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Newport, R.I.**

**CONTRACTORS ON THE BATTLEFIELD:  
ENSURING THIS ASSET DOES NOT BECOME A LIABILITY**

by

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

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

**Signature: \_\_\_\_\_**

**23 April 2008**

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## **Abstract**

The Department of Defense, along with just about every other federal agency, alleviates its personnel shortage with the use of contractor personnel. Contractors are valuable resources that have proved to be critical assets to military operations. Contractors have also paid the ultimate price for their service. To date almost 1000 contractors have lost their lives providing services in Iraq. With nearly 25% of reconstruction costs in Iraq going towards contractor provided security services, it is imperative that commanders think about the employment of contractors early in the planning process. Over the years some would say the line has blurred between what are considered military tasks and functions performed by contractor personnel. Contractors performing tasks that can be perceived as direct combat actions, whether true or not, can have an effect on the commander's ability to maintain legitimacy of the military operation. To ensure the proper employment and protection of the contractors deploying with force, the Geographic Combatant Commander should consider issues such as force protection, legitimacy, and cost before bringing contractors into the theater of operation.

## INTRODUCTION

It would be an understatement to say the United States military services are being stretched thin around the world. Currently, there are 1.5 million U.S. service men and women serving in 40 countries and territories across the globe, with over 10 percent of these forces in Iraq alone.<sup>1</sup> Despite this, the military is completing its missions and honoring its obligations under the adage of ‘do more with less.’ Because the separate military departments cannot permanently increase their end strengths without congressional approval, they have been forced to find additional ‘forces’ elsewhere. As a result, they have increasingly turned to corporate America for help. The Department of Defense, along with just about every other federal agency, alleviates its personnel shortage with the use of contractor personnel.

The contractors used in military operations today are generally broken up into three categories: (1) nonlethal service providers, (2) private military companies, and (3) private security companies.<sup>2</sup> Nonlethal service providers include those contractors providing logistical support such as laundry service, mess hall service, construction and even unexploded ordnance disposal. The work accomplished by private military companies is usually done at the strategic level and include functions such as police training and civil-military relations. Private security companies, like the name implies, provide security for people, buildings, supply routes, etc. These are the contract companies that have been in the news the most in Iraq.

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<sup>1</sup> International Institute for Strategic Studies, *The Military Balance 2007* (London: Routledge, 2007), 28-42. This figure includes 107,000 Army and 11,300 Marine reservists currently on active duty.

<sup>2</sup> Doug Brooks and Jim Shevlin, “Reconsidering Battlefield Contractors,” *Georgetown Journal of International Affairs*, 6, no. 2, (Summer 2005): 104-105.

Looking at these three groups it would appear the employees of the private security companies are the true battlefield contractors conducting operations outside the wire. The problem in places like Iraq and Afghanistan, though, is that there is no “wire.” The tactics and techniques of the enemy, such as, improvised explosive devices, mortars, car bombs and suicide bombers, are indiscriminate in nature. The attacks are aimed at both military and civilian targets. Moreover, the enemy attacks can occur anywhere, including places like the heavily guarded Green Zone in Iraq or a downtown market. Thus every contractor in Iraq can potentially become battlefield contractors, thereby increasing the military commander’s force protection requirements.

Over the years some would say the line has blurred between what are considered military tasks and functions performed by contractor personnel. Contractors performing tasks that can be perceived as direct combat actions, whether true or not, can have an effect on the commander’s ability to maintain legitimacy of the military operation. In addition, the cost of contractor operations can have an effect on the commander’s ability to accomplish the mission. In October 2007, the U.S. Congressional Budget Office reported that the operations in Iraq and Afghanistan cost nearly \$11 billion a month.<sup>3</sup> Therefore, monitoring the cost of a military operation, specifically private military contractor costs, is a very important function for the commander.

Private military contractors are valuable resources that have proved to be critical assets to military operations. ***However, to ensure the proper employment and protection of the contractors deploying with force, the Geographic Combatant Commander or Joint***

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<sup>3</sup> Peter Orszag, “Testimony,” House, *Estimated Costs of U.S. Operations in Iraq and Afghanistan and of Other Activities Related to the War on Terrorism: Hearing before the Committee on the Budget*, 110<sup>th</sup> Congress, 24 October 2007, [http://www.cbo.gov/ftpdocs/86xx/doc8690/10-24-CostOfWar\\_Testimony.pdf](http://www.cbo.gov/ftpdocs/86xx/doc8690/10-24-CostOfWar_Testimony.pdf) (accessed 17 April 2008).

*Task Force Commander should consider the following before bringing contractors into the theater of operation:*

*1) Does the commander have the ability to provide an adequate level of force protection for the contractor personnel?*

*2) Are the duties performed by the private military contractors such that they do not violate the joint operations principle of legitimacy?*

*3) Have appropriate steps been taken to ensure contractor costs are properly monitored?*

### **PRIVATE MILITARY CONTRACTORS: BACKGROUND**

The use of contractors in both Iraq and Afghanistan is not a new concept. The U.S. Government and the Department of Defense have employed contractor personnel during wartime for many years. Private contractors were used in both the War for American Independence and the Civil War. More recently, during World War II and the Vietnam War the ratio of contractors to soldiers was 1:6. This fell to 1:50 during Operation Desert Storm.<sup>4</sup> But as can be seen today, there is almost a 1:1 ratio of contractors to U.S. soldiers in Iraq. In another example, in 1998 when other participating countries sent officers of their military as verification monitors in Kosovo, the U.S. contracted with DynCorp, a Virginia-based contractor, to fulfill the U.S. obligation.<sup>5</sup>

The United States is not the only country that has used contractors to augment military forces. History is full of examples of countries augmenting their military forces with private contractors in order accomplish military objectives. For instance, the Italians used private armies, called *condottieri*, during the Italian Renaissance and Hannibal, the Carthage

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<sup>4</sup> Katherine McIntire Peters, "Contractors at War," *Government Executive*, 01 July 1996 <http://www.govexec.com/archdoc/0796/0796s2.htm> (accessed 24 March 2008).

<sup>5</sup> Thomas Adams, "The New Mercenaries and the Privatization of Conflict," *Parameters* (Summer 1999) <http://www.carlisle.army.mil/usawc/Parameters/99summer/adams.htm> (accessed 29 March 2008).

commander, also led a group of private forces during the Punic Wars.<sup>6</sup> Although they did not use the term contractor, these private forces were still paid for a certain task and were not part of the regular army which equates to our private contractors of today.

These private forces, however, performed functions that more closely mirrored combat soldiers and would more appropriately be termed mercenaries. Most of the private forces historically used by the United States were performing logistical-type functions and, for the most part, were not on the battlefield. This largely stemmed from the Anti-Pinkerton Act of 1892.<sup>7</sup> The Act (codified in 5 U.S.C. §3108) states, “An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia.”<sup>8</sup> Although the original intent of the law was to prevent the Government from hiring private companies to break up labor protests and strikes, the consequence was an aversion of the U.S. Government to enter into contracts with any company for security services.

In turn, this law has been incorporated into the Federal Acquisition Regulation (FAR) which contains the set of rules U.S. Government contracting officers are required to use when formulating and administering contracts. The FAR clause further clarifies the intent of the U.S. Code: “This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract’s character.”<sup>9</sup> This clarification shifted the intent away from using private companies to break

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<sup>6</sup> Fred Rosen, *Contract Warriors*, (New York: Penguin Group, 2005), 53-54 & 70.

<sup>7</sup> Major Mark A. Ries, USA. “Contractors Accompanying the Force.” *The Army Lawyer* (Army Pamphlet 27-50-404) January 2007, 164.

<sup>8</sup> U.S. Congress, *Government Organization and Employees*, Title 5 U.S. Code, sec. 3108.

<sup>9</sup> U.S. General Services Administration, *Federal Acquisition Regulation (FAR)*, subpart 37.109, 31 March 2008, <http://www.arnet.gov/far/> (accessed 04 April 2008).

up labor disputes and strikes and focused the prohibition more on military-type operations and functions.

To some it would appear a few of the contracts for services in Iraq are in violation of the Anti-Pinkerton Act. In fact, in 2006 a contractor protested the issuance of two U.S. Government Requests for Proposal on these grounds.<sup>10</sup> The protestor argued that the solicitations, which required security services and cargo transportation, would result in contract awards to quasi-military armed forces for hire. The Government Accounting Office (GAO) denied the protests on the basis that contracts for guard or security services do not violate the Anti-Pinkerton Act as these services are not considered quasi-military.<sup>11</sup>

Just as important, the GAO decision also addressed the complex issue of inherently governmental functions. In general, the U.S. Government is prohibited from entering into contracts for services that are deemed to be inherently governmental functions.<sup>12</sup> The GAO determined guard and security services performed in Iraq (albeit more dangerous) are similar to services normally provided by the private sector within the United States such as bank guards and “armed escort for high value cargo.”<sup>13</sup> Therefore, security services are not inherently governmental functions and can be outsourced to contractors.

In recent years DoD’s use of contractors has increased dramatically. A survey conducted by the United States Central Command estimated by the end of 2006, the number of contractors in Iraq alone numbered almost 100,000.<sup>14</sup> To put this in perspective, there are approximately 155,000 U.S. servicemen and women in Iraq.<sup>15</sup> Moreover, it is estimated that

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<sup>10</sup> U.S. Government Accountability Office (GAO), *GAO Decision B-298370 & B-298490* (Washington, DC: GAO, 18 August 2006), 1.

<sup>11</sup> *Ibid.*, 5.

<sup>12</sup> FAR, subpart 7.503.

<sup>13</sup> U.S. GAO, *GAO Decision B-298379 & B-298490*, 6.

<sup>14</sup> Marc Lindemann, “Civilian Contractors under Military Law,” *Parameters* (Autumn 2007) 83.

<sup>15</sup> International Institute for Strategic Studies, *The Military Balance 2007*, 28-42.

there are currently well over 100 different contract companies operating in Iraq today.<sup>16</sup>

Contractor employees providing services in Iraq outnumber the number of personnel provided by all the U.S. coalition partners *combined*.<sup>17</sup>

This increased use of contractors can be explained with the elementary economic concept of supply and demand.<sup>18</sup> Following the end of the Cold War the military began a massive personnel drawdown, decreasing the supply of military forces. Then with 9/11 and the continuing operations in Iraq the demand for military forces dramatically increased. Because of the military's inability to quickly recruit, train, and deploy new forces, the demand gap has been filled with private contractors.<sup>19</sup>

Some would argue the increased use of contractors by the military is getting out of hand. United States Senator Carl Levin asked recently, "How is it in our nation's interest to have civilian contractors, rather than military personnel, performing vital national security functions...in a war zone?"<sup>20</sup> This is not a new view. In 1997, Herbert Howe, a Georgetown University professor specializing in the privatization of military operations, remarked, "I think the major worry that everyone has about this sort of thing is, will these forces become a force unto themselves, kind of rogue elephants?"<sup>21</sup> But with no immediate end in sight for either Operations Iraqi or Enduring Freedom, it is clear that DoD's use of contractors will remain high for some time to come.

To be sure, contractors deploying with the force, as the DoD refers to them, are an asset to any operation by providing services that the military forces either cannot provide

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<sup>16</sup> Avril McDonald, "Ghosts in the Machine: Some Legal Issues Concerning US Military Contractors in Iraq," in *International Law and Armed Conflict: Exploring the Faultlines*, ed. Michael Schmitt and Jelena Pejic (Boston: Martinus Nijhoff Publishers, 2007), 359.

<sup>17</sup> Lindemann, "Civilian Contractors under Military Law," 83.

<sup>18</sup> Deborah Avant, *The Market for Force*, (New York: Cambridge University Press, 2006), 30.

<sup>19</sup> *Ibid.*, 31.

<sup>20</sup> Deborah Avant, "Mercenaries" *Foreign Policy*, (July/August 2004), 20.

<sup>21</sup> Adams, "The New Mercenaries and the Privatization of Conflict."

themselves or only could at the expense of combat forces. United States Army Field Manual 3-100.21 states: “When military force caps are imposed on an operation, contractor support can give the commander the flexibility of increasing his combat power by substituting combat units for military support units.”<sup>22</sup> But significant use of contractors can also present challenges for the commander. For instance, as stated earlier contractor personnel in Iraq now represent over 100,000 additional individuals that require force protection. Contractors are in harm’s way just as the military force. In the first four years of Operation Iraqi Freedom 917 private military contractors were killed and more than 12,000 injured.<sup>23</sup> In fact, in the first three months of 2007, 146 contractors were killed compared to 244 U.S. military personnel.<sup>24</sup>

Additionally, another challenge for commanders when contractors accompany the force deals with public perception. Every contractor action while under contract with the U.S. Government is perceived as a U.S. military action and the U.S. military as a whole is held accountable whether responsible or not. In 2004, U.S. Senators John Kerry, Hillary Clinton, Ted Kennedy, Chris Dodd and Charles Schumer sent a letter to Secretary of Defense Donald Rumsfeld. In this correspondence, the Senators voiced concerns over the actions of some private contractors during the Abu Ghraib incident in Iraq, “In light of the recent revelations of abuses of detainees in Iraq, it is important that U.S. actions, whether by military personnel or contractors, have respect for the law.”<sup>25</sup>

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<sup>22</sup> U.S. Army, *Contractors on the Battlefield*, Field Manual (FM) 3-100.21 (Washington, DC: Headquarters Department of the Army, 03 January 2003), 1-1.

<sup>23</sup> Jennifer Elsea and Nina Serafino, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” *CRS Report for Congress*, updated 11 July 2007, CRS-5, <http://fas.org/sgp/crs/natsec/RL32419.pdf> (accessed 24 March 2008).

<sup>24</sup> *Ibid.*

<sup>25</sup> Rosen, *Contract Warriors*, 179-180.

The increased use of contractors on the new ambiguous battlefield has created a need for additional guidance on how and when contractors deploying with the force can be employed. However, there is concern that the increased use of contractor personnel in military operations is proceeding faster than regulations can be written.<sup>26</sup> Just as troubling is the fact that the regulations that do exist sometimes contradict each other.

The core document for the Department of Defense is DoD Instruction (DoDI) 3020.41, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*. An area of concern in this DoDI is paragraph 6.3.3, Contractor Direction and Discipline. While the document acknowledges the link between the military commander and the contractor is through the U.S. Government contracting officer, it also states that in emergency situations the military commander can “direct contingency contracting personnel.”<sup>27</sup> Conversely, in a recent update to the DFARS (DoD version of the FAR), the DFAR Committee refused to incorporate this DoDI language, thereby keeping all control with the government contracting officer.<sup>28</sup> Even within the Department of Defense there is disagreement over how contractors can be managed.

Another important aspect of this instruction is paragraph 4.4.1 which states that with the Geographic Combatant Commander’s approval contractors deploying with the U.S. armed forces may carry a weapon for individual self defense.<sup>29</sup> This authority, of course, only applies during contingency operations. Contractors carrying weapons can only further complicate an already complex military operation.

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<sup>26</sup> Alan L. Gropman, “Privatized Operations,” *National Defense*, 92, no. 650 (January 2008): 22.

<sup>27</sup> U.S. Department of Defense, *Contractor Personnel Authorized to Accompany the U.S. Armed Forces*, Department of Defense Instruction (DODI) 3020.41 (Washington, DC: DoD, 03 October 2005), 15.

<sup>28</sup> Ries, “Contractors Accompanying the Force,” 163.

<sup>29</sup> U.S. Department of Defense, DODI 3020.41, 3.

## FORCE PROTECTION

March 23, 2008 marked a grim milestone for the war in Iraq. Just four days after the fifth anniversary of the start of Operation Iraqi Freedom, the 4000th U.S. soldier was killed.<sup>30</sup> While each military death makes the nightly news and the running tally is scrolled across the banner on CNN, it would be hard to find an average citizen who knew how many civilian contractors have been killed in the conflict. Currently contractor deaths account for nearly twenty percent of the fatalities in Iraq (not including the Iraqi civilian deaths).<sup>31</sup> Force protection for the contractors in the theater of operations is just as important as it is for the deployed military forces.

Joint Publication 3-0, *Joint Operations*, defines force protection as “Preservations of the effectiveness and survivability of mission-related military and nonmilitary personnel, equipment, facilities, information, and infrastructure deployed or located within or outside the boundaries of a given operational area.”<sup>32</sup> Contractor personnel deployed with the force are included in the ‘nonmilitary personnel’ grouping. The U.S. Army views the function of force protection of contractors accompanying the force in the same light as protecting deployed Department of the Army civilian personnel.<sup>33</sup>

Ironically, contractors do not just need protection from the enemy, but from friendly forces as well. The Government Accounting Office recently conducted a study of contractors

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<sup>30</sup> Ross Colvin. “U.S. Toll in Iraq Hits 4,000 as Four Soldiers Killed.” Reuters on-line, <http://www.reuters.com/article/newsOne/idUSL2423186320080324> (accessed 03 April 2008).

<sup>31</sup> Elsea and Serafino, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” CRS-5.

<sup>32</sup> Chairman, U.S. Joint Chiefs of Staff, *Joint Operations*, Joint Publication (JP) 3-0 (Washington, DC: CJCS, 17 September 2008), GL-26.

<sup>33</sup> U.S. Army, FM 3-100.21, 6-1. In FM 3-100.21 the Army recognizes that civilian contractors cannot be expected nor required to provide the type of force protection that inherent military personnel can accomplish. These types of force protection functions include: fortification construction, electronic countermeasures, integrated air defense coverage, nuclear, biological and chemical defensive measures, and rear operations including antiterrorist actions.

accompanying the force. Over a five month period 20 blue on white, or U.S. military on contractor, incidents were reported in Iraq.<sup>34</sup> These incidents have been attributed to a lack of training for both parties – contractor and military. Improved training on the rules of engagement and the proper conduct of military operations will help to prevent these incidents. More importantly, without a single focal point for contractors in the theater of operation, there is no way to know where all the contractor personnel are operating at any given time. This potentially increases the risk of blue on white incidents.

## **LEGITIMACY**

Joint Publication 3-0 states the purpose of legitimacy is “to develop and maintain the will”<sup>35</sup> necessary to achieve the objective. The “will” refers not only to the fighting force’s own military and citizens, but also coalition partners and world opinion in general. To keep a coalition together a commander must ensure the legitimacy of the operation is never threatened. This can happen if the objectives are altered or if the tactics and procedures to achieve the objective change in relation to the coalition approved objectives and procedures. In the case of contractors on the battlefield, using contractor personnel to engage in functions that appear to be combat related can have an effect on perceived legitimacy. The actions of combatants during armed conflict are governed by a set of rules called the law of international armed conflict.<sup>36</sup> Because there is debate whether contractors are combatants or non-combatants, their use may be viewed as a way to get around this set of rules.

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<sup>34</sup> U.S. Government Accountability Office (GAO), *Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers*, GAO-05-737 (Washington, DC: GAO, July 2005), 28.

<sup>35</sup> JP 3-0, *Joint Operation*, A-4.

<sup>36</sup> Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, (New York: Cambridge, 2004), 4.

News reports have surfaced that some contractors deployed with the force have engaged in activities that otherwise would be punishable if a military person had committed the act. In a recent hearing, the Chairman of the Oversight and Government Reform Committee, Representative Henry Waxman, told the story of a drunken employee of Blackwater (contractor providing security services in Iraq) who shot and killed the guard of the Iraqi Vice President. The shooting occurred not while the contractor was on a mission, but inside the protected Green Zone. The only punishment the contractor received was that he lost his job. Representative Waxman noted the legal inequality, “If a drunken U.S. soldier had killed an Iraqi guard, the soldier would face a court martial.”<sup>37</sup>

As a result of incidents like this, Congress reacted. In the 2007 National Defense Authorization Act, Section 552 was added:

**SEC. 552 CLARIFICATION OF APPLICATION OF UNIFORM CODE OF MILITARY JUSTICE DURING A TIME OF WAR.**

Paragraph (10) of section 802(a) of title 10, United States Code (article 2(a) of the Uniform Code of Military Justice), is amended by striking “war” and inserting “declared war or a contingency operation”.<sup>38</sup>

Before the 2007 NDAA was enacted, civilian contractor personnel accompanying the force fell under the jurisdiction of the Uniform Code of Military Justice (UCMJ) only in times of declared war. Now, however, contractor personnel fall under the jurisdiction of the UCMJ in times of declared war *or a contingency operation*. Therefore, contractors deployed with the force can now be held accountable to the same legal standard as the military force. Consequently, Secretary of Defense Robert Gates issued a memo to his service secretaries and commanders of the combatant commands to ensure they were all aware of the change to

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<sup>37</sup> House, *Private Security Contracting in Iraq and Afghanistan: Hearing before the Committee on Oversight and Government Reform*, 110<sup>th</sup> Congress, 02 October 2007, <http://oversight.house.gov/story.asp?ID=1511> (accessed 4 April 2008).

<sup>38</sup> *John Warner National Defense Authorization Act of 2007*, H.R. 5122, 109<sup>th</sup> Congress (02 January 2006).

the UCMJ. Secretary Gates left no room for interpretation, “I expect commanders and their law enforcement authorities to act accordingly.”<sup>39</sup>

This change will have a profound effect on the United States’ struggle with legitimacy in Iraq. While the concept of legitimacy has many dimensions, by ensuring the entire force of the Department of Defense (military, civilian and contractor) is held accountable to the same legal standard, the DoD builds credibility by demanding a single standard of conduct for all persons in the theater of operations.

Another dimension of legitimacy and contractors is determining what functions the contractors will perform. More and more contractors are performing functions that just a few years ago would have been accomplished by uniformed military personnel. Although the United States is using contractors as a way to augment a shortage in military personnel, others may conclude that the U.S. is contracting out the war.

Michael Schmitt, an expert in international and humanitarian law and currently the Stockton Professor of International Law at the U.S. Naval War College, notes that today contractors working for the U.S. Government can be found maintaining “complex weapons systems such as the F-117 Nighthawk fighter, B-2 Spirit bomber, M1 Abrams tank, and TOW missile system, and operate the Global Hawk and Predator unmanned aerial vehicles.”<sup>40</sup> Not only does it appear the United States is privatizing warfighting, but more dangerously, engaging in such functions can make these contractors more susceptible to attack by the enemy by appearing to be more like combat, vice logistics, tasks.

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<sup>39</sup> Robert Gates, Secretary of Defense, to secretaries of the military departments, Chairman of the Joint Chiefs of Staff, Under Secretaries of Defense and Commanders of the Combatant Commands, memorandum, 10 March 2008.

<sup>40</sup> Michael Schmitt, “Humanitarian Law and Direct Participation in Hostilities by Private Contractors or Civilian Employees,” *The Chicago Journal of International Law*, 5, no. 2 (Winter 2004), 512.

More damaging is that the U.S. may be seen as augmenting with contractors what it cannot achieve through coalition partner participation. That is, the lack of support by other nations is made up for by contractor employees. In fact, some view the contractor companies as a coalition member in and of themselves, albeit a coalition “of the billing.”<sup>41</sup> If coalition partners know the United States can just contract out for additional forces, they may be reluctant to put their military personnel in harm’s way and just let the United States handle future conflicts alone.

The counterargument to that is: What is wrong with using contractors? Joint Publication 3-0 states that “legitimacy is based on legality, morality, and rightness of the action.”<sup>42</sup> The objectives in Operations Iraqi and Enduring Freedom are a secure and stable Iraq and Afghanistan. If coalition partners are unable or unwilling to participate, the U.S. has an obligation and a right to use all resources at its disposal to achieve those objectives. Further, the use of contractors fulfills all the requirements of a legitimate action: legal, moral and right.

## **COST**

The outsourcing of government services has become big business. It has been calculated that 40 cents of every taxpayer dollar spent on federal programs goes to private contractors.<sup>43</sup> In a recent hearing on private security contractors in Iraq, Representative Waxman noted that sergeants in the military cost U.S. taxpayers \$50,000 to \$70,000 a year while a “comparable position at Blackwater costs the federal government over \$400,000 – six

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<sup>41</sup> *Ibid.*, 514.

<sup>42</sup> JP 3-0, *Joint Operations*, GL-26.

<sup>43</sup> House, *Private Security Contracting in Iraq and Afghanistan: Hearing before the Committee on Oversight and Government Reform*.

times as much.”<sup>44</sup> To be sure, in 2000 Blackwater had only \$204,000 in U.S. Government contracts. Since then the company has received over \$1 billion in contracts.<sup>45</sup> Moreover, the State Department determined that 16%-22% of the costs of reconstruction projects in Iraq are for contractor provided security services alone.<sup>46</sup>

The increased contract security costs are having a negative effect on the military’s ability to achieve its objectives. One of the missions of the U.S. military in Iraq is to rebuild the country’s infrastructure. With almost a quarter of the Iraq reconstruction funds going to security, reconstruction efforts have been slow. In fact, some reconstruction projects have been canceled altogether because the funding was needed for additional security requirements elsewhere.<sup>47</sup> The *Washington Post* reported that in Iraq two electric power generation projects worth \$15 million were canceled so the funds could be put towards security contracts.<sup>48</sup>

Based on these substantial contractor costs, it is imperative that commanders ensure that the contractors working for them are providing services at the best value to the U.S. taxpayer. One way to do this is have the proper contract oversight in place to monitor contractor costs. The Defense Contract Audit Agency (DCAA) conducted a review of the Logistics Civil Augmentation Program (LOGCAP) contract.<sup>49</sup> The contract was awarded to Kellogg, Brown and Root, a subsidiary of Haliburton, and provides logistical and life support services for U.S. troops and civilians in Iraq, Kuwait, and Afghanistan. The DCAA audited

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Elsea and Serafino, “Private Security Contractors in Iraq: Background, Legal Status, and Other Issues,” 5.

<sup>47</sup> Renae Merle and Griff Witte, “Security Costs Slow Iraq Reconstruction” *Washington Post* (29 Jul 05), A1, <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/28/AR2005072802269.html> (accessed 19 April 2008).

<sup>48</sup> Ibid.

<sup>49</sup> William H. Reed, Director of Defense Contract Audit Agency, “Testimony,” Senate, *Hearing before the Armed Services Committee*, 110<sup>th</sup> Congress, 19 Apr 07.

68 task orders awarded under the LOGCAP contract valued at \$16.2 billion. Of this amount, DCAA took exception to \$1.9 billion of contractor costs. To date, negotiations have resulted in price reductions of \$600 million.<sup>50</sup> These resources can now be used for other reconstruction projects.

## **RECOMMENDATIONS**

In order to achieve unity of effort and have a complete picture of the operational environment, all forces (military, civilian, and contractor) in the area of operations should be under the command of a single individual. As stated earlier, contractor personnel make up nearly one-fifth of the coalition deaths in Iraq. Establishing a unity of command would better enable the commander to provide adequate force protection.

In order to avoid any appearance of illegitimacy, commanders should refrain from using contractors in functions that make them appear to be taking direct part in hostilities. More appropriate functions would be those associated with logistics. This will not only reduce the force protection burden, but it will also help maintain the legitimacy of the military action.

Commanders need to make sure that proper contract oversight is in place. Agencies such as the Defense Contract Audit Agency should be used to ensure contractor costs are validated. Closely monitoring contract costs will enable the commander to properly allocate resources to where they are needed most.

Lastly, in future conflicts the timing of when to bring in contractors should be carefully considered. Although not fully explored in this paper, it has been argued that contractors were brought into Iraq too early after the end of hostilities was declared. The

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<sup>50</sup> William H. Reed, "Testimony," Senate, *Hearing before the Armed Services Committee*.

country was not stable from a security standpoint before the civilian contractors were brought into the area of operations to begin work. One reason for the large percentage of funds in Iraq being spent on security is most likely attributed to this rush to get contractors into the theater and begin reconstruction.

## CONCLUSION

With U.S. military commitments continuing around the world, the use of private contractors to augment the force will remain. Contractors provide a valuable resource to any commander as long as they are employed properly. The challenge of using private contractors in military operations is not new. The noted Italian philosopher Niccolo Machiavelli lamented:

I want to show more clearly what unhappy results follow the use of mercenaries. Mercenary commanders are either skilled in warfare or they are not; if they are you cannot trust them because they are anxious to advance their own greatness by coercing you, their employer, or by coercing your enemies more than you intended...Experience has shown that only princes and armed republics achieve solid success, and that mercenaries bring nothing but loss.<sup>51</sup>

While the United States has had some missteps in the employment of contractors deployed with the force, the above view is not true today. By taking into account force protection, legitimacy and the cost, commanders can leverage the invaluable services contractors deploying with the force bring to the battlefield in order to help achieve the national security objectives and not bring about loss.

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<sup>51</sup> Rosen, *Contract Warriors*, 71-72.

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