

USAWC STRATEGY RESEARCH PROJECT

PROTECTING CONTRACTORS DEPLOYING WITH THE FORCE

by

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ABSTRACT

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The extensive use of contractors supporting Operations Iraqi Freedom and Enduring Freedom exceeded all expectations. At any given time, nearly 100,000 contract personnel deployed to perform a wide variety of activities from repairing vehicles to washing dishes to providing additional security for high-ranking personnel. This puts the number of contractors close to the number of deployed military personnel. Of paramount importance is providing adequate protection for such personnel. Clearly, commanders have ethical and legal responsibilities to protect contractors on the battlefield. But, the number of contractor personnel makes meeting such responsibilities challenging. This paper examines existing law and policies regarding such protection for Contractors Deploying with the Force (CDF). This includes administration, providing passive protection (body armor, armored vehicles, uniforms, NBC protective equipment), providing active protection (weapons for self-defense), and training (battlefield survival techniques). The paper concludes that while recent improvements have been made, additional policy and resources are essential to ensure an acceptable level of protection.

PROTECTING CONTRACTORS DEPLOYING WITH THE FORCE

On March 31, 2004, a convoy of three empty trucks on their way to pick up kitchen equipment from the US Army's 82nd Airborne Division drove through the city of Fallujah, Iraq. The trucks were escorted by two vehicles from a private security company, Blackwater USA. Each security vehicle was short a rear-gunner, reducing the crew to two and greatly reducing the ability of the team to spot approaching threats. In the center of downtown, the two security vehicles were suddenly and violently ambushed by insurgents attacking from the rear. As videotapes of the aftermath showed, at least two of the security guards were killed outright. If the others weren't killed immediately, they didn't survive for long. A mob formed and the vehicles and bodies were set on fire. Soon, one body was being dragged up and down the street tied to an automobile cable. Finally, the burned and torn remains of two of the men were strung on the girders of a nearby bridge. While the cameras rolled and the crowd celebrated, the US Marine commander, responsible for the area, was briefed on the situation. Previously unaware of the contractors' presence or mission, the commander was suddenly forced to throw out plans to occupy Fallujah using an approach to win hearts and minds through reconstruction projects and move to a more hostile posture. Within days, the Marines were engaged in a bloody battle to locate and punish the insurgents responsible for the ambush.¹

Subsequent investigations revealed other shortfalls. Not only were the vehicles each short a rear-gunner, the teams did not have maps. Not only was the local military commander unaware of the contractors' presence, the contractors apparently did not know they were driving through very dangerous territory in the heart of an area under insurgent control. Further, the contractors, each being paid an estimated \$1000/day, were in commercial SUVs when the company could have provided armored vehicles for as little as \$100,000 each.²

This incident highlights many of the issues surrounding force protection for contractors on the battlefield. Growing number of contractors has been a concern of the Department of Defense (DOD) since the Gulf War, resulting in the publication of over 60 policies and regulations by the DOD, the joint commands and the individual services.³ But, Operation Iraqi Freedom highlighted gaping holes in many of the publications both because of the high-level of threat and because of the tremendous number of contractors deployed.

By one estimate, 95,000 contractors were in Iraq in August 2005 – a stunning number considering the total number of American military personnel in the country during the same month was 110,000⁴ Estimates are that contractors account for 10% of the casualties in Iraq

but that most cases go unreported.⁵ With the number of contractors almost on par with the number of military, force protection of the contractors, already a challenge, becomes daunting.

Incidents such as the killing and mutilation of the Blackwater security guards in Fallujah, videotaped beheadings, and feedback from the field prompted the DOD to publish new guidance in October 2005.⁶ The document, DOD Instruction (DODI) 3020.41, *Contractor Personnel Authorized to Accompany the US Armed Forces*, answers many concerns raised as a result of the American experience in Iraq. Foremost is defining to which contractors the instruction applies.

In DODI 3020.41, contingency contractors⁷ directly supporting DOD fall into the category of Contractors Deploying with the Force (CDF).⁸ This includes those contractor and sub-contractor personnel issued an identification card in accordance with the Geneva Conventions that support US military forces in theater during contingency operations. The CDF do not include Host Nation (HN) and Third Country Nation (TCN) personnel that are hired in theater using local contracts. In Operation Iraqi Freedom, CDF account for roughly a third to half of the contractors in theater (30,000-50,000).⁹

Given the rich history of supporting contractors on the battlefield as well as the complexities of international law, analysis of force protection is more clearly accomplished by focusing on one category of contractor. Given the large amount of available documentation and analysis of DOD's effort, focusing on CDF enables more concise examination.

Investigation of the thoroughness of force protection for CDF begins with the evolution of DOD guidance from a myriad of conflicting policies to the current concise instruction. Next, interpretation of national and international laws' impact on force protection is required. From the policies and the laws a clear definition of what force protection includes emerges. With this foundation, key areas of force protection are derived and examined. This results in identification of remaining gaps. Clearly, while the guidance for force protection for CDF has improved, actions remain to fill seams in existing policies.

Survey of Existing Policy

For years, the military has relied on a pile of regulations, field manuals and pamphlets none of which provided comprehensive and complete guidance on employment of CDF.¹⁰ All of these documents were published prior to the war in Iraq.

While the efforts to provide policy were well-intended, there was an overwhelming lack of consistency. For example, Joint Publication 4-0 (*Doctrine for Logistic Support of Joint Operations*) put all responsibilities for force protection on the contractor, Army Field Manual 3-

100.21 (*Contractors on the Battlefield*) said that force protection for the contractors was a responsibility of the commander, while Air Force policy memorandum said that force protection may be provided by the Air Force but only if called out in the contract.¹¹ Such examples led the Institute for Defense Analysis (IDA) to conclude that the US government lacked a clear policy to ensure that contractors were protected.¹² This shortfall was partially attributed to the fact that “the contract language for Operation Iraqi Freedom was lifted directly from existing contracts in Kosovo, which is a more permissive and safe environment than Iraq.”¹³

The IDA Analysis was one of many reports that began circulating throughout the US government after Operation Iraqi Freedom began in 2003. The most significant requests for clearer guidance came from three sources: a General Accountability Office (GAO) study in 2003, lessons learned from the commander of Joint Forces Command in 2004, and the 2005 Defense Authorization.¹⁴

The GAO study, conducted from August 2002 to April 2003, concluded that operational plans did not adequately address contingency contractors.¹⁵ The purposes of the study were to assess why and how DOD used contractors, the adequacy of DOD planning in using contractors, and the adequacy of oversight and guidance.¹⁶ The study found that guidance provided by DOD, combatant commands and the military services varied widely with inconsistent policies.¹⁷ Furthermore, the study determined that there was no DOD guidance outlining a baseline policy on using contractors.¹⁸

The GAO study drew attention to growing challenges with the inconsistency in policies. The study’s conclusions were amplified when in March 2004, Admiral Edmund Giambastiani, then commander of Joint Forces Command, published lessons learned and called for more specific policy. Soon afterward, Congress, in the 2005 Defense Authorization, directed the DOD to publish new policy.¹⁹

As a result, the DOD tied “together nearly 60 Pentagon directives and Joint Staff doctrinal statements²⁰ in a single document. The product was DODI 3020.41, *Contractor Personnel Authorized to Accompany the US Armed Forces*, which was published in October 2005. This instruction will drive changes in the other existing documents and, for now, is the primary reference for policy concerning contractors on the battlefield.

The document greatly improves force protection related guidance. Most significantly, it provides clear procedures allowing CDF to carry weapons for self-defense. However, some gaps remain. These gaps include the role of CDF in planning, their role in the military chain of command, and rules for arming CDF - particularly the role of private security firms.²¹ Most significantly, according to P.W. Singer, a fellow at the Brookings Institute, “It still doesn’t answer

some of the fundamental questions of legal status and accountability in a realistic manner.”²² So, revision and more policy appear necessary.

Consequently, DODI 3020.41 is kicking off a new round of policy updates. Several of the Defense Federal Acquisition Regulations are being updated but it will likely take time before all of the policies called out in the new guidance are fully implemented.²³ Despite these shortcomings, much progress has been made to clarify the contractors’ status as a civilian authorized to accompany the military force on the battlefield.

Legal Status of CDF

Understanding the status of the contractor on the battlefield is essential to understanding the requirements of force protection for the CDF. On the surface, the laws seem straightforward, however, in practice, CDF, especially those who are armed, walk the line between legal and illegal combatants. This is further impacted by US laws, local laws, Status of Forces Agreements (SOFA) and the Uniform Code of Military Justice (UCMJ). As with policies, there are inconsistencies, gaps and a variety of interpretations.

According to the Geneva and Hague Conventions, a person involved in an armed conflict is classified as combatant, civilian accompanying the force or a non-combatant. Each category has a unique legal status as well as a required set of rules to follow. Violation of the rules means loss of legal status with dire consequences.²⁴ To qualify as a legal combatant, the individual must be under the orders of a military commander with the authority to enforce internal discipline, wear a uniform, carry arms openly, and conduct operations in accordance with the laws and customs of war.²⁵ A civilian accompanying the force must be designated as such and carry the Geneva Convention identification card (currently issued to American personnel as DA Form 489).²⁶ A non-combatant is any other person that is not illegally engaging in combat.²⁷

While this seems straightforward, in practice, it’s not easy to implement. First, much of the equipment worn by soldiers (flak vests, helmets, protective masks, etc.) is also needed by the contractor. So, visually, it can be very difficult to distinguish the contractor acting as a civilian accompanying the force from the combatant soldier. Second, International Law does allow the carrying and use of arms by non-combatants and civilians accompanying the force for self-defense.²⁸ Again, this makes a non-combatant look like a combatant. As a result, an enemy could claim, with strong justification, that the armed contractor is in fact an illegal combatant.

An illegal combatant faces very dire circumstances. All of the protections for prisoners of war guaranteed by the Geneva Convention do not apply to illegal combatants.²⁹ If captured, they are not recognized as prisoners of war and can face trial for such crimes as murder, assault and vandalism.³⁰

A few years ago, the United States, United Kingdom, Australia and Canada attempted to avoid these pitfalls by declaring that CDF were legal combatants. Unfortunately, the International Committee of the Red Cross, the organization responsible for administering the Geneva Convention, determined this was not possible unless CDF fall under military chains of command. This is because all four criteria must be met to be a legal combatant. It isn't possible to integrate CDF into chains of command because CDF can only legally respond to the terms of the contract and the contracting officer. Thus, CDF must continue to abide by the rules for civilians accompanying the force if they are to keep a legal status.³¹

Status under International Law is only the tip of the iceberg. As civilians accompanying the force CDF must contend with the UCMJ, US law, laws of other nations and SOFA.

When the United States Congress declares war, CDF become subject to the UCMJ. This does not mean, however, that CDF fall under the military chain of command. The intent is to extend control of the military commander to the maximum extent possible without violating the legal constraints of contract law.³² But, since the United States has not declared war since 1941, it remains unlikely that this rule will be exercised in the near future.

When deployed CDF must follow US laws including the Pursuant to the War Crimes Act and Military Extraterritorial Jurisdiction Act (MEJA) that do not apply to military personnel. The Pursuant to War Crimes Act means that a CDF can be tried in International Court for committing War Crimes. To date, this act has not been invoked for any contractor. The MEJA basically says that a CDF can be found guilty of a crime that is illegal in the United States even if he is in another country and even if that country chooses not to prosecute (or even if the act is legal in that country).³³ While no contractor has been charged under MEJA, the dependant wife of a US Air Force sergeant was tried under MEJA for stabbing her husband to death in Turkey.³⁴

The CDF must also obey HN laws in the country where they are deployed. Such rules add greater complexity to an already confusing set of rules, especially in cases where laws do not agree.³⁵

Negotiated SOFAs may clarify the situation since the intent of a SOFA is to address conflicts between US and other nations' laws as well as lay out the procedures for dealing with criminal acts. They identify authorized activities, use of resources, and application of taxes and other fees.³⁶ Currently, the United States has negotiated 109 SOFAs world-wide.

Unfortunately, only five contain language that specifically addresses contractors accompanying armed forces.³⁷

In the end, the status of CDF, especially one that carries a weapon for self-defense is vague. The CDF runs both the risk of becoming an illegal combatant and of being charged with violating laws that do not apply to military personnel. While this is often a key consideration when deciding to arm a CDF, as has been discussed above, it also must be considered when the CDF simply dons a flak vest and helmet. Consequently, SOFAs, contracts and local policies must amplify both desired status and the applicable US, TCN, and HN laws. This is an essential step in determining method and extent of force protection.

Force Protection

Joint doctrine defines force protection as security programs designed to protect personnel, facilities and equipment in all locations and situations.³⁸ Force protection does not include actions to defeat the enemy or protect against accidents, weather, or disease.³⁹ Rather, it consists of four major elements - administration, passive protection, active protection and training. Administrative actions define who controls the CDF; define their legal status; account for their whereabouts; and track training and equipping activities. Administration also includes establishing procedures for the contractors to follow when on the battlefield.⁴⁰ Passive protective measures include providing protective equipment such as helmets, flak vests, armored vehicles and chemical protective gear. Active measures include overt use of military forces to protect the contractor from attack as well as arming the contractor.⁴¹ Training focuses on use of protective gear, convoy procedures, and weapons qualification.

Combatant Commanders are responsible for developing plans to provide force protection for CDF.⁴² Although there is a preference for CDF to provide their own resources for force protection to the maximum extent possible, restrictions on the use of force and lack of training, limits the ability of the CDF to independently provide for all needs.⁴³ Therefore, the military must work closely with CDF to fill the gap. In the end, the CDF is responsible for obeying all general orders and obeying all force protection rules while in the combat area.⁴⁴

Administration

Key administrative elements of providing force protection to contractors consist of simply knowing where all the contractors are and then controlling their activities in a manner beneficial to their well-being. Both prove challenging activities.

The commander has limited control over the CDF. Like all defense contractors, CDF only perform duties within the scope of the contract. As such, under almost all circumstances, only

the contracting officer or a authorized representative may give direction to the CDF, not the commander.⁴⁵ However, in emergency situations (such as enemy actions or terrorist acts) the commander may lawfully direct the contractor. The directed action can't, however, tell the CDF to do an inherently governmental activity. The commander can also issue general orders to which the contractor must conform. The commander can not discipline the CDF except in time of declared war when CDF fall under the UCMJ. However, the commander does control CDF access and movement on government installations and facilities. So, when it comes to providing force protection, the commander can issue general orders, direct access, restrict movement, and use the contracting officer representative to ensure local policies are followed by the CDF.⁴⁶ Inherent in these authorizations is the responsibility of the commander to ensure the latest intelligence, tactics, techniques and procedures related to force protection is shared with the CDF. As previously mentioned, the Blackwater incident may have been avoided if the local commander knew of the CDF activities and had provided updated intelligence and current maps.

One of the greatest challenges in Operations Enduring Freedom and Iraqi Freedom has been simply keeping track of the contractors on the battlefield. This is exacerbated by the fact that contractors do not enter nor leave the theater in established cycles. So, the count varies from day to day. Still, there is some agreement on the magnitude of the number of contractors present.

Many sources put the number of private armed security personnel at 20,000 which, if true, make them the second largest armed force on the battlefield at over double the strength of the United Kingdom (8,361).⁴⁷ There is general agreement that another 80,000 – 100,000 contract personnel (both armed and unarmed) perform other duties.⁴⁸ Of these two groups, 45,000 CDF were registered with the United States Army Material Command in the fall of 2005 out of which 30,000 were currently in theater.⁴⁹

Not surprisingly, the number of casualties among contractors remains vague. Estimates range from 175 to 232 killed and 900 wounded.⁵⁰

As a result of these gaps, DODI 3020.41 has directed that a joint database account for all contractors. The database includes information to assist in planning for “force protection, medical support, personnel recovery, and other support.”⁵¹

The United States Army Material Command currently has responsibility for this database. The Synchronized Personnel Operational Tracker (SPOT) began registering and tracking contractor, civilian and individually deployed military personnel in 2005.⁵² The system maintains administrative, medical, and training status as well as current deployed status.

Tracking systems, such SPOT, are essential in ensuring contractor personnel are properly accounted for. This extends beyond awareness and includes ensuring all equipment and training has been provided prior to deployment.

An additional recommendation is to expand the database to track local command within which the CDF is operating. While this information will likely change daily as the CDF move about the combat area, it is essential that everything be done to make local commanders aware of the presence of CDF to ensure link-up occurs. Again, the Blackwater incident highlights the potential of adversely affecting the military mission when this does not occur.

Passive Protection

Experience in Iraq has shown there are no front lines or truly safe areas. Even within the walls of secure compounds, mortars and rockets attacks occur daily. Consequentially, all personnel deployed with US forces need protective equipment.

The DOD policy is for the contract to specify what protective gear is provided by the government. If specified, the government is allowed to issue standard military items (e.g., chemical defensive gear, body armor, personal protective equipment).⁵³ In practice, there is not much debate on what this equipment consists of. In the case of Operation Iraqi Freedom, contractors typically receive helmets, flak vests, and set of Nuclear, Biological, and Chemical (NBC) protective equipment (mask, spare filters, gloves, boots, and two protective suits).⁵⁴

If there are shortages of equipment available from the military, the commercial market offers a variety of surprisingly high-quality equipment providing equivalent or better protection than US military personnel receive. This includes protective masks (\$159.00)⁵⁵ and filters (\$60.00);⁵⁶ Kevlar helmets (\$295.00);⁵⁷ flak vests (less than \$1000.00)⁵⁸ and protective armored plates up to Level IV protection (\$500 for front and back plates).⁵⁹

A controversial item of protective gear is the military uniform. The Geneva Accords prohibits the wearing of military uniforms by CDF.⁶⁰ This is reinforced by older DOD policy which prohibits commanders from issuing "military or military look-alike uniforms."⁶¹ That said, experience in Iraq has shown that the old principle of attacking the thing that looks different because it might be important remains in effect and personnel not wearing uniforms tend to draw significantly more fire. As a result, contractors often don military uniforms.

Fortunately, this phenomena is recognized in DODI 3020.41 which allows military to authorize (in writing) the wearing of standard uniform items by CDF. However, it still requires that CDF distinguish themselves from the military by wearing distinctive patches, arm bands,

name tags or headgear.⁶² In the end CDF blend in from afar but appear distinct up-close, a reasonable and acceptable compromise between the law and survival.

One area not addressed in either regulation or practice is the use of armored vehicles. Great attention has been paid by the government and media in ensuring all soldiers travel

NATIONAL INSTITUTE OF JUSTICE BALLISTIC RESISTANCE OF POLICE BODY ARMOR		
Body Armor Threat Levels		NIJ STANDARD 0101.03
	CALIBER	VELOCITY (fps)
LEVEL I	.22 LRHV (40g) Lead	1,050 – 1,100
	.38 Caliber (158g) Lead Round Nose	850 – 900
LEVEL IIA	.357 Magnum (158g) Jacketed Soft Point	1,250 – 1,300
	9mm (124g) Full Metal Jacket	1,090 – 1,140
LEVEL II	.357 Magnum (158g) Jacketed Soft Point	1,395 – 1,445
	9mm (124g) Full Metal Jacket	1,175 – 1,225
LEVEL IIIA	.44 Magnum (240g) Lead Semi Wadcutter	1,400 – 1,450
	9mm (124g) Full Metal Jacket	1,400 – 1,450
LEVEL III	7.62 mm (150g) (.308 Caliber) Full Metal Jacket	2,750 – 2,800
LEVEL IV	30.06 (166g) (.30 Caliber) M2AP Armor Piercing	2,850 – 2,900

FIGURE 1. LEVELS OF BALLISTIC PROTECTION⁶³

exclusively in armored vehicles. But, there is no comparable movement to ensure that CDF do the same.

Logically, this does not make sense. CDF travel in the same convoys as military vehicles and are equally as likely to encounter Improvised Explosive Devices (IED), Rocket Propelled Grenades and sniper fire while on the road. The soft skin of the typical SUV has no stopping power against bullets or an RPG.



FIGURE 2. FORD F-350 ARMORED PICK-UP TRUCK⁶⁴



FIGURE 3. FORD F-350 ARMORED PICK-UP TRUCK WITH OPTIONAL REAR GUN PORT⁶⁵

There are two ways to solve this dilemma. First, the cheapest solution is for the military to require CDF to ride in armored vehicles with the soldiers. But, that may be unrealistic given the number of contractors and constrained military assets. Another solution is to require CDF to procure armored vehicles on the commercial market. Recently, Ford began selling a fully armored F350 pick-up truck that retails for \$100,000⁶⁶ and provides Level III protection.⁶⁷ For an additional \$20,000, a gun port may be added.⁶⁸ Many other armored vehicles are also available. A good representative of the high-end of the market is the Combat T-98 built by Labock which sells for \$250,000 and features Level IV protection.⁶⁹



FIGURE 4. LABOCK COMBAT T-98⁷⁰

In conclusion, the commercial market can supplement the DOD when it comes for ensuring contractors have adequate passive protection. The DOD policies and current practices provide personal protective equipment to an adequate level. But, surprisingly high-quality products are also available, commercially, should shortages ever arise. The one gap in DOD planning is an apparent lack of consideration of the need for armored vehicles. Again, the commercial market can provide quality products to fill this gap. In the end CDF do have access to all of the passive protection necessary.

Active Protection

Active force protection involves the use of military forces as well as arming CDF or hiring contractors specifically to provide security for CDF. Active force protection measures include perimeter security for work areas and armed escorts during movement.⁷¹

Naturally, providing military protection is both more effective (because they are not limited to acting only in self-defense) and relatively free of the potential legal entanglements. The challenge is that with such a tremendous number of CDF on the battlefield, it is not always cost-effective to divert the military from their primary mission to provide security for CDF. Inevitably, the combatant commander must seriously consider authorizing the arming of CDF.

Probably nothing makes a military professional more nervous than a CDF carrying a weapon. There are good justifications for such concern. However, the greatest reason isn't potential lack of training. There is a fine line between legally arming a civilian accompanying the force and that civilian becoming an unprivileged belligerent with no protection under international laws. Violations not only put the CDF at risk, but also potentially challenge the legitimacy of the United States in engaging in conflict using personnel which appear to be hired guns. While current policy does allow arming of CDF and the employment of CDF security

forces, further guidance is needed to ensure proper use of such personnel. To understand the need for the guidance, we must examine the rules as they appear in law and policy, the potential pitfalls of arming CDF, and how to avoid such pitfalls.

International law does not specifically provide circumstances for arming civilians accompanying the force. Rather, the law states that the combatants must carry arms openly.⁷² However, from this, legal professionals working for the US Army derived that a CDF openly carrying a weapon for self-defense, remains protected by international law.⁷³ As specified in DODI 3020.41, when military and/or civil force protection is unavailable, the Combatant Commander (or a delegate of flag rank) can authorize the arming of CDF.⁷⁴

The challenge with the legal ruling and current policy is two-fold. First, the criterion of what constitutes “defensive” versus “offensive” use of a weapon remains vague. If a contractor sees an enemy holding a rifle, can the contractor open fire rather than wait for the enemy to act? Second, does acting defensively mean the contractor can only use certain weapons, such as hand-guns and rifles? These are critical questions to answer since perceived offense action risks illegal belligerent and forfeiture of POW rights if captured.⁷⁵

Defining the criterion for self-defense is a challenge not unlike the one faced whenever the military creates rules-of-engagement for combat operations. General procedures supported by sample vignettes could clarify the situation. Additional policy and training could focus on and address this issue.

Older policies restricted contractors to using only military-specification sidearms, loaded with military-specification ammunition.⁷⁶ However, DODI 3020.41 does not contain this restriction and, in practice, this rule isn’t always followed. In one case a private security company in Iraq received permission from the DOD officials to dig through a dumping ground of captured enemy weapons. The contractors collected up a pile of salvageable AK-47’s and ammunition.⁷⁷ Can a contractor carrying an AK-47 claim to be using the weapon only defensively? What about a .50 cal sniper rifle or a grenade launcher? Surely, there must be a limit, supportable by legal review of the Laws of War, which DOD can specify.

Once a decision to arm CDF is made, who is responsible for providing the arms? This isn’t addressed in policy. Piles of captured enemy weapons won’t always be available, so DOD needs to determine the sources. While this appears to be a monetary decision, it really isn’t. Regardless, DOD will pay whether it procures and issues the weapons or contract fees are increased to compensate for the expenditure. But, the decision does impact procurement authorization levels. So, planning for arming CDF needs to be done at the highest levels of defense procurement and receive authorizations from Congress.

On the positive side, DODI 3020.41 does require “briefings on the rules regarding the use of force to the contingency contractor personnel.”⁷⁸ Further, the guidance emphasizes the importance of only using the weapon for self-defense. It also requires legal review and approval by the Combatant Commander of the weapons being employed.

In conclusion, arming CDF, while greatly enhancing force protection, does have its risk. However, arming CDF may be the only alternative left if military forces are unavailable. While the procedures for authorizing weapons are spelled-out, DOD needs to provide greater guidance on what weapons are authorized and whether the government or private sector provides the weapons. If the government provides the weapons, adequate procurement resources must be coordinated.

Training

Training for CDF is addressed in policy and practice. However, it is not certain whether the amount and subjects of the training are adequate. Logically, CDF with no military experience should undergo much more training than military personnel who have many years of combat training if not actual combat experience.⁷⁹ But, the CONUS Replacement Centers (CRC) at Fort Benning and Fort Bliss only provide five days of training to CDF (mostly briefings)⁸⁰ while the military receives twelve (mostly hands-on exercises)⁸¹

While DOD requires that CDF receive training in “Geneva Conventions; law of armed conflict; general orders; standards of conduct; force protection; personnel recovery; medical; operational security; anti-terrorism; nuclear, biological and chemical protective gear; country brief and cultural awareness; and other training as appropriate,”⁸² it does not specify the quality of such training or specific content of the training in detail. Industry representatives have not only noted these deficiencies in training provided by the CRC but also point out that what training that is provided does not always reflect the current threat environment or theater directives.⁸³ Military leaders have also noted a lack of adequate code of conduct; survival evasion, resistance and escape (SERE); and advanced NBC protection training.⁸⁴

Of significant note is the lack of comprehensive weapons training for armed CDF. Naturally, “an untrained, armed contractor heightens the risk to everyone by increasing the likelihood of an accidental discharge or even worse, risking fratricide.”⁸⁵ Consequentially, DOD policy dictates that “the Government shall provide or ensure weapons familiarization [and] qualifications.”⁸⁶ Thus, CDF authorized to possess weapons must receive training and prove mastery of the skills through a qualification course. But, still this remains inadequate.

Current operations in Iraq and Afghanistan indicate that a very likely place for the contractor to become engaged is in a convoy ambush. Basic marksmanship training does not teach and basic weapons qualification courses do not test proper techniques for engaging targets from inside a vehicle. Neither do they cover proper techniques for engaging the enemy while exiting a disabled vehicle. Clearly, the current DOD policy does not go into enough detail in prescribing proper training. Handling a weapon while inside a moving vehicle adds new hazards not present on a typical rifle range. Extra care must be taken to orient the weapon away from the driver and passengers. Special handling is required if the vehicle is armored and the windows do not roll down. Firing from a seated position while inside a moving vehicle is also requires training to master and execute safely.

These shortfalls do not appear to be attributed to lack of knowledgeable trainers (as noted, the military going through CRC receive higher quality and quantity of training). Studies have noted that the CRC could provide such high-quality training to CDF as well.⁸⁷ However, additional government funding would be required.

This is not an area where the commercial market can supplement the shortfall. Only the military is aware of the latest tactics being used by the enemy. More importantly, only the military has knowledge of the latest countermeasures (which are often classified). Additionally, the most effective training would combine both the military and CDF in hands-on training with each playing their roles in actual convoy operations. Not only will this be of benefit to the contractors, but the military will also become familiar with the adjustments necessary when protecting CDF.

Awareness by the military of CDF is also a critical training item not covered in current CRC Training. As incidents, such as the arrest, detention, and subsequent unproven claims of manhandling of 16 contractors by US Marines in Fallujah have demonstrated, there is not only misperception but also apparent animosity.⁸⁸ Combined military/CDF training would also reiterate the importance of coordination and reduce the likelihood that contractor activities would impact the military mission.

In conclusion, training is addressed adequately in policy. However, it remains an area which could benefit from improvements in both quality and depth. The highest quality and most up-to-date training should be provided by the US government.

Conclusion

Research indicates that DOD understands the importance of force protection for CDF and provided greater clarity by publishing DODI 3020.41. However, this remains a first step that

must be followed by further guidance and actions by DOD and the service components. This includes updates to International agreements; administrative direction; and expanded provisions for passive protection, active protection, and training. Furthermore, a careful review of the level and source of resources required to implement these new efforts is required.

Of critical importance is ensuring that there is international agreement on application of laws to deployed contractors. All current and future SOFA agreements must reflect the status of the CDF as well as other contractors employed by DOD. This includes highlighting which US, TCN and HN laws apply. This information should be shared with contracting agencies and referenced in DOD contracts. Additionally, this type of information should be included in pre-deployment training not only for contractors but, also for military commanders and other government personnel involved managing contractor activities.

Greater administrative direction is needed. Policy updates need to provide definition of CDF role in planning, provisions on how the CDF relates to the military chain of command, greater specification on the how CDF security personnel coordinate their activities, greater detail on CDF legal status, and procedures for ensuring proper accountability of CDF that go beyond current database requirements. For example, the joint database (SPOT) should be expanded to reflect which local military commanders are responsible for each CDF. This database should be shared with both military and CDF personnel and updated daily.

Provisions for passive protection should be expanded and periodically reviewed to ensure currency. While adequate commercial solutions (protective masks and filters, flak vests and armored plates, and helmets) remain available, contractors need to know specifications of effective gear to ensure proper equipping. Additionally, the procurement and use of armored vehicles by CDF should be made mandatory.

Active provisions should likewise be expanded and periodically updated. Specifically, DOD should publish criterion for self-defense with example vignettes. Additionally, DOD needs to provide legally reviewed guidance with greater specificity on types of weapons authorized for contractor use. Together, this will help ensure contractors act in accordance to the Laws of War.

The quality of training for CDF personnel should be increased to include more hands-on, realistic, and thorough training which integrates military personnel. Most critical are providing training convoy procedures and the use of weapons when traveling in an armored vehicle. The government should remain responsible for the training to ensure currency with on-going operations.

These recommended activities will require additional resources. The government should carefully consider the best approach. When the burden is on the contractor to provide solutions, additional contract dollars will be required. When the burden is on the government, not only is funding required, but careful consideration of the type of funds and caps on procurements is essential. Like many issues surrounding CDF, this is a complex and challenging activity requiring a thoughtful approach.

Of paramount importance is for DOD to ensure that CDF activities enhance rather than interfere with military operations. This will require commanders to go beyond guidance called out in policy. Only by integrating CDF into operational activities potentially adverse impact on the mission be mitigated. In the end, there should be no seam between the CDF and military forces.

The ambush of the four Blackwater contractors in Fallujah brought many critical issues concerning the protection of contractors to light. The current doctrinal revision and resulting activities at the CRC demonstrate this issue is being taken seriously. The fact that an estimated 20% of every contract dollar goes for security drives home this point.⁸⁹ In the end, DOD will certainly get better service from its contractors if they are adequately protected.⁹⁰ The foundation of force protection for CDF is well-established. Congress has recognized this progress and is now directing DOD to expand policy to include other categories of contractors.⁹¹ As the military services supplement DODI 3020.41 with their own policies, all of the issues raised in this paper can be adequately addressed. As lessons are learned and new procedures implemented, the military can work more closely with its contractor personnel. Together, they can ensure the interests of the United States are defended on the battlefield.

Endnotes

¹ PBS Frontline, *The High Risk Contracting Business*, available from <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/contractors/highrisk.html>; Internet; accessed 7 November 2005.

² Ibid.

³ Jason Sherman, "New DOD Policy To Guide Role Of Contractors On The Battlefield", *Inside Defense*, 18 October 2005

³ Daniel Bergner, "The Other Army," *New York Times Magazine*, 14 August 2005.

⁵ PBS Frontline, "Interviews Steven Schooner," available from <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/interviews/schooner.html>; Internet; accessed 7 November 2005.

⁶ Sherman.

⁷ DODI 3020.41 defines Contingency Contractor Personnel as defense contractors and employees of defense contractors and associated subcontractors, including U.S. citizens, U.S. legal aliens, TCNs, and citizens of HN's who are authorized to accompany U.S. military forces in contingency operations or other military operations, or exercises designated by the geographic Combatant Commander. This includes employees of external support, systems support, and theater support contractors. Such personnel are provided with an appropriate identification card under the Geneva Conventions. Department of Defense, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, Department of Defense Instruction Number 3020.41 (Washington DC: U.S. Department of Defense, 3 October 2005), 24.

⁸ DODI 3020.41 defines Contractors Deploying with the Force (CDF) as a sub-category of "contingency contractor personnel" defined above. CDF are employees of system support and external support contractors, and associated subcontractors, at all tiers, who are specifically authorized in their contract to deploy through a deployment center or process and provide support to U.S. military forces in contingency operations or in other military operations, or exercises designated by a geographic Combatant Commander. CDF includes forward-deployed system support and external support contractors designated to remain in place in theater when a contingency is declared. Such personnel are provided with an appropriate identification card under the Geneva Conventions. CDF usually work for the U.S. military forces under a deployable contract agreement in peacetime and in many cases have a long-term relationship with a specific unit. They usually live with and provide services directly to U.S. military forces and receive Government-furnished support similar to DoD civilians. CDF do not include TCN or local national personnel hired in theater using local procurement (e.g., day laborers). DODI 3020.41, pages 24-25.

⁹ As of Fall 2005, the Department of Defense's database maintained by the Army Material Command registered 45,000 personnel of which slightly more than 30,000 were currently deployed in theater. Carl J. Cartwright, "Contractor Coordination Cell," briefing slides, available from <http://www.dtic.mil/ndia/2005logistics/thursday/cartwright.pdf>; Internet; accessed 7 November 2005.

¹⁰ These included the Federal Acquisition Regulation Manual No. 2 (*Contingency Contracting*), Joint Publication 4.0 (*Doctrine for Logistic Support of Joint Operations*), Army Regulation 715-9 (*Contractors Accompanying the Force*), Army Field Manual 3-100.21 (*Contractors on the Battlefield*), and Department of the Army Pamphlet 715-16 (*Contractor Deployment Guide*).

¹¹ In summary:

- Joint Publication 4-0 "Chapter V," states "Force protection responsibility for DOD contractor employees is a contractor responsibility, unless valid contract terms place that responsibility with another party."
- Army Field Manual 3-100.21 states, "Protecting contractors and their employees on the battlefield is the commander's responsibility. When contractors perform in potentially hostile or hazardous areas, the supported military forces must assure the protection of their operations and employees. The responsibility for assuring that contractors receive adequate force protection starts with the combatant commander, extends downward, and includes the contractor."

- The Air Force policy memorandum states, “The Air Force may provide or make available, under terms and conditions as specified in the contract, force protection ... commensurate with those provided to DOD civilian personnel to the extent authorized by U.S. and host nation law.”

GAO-03-695, 25.

¹² Roxana Tiron, Pentagon Still Undecided on Policies to Protect Contractors, *National Defense*, November 2004, available from http://www.nationaldefensemagazine.org/issues/2003/Sep/Army_Not_Equipped.htm, accessed 7 November 2005.

¹³ Ibid.

¹⁴ Sherman.

¹⁵ Richard L. Dunn, “Contractors in the 21st Century “Combat Zone,” (College Park MD: University of Maryland, April 2005), available from <http://www.nps.navy.mil/gsbpp/ACQN/publications/FY05/CM-05-020.pdf>; Internet; accessed 15 November 2005, 32.

¹⁶ GAO-03-695, 1.

¹⁷ The reported noted that only the Army had developed substantial polices. Ibid., 3.

¹⁸ The study determined that “DOD Directive 2000.1225 establishes DOD’s antiterrorism and force protection policy and that DOD Instruction 2000.1626 establishes specific force protection standards pursuant to the policy established by DOD Directive 2000.12.” but there was no coordinating or overarching policy. GAO-03-695, 20-21.

¹⁹ Sherman.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Experts say that it may be too difficult to retroactively implement all of the rules and regulations spelled out and that full implementation will be the goal for future U.S. military deployments. Sherman.

²⁴ Lynn G. Norton, *Civilians at the tip of the spear*, available from <http://www.highbeam.com/library/docfree.asp?DOCID=1G1:92044660&ctrlInfo=Round18%3AMode18c%3ADocG%3AResult&ao>; Internet; accessed 15 November 2005.

²⁵ Ibid.

²⁶ Althouse, James E, *Contractors on the Battlefield: What Doctrine Says, and Doesn't Say*, available from <http://www.almc.army.mil/alog/issues/NovDec98/MS323.htm>; Internet; accessed 7 November 2005.

²⁷ David J. Mailander, *Battlefield Contractors: Assessing the Benefits and Weighing the Risks*, (Carlisle Barracks, PA: U.S. Army War College, 2002), available from <http://handle.dtic.mil/100.2/ADA400765>; Internet; accessed 20 October 2005, 10.

²⁸ Ibid.

²⁹ DODI 3020.41, 6.

³⁰ Dunn, 20.

³¹ Ibid., 22.

³² DODI 3020.41, 7.

³³ Dunn, 22.

³⁴ Ibid., 63.

³⁵ DODI 3020.41, 7.

³⁶ Frank Camm and Victoria A. Greenfield, "How Should the Army Use Contractors on the Battlefield?," (Arlington, VA: The RAND Corporation, 2005), available from http://www.rand.org/pubs/monographs/2005/RAND_MG296.pdf; Internet; accessed 7 November 2005, 196.

³⁷ Ibid., 196.

³⁸ Department of Defense, *Joint Tactics, Techniques and Procedures for Peace Operations*, Joint Publication 3-07.3 (Washington D.C.: Department of Defense, 13 February 1999), page GL-6.

³⁹ U.S. Department of the Army, *Contractors on the Battlefield*, Field Manual (FM) 3-100.21 (Washington, DC: U.S. Department of the Army, 3 January 2003), page 6-1.

⁴⁰ James J. McCullough and Courtney J. Edmonds, *Contractors on the Battlefield Revisited: The War in Iraq and Its Aftermath* (Briefing Papers, Second Series, June 2004), available from http://www.friedfrank.com/govtcon/pdf/briefing_papers_2.pdf; Internet; accessed 7 November 2005, 2.

⁴¹ FM 3-100.21, page 6-5.

⁴² DODI 3020.41, 16.

⁴³ FM 3-100.21, page 6-1.

⁴⁴ U.S. Department of the Army, *Contractors Accompanying the Force*, Pamphlet 715-9 (Washington, DC: U.S. Department of the Army, 29 October 1998), 10.

⁴⁵ Viewed another way, the contracting officer or representative is the liaison between the commander and the CDF.

⁴⁶ DODI 3020.41, 15.

⁴⁷ Wikipedia, "Multinational Force In Iraq", available from http://en.wikipedia.org/wiki/Multinational_force_in_Iraq; Internet; accessed 7 November 2005.

⁴⁸ PBS Frontline, "Private Warriors," available from <http://www.pbs.org/wgbh/pages/frontline/shows/warriors/view/>; Internet; accessed 7 November 2005.

⁴⁹ Cartwright.

⁵⁰ The estimate of 175 killed and 900 wounded comes from *Military Contractors*, available from <http://www.topsy.org/contractors.html>; Internet; accessed 9 November 2005. The estimate for 232 killed comes from the Brookings Institute, CNN.COM, *7 U.S. security contractors killed in Iraq*, available from <http://www.cnn.com/2005/WORLD/meast/04/21/iraq.contractors/>; Internet, accessed 7 November 2005.

⁵¹ DODI 3020.41, 10.

⁵² The system evolved from a previous database called the Special Project Office (SPO) Tracker which began operating in 2004. *Department of Defense - Synchronized Personnel Operational Tracker*, available from <https://iel.kc.us.army.mil/spotracker/>; Internet; accessed 5 December 2005.

⁵³ DODI 3020.41, 14.

⁵⁴ U.S. Army Infantry CONUS Replacement Center, "Iraq Civilian Menu," available from <https://www-benning.army.mil/CRC/content/packing%20lists/3oct05/IRAQ%20CIV.doc>; Internet; accessed 7 November 2005.

⁵⁵ Black Armor, *Military Gas Mask*, available from http://blackarmor.com/Gas_Mask/gas-mask.htm; Internet, accessed 24 November 2005.

⁵⁶ Black Armor, *Replacement Filter*, available from http://blackarmor.com/Gas_Mask/gas-mask.htm; Internet, accessed 24 November 2005.

⁵⁷ Black Armor, *Tactical Helmet*, <http://www.blackarmor.com/Vest/Helmet.htm>; Internet, accessed 24 November 2005.

⁵⁸ The Ann Corporation, *Armored Vest level NIJ 0101.04 level II or III*, available from <http://www.bahrain.citymax.com/page/page/2353428.htm>; Internet, accessed 24 November 2005.

⁵⁹ Level IV protection is effective against 3.06 caliber ammunition. Black Armor, *Plate Inserts*, available from http://www.blackarmor.com/Vest/Plates_Inserts.htm; Internet, accessed 24 November 2005.

⁶⁰ U.S. Department of the Army, *2004 Operational Law Handbook* (Charlottesville, VA: The Judge Advocate General's Legal Center and School, 2004), 16.

⁶¹ DODI 3020.41, 14.

⁶² *Ibid.*, 14.

⁶³ *National Institute of Justice, Ballistic Resistance of Police Body Armor*, available from http://www.blackarmor.com/Protection_Level.htm; Internet, accessed 24 November 2005.

⁶⁴ *2005 Ford F350 Pick-up Truck*, available from http://www.armored-cars.com/vehicles/xStock_SUV_F350_PIC.html; Internet, accessed 24 November 2005.

⁶⁵ *The Ford F350 Gun Truck*, available from <http://www.bahrain.citymax.com/page/page/698934.htm>; Internet, accessed 24 November 2005.

⁶⁶ 2005 Ford F350 Pick-up Truck.

⁶⁷ The armored Ford F350 provides protection against 7.62mm. Additional shielding may be purchased to provide protection against 30.06 and 7.62x51mm. *Streit Manufacturing Inc.*, available from <http://www.armored-cars.com/pricing.html>; Internet, accessed 24 November 2005.

⁶⁸ The Ford F350 Gun Truck.

⁶⁹ *The Combat T-98 Armored Luxury SUV*, available from <http://www.gizmag.com/go/4799/>; Internet, accessed 24 November 2005.

⁷⁰ Ibid.

⁷¹ FM 3-100.21, page 6-5.

⁷² The Qualification of Belligerents, Article I of Hague Convention (IV) Respecting the Laws and Customs of War on Land, Annex to the Convention as quoted by W. Michael Reisman and Chris T. Antoniou, *The Law of War* (New York, NY: Vintage Books, July 1994), 41.

⁷³ FM 3-100.21, 2-11.

⁷⁴ The carrying of weapons is further restricted by "applicable U.S., HN, and international law, relevant SOFAs or international agreements, or other arrangements with local HN authorities." DODI 3020.41, 16.

⁷⁵ Gordon L. Campbell, "Contractors on the Battlefield: The Ethics of Paying Civilians to Enter Harm's Way and Requiring Soldiers to Depend upon Them," (United States Army Combined Arms Support Command, January 2000), A paper prepared for presentation to the Joint Services Conference on Professional Ethics 2000, Springfield, VA, January 27-28, 2000, 3.

⁷⁶ FM 3-100.21, 6-6.

⁷⁷ Bergner.

⁷⁸ DODI 3020.41, 16

⁷⁹ Camm, 62.

⁸⁰ U.S. Army Infantry CONUS Replacement Center, "High Troop Density Model for Civilian IRs," available from <https://www.bliss.army.mil/LocalUnitLinks/326thcrc/civilian.xls>; Internet; accessed 7 November 2005.

⁸¹ U.S. Army Infantry CONUS Replacement Center, "High Troop Density Model for Military IRs," <https://www.bliss.army.mil/LocalUnitLinks/326thcrc/WEEK2.xls>; Internet; accessed 7 November 2005.

⁸² DODI 3020.41, 12.

⁸³ Dunn, 79-80.

⁸⁴ Roxana Tiron, Pentagon Still Undecided on Policies to Protect Contractors, *National Defense*, November 2004, available from http://www.nationaldefensemagazine.org/issues/2003/Sep/Army_Not_Equipped.htm, accessed 7 November 2005.

⁸⁵ Michael T. McBride. The Proliferation of Contractors on the Battlefield: A Changing Dynamic That Necessitates a Strategic Review, Strategic Research Project, (Carlisle Barracks, PA: U.S. Army War College, 2003), 18.

⁸⁶ Department of Defense Instruction Number 3020.41, 16.

⁸⁷ Tiron.

⁸⁸ The incident occurred in late November 2004. Marines in Fallujah stopped a convoy of 16 security contractors from Zapata Engineering providing security to a depot of captured weapons. The Marines claimed the convoy had fired upon local friendly forces, a charge which the contractors denied. While the Marines claimed the 16 detainees were properly handled, the contractors claimed differently. According to the contractors, they were wrestled to the ground, struck and taunted about their "high salaries" while female Marine handling a guard dog took pictures. The men were held for three days and then banished from working in Iraq by the local commander. Phinney, David, "Marines Jail Contractors in Iraq," *Corpwatch*, available from <http://www.corpwatch.org/>; Internet; accessed 7 November 2005

⁸⁹ Dunn, 55.

⁹⁰ Camm, 183.

⁹¹ FY06 HR1816C Conference Report, *Title VIII—Acquisition Policy, Acquisition Management, and Related Matters*, available from http://www.ndia.org/Content/NavigationMenu/Advocacy/Action_Items/FY06HR1815Confrpt.pdf, accessed 25 January 2006.