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**WARRIOR CIVILIANS – NON-MILITARY PERSONNEL ON
THE BATTLEFIELD**

by

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Abstract

How should the United States effectively use and protect its non-military personnel accompanying the force? Under international law, “civilian” is a status which provides protected persons from attack by the warring parties. Persons accompanying the United States (U.S.) armed forces on the battlefield, however, are wearing military uniforms, making them indistinguishable from their military counterparts. Additionally, the activities they conduct have expanded, closing the gap between traditional support activities and actions which constitute “direct participation in hostilities.” Both of these factors put these individuals at risk of losing “civilian” status. This paper advocates clearly distinguishing deployed personnel and when necessary incorporating them *into* the “armed forces.” This proposed action is necessary in order to appropriately distinguish those entitled to “civilian” status while enabling others, as needed, to conduct activities on the battlefield without the risk of becoming illegal combatants.

Introduction

Three military vehicles make their way down a dirt road outside of Al Basrah, Iraq. Air Force Office of Special Investigations (AFOSI) Special Agent Jill Thomas,¹ a Department of Defense (DOD) civilian employee, rides along with another agent and several military personnel. Outfitted in desert uniforms and military protective gear, the team is on its way to pick up a suspected Al Qaeda (AQ) collaborator at his home. AFOSI is responsible for collecting intelligence in the area and intends to collect any computers, documents or information located in the suspect's home after the military special operators apprehend him. As they approach the home, they begin to take on small arms fire. They expected resistance, but not to this extent.

An explosion overturns the lead vehicle. Personnel from the lead vehicle are quickly recovered and the convoy attempts to retreat. Agent Thomas is wounded in the exchange, but she understood the dangers of being in a combat zone. As a federal agent, she expected that she would be shot at, but in a combat zone, was she a combatant? She was briefed by the Wing Judge Advocate General (JAGs) that she was a "civilian" and couldn't lawfully be targeted by the enemy—unless she took a part in hostilities. She wondered, for the first time, what that meant and how the enemy was expected to distinguish her from the combatants in the vehicle.

Now that she and the others had been captured, to what protections was she entitled? Her Department of Defense (DOD) identification card indicates she is a "civilian." Under international law, "civilian" status protects her from direct attack by the enemy. However, she looks just like the other members of the team. She is wearing a military uniform, military protective gear and carrying a weapon. Additionally, as an agent for AFOSI, she interrogates suspected AQ affiliates, conducts human intelligence (HUMINT) activities and acts as a security escort—functions that have traditionally been performed by members of the military. Based on

her conduct, would her captors still consider her a civilian, or had she somehow become an illegal combatant?

Problem Background

The presence of non-military personnel on the battlefield is not new, they have supported the military in every major war in U.S. history. During the Revolutionary War, they were used extensively in supply functions,² and later amidst the War of 1812, they completed the majority of the labor in the field under the complete command and control of the military.³ By 1908, the military had sufficient personnel and expertise in armed service to support itself.⁴ Yet, during World War I and II, inadequate numbers of personnel once again necessitated the use of persons outside the military to support and sustain combat forces.⁵

By 1973, DOD adopted a policy of total force integration. The policy directed the armed services to fully integrate non-military employees into the national defense effort.⁶ It wasn't until the end of the Cold War, however, that resource and budgetary constraints forced dramatic reductions in the active force.⁷ In response to fewer available dollars, DOD began utilizing persons outside the military to maintain operational readiness with a smaller number of active duty service members.⁸

DOD's increased dependence on advanced technologies and weapons is another apparent factor driving its growing reliance of non-military personnel. The technical expertise for many of the U.S.'s sophisticated systems already existed within the civilian sector that developed them.⁹ Therefore, it seemed to "make sense," to place contractors—already trained and with system expertise—into positions supporting and maintaining this high-tech equipment. By doing so, the need to train military members to operate or support the systems is eliminated, freeing them up for combat related duties. Non-military personnel also relocate and deploy less often,

providing greater continuity and institutional memory to the support of these systems.¹⁰ As a result, they are viewed as a way of achieving greater operational efficiencies and at a reduced cost.

Since the early 1990s, individuals outside the military have become increasingly vital to conducting the mission of the armed forces. In some areas they outnumber uniformed service members and are conducting a broader spectrum of activities than ever before. The use of these non-military personnel to carry out certain functions reduces the costs of service member entitlements, making their employment increasingly attractive. In addition, functions performed by contract employees can be purchased as needed. This allows the military to buy expertise without having to maintain the skill on a long term basis. The incorporation of non-military personnel within the force provides DOD the flexibility to determine the most effective and efficient composition of the force. Despite all of the benefits of using non-military personnel, they have become indistinguishable from combatants, creating uncertainty regarding their status as “civilians.”

In 1995, Major Brian Brady, a U.S. Army Judge Advocate, identified the fact that few deployed commanders and contractors understood the status of non-military personnel in the field.¹¹ While, some military analysts concluded that in a combat zone these individuals had become “legitimate targets,”¹² confusion remained “about their status under the Law of War.”¹³

The debate over the status of individuals “accompanying the force” continued in 2001, when Major Lisa Turner and Major Lynn Norton, two Air Force judge advocates again identified challenges associated with having non-military personnel on the battlefield. They identified three categories of non-military persons: DOD civilians, contractors and non-affiliated

civilians—all having “varying statuses, rights and responsibilities under international and domestic law, and under DOD and service regulations.”¹⁴

The resulting domestic service doctrine that developed reflected the confusion and uncertainty of the status of persons “accompanying the force.” Army Pamphlet 715-16 instructed that individuals who accompany the force¹⁵ “can only be used to perform selected combat support and combat service support (CSS) activities.”¹⁶ Joint Publication (JP) 4-0 added that “[i]n all instances, contractor employees cannot lawfully perform military functions and should not be working in scenarios that involve military combat operations where they might be conceived as combatants.”¹⁷

Using non-military personnel to perform “selected combat support and combat service support activities” lacks defined parameters and has not been limited to “traditional” support activities. While the JP 4-0 initially limited contractor functions to three support arenas: systems support, external theater support and theater support,¹⁸ the scope of the contract duties has continued to grow. Systems support contracts designed to use non-military personnel to support specific systems has expanded to include system operation. During combat, weapon systems, such as Unmanned Aerial Vehicles (UAVs) are increasing being operated by non-military personnel.¹⁹ Additionally, theater support contracts that used to provide goods, services, and minor construction to meet a commander’s immediate needs²⁰ now include security details, facilities protection and prisoner interrogation.²¹

The varying definitions of support led to differing conclusions by the armed services about the status of non-military individuals executing battlefield functions. The Air Force, for example, concluded that individuals performing “duties directly supporting military operations” were combatants “subject to direct, intentional attack.”²² The Navy, however, contended that

these individuals were not combatants and “not subject to direct attack although they assume the risk of [becoming] collateral damage because of their proximity to valid military targets.”²³

Although attempts have been made to create clarity and consistency, doctrine and guidance remain unclear. Are personnel “accompanying the force” *civilians* or *combatants*? Today, contractors, who had once been restricted to using force only in self defense, can now use force when performing security functions and to protect assets and persons.²⁴ Bearing in mind this expanded authority; it is unclear how can federal law can rationalize their status as “civilians.”²⁵

Consider the following: (1) by engaging in hostilities, civilians lose their protections; (2) to the extent this is true, why would the DOD contract for services that place personnel at risk of becoming “illegal combatants?” (3) Moreover, with large numbers of non-military personnel on the front lines, wearing military uniforms²⁶ how can they be protected from attack?

The current practices, at best, create a real risk that civilians will be targeted and, worse, if captured, subject to trial by the enemy for hostile acts.²⁷ From now on, DOD leaders and policy makers should eliminate the use of the term “civilian” except as defined under international law. Furthermore, the service secretaries should take the necessary steps to clearly distinguish personnel who qualify for “civilian” status. These individuals can only be adequately protected through *unambiguous* visual identification. Finally, policy makers should consider incorporating non-military individuals who perform combat activities *into* the armed forces. Making them members of the force eliminates the potential that these personnel could become unlawful combatants.

Definitions: Who's Really Who?

1. **combatants** – members of the armed forces; a unique set of individuals authorized to engage in hostilities.²⁸ Examples: infantry soldier, submariner and F-15 pilot.

2. **non-combatants** – a subset of the armed forces who have been prohibited by their nation state, not international law, from engaging in hostilities.²⁹ Non-combatants and civilians are mutually exclusive. As members of the force this group receives no greater protections under the law than combatants.³⁰ Examples: military chaplains.³¹

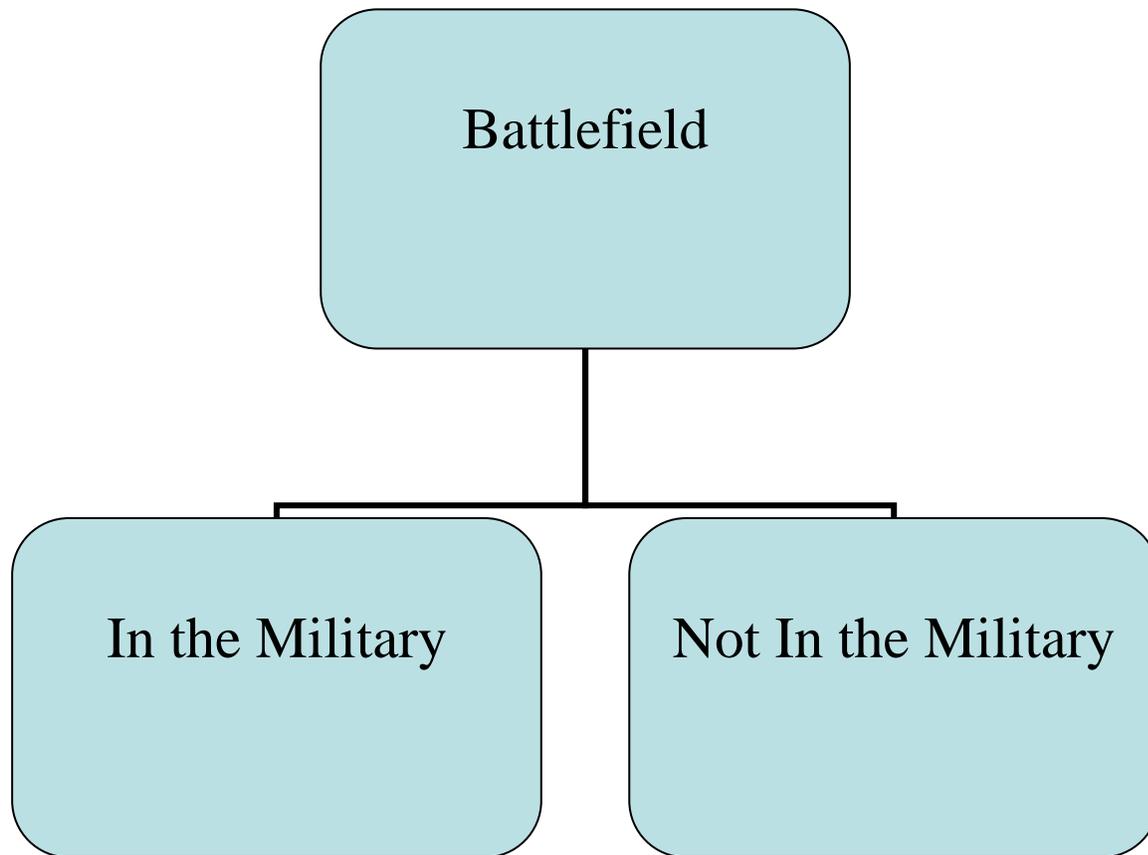
3. **civilians** – persons who are **not** members of the armed force.³² These individuals include the indigenous population, non-affiliated persons and persons who accompany the armed forces.³³ This group is entitled to “civilian” status because they are not permitted to “take a direct part in hostilities.” Examples: the Cleaver family, doctors without borders and the Red Cross.

a. **non-affiliated persons** – a sub-category of civilians. Persons not affiliated with an armed force include the media, non-governmental organizations (NGOs), private voluntary organizations (PVOs), intergovernmental organizations (IGOs), refugees, stateless persons, and internally displaced persons (IDPs).³⁴ Examples: the Afghanistan population and doctors without borders.

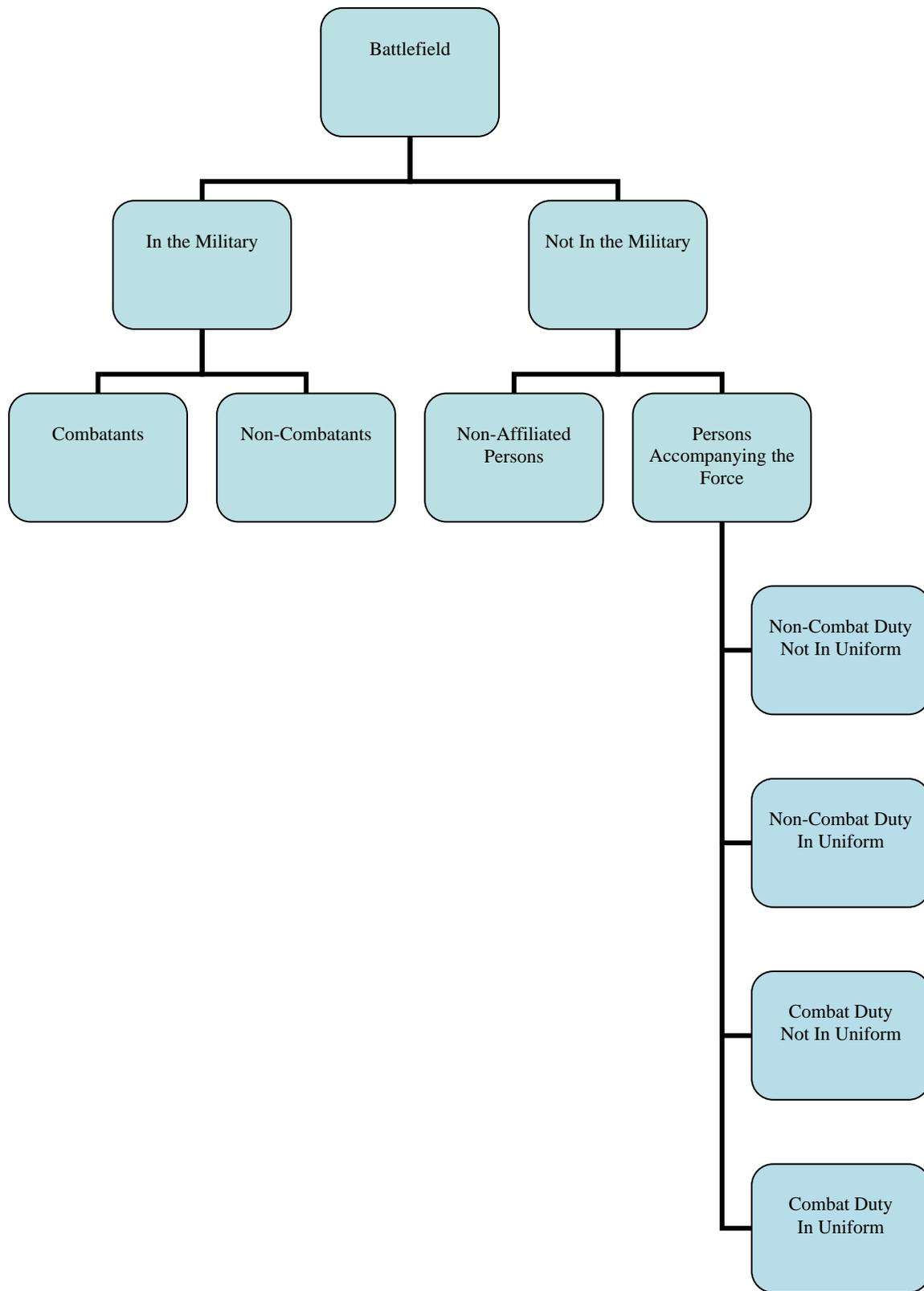
b. **persons accompanying the force** – a sub-category of civilians. This group includes individuals who accompany an armed force, but are not members of it.³⁵ Examples: Blackwater World Wide Security.

4. **illegal combatant** – an individual who engages in combat without the authority of their nation-state.

As illustrated in the following chart, individuals on the battlefield are broadly classified as either “in the military” or “not in the military.”



Within these two broad categories there are two sub-categories each. For individuals “in the military,” the two sub-categories are: combatants and non-combatants. For those “not in the military” the sub-categories are: non-affiliated individuals and individuals “accompanying the force.”



The roles and statuses both sub-categories of “in the military” are fairly well understood. “Combatants” are the only ones authorized to engage in hostilities against the enemy. They are obligated to conduct their warfighting in accordance international law principles and to distinguish themselves from civilians. They may be directly targeted by the enemy, are entitled to Prisoner of War (POW) status upon capture and are immune from prosecution for their Law of War (LOW) compliant actions.

“Non-combatants” are the “non-fighting” personnel of an armed force.³⁶ These individuals are not authorized to engage in hostilities because their nation-state has prohibited them from fighting. However, because they are members of the armed force, under international law, they represent a legitimate target for attack by the enemy.

The categories of individuals “not in the military” are more problematic. Within the category of “not in the military” non-affiliated persons is the clearest. These individuals are not associated with either of the warring parties and are not authorized to engage in combat. They are entitled to “civilian” status ensuring they are to be respected and protected at all times. The status and roles of this group of individuals during hostilities present few legal concerns and is generally well understood.

Of those individuals who are not in the military, the category of “persons accompanying the force” is the most complex, creating a great deal of confusion regarding appropriate legal statuses and roles. Within this sub-category of persons not in the military, there are four groups of individuals. The first group consists of individuals who accompany the force but remain distinct from it—this is the traditional example of persons “accompanying the force.”

These individuals do not wear the military uniform, and perform support—not combat functions, and therefore are considered “civilians” under international law. Some examples of

individuals in this group are contractors who provide billeting facilities, messing service, or operate the Army and Air Force Exchange Service (AAFES). Although this group risks injury because of their proximity to military operations, they are not targetable based on their activities or appearance.

The remaining sub-categories of persons “accompanying the force” are either not entitled to or are in danger of losing “civilian” status. These sub-categories consist of individuals who are not in the military but perform either (1) non-combat duty, in military uniform; (2) combat duty, not in military uniform or (3) combat duty, in military uniform.

Among these sub-categories of non-military personnel, the first group at risk consists of those persons who, although they do not perform combat duties, wear a military uniform. This category of person is at risk of losing their “civilian” status because they have become indistinguishable from combatants. The second group is made up of individuals who perform combat activities but do not wear a military uniform. This category of persons violates the international Law of War (LOW) by engaging in combat illegally. Third, are those individuals who engage in combat and wear the military uniform. They, like group two, engage in combat illegally. Although they distinguish themselves from civilians, they violate the LOW because they do not have combatant status.

Under international law, only combatants are authorized to engage in combat and only members of the armed force are able to qualify for combatant status. By taking a direct part in hostilities, without being members of the armed force, individuals become “illegal combatants.” Illegal combatants are not entitled to POW status. Additionally they may be prosecuted by a detaining nation for any hostile acts they have taken.

Some Practical Examples

Goodwill Gail – Non-combat duty, in military uniform.³⁷

Under international law, persons “accompanying the force” are not members of the military. These individuals do not qualify for “combatant” status. They support the force and typically include members of “labour units,” or are “responsible for the welfare of the soldier,”³⁸—like Gail. Gail is a DOD civilian and Army morale, welfare and recreation specialist. When she deployed to Iraq, she was issued a military uniform, which she wears daily. She travels around to different units to provide soldiers with game stations, videos and magazines; anything to help them feel like someone cares. The problem for Gail is that by wearing the military uniform,³⁹ she has become indistinguishable from the armed force she is supporting.

Covert Chris – Combat duty, not in military uniform.

Chris is an intelligence analyst and a DOD contract employee. In Iraq, he wears his jeans and a company shirt while accompanying the Army reconnaissance team. He wants to ensure he remains distinct from the military. He has been instructed by his contract manager that he is a “civilian” and cannot lawfully engage in activities that may be considered combat. The problem for Chris is that no one can tell him exactly what constitutes “activities that may be considered combat.” While, some may not consider Chris to be a combatant, international law experts supported by the recent Israel Supreme Court decision define intelligence gathering against an enemy army as direct participation in combat.⁴⁰

G.I. Jill – Combat duty, in military uniform.

As discussed, Jill Thomas, or heroine from the opening scenario, is an AFOSI agent and DOD civilian employee. She both wears the military uniform and performs a combat activity.

Her job entails the use of force, a key characteristic of a combatant.⁴¹ Further, she was hired to conduct prisoner interrogations and security activities formerly executed by uniformed service members.⁴² Jill has become a replacement for or an augmentee of the military force. However, she is not a member of it. Thus, although she distinguishes herself from those entitled to “civilian” status, she is engaging in hostilities without authority. Her activities create the risk that she, like Chris, will be considered an “illegal combatant.”

Gail and the Need for Distinction

International law requires warring parties to distinguish their combatants through a distinctive uniform or symbol which makes them discernable from “civilians.” In response nation-states developed the practice of having combatants wear a military uniform.⁴³ This requirement is the result of the desire to restrict warfare to acts of violence against combatants and military targets. It is believed that forces, unable to distinguish enemy combatants from civilians, would resort to targeting all individuals in an area.

Article 48 of Additional Protocol I dictates that “to ensure respect for and protection of the civilian population and civilian objects, the Parties to a conflict are required at all times to distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly must conduct their operations only against military objectives.”⁴⁴ However, evidence from DOD’s conduct during current combat operations fails to adequately do so. In a recent policy memorandum, Geographic Combatant Commanders (GCCs) are authorized to direct uniform wear for deployed non-military personnel, arguably undermining its use as a traditional method of distinction.

DOD contends that despite the international law requirement of distinction, uniform wear by non-military personnel is *not* inconsistent with international law.⁴⁵ Requiring individuals

entitled to “civilian” status to wear a military uniform, however, makes distinguishing them from combatants impossible—eliminating a key function of the uniform. This action instead increases the likelihood that those wearing a uniform will be intentionally targeted by the enemy.

International law does not require combatants to wear a “military uniform.” It only requires combatants to distinguish themselves from civilians. Nevertheless, wearing the uniform has evolved over years of combat as the fundamental method of identifying combatants. Even so, DOD has ignored this tradition.⁴⁶ While it may be true that non-military personnel in uniform are more easily identified at a distance by friendly forces, they are also easily misidentified by the adversary as a combatant.

This misuse of the uniform constitutes a problem on the battlefield. Although DOD prescribes some methods to distinguish combatants from civilians, they are ineffective. Attaching the word “civilian” in place of the service name over the uniform pocket is an impractical method of distinction. Not only are name tags written in English they are also difficult, if not impossible to see at a distance or under protective gear. Ultimately, military uniforms, even with the distinct name tape, are for all intents and purposes a combatant uniform. Arguing that uniform wear in a hostile environment increases the security of non-military personnel contradicts years of tradition.

Chris and Jill and the Need for Combatant Status

The term “civilian” as defined by DOD is a U.S. citizen or foreign national hired to work for the DOD.⁴⁷ The term identified persons who are affiliated with the armed forces, but are not service members. Individuals who are not in the military however, are not necessarily entitled to “civilian” status on the battlefield. Under international law, “civilian” is a status afforded only to those persons on the battlefield who do not engage in hostilities.

In the scenario of Chris and Jill, both have directly participated in hostilities. As a result, neither of them would qualify for “civilian” status. Additionally, because they are not members of the armed force—that is they are not combatants—international law would not recognize their authority to engage in hostilities. Absent the authority to engage in combat, both of them could be considered criminals facing potential prosecution for their actions under the law of the detaining state. And if either of them killed an enemy combatant, the prosecution could include trying them for murder. Furthermore, neither of them is entitled to status as a POW⁴⁸ and therefore, could not expect repatriation at the cessation of hostilities.

Direct Participation in Hostilities

The complicated legal framework regarding “direct participation in hostilities” creates ambiguity on the subject of which activities can be performed by non-military personnel. Combat is defined by some experts as the “kill[ing] or take[ing of] prisoners, [the] destroy[ing of] military equipment, or gather[ing] information in the area of operations.”⁴⁹ Others argue the changing nature of warfare has expanded the definition to include persons who “operate a weapons system, supervise such operation, or service such equipment.”⁵⁰ Without clearly defined limits, it is difficult to determine when an individual may be engaging in combat.

Too Much Legalese

Scholars of international armed conflict such as W. Hays Parks and Geoffrey Corn have attempted to clarify the activities that constitute “direct participation in hostilities.” Parks emphasizes that direct participation in hostilities is only that action which “cause[s] actual harm to the personnel and equipment of the enemy armed forces.”⁵¹ Corn, on the other hand advocates a “functional discretion” test.⁵² Under Corn’s test if an individual’s decision-making authority could result in a violation of the Law of War, that activity should be considered a direct part in

hostilities. Therefore, if a particular activity's level of discretion could result in Law of War violation, persons outside the military should be prohibited from executing them.⁵³ This type of delineation necessitates an assessment of every activity being conducted in order to determine if a prohibited level of discretion exists.

Under Parks' definition it is difficult to determine the definition of "actual harm." For example, it is unclear if an intelligence analyst in the area of hostilities would qualify as a combatant. It may be argued the intelligence analyst is not causing actual harm to an enemy because the analyst is not killing anyone. A contrary argument asserted by the Israel Supreme Court, is that "direct participation in hostilities" does not require the use of arms.⁵⁴ Harm can be done without the use of arms at all. In this case, although the analyst is not shooting a bullet at the enemy, he is causing direct harm by providing targeting information a B-1 bomber will use to drop bombs on the enemy.

Under the functional discretion test advocated by Corn the same analyst's activities would have to be assessed under the four Law of War (LOW) principles: distinction, necessity, proportionality and minimization of unnecessary suffering, to determine the level of discretion the he or she possesses. Generally, for intelligence analysts, the principle of necessity is an essential consideration. An analyst is the primary individual responsible for identifying valid military objectives. The principle of necessity requires them to assess that the objective be an object which by its nature, purpose, location or use effectively contributes to the warfighting, war sustaining capabilities of the enemy and whose partial or total destruction will result in a distinct military advantage for friendly forces.⁵⁵ Because the identification of targets is a fundamental combat operation the misapplication of the principle of necessity could create a

LOW violation. Although the analyst may not have discretion with regard to other principles of the LOW, he or she may still be considered a combatant.

Mental discretion is difficult to measure and often changes with seniority, rank and level of responsibility. It is possible, then, to have personnel with the same “duty title” but various legal statuses based on the level of discretion they exercised during a particular event. For example, a junior analyst deployed to field may not have the authority to designate targets while he is working at the Air Operations Center (AOC). When he goes forward with the Brigade Combat Team (BCT), however, his target designation authority may change. Attempting to ascertain his legal status based on his daily or perhaps hourly discretion is of little value.

Clearly identifying the status of persons on the field is critical in ensuring adequate protections for “civilians” and necessary entitlements for combatants. However, neither of these legal constructs provides much clarity for commanders or affected non-military personnel. Personnel in combat need clear, simple guidelines and procedures that reduce the potential for diverse legal conclusions that may have devastating consequences.

The Risks

Gail, the good-will specialist mentioned earlier, is a mother. She has a daughter and a son. She remembers when they headed off to college. The calls home and the care packages she sent. It was these memories that motivated her to bring compassion in the form of Sony Play Stations and cookies to the troops—her troops. She never imagined that she would be considered a combatant. Today, however she is in the crosshairs of Abdulla Sayeed, a seventeen year-old member of Al Qaeda. She would not be the first American Abdulla would kill. He had been fighting since he was nine. No time for school, but he didn’t need to read. He knows the uniform of the Americans. He aims and squeezes the trigger.

Meanwhile, in a small concrete room across town Jill waits. She was alone in the room. She had been alone for about three hours now. The adrenaline from the earlier firefight has worn off. Surprisingly, she wasn't worried. She understood that under international law, she is a POW and will be treated humanely. Suddenly, outside the door she hears yelling. She hears the English words "terrorist" and "criminal" and a man is thrown into the room. It's Chris. She doesn't know him, but she recognizes his face. What did her captors mean "terrorist" and "criminal?" Were they talking about Chris? He isn't a terrorist or a criminal. He's an intel guy. He wears jeans and only carried the 9MM he had been authorized for self defense.

"MY GOD," she thought, maybe they were talking about her. They couldn't be. Admittedly she was in a uniform, but DOD wouldn't direct her to wear it if it wasn't appropriate. And, certainly they would not use her to conduct activities that were not lawful. But, she looks like a combatant and she was the one who had been carrying an M4 assault rifle. The adrenaline was back. Now, she was scared.

What Now? Uncomplicate It

Under the current regime, non-military personnel on the battlefield are at significant risk. They are wearing uniforms and protective gear that make them indistinguishable from their military counterparts. Additionally, the activities they conduct have expanded, closing the gap between support activities and actions which constitute "direct participation in hostilities." Both of these factors put the "civilian" status of these individuals in jeopardy. It is imperative that policy makers act to eliminate this risk. The following represent four simple, yet necessary actions to ensure adequate protections for non-military personnel accompanying the force:

1. Stop using the term "civilian" except as defined under international law. Policy makers need to stop deceiving themselves. Not all non-military personnel are "civilians" under

international law. Using the term “civilian” to define all non-military personnel leads to the misunderstanding that they all qualify for “civilian” status. They do not.

2. Limit the Activities Performed by Non-military Personnel. If policy makers intend for all individuals accompanying the force to qualify as “civilians,” then their activities must be limited to support and welfare activities as described under the international law.

3. Clearly Distinguish “Civilians.” Individuals who are entitled to protection from attack must look like they are protected, not like a target. Directing non-military persons to wear a military uniform undermines their protections and is inconsistent with the traditional practice of nation-states. A name tape with the word “civilian” is not easily seen or understood by an enemy. Nowhere under the law is anyone required to speak or read English. Therefore, to ensure “civilians” are protected, they cannot continue to wear the uniform of the U.S. military force. If the purpose is to ensure quick, clear, and easy identification of “civilians” by *both* friendly and enemy forces, wouldn’t reflective orange safety vests be more effective?

4. Incorporate Non-military Personnel who Perform Combatant Functions into the Armed Force. DOD cannot continue to use non-military personnel to conduct combat activities, while insisting that they be afforded “civilian” status. Ascertaining a clear definition of “direct part in hostilities” is too complicated and impossible to determine as the nature of warfare changes.

What is clear is that the level of activities being performed by those not in the military is greater than ever before. Using “civilians” to conduct battle is inconsistent with the intent of the law. It also places every civilian on the battlefield at risk. Adversary forces—witnessing the hostile acts by individuals who are not in the military—can no longer determine which persons present a danger to them. Thus, all individuals in a contested area may be considered a threat,

creating the risk that both those associated with the military as well as those who are not will be killed.

To prevent the risk of attack against the civilian population, it is necessary to craft legislation incorporating persons “accompanying the force” into the military. These individuals would constitute an “auxiliary” military force, identified by military uniform and capable of engaging in combat.⁵⁶ As an auxiliary force, personnel conducting combat on behalf of the United States would be entitled to combatant status and all the relevant protections. Additionally, this action would create clearer lines of distinction, thereby reducing the risks to actual “civilians.”

The Merchant Marine Act of 1936 provides a starting point for crafting legislation. This Act provides a mechanism for non-military mariners to become an auxiliary force during times of war.⁵⁷ In a similar fashion, non-military personnel could become an auxiliary to the armed forces during deployments to areas of combat. Their membership in the force would additionally provide clear command and control for commanders while further enabling them to carry out all activities, including combat. Ultimately, this will enable commanders to have greater latitude in executing operations while ensuring their personnel are protected.

Incorporation of non-military personnel does not necessarily have to entitle them to military benefits. This issue should receive further consideration to determine its appropriateness. While it may be argued that serving in an armed conflict entitles one to service member benefits, thousands of individuals currently conduct operations in hostile areas without such an expectation. However, because closely affiliated entities such as the Women’s Air Force Service Pilots and some Merchant Marines have received entitlements,⁵⁸ further research in this area is warranted.

Conclusion

The current policies and generalities leave personnel accompanying the force in uncertain and dangerous conditions. On the battlefield, everyday, they take their chances. The risk that any individual supporting the military is inappropriately targeted or prosecuted for illegal combatant activities is a chance U.S. leadership should not continue to take.

Several layers of contradictory domestic policy and guidance currently exist, much of which is confusing even to legal experts. However, because the use of non-military personnel during combat is likely to continue, policy makers must act to protect them. The recommendations outlined in this paper are simple; yet provide clear parameters that will more effectively protect all battlefield participants.

¹ The fictional scenario and character of Special Agent Thomas are based on an interview of Special Agent Julie Lecea, AFOSI Detachment Commander, Luke AFB, regarding actual AFOSI activities in Iraq.

² Harvell III, Thea. *Department of Army (DA) Civilians in Support of Military Operations How Should Current Policies Change to Better Support Them on Today's Battlefield?*, U.S. Army War College, 18 March 2005, 1-2.

³ Ibid.

⁴ Ibid.

⁵ Ibid, 2.

⁶ General Accounting Office (GAO). *DOD Force Mix Issues: Greater Reliance on Civilians in Support Roles Could Provide Significant Benefits*, October 19, 1994, Ch 0:2.

⁷ Heaton, J. Ricou. *Civilians at war: reexamining the status of civilians accompanying the armed forces*, Air Force Law Review, Winter 2005, 3.

⁸ GAO, "Force Mix Issues," Ch 0:1.

⁹ Ibid, Ch 2:3.

¹⁰ Ibid, Ch 2:3.

¹¹ Brady "Notice Provisions," 3.

¹² Ibid.

¹³ Ibid.

¹⁴ Turner, Lisa and Norton, Lynn. *Civilians at the Tip of the Spear-Department of Defense total force team*, Air Force Law Review, Spring 2001, 2.

¹⁵ Department of Army Pamphlet 715-16, *Contractor Deployment Guide*, 27 February 1998. Although the Army Handbook specifically addresses the limits of contractor support, similar legal arguments exist for civilian employees.

¹⁶ Army Handbook, 138.

¹⁷ Joint Publication 4-0. *Doctrine for Support of Joint Logistics*, 6 April 2000, Ch V.

¹⁸ JP 4-0 (2000), V-I.

¹⁹ Dunn, Richard L. *Contractors Supporting Military Operations*, Excerpts from the Third Annual Acquisition Research Symposium, May 17-18, 2006, 5.

²⁰ Ibid.

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- ²¹ Ibid.
- ²² Ibid, 12.
- ²³ Ibid.
- ²⁴ 48 Code of Federal Regulations, Part 252.225-7040, b(3)(ii)
- ²⁵ Ibid, b(3)
- ²⁶ Department of Army Pamphlet 715-16, *Contractor Deployment Guide*, 27 February 1998, App. B-1, para. 5-1.
- ²⁷ Guillory, Michael E. *Civilianizing the Force: Is the United States Crossing the Rubicon?*, *Air Force Law Review* 51, 2001, 4.
- ²⁸ Additional Protocol I, Article 48, 1977.
- ²⁹ Fleck, Dieter. *Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, 1995, 84. (Medical service and religious personnel, although often categorized as ‘non-combatants’ are granted the ‘benefit of neutrality’ and unlike other ‘non-combatants’ are to be ‘respected and protected under all circumstances.’ See Handbook, 88-89).
- ³⁰ Fleck, “Handbook,” 84.
- ³¹ Medical service and religious personnel, although often categorized as ‘non-combatants’ are granted the ‘benefit of neutrality’ and unlike other ‘non-combatants’ are to be ‘respected and protected under all circumstances.’ See note 24, Fleck, “Handbook,” 88-89.
- ³² Ibid, 210-211.
- ³³ Ibid, 95.
- ³⁴ Turner, “Civilians at the Tip of the Spear,” 1.
- ³⁵ Fleck, “Handbook,” 95.
- ³⁶ Ibid, 84.
- ³⁷ Based on the real world example in Bosnia cited by Katherine Peters in “Civilians at War.” *Government Executive*, July 1, 1996. <http://www.govexec.com/reinvent/downsize/0796s2.htm> (accessed 14 August 2008).
- ³⁸ Fleck, “Handbook,” 95.
- ³⁹ Haynes, Mareshah. “Combat Civilians: Managing the Airfield,” *Air Force News*, March 27, 2008. <http://www.offutt.af.mil/news/story.asp?id=123092773> (accessed 14 August 2008).
- ⁴⁰ Editorial. *Israel Ministry of Foreign Affairs*, 20 December 2006. <http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Israel%20Supreme%20Court%20decision%20on%20targeting%20terrorist%20operatives%2020-Dec-2006> (accessed 31 March 2009).
- ⁴¹ Bailes, Alyson, Schnecker, Ulrich, and Wulf, Herbert. *Revisiting the State Monopoly on the Legitimate Use of Force*, Geneva Center for the Democratic Control of Armed Force, 2007,” 1.
- ⁴² Maginnis, “Security Contractors in War.”
- ⁴³ Fleck, “Handbook,” 75.
- ⁴⁴ Additional Protocol I, Article 48.
- ⁴⁵ DODD 1404.10, para 6.9.8.
- ⁴⁶ Ibid.
- ⁴⁷ Department of Defense Directive 1400.31. *DOD Civilian Work Force Contingency and Emergency Planning and Execution*, 1 December 2003, para 3.1.
- ⁴⁸ Additional Protocol I, Article 47, 1977.
- ⁴⁹ Fleck, “Handbook,” 232.
- ⁵⁰ Ibid.
- ⁵¹ Maxwell, David. *Law of War and Civilians on the Battlefield Are We Undermining Civilian Protections?*, *Military Law Review*, September-October 2004, 18.
- ⁵² Corn, Geoffrey. *Unarmed but How Dangerous? Civilian Augmentees, the Law of Armed Conflict, and the Search for a More Effective Test for Permissible Civilian Battlefield Functions*, *Journal of National Security Law and Policy*, Volume 2:257 (2008), 261.
- ⁵³ Corn, “Unarmed,” 261.
- ⁵⁴ Editorial. *Israel Ministry of Foreign Affairs*, 20 December 2006.
- ⁵⁵ Commander’s Handbook on the Law of Naval Operations. Department of the Navy, July 2007, para 5.3.1.
- ⁵⁶ Merchant Marine Act, 1936, Title I, Section 101 (b).
- ⁵⁷ Merchant Marine Act of 1936, Title I, Section 101 (b).
- ⁵⁸ <http://www.usmm.org/strugglevetstatus.html>

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