencies. The current contract is CPAF with KBR for one base and four option years.

The use of these prearranged contracting arrangements has increasingly acted as a force multiplier for the theatre commander by effectively providing CS/CSS and freeing limited uniform personnel for more "military" missions. The first real use of LOGCAP was in Somalia in 1992 where KBR was paid $62 million for constructing and maintaining Army camps. Two years later, in support of operations in Haiti, KBR was paid more than $133 million for building bases and supporting some 18,000 troops. Since 1995, to support operations in Bosnia, KBR, initially under LOGCAP and since 1997 under the single Balkans Sustainment Contract, has employed between 5,000 and 20,000 personnel to build and operate bases and provide dozens of support functions in support of as many as 20,000 troops.[xxxvi] Depending on which author you choose to believe, it is quite possible that there

have consistently been more U.S. contractors and subcontractors in this theater than uniform service members. In total, since operations in Bosnia began in 1995, KBR has been paid approximately $2.2 billion.[xxxvii]

Kosovo is a continuation of the story of increasing reliance on contracted service support within a theatre of operations. At Camp Bondsteel, Kosovo with 3,600 troops, KBR work has included building 200 dormitory-style barracks in less that 90 days; providing 600,000 gallons of water a day and generating enough electricity for a city of 25,000; running a supply center with 14,000 product lines; washing 1,200 bags of laundry and cooking and serving more than 18,000 meals a day; and operating 95% of the Army's transportation, including rail lines and airfields.[xxxviii] About 5,000 of the company's 5,500 employees in Kosovo are local residents making KBR that country's largest employer.[xxxix] According to a GAO study, a full 10% of the money that the DoD has spent in the Balkans has been paid to contractors for battlefield support.[xl] Army peacekeepers in the Balkans are noted to joke that they're missing a patch on their fatigues; they say they need one that reads, "Sponsored by Brown and Root."[xli]

Efforts conducted by contractors in support of U.S. operations under AFCAP have also been impressive. In support of Operation Enduring Freedom, RMS supported the 820th RED HORSE squadron in building two large concrete aircraft ramps averaging 18 football fields side-by-side. Using a heavy equipment lease package and asphalt delivery services from the contractor, RED HORSE personnel were able to lay 30,000 tons of asphalt in 13-days. Contractor support, including providing state of the art equipment and setting up two mobile concrete batch plants, allowed for completion of a job that would normally have taken 24 months in just six months.[xlii] Since 1997, RMS has earned more than $200 million providing support services to the Air Force. In addition to the activity detailed previously,

the company was paid $40 million for building 3 refugee camps within 45-days in Kosovo and $20 million to produce and deliver 19,000 metric tons of construction timber on 39 trains to Kosovo to repair houses damaged during the war.[xliii]

SIGNIFICANT ISSUES FOR THE COMMANDER

Command and Control

Extensive use of contracted CS/CSS support in a theatre of operations violates the Principle of War of Unity of Command. Where the commander's link to the uniformed forces in theatre is direct through the chain-of-command, the commander's link to contractor personnel is indirect through a series of Contracting Officers (CO) or the CO's Representatives (COR).[xliv] Where mission drives a theatre commander, profit drives the contractor. The relationship between the Government and the contractor is established by a contract Statement of Work (SOW). The SOW defines the extent of the tasks assignments that represent the total performance obligation of the contractor. FM3-100.21 notes that the "Duties of the contractors are established solely by the terms of their contract – they are not subject to Army regulations or the Uniformed Code of Military Justice (UCMJ)…Authority over contractors is exercised through the contracting officer."[xlv]

In short, lacking specific language or task assignments in their contracts, the operational commander does not have any tacit authority to direct contractors operating within his command. The only person with that authority is a warranted CO. In fact, authoritative direction outside the scope of the contract could be construed as a "Constructive Change" or what FM3-100.21 refers to as an "Unauthorized Commitment" committing the Government to cover expenses for work not authorized on contract or even in extreme cases committing the commander to pay the unauthorized expense.[xlvi] The number of organizations contracting within a theatre can compound this lack of authority to create a

difficult situation. Most if not all of the Internal Theatre Support arrangements are made by COs reporting to a Joint Task Force (JTF) or to the Combatant Command (CC). These activities can be effectively coordinated through some type of a joint contracting board. PACOM for example uses a Pacific Contingency Contracting Officers Working Group (PCCOWG) to ensure that service components are not bidding against each other for the same commodity or service.[xlvii] The difficulty arises from the use of programs like LOGCAP and the use of either CLS or ICS system contractor arrangements made through the acquisition process. For both of these arrangements, in general, the offices making the contract arrangements and the responsible COs are not located in the theatre or do not deploy with their respective systems. Since the contractor is only obligated to perform tasks called out in their contract, the ability of the contractor to perform is only as good as the ability of the CO to modify an existing contract. If the environmental conditions within a theatre change during the execution of a mission, the lack of a CO in theatre to speedily change contracts can significantly reduce the flexibility of the operational commander to successfully complete his assigned mission.[xlviii]

A Status of Forces Agreement (SOFA) defines the legal status of U.S. personnel and property in the territory of another nation. Most SOFAs recognize the rights of the host governments to "primary jurisdiction" when U.S. personnel violate host country laws.[xlix] The issue in dealing with contractors comes when the host nation is either unwilling or unable to prosecute a U.S. citizen that is performing contract activities for the DoD. Since most countries where the DoD is conducting contingency operations tend not to have stable or robust administrative or police authorities, this issue can and should be a significant concern for the theatre commander.

Except in times of congressionally declared wars, civilian contractors to the DoD, unlike uniformed military personnel, are not subject to the UMCJ.[1] Since most U.S. laws have no extraterritorial effect, if the host nation does not prosecute a crime, the theatre commander has no authority and very limited capability to discipline a contractor employee. This loophole in jurisdiction can and has resulted in DoD contracted personnel committing serious crimes in foreign countries with no greater punishment than dismissal from their jobs. An example of this situation occurred in early 2000 when private contractors, seven men and one supervisor, working for DynCorp on a base near Tuzla, Bosnia were accused of purchasing women from local brothels. Some of the women were alleged to have been as young as 12 and some were being held as sex slaves. Despite the fact that both the Army and the Bosnian police essentially confirmed the allegations no one has ever faced criminal prosecution in the case.[li]

To close this prosecution loophole, the U.S. Congress passed the Military Extraterritorial Jurisdiction Act (MEJA) of 2000. The law applies to civilians and family members and to service members who separate from active duty before being identified and prosecuted. The act allows the U.S. to prosecute crimes committed by U.S. citizens in foreign countries if the crime would be punishable in maritime or territorial jurisdiction of the U.S. by confinement of one or more years.[lii] Unfortunately, even though the act was passed and signed into law in 2000, the DoD has yet to finalize the policy and procedures to implement it. The procedures are being coordinated with the Departments of State and Justice and until the coordination process is complete, DoD will not put the provisions of the act into effect.[liii] In addition, while the MEJA is a good start, it still does not provide the theatre commander with a discipline alternative for lesser offences (misdemeanors) and it does not apply when U.S. contractor personnel are working as a part of a UN force.[liv]

Last, where the operational commander can compel a uniformed service member to comply with an order, the commander cannot (in the absence of a declared war) compel contractor personnel to perform once hostilities have started. It is not unlawful for contractor personnel to leave a hostile area.[lv] The commander has no recourse, other than denying simple administrative privileges (Exchange access for example) or requesting the contractor remove an employee to compel performance of duties or to punish acts of misconduct.[lvi] When planning, the commander and his staff need to perform a Risk Assessment of contractor functions and provide for a uniformed military back up for mission critical functions being accomplished by contractor personnel to ensure continuity in the event the contractor or some of his personnel fail to perform or choose to leave the theatre.

Force Protection

Michael Pouliot was killed and his passenger was wounded after an ambush of his vehicle just outside of Camp Doha in Kuwait. Mr. Pouliot was a software engineer and the co-founder of Tapestry Software. He was in Kuwait under contract from the DoD to install software that would allow the U. S. military to coordinate operations. The killing of Mr. Pouliot underscores the difficulty a theatre commander might have in providing protection to contractors supporting U.S. forces in his theatre.[lvii]

Civilian contractor personnel have a legal status relative to the Law of Armed Conflict that falls into a category somewhat between combatant and noncombatant. Article 13 of the Hague Convention defines "Individuals who follow an army without directly belonging to it, such as…contractors…" and provides them with the rights to be treated as prisoners of war.[lviii] This right is reflected in Article 4 of the Geneva Convention as well.[lix] Article 1 of the Hague Convention describes the qualifications of belligerents. In general these are, be commanded by a person responsible for his subordinates, have a fixed

distinctive emblem, carry arms openly, and conduct their operations in accordance with the laws and customs of war.[lx] The obligations of the theatre commander are to protect the legal status of contractor personnel to ensure that they are not mistakenly perceived as belligerents and as a result become the subject of attack and to ensure that contactors do not take actions that are solely the rights of a combatant and as a result become a war criminal.

In today's environment this is becoming more and more difficult. Battlelines during contingency operations are not nearly as clear as they once were. As Mr. Pouliot's death demonstrates, there are no safe rear areas. The increased range of today's weapons and the disappearance of the linear battlefield means that anyone working in the theatre is on the battlefield. With the increasing use of contractors to provide forward real-time maintenance to complex weapons systems, the presence of a contractor near, at, or on a weapon platform may give the impression to an adversary that the contractor is in fact a combatant. In addition, some of the contractor jobs supporting weapons systems may be seen as active participation in hostilities making these contractors subject to open attack.[lxi] Last, any civilian's status is irrelevant if the adversary does not agree with or chooses to ignore our definition of a civilian accompanying the force.[lxii]

Some of the literature states that, lacking specific contract provisions otherwise, force protection for contractor personnel is a contract issue and the responsibility of the contractor. In fact this is the position stated in JP 4-0.[lxiii] Given that contractor personnel have very few options for personal protection that do not endanger their status as civilians, this does not seem to be a reasonable position. The Army, in FM-100.21 provides a better solution by stating, "When contractors provide direct support of Army forces in potentially hostile areas, the supported military forces must provide the protection of the contractor's operations and personnel."[lxiv] There are force considerations related to this position that need to be

addressed by the theatre commander. While the use of civilian contractors is a force multiplier, the need to use uniform forces to provide protection or escorts for civilians actually takes forces from mission-direct military operations. In addition, due to their status as civilians, contractor personnel unlike combatant personnel performing the same jobs are not available as an emergency fighting force. Where military logistics personnel can be considered "infantry in reserve" available to assist in providing force protection and security to rear areas, there are no civilian contractor "Fighting Seabees."[lxv]

With the number of different military service organizations contracting support in any given theatre, with some of the contracted support being "habitual" and self-deploying, and with external support contractors additionally subcontracting tasks to other contractor organizations or hiring from the local population, it is becoming very difficult for the theatre commander or his staff to actually keep track of the number of contracted personnel operating in the theatre or their specific locations. The Army recently made an attempt to quantify the amount of work they were contracting. Their conclusion was that they had contracted out between 124,000 and 605,000 work-years in 2001.[lxvi] While all this effort is certainly not exclusively associated with contracting in an operational area, the broad range of the results tends to support a conclusion that the Army really does not know how much work is being contracted out making it difficult to understand, given the conclusion, how protection can be provided to these personnel if the commander is not aware they are in his theatre. In her article Robinson quotes an Army Colonel as suggesting to the Army's logistics chief, "At the very least, he could count these little beggars in some fashion before they show up on the battlefield and surprise some poor commander with horrific support, real estate and security requirements."[lxvii]

A last consideration is to not only address protection for contractors, but also the need to address protection from contractors. Using contractors brings on the added danger of infiltration of the contractor workforce.[lxviii] Recent events at Camp Pennsylvania in Kuwait where SGT Asan Akbar of the 101st Airborne executed a grenade and rifle attack in camp that killed 1 and wounded 12 demonstrates the potential risk to the force from a single infiltrator.[lxix] When using contractor support, the commander needs to weigh their force multiplier effect against the added security requirements to counter the very real danger of infiltration, sabotage, and/or communications disruption within the operations area.[lxx]

CONCLUSIONS

The use of civilian contractors to provide CS/CSS in direct support of military operations is not new. As long as the U.S. has had a military, that military has been contracting with individuals and companies for services in order to free uniformed personnel to focus on military missions and activities. The difference between then and now is in degrees. The focus of the DoD from the SECDEF through the various services is to take non-core military and DoD civilian jobs and privatize or outsource those jobs to contractors. The focus of these current initiatives is not necessarily to continue the downsizing of the DoD, but to focus its restricted numbers of military personnel on essential military missions and let non-combatant contractors handle the rest and to tap industry skills in maintaining increasingly complex weapons systems.

The plan seems reasonable. Through the use of programs like LOGCAP and AFCAP, large contractor organizations are showing a capability to provide operational commanders with timely and effective CS/CSS services during contingency operations. Contractors are also showing the capability to provide a full range of logistics services in support of the military's equipment. In total, the effective use of contractors during

contingency operations is acting as a force multiplier for the theatre commander allowing him to dedicate a larger portion of his uniform force to the direct accomplishment of the mission.

This force multiplier comes at a price. Command and Control is not the same with contractors as it is with a uniformed force. The commander needs to recognize that bringing on a contractor force trades some operational flexibility by requiring a change to a contract instrument to account for changes in the operational environment. In addition, the commander needs to recognize that he has very limited opportunities to discipline contractors due to the lack of application of the UCMJ. In addition, in his planning, the commander needs to account for the fact that contractor personnel are not obligated to perform if hostilities start. A back up plan needs to be in place to fill mission essential positions in the event the contractor leaves the theatre. The commander needs to recognize the limitations on his contractors due to their legal status. He needs to ensure they do not perform jobs or are put in a position where an adversary may believe they are combatants, and he cannot allow them to illegally take up arms in combat. Last, the commander needs to weigh the use of contracted support against the need to protect the rest of his force from possible hostile infiltration of the contractor's organization.

ENDNOTES

[1] In this paper a "Contingency Operation" is being defined as "an event that requires the deployment of military forces in response to natural disasters, terrorists or subversive activities, collapse of law and order, political instability, or military operations." Contingency Contracting is defined as "the process by which essential supplies and services needed to sustain deployed forces are obtained on behalf of the US Government." Both these definitions are taken form the Army Field Manual (FM) 100-10-21, Contracting Support on the Battlefield, chapter I, page 2.

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[1] "Title 10, Section 129a – General Personnel Policy," US Code Title 10 – Armed Forces, <www4.law.cornell.edu/uscode/10/129a.html> (19 April 2003).

[1] Department of Defense, *DoD Directive (DODD) 1100.4*, 20 August 1954, p. 2.

[1] Washington Headquarters Services, Directorate of Information Operations and Reports, *Department of Defense Selected Manpower Statistics, Fiscal Year 2001*, <www.web1.whs.osd.mil/ mmid/mo1/fy01/m01fy01.pdf> (22 April 2003) p. 15.

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[1] The table below provides a short summary of historic use of civilians and contractors during these wars or conflicts as a ratio of the deployed military force. The table or one similar can be found in a number of the writings on this subject. This particular table was pulled from a U.S. Army War College published report written by Paula J. Reber titled "Contractor Support on the Battlelfield." Of note to this discussion is that before Korea, the services did not make a distinction between civilian and contractor support. As a result, the numbers and ratios pre-Korea and the same values for post-Korea may not be completely comparable.

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[1] Zamparelli, p. 10.

[1] Paula J. Rebar, *Contractor Support on the* Battlefield, U.S. Army War College, p. 3.

[1] John T. Gutierrez, Capt, USMC, *Contracted Logistics Support in Operational Environments: The Legal Issues and Their Effects on the Decision to Outsource*, Naval Postgraduate School, December 2001, p. 10-15.

The conclusions in this paragraph are distilled from a more detailed discussion by Capt Gutierrez on the overall history of the use of contractors in the theatre of operations.

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[1] Donald H. Rumsfeld, *Quadrennial Defense Review Report*, 30 September 2001, p. 53-54.

[1] Michael Kilian, "Rumsfeld Submits Report Calling for Sweeping Changes in Military," *European Stars and Stripes*, 15 April 2003, <www.estripes.com/article.asp?section=104&article=14218&archive=true>, (16 April 2003).

[1] Fredrick J. Krosen, Gen USA Retired, "Expending the Force III," *Army Magazine*, January 2003, <www.ausa.org>, (9 April 2003).

[1] Dennis Ryan, "Army Jobs Privatization 'Third Wave' Coming Soon," *Herald Post On-line, <www.26thasg.Heidelberg.army.mil/newspaperweb/Aarchive/2002/Oct24/MainStory1.htm>* (27 March 2003).

[1] Katherine McIntire Peters, "Roadblock," *GovExec.Com*, 1 September 2000, <www.gov.exec.com/features/0900/0900s3.htm>, (31 March 2003).

[1] Katherine McIntire Peters, "Civilians at War," *Government Executive*, July 1996, p. 27.

[1] Zamparelli, pg. 11.

[1] Linda Robinson, "America's Secret Armies, A Swarm of Private Contractors Bedevils the U.S. Military," *USNEWS.Com*, 4 November, 2002, <www.sandline.com/hotlinks/4contractors.htm>, (12 April 2003), pg. 2.

[1] Stephen Barr, "Defense Bigwigs Push for Pentagon's Civil Service Overhaul." *Washington Post*, 7 May 2003, p. B2.

[1] Department of Defense, Joint Publication (JP) 4-0, "Doctrine for Logistics Support of Joint Operations," 6 April 2000, p. V-1 – V-2.

The definitions provided here are derived form the categorizations provided in JP 0-4. Similar definitions are provided in Army Field Manual FM3-100.21, Contractors on the Battlefield.

[1] U.S. Army, Field Manual FM3-100.21, "Contractors on the Battlefield," 3 January 2002, p. 3-1.

[1] George A. Cahlink, "Send in the Contractors," *Journal of the Air Force Association*, January 2003 Vol. 83 No. 1, <www.afa.org/magazine/Jan2003/0103contract.asp>, (12 April 2003), p. 3.

[1] Philip M. Mattox, BGen, USA and William A. Guinn, LtCol, USA, "Contingency Contracting in East Timor," *Army Logistician*, Jul/Aug 2000, <www.almc.army.mil/ALOG/JulAug00/MS656.htm>, (5 April 2003).

[1] FM3-100.21, p. 4-3.

[1] Sam Hamontree, Major, USA, "Contractors on the Battlefield, Plan Now or Pay Later," *Armed Forces Journal*, June 2002, <www.call.army.mil/Products/NFTF/septoct02/hamon.htm>, (5 April 2003).

[1] FM3-100.21, p. 4-3.

[1] FM3-100.21 (chapter 1, page 9) defines a "Habitual" relationship as "a relationship between a business and the military for habitual support of a unit/organization or system or set of systems." The relationship may be long-term and continuous. Of note is that the military may not be able to deploy the supported systems without also deploying the supporting contractors.

[1] Castillo, p. 4.

[1] Peter J. Higgins, "Civilian Augmentation of Joint Operations," *Army Logistician*, January/February 2003, <www.almc.army.mil/alog/issues/JanFeb03/MS870.htm>, (5 April 2003).

The descriptions of the various service augmentation programs is taken form the article written by Mr. Higgins. Other information embedded in this paper is individually footnoted as necessary and appropriate. Specific services offered under each program are as follows;

<u>LOGCAP</u> – Supply Operations; clothing exchange of bath; clothing repair; mortuary affairs; billeting; facilities management; information management; other operations and services; transportation; engineering and construction; distribution; support of Army personnel and equipment retrograde; field services; laundry; food service; hazardous materials/waste; morale, welfare and recreation; personnel support; maintenance; medical services; power generation; management and information systems operations.

<u>AFCAP</u> – Deployed management services, airfield support, infrastructure support, emergency support services, reconstitution, services (morale, welfare, and recreation), environmental, restoration, and material support.

<u>CONCAP</u> – Horizontal/Vertical Construction – Runways, roads, bridges, piers, berthing/messing facilities, depots/warehouses, clinics and filed hospitals, operations facilities, communications facilities, and ammunition dumps. Specialty Construction/Engineering – Dredging; aerial photography; soils engineering and survey; operations of power generation; petroleum, oil, lubricants; environmental restoration; concrete and asphalt plants.

[1] George Chalink, "Army of Contractors," *Government Executive Magazine*, 1 February 2002, <www.govexe. Com/features/0202/0202s5.htm>, (31 March 2003), p. 3.

[1] Ibid, p. 1.

[1] Ibid, p. 4.

[1] Ibid, p. 4.

[1] Ibid, p. 2.

[1] Ibid, p. 1.

[1] Vic D. Blano, LCDR, USN, "Providing Contingency Contracting Administration Services (CCAS) Support to the U.S. Air Force RED HORSE," *The Navy Supply Corps Newsletter*, September/October 2002, <www.navsup.navy.mil/lintest/so02/ccas.htm>, (5 April 2003), p. 1.

[1] Chalink, *Journal*, p. 1-2.

[1] JP 4-0, p. V-1.

[1] FM3-100.21, p. 1-2.

[1] FM3-100.21, p. 1-5.

The Unauthorized Commitment is defined to have occurred when "there is a purchase agreement that is not binding solely because the government representative…who made it lacked the authority to enter into the agreement on behalf of the government."

[1] Steven J. Minear, "Contingency Contracting in the Pacific Command," *Army Logistician*, November/December 2001, <www.almc.army.mil/alog/NovDec01/MS687.htm>, (5 April 2003), p. 1.

[1] Eric A. Orsini and Gary T. Bubiltz, LtCol USA, Contractors on the Battlefield: Risks on the Road Ahead," *Army Logistician*, January/February 1999, p. 131.

[1]GlobalSecurity.org, "Status –of-Forces Agreement (SOFA)," <www.globalsecurity.org/military/ facility/sofa.htm>, 13 April 2003.

The U.S. currently has 105 SOFAs negotiated with other nations. The most notable missing nation is Iraq.

[1] Foster, p. 19.

Application of UCMJ to civilians has been portrayed as a constitutional issue (civilian control of the military). The initial versions of the MEJA, soon to be discussed, actually tried to extend UCMJ to civilians. The DoD objected to the provisions fearing lawsuits and court battles. The final version of the act excluded the application of the UMCJ to civilian contractors during contingency operations.

[1] Robert Capps, "Crime Without Punishment," *Salon.com News*, 27 June 2002, <www.salon.com/news/feature/2002/06/27/military/print.htm>, (6 April 2003), p. 1.

[1] Title 18, Section 3261, "Military Extraterritorial Jurisdiction Act of 2000."

[1] David A. Fahey, Col, USAF<David.Fahey@DCMA.mil>, "MEJA," 17 April 2003.

[1] The Departments of Justice and State are working on recommending changes to the language in the MEJA to include U.S. contractor personnel that are working for the UN in order to fill at least one of these loopholes.

[1] James J. McCullough and Abram J. Pafford, "Contractors on the Battlefield: Emerging Issues for Contractor Support in Combat & Contingency Operations." *Westgroup Briefing Papers no. 02-7*, June 2002, p. 13.

[1] James E. Althouse, Maj. USA, "Contractors on the Battlefield: What Doctrine Says, and Doesn't Say," *Army Logistician*, November - December 1998, p. 14.

[1] Braley J. Fikes, "Poway Man Killed, San Diegan Injured in Kuwait, *North County Times*, 22 January 2003.

[1] Laws and Customs of War on Land (Hague IV), 18 October 1907, <www.yale.edu/lawweb/avalon/lawofwar/hague04.htm>, (19 April 2003.

[1] Geneva Convention (III) Relative to the Treatment of Prisoners of War; 12 August 1949, <www.yale.edu/lawweb/avalon/lawofwar/geneva03.htm>, (19 April 2003).

[1]Hague.

[1] Althouse, p. 17.

[1] Hamontree, p. 4.

[1] JP 4-0, p. V-7.

[1] FM3-100.21, p. 2-10.

[1] Orsini and Bubilitz, p. 130.

[1] Robinson, p.3.

[1] Ibid, p. 3

[1] Isolde K. Garcia-Perez, Capt. USA, "Contractors on the battlefield in the 21st Century," *Army Logistician*, November - December 1999, P. 40.

[1] Martin Walker, "U.S. Grenade Victim in Kuwait Dies," *The Washington Times*, 23 March 2003, <dynamic.washtimes.com/twt-print.cfm?ArticleID=20030323-042706-5192r>, (11 May 2003).

[1] Garcia-Perez, p. 43.

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[ii] Susan C. Foster, *Contractors on the Battlefield: Force Multipliers or Detractors?*, U.S. Army War College, 7 April 1998, p. 5.

[iii] "Title 10, Section 129a – General Personnel Policy," US Code Title 10 – Armed Forces, <www4.law.cornell.edu/uscode/10/129a.html> (19 April 2003).

[iv] Department of Defense, *DoD Directive (DODD) 1100.4*, 20 August 1954, p. 2.

[v] Washington Headquarters Services, Directorate of Information Operations and Reports, *Department of Defense Selected Manpower Statistics, Fiscal Year 2001*, <www.web1.whs.osd.mil/ mmid/mo1/fy01/m01fy01.pdf> (22 April 2003) p. 15.

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[ix] Paula J. Rebar, *Contractor Support on the* Battlefield, U.S. Army War College, p. 3.

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[xii] Center for Defense Information (CDI), *U.S. Military Deployments/Engagements 1975-2001*, <www.cdi.org/issues.USForces/deployments.html> (21 April 2003), p. 1-6.

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The claimed numbers of contractors in Bosnia theatre varies greatly depending on the author and the date of the article/paper. Best guess at this point is that the civilian to force ratio at this point is about 1:1.

[xvii] Donald H. Rumsfeld, *Quadrennial Defense Review Report*, 30 September 2001, p. 53-54.

[xviii] Michael Kilian, "Rumsfeld Submits Report Calling for Sweeping Changes in Military," *European Stars and Stripes*, 15 April 2003, <www.estripes.com/article.asp?section=104&article=14218&archive=true>, (16 April 2003).

[xix] Fredrick J. Krosen, Gen USA Retired, "Expending the Force III," *Army Magazine*, January 2003, <www.
ausa.org>, (9 April 2003).

[xx] Dennis Ryan, "Army Jobs Privatization 'Third Wave' Coming Soon," *Herald Post On-line, <www.26thasg. Heidelberg.army.mil/newspaperweb/Aarchive/2002/Oct24/MainStory1.htm>* (27 March 2003).

[xxi] Katherine McIntire Peters, "Roadblock," *GovExec.Com*, 1 September 2000, <www.gov.exec.com/features/ 0900/0900s3.htm>, (31 March 2003).

[xxii] Katherine McIntire Peters, "Civilians at War," *Government Executive*, July 1996, p. 27.

[xxiii] Zamparelli, pg. 11.

[xxiv] Linda Robinson, "America's Secret Armies, A Swarm of Private Contractors Bedevils the U.S. Military," *USNEWS.Com*, 4 November, 2002, <www.sandline.com/hotlinks/4contractors.htm>, (12 April 2003), pg. 2.

[xxv] Stephen Barr, "Defense Bigwigs Push for Pentagon's Civil Service Overhaul." *Washington Post*, 7 May 2003, p. B2.

[xxvi] Department of Defense, Joint Publication (JP) 4-0, "Doctrine for Logistics Support of Joint Operations," 6 April 2000, p. V-1 – V-2.

The definitions provided here are derived form the categorizations provided in JP 0-4. Similar definitions are provided in Army Field Manual FM3-100.21, Contractors on the Battlefield.

[xxvii] U.S. Army, Field Manual FM3-100.21, "Contractors on the Battlefield," 3 January 2002, p. 3-1.

[xxviii] George A. Cahlink, "Send in the Contractors," *Journal of the Air Force Association*, January 2003 Vol. 83 No. 1, <www.afa.org/magazine/Jan2003/0103contract.asp>, (12 April 2003), p. 3.

[xxix] Philip M. Mattox, BGen, USA and William A. Guinn, LtCol, USA, "Contingency Contracting in East Timor," *Army Logistician*, Jul/Aug 2000, <www.almc.army.mil/ALOG/JulAug00/MS656.htm>, (5 April 2003).

[xxx] FM3-100.21, p. 4-3.

[xxxi] Sam Hamontree, Major, USA, "Contractors on the Battlefield, Plan Now or Pay Later," *Armed Forces Journal*, June 2002, <www.call.army.mil/Products/NFTF/septoct02/hamon.htm>, (5 April 2003).

[xxxii] FM3-100.21, p. 4-3.

[xxxiii] FM3-100.21 (chapter 1, page 9) defines a "Habitual" relationship as "a relationship between a business and the military for habitual support of a unit/organization or system or set of systems." The relationship may be long-term and continuous. Of note is that the military may not be able to deploy the supported systems without also deploying the supporting contractors.

[xxxiv] Castillo, p. 4.

[xxxv] Peter J. Higgins, "Civilian Augmentation of Joint Operations," *Army Logistician*, January/February 2003, <www.almc.army.mil/alog/issues/JanFeb03/MS870.htm>, (5 April 2003).

The descriptions of the various service augmentation programs is taken form the article written by Mr. Higgins. Other information embedded in this paper is individually footnoted as necessary and appropriate. Specific services offered under each program are as follows;
<u>LOGCAP</u> – Supply Operations; clothing exchange of bath; clothing repair; mortuary affairs; billeting; facilities management; information management; other operations and services; transportation; engineering and construction; distribution; support of Army personnel and equipment retrograde; field services; laundry; food service; hazardous materials/waste; morale, welfare and recreation; personnel support; maintenance; medical services; power generation; management and information systems operations.
<u>AFCAP</u> – Deployed management services, airfield support, infrastructure support, emergency support services, reconstitution, services (morale, welfare, and recreation), environmental, restoration, and material

support.
CONCAP – Horizontal/Vertical Construction – Runways, roads, bridges, piers, berthing/messing facilities, depots/warehouses, clinics and filed hospitals, operations facilities, communications facilities, and ammunition dumps. Specialty Construction/Engineering – Dredging; aerial photography; soils engineering and survey; operations of power generation; petroleum, oil, lubricants; environmental restoration; concrete and asphalt plants.

[xxxvi] George Chalink, "Army of Contractors," *Government Executive Magazine*, 1 February 2002, <www.govexe.
Com/features/0202/0202s5.htm>, (31 March 2003), p. 3.

[xxxvii] Ibid, p. 1.

[xxxviii] Ibid, p. 4.

[xxxix] Ibid, p. 4.

[xl] Ibid, p. 2.

[xli] Ibid, p. 1.

[xlii] Vic D. Blano, LCDR, USN, "Providing Contingency Contracting Administration Services (CCAS) Support to the U.S. Air Force RED HORSE," *The Navy Supply Corps Newsletter*, September/October 2002, <www.navsup.navy.mil/lintest/so02/ccas.htm>, (5 April 2003), p. 1.

[xliii] Chalink, *Journal*, p. 1-2.

[xliv] JP 4-0, p. V-1.

[xlv] FM3-100.21, p. 1-2.

[xlvi] FM3-100.21, p. 1-5.
The Unauthorized Commitment is defined to have occurred when "there is a purchase agreement that is not binding solely because the government representative…who made it lacked the authority to enter into the agreement on behalf of the government."

[xlvii] Steven J. Minear, "Contingency Contracting in the Pacific Command," *Army Logistician*, November/December 2001, <www.almc.army.mil/alog/NovDec01/MS687.htm>, (5 April 2003), p. 1.

[xlviii] Eric A. Orsini and Gary T. Bubiltz, LtCol USA, Contractors on the Battlefield: Risks on the Road Ahead," *Army Logistician*, January/February 1999, p. 131.

[xlix]GlobalSecurity.org, "Status –of-Forces Agreement (SOFA)," <www.globalsecurity.org/military/ facility/sofa.htm>, 13 April 2003.
The U.S. currently has 105 SOFAs negotiated with other nations. The most notable missing nation is Iraq.

[l] Foster, p. 19.
Application of UCMJ to civilians has been portrayed as a constitutional issue (civilian control of the military). The initial versions of the MEJA, soon to be discussed, actually tried to extend UCMJ to civilians. The DoD objected to the provisions fearing lawsuits and court battles. The final version of the act excluded the application of the UMCJ to civilian contractors during contingency operations.

[li] Robert Capps, "Crime Without Punishment," *Salon.com News*, 27 June 2002, <www.salon.com/news/feature/2002/06/27/military/print.htm>, (6 April 2003), p. 1.

[lii] Title 18, Section 3261, “Military Extraterritorial Jurisdiction Act of 2000.”

[liii] David A. Fahey, Col, USAF<David.Fahey@DCMA.mil>, “MEJA,” 17 April 2003.

[liv] The Departments of Justice and State are working on recommending changes to the language in the MEJA to include U.S. contractor personnel that are working for the UN in order to fill at least one of these loopholes.

[lv] James J. McCullough and Abram J. Pafford, “Contractors on the Battlefield: Emerging Issues for Contractor Support in Combat & Contingency Operations.” *Westgroup Briefing Papers no. 02-7*, June 2002, p. 13.

[lvi] James E. Althouse, Maj. USA, "Contractors on the Battlefield: What Doctrine Says, and Doesn't Say," *Army Logistician*, November - December 1998, p. 14.

[lvii] Braley J. Fikes, “Poway Man Killed, San Diegan Injured in Kuwait, *North County Times*, 22 January 2003.

[lviii] Laws and Customs of War on Land (Hague IV), 18 October 1907, <www.yale.edu/lawweb/avalon/lawofwar/hague04.htm>, (19 April 2003.

[lix] Geneva Convention (III) Relative to the Treatment of Prisoners of War; 12 August 1949, <www.yale.edu/lawweb/avalon/lawofwar/geneva03.htm>, (19 April 2003).

[lx]Hague.

[lxi] Althouse, p. 17.

[lxii] Hamontree, p. 4.

[lxiii] JP 4-0, p. V-7.

[lxiv] FM3-100.21, p. 2-10.

[lxv] Orsini and Bubilitz, p. 130.

[lxvi] Robinson, p.3.

[lxvii] Ibid, p. 3

[lxviii] Isolde K. Garcia-Perez, Capt. USA, "Contractors on the battlefield in the 21st Century," *Army Logistician*, November - December 1999, P. 40.

[lxix] Martin Walker, "U.S. Grenade Victim in Kuwait Dies," *The Washington Times*, 23 March 2003, <dynamic.
washtimes.com/twt-print.cfm?ArticleID=20030323-042706-5192r>, (11 May 2003).

[lxx] Garcia-Perez, p. 43.