



LANDPOWER ESSAY SERIES



No. 95-4

June 1995

THE EMERGING IMPORTANCE OF CIVILIAN AND CONTRACTOR EMPLOYEES TO ARMY OPERATIONS

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EXECUTIVE SUMMARY

As the Army transitions into Force XXI, the emerging importance of civilian and contractor employees to the Army's success on the battlefield and beyond cannot be overstated. The Army must take into account doctrinally as it downsizes and digitizes, what an increased need to rely on civilian and contractor employees means to operations. When a crisis occurs, the Army cannot be in the position of then discovering the extent of the reliance on civilian members of the force.

The need to recognize the increased importance of civilians plays out on several levels.

- On the international level, technology has outpaced law of war concepts describing the roles of civilians in a hostile fire setting and rendered these concepts outmoded.
- Among our military allies, varying differences in philosophy and policy have become apparent where the use of civilian and contractor employees in military operations is concerned.
- In joint operations, under a combatant commander, command and control questions from the Gulf War linger.
- At the tactical level, commanders and their soldiers who work directly with civilian and contractor employees need a clearer understanding of where civilians "fit" within their organizations.

Landpower Essay Series is published by the AUSA Institute of Land Warfare. The series is designed to provide an outlet for original essays on topics that will stimulate professional discussion and further public understanding of the landpower aspects of national security. The content represents the personal opinions of the author and not necessarily the position of the Association of the United States Army or its members. Candidate essays of 2000 words or less may be submitted: Association of the United States Army, Institute of Land Warfare (Attn: Landpower Essay Series), 2425 Wilson Boulevard, Arlington, Virginia 22201.

They need to know what is expected from the civilians and the civilians need to know what they can expect from the military. This is critical when the unit is deployed.

Deployed civilian and contractor employees responsible for highly sophisticated weaponry have questions for their military and civilian leaders. Rightly, they expect to know that when placed in harm's way the Army has thought out how they will be fed, clothed, housed, and even armed. They expect to know that if they become sick or wounded, the Army has thought out who will provide care; if they are captured, what their law of war status will be; and if they die, who will provide for their effects, remains and loved ones.

BACKGROUND

In October 1994, *Federal Times*, a newspaper published for federal civilian employees, carried the banner headline, "Officials Want to Make More Jobs Civilian." The stated reason for this initiative, according to the article, involved converting military positions to civilian positions to save payroll money.

The article quoted figures from a 1994 General Accounting Office (GAO) report that about 5,000 civilian employees and 9,200 contractor employees deployed in the Gulf War in support of U.S. forces. Further, that the House Armed Services Committee believed that about 10,000 military positions within the Department of Defense (DoD) that remain classified as "support" could be civilianized. This would free service members "for combat units while civilians fill support roles." Whether adding another 10,000 civilian employees to the DoD rolls is politically viable in today's environment is another question entirely. However, there is a lack of understanding about what impact civilianizing more "support" roles could have for future military operations.

The issue was further crystallized in an article in the January 1995 issue of *Army* magazine ("Faceless Firepower — The Rise of High-Tech Combat Support," by CWO4 Robert E. Howard, USA Ret.). The article advises military planners and budgeteers to recognize a new reality when either cutting or assigning new missions to "support" personnel. The author took to task planners who, without regard to the long-range impact (including civilianization), look to make cuts in military positions defined as "support" in an effort to preserve higher "tooth to tail ratios." The author also took to task budgeteers who push for development of "super weapon systems" without the numbers of "high-tech" personnel who will be needed to maintain these systems.

Army civilian and contractor employees who deploy to the modern battlefield with our soldiers and the highly sophisticated systems they use are potentially a part of the "tooth," not the "tail." The author, who was writing about soldiers in aviation support units in the Gulf War, recognized a new role for civilians:

In addition, because of the high-tech nature of deployed helicopters, droves of civilian contractors were sent to Saudi Arabia to augment the military repairmen. Fortunately, no enemy attacks were inflicted on the helicopter maintenance sites, nor did the maintenance force have to follow the fighting into an area of combat operations. A potential for problems existed there in terms of administrative support and legalities associated with civilians in combat.

Multiply these concerns by the number of sophisticated systems requiring civilian support and the number of civilians required to maintain them. The increased importance of Army civilian and contractor civilian employees stands out. It is one matter to civilianize military positions in time of peace, and to do so for budget reasons. It is another matter entirely, and dangerous, to ignore the reality that one day, potential hostilities similar to Desert Shield/Storm, Somalia, Haiti or Macedonia may require the incumbent of a civilianized position to deploy to an area of potential hostilities.

We must analyze doctrinally where civilian employees will be utilized in warfighting, peace-keeping or peacemaking, to include the circumstances under which they will be utilized and the issues that will arise. The issues run the gamut, from sophisticated and sensitive in international law to individual personnel issues.

Technology, for example, has outstripped international law. If an opposing force attacks a remote site where civilian employees are performing highly sophisticated technical support, such an attack would not violate the law of war. Yet, the laws of war contain no clear recognition of this new status or role of civilians accompanying a military force in the field. Just as problematic, Army doctrine may well have classified that civilian as a "noncombatant," when clearly under the laws of war the civilian is a lawful target of attack. Upon capture, the opposing force will in reality group the civilians with captured soldiers and not consider the civilians "noncombatant."

Civilian personnel issues, such as who "owns" an Army civilian deployed overseas in a joint operation, can quickly become a force detractor. Ownership can be claimed (or disclaimed) for a wide variety of purposes: pay and benefits, medical treatment, discipline, job performance, routine personnel actions, etc. Is it the combatant commander into whose area of operations the civilian is deployed? The local commander with whose forces the civilian is deployed? The commander who owns the civilian's stateside installation? The major command (MACOM) commander who owns the deploying civilian's installation? The MACOM commander who owns the support mission being performed?

ISSUES

This paper raises the issues. Developing the issues can generate discussion and analysis. Addressed in this fashion, a cohesive approach to integrating Army civilian and contractor employees into Force XXI doctrine could emerge.

Army Chief of Staff Gordon R. Sullivan, regarding the rationale for the Louisiana Maneuvers and the other reviews in which the Army has engaged to learn how it needs to fight into the next century, stated, "We don't know what we don't know." In this same vein, defining the issues concerning civilians will help us define what we don't know about their place in future Army doctrine and what we need to know about civilian and contractor employees and their role in Force XXI.

What follows is a threshold set of issues that are meant to be expanded, modified or otherwise refined through further discussions. They are presented here as indicators of the complexity of the notions of greater participation of civilians in future military operations.

APPENDIX

Issues of International Scope

1. Are civilians who accompany a military force combatants or noncombatants?
2. Within the current laws of war (those governing land warfare, warfare at sea, and the protection of sick, wounded and captured), can existing definitions or provisions be interpreted to accurately describe the new role of Army civilian employees and contractor personnel?
3. Are new definitions or new categories necessary under the current laws of war to accurately describe the new role technology has created for civilians accompanying or in the employ of a military force in the field?
4. Should civilians accompanying armed forces during time of hostilities be entitled to greater status under the laws of war than their military counterparts?
5. Should captured civilians be entitled to treatment according to their equivalent rank or status within the force from which they are captured, or granted or accorded some other status?
6. Should civilians accompanying or employed by a military force engaged in military operations be required to wear uniforms, have insignia or some other indicia than an identification card to be entitled to prisoner-of-war (PW) status upon capture?
7. Should there be separate levels of recognition for law of war purposes based on where civilians are found on the battlefield (i.e., those with forces within range of direct fire weapons versus those with forces who are subject only to indirect fire weapons)?
8. Should distinctions or gradations upon capture by an opposing force be recognized based on citizenship status, to wit: U.S. citizens accompanying U.S. forces accorded one degree of status, versus citizens of the country on whose land the operations are being conducted, versus a third country national employed by U.S. forces?
9. Should there be distinctions made and/or protections accorded to civilians depending on the role of the sending force (warfighting versus peacekeeping versus peacemaking)?
10. Should distinctions and/or protections accorded depend on the auspices under which these missions are undertaken (i.e., part of a United Nations force, part of a regional operation, invitation by a host nation, etc.)?
11. What international standards currently exist? For example, what is the current policy of former Soviet bloc nations versus the individual policies of NATO member states?
12. Does NATO have a policy concerning the role of or use of civilians in military operations?
13. What are the specific policies of traditional U.S. allies such as Great Britain, Canada, Australia?

Issues of National Scope

1. Should there be a law which prohibits deployment of civilian employees or contractor employees with military forces to an area of potential hostilities?
2. Should there be a law requiring that any such employees deployed have reserve component status?
3. Should Congress change the current Uniform Code of Military Justice (UCMJ) to extend court-martial jurisdiction over civilian employees and employees of contractors in situations short of an actual declaration of war by Congress? (Based on wording in the UCMJ, the Supreme Court has ruled that civilians are subject to court-martial only in congressionally-declared wars. Congress could be asked to change the law to specify circumstances other than congressionally-declared war.)
4. Do any civilian agencies which routinely send U.S. citizen or contractor employees overseas to potential danger areas have procedures or policies in place for protection of those individuals? What are the similarities or differences between DoD and military policy and the policies of these agencies?
5. Is there a need for national rules for all civilians from all agencies who may be sent to areas of potential hostilities, or are DoD rules sufficient for DoD personnel?
6. When civilian employees accompany U.S. forces on deployments, should State Department policy control extension of danger pay or other benefits or should the combatant commander have such authority?
7. What should trigger receipt of danger pay for civilian employees — deployment overseas with U.S. forces, presence for a requisite number of days in a theater or area of operations, a State Department declaration, a declaration by the ambassador of each country within the area or theater of operations, a presidential order or directive, or some other triggering event?
8. Is legislation needed in either Title 5 or Title 10 to recognize special circumstances involving employees who are “emergency essential”?

Issues of a Joint Service Nature

1. Should the combatant commander actively determine the civilian “mix” needed with the force required, or establish general military force requirements?
2. If a general requirement for forces is established, what role should the commander in chief (CINC) have in determining the numbers and types of civilians necessary, the length of their stay and whether they are sent on temporary duty (TDY) or reassigned to the area or theater of operations?

3. Who "owns" the civilians once they are deployed to the area or theater of operations? Is it the combatant commander, the Army component commander (for Army employees), the MACOM commander, the commander of the sending installation, the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (MRA))?

4. What does "own" mean? Authority to come and go only? Responsibility for pay and administration only? Responsibility to train and equip? Responsibility to discipline? Responsibility to arm? Responsibility to provide medical care or legal assistance?

5. Should Army establish policy for Army employees, Navy for Navy, Air Force for Air Force? DoD for other DoD agencies?

6. Who provides contractor employee support while contractor employees are in-theater? For example, who is responsible for providing needed vehicular support, medical support, food and replacement clothing or equipment, etc.?

7. What mechanisms are in place or should be in place for replacing contractor employees who fall ill, quit or otherwise cannot perform while in theater?

Army Specific Issues

1. Who decides within Army which Army civilians are needed, from where they are to be obtained, how long they are to be deployed, how the replacement stream will operate, etc.?

2. Should Army civilians used be "pure" volunteers?

3. Should there be an Army policy not to assign any civilian employees against their will to an area of potential hostilities?

4. Should a local installation commander have the authority to determine the "mix" of civilians from his/her installation being sent, to include denying the request to deploy an individual civilian employee based on the commander's determination that the local mission requirements preclude the individual's deployment?

5. Who identifies civilian positions which are "emergency essential"?

6. How are civilians who encumber these positions trained and equipped?

7. Are medical standards for encumbering "emergency essential" positions necessary? If so, how are they enforced?

8. Who is responsible for preparing civilians for deployment? Who issues the equipment to them? Who ensures medical readiness for deployment?

9. Can/should civilians subject to deployment be required to participate in Emergency Deployment Readiness Exercises? Should they be authorized overtime pay or granted compensatory time, even if in positions traditionally exempt from requirements of the Fair Labor Standards Act?

10. Should a civilian identified for deployment be entitled to decline deployment?

11. Who decides if a civilian who so requests should be excused? The local commander, the Army component commander, someone at Department of the Army (DA) or DoD level?

12. If a civilian refuses to go when ordered or if a civilian who has deployed returns without authorization, should uniform disciplinary standards be in place?

13. At what level is discipline appropriate? The local command level, MACOM level, Army component level, HQDA level or DoD?

14. Who determines equipment needs? Who furnishes it? At what point is it furnished? If a civilian has not been trained previously in its use, who provides the training? Where? Can the civilian not be deployed until trained in use of the equipment?

15. Who pays for the equipment issued to the civilian? Who pays for equipment issued to civilians at the overseas processing point not issued to them at the civilian's home installation? Does the processing installation provide the equipment or wait to get it from the civilian's home installation? If the processing installation provides it, does it eat the cost, or bill back the cost to the home installation? Can it be accounted for out of an Army account, a Joint Chiefs of Staff (JCS) account established for the particular operation, or another DoD account?

16. If the civilian employee loses or damages the equipment issued, or loses or damages organizational equipment of a high value, who runs the report of survey? Who assesses the loss against the civilian? Who is the reviewing command authority — the CINC or someone in that chain of command, the MACOM chain of command, or some other level of review?

17. Who pays for medical treatment? The CINC, costed against a special JCS account, HQDA account or some other account?

18. Are deploying civilians and their dependents authorized care at military treatment facilities? Are they authorized such care for some period after their return? If they complain of post-deployment medical difficulties (such as Gulf War Syndrome) after their return, does the Army or DoD pick up those costs?

19. Should "emergency essential" civilian positions be part of a table of organization and equipment (TO&E), a table of distribution and allowances (TDA) or only on mobilization TDAs?

Contractor Issues

1. Who sets policy for employees of defense contractors deployed in support of military operations? Should it be the Assistant Secretary of the Army for Research, Development and Acquisition, the Deputy Chief of Staff for Logistics (DCSLOG), the Deputy Chief of Staff for Personnel (DCSPER), the ASA(MRA), some combination thereof, etc.?
2. What are the differences, if any, in the requirements of deploying employees of contractors vis-à-vis the requirements of deploying Army civilian employees?
3. Who exercises command and control over deployed contractor employees versus command and control over deployed Army civilian employees?
4. Once the contractor employee is deployed with a particular military unit or organization, who provides command and control? What authority does the contractor have to override directives given to the contractor employee by the immediate commander with whom the contractor employee is assigned?
5. Are there current Defense Federal Acquisition Regulations (DFARS) provisions which cover deployment of contractor employees?
6. What uniform provisions are there in defense contracts requiring the contractor to deploy contractor employees in support of military operations which address training, an agreement to remain in the event of an outbreak of hostilities, an agreement concerning issuance or loan of items of personal equipment and clothing, etc.?
7. Who is responsible for training and equipping contractor employees? Notwithstanding who provides the training and equipment, who pays for it? How is it costed — as a direct cost or as overhead?
8. Should contractor positions be recognized on military TDAs and TO&Es?
9. Who processes contractor employees for deployment? Who pays for it?
10. Should contractor employees have the authority to show up in-theater by any means whatever or should they only be sent through routine deployment channels?
11. Who governs vacation/time off policies while contractor employees are in-theater?
12. What uniforms, indicia or insignia do contractor employees wear while in theater?
13. Who provides medical treatment in-theater, while an injured contractor employee is being removed from theater, upon return to the United States, etc.? If the government is responsible, for how long? What mechanisms are in place for charging back the costs of medical care to the contractor or would the government be required to absorb these charges as part of the contract? What about circumstances where the injury is due to the contractor's own negligence?

14. Are contractor employees covered adequately by the current laws of war?

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