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14. ABSTRACT Contractors in the battlespace have become a foregone conclusion. Although they can be a valued force multiplier, they are not a panacea. For a combatant commander to effectively integrate them with his military force requires an understanding of the operational environment, contractor capabilities, acceptable levels of risk, applicable international agreements, and the potential problems. Planning is the key to a successful operation, enabling the combatant commander to maximize a contractor's benefits and minimize his weaknesses. This analysis will endeavor to address the effective utilization of logistics contractors as a member of the overall logistics team.					
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Integrating Contractors into the Logistics Force

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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.

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13 February 2006

Abstract

Contractors in the battlespace have become a foregone conclusion. Although they can be a valued force multiplier, they are not a panacea. For a combatant commander to effectively integrate them with his military force requires an understanding of the operational environment, contractor capabilities, acceptable levels of risk, applicable international agreements, and the potential problems. Planning is the key to a successful integration, enabling the combatant commander to maximize a contractor's benefits and minimize his weaknesses. This analysis will endeavor to address the effective utilization of logistics contractors as a member of the overall logistics team.

Table of Contents

Introduction	1
Determining the Right Military/Contractor Mix	4
Planning for Effective Utilization	10
Potential Issues with Contractors	16
Conclusion	19
Bibliography	21

Introduction

Joint Publication 4-0, *Doctrine for Logistic Support of Joint Operations*, defines logistics as “the science of planning and carrying out the movement and maintenance of forces.” Specifically, logistics involves military operations which deal with such activities as design and development, acquisition, storage, distribution, transportation, maintenance, construction, and a broad range of support services (such as food services, laundry, and waste disposal).¹ In conducting such logistical operations in support of a variety of operations ranging from humanitarian assistance to full-scale war, contractors have become a requisite member of the logistics team. Fulfilling logistical requirements involves the utilization of a number of resources in what Department of Defense Instruction (DODI) 3020.37 terms the “Total Force”: “the DOD [Department of Defense] Components shall rely on the most effective mix of the Total Force, cost and other factors considered, including active, reserve, civilian, host-nation, and contract resources necessary to fulfill assigned peacetime and wartime missions.”² Planning is the key to a successful integration, enabling the combatant commander to maximize a contractor’s benefits and minimize his weaknesses. This analysis will endeavor to address the effective utilization of logistics contractors as a member of the overall logistics team.

The US military has used contractors to fulfill many of its logistical requirements since the Revolutionary War and has continued this method of force multiplication throughout its entire history. There has been a trend, however, for an increasing number of

¹ Joint Chiefs of Staff, *Doctrine for Logistic Support of Joint Operations*, Joint Pub 4-0 (Washington, DC: 6 April 2000), I-1, 2.

² Defense Department, *Continuation of Essential DoD Services During Crises*, DODI 3020.37 (Washington, DC: 6 November 1990), 2.

civilian contractors in theater to support logistics and combat operations.³ Though contractors have proven to be a capable member of the Total Force team, the transfer to contractors of a number of support functions that had previously been accomplished via organic military assets has been driven by economics. Three factors have contributed to the growing reliance on contractors to perform these support functions: deep cuts in uniformed personnel, a push to privatize functions, and a growing reliance on contractors to maintain increasingly sophisticated weapons.⁴ Unfortunately, these reasons are the reality of today's defense environment where benefits must be weighed against costs, resulting in an increased reliance on contractors, especially in the support of small to medium-scale deployments that make up the current Range of Military Options (ROMO) used in the attainment of the US's national strategic objectives. Many of these support functions that are a part of the military infrastructure are not directly related to core military competencies and claim an unaffordable 60 percent of the DOD budget.⁵ The military has no choice but to be creative in how it accomplishes its mission in an ever-increasing operations environment requiring flexible options.

Although not always the cheapest option, contractors bring a surge capability to the table that can be easier to access than reserve forces, especially if the activation of reserve or guard forces is politically sensitive. Additionally, contractors provide the services alternatives when constrained by force structure availability or the political constraints of troop ceilings imposed by either Congress or the host nation. There are also times when the

³ Steven J. Zamparelli, "Contractors on the Battlefield: What Have We Signed Up For?" *Issues and Strategy 2000, Contractors on the Battlefield*, Air Force Logistics Management Agency (Washington, DC: December 1999): 11.

⁴ Katherine McIntire Peters, "Civilians at War," *Government Executive*, 7 (July 1996): 24.

⁵ Susan A. Davidson, "Where is the Battleline for Supply Contractors?" *Issues and Strategy 2000, Contractors on the Battlefield*, Air Force Logistics Management Agency (Washington, DC: December 1999): 57.

United States would like to continue nation-building or peace-keeping operations but may need to maintain a low military presence or use specialized logistics forces, such as engineering units, in another region.⁶ Contractors can continue such operations with a smaller number of military forces providing force protection.

Along with their benefits, contractors also bring their own unique set of challenges. Unlike military forces, combat commanders do not exercise absolute control over contractor employees. Contractors can not be compelled to stay on the job, a risk for which combatant commanders are required to plan. There are also the questions of force protection and the status of captured contractors.

Contractor support in a deployed operation comprises three broad categories – system support, external theater support, and theater support. Systems support contractors provide maintenance, spare parts, and other functions throughout a system’s life cycle. External theater support contractors are awarded outside the theater of operations and focus on deployed operational forces. An example is the Army’s Logistics Civilian Augmentation Program (LOGCAP) which provides such services as construction, transportation, billeting and food services, utilities operation, and decontamination. Theater support contracts also support deployed operational forces with goods, services, and minor construction but are arranged within the mission area or are prearranged contracts through host nation and/or regional businesses and vendors.⁷

The focus of this paper will be the planning of the integration of the latter two types of contractors with deployed military forces into the logistics team. First, the combatant

⁶ Maria J. Dowling and Vincent J. Feck, “A Joint Logistics and Engineering Contract,” *Issues and Strategy* 2000, *Contractors on the Battlefield*, Air Force Logistics Management Agency (Washington, DC: December 1999): 61.

⁷ Joint Pub 4-0, V-1, 2.

commander needs to take into account such practical considerations as the nature of the operation, logistical requirements, operational environment, acceptable levels of risk, and existing international agreements when determining the appropriate amount of logistical support. Second, he must realize that planning is essential when using contractors in an operation and involves knowing how to use the contractor efficiently and legally. Third, there are potential issues with contractors with which he must be aware and know how to manage.

Determining the Right Military/Contractor Mix

Joint Publication 4-0 describes three sources of supply for US forces deployed in a contingency operation, each carrying its own set of considerations for use: organic US force structure (active and reserve), host-nation support, and contracting. The delimiting factors for using US forces to provide logistical support are mobilization authority, unit availability, troop ceilings, lift availability, operational costs, and ability to deploy units to a major theater war. Host nation support involves the availability of agreements and the capability of the host nation to provide reliable levels of support. Contracting requires the consideration of going directly to local vendors or using existing contingency contracts, the ability to provide contractors with adequate force protection, and the status of contractor personnel as specified in status of forces agreements (SOFAs).⁸

Although not specifically addressed by doctrine, there are many practical considerations to be addressed in finding the proper method of providing logistical support, specifically with respect to using contractors versus military forces. The nature of the deployment and the associated operational environment will be considerations in the utilization of contractors in lieu of troops. “Contingency need, as opposed to contractor

⁸ Joint Pub 4-0, II-9.

capability, should be the deciding factor for contractor employment.”⁹ Missions may be conducted in operational environments that do not permit the entry or sustainment of civilian contractor forces, leaving military forces as the only option for providing logistical support. “The Army describes the operational environment in terms of METT-T: mission, enemy, terrain, troops, and time. Planners must weigh the likelihood that contractors will not be allowed (or will not be able) to enter the theater at the start of a major operation. The military forces may be required to be self-sustaining for a period of time.”¹⁰

The maturity of the theater, with respect to security, infrastructure, and the local economic base, will also determine the ability of contractors to successfully operate. For example, in a relatively stable environment, as was experienced in the Balkans, contractors were able to provide such base operations support services as construction and maintenance, food, laundry, and recreational. Contrastingly, in a less secure environment, such as after the initial entry of US forces into Afghanistan, weapons systems support contractors were the only contractors in theater.¹¹ Organic logistical assets, such as engineering forces, were the only option in such an immature and dangerous environment. The contractor’s state of readiness will determine his ideal operational environment.¹²

The operational environment will change as the operation progresses, from the initial phases of deterring and seizing the initiative activities, through dominating activities, ending with stabilizing and enabling civil authority activities.¹³ The level of contractor use,

⁹ Dowling and Feck, 67.

¹⁰ David L. Young, “Planning: The Key to Contractors on the Battlefield,” *Army Logistician*, 3 (May/June 1999): 10 - 11.

¹¹ General Accounting Office, *MILITARY OPERATIONS: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DOD Plans*, Report to Congress, GAO-03-695 (Washington, DC: June 2003), 7.

¹² Young, 11.

¹³ Joint Chiefs of Staff, *Joint Operations*, Joint Pub 3-0 (DRAFT) (Washington, DC: 23 December 2005), IV-34.

including the types of contractors employed, will change commensurate with the employment of US forces. The Army has identified three LOGCAP employment scenarios:

1. at initial entry prior to arrival of the main task force;
2. at initial entry with a task force; and
3. as a sustainment force.

The aforementioned scenarios notwithstanding, LOGCAP is lacking in initial entry capability, especially when it does not have the appropriate time to establish operations.¹⁴

The contractor can not be fully mobilized instantaneously and requires increasing amounts of time to provide increasing levels of support, requiring the military to either rely on organic forces or local contractors for logistical support during the initial phase of an operation.

After the initial combat phases and a more permissive, though not necessarily devoid of danger, operational environment is achieved, the contractor will be able to take on the majority, if not all, of logistical support functions. Over time, as the nature of the operational environment becomes more stable and there is a desire to rebuild the economy, US forces will want to transition from an external theater support contractor to local contractors, infrastructure permitting, as a means of supporting the local economy. Although an umbrella support contract like LOGCAP enjoys economies of scale not endemic to the military, the combatant commander must be ever mindful of the risks present with solely relying on a contractor in a contingency environment, even one deemed secure, and the potential disruption of essential services. Contractor employees may not be as willing to endure enemy fire to repair a runway as US Navy Seabees. Additionally, in past conflicts logisticians were the de facto “infantry in reserve” and were often called upon to provide

¹⁴ Dowling and Feck, 68 - 69.

force protection for rear area headquarters and lines of communication.¹⁵ Joint doctrine also advises the following: “Core logistics support competencies must be maintained to ensure that support to deployed forces will continue in the event contractor support is not available.”¹⁶

DODI 3020.37 considers contractor services essential when they meet one of the following two criteria:

1. DOD components may not have military or civilian employees to perform these services immediately, or
2. the effectiveness of defense systems or operations may be seriously impaired and interruption is unacceptable when those services are not available immediately.¹⁷

Although laundry services or trash collection may not meet these criteria, such services as fuel delivery or the afore-mentioned runway repair services that are often provided by a contractor, certainly do. The instruction further directs the combatant commander to identify such services in the statement of work (SOW), and where “reasonable assurance of continuation” of such services cannot be attained he is to do one of the following:

1. obtain military, DOD civilian, or host nation personnel to perform the services concerned, and in consultation with legal and contracting personnel, determine the proper course of action to transition from the contractor-provided services;
2. prepare a contingency plan for obtaining the essential services from other sources if the contractor does not perform in a crisis; or
3. accept the risk attendant with a disruption of services during a crisis situation.¹⁸

¹⁵ Eric A. Orsini and Gary T. Bublitz, “Contractors on the Battlefield: Risks on the Road Ahead?” *Army Logistician*, 1 (Jan/Feb 1999): 131.

¹⁶ Joint Pub 4-0, V-3.

¹⁷ DODI 3020.37, 8.

¹⁸ *Ibid.*, 4.

An acceptable level of risk, or even how one would define risk, can be quite elusive. Risk can be defined to include “one or all of the following: a degradation to mission accomplishment, an increase in the time needed to complete the mission, or an increased threat of loss of life.” Risk can be reduced and confidence built by continuously testing and evaluating contractor support through ongoing operations and training exercises.¹⁹ Contracts that are carefully planned and developed prior to deployment are inherently less risky than those awarded during a crisis.²⁰

In late 2002, the Joint Staff modified the Joint Strategic Capabilities Plan’s logistic supplement to “require the development of a mitigation plan that details transitioning to other support should commercial deliveries and/or support become compromised.”²¹ This and earlier DOD direction notwithstanding, the General Accounting Office (GAO), now Government Accountability Office, revealed in a report to Congress in 2003 that DOD components were not conducting the directed reviews of contracts for essential services. The GAO also found operational plans (OPLANS) deficient of any sort of backup plans, particularly the logistics portion, which addresses contracting, of the operations plan for the war in Iraq. When questioned about the lack of backup plans by the GAO, DOD officials said that contractors had not failed to support deployed US forces in the past and that they expected such support to continue. “It is DOD policy that contractors providing essential services are expected to use all means at their disposal to continue to provide such services, in accordance with the terms and conditions of the contract during times of crisis, until appropriately released or evacuated by military authority.”²²

¹⁹ Orsini and Bublitz, 130 - 131.

²⁰ Young, 11.

²¹ GAO-03-695, 14.

²² Ibid., 16.

Such an absolute faith in contractor support can be dangerous for a combatant commander to adopt, especially when the contractor is providing essential services. Unless the combatant commander is willing to accept the risk of not having such services, it is imperative that he develop the directed contingency plans in the event that contractor support is lost. Contractors are not unlike a weapons system, requiring planning and management for them to be used effectively, realizing that they are not above failure.

Although contractors have proven capable of providing any logistical resource required by a deploying force, a thorough review of existing international agreements must be conducted to determine what, if any, of the litany of requirements has been prearranged through an existing agreement. There could be a number of bilateral agreements in existence, such as SOFAs, acquisition and cross-service agreements (ACSAs), multilateral support plans, and Defense Cooperation Agreements (DCAs) to provide support and reduce the logistical footprint in theater, and the combatant commander should use these to the fullest. If none of these agreements exist, the combatant commander should seek the authority to negotiate and establish them, preferably ahead of time.²³

Additionally, there may be stipulations in these agreements affecting the use of contractors. Theater contracting involves international, host nation, and US law. Combatant commanders must ensure judge advocate or legal counsel review all OPLANs and operation orders (OPORDs) for compliance with various international, US, and host nation laws, along with applicable treaties, SOFAs, status of mission agreements, ACSAs, and memoranda of understanding and agreements. SOFAs or host nation law may require the use of host nation resources prior to external theater contractors.²⁴

²³ Joint Pub 4-0, I-19.

²⁴ Ibid., V-5.

Planning for Effective Utilization

Since having contractors in today's operational environment has become a foregone conclusion, planning for their effective utilization should ideally begin during the review and development of OPLANs, focusing on the following questions:

1. When will the operational environment permit the use of contractors?
2. What are the host nation's restrictions on the use of contractors?
3. How will support be provided to the contractors in such areas as force protection, timing, and means of deployment, life support (food, lodging, and medical care), and facilities?
4. How will command and control be exercised? Which organization will administer the contracts? To what extent will contractors be integrated into the force?
5. How will the operational-level budget for supporting contractors be administered?²⁵

A basic tenet of planning for the number and types of contracts to be awarded, at least for the initial phases of the operation, is to minimize the number of contractors. A hundred small contractors with a few employees each is more difficult to manage than one contractor with several thousand employees. Another planning tenet is the inclusion of the government contracting team and key contractors early in the planning effort, which will increase the chances of mission success as well as the accuracy of initial cost estimates.²⁶ An advantage of an umbrella support contract like LOGCAP is that it lasts for 10 years, providing all options are exercised, allowing for a synergy to develop between the combatant commander's planning staff and the contractors during deliberate planning and exercises.²⁷

²⁵ Young, 10.

²⁶ Ibid., 13.

²⁷ Ibid., 11.

Unfortunately, the latter axiom has not been followed in our most recent deployed contingencies for a variety of reasons. Army Central Command (ARCENT), responsible for LOGCAP planning in Iraq and Kuwait, developed a plan in 2003 to support the troops in Iraq using LOGCAP, contracted with Kellogg Brown and Root (KBR) since 2001. The plan was incomplete, however, due to KBR not being involved in the early planning process.

According to retired Lieutenant General Jay Garner, who was responsible for the initial stage of Iraq's reconstruction, contractors were not involved in the early planning stages due to the political concern of making the war look like a foregone conclusion in the international arena. Additionally, 75 percent of the support contracts were not awarded prior to the invasion.²⁸ The Army's lack of initial planning was detailed in a GAO report to congress in 2004. The report also described the Army's continued lack of inclusion of KBR personnel even though the deployment of US forces would be longer than expected.²⁹

Furthermore, lack of foresight in the planning process also resulted in costly delays. ARCENT prepared the mission according to standing LOGCAP plans. After the forces deployed, however, the plan changed significantly. The US Army Materiel Command (USAMC), responsible for managing the LOGCAP contract, and contractor were left out of the subsequent planning due to security concerns – ARCENT raised the security classification of the plan above the clearance level held by the planners. Although ultimately resolved, the planning personnel with the most experience in using the contract were excluded from the planning process during a critical planning period.³⁰

²⁸ Tony Skinner, "Essential Cover," *Jane's Defence Weekly*, 30 (27 July 2005): 29.

²⁹ General Accounting Office, *MILITARY OPERATIONS: DOD's Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*, Report to Congress, GAO-04-854 (Washington, DC: July 2004), 2.

³⁰ *Ibid.*, 18.

In addition to planning for the use of contractors in theater, the combatant commander must determine how he will maintain visibility of the contractors in his AOR. Oversight and management responsibilities can be hampered if there is limited awareness by combatant commanders of contractor activity supporting their operations. Such a limited awareness is due to any number of requiring activities, including the DOD and other federal agencies, within and outside the AOR being able to independently hire contractors to provide support to a deployed location. Although he may not have brought the contractors into his AOR, the combatant commander is responsible for them. Contractor visibility is needed to resolve issues associated with contractor support and ensure the following:

1. the overall contractor presence in a theater is synchronized with the combat forces being supported and that adjustments can be made to contractor support when necessary;
2. operational support and force protection is provided to participating contractors.

An example of the importance of maintaining visibility of contractors involves increasing security at a base due to a threat. With an increased force posture third country nationals (personnel who are not from the host country and normally work in quality of life jobs, such as food service) may be barred from entering the base. Visibility of the totality of contractor support will allow the combatant commander to know to what degree support services rely on third country personnel, permitting the identification and mitigation of the effects of losing that support.³¹

Additionally, visibility is required for the combatant commander to be able to efficiently plan and prioritize movement and distribution throughout the theater without having to compete with contractors for airlift, aerial ports of debarkation, transportation, and

³¹ GAO-03-695, 31-33.

road/rail networks.³² In order to reduce the potential duplication of effort and competition for limited resources, he should develop a standing operating procedure that establishes “lanes of operation” for military engineer units, service civil engineers, and external theater support contractors.³³ The Joint Acquisition and Contracting Board, chaired by a J-4 representative with members from each of the functional and component commands, will also assist in the integration and monitoring of contracting activities throughout the AOR.³⁴

Joint doctrine recognizes the value contractors can bring to logistical support in the forms of flexibility and performance, but cautions combatant commanders against relying on them solely or even separately from the total force structure: “...it is imperative that logisticians fully integrate, in logistics plans and orders, the functions performed by contractors together with those performed by military personnel and government civilians.”³⁵ As previously mentioned, without effective integration with military forces for use of transportation assets, contractor capability will be wasted. Although the LOGCAP contractor can utilize commercial transportation resources to move personnel and equipment to the theater, his intratheater movement must be integrated into the intratheater movement plan, especially if the military is providing force protection.³⁶ Good contractor/military integration not only enables the contractor to do what he is being paid to do, but also forges a synergy that capitalizes on the comparative advantages resulting from each force working at what it is most capable.

³² Skinner, 25.

³³ Karen E. LeDoux, “LOGCAP 102: An Operational Planner’s Guide,” *Army Logistician*, 4 (July/Aug 2005): 25 - 26.

³⁴ Joint Pub 4-0, V-3.

³⁵ Ibid., V-3.

³⁶ LeDoux, 27.

Although there are a number of contracting options available for the combatant commander, the previously-mentioned external theater support contractor is usually the contracting vehicle of choice when planning for overarching logistical support for his deployed forces. There are three such contracts currently available: the Army's LOGCAP, the Navy's Construction Capabilities Contract program (CONCAP), and the Air Force's Contract Augmentation Program (AFCAP). It is important to remember that these are service rather than supply contracts and can not be used to buy items or products.

LOGCAP, the largest of the three contracts, can support all DOD components and missions worldwide and includes facilities repair and construction, base operations and maintenance, food and berthing services, transportation, and other logistics services.³⁷ One of LOGCAP's strengths is its surge capability. The original scope of work in Iraq called for KBR to support of a minimum of 25,000 troops, with a maximum of 50,000, divided among seven base camps comprising 3,000 troops each, with a rear support area housing 4,000 troops. Currently, KBR is supporting more than 200,000 US and coalition troops and civilians at more than 70 sites in Afghanistan, Djibouti, Iraq, Kuwait, the Republic of Georgia, and Uzbekistan, managing the largest civilian force ever assembled to support the military.³⁸

The Navy's CONCAP contract, currently held by KBR, offers primarily worldwide engineering and construction support. It has seen service in such disparate missions as engineering fieldwork in Bosnia to disaster response and recovery for Hurricane Bertha at Camp Lejeune, North Carolina. CONCAP's major capabilities include engineering, design,

³⁷ Joint Chiefs of Staff, *Joint Doctrine for Civil Engineering Support*, Joint Pub 4-04 (Washington, DC: 27 September 2001), V-8

³⁸ Skinner, 28.

and construction of airfield and port facilities, roads and bridges, power plants and utilities systems, and medical and enemy prisoner of war facilities.³⁹

AFCAP is designed to augment civil engineer and services capabilities in support of worldwide deployed operations. It may be used to provide construction support at existing overseas locations and base recovery operations following natural disasters, accidents, or terrorist attacks. AFCAP capabilities include professional engineering and infrastructure support, emergency management and facility hardening, environmental management and hazardous waste disposal, and food service and troop support.⁴⁰ IAP Worldwide services is the current AFCAP contractor. AFCAP's primary focus is sustainment activities, and it can not be employed in hostile environments.⁴¹

Although contractors are hired with the expectation that they will be self-sufficient, there are times when it is in the government's best interest to provide support to a contractor when deployed with US forces to an area of operation (AO). Government-furnished support may be appropriate or even necessary in the following situations:

1. it is less expensive than contractor-provided support;
2. the government controls the support needed or is the only source of support, such as transportation within the AO.

Figure 1 illustrates how nature of the operation and location on the battlefield determine the expected level of government-provided support to a contractor.⁴²

³⁹ Joint Pub 4-04, V-8, 9.

⁴⁰ Joint Pub 4-04, V-9.

⁴¹ Dowling and Feck, 18.

⁴² Department of the Army, *Contractors on the Battlefield*, FM 3-100.21 (Washington, DC: January 2003), 5-1.

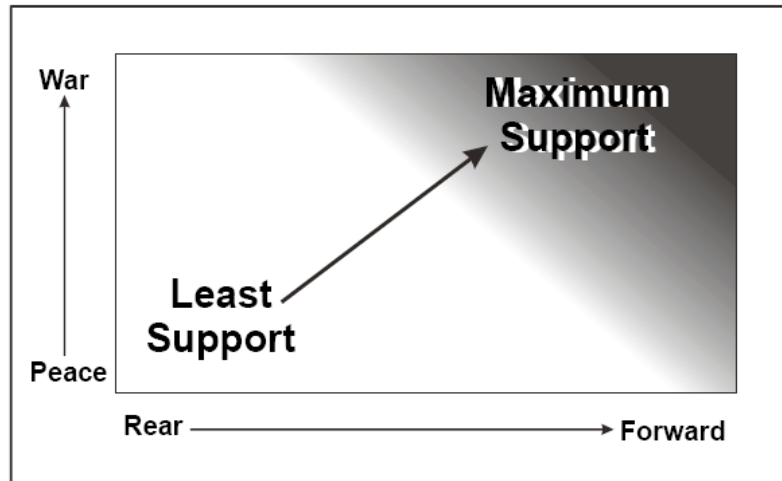


Figure 1. Military Support to Contractors⁴³

Potential Issues with Contractors

Although contractors can be a force multiplier with many advantages, they are not a panacea and their use carries with them many potential issues of which the combatant commander needs to be aware so that he can be prepared to mitigate their consequences. To begin with, there exist the previously-mentioned logistical constraints, whereby the military and contractors are competing for the same assets. Even with separate lift assets, military and contractor aircraft may find themselves competing for available ramp space.⁴⁴

Additionally, the government is expected to supply the contractor with force protection. There exists contradictory guidance for this, however, whereby joint doctrine states that contractors are responsible for their own force protection (unless the contract places the responsibility with the DOD, though doctrine advises against arming contractors), Army guidance holds the combatant commander responsible, and Air Force guidance

⁴³ Ibid., 5-1.

⁴⁴ Dowling and Feck, 64.

considers force protection a contractual matter.⁴⁵ However, practically speaking, the combatant commander can expect to provide force protection for the following three reasons:

1. a legal responsibility to provide a safe workplace;
2. a contractual responsibility that is stipulated in most contracts; and
3. a practical responsibility to help contractors do their jobs.

Force protection can range from constant, as in Iraq, or limited, as in Bosnia.⁴⁶ The degree of force protection will be a function of the mission, threat, and location.⁴⁷ A question the combatant commander might ask is if force protection can be hired for individuals, why not for contractors? The precarious status of such contracted force protection may preclude their use by contractors, at least in the near-term.

Control and discipline of contractor personnel is another potential issue that will weigh heavy on a combatant commander's mind. Since contractor employees are under no legal obligation to stay on the job, there is no guarantee they will continue to work should they come under fire. They are also not bound by the Uniform Code of Military Justice unless they are with deployed forces in a Congressionally-declared state of war.⁴⁸ Normally, the terms of the employment agreement dictate the discipline of an employee by a contractor, his ultimate punishment being termination of employment. An employee could also suffer such disciplinary actions as suspension of clearances, restriction from installations or facilities, or revocation of privileges.⁴⁹ Additionally, contracts can be written to include

⁴⁵ GAO-03-695, 25.

⁴⁶ Young, 11.

⁴⁷ FM 3-100.21, 2-10.

⁴⁸ Department of the Army, *Contractor Deployment Guide*, PAM 715-16 (Washington, DC: 27 February 1998), 5.

⁴⁹ Joint Pub 4-0, V-8.

language that requires employees to follow the general orders and force protection policies of the local commanders.⁵⁰

Criminal offenses committed by contractor employees fall under the jurisdiction of international agreements, such as a SOFA, or host nation laws. In the absence of host nation involvement, if the crime committed was of a federal level and punishable by imprisonment of more than one year, the Military Extraterritorial Jurisdiction Act (Public Law 106-778) of 2000 can be used to prosecute the employee in federal court, provided he is not a national of or resident of the host nation. This law specifies the arrest and extradition of accused individuals to the US by DOD law enforcement personnel.⁵¹

The legal status of contractors is another complicating factor. In the past, civilian support to deployed forces was accepted based upon the expectation that it would be performed in rear areas, out of direct confrontation with the enemy. The nature of today's warfare has not only altered the environment in which civilians provide this support, but also the support they provide, possibly clouding their noncombatant status. Merely having a contractor participate in the use of a weapons system could result in the forfeiture of his protected status and result in execution if captured.⁵² Moreover, DOD civilians and contractors are not automatically afforded the same status. The North Atlantic Treaty Organization SOFA does not consider contractors members of the civilian component.⁵³ Contractors are subject to host nation laws if they are not granted special status under SOFA provisions. The DOD should work with the State Department to ensure SOFAs contain

⁵⁰ GAO-03-695, 28.

⁵¹ FM 3-100.21, 4-12.

⁵² Zamp, 10, 15.

⁵³ PAM 715-16.

language giving contractors the same status as DOD civilians, designating them as “members of the force.”⁵⁴

Under the 1949 Geneva Convention Relative to the Treatment of Prisoners of War, civilians that are captured accompanying the force in international conflict shall be granted prisoner of war status. Combatant commanders should issue Uniformed Services Geneva Convention cards to contractors designating them as noncombatants. Additionally, if contractors are required to wear battle dress uniforms due to force protection requirements, they should wear a symbol that indicates they are contractors.⁵⁵

Conclusion

For the past 20 years the military has seen contractors play a greater role in logistical support due to an ever-increasing reduction in military support personnel, making contractors a valuable member in the Total Force. The combatant commander is not to rely solely on contractors for logistical support, however, and must determine the right mix of military and contractor personnel in order to accomplish his assigned mission. He needs to consider such items as the nature of the operation, logistical requirements, operational environment, and acceptable levels of risk in determining the appropriate level of contracted support. He must involve contractors in the planning process as early as possible and develop efficient means of managing them once they are in theater. Additionally, he needs to have a contingency plan in case contractor support should become unavailable. Finally, he must consider their force protection, competition for resources, and discipline in his overall planning. Although using contractors may not seem as convenient or easy to use as military forces, they are a

⁵⁴ Joint Pub 4-0, V-6.

⁵⁵ Ibid., V-7.

valuable force multiplier that can provide a combatant commander with a flexibility he would not enjoy were he to use military forces alone.

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