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Contractors on the Battlefield – Have We Done Our Homework?

By /par

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ABSTRACT

One form of Alternative Service Delivery in the Canadian Forces, the contracting out of services and support to deployed operations, is seen by some as a panacea for an increasingly over-tasked combat service support element of the CF. Witness to this statement, the CF has a project underway to put in place a dedicated contracting out programme to support operations.

This paper explores the background and rationale of using contractors to support deployed operations, known colloquially as contractors on the battlefield. Recent experiences with contracting by the CF and the United States Army and the state of current doctrine are reviewed. The legal and operational issues that make this form of Alternative Service Delivery a real risk to Canadian Forces deployed operations are also discussed.

The author provides a balanced analysis and draws the conclusion that while contracting is a force multiplier that may be suitable for CF routine and domestic operations, it is not appropriate for all deployed contingency operations. He also concludes that the CANCAP project should not proceed until these issues are addressed and suitable doctrine has been developed. He identifies a methodology for determining which theatres may be suitable for contracting support and a number of principles that should form the basis of CF doctrine in this area.

INTRODUCTION

“Logistics is the careful integration of transportation, supply, warehousing, maintenance, procurement, contracting and automation into a coherent functional area; in a way that permits and enhances the accomplishment of a given goal, objective or mission.” (Lt-General William Pagonis, US Army)¹

According to the officer widely recognized as the theatre logistician during the 1991 Gulf War,² Lt-General Pagonis, contracting is considered a key component of military logistics operations. In fact, without contracting at some stage, it would be impossible to support all but the most rudimentary of military operations. Contractors are a necessary interface between industry and the military. At the strategic level they provide access to the goods and services that the military needs to function on a day-to-day basis. At the operational level they can provide the mass transport of troops and equipment to distant theatres as well as third line maintenance. At the tactical level they can provide the consumables in the form of rations, POL and spare parts to fuel the operation.

In his book, *Moving Mountains – Lessons in Leadership and Logistics from the Gulf War*, Lt-General Pagonis states the US Army drew up executed and monitored over 70,000 contracts in the 1991 Gulf War. His book is sprinkled with anecdotes of contractors, like the civilians who worked 24/7 to replace the 105 mm gun barrels on US tanks with 120 mm barrels in the port of Ad Damman, the civilian drivers who drove the almost 4000 heavy transport vehicles across the desert in support of the famous flanking manoeuvre, and the contractor who provided fresh rations in mess halls throughout the theatre.³ In Pagonis’ opinion, these contractors were key to the success of the US war

¹ William G. Pagonis, *Moving Mountains, Lessons in Leadership and Logistics from the Gulf War*. (Harvard Business School Press, 1992), 2.

² Colonel Carla Coulson, “Sustaining Joint and Combined Operations “Reflections on the Adequacy of Doctrine””, AMSC, Canadian Forces College, Toronto, October 2000, 16.

³ Pagonis, 8,9, 107-115.

effort in the Gulf. Other US Army logisticians have even gone as far as to say that contractors proved indispensable in supporting US operations during the Gulf War.⁴

It must be kept in mind however, that the primary role of contractors in Desert Shield/Desert Storm was to support the build up of forces in theatre prior to the commencement of hostilities. As such, the majority of the contractors were in Saudi Arabia, well back from Iraqi lines and in little danger during the short 100-hour ground war. Consequently, their personal safety was never at issue. Had the Gulf War been longer in duration and the Iraqi forces a more formidable foe, perhaps the use of contractors would not have been quite the success it was.

“We’ve been involved in ASD for nearly two years now. It’s a huge challenge – one that cause great angst in the organizations being reviewed – but its an avenue we must follow to free the funds we need to meet operational commitments.” (Kathryn Howard, as quoted in D2000 Newsletter, June 1997.)⁵

In the Canadian Forces (CF), contracting out has become synonymous with Alternative Service Delivery (ASD), a catch phrase that has been in use for the better part of the past decade, particularly since the advent of the 1994 White Paper. ASD was conceptualized as a result of the many rounds of budget cuts that the CF endured during the mid to late 1990s and the concurrent downsizing of the CF by 30 percent. Instituted formally by the Department of National Defence in 1995,⁶ in essence ASD is a cost cutting measure whereby activities done previously by military personnel or DND civilian employees are contracted out to the private sector. ASD can take many forms and achieve various goals, from the disposal of unexploded ordnance, to the privatization

⁴ Virginia H Ezell, “Logisticians and Contractors Team for LOGCAP Exercise”, Army Logistician, Volume 31, Issue 6, (November-December 1999), 17.

⁵ Kathryn Howard, as quoted in D2000 Newsletter June 1997, accessed 11 September 2001 at VCDS Website, MCCRT D2000 News. www.vcds.dnd.ca/d2000/1997/jun97/asd_e.html

⁶ VAdm Gary R Garnett, “ASD: Not a Workforce Reduction Scheme”, DGMRS-D2000 January 1998, accessed 11 September 2001 at VCDS Website, MCCRT D2000 News. www.vcds.dnd.ca/d2000/1998/jan98/asd_e.asp

of a Queen's Printer shop, to the complete contracting out of administration and support services for a major training base.⁷

One of the more controversial forms of ASD is the use of contractors in deployed peace support operations. The use of contractors on the battlefield, contracting out, or out-sourcing, as the concept is sometimes referred to, is complex in that there are a number of legal issues, operational factors, practicalities and risks that must be considered. Numerous papers and articles have been written on this subject. Most have been rather one-sided in their approach, either unequivocally for, or against it. This paper will provide a balanced analysis of using contractors to support deployed CF operations and reach the conclusion that while contractors do achieve some defence objectives and are appropriate for use in routine and domestic operations, they are not suitable for all international contingency operations.⁸ Moreover, if they are used in this context, a detailed risk assessment should be conducted as part of the planning process and risk mitigation strategies should be employed.

To achieve this aim the paper will briefly review the history of contracting in the military, particularly in the US and Canada. It will then present a comprehensive review of both benefits and shortcomings by discussing the reasons for using contractors in support of military operations; by examining the current status of doctrine and the problems experienced with contractors on recent operations; and by analyzing the legal and operational issues related to contracting. The paper will discuss the risks associated with contracting and then present a risk assessment methodology and principles that should be followed if contracting is to be used for CF deployed contingency operations.

⁷ In 1999 the DM and CDS approved the use of Alternate Service Delivery for large-scale unexploded ordnance disposal, thereby relieving the CF of the responsibility. Administrative support to the NATO flight training and range facility at CFB Goose Bay, Labrador was contracted out to ATCO FRONTEC in 1997.

⁸ Contingency operations are defined in the CF Operations Manual as any operation that is not routine. This means that the operation is under CDS operational command, which is exercised on a day-to-day basis by the DCDS.

HISTORY OF CONTRACTING IN THE MILITARY⁹

“In all countries engaged in war, experience has sooner or later pointed out that contracts with private men of substance and understanding are necessary for the subsistence, covering, clothing and moving of any Army.” (Robert Morris, Superintendent, US Department of Finance, 1781.)¹⁰

While the CF has only recently begun to use contractors on the battlefield, the concept is certainly not new. Private citizens have been used in support of military operations since the Middle Ages.¹¹ Martin van Creveld in his book, *Supplying War*, discusses sutlers who, in the latter part of the 16th century, were contracted to provide the army with supplies beyond that which could be plundered.¹² In the latter part of the twentieth century the United States Department of Defense used contractors extensively in the Vietnam War.¹³ The first major contractor project took place in 1975 when the Vinnell Corporation of California was awarded a long-term multi-million dollar contract to create and operate a training establishment for the Saudi Arabia National Guard.¹⁴ More recently, the United States Army relied heavily on contractor support during the Gulf War. Although there is some variation as to the exact numbers,¹⁵ it is generally

⁹ A concise history of contracting in the military can be found in Chapter 3 of the Logistics Branch Handbook, accessible on line at http://www.dnd.ca/admmat/logbranch/handbook/Volume1/chap3_e.htm

¹⁰ Robert Morris, Superintendent of Finance, 1781. Quote from Joint Pub 4.0, Doctrine for Logistics Support of Joint Operations, United States Government, Department of Defence, 6 April 2000, p V-1.

¹¹ Thomas K. Adams, “The New Mercenaries and the Privatization of Conflict”, Parameters, US Army War College Quarterly, (Summer 1999), 107.

¹² Martin Van Creveld, Supplying War Logistics from Wallenstein to Patton (Cambridge: Cambridge University Press, 1977), 8.

¹³ Vincent Demma, Contractors on the Battlefield, an historical Survey from the Civil War to Bosnia. US Army Centre of Military History, (Fort McNair, Washington DC.), 7-10.

¹⁴ Adams, 107.

¹⁵ Some sources have stated that there were as many as 9200 contractors and 5200 civilians deployed in the Gulf theatre, (Marilyn Harris, United States Department of the Army Civilian, “LOGCAP; The Nation’s Premiere Contingency Contracting Program For Force XXI”, US Army War College, Carlisle PA. (April 2000), 3.) while others state that 76 contractors deployed with 969 personnel. (A. Orsini and T. Bublitz, “Contractors on the Battlefield: Risks on the Road Ahead?” Army Logistician. Volume 31, Issue 1, (January-February 1999), 130.) The discrepancy appears to be related to whether the number cited

accepted that the US Army Support Command (Provisional) employed some 2000 American contract employees while Army Materiel Command had deployed 945 contractors to provide various types of support.¹⁶

With a steady increase in involvement in peace support operations in the mid-1980s, the US Army began to formalize the coordination of logistics support to US Army peacekeeping operations through the use of contractors. This system, implemented in 1992 and known as the Logistics Civilian Implementation Program (LOGCAP), provides a framework for the use of contractors. LOGCAP's original objective was to "preplan for the use of civilian contractors to perform selected services to augment army forces."¹⁷ In those days it was seen as suitable for use in the US participation the UN Multinational Force and Observers in the Sinai, due to the multi-national and non-combat orientation of that operation.¹⁸ However, over time it has evolved into a general purpose means of preplanned contracting through a prime contractor that can be employed in any US Army operation. Since 1992 LOGCAP has been used by the US Army in Somalia, Rwanda, Haiti and Bosnia. In 1997 the US Army Materiel Command replaced its Corps of Engineers with the DYNACORP Company who now has the worldwide umbrella LOGCAP contract.¹⁹ The US Air Force has initiated a similar programme, known as Air Force Contract Augmentation Program, or AFCAP²⁰ and the US Navy has developed a similar concept for construction capabilities contracts, known as CONCAP.²¹

represents the number of contractors deployed from the US, or an aggregate total of all persons employed in theatre through contracting out.

¹⁶ Demma, 9.

¹⁷ J-4 Directorate, Organization of the Joint Chiefs of Staff, Logistic Planning for the Low Intensity Conflict Environment, Studies, Concepts and Analysis Division, United States Government, Department of Defence, (25 February 1987), F-5.

¹⁸ Ibid, p F-5.

¹⁹ Demma, 10.

²⁰ David L. Young, "Planning: The Key to Contractors on the Battlefield", Army Logistician. Volume 31, Issue 3, (May-June 1999) 13.

²¹ United States Government, Department of Defence, Joint Pub 4.0, Doctrine for Logistics Support of Joint Operations, (6 April 2000), II-9.

Concurrent to these activities in the US Department of Defense, the “Peace Dividend,” supposedly accrued at the end of the Cold War, the global recession of the early 1990s, and resultant budget cuts caused other nations to initiate similar projects. The British, French and Australians²² created programmes to achieve objectives similar to those of LOGCAP, either in the joint context, or as single service ventures.

Within the CF in the late 1990s, the primary objective of ASD was to cut operations and maintenance costs, thereby achieving better business practices in keeping with the objectives of the Defence 2000 programme. However, with the end of the Cold War in 1989, the Canadian Government, in its desire to play an active role in maintaining international peace and stability, significantly increased the number of deployed contingency operations that were mounted by the Canadian Forces. This, combined with the force reduction programmes of the 1990s, placed a significant strain on resources, particularly CF personnel. These pressures led the Logistics Branch to consider using contractors in support of operations.

The first use of ASD for a significant operation was OP ABACUS, the Y2K domestic contingency initiative. The \$10 M LOGCAS contract awarded to ATCO Frontec Logistics Corporation²³ was considered at relative success in that logistics personnel replaced by contractor support were freed up for other duties. It soon became apparent, however, that the only way to make a significant reduction in pers tempo²⁴ was to look at contracting out support functions for deployed contingency operations, e.g. those overseas operations under Chief of Defence Staff operational command that were mounted in response government direction. In June 2000 a trial of contractor support to

²² Canadian Forces D-NET Newsroom Press Release. “The Canadian Forces Teams up with Industry for Support Services in Bosnia-Herzegovina.” NR-00.060 7 June 2000.
http://www.dnd.ca/eng/archive/2000/jun00/07ottawa_n_e.htm

²³ LCdr Macarena Barker, and Captain Pam Hatton, “Contractors in Support of Operations: A Canadian Perspective”, PASOLS LOG, Number 20 (August 2000), 13.

²⁴ Pers Tempo is a term similar in nature to ops tempo in that it relates to the frequency of deployment for CF personnel. The logic is that a reduction in pers tempo (deployment) will result in a consequent improvement in quality of life for the personnel involved.

Canadian troops deployed with OP Palladium, the Stabilization Force Contingent in Bosnia,²⁵ was announced by DND. Commencing in September 2000 and concurrent to the restructuring of CF operations in the Balkans, contractor personnel were to replace approximately half the combat support and combat service support personnel in the National Support Element²⁶ of Task Force Bosnia-Herzegovina (TFBH).²⁷ Under this two year, \$83 M contract, ATCO Frontec is required to provide communications, engineering, food services, transportation, facilities management, water and environmental protection.²⁸

During the same timeframe the National Military Support Capability (NMSC) Study determined that the CF was suffering from shortfalls in support readiness and sustainability.²⁹ As a result of the study the NMSC Project identified the need for a generic capability to provide contractor support to deployed operations.³⁰ Consequently, J4 Logistics has developed a project, known as CANCAP which, like LOGCAP, is supposed to provide a contracting planning and management capability for the CF.³¹ The overall intent of CANCAP is to provide the CF with additional operational flexibility through enhanced support capacity. Although it not considered an ASD initiative³² it has all the attributes of one. It is supposed to free up military personnel for employment

²⁵ Barker and Hatton, 13.

²⁶ Ibid, 13.

²⁷ Canadian Forces D-NET Newsroom Press Release at http://www.dnd.ca/eng/archive/2000/jun00/07ottawa_n_e.htm

²⁸ Canadian Forces D-NET Newsroom Press Release at http://www.dnd.ca/eng/archive/2000/jun00/07ottawa_n_e.htm

²⁹ Framework for the Development of the Canadian Contractor Augmentation Program (CANCAP), J4 Log Contractors in Support of Deployed Operations Website, accessed 2 Oct 2001 at http://www.dnd.ca/j4log/cancap/Letter_DCDS_CANCAP_e.htm

³⁰ Ibid.

³¹ Summary of Synopsis Sheet (Preliminary Project Approval) Canadian Contractor Augmentation Program (CANCAP) Project File No. 3136-1 (CANCAP), para 7, from J4 Log Contractors in Support of Deployed Operations Website, accessed 2 Oct 2001 at [http://www.dnd.ca/j4log/cancap/SS\(PPA\)CANCAPvpost_14_Nov_as%20at%2020%20Nov_e.htm](http://www.dnd.ca/j4log/cancap/SS(PPA)CANCAPvpost_14_Nov_as%20at%2020%20Nov_e.htm)

³² Ibid, para 8.

where their skills are most needed.³³ While it is acknowledged that CANCAP may not produce much in the way of savings, it is touted as a significant force multiplier.³⁴

While the objectives of CANCAP are worthy, at this point much of the logic and doctrine underpinning the project is either flawed or underdeveloped. A number of problem areas should be addressed before CANCAP is implemented. The discussion and analysis of the problems associated with using contractors on deployed operations that is presented later in this paper will support this assessment.

From this brief review of recent contracting out activities to support military operations it is obvious that contractors and the military have formed an alliance that is here to stay for the foreseeable future. There are some very good reasons why this bond has been formed. The next section will examine these reasons and discuss the benefits of contracting in terms of defence objectives.

WHY CONTRACTORS ON THE BATTLEFIELD

“When US troops set foot on Saudi Arabian sand, many defense industry contractors were close behind. The contractors followed the military to make sure that their multi-million dollar weapon systems functioned properly in the harsh desert environment.” (James C. Hyde, *Armed Forces International Journal*, 1991.)³⁵

In general terms, contracting out allows resources to be concentrated in areas deemed to be of greatest importance. It is also more cost effective in many cases, in that if the service required is relatively minor in nature, it can be easily provided by the private sector and for a lesser cost. In the contracting out of government services, it has

³³ Framework for the Development of the Canadian Contractor Augmentation Program (CANCAP), J4 Log Contractors in Support of Deployed Operations Website, accessed 2 Oct 2001 at http://www.dnd.ca/j4log/cancap/Letter_DCDS_CANCAP_e.htm

³⁴ Ibid.

³⁵ James C Hyde, “Defence Contractors Serve on the Front Lines of Operation Desert Storm,” *Armed Forces International Journal*, (March 1991), p 32.

been determined that the private sector is likely to be more efficient as compared to public services, although the terms of employment for workers is less favourable in the private sector.³⁶ In some cases it is far more efficient to contract a Field Service Representative (FSR) to maintain or repair a specific piece of equipment than to take a military maintainer far from his normal place of work. In others, military personnel may not have the training or expertise to work on a unique piece of equipment. Moreover, if there is only a limited number of a particular system, it may be more cost-effective to use FSRs than to train military personnel. In the recent climate of shrinking defence budgets contracting out is seen as a method of focusing resources on the war-fighting aspects of military activities.

To look at specifics, there are four reasons why using contractors to support military operations has become so widespread in recent times with western militaries. First, there have been significant reductions in the size of military forces since the end of the Cold War. Using contractors to replace or augment military combat support and combat service support personnel takes some of the stress off the military organization by reducing the number of deployments and increasing the time between deployments, thereby helping improve the “quality of life” for military personnel.³⁷ In Canada, ASD came to be seen as a possible means of achieving this objective.³⁸ Second, there has been a desire to improve efficiencies through better business practices. Defence 2000, launched in the mid-1990s, and the adoption of business plans to justify resource allocations was the beginning of this activity in Canada. As stated above, it has been demonstrated that the private sector is generally more efficient in the provision of certain goods and services than the government. A smaller, specialized force, supported by contractors who provide non-military skills³⁹ is a more economical way to operate a

³⁶ Jonas Prager, “Contracting Out as a Vehicle for Privatization: Half Speed Ahead”, Journal of International Affairs. Vol 50, No 2, (Winter 1997) 620-621.

³⁷ Barker and Hatton, 12.

³⁸House of Commons “Moving Forward A Strategic Plan for Quality of Life Improvements in the Canadian Forces”, Canada, Parliament (Ottawa: October, 1998), 79.

³⁹ Non-military skills could include food services, laundry, waste disposal and other forms of support.

military organization. Third, modern weapons systems, ships, vehicles and their associated equipment and control systems have become exceedingly complex. The maintenance required to keep these systems operational is highly technical and often requires specialist training which is not readily available to service personnel. As such, there has been a growing increase in reliance on specialized contractors, such as FSRs to maintain these systems. Finally, governments have begun to place limits on the number of personnel that are to be committed to a particular operation.⁴⁰ This has occurred regularly over the past ten years in Canada, commencing with OP Deliverance in Somalia when the Chief of Defence Staff somewhat arbitrarily capped the Battle Group at one thousand troops. This ceiling caused a significant amount of difficulty and was a contributing factor to not having sufficient military police in theatre, which ultimately proved to be a serious shortcoming. On occasion, host nations have also put limits on the number of foreign military personnel permitted on their soil. As a result, task force commanders find themselves under pressure to cut numbers of key personnel, thereby limiting their flexibility to conduct operations. In these instances, contracting out allows the task force commander to stay within the personnel strength ceiling while at the same time maximizing his “tooth-to-tail” ratio. Given that out sourcing is a force multiplier,⁴¹ it makes good sense for the CF to use it in some, but perhaps not all circumstances.

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achievement of other outcomes, particularly improved quality of life for CF personnel, caused this initial direction to be disregarded.

STATUS OF CURRENT DOCTRINE ON CONTRACTING

The key to the success of any government activity is the development of doctrine on how to implement, maintain and fund the particular programme. Although some authors have referred to existing US doctrine as under-developed,⁴⁴ there has been some recent progress made with the production of FM 100-21,⁴⁵ a new US Army publication that covers all aspects of contracting. On the other hand, current US joint doctrine specific to contracting is just over 8 pages, hardly sufficient detail to implement and oversee such a critical venture with any degree of effectiveness.⁴⁶ The newest document on contracting is Chapter 17 of the *Theatre Logistics Handbook, 2001* produced by the US Army Training and Doctrine Command, which focuses on LOGCAP.⁴⁷ Like the US joint doctrine, this document also tends to gloss over the hard issues related to legality and risk and the operational issues discussed later in this paper.

While there has been some doctrinal development in the US on contracting out, there has been virtually none in Canada. To date the lessons learned from LOGCAS and the recent experiences in Bosnia do not appear to have been captured in any formal documentation. Although a significant amount of direction has been written on the broader subject of ASD, very little has been developed on how CANCEP will be implemented and utilized. Despite the fact that the project is proceeding apace to deliver

⁴⁴ Young, 13.

⁴⁵ FM 100-21, *Contractors on the Battlefield*, United States Government, Department of Defence, accessed 10 October 2001 at <http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/100-21/ch1.htm#s2>

⁴⁶ *Joint Pub 4.0, Doctrine for Logistics Support of Joint Operations*, United States Government, Department of Defence, (6 April 2000), V1-V9.

⁴⁷ US Army TRADOC, *Theater Logistics Handbook, 2001* CHAPTER 17 ARMY MATERIAL COMMAND – FORWARD & THE LOGISTICS CIVIL AUGMENTATION PROGRAM (LOGCAP), accessed 9 October 2001 at <http://www.almc.army.mil/ledd/8a-f17/Adobe/Chap17.pdf>

a contract and management capability by December 2001,⁴⁸ the requirement for doctrine does not appear to have been considered. There is no mention of it in the CANCAP Project Charter or other related documentation.

Now that the groundwork on using contractors in deployed operations has been prepared, it is appropriate to look at some of the difficulties involved in the recent contracting out ventures by the US Army and the CF as a precursor to discussion on why contracting is not suitable for all CF deployed operations.

USE OF CONTRACTORS IN RECENT OPERATIONS

From the earlier quote of Lt-General Pagonis, one would assume that the contracting out methodology was very successful for the US Army in the 1991 Gulf War. However, a close examination shows that despite the rave reviews of Lt-General Pagonis, it was far from perfect. Notwithstanding the lack of opposition from the Iraqis, the contract drivers hired by the US Army were not particularly reliable. They did not keep to schedules and had to be back-filled with a pool of military drivers at the beginning of the ground campaign in case there was a mass defection of civilian drivers.⁴⁹ Also, it must be remembered that although records indicate that almost 1000 contracted personnel were involved in the Gulf War, very few actually deployed into Iraq or Kuwait with combat elements.⁵⁰

This issue, the risk that the contractor personnel will not fulfill their contractual obligations, but instead will abandon posts in the area of operations, is in fact, the crux of the matter. The question is: will the contractors remain in place and carry out their duties when the situation is deteriorating and hostilities are imminent, or will they flee? In some

⁴⁸ CANCAP Project Charter, J4 Log Contractors in Support of deployed Operations Website, accessed 12 Oct 2001 at http://www.dnd.ca/j4log/cancap/proj_chart/main_e.htm

⁴⁹ Demma, 9.

⁵⁰ A. Orsini and T. Bublitz, "Contractors on the Battlefield: Risks on the Road Ahead?" Army Logisticians. Volume 31, Issue 1, (January-February 1999), 130.

cases the contractors have proven themselves fairly reliable.⁵¹ However, in other situations the propensity of the contractor personnel to flee has been very disturbing. The most frequently cited example of this is the August 1976 tree cutting incident in Korea, where hundreds of civilians who had replaced US military personnel requested immediate evacuation out of Korea when Defense Readiness Condition Three was ordered.⁵² This issue will be examined in detail later in the paper.

The initial Canadian contracting experience with LOGCAS for Y2K by all accounts was a success.⁵³ However, despite the pressures related to concern over Y2K the mission did not contain the operational challenges of an overseas deployment. Contractors were not overly challenged in that they provided support in a benign domestic environment with no perceived threats and with the benefit of a predetermined infrastructure and a well-established economy.

The trial use of contractors in support of CF operations in Velika Kladusa, Bosnia has failed to achieve expected outcomes and in fact has experienced some serious difficulties. Morale among both the contingent and the contractors is reportedly low and attrition among the ATCO FRONTEC personnel is at 68 percent. The contractor's personnel complain that their employment is like being in a minimum security prison. Since the contractor lacks the expertise to provide some specialist vehicle and weapons maintenance positions, these positions must be filled by the military. Soldiers resent having to take orders from civilian supervisors. Additionally, the soldiers consider themselves short-changed in that they must provide all the security for the camp while the civilians cannot be assigned sentry duties. The army has also been forced into last minute

⁵¹ Demma, 13.

⁵² Orsini and Bublitz, 131.

⁵³ This comment is based on the overall success of OP Abacus, which was widely advertised in Maple Leaf articles and congratulatory messages from the DM and CDS. However, specifics on LOGCAS successes or shortcomings and lessons learned cannot be located.

postings to fill vacancies caused by the civilians quitting.⁵⁴ All of these problems indicate that perhaps Bosnia is not a suitable theatre for using contractor support at this point in time.

LEGAL ISSUES RELATED TO USING CONTRACTORS

“Qualification of Belligerents. Article 1. The laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: To be commanded by a person responsible for his subordinates; to have a fixed distinctive sign recognized at a distance; to carry weapons openly; and to conduct their operations in accordance with the laws and customs of war.” (Hague Conventions, 1907.)⁵⁵

There are a number of other issues or problems with using contractors on deployed operations. This section discusses several key issues or “show-stoppers” related to the legal aspects of employing contractors on deployed operations and the interpretation of this passage from the Hague Conventions.

At the time of the writing of the Hague Conventions, the sutler or contractor of the 19th and early 20th centuries was not a part of the war effort in that he only provided essentials such as food and water. However, the status of the modern day contractor who maintains and repairs equipment vital to the prosecution of the battle is not nearly as clear. Notwithstanding that peace support operations are not war, it is generally accepted that international laws and conventions apply. As indicated above, under the Hague Conventions persons on the battlefield are known as belligerents and are deemed to be in one or the other of two categories. They are either combatants or non-combatants. Since contractors work under the authority of their company owner and supervisory chain and are not subject to service regulations, they should be considered as non-combatants. This

⁵⁴ Howard Michitsch, “Armed Forces' Civilian Program hits Snags: Military's Private Contractor Loses up to 68% of Workers Annually”, Ottawa Citizen, Southam News Corp, (25 August 2000), A-9.

⁵⁵ Howard S. Levie, editor and annotations, Documents on Prisoners of War, US Naval War College International Law Studies Volume 60, (Naval War College Press, Naval War College, Newport, Rhode Island, 1979), 81.

status protects them in a conflict situation from being targeted by an opposing force, but it also means that even in the worst of circumstances in peace support operations, they cannot be ordered to participate in any fashion in the defence of the camp or its personnel. However, international law also recognizes the state's employment of civilians on the battlefield,⁵⁶ in that Article 13 of the Hague Conventions of 1907⁵⁷ refers to sutlers and contractors as being entitled to Prisoner of War status if captured. Additionally, as a combatant, a soldier who kills in the course of warfare and who is subsequently captured must be treated as a Prisoner of War. However, if a civilian participates in such activities and is later captured, he or she loses their non-combatant status and may be held, tried and punished as a criminal.⁵⁸ This issue of whether a modern day contractor is a non-combatant or is in a separate category is the currently subject of considerable discussion in legal circles.⁵⁹

In the case of contractors who work in support of US forces, it is very clear that they are not subject to the Uniform Code of Military Justice (UCMJ) to ensure that they can retain their status as non-combatants.⁶⁰ However, should war be declared US laws dictate that they will become subject to the authority of the UCMJ. The Canadian situation is not as clear-cut. According to information on use of contractors in TFBH and plans for CANCAP, civilian contractors employed by the CF are subject to the Code of Service Discipline.⁶¹ This, in effect, may make them combatants. As such, they may

⁵⁶ Zamparelli, 10.

⁵⁷ Levie, Documents on Prisoners of War, 83.

⁵⁸ Joe A. Fortner, "Managing Deploying Sustaining and Protecting Contractors on the Battlefield", Army Logistician Website accessed 27 September 2001 at <http://www.almc.army.mil/alog/SepOct00/MS571.htm>

⁵⁹ Author's conclusion based on discussion with LCdr Guy Phillips, of the CF JAG Directorate of Law Training, 23 October 2001.

⁶⁰ This fact is clearly stated in FM 100-21 which is dated 26 March 2000. However, in his NSSC 3 paper on contracting and CANCAP written in June 2001, Capt(N) MacIsaac states that this policy has changed as a result of recent US laws passed by Congress. However, the website he cites cannot be accessed to verify this fact.

⁶¹ Allison Delaney, "Civilian Contractors to Augment CF Peacekeepers in Bosnia", Maple Leaf, Vol 3, Number 22. 14 June 2000. Website accessed 2 Oct 2001 at http://www.dnd.ca/menu/maple/vol_3/Vol3_22/headline_e.htm

lose their protections as non-combatants in that they could be considered as valid targets on the battlefield in the eyes of an opposing force. Additionally, it is not clear whether a commander can compel a contractor to perform his duties, ever under contract, if it would force the contractor to put himself in harm's way. As such, the commander has no recourse other than to accept the risk that his contractor personnel may not respond to his orders.⁶²

Another legal concern relates to the status of contractors in the eyes of a host nation. In some instances host nations may insist that their own contractors be the only persons allowed to enter into agreements to support foreign contingents. These personnel may or may not meet Canadian security or medical screening requirements. Additionally, contractors' lack of status as members of the military means that they are subject to the laws and punishments of the host nation, which in some cases can be far more severe than those employed at home. Canada has very few Status of Forces Agreements (SOFAs) with other nations. Instead, the CF tends to rely on the NATO SOFA as a means of establishing a framework for host nation agreements. This arrangement is suitable for operations in European countries, but it does not meet the requirements for operations in Africa, Asia, the Middle East or the Far East, the areas in which the CF has found itself deploying in recent times and can expect to deploy to in the future. A first step towards rectifying this problem could be development of military to military memoranda of understanding, which could be the basis for more detailed SOFAs.⁶³

As mentioned above, contractors are normally employed under a separate chain of authority. They work under the terms of a contract, not a sworn allegiance to defend Queen and country. Contracts are normally written in terms such that the employees are not required to perform any tasks outside the scope of the contract, nor are they required

⁶² Zamparelli, 13.

⁶³ The author has been involved in the development of a MOU between the Canadian Navy and the Philippines Navy on training and mutual cooperation. From this experience he assesses that they can serve as a point of departure for negotiation of more complex issues such as contracting.

to take orders from anyone outside a contracting officer or his representative.⁶⁴ In essence, the commander can only exercise indirect command and control over contractor personnel.⁶⁵ This can make enforcement of discipline particularly challenging. Should the contractor personnel not wish to participate in some less than appealing aspects of the camp life, they have only to decline. Even though the ATCO Frontec personnel in Bosnia are supposedly under the Code of Service Discipline, their cooperation and support is not guaranteed. Problems with discipline and morale among contractor personnel are issues that must be examined closely and rectified if using contractors in deployed CF operations is to be successful. Clearly, this is an issue where some CF doctrinal and policy development is required. The US Army has come to grips with this problem to some degree with the use of Contracting Officers and Contracting Officer's Representatives who act as the interface between the contractor's senior on site personnel and the military chain of command.⁶⁶ In the CF context, a possible solution may be a civilian contractor code of discipline and a separate contractor chain of command doctrine.

Another thorny legal side issue is whether or not to allow or require contractors to carry side arms on deployed operations. On one hand they may carry side arms for protection and use in self-defence. However, in order to maintain their non-combatant status they cannot allow themselves to become engaged in warfare. This means that a contractor cannot defend his civilian and military co-workers, nor can he defend his equipment or his personal belongings with deadly force. He also cannot provide for his own security as that is considered to be a military function.⁶⁷ If the contractor can only defend himself and no one else, it is questionable as to whether allowing him to be armed is worthwhile. Since they are the responsibility of the commander while in the area of

⁶⁴ Ibid, 15.

⁶⁵ Isolde K Garcia-Perez, "Contractors on the Battlefield in the 21st Century" *Army Logistician*. Volume 31, Issue 6, (November-December 1999), 42.

⁶⁶ Chapter 1, FM 100-21, "Contractors on the Battlefield", United States Government, Department of Defence, accessed 10 October 2001 at <http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/100-21/ch1.htm#s2>

⁶⁷ Fortner at <http://www.almc.army.mil/alog/SepOct00/MS571.htm>

operations, it would be wise to ensure that if they do carry side arms they are properly trained and qualified on the weapons.⁶⁸

To summarize this section, there are a number of legal issues that should be addressed before Canada ventures further with contracting out on deployed operations. First, the status of modern day contractors under international law is unclear. Also, putting contractor personnel under the Code of Service Discipline may threaten their potential status as non-combatants. Doctrine to address chain of command issues is also required. Additionally, progress must be made with MOUs, and in due course, SOFAs, in order to provide a framework for host nation support arrangements. A policy on firearms should also be developed. Now the impacts of using contractors will be examined from an operational perspective. These are key issues should also be dealt with or at least considered before the CF goes any further with CANCAP.

OPERATIONAL IMPACTS OF USING CONTRACTORS

“The operational forces cannot afford the risk of a contract dispute during a crisis situation that leaves them vulnerable and unable to carry out their mission requirements.” (Major Kim N. Nelson, US Air Force)⁶⁹

This quote from an author with similar concerns on contractor use by the US armed services, says it in a nutshell. From an operational perspective, contracting is supposed to improve flexibility and relieve pressures on support personnel. However, the presence of contractors can have an impact on the commander’s operational focus. Rather than being able to concentrate on operations, the commander may have to devote a significant amount of his time and energy to dealing with contractors’ shortcomings and problems. Rather than having a professional, dependable logistics team on which he can

⁶⁸ Ibid.

⁶⁹ Major Kim N. Nelson, Contractors on the Battlefield, Force Multipliers or Force Dividers? AU/ACSC/130/ 2000-04, Air Command and Staff College, (Maxwell Air Force Base, Alabama, April 2000), 2.

rely, he must concern himself with contractual issues. The commander should be focused on the operational aims of his mission, not contractual problems.

Using contractors also has a significant impact on the commander's flexibility. He must be prepared for the eventuality that the contractor's personnel may decide to leave the theatre if they feel their security is threatened. The military must have personnel available to backfill these personnel. Additionally, the commander will have to provide force protection for contractor personnel. This can have a significant impact on resources during periods of heightened activity or operations away from base camp.

Contractor personnel are not necessarily cross-trained to execute tasks that are not part of their job description. As a result, use of contractors can negate the ability to deal with the unexpected. For example, the contractor has certain personnel responsible for fire protection. If a large fire broke out in the camp can the commanding officer expect the other contractor personnel pitch in and help put it out in the manner that the military personnel would? Similarly, if there were a major battle, would the contractor personnel be willing to pick up stretchers and assist with the evacuation of casualties? Not only may they be unlikely to do these kinds of tasks because they are not part of their contractual obligations, they cannot be ordered to do them by the military chain of command.

Using contractors also deprives some military personnel of valuable field experience and training. The problem solving opportunities that are so critical to the preparation of senior logistics officers and NCOs are no longer available.⁷⁰ Additionally, while the contractors can relieve some of the burden on cooks and supply techs, these personnel do not get the operational experience they need to be effective members of the team when they really are required. As one commander noted, "Army cooks can fight as well as cook. So can army mechanics and fuel handlers...But contractors are not armed...Replace such units with contractors and you lose guns."⁷¹

⁷⁰ Orsini and Bublitz, 132.

Supervisory level logisticians are also not given the opportunity for experience in the field. Those who do get assignments on deployed operations are not necessarily supervising and overseeing the activities of military personnel, but are more likely to be engaged as buffers between the contractor's supervisors and the remainder of the military hierarchy. Junior officers and NCOs without operational field experience will be of little value to the commander when advice is required.

‘What’s the biggest difference between logistics in the military and in the private sector? Without a doubt it’s our respective bottom lines, and how we think about them. The military focuses on life and death, whereas business measures profit.’
(Lt-General William Pagonis, US Army)⁷²

There is no doubt that the contractors who provide combat service support to deployed missions are in business primarily to make money. Often, they will not do any more than that which is agreed in their contract and they will do everything they can to save money and thereby increase their profits. This makes their employment problematic from the outset. Typically military operations employ a certain degree of redundancy to ensure that if there are any failures in equipment or support, the casualty can be rectified with minimal impact and delay. For instance, additional stores and equipment are usually kept close at hand. When required, military supervisors often pitch in to ensure that tasks are completed correctly and on time. This is also provides a boost to the morale of the more junior personnel and promotes unit cohesion. However, a civilian contractor supervisor may not follow the same work ethic. In keeping with the new “just in time” business practices, he may not have more than the minimum stock on hand and he may not wish to get his hands dirty when the objective in his mind is only to meet the minimum requirement or standard.

Security I also an issue in that contractor personnel are not necessarily subject to the same security screening as regular forces personnel, particularly those who may be

⁷¹ Demma, 12.

⁷² Pagonis, 210.

hired in theatre. They may have sympathies towards the enemy or in the peace support context, with one or the other of the opposing forces. They also cannot be expected to pass any information that may contribute to the intelligence picture and they may, in fact, be a threat to security. In hostilities, they may pass information on troop movements or dispositions key to the success of a future operation. In the peacekeeping context the leaking of information on negotiations or bargaining tactics may undo a great deal of what has already been achieved. Opposing forces may also find it relatively easy to infiltrate contractor staff.⁷³ The use of insecure commercial communications systems by contractors may also be a security concern.⁷⁴

Like soldiers, contractors in theatre require a support mechanism. They must be provided what has come to be known as “life support”⁷⁵ which includes a variety of items such as canteen, laundry, mail, off duty recreation and social activities, religious and spiritual support and general administrative support. In most cases this can be provided as part of that which is provided to the military personnel. Most of these issues can be dealt with through local sources. However, in austere environments this may not be possible and alternate arrangements will have to be made. Some of these issues, such as off duty alcohol consumption require specific policies and direction and will have an impact on overall morale. Hence they must be given consideration in the early stages of operational planning. If it appears that adequate life support cannot be provided to contractors once in theatre, then the decision must be to leave contractor support out of the equation.

The profit motivation and the inflexibility of contractor personnel is also a function of their lack of commitment to the overall objectives of the military mission. While acceptable levels of service are provided when the tempo of operations is

⁷³ Garcia-Perez, 43.

⁷⁴ Sylvester H. Brown, “Using Third Party Logistics Companies”, *Army Logistician*. Volume 31, Issue 6, (November-December 1999), 22.

⁷⁵ Fortner at <http://www.almc.army.mil/alog/SepOct00/MS571.htm>

relatively moderate, there is no doubt that the quality of service and overall readiness of the unit will go down as the situation deteriorates and the contractor starts to experience difficulty. Additionally, the increase in op tempo will likely bring with it an exponential increase in cost when additional requirements are placed on the contractor.

To summarize, there are a number of reasons why the CF should not engage contractors for all deployed operations. Notwithstanding the legal “show stoppers”, there are also a number of operational reasons that, if taken in isolation, are not that daunting. However, when put in combination they can prevent a commander from achieving his mission. As such, contracting out may not be suitable in every instance. Further, CANCAP should not be used as a blanket policy for all deployed operations. This brings us back to the crux of the issue, risk. In every deployed the question must be asked - what is the risk involved in using contractor support versus using military combat service support? If the risk is deemed to be high, then contractors should not be used. The penultimate section of this paper will look at risk, a methodology for determining the relative degree of risk and principles that, if applied, will reduce the overall risk of contracting out.

RISK OF USING CONTRACTORS

“Commanders have enough to worry about in fighting a war; they do not need to be concerned about contracting. They need the flexibility to do what is needed, when it is needed, and to the degree it is needed. To have any less flexibility increases risk significantly.”(A. Orsini and T. Bublitz)⁷⁶

It can be concluded from the discussion above that there is risk involved in employing contractors on deployed operations. Depending on a number of factors and circumstances, the risk is variable in magnitude or significance. Some factors that could influence the level of risk include: the presence or absence of hostilities; the proximity of the contractor’s location to areas where tension or fighting is evident; the likelihood of use of biological/chemical warfare; the presence of mines or environmental concerns; the

⁷⁶ Orsini and Bublitz, 131.

presence or lack of infrastructure; the degree or lack of host nation support; and the availability of resources for the contractor personnel's protection. Risk can also be looked at in terms of any or all of the following: degradation of mission accomplishment, increase in time needed to complete the mission, or increased threat of loss of life.⁷⁷ The risk can apply either to the contractor personnel or to the commander and the successful achievement of his mission. Both categories ultimately have the potential to impact of the conduct of operations and could influence the ability of the commander to achieve his mission goals and objectives. In the more severe of instances the result may be complete failure of the mission. Therefore, the greatest risk to the commander is that the contractor will not be available or willing to perform his duties when the situation deteriorates or hostilities break out.⁷⁸

RISK ASSESSMENT METHODOLOGY

Given the existence of these risks, a proper risk analysis of each mission should be conducted to determine whether or not contracting is a suitable and cost-effective means of achieving the mission objectives.⁷⁹ A former commander of OP Palladium Roto 7 in Bosnia has put forward the idea that theatres could be considered as new, stable or mature, in terms of suitability for contractor support. In the new theatre risk is considered high and therefore a completely military support element should be in place. In a stable theatre conditions are more predictable and a blend of contractor and military support element would be acceptable. In the mal3998 heat 80 /P AMCID 10 BDC B2/TT0 1 Tf0.00031 Tc C

assess overall risk in terms of risk factors versus risk of failure. Factors can be assigned values and summed to determine whether a given operation would benefit from contractor support, or if the risks involved outweigh the benefits. These factors could be weighted or given values and then assessed as low, medium or high. The table below⁸¹ provides an example of assessing a relatively new theatre.

	Value/10	Low (2)	Med (5)	High (8)	Score
Peace/Conflict	8			x	64
Proximity	8		x		40
BCW	7	x			14
Ecology	7		x		35
Mining	7		x		35
Infrastructure	-5	x			-10
HNS	-5	x			-10
Protection	-4			x	-32
R and R	-4		x		-20
Overall Risk					116

A more stable or mature theatre might be assessed as follows:

	Value/10	Low (2)	Med (5)	High (8)	Score
Peace/Conflict	8	x			16
Proximity	8	x			16
BCW	7	x			14
Ecology	7	x			14
Mining	7	x			14
Infrastructure	-5		x		-25
HNS	-5			x	-40
Protection	-4		x		-20
R and R	-4		x		-20
Overall Risk					-31

⁸¹ The Risk Assessment Methodology is an idea developed by the author. The following expands each of the factors used in the table: Likelihood of conflict; proximity of the contractor's location to areas where tension or fighting is evident; likelihood of use of biological/chemical warfare; Ecological threat from bad water/toxic waste/pollutants/DU/etc; presence of mining; presence or lack of infrastructure; degree or lack of host nation support; availability of resources for the contractor personnel's protection; and proximity to R and R sites with personnel proceeding on leave. The list is representative and is by no means complete.

The higher the risk assessed to the theatre, the less suitable the theatre would be for contracting. A points score of above 100 may be considered not suitable, whereas a score below 0, could be assessed as in the mature category and therefore suitable for contractor support. Further research is required to determine a complete set of assessment criteria and a suitable valuation system.

PRINCIPLES OF CONTRACTING

The corollary to any discussion of risk is a discussion of risk mitigation. Once an initial risk analysis has been conducted and it is confirmed that senior management in the CF and in Government are willing to accept those risks, a number of issues should be considered to ensure that the risk of employing contractors is reduced to the minimum. Many of these issues relate to concerns discussed earlier in this paper. Some authors have referred to these as issues the Principles of Contracting.⁸² They have been adopted by the US Army in its contracting doctrine⁸³ and could be the basis of CF doctrine for employment of contractors in deployed operations in general and CANCAP in particular.

Conduct a Detailed Risk Assessment. The old adage used by the carpentry trade comes to mind, “Measure twice, cut once”. A second, more detailed risk assessment should be conducted to ensure that no detail has been overlooked and the theatre is definitely suitable for the employment of contractors.⁸⁴ Deployment of contractors in an operations area is subject to mission, enemy forces, friendly forces, terrain, and assigned tasks. In some cases they should not be deployed below division level. In very benign circumstances they can be deployed throughout the area. If the second assessment contradicts the first, always go with the more prudent course of action, which is not to use contractors.

⁸² Fortner, Joe A. and Ron Jaeckle. "Institutionalizing Contractors on the Battlefield" Army Logician. Volume 30, Issue 6, (November-December 1998), p 11.

⁸³ Chapter 1, FM 100-21, "Contractors on the Battlefield", United States Government, Department of Defence, accessed 10 October 2001 at <http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/100-21/ch1.htm#s2>

⁸⁴ Garcia-Perez, 42.

Verify Contractor Reliability. The commander must know the contractor's reliability before the deployment.⁸⁵ The commander must also be aware of any intent to use third party contracting. The case of the GTS Katie⁸⁶ is an example where the necessary homework was not done and a significant amount of military intervention was required to sort out the problem.

Augmentation, not Replacement. Contractors are used to augment, but not to replace force structure.⁸⁷ They are meant to provide an additional option for meeting support requirements. When properly employed they can be force multipliers.⁸⁸

Engage the Contractor Early. Once it has been determined that the theatre is suitable for contractor support engage the contractor in the mission planning process, keeping any security constraints. This will ensure that all of his concerns and requirements are considered in the overall deployment plan.⁸⁹

Establish Control and Direction of Contractor Personnel. While the commander does not have command authority over contractor personnel the way he does with military personnel, there must be a clearly defined relationship between the military chain of command and the contractor and this must be set out in the terms and conditions of the contract.⁹⁰ If contractor personnel are not subject to the

⁸⁵ Young, 11.

⁸⁶ The GTS Katie incident occurred in Jul-August 2000. \$20 M worth of Canadian military equipment was caught in the middle of a contractual dispute between the vessel's owners and an intermediary contractor. The issue was resolved when the CF intervened, boarded the vessel and escorted it into port.

⁸⁷ Fortner and Jaeckle, 11.

⁸⁸ Brown, 18.

⁸⁹ LCol Gerhard Christiner, Austrian Army, fellow AMSC 4 student suggested this principle in his critique of the paper.

⁹⁰ Gordon L Campbell, "Contractors on the Battlefield: The Ethics of Paying Civilians to Enter Harm's Way and Requiring Soldiers to Depend upon Them." A paper prepared for the Joint Services Conference

Code of Service Discipline (which they should not be, as discussed above) then there must be a clear set of rules and regulations in the terms of their contract that governs their conduct in theatre. These regulations should be similar to the rules that military personnel are subjected to (alcohol consumption, curfew, etc).⁹¹

Establish a Command – Contractor Interface. There should be one individual on the commander’s staff (the US Army uses the term Contingency Contracting Officer) ⁹² who is responsible for dealing with all contractors on all matters pertaining to the contractor’s employment in theatre.

Establish a Separate Contracting Budget. An operational level budget must be set up and administered for contracting support in the theatre.⁹³

Ensure Contractor Capability. Contractors must have a sufficient number of employees available with the appropriate skill sets required in order to conduct the tasks required of them and meet potential sustained requirements.⁹⁴

Ensure Contractor Suitability. Contractors must meet certain requirements in order to be suitable for employment in theatre. They must be medically and physically fit; they must meet all legal and administrative requirements associated with international travel and working and driving in foreign countries; they must meet all training requirements including NBC, mine awareness, cultural awareness and weapons qualification.⁹⁵

on Professional Ethics, 2000 January 27-28, 2000. Website accessed 27 September 2001 at <http://www.usafa.af.mil/jscope/JSCOPE00/Campbell00.htm>, p 6/12.

⁹¹ Zamparelli, 15.

⁹² Eric C. Wagner, “Contingency Contracting for a Special Forces Group”, *Army Logistician*. Volume 31, Issue 3, (May-June 1999), 8.

⁹³ Young, 10.

⁹⁴ Fortner and Jaeckle, 11.

⁹⁵ Ibid, 13.

Integrate the Contractor's Personnel. Contractor support must be integrated into the overall plan.⁹⁶ Contractors should be made to feel as much as possible a part of the team. A cooperative working environment must be developed. Habitual Relationships, which are long-term relationships between business and the military, should be fostered.⁹⁷

Ensure Contractor Transport. The contractor may require transport to get to the area of operations⁹⁸ and local transport in order to conduct his tasks. Once in theatre contractor personnel must be provided adequate workspace and technical support.⁹⁹

Determine Contractor Status. The legal status of the contractor must be determined for the theatre and if necessary for each area of operations in which he may be required to work.¹⁰⁰ The commander must consider the host nation situation and ensure that his contractor will be able to operate effectively given the prevailing situation in the host nation. In some cases the contractor will require host nation permission to set up operations.¹⁰¹ In others the host nation may want the contractor to be included in the status of forces agreement.¹⁰²

⁹⁶ Ibid, 11.

⁹⁷ Fortner discusses habitual relationships at <http://www.almc.army.mil/alog/SepOct00/MS571.htm> . In FM 100-21, Contractors on the Battlefield, a habitual relationship is defined as a long-term relationship between a business and the military. The nature of this relationship is established through the terms and conditions of a contract, and extends beyond that of the organization to include the individual contractor employee and soldier. This type relationship establishes a "comrade-at-arms" kinship, which fosters a cooperative, harmonious work environment, and builds confidence in each other's ability to perform. FM 100-21, Contractors on the Battlefield, United States Government, Department of Defence, accessed 10 October 2001 at <http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/100-21/ch1.htm#s2>

⁹⁸ Young, 12.

⁹⁹ Ibid, 12.

¹⁰⁰ Fortner and Jaeckle, 13.

¹⁰¹ Young, 11.

¹⁰² Ibid, 12.

Assess Host Nation Contractor Availability. Depending on the type of contract(s) under consideration, the host nation may or may not be able to provide the required services.¹⁰³

Assess Contractor Impact. The presence of contractors must not place any additional burdens on the military personnel.¹⁰⁴ Commanders must remain aware that the use of contractors may decrease flexibility.¹⁰⁵ The commander must also have a contingency plan if the contractor fails to perform.¹⁰⁶

Define Contractor Protection. Commanders are legally responsible for the protection of the contractors in their area of operations. This means that depending on circumstances and threat levels they must provide military escort for contractors moving in theatre and force protection in camp.¹⁰⁷

Determine requirements for Contractor Life Support. Like military personnel, contractors require life support in theatre. They must be provided with lodging, food, medical and dental facilities, postal, administration, finance and laundry services and the like.^{108/109}

¹⁰³ The current operation against terrorist forces is a case in point. Using host nation contractor support for food services in Pakistan may not be feasible for security reasons or because of religious considerations.

¹⁰⁴ Fortner and Jaeckle, 11.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Fortner, at <http://www.almc.army.mil/alog/SepOct00/MS571.htm>

¹⁰⁹ FM 100-21, Contractors on the Battlefield, US Government, Department of Defence, accessed 10 October 2001 at [http://www.adtdl.army.mil/cgi-bin/atdl.dll/fmm\(i2.375580 0 10.02 339.240134/ch1.ht93271 108.8401 Tm\(m\)02](http://www.adtdl.army.mil/cgi-bin/atdl.dll/fmm(i2.375580 0 10.02 339.240134/ch1.ht93271 108.8401 Tm(m)02)

CONCLUSION

This paper has argued that one form of Alternative Service Delivery (ASD), the use of contractors to support military operations, meets some government objectives and has potential to improve “quality of life” for CF combat service support personnel, but is not a panacea for use in all deployed contingency operations.

Employing contractors to replace military capabilities has become popular because in a business context it provides some efficiency and enables the CF to live within the reduced funding envelope imposed by the Government. It also allows the CF to do is to reduce the number of personnel in support trades, thereby improving the overall “tooth to tail” ratio.

There is little doubt that contracting done well allows the military to focus on its primary mission.¹¹⁰ Recent trials of the concept by the CF did provide a better “tooth to tail” ratio in that more soldiers were available for operational versus support tasks. However, it must be remembered that contracting out was not meant for all deployed contingency operations. It violates the original VCDS direction that it is to be used only for non-core activities. Doctrinal development on contracting out activities in the CF is very much in its infancy. Memoranda of Understanding could be a first step towards developing Status of Forces Agreements that would provide a legal framework for using contractors overseas.

There are numerous legal, operational and practical shortcomings with contracting on deployed operations. Notwithstanding their apparent commitment, given that contractors are not subject to the same considerations under law as regular forces, they cannot be expected to come to the aid of their comrades should the situation deteriorate. Contractors cannot be depended upon to remain in theatre when there is a risk of

¹¹⁰ Garcia-Perez, 41.

bloodshed. When it comes to front line operations contractors are not necessarily the most appropriate means of providing the required support. Had circumstances and the outcome of the Gulf War been different, the success of using contractors in the Gulf theatre may well be seen in a different perspective.

There are significant issues related to contractors' legal status and employment under the Code of Service Discipline that must be resolved. Doctrine on contracting out for CF deployed operations should be developed prior to implementation of the Canadian Contractor Augmentation Project (CANCAP). Such doctrine should include the Risk Assessment Methodology and the Principles of Contracting outlined in this paper.

In the final analysis, contracting is a force multiplier that can work in domestic or routine operations where there is no risk. Using it for deployed contingency operations in a benign threat environment may also be successful provided the risks are mitigated. However, at the higher end of the spectrum of conflict using contractors can have a substantial impact on a commander's flexibility and operational focus, and on a deployed unit's capabilities and operational readiness. Accordingly, contractors should not be used in international contingency operations where the risk is such that their use could lead to mission failure.