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Use of Contractors on Canada's Deployed Operations - To What Extent?

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ABSTRACT

Military contractors, firms that conduct tasks in the field of logistics, maintenance and force application that were once thought to be the preserve of a nation's military, now have a greater stake in deployed operations. Since the early 1990s, Canada's military, and those of her allies, have increasingly contracted out military capabilities. The scope of military contractors responsibilities on deployed operations has expanded to operating and maintaining cutting edge equipment, to designing policies, doctrine and training relationships between the private and public sectors; through to providing their own private security companies for the conduct of front line tasks. Civilian contractors will continue to play larger roles in the years ahead, with their presence becoming more commonplace on the battlefield as weapon systems become more complex.

This paper argues that as these trends continue, several issues must be addressed to ensure a proper binding of public-private relationships. These issues, limitations, and risks are well documented and this paper will examine them in turn: impact on military effectiveness, growth of private security companies, limitations to command and control, protection of contractor, liability in war zones, application of the Geneva Convention, effect on policy and doctrine, and identification of costs. This paper argues that only through studying progress made and assessing the issues uncovered by the US and other allies, developing our own policy and doctrine, and by weighing the operational risks can the CF proactively manage this trend.

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*We have expanded traditional contractor functions to include some directly related to the prosecution of battle and have moved contractors onto the battlefield. They are now a vital and irreplaceable component in our ability to fight and win. Yet we have done this without addressing the critical legal and doctrinal issues this creates...while contractor employees are a supporting part of the team, they are not 'soldiers'. It seems that rather than acknowledge that fact, and use that knowledge as input to decision making and doctrine development, the Services have chosen to ignore it.*¹

Military forces, over the past several centuries, have employed civilian contractors on the battlefield to provide various levels of support. Historically, they have been an ad hoc addition to the battlefield. More recently, however, their roles have changed and tasks have increased significantly as western militaries, including the Canadian Forces (CF), seek innovative ways to make more efficient use of scarce resources.

The role of contractors in warfare has been evolving and maturing at a rapid rate. It has been argued that reliance on contractors on deployed operations, for the CF and other militaries, is an increasing necessity. Never before has there been such a reliance on non-military members to accomplish tasks normally reserved for soldiers, resulting in the blurring of the distinction between the soldier and civilian.

The requirement to deploy rapidly and the increasingly high technological nature of our equipment have necessitated integration of contractor support into military operations. Recent force reductions and increased operational tempo², combined with drastic budget cuts mean that

¹ Col Stephen J Zamparelli, "Competitive Sourcing and Privatization, Contractors on the Battlefield, What Have We signed up for?" *Air Force Journal of Logistics*, Volume XXIII, Number 3, (Fall 1999), vii

deployed military forces often need significant augmentation by contractors to reach acceptable levels of capability.

The use of contractors to support military operations is no longer a nice to have. Their support is no longer an adjunct, ad hoc add-on to supplement a capability. Contractor support is an essential, vital part of our force projection capability – and increasing in its importance.³

However, as these trends continue, several issues must be addressed to ensure a proper blending of public-private relationships. These issues, limitations, and risks are well documented and this paper will examine them in turn: impact on military effectiveness, growth of private security companies, limitations to command and control, protection of contractor, liability in war zones, application of the Geneva Convention, effect on policy and doctrine, and identification of costs. This paper argues that only through studying progress made and assessing the issues uncovered by the US and other allies, developing our own policy and doctrine, and by weighing the operational risks can the CF proactively manage this trend.

This paper analyzes issues surrounding the use of contractors on CF operations, and the scope and limits of private sector support for Canada and other militaries. The first section explains why contractor involvement has increased. The second section analyzes current issues and problems. Finally, an evaluation of future expectations of contractor support on operations is provided.

² CANCAP Program Governance Canada. Department of National Defence, CANCAP Program Governance, first edition 10 Jul 2003, 2. Since 1990, the CF has undertaken a significant number of contingency operations abroad notwithstanding a concurrent force reduction of 30 percent. This has placed a particularly heavy stress on support personnel, many of whom have undertaken several operational tours.

³ G.L. Campbell, “Contractors on the Battlefield: The Ethics of Paying Civilians to Enter Harms Way and Requiring Soldiers to Depend Upon Them.” Joint Services Conference on Professional Ethics 2000, Springfield Virginia, 27-28 January 2000

WHY CONTRACTOR INVOLVEMENT HAS INCREASED

Since the 16th century, contractors have been employed on the battlefield in varying capacities to furnish the soldier with his basic needs, including food, fodder, weapons and clothing. As documented by Martin Van Creveld in his book, *Supplying War*, this support was provided to soldiers through the assistance of sutlers, with whom contracts were signed.⁴ More recently, beginning with the Vietnam War in the 1960s and 1970s, militaries have relied increasingly on contractors, not only in the rear areas, but even in conducting tasks normally completed by front line soldiers.

There are many reasons for governments to contract out services and these can be examined from a military perspective. In Canada, during the 1990s, the end of the Cold War combined with economic difficulties translated into a thirty percent downsizing of the CF. The Department of National Defence was faced with several major equipment acquisition and modernization projects and was required to reallocate personnel, operations and maintenance funding to capital investment. These reductions resulted in initiatives to outsource a wide range of support activities, including weapon support, base level services and basic flight training.⁵

Furthermore, the downsizing and budget reductions occurred during a decade marked by high operational tempo. The CF continued to be burdened by a heavy pace of operational activity with increasing demand for strategic lift, combat support, and combat service support.⁶ To protect Army combat arms soldiers for operational deployments, it was necessary for the CF to

⁴ Martin Van Creveld, *Supplying War – Logistics from Wallenstein to Patton*. (Jerusalem: Cambridge University Press, 2004), 8.

⁵ CANCAP Project Charter, J4 Log Contractors in Support of Deployed Operations Website, http://www.dnd.ca/j4log/cancap/proj_chart/main_e.htm, accessed 26 Sep 2005, 1.

⁶ Ibid., 2

make significant cuts to uniformed support trades. By 2000, with no sign of a reduced activity rate, options for reducing personnel tempo stress required further examination.

Other reasons for the recent increased focus on deployed contractor support are financially, politically, and technologically driven. It may be cheaper to contract than to train troops to perform tasks that are performed on a routine basis. If a private firm can deliver a service for less than the government can, at little or no risk to the operation, then it makes perfect sense to consider contractor support as an alternative.⁷ Likewise, political constraints often limit troop numbers, with ceilings established, while functions performed by contractors are not counted against force totals. Further, militaries also rely heavily on civilian contractors to develop, maintain, and on occasion, operate new technology. This technology includes complex vehicle, fire control, weapons, and communications systems. As these systems deploy, the contractor support is often needed to accompany them.⁸

CANCAP

In 2000, to relieve the personnel stress caused by years of heavy operational tempo, Canada created its first major support contract with ATCO-Frontec in Bosnia. The success of this contract led to further demands for a more flexible approach that could be used in any future theatres of operation.⁹ In 2003, the Canadian Contractor Augmentation Program, also referred to as CANCAP, began with a contract with SNC-Lavalin/PAE to support forces not only in Bosnia, but for deployed operations in general. Developed as a longer term force sustainment enabler,

⁷ James E. Althouse, "Contractors on the Battlefield: What Doctrine Says, and Doesn't Say." *Army Logistician*, Volume 30, Issue 6, (Nov-Dec 1998), 15

⁸ Rebecca Rafferty Vernon, "Battlefield Contractors: Time to Face the Tough Issues," Master's Thesis, George Washington University, 2003, 2

⁹ LCol A Morrow, "CANCAP – The Changing Face of Logistics Support to the Canadian Forces," *The Canadian Army Journal*, Vol. 8.2 (Summer 2005), 76

CANCAP is primarily intended to provide operational level support services to deployed CF contingents within a theatre of operations.¹⁰ CANCAP employees permit a reduction in the number of Combat Support (CS) and Combat Service Support (CSS) personnel serving in a theatre of operations, in either single service or joint operational environments. As part of a multinational logistics support arrangement, the contractor can also be employed to provide services to the militaries of other countries during combined operations.¹¹

CANCAP will normally be employed after the CF contingent's in-theatre support arrangements have been established by either the Joint Task Force Support Group or the National Support Element. Ideally, in-theatre support conditions should reach a reasonably steady-state prior to the deployment of the contractor.¹² Also, the in-theatre security risk must be satisfactory for the deployment and employment of the contractor, with local conditions reasonably stable and secure.

Having a long-term, single source contingency-based contract, coupled with not having to re-tender for each operation are two advantages to CANCAP. Similarly, integrated planning capabilities and having both sides fully aware of the basis for wages, job descriptions, timelines and restrictions are other aspects drawn from the US Army's Logistic Contractor Augmentation Program (LOGCAP) and adapted for the CF. Financially, having a capability that is only paid for when deployed is also favourable, but one that needs to be balanced by an acceptance of the contractor's reduced state of readiness.¹³

The contractor is paid on a cost plus basis, which means he is reimbursed for actual expenses and is given a fixed four percent profit of these expenses. In addition, a bonus

¹⁰ CANCAP Program Governance..., 5

¹¹ Ibid., 6

¹² Ibid., 6

¹³ LCol A Morrow, "CANCAP – The Changing Face...", 76

(representing up to eight percent of the total contract price) is determined based on performance of the contractor as determined by a Performance Incentive Fee Board.¹⁴

LOGCAP

Much of what Canada has learned has been derived from the US, particularly from LOGCAP. With reduction of resources and the desire to retain only those core functions necessary to ensure readiness, the US Department of Defence expanded its options through increased use of the commercial sector as a logistics provider. Outsourcing and privatization are no longer pursued as special initiatives, but rather as integral elements of a comprehensive strategy to introduce greater competition and efficiency into logistics business areas, eliminate inefficient duplications between the Department of Defence and industry, create support structures, improve performance and generate savings.¹⁵

Peter Singer contends that the US' privatization of its military emerged in the 1990s for three main reasons – “the end of the Cold War and the vacuum this produced in the market of security, transformations in the nature of warfare, and the normative rise of privatization.”¹⁶ Tasks within the private military industry range from multi-billion dollar contracts that provide logistics, intelligence, engineer and maintenance services to armed forces, to military strategic advisory and training expertise and tactical services. Singer explains that tactical military

¹⁴ Canada. Department of National Defence, Lessons Learned – Contractor support on ISAF Rotation 0 (Operation ATHENA), Apr 2003, 6-26

¹⁵ United States. Joint Vision 2010, Focused Logistics: A Joint Logistics Roadmap, 1997, 35

¹⁶ Peter W Singer, “The Private Military Industry and Iraq: What Have We Learned and where to Next?”, Policy Paper – Geneva Centre For the Democratic Control of Armed Forces (DCAF), Nov 2004, 2

services may include serving in front-line combat, protection of key installations and facilities, protection for key leaders and individuals, and convoy escort.¹⁷

In 1992 the LOGCAP contract with Brown and Root, the first major contractor for this program, had barely been established when it was decided to deploy the US Marines to Somalia in Operation Restore Hope. Since then, LOGCAP contracts were awarded to DynCorp and Halliburton KBR, supporting a multitude of deployed operations including Afghanistan and Iraq. Since 1994, the US Department of Defence has entered into over 3,000 contracts with US based military firms.¹⁸ Similar to the CANCAP contract subsequently developed by Canada, the LOGCAP contract is for a fixed period with option years and is based on reimbursing the contractor for costs, plus an incentive fee based on performance.¹⁹

The aim of the LOGCAP program is to obtain logistics, maintenance and engineering support through contracting. It is managed at the strategic level, but allows commanders at both the operational and tactical levels to call up these services. The use of contractors is necessary in most major operations because of troop ceilings, unavailability of host nation support and the need to keep uniformed personnel available for major conflicts.²⁰ Use of high-technology equipment also feeds the process. Private companies have capabilities that the military needs, but does not possess. The recent war in Iraq highlighted the increased presence of battlefield contractors for this class of need. The Air Force employed contractors to maintain the B-2 stealth bomber, F-117 stealth fighter and U-2 reconnaissance plane, and repair and operate some of the newer weapon systems, such as the Global Hawk, Predator unmanned drones, and

¹⁷ Ibid., 6

¹⁸ Ibid., 3

¹⁹ LCol A Morrow, "CANCAP – The Changing Face...", 75

²⁰ Maynard, Col R, "Army Logistics Beyond Repair: Can Contracting Out Save The Day?," Canadian Forces College Advanced Military Studies Course, 1999, 5

sophisticated communications networks and computer systems.²¹ The Army contractors had maintenance teams supporting Patriot missiles and M1A1 Main Battle Tanks.

During the first Gulf War, about two percent of deployed US personnel were private workers. As of 2003, it had reached ten percent, with the Pentagon employing more than 700,000 private contractors, and at least \$33 billion (US\$) of the \$416 billion (US\$) in military spending going to private military contractors.²² In 2003 alone, Halliburton KBR charged the US government \$4.3 billion (US\$) for work it had undertaken in Iraq, filling a gap in troop strength and a variety of roles that the US forces preferred not to carry out.²³ In 2003, a reported 28 percent of all weapon systems relied on contractor maintenance, a level the US government wishes to raise to 50 percent.²⁴ Even in 1991, Lieutenant General Pagonis, the senior logistician in theatre during Operation Desert Storm, states in his book *Moving Mountains*, “contracted support was the key to our survival in the desert.”²⁵

Although smaller in scope and funding, the Air Force Civil Augmentation Program (AFCAP) is similar to LOGCAP. The United States Air Force places orders on this contract for support during military contingencies. Tasks conducted under the AFCAP contract include building refugee camps in Kosovo, designing electrical engineering at Ali Al Saleem Air base in Kuwait, and upgrading airfields in Equador to support counter-drug operations.²⁶

²¹ Guma, Greg, “Privatizing War”, Countercurrents.org, July 2004: 1-3 <http://www.countercurrents.org/us-guma080704.htm>, 2

²² Ibid., 1

²³ Peter W Singer, “The Private Military Industry...”, 5

²⁴ Christopher Spearin, “The Emperor’s Leased Clothes: Military Contractors and Their Implications in Combating International Terrorism,” 249

²⁵ William G Pagonis, *Moving Mountains*, 108

²⁶ Vernon, Rebecca Rafferty, “Battlefield Contractors...”, 19

CONDO

The United Kingdom (UK) has developed a program to outsource called Contractors on Deployed Operations, or CONDO. CONDO defines standards that apply to all new contracts, and covers contractor protection measures, operational management, pre-deployment training and contractor insurance arrangements.²⁷ Developed in 2001, CONDO is a more formal, wide-ranging and proactive method of contracting than earlier UK methods. Joint Doctrine Pamphlet 4/01 provides information and guidance on the use of CONDO for strategic and operational level commanders and staffs, and for planners responsible for the provision of combat support and combat service support to operations. CONDO doctrine was produced as a framework for long-term cooperation with industry in the provision of certain contracted support services.²⁸

ISSUES, LIMITATIONS AND RISKS

Past experience has shown that contracting out can be an effective enabler to supporting deployed military operations so long as there is an understanding of capabilities, limitations, and risks. The rate of use of contractors has outpaced the military's ability to manage it, creating a gap in understanding that is limiting effective employment on deployed operations. Several issues in the employment of contractors have been identified and we will examine them in turn: impact on military effectiveness, growth of private security companies, limitations to command

²⁷ Uttley, Matthew R, "Private Contractors on Deployed operations: the United Kingdom Experience." *Defence Studies*, Vol.4, No.2 (Summer 2004): 145-165, 159

²⁸ United Kingdom. Ministry of Defence. Joint Doctrine Pamphlet 4/01, Contractors on Deployed Operations, Dec 2001, iii

and control, protection of contractor, liability in war zones, application of the Geneva Convention, effect on policy and doctrine, and identification of costs.

1. IMPACT ON MILITARY EFFECTIVENESS

Outsourcing brings with it risks to mission success. Concerns regarding over-reliance on private firms for mission accomplishment have been well documented by the UK and US, and more recently for Canadian deployed operations. Expectations must be realistic and reflected in contractual documents to ensure both the contractor and the military are thinking alike.

Deployed contractor services represent an operational support tool, managed through the military chain of command. In Canada, the DCDS is the ultimate authority for approving the deployment of contractors into a theatre of operations. Although the Task Force Commander has authority over contractors once deployed, contracted personnel are not employees of the Crown.²⁹

The military profession has long seen itself as unique, and set apart from the rest of civilian society, given its accountability for the safety and security of the society to which it belongs. Contractors signify the morphing of this once unique professional identity into the regular civilian workplace.³⁰ Discretion on recruiting, screening, and hiring of employees for work in overseas operations has been largely left to private firms. Recent operations in Bosnia and Afghanistan revealed examples of CANCAP's inability to adequately source and train employees. In March 2004, reports by the Canadian military regarding CANCAP performance in Afghanistan on Operation ATHENA Rotation 0 highlighted several deficiencies at the contractor's management and supervisory levels. Specifically noted were an uncooperative

²⁹ Lol A Morrow, "CANCAP – The Changing Face...", 79

³⁰ Peter W Singer, "The Private Military Industry...", 13

approach from the in-theatre CANCAP manager, lack of support from the corporate office, inadequate qualifications and lack of continuity in key positions, and staffing shortfalls, emphasizing some of the differences in commitment between soldiers and civilian personnel.³¹ Furthermore, many contractors hire employees who have never worked together, or bring in third party nationals, for the sake of limiting costs. “These individuals are even less bound by the bonds of group loyalty or patriotism, thus demonstrating how gains in one area can harm another.”³²

2. PRIVATE SECURITY COMPANIES

Contractors are employed widely on overseas missions in private security companies (PSCs). Many firms of this type provide a myriad of front line policing and military tasks and offer services such as close protection, training and advising forces, guarding, and removal of landmines. PSCs are now using civilian technologies with many legitimate and useful purposes, which have become very difficult to regulate and control.³³

PSC examples, to name a few, include firms such as: MPRI who oversaw live-fire training exercises in Kuwait in the build-up period before Operation Iraqi Freedom; DynCorp who provided the bodyguards for President Hamid Karzai in Afghanistan, the security at US military installations in the Persian Gulf region, and the over 1,000 judicial, corrections, and police experts in Iraq; Vinnell Corporation who has a 48 million (US\$) contract to train 40,000

³¹ Canada. Department of National Defence, *Lessons Learned – Contractor support on ISAF Rotation 0...*, para 65

³² Peter W Singer, “The Private Military Industry...”, 8

³³ Thomas K Adams, “The New Mercenaries and the Privatization of Conflict”, *Parameters*, (Summer 1999), 113

strong Iraqi military; and Kroll Incorporated who has the responsibility to train a paramilitary force that will guard government sites in Iraq.³⁴

The Canadian military has also interacted with PSC personnel in its operations overseas. From 1996-2000, International Charter Incorporated of Oregon (ICI), a firm specializing in airborne surveillance and security operations, supported Canadian peacekeeping troops in Haiti with helicopter services to provide aerial deployment of quick reaction forces and distribution of humanitarian supplies.³⁵

A particular problem impacting a military's operational capability and that experience in Iraq has brought to the fore, is how an expanding contractor marketplace has the potential to hurt the military's retention of talented soldiers. The Canadian military, and particularly JTF-2's special operations unit, are facing severe retention pressures as personnel are lured away to work at highly lucrative rates for British and American Private Security Companies (PSCs) in Iraq.³⁶ Soldiers who transition to the contracting force can make anywhere from two to ten times what they make in the regular military.³⁷

The presence of PSCs, including Canadian-based PSCs, calls for a re-evaluation of traditional thinking. Over the past two centuries, the expectation has been that expertise pertaining to violence, and its appropriate application, were the exclusive domain of the state's military force. The responsibility and accountability for the actions of the security sector clearly rested with the state. The presence of PSCs, however, has clouded this responsibility and has revealed that this common approach no longer applies in all cases. In short, with contractors

³⁴ Christopher Spearin, "The Emperor's Leased Clothes: Military Contractors and their Implications in Combating International Terrorism." *International Politics*, (June 2004), 249

³⁵ Christopher Spearin, "International Private Security Companies and Canadian Policy: Possibilities and Pitfalls on the Road to Regulation." *Canadian Foreign Policy*, (Winter 2004), 2

³⁶ Christopher Spearin, "International Private Security Companies...", 3

³⁷ Peter W Singer, "The Private Military Industry...", 15

performing security related tasks, the state no longer holds all the resources and decision-making capacity.³⁸

3. COMMAND AND CONTROL

Contracts are expected to be honoured, whether undertaking support to an operation during the unsteady phases of mission build-up, through close-out, when responding to surges in operations, and indeed during hostilities. One of the main issues facing the military is not so much whether large contractors will continue to service the contract, but whether they will be able to keep their employees on the battlefield in an unstable and immature theatre of operations. Difficulties of the contractor to meet its requirements should not be imposed on a military force. However, in the midst of a crisis, the reality is that militaries with contracted support may be burdened with the worry about how they can maintain needed support if the firm or its employees refuse or are incapable of carrying out tasks.

During the deployment delays in the summer of 2003, the upsurge of violence in April 2004, and the mass of contractor kidnappings of July 2004, U.S. forces in Iraq faced a wave of firms delaying, suspending, or ending operations because they found it too dangerous, with the inevitable resultant stresses on the level of supplies and troops' welfare.³⁹

Militaries do not command and control contractors in the sense that they command and control their own units and soldiers. Rather, “contractors are managed, and the management mechanism is the contract itself. A contractor is obligated to do only what is specifically required

³⁸ Christopher Spearin, “International Private Security Companies...”, 12

³⁹ Ibid., 8

by the contract.”⁴⁰ Flexibility, one of the military profession’s principles of war, may be lost when going to war with civilians. A commander’s freedom and ability to improvise quickly, use tactics, employ weapons, and deploy personnel have long been considered essential to victory in combat. Contracts are legal, binding documents. Even when written with the best of intentions, they cannot cover every possible contingency in advance.⁴¹ If the scope of a contract is too restrictive, it may need to be amended in the face of changing circumstances. The only recourses are the modification or termination of the contract, which inevitably leads to both unacceptable delays and additional costs.⁴²

4. CONTRACTOR PROTECTION

Contractors cannot provide their own security, reinforcing the notion that contractors cannot replace military force structure.⁴³ Security is a military responsibility; thus soldiers must provide protection for deployed contractors. Where potential exists for contractors to accompany military forces on deployed missions, commanders must evaluate the operation with respect to the risks to supporting contractors, and determine the troop requirement to protect the contractor’s operation.

Service contracts normally preclude the contractor from being armed or from engaging separate security services. For this reason, the responsibility for force protection usually resides with the military. The normal standard is the same as that afforded to military personnel. In the

⁴⁰ Joe A Fortner, and Ron Jaeckle, "Institutionalizing Contractors on the Battlefield." *Army Logistician*. Volume 30, Issue 6, (November-December 1998), 3

⁴¹ Lourdes A Castillo, “Waging War With Civilians Asking The Unanswered Questions.” *Aerospace Power Journal*, Vol.14 issue 3 (Fall 2000), 3

⁴² Col R Maynard, “Army Logistics Beyond Repair: Can Contracting Out Save The Day?,” Canadian Forces College Advanced Military Studies Course, 1999, 9

⁴³ Joe A Fortner, and Ron Jaeckle, “Institutionalizing Contractors on the Battlefield." *Army Logistician*. Volume 30, Issue 6, (November-December 1998), 7

case of CANCAP, this includes protection during movement and the provision of personal protective equipment such as respirators, flak vests and helmets.⁴⁴ Finding safe and secure areas for contractors on deployed operations may prove to be a challenge, thus creating a requirement to “tie up military personnel with contractor protection rather than releasing soldiers for front-line duties.”⁴⁵

5. LEGAL

There are a number of significant legal issues that result from the employment of contractors in operational zones, including their status and their entitlements under local, national and international laws.⁴⁶ Although contractors cannot be deliberately targeted, situations may arise that put contractors at risk due to the tasks they are performing, and the location in which they are performed. It remains the responsibility of the CF to provide contractors with the necessary level of protection, and the commanding officer of the unit to which the contractors are assigned is legally responsible to provide the protection.

International law does not speak to the status of contractors; thus the latter are subject to the laws of their own state by default. Contractors fall within a unique category called civilians authorized to accompany the force.⁴⁷ Legal issues of deployed CANCAP employees are addressed under Canadian law, as described in the National Defence Act as civilians who accompany the Canadian military forces and are, as such, subject to the Code of Service

⁴⁴ LCol A Morrow, “CANCAP – The Changing Face...”, 80

⁴⁵ Matthew R Uttley, “Private Contractors...”, 156

⁴⁶ Capt I Garcia-Perez, “Contractors on the Battlefield in the 21st Century.” *Army Logistician*, (Nov-Dec 1999), 43

⁴⁷ Canada. Department of National Defence, CANCAP Program Governance, first edition 10 Jul 2003, 10

Discipline.⁴⁸ If a contracted employee commits a major service offence that is construed as a Criminal Code of Canada offence, or compromises the security of the operation, the employee can be tried under the provisions of a special general court martial. Lesser offences are handled through the contractor's project manager, in consultation with the local military authorities.⁴⁹

Deployed contractors often operate in failed states; indeed, the absence of a local state is normally why they are there.⁵⁰ Upon commencement of Operation Iraqi Freedom, for example, there were no established Iraqi institutions and, in any case, coalition regulations explicitly stated that contractors did not fall under them. The result is that with more than 20,000 private military contractors are present in Iraq, and yet not one has been prosecuted or punished for any crime.⁵¹

This state of affairs had grave consequences in the Abu Ghraib prison abuse case. A reported 100% of the translators and 50% of the interrogators were private contractors from the Titan and CACI firms respectively. The U.S. Army found that contractors were involved in 36% of the proven abuse incidents and identified 6 PMF [Private Military Force] employees in particular that were culpable in the abuses. However, not one of these individuals has yet been indicted, prosecuted, or punished. This is despite the fact that the US Army has found the time to do so for the enlisted soldiers involved.⁵²

The legal status of contractors employed in war zones is unclear. Although individual contractors are civilians and not part of the chain of command, a contractor's job may be perceived by opposing forces as being involved in hostilities, thus making them subject to attack. This perception will continue to increase as technological advances bring more contractors onto

⁴⁸ Ibid., 11

⁴⁹ LCol A Morrow, "CANCAP – The Changing Face Morrow...", 80

⁵⁰ Peter W Singer, "The Private Military Industry...", 12-13

⁵¹ Ibid., 13

⁵² Ibid, 13

the battlefield. For these reasons, it is generally accepted that there are limitations to the use of contractors in a hostile environment.⁵³

6. POLICY AND DOCTRINE

Employment of contractors on the battlefield will continue to have profound implications on policy and doctrine. CANCAP provides operational flexibility by offering eighteen functional areas of potential services, but with some restrictions. Contractors augment military capability. Therefore, the CF must retain sufficient service support capability to meet the demands of a Roto 0, and must be prepared to adapt to situations where contracted support is not a viable option.

Another limitation that must be understood is that CANCAP is not designed to meet short notice demands. The normal planning timeline is 90 days to prepare the task order and a further 90 days for the contractor to hire and deploy personnel to assume service-delivery responsibilities. As the contractor is not funded to meet higher readiness requirements, the military must also retain sufficient depth to meet rapid deployment requirements.⁵⁴

The CF has yet to establish doctrine for employment of contractors on operations. Other nations, specifically the US and UK, have promulgated doctrine, although they recognize their doctrine has not been able to keep pace with recent developments and the conditions under which their militaries are deploying. With more civilian support on the battlefield, the military needs to clarify contractors' roles. Among the issues confronting the latter are understanding when the operational theatre is considered stable enough to allow the employment of contractors, and under what conditions their employees should be permitted in forward operating areas.

⁵³ Col R Maynard, "Army Logistics Beyond Repair...", 9

⁵⁴ LCol A Morrow, "CANCAP – The Changing Face...", 77

It is necessary to clarify where, in the spectrum of conflict, contractors are needed. Both DND and SNC-Lavalin/PAE took risks in implementing CANCAP support on Rotation 0 of the Canadian ISAF mission.⁵⁵ The post-mission performance evaluation report highlighted several issues, including the requirement to conduct a more detailed strategic analysis, develop employment options, and staff a risk mitigation plan. Furthermore, the need for a streamlined process for actioning Task Order amendments was highlighted. “Given the complexity of this mission, planning decisions were made in record speed and unfortunately our inability to have the Task Order amended in a timely manner still affects both the CF and the Contractor greatly.”⁵⁶ With no written policy or doctrine covering this issue, only through collaborative efforts and very hard work were the military force and contractor able to overcome the numerous challenges encountered.

Likewise, it is necessary to clearly define what the core capabilities are that will not be contracted out. Although it would be preferable for contractor personnel to remain in the rear, it must be accepted that the weapon systems contractors in particular need the ability to provide support forward when necessary. Establishing the doctrine for employing contractors in forward areas has been a source of confusion for the military in the past, and this must change.⁵⁷

7. COSTS

Many proponents for the use of contractors highlight cost savings as one of the benefits to be realized. The economic rationale is derived from the assumption that contractors can

⁵⁵ Canada. Department of National Defence, *Lessons Learned – Contractor support on ISAF Rotation 0 (Operation ATHENA)*, Apr 2003, para 64

⁵⁶ *Ibid.*, para 64

⁵⁷ Col R Maynard, “Army Logistics Beyond Repair...”, 13

provide certain services more cheaply than militaries. Advocates argue that contractors are more efficient because of their ability to focus on specific activities and deliver services when actually required. This logic, however, breaks down when attempting to analyze and compare the figures, as there is little empirical or systematic evidence to prove that contractor support is less expensive than military support alternatives.⁵⁸ Thus, the validity of the proponent's argument has yet to be proven; in fact, many authors caution that there are numerous secondary costs unaccounted for in the contract price.

Examples of these hidden, secondary costs, can be found for major contract programs in US, UK and Canada. Opponents to LOGCAP view the program as being expensive. Moreover, the US General Auditor's Office (GAO) expressed concerns about the US Army's ability to control and report costs effectively for LOGCAP in Bosnia. "The solution is to assemble a professional contract management cadre, including financial experts, to augment the normal staff."⁵⁹

In a letter signed by the DCDS in July 2000, in outlining a framework for the development of CANCAP, he stated that the contract may not produce financial savings, choosing instead to emphasize the anticipated benefits in operational flexibility and on relieving the pressures on force personnel.⁶⁰ Similar to the US situation, CANCAP's disadvantage to the government is the expenditure of considerable resources, from the strategic to the tactical level, in monitoring and managing the contract. The military chain of command, contract management

⁵⁸ Matthew R Uttley, "Private Contractors...", 158

⁵⁹ David L Young, "Planning: The Key to Contractors on the Battlefield", *Army Logistician*. Volume 31, Issue 3, (May-June 1999), 3

⁶⁰ Canada. Department of National Defence, Framework for the Development of the Canadian Contractor Augmentation Program (CANCAP), J4 Log Contractors in Support of Deployed Operations Website, http://www.dnd.ca/j4log/cancap/Letter_DCDS_CANCAP_e.htm, accessed 26 Sep 2005

teams, along with Director General Procurement Services, expend significant resources performing contract managing functions to ensure the government is receiving quality services from the contractors at the best possible price. Other hidden costs are illustrated with the UK contract with CONDO, including contractor protection and other military support to contractor personnel during deployments; these are “seldom included in MoD [Ministry of Defence] comparisons of armed service and outsourced provision.”⁶¹

In a November 2004 article, Peter Singer states that many contractor employees believe that they are carrying out a public function under the same code of honour and patriotism as their uniformed counterparts; the only difference being that they are paid better. Singer then argues that Private Military Firms (PMFs) differ by being directly competitive with the military, by drawing employees from the military to fill military roles, thus shrinking the military’s purview. “The overall process is thus brilliant from a business standpoint and self-defeating from the military’s perspective. The PMF uses public funds to provide higher pay and then charges back the military at a higher rate, all for the human capital investment that the public institution originally paid for.”⁶²

THE WAY AHEAD – WHAT SHOULD WE EXPECT?

Regarding use of contractors on deployed operations, should we expect the future to be different? Contractors have helped mitigate the effects of specific policy and resource constraints. If troop ceilings were higher, the military would prefer to use military personnel. If the Army had enough soldiers to handle all deployment responsibilities, it would prefer to use

⁶¹ Matthew R Uttley, “Private Contractors...”, 156

⁶² Peter W Singer, “The Private Military Industry...”, 16

military personnel. Because, in all likelihood, such constraints will persist, the military will continue to use contractors, even though the preference may be to use soldiers in many cases.⁶³

Constraining the shift towards increased private contractor involvement on deployed operations is an unlikely outcome. Base support operations, domestically and internationally, are already heavily reliant on contract support with significant service functions private sector provided.

Contracting is a force multiplier that can work in routine operations, whether domestic or overseas, where there is low risk. Using it for deployed contingency operations in a benign environment, given risks are mitigated, can also be successful. However, at the higher end of the spectrum of conflict, using contractors can have a substantial impact on a commander's flexibility, focus, and on his unit's 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."⁶⁴ Interestingly, this is only taken as a guideline. As exemplified by the decision to deploy CANCAP on Roto 0 in Afghanistan in May 2003 to construct camps even before the arrival of our forces,⁶⁵ we should expect decisions to deploy contractors even at the higher end of our spectrum of conflict in the future.

Since the September 11, 2001 attack on the US, our front lines have become even less distinct, as our focus has turned to the fight against terrorism. In dealing with this new focus, by default, private contractors have become much closer to the front lines, and many of the traditional close fight military activities have become increasingly privatized through PSCs. On

⁶³ F Camm and V Greenfield, RAND Arroyo Center, "How Should the Army Use Contractors on the Battlefield? Assessing Comparative Risk in Sourcing Decisions, Prepared for the US Army, 2005, xxiii

⁶⁴ Cdr T Addison, "Contractors on the Battlefield – Have We Done Our Homework?" Canadian Forces College Advanced Military Studies Course, 2001, 31

⁶⁵ LCol A Morrow, "CANCAP – The Changing Face...", 77

one hand, there is widespread belief that PSCs are a potentially dangerous and destabilizing development, but on the other hand they are also an accommodation to the reality that states are no longer willing, or in some cases able, to meet the financial and political costs of maintaining their monopoly on the use of deadly force.⁶⁶

The future should also see more contractor involvement at the early stages of the operational planning process. The inclusion of contractor support into the operational planning process started with LOGCAP warfighter exercises in 1999 and was used to compare contractor capabilities with those of the US Army. Working alongside the contractor, the LOGCAP program manager developed a number of contingency plans to address the potential needs of the US unified commanders in designated locations world-wide.⁶⁷ In a 2004 report, based on GAO's recommendation, the Secretary of Defense agreed with guidance to identify operational requirements that are to be provided by contractors early in the planning cycle and involve the contractor in the planning, where practicable.⁶⁸ The inclusion of contractor support into the planning will also ensure that several other issues, limitations and risks can be addressed early in the planning phases of an operation. In the same report, based on GAO's recommendation, the US Secretary of Defense agreed to develop and implement training courses for commanding officers and other senior leaders who are deploying to locations with contractor support.⁶⁹

Contractors should expect to show up when the going gets tough. In the UK, the Minister of Defence pointed out that the risk contractors might fail to support deployed operations

⁶⁶ Thomas K Adams, "The New Mercenaries...", 6

⁶⁷ Ibid., 76

⁶⁸ United States. Government Accountability Office, Military Operations: DoD's Extensive Use of Logistic Support Contracts Requires Strengthened Oversight, Jul 2004, 60

⁶⁹ Ibid., 61

is remote, citing the fact that “of the 180 firms employed to support the UK armed services in Iraq during 2003, just two refused to deploy.”⁷⁰

We should also expect contractor support to high technology equipment to continue, as rapid technological change, in many cases, has made it uneconomical to keep soldiers capable of maintaining, trouble shooting and in some cases, employing our most sophisticated weapons. “In the future when US forces deploy there will be many situations where a contractor employee is the only person with the technical skill to perform functions necessary for the employment of a weapon system.”⁷¹

Although CANCAP’s support is primarily intended for operational level support to deployed forces, it can be extended to the tactical level. As already realized by the US and UK forces, the Canadian Army should expect to see contractors expand further into providing more services at the tactical level, and closer to the front lines. Also, CANCAP support is “applicable to either single service or joint operations, and could conceivably be employed as part of a CF contribution to force level support provided to multinational operations.”⁷²

Action must also be taken on the issue of legal accountability... “to pay contractors more than our soldiers is one thing; to give them a legal free pass (as is currently happening with Abu Ghraib) on top of that is unconscionable.”⁷³ New laws need to be developed that control the variety of legal dilemmas the contractor industry has raised. Legal clarification to the questions of “who can work for the firms, who the firms can work for, and what bodies and codes will investigate, prosecute, and punish any wrongdoing and in which domains” are needed.⁷⁴

⁷⁰ Matthew R Uttley, “Private Contractors...”, 160

⁷¹ Col Stephen J Zamparelli, “Competitive Sourcing and Privatization”, 14-15

⁷² LCol A Morrow, “CANCAP – The Changing Face...”, 77

⁷³ Peter W Singer, “The Private Military Industry...”, 21

⁷⁴ Ibid., 21

The CF must examine the lessons learned by our allies and then develop the required doctrine, as none currently exists. Specifically, a joint publication, focused on contractors on the battlefield, needs to be written. Canada has not yet developed contractor doctrine despite the contractor initiatives already put into place.⁷⁵ Items for consideration include, but are not necessarily limited to, contractor deployment, force protection and self-protection responsibility, discipline, understanding contract scope and authority, liability and application of the law of armed conflict.

CONCLUSION

The employment of contractors on deployed operations has played an important role for some time, but most particularly since the early 1990s. The rate of increased use has been impressive; as contractor use becomes more institutionalized, we should expect even more functions to be contracted out. Commanders and their planning staffs must now be prepared to receive significant support from contractors in all military operations and under virtually all conditions.

Budget reductions and other service delivery options aside, the Canadian military has adopted the use of contractors for several excellent reasons. The changing nature of conflict, specialized support to high technology equipment, increased force projection distances, high operational tempo, and soldier burnout have all contributed to a higher reliance on contractor support.

In comparison to the US, the Canadian military is still at the early stages of institutionalizing contractor support. Much has already been learned from operational missions in Bosnia and Afghanistan, but commanders and their staffs will face increasing need to deploy,

⁷⁵ Maj C Hobbs, "Contractors on the Battlefield – Not A Silver Bullet." Master's Thesis, Royal Military College, 2002, 69

manage, and protect contractor personnel. While capstone doctrine supporting these efforts is written and published in the US and UK, it has not yet been developed in Canada.

To maintain focus on its core capabilities, the CF developed and implemented CANCAP as an innovative and highly successful program to augment its ability to sustain operations. However, caution must be exercised as balance is needed to ensure commanders understand the potential issues, limitations, and risks to operational success.

The debate is no longer about whether contractors will support deployed operations; rather, the issue is when and where contract support offers the best solution in both operational and financial terms.⁷⁶ Addressing security needs through the use of contractors is not necessarily a terrible or impossible thing. Like most privatization experiences, use of contractors on deployed operations clearly carries both advantages and disadvantages that must constantly be weighed; the latter mitigated through effective policy and smart business practice. However, we must proceed with prudence and become more aware of what is at stake, as warfare has far more serious implications than most business domains.

⁷⁶ Matthew R Uttley, "Private Contractors...", 161

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