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Private Sector Support to Operations



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PRIVATE SECTOR SUPPORT TO OPERATIONS 2013

ABSTRACT: Twelve years of sustained combat operations in the Middle East changed the U.S. military and the overall defense establishment. The privatization of wartime tasks through the use of contractors at military garrisons, depots, international staging bases and in combat zones themselves facilitated a level of execution beyond the capability of the organic armed services.

Relying on private industry throughout the wars employed a staggering array of talent provided by a very responsive support industry. The U.S. exit from Iraq and impending draw down from Afghanistan are forcing both the government and private industry to reexamine, re-plan and reshape future requirements.

This report looks at the relevant shaping efforts of both the government and firms providing Private Sector Support to Operations (PSSO) as they enter the post-major theater war era. Neither the government nor private industry fully understand the way ahead while the nation recovers from war... but what is clear is that they need each other. Through a series of topics we illustrate the health and potential readiness of the government-private sector partnership in a post-Iraq/Afghanistan environment and offer recommendations for maintaining the future health of the industry.

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INTRODUCTION

The United States Government first assimilated contractors into its ranks in the Revolutionary War when George Washington used them to deliver food and clothing to his troops. Throughout US history, our military has relied on the private sector to provide a range of services. Most recently, the use of contractors grew significantly as major budget reductions and drawdown of forces in the 1990s under the Clinton administration created pressure for smaller government and outsourcing allowed agencies to operate with fewer people on the federal payroll. Similarly, for the military, this was achieved by shifting combat support services to the reserve forces and awarding contracts to fill mission gaps in the conduct of required operations. The post-9/11 era ultimately tested this model as the military prosecuted the wars in Iraq and Afghanistan. Contractors offered a variety of functions to augment the military and other government agencies with service support, infrastructure development, training, transportation, logistics, maintenance, construction, security, language translation, and numerous other services serving side-by-side with deployed military and civilians.

This report focuses on the private sector support to operations (PSSO), a market sector defined herein as a distinct portion of the services industrial base (SIB), rather than the broader defense industrial base (DIB), providing support to contingency operations. PSSO is comparable to operational contract support (OCS) and is used interchangeably.

The defense industry currently consists of six major large-capital defense firms (Boeing, Lockheed Martin, Northrop Grumman, General Dynamics, Raytheon, and BAE), many mid-capital firms, and numerous small businesses. The majority of the PSSO industry is made up of mid-capital firms that support all types of military operations. While there are larger firms that dominate certain sectors of the services market, such as KBR and DynCorp International, there are many additional firms supporting other sectors, such as information technology (IT) and cyber security. According to the Government Accountability Office, U.S. government agencies collectively pay in excess of \$500 Billion per year on contracts for supplies and services to support their missions. Presently, the Department of Defense (DoD) expends more than 50% of its contractual spending on services annually.

Input for this report comes from domestic and international sources, guest speakers and visits to industry partners as well as government agencies that interact with the industry. The team examined the PSSO industry from the following perspectives: 1) Current market conditions and select industry financial posture, 2) Government-agency interaction, with a look at industry risks, opportunities and potential market futures, and 3) Potential ways to ensure the continued viability and availability of the PSSO industry, with recommendations for incorporating lessons learned into the future operational planning process at the combatant command and service component levels.

CURRENT MARKET CONDITIONS

Given that the majority of military forces departed Iraq and the drawdown of US forces in Afghanistan is ongoing, it is clear that decade of contingencies is ending. The full extent of declining defense budgets on the health of the PSSO industry remains unknown. However, we



found firms already reacting to the anticipated impact of a changing environment by cutting costs and repositioning their companies to expand into other more sustainable areas.¹ Defense firms and industry associations have noted their concern that budget reductions will shrink government contracting dollars. Service providers will need to compete more aggressively for remaining opportunities.

Competition drives prices down. To win an award, a firm will need to make smarter and more selective decisions on what to invest bid and proposal dollars. However, if firms cannot make adequate profit within the government sector, they may pursue alternate business opportunities which lead to a reduction in federal competition.² Competition in times of fiscal austerity becomes a battle of lowest price, a risk especially within the PSSO industry where there is little differentiation in services provided. As bid prices go lower and firms chase fewer opportunities, they cut costs to win the award. When competition is based on lowest price, the industry may enter a so-called “death spiral” leaving firms to go out of business, leave the defense industry, or merge with other firms.³ Firms are using a variety of strategies to respond to increasing competition pressures, such as strengthening focus on high-growth areas such as cyber security, energy, and information technology (IT), to include health care both inside and outside the government.⁴

Overall, individual firm diversification is a common strategy, a trend confirmed by professional analysts and industry associations. Additionally, analysts anticipate mergers and acquisitions of mid and lower tier firms to increase the competitive advantage of larger firms as they compete for future contracts.

Economic Health. The team examined the economic health of five firms within the PSSO industry to determine whether it is positioned sufficiently to provide services in support of medium and long-term national security requirements. Although the team visited ten domestic and international firms within the industry, only five firms were analyzed financially: Fluor, KBR, URS, ManTech, and CACI. These five firms represent a small subset of the total services industry and PSSO, yet they show indicators that the industry is healthy but unsettled due to government fiscal uncertainty. Subsequently, the team focused on the industry’s resiliency -- its ability to respond to future conflicts with necessary capabilities at appropriate levels of capacity.

It is unknown what types and level of support the government may need for future requirements. However, resiliency within the industry is likely given that commercial customers and government entities both continue to require similar services for their peacetime missions as those provided during military operations. As a consequence, the SIB will provide the foundation for response to future operational requirements.

The firms visited stated they do not fear the loss of skills as they can shift key employees to other efforts from which they could be recalled as necessary for future contingencies. Good intentions notwithstanding, firms will not carry unneeded overhead indefinitely, but it appears the industry will adjust to find reasonable solutions for their customer base. They are in business to make money and will pursue opportunities that permit them to do so.

Financial Performance. The PSSO industry is not threatened in the near term (3-5 years) due to its diversification, ability to be self-sustaining through peace time usage, and its low barriers to



entry. Firms will continue to offer their services where profit can be made, depending on the extent and duration of sequestration. Table 1 depicts key economic ratios for the firms reviewed within the PSSO industry. These ratios determine if the top firms are creating value at an acceptable level of risk. Industry data allows a financial health comparison with the leading firms, while S&P 500 data enables a comparison with the nation's top 500 large capitalization firms.

Financial Ratio	<i>FLUOR</i>⁵	<i>KBR</i>⁶	<i>URS</i>⁷	<i>ManTech</i>⁸	<i>CACI</i>⁹	<i>Industry</i>¹⁰	<i>S&P 500</i>¹¹
Current Ratio¹²	1.6	.6	1.8	1.9	1.6	1.5	1.5
LTDE Ratio¹³	.16	.03	.55	.17	.62	.14-.32	.74
Return on Investment (ROI)	14.8	.7	7.6	7	0	5.8-13.1	7.5-8.0
ROI (5 yr avg)¹⁴	7.5	5	3.6	5.6	1	-0.2-7.1	5.9-6.6

Table 1

Of the firms reviewed, a 'current ratio' greater than 'industry' and 'S&P 500' firms indicates general health and ability to provide adequate liquidity for liabilities. The long term debt to equity (LTDE) ratio indicates a range of approaches within the firms. KBR and ManTech offer mainly resourcing manning solutions with little/no infrastructure requirements for their efforts, so a low level is expected. CACI holds almost double the industry's average, and nearly the average rate of the S&P500 which includes firms with a heavy industrial infrastructure. Their cash levels dropped from \$250M in 2010 to \$15M in 2012.

In looking at the return on investment (ROI), we see CACI has a weak ROI when compared with other firms we reviewed in PSSO and the broader industry and S&P500.¹⁵ The remaining firms we studied are making reasonable ROI numbers when compared to each other and to industry/S&P 500. Fluor's one year ROI is the highest of the firms indicating their shift to overseas construction and hydrocarbon infrastructure/support was an appropriate business focus. KBR's reduction in current ROI from historical 5 year average is understandable due to the withdrawal of forces from overseas deployment; it resulted in a drop in revenue of over 50% from 2010 to 2012.¹⁶ Even though KBR has reduced manning by approximately 24,000 employees, the impact to net profit could not sustain itself with the reduction in cash generated by operating activities.¹⁷ This reducing trend is also evident in the net profit KBR along with URS, ManTech, and Fluor generated in their last 10-Ks.¹⁸

While these trends might be a cause for concern with firms unable to sustain net profit levels, it is interesting that the one firm that isn't on a decreasing trend for net profit is CACI--the only firm struggling to show a ROI greater than one.¹⁹ CACI continues to expand the number of employees consistently (partly due to acquisitions) and expand their business line. They borrowed heavily and coupled with their large (over \$1B) goodwill, this firm may be weak potentially due to over leverage, leaving them as a candidate for take-over or consolidation.

GOVERNMENT-INDUSTRY INTERACTION



There are many reasons why the U.S. uses contractors rather than rely on organic personnel. These include: to reduce government personnel cost (burdened rates), fill gaps in force structure, provide logistics speed and access to the supply chain, boost local economies, and to provide continuity. The government makes numerous decisions on when to rely on contractors to perform the work and when to depend on internal military resources. The government-contractor relationship is symbiotic, especially as numerous active duty personnel shift to the private industry at the end of their career. The use of contractors establishes a level of risk to both government and private industry. This manifested itself during Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) as the volume and complexity of contracting actions severely stressed the ability of government to plan for, manage, and oversee contractors in theater. Other risks in the use of contractors include potential for corruption, lack of discipline, and the loss of organic capabilities. Additionally, instances of contractor criminal behavior, however rare, can negatively impact U.S. relations with the host nation.

Contingency operations experienced certain risks, but now the situation progresses to post-conflict drawdown, bringing new risks to both parties. The most important are restrictive budgets, readiness and self-sufficiency, and inherently governmental functions.

Restrictive Budgets. The size of the national debt places ever increasing constraints on U.S. flexibility to respond to worldwide situations. Admiral Mike Mullen, former Chairman, Joint Chief of Staff (JCS), stated “Our financial health is directly related to our national security...the biggest threat to our national security is our national debt...”²⁰

In 1985, the United States established the Logistics Civilian Augmentation Program (LOGCAP) contract to prepare for contingencies and to leverage existing private sector resources. It has evolved into a contract that not only preplans for contingencies but also aids in setting up and building infrastructure for forward operating bases as well as providing service contractors to support the military while deployed in support of the contingency.

As OEF/OIF expanded, the level of growth was not envisioned by the then LOGCAP-III prime contractor (KBR) who had anticipated supporting a brigade for up to six months. OEF/OIF required a larger footprint, more diverse capabilities and a longer duration. KBR reacted positively to increased demands and delivered within the existing contract structure, while earning a fee of only 1% (well below the industry standard).

Within the DoD, the fastest growing segment of defense spending is in services acquisition sector. By 2010, the federal services market was \$333B, doubled from the previous decade.²¹ Today’s budget constraints reduced military deployments cannot sustain the level of service sector spending and support seen over the last ten years in OEF/OIF. As the DoD moves from wartime to peacetime, the focus will shift towards cost control and greater efficiency. The government is focusing on protecting critical missions such as Special Operations Forces, cyber security, and C4ISR. In order to fully fund those efforts, DoD will have to find cost effective ways of accomplishing its many missions. In some areas, reduced budgets may actually encourage greater use of contractors.



Readiness and Self-Sufficiency. A Chinese proverb states, “Train [an] army for a thousand days to use it for one morning.” This idea refers to the importance of maintaining readiness and self-sufficiency. The question is how to do so, given our significant reliance on contractor support.

The military must maintain readiness and operational capability in order to respond to a critical situation immediately, whether or not a continuous demand exists. The risk of readiness without self-sufficiency should be assessed in terms of continuity of demand for the services regardless of being provided by the military or private sector. There is not, however, a guarantee that the contractor will retain the capability in the future. “Capabilities could be lost, and once lost, could be difficult, costly, and slow to replace if and when they are needed again.”²²

Inherently Governmental Function (IGF). An Inherently Governmental Function is one that is so closely related to the public interest as to mandate performance by the military or Federal Government employees. With the increase in contractor support, the Office of Federal Procurement Policy (OFPP) issued a policy letter in September 2011 to provide guidance on managing the performance of IGF. The policy letter objectives were to:

- Clarify IGF
- Explain a new category of activities “closely associated” with IGF
- Require agencies to identify “critical functions” (core to agency’s mission)
- Outline management responsibilities to strengthen accountability

Figure 1 depicts a spectrum of functions from clearly commercial activities (CA) to IGF. The “grey” or obscure area in the middle suffers from lack of clarity and political influence. The OFPP memo intended to help resolve the obscure area by categorizing functions as “closely associated” and “critical functions”; however, the discussions about the IGF and CA spectrum continues today. As budgets continue to reduce and the operational tempo recedes, the government may redefine IGF more restrictively. The government will need to partner with industry to find the right balance between internal capability and outsourcing functions. A natural tension exists between meeting owners’ objectives (raising equity, ROI) and government objectives (supporting the public interest). The government must have adequate and skilled internal resources to ensure requirements are met for the good of the government. Absent insourcing under IGF justification rationale, contractors already have protested other recent insourcing efforts stating the government did not provide a proper Business Case Analysis (or reverse A-76 study).

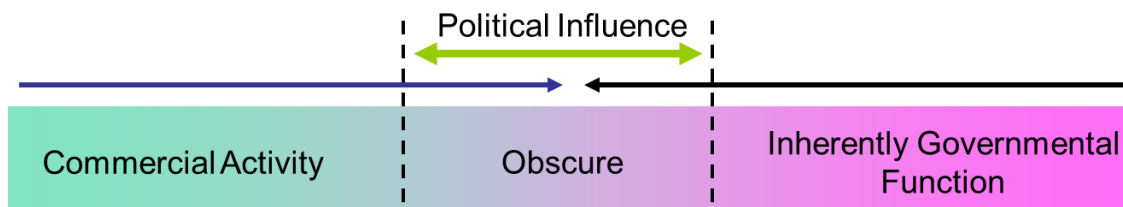


Figure 1. Relation between IGF and CA, and political influence

Policies and Practices. A number of PSSO firms provided opinions on how they believe the government perceives their industry. They commented on several areas where open



communication would be beneficial to remove misperceptions and improve the government-contractor partnership (ultimately improving contractor performance). For instance, there is a noticeable shift from the ‘best value’ method of proposal evaluation/decisions to a Lowest Price Technically Acceptable (LPTA) approach. Several contractors/associations indicate that bidding LPTA incurs risk as they must reduce costs to remain competitive. This, in turn, can cause a reduction in work quality due to a need to hire less experienced, and therefore cheaper, personnel. Additionally, many in the PSSO industry claim LPTA evaluations do not reward bidders for developing innovative solutions and key capabilities that exceed the technical requirements set forth in the Request for Proposal (RFP), as did best value bids. Without clear and concise technical discriminators on which to judge competing bids, the LPTA evaluation devolves into ‘adequate’ and ‘cheap’ (industry words) rather than high quality and greatest value. Since the essence of competition within the PSSO industry hinges on value differentiation, it is increasingly difficult, if not impossible, for companies to win work and make sufficient profit to warrant the investment of bid and proposal costs. Through various associations, the government is listening to industry’s concerns about the lack of clarity of technically acceptable discriminators, and the risks inherent in bidding to lowest price only, reducing profitable opportunities.

Additionally, members from both government and industry identified areas for improvement of requirement delivery once on contract. It was noted by the Commission on Wartime Contracting that contingency contracts have been hampered by poor planning, management and oversight. Similarly, the Army Contracting Command is conducting a study of Army contracting efforts and industry’s perceptions. There is overlap between the results and the interviews conducted during the PSSO study. The most commonly suggested improvements include: 1) addressing and ensuring a sufficiency of acquisition workforce, both contracting and program management, based on current workload and operational tempo (to avoid overworked and understaffed personnel), 2) establish training for inexperienced Contracting Officer’s Representatives (CORs), and for contracting officers who have not served during contingency operations, and 3) improve communication during requirements development so industry can offer experiences and insight into better translation of need into obtainable contract language.²³

Said Dr. Aston Carter, “I am not a believer that the defense industry is the enemy; they are our partners. We can’t arm and defend the country without private industry.”²⁴ Understanding and accepting the need for a strong partnership is the foundation for leading to improving communication such as during requirements development, so industry can offer experiences and government can learn from their insight. Open communication and partnership between government and private industry leads to an improved sense of ownership and a teaming environment.

THE FUTURE OF THE PSSO INDUSTRY

As the U.S. implements a structured post-conflict draw-down, refines its strategy toward the Asia-Pacific region, and continues to deal with foreign and domestic crises, the PSSO industry must determine where to position itself during these uncertain times. The PSSO Industry is expected to become leaner in the future and defense contracts will move towards more historical norms. The current fiscal environment provides the U.S. with the opportunity to reset and reshape OCS. Therefore, the defense department must prioritize its support services so that defense contractors may focus on more efficient use of their operating capital, which has decreased 10-



20% in recent years.²⁵ Making these decisions now, the U.S. can help the PSSO industry to better position itself to provide capabilities that are critical to future operations, which will ultimately lead to a healthier, more responsive industry and better overall value to the government.

The Obama Administration declared that U.S. priorities lie in the Asia-Pacific region; the *Defense Strategic Guidance* released in January 2012 indicates the direction of the resourcing strategy for the Department of Defense (DoD). The PSSO industry faces a mature operational support market in the Asia-Pacific region. Unlike the situation found in OIF/OEF, where supported operations were localized, bases in the Asia-Pacific region are geographically distributed throughout the Pacific, and opportunities for large scale revenues are not the same. The expected cuts in overall military personnel end strength most likely will not impact force structure in this region, because of the recent events in North Korea. However, the large OCS firms that provided support during operations in Iraq and Afghanistan must now decide if they should shift their companies' resources towards Asia in anticipation of future business, or look for other opportunities.

The LOGCAP contract utilizes civilian contractors to facilitate core logistical needs for deployed forces, reducing the life cycle costs of active duty service members with the costs of shorter-term contracts.²⁶ The base program, a subset of the larger Operational Contract Support, is tied to the National Defense Strategy (NDS) and the Quadrennial Defense Review (QDR) in its outlook.²⁷

With LOGCAP, the government seeks both maximum flexibility and maximum competition in awarding contracts.²⁸ It pursues multiple vendors and offers short-term contracts with multiple one-year options in an effort to facilitate operations, but rapidly conclude/terminate contracts when they are no longer needed or when the Government desires a change.²⁹ It offers Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts as a means of “retaining” these services in times of relative tranquility, and providing rapid logistical support for unexpected contingencies through the issuance of task orders.³⁰ When the government desires a change (or when the base contract expires), it usually requires at least two years—likely three—to finalize this new contract and produce results due to potential protests of both the initial contract award decision as well as subsequent task orders.³¹ Currently in its fourth iteration, LOGCAP IV will come up for re-bid in 2018.³²

Potential Future Markets. Although U.S. Foreign policy is refocusing towards Asia-Pacific Theater, there appears to be limited operational support work for the PSSO industry. The following countries were evaluated Japan, Korea, Guam, Philippines, Singapore, and Australia. Three areas were assessed: opportunity for installation support, the number of U.S. personnel, and possible U.S. equipment requiring support. The results showed that the Philippines have the most potential for growth, because the U.S. is currently investing heavily in the Philippines. Korea and Japan have mature markets, and the local PSSO contracts are already established. Guam has growth potential, but the costs associated with materials and labor could limit an OCS firm's profit margins, and there is uncertainty as to the full extent of U.S. plans for Guam. Finally, until Australia and Singapore accept a larger presence of U.S. forces, there will be limited opportunities for large OCS firms in those countries.



The U.S. must establish an Asia-Pacific basing strategy, which will outline the overall U.S. military presence. Following this strategy as their guide, the large PSSO companies will likely partner with smaller local and regional OCS firms in order to build relationships for future opportunities. The fact that the Asia-Pacific bases are geographically dispersed limits the economies of scale the large PSSO firms were able to leverage in Iraq and Afghanistan. Most of the contracts necessary to support operations in this region are relatively small Base Operating Support (BOS) contracts or Contractor Logistics Support (CLS) contracts that are already in place, and there will be less overall revenue compared to OEF/OIF. But each contract awarded in this region, no matter how small, should be viewed as a long term investment in that country.

Given the limited potential of the Asia-Pacific refocus, PSSO firms can expect to gravitate toward expanding segments of the U.S. and international services industry such as security services, interagency support, new growth sectors such as hospitals, business analytics and enterprise software, and privatization of installation support functions. Fortunately, PSSO firms are postured for success based on years of experience gained in supporting operations such as Stabilization Force for Bosnia and Herzegovina, Kosovo Force, Operation Desert Storm, OEF, and OIF where they provided sustainment and logistic operations along with a wide spectrum of other related service that correlate directly:

US Service Industry	# of <u>Businesses</u>	\$ Millions		Annual Growth %	
		<u>Revenue</u>	<u>Profit</u>	<u>2007-2012</u>	<u>2013-2018</u>
Security Services	40,874	28.2	2.3	-0.2	4.2
Natural Disaster & Emergency Relief Services	3,822	11.2	0.6	1.1	1.2
Hospitals in the U.S.	3,013	785.7	4	3.1	4.0
Office Staffing and Temp Agencies	12,922	93.0	2.3	-1.7	2.7
Data Processing and Hosting Services	47,744	83.8	1	2.4	3.0
Business Analytics and Enterprise Software	617	26.9	9.6	2.0	3.9

Source: IBISWorld Industry Reports,
www.IBISWorld.com

The PSSO industry can make post-conflict contributions to Interagency (IA) activities and commercial support that require the same skill sets developed through support of contingency operations. Firms can provide partner nation development support, anti-corruption and governance capacity-building, logistics support, aviation and operations maintenance, humanitarian operations, and linguist services.³³ The IA stands to become the primary customer of the PSSO industry in these countries because U.S. interests there remain vital and the IA must carry on its mission in what are still non-permissive environments. However, as the OCS firms expand into new mission sets; the definition of 'operational contractor' also needs to expand.



Since, PSSO is the industrial base that will be relied upon for the next conflict, contingency, or emergency action, they must be incorporated into all peacetime contingency planning and execution.

The IA was the military's partner throughout the conflicts of the past decade and had a hand in the evolution of contracted support to contingency operations. However, going forward the bilateral realms of diplomacy and development will take the fore. Thus the two main IA players there, Department of State (DoS) and United States Agency for International Development (USAID), must take the lead. In order to provide the taxpayer with the greatest value with fewer resources, the IA must learn the lessons of the past and continually make improvements to ensure the most efficient, effective, and economical use of contracted support.

A large and vitally important function in support of IA operations in former major military theaters of operation is security. The Department of State individually solicits and contracts security services at 168 of its 268 United States Missions worldwide under LPTA contracts. Protective operations currently run at approximately \$1.4 Billion/year for Afghanistan and Iraq alone and \$590 Million for the rest of the State's security programs. Additionally, worldwide demand for security services is expected to grow. "According to a new report from Cleveland-based research firm The Freedonia Group, global demand for private contract security services is expected to increase by more than 7 percent a year to \$244 billion in 2016. The report says that global demand is being driven by several factors: increasing urbanization, real and perceived risks of terrorism and crime, a belief that public safety measures are insufficient, and growth of a middle class with resources to pay for these security measures."³⁴ The major security contractors will therefore find sufficient business to support their segment of the PSSO industry.

Another interagency function which makes extensive use of PSSO industry is disaster response. Two primary advantages that the private sector has over the federal government are speed in mobilization and resilient local logistic support sources. The challenge that has plagued the federal government during past disaster response operations has been the imbalance of disaster response responsibilities between the federal government and the private sector as prescribed by the National Response Framework (NRF). In theory, the NRF appears to capture the essence of the solution to domestic response; however it underutilizes the most powerful component of its architecture; that of the private sector. Examples of private sector underutilization are peppered throughout the 15 Emergency Support Functions (ESF) that are used to execute domestic response and recovery operations. Allowing the private sector to execute several ESFs provides great leverage to create efficiency in disaster response operations.

Additionally, despite the global economic downturn, there are countries actually spending more on defense. Brazil, India, South Korea, and the United Arab Emirates are expected to purchase a significant quantity of military equipment in the coming years.³⁵ This equipment will likely require contract service maintenance and training, representing an opportunity for the PSSO industry to compete or partner with the original equipment manufacturer.

Outlook. OCS firms must evolve in order to remain solvent. As the drawdown in Afghanistan continues, companies involved in overseas contingency contracting will need to replace their lost revenue or contract in size. However, this will be difficult since the contingency spending has been



so large in the past decade, as LOGCAP IV paid over \$22 billion between 2003 and 2007.³⁶ One offset is for defense contractors who have traditionally focused on U.S. programs to look for contingency contracting opportunities with other countries, especially in Asia and Africa.³⁷

A long term objective for the PSSO industry may be an emphasis on diversification to avoid reliance solely on DoD for their revenue. For example, a large engineering, construction, and services company receives approximately 15% of its revenue from U.S. government contracts. Contrast this with other companies which rely on government contracts for around 70-99% of their revenue. As a result, many industry leaders believe that with both decreasing contract dollars and intensified competition, the industry will be forced to consolidate with at least one of the big defense services companies leaving the market and several of the medium sized companies acquired by the remaining larger ones.³⁸

Many of the PSSO firms interviewed stated they did not feel there would be much merger and acquisition activity between the larger firms. However, given the uncertainty of the fiscal environment, one could expect that small to medium companies to consider mergers, acquisitions, and joint ventures to further diversify their services and be in more strategic positions for stronger bidding power. Many of the mid-capital PSSO firms have core businesses outside of the PSSO industry. For example, those whose customers include non-governmental contracts also have core business lines of hydrocarbons, while others specialize in areas such as aviation maintenance. These core business lines provide these companies flexibility to withstand cash flow fluctuations and the ever-changing market conditions. It could also provide them some ability to acquire smaller companies that add value to their overall portfolio.

Lastly, the PSSO industry will need to anticipate operating under greater scrutiny. In the past decade there has been a perception of enormous amounts of contracting fraud and waste, with "at least \$31 billion and possibly as much as \$60 billion has been lost to contract waste and fraud in America's contingency operations in Iraq and Afghanistan."³⁹

Recommendations: The U.S. Government can help the PSSO industry through increased communication and guidance on enduring support services that it expects to contract out to the private sector. Working together will improve the chances for success on both sides as the PSSO industry faces hard business decisions in the new resource constrained environment.

DoD must show the cost effectiveness of utilizing OCS over military personnel, and decrease the number of support billets currently performed by the military where appropriate. Then implement a strategic communications plan that emphasizes that OCS firms are members of the Total Force and are necessary for the long term health of DoD.

The LOGCAP V should continue to use the NDS/QDR as a guide and foster an appropriate level of competition while closely aligning the longevity of the base contract to the QDR cycle. Significant changes in the National Security Strategy should be reflected in both the QDR and the creation of a new contract vehicle (when necessary) to better match industry's talent to the task.

To facilitate future operations and preserve a cohesive relationship between the military and industry—while simultaneously retaining flexibility and sound control of taxpayer's dollars— In addressing the number of major regional conflicts the nation must address, the NDS/QDR can



guide the level of competition necessary to ensure contractor(s) provide the flexibility to confront multiple, simultaneous challenges throughout the world. Thus, if the NDS and QDR identify the potential to address multiple contingencies and/or the Government desires to hedge against this likelihood, LOGCAP V should continue to foster competition through the use of multiple contractors, although there is potential for protest over the award of task orders, which could cause delays in service.

INSTITUTIONALIZING PSSO

While contractors may be resilient in responding to future needs, the government will need to ensure viable approaches for establishing the requirements and acquiring future support.

The current condition of the PSSO industry is strong and well developed after a decade plus of war. The key to the continued utility of the industry for support of future contingency operations is institutionalizing the lessons learned and best practices developed during the Iraq and Afghanistan conflicts.

This is, and should remain, a shared responsibility between the Office of the Secretary of Defense (OSD), Joint Chiefs of Staff (JCS) and the Service Chiefs. Ongoing efforts in this regard are moving forward. The Under Secretary of Defense (AT&L) has required the Director of Defense Procurement and Acquisition Policy (DPAP) to “develop and implement a DoD-wide contingency contracting-related lessons learned program and to ensure these lessons are incorporated into relevant Defense Acquisition University (DAU) instruction.”⁴⁰ The J4 is pushing to have OCS related lessons learned incorporated in all phases of the Professional Military Education (PME) system. The J4 is assisting in the development of an OCS Planning and Execution course and will designate the Army Logistics University OCS course as “Joint” and Multi-Service. The J4 also maintains a database called Joint Lessons Learned Information System (JLLIS) that captures and records OCS-related lessons learned and best practices. It remains unclear what access requirements will be put in place and the extent to which it can influence existing DoD processes or policies. The Joint Contingency Acquisition Support Office (JCASO) has as a mandate to “derive OCS best practices from after-action reports and submit recommendations on refining tactics/ techniques/procedures, deployment drills, and personal and functional training (to include curriculum reviews and recommendations).”⁴¹

The DPAP oversees the development and administration of contracting policy and is also responsible for ensuring consistency in the language in the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement (DFARS), the Service FAR supplements (Title 48, Code of Federal Regulations [CFR]), and any applicable contingency contracting acquisition instructions. The DPAP is required to work collaboratively with OSD Principal Staff Assistants, Chairman of the Joint Chiefs of Staff (CJCS) representatives, and the DoD Service Chiefs in the development of OCS related policies.

These activities are making strides to ensure lessons learned are not just archived but inform OCS policy and practices. One key to the success of this effort over time will be improvement of information sharing regarding OCS. The DPAP is responsible for “maintaining a contingency contracting internet portal that includes guidance and information on policies, tools and processes



as well as links to Geographic Combatant Commander (GCC)-directed, mission specific OCS policies, procedures and other related guidance.”⁴² Requiring both the DPAP and GCC to maintain and update this web portal should help resolve the inconsistencies between local GCC guidance and DoD policies, discussed below.

In March 2010, the USD AT&L created the OCS Functional Capabilities Integration Board (FCIB) to address a wide range of issues related to OCS employment in current and future contingency operations, providing strategic leadership for the myriad OCS stakeholders as well as analysis and implementation of commission recommendations and Congressional mandates.⁴³ That same year, DoD developed a strategic framework to unify department efforts to tackle OCS shortfalls in “organization; policy and doctrine; personnel; training and education; integrated planning; and contractor accountability and visibility.”⁴⁴ Since July 2011, “the Joint Requirements Oversight Council (JROC) approved the OCS Initial Capabilities Document (ICD) and formally tracks progress of OCS integration into all relevant supporting documents.”⁴⁵

Guidance, Policy and Operational Planning. OSD and the JS are updating OCS policies and procedures to reflect current practices and legislative mandates. Quite a few changes have been implemented since 2008. Many people have complained that existing OCS policies are confusing and inconsistent. One OSD staffer remarked, “The confusion can be attributed to inconsistencies between local Geographic Command guidance, DoD-wide policies and the Defense Federal Acquisition Regulations Supplement.”⁴⁶ This section will discuss on-going efforts to rectify policy disconnects and to improve OCS synchronization within DoD.

The Joint Staff is updating Joint Publication 4-10, *Operational Contract Support*, to include updated OSD policies and procedures. JP 4-10 provides “doctrine for planning, conducting, and assessing OCS integration and contractor management functions in support of joint operations.”⁴⁷ The JS is currently staffing the update across Military Departments and GCCs and intends to republish JP 4-10 later this year.⁴⁸

32 CFR Part 158 requires the Deputy Assistant Secretary of Defense for Program Support (DASD(PS)) to “lead the effort to resource the OCS toolset that provides improved OCS program management, planning, OCS preparation of the battlefield, systems support, and theater support contracts, contractor accountability systems, and automated contract process capabilities.”⁴⁹

In an effort to improve operational planning, due to certainty that future operations would continue to depend heavily on contract services as part of the Total Force, the Joint Staff (J4) initiated the OCS Joint Concept In June 2010.⁵⁰ The Secretary of Defense and CJCS fully supported this concept and approved inclusion of directive OCS planning guidance in the Guidance for Employment of the Force (GEF) and the Joint Strategic Capabilities Plan.⁵¹

The Joint Staff (J4) continues to work diligently in their various efforts to create processes that optimize consideration, integration, synchronization, tracking, and support of contract services capabilities in the planning process.⁵² The J4 is in the process of creating commercial “contract services” Unit Type Codes (UTC) within the formerly military-only Time-Phased Force Deployment Data (TPFDD) database resident in the Joint Operational Planning and Execution System (JOPES) to better plan for and track DoD military departments’ requirements for, and



utilization of, contract services capabilities.⁵³ The benefit here is that contract service capabilities can now be identified in operations plans and tracked in the phasing and force deployment process. Over time, the database will be able to provide data on which contract services are used the most, in what context, and for what type of contingency, enabling a more holistic view of how DoD is utilizing contract service capabilities for contingencies. Once robust enough, the database could provide insight into what capabilities are lacking or overlapping with existing military capabilities. If those military capabilities are facing reduction or extinction, the database may reveal commercial UTCs that can fill the capability gap.

These ongoing OCS process improvement initiatives, coupled with the Better Buying Power 2.0⁵⁴ initiative, will eventually enable DoD to contract services capabilities and manage their associated costs more efficiently and effectively. Once these initiatives have become institutionalized and uniformly practiced throughout DoD and the military services, the stage will be better set to focus on optimizing selection and use of specific contract services to fill potential military capability gaps imposed by sequestration and diminishing military service budgets.

Oversight and Training. The spike in contractor support has generated congressional calls for more scrutiny, improved accountability and better oversight. This section will discuss on-going efforts to improve OCS oversight and to incorporate OCS into existing acquisition curriculum and contingency contracting training.

Contract oversight remains a point of contention between the government and industry. The following are key legislative actions from 2007-2012 that serve as drivers for OCS oversight change focusing on force structure addition, planning, training, and education across the government workforce.

First, the DoD is in version 2.0 of the OCS Curriculum Development Guide (CDG) which is focused on training non-acquisition personnel attending training under Joint Professional Military Education umbrella. Even as OCS has remained a CJCS Special Area of Emphasis (SAE) since 2009, the Joint Staff/J4 uncovered continuing evidence through JPME site visits that the overarching program still lacked uniformity and depth. In the CDG version 2.0, the Joint Staff/J4 has packaged authoritative resources for instructors and students to facilitate course development and study.

Second, force support structure initiatives such as the JCASO, the Army's Contracting Command (ACC) and continued acquisition training through the DAU all generate momentum towards correcting deficiencies identified earlier in the legislative drivers. Both the JCASO and ACC were established in 2008 in response to congressional mandates in the 2007 National Defense Authorization Act (NDAA). "The mission of the JCASO is to provide OCS enabling capability across DoD and the Whole of Government (WOG) during peacetime and contingency operations."⁵⁵ This enabling capability greatly enhances connectivity to the Combatant and Functional commanders as well as other governmental leaders and staff while conducting operational and strategic OCS planning. The Army's Contracting Command (ACC) with sub-elements such as the Expeditionary Contracting Command provides support from offices in 117 locations around the world. With 5,800 soldiers and civilians, ACC is a formidable asset in contract management. Its expeditionary arm provides comprehensive support outside the United States



covering any contingency contracting requirements through its brigades, battalions, and contracting support teams.⁵⁶

Third, the Office of Management and Budget (OMB) issued guidance to chief acquisition officers and senior procurement executives regarding an initiative aimed at all federal civilians (excluding DoD), revising the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR). Mr. Daniel Gordon, OMB administrator, states that "the new program and the additional language in the FAR are designed to strengthen the acquisition workforce to improve program outcomes, consistent with the President's March 2009 Memorandum on Government Contracting." This revision set to "establish a risk-based, three-tiered certification program for civilian agencies that better reflects the importance of the Contracting Officer's Representative."⁵⁷ The ability to sustain this OCS momentum across the services is critical. Sequestration coupled with significant resource constraints places this forward momentum at risk. The levels of contract support will unquestionably reduce in the near future. Contract oversight in Iraq continues, although greatly reduced. It is yet to be determined how the long-term OCS landscape will take shape in Iraq or Afghanistan.

Steps are in motion to create enduring OCS linkages with Acquisition Training. DODD 3020.49, dated March 24, 2009, mandates that the President of DAU develop and execute training of the acquisition workforce to prepare and manage OCS. Hardwiring lessons learned into acquisition programs of instruction (POI) not only creates an enduring aspect to understanding OCS best practices but also creates enduring linkages into the acquisition process.⁵⁸

DoD and the JS have made significant improvements integrating OCS into joint and GCC-directed exercises. The J4, in coordination with the JS J7, have included OCS learning objectives in all joint training and CJCS exercises. They also plan to add an appendix on OCS Tactics, Techniques and Procedures (TTPs) to JP 4-10. The JS has tested these TTPs in the PANAMAX-12 and UFG-12 field exercises, and plan to incorporate them in the upcoming USPACOM JTSCC Rehearsal of Concept.⁵⁹

Interagency or Whole of Government Improvements. Improving the transition of OCS from DoD to non-DoD agencies will be an important consideration for future contingency operations. USFOR-A recently established an OCS drawdown cell (OCSDC) that not only manages the reduction of contract requirements in theater but also synchronizes OCS actions across all primary and special staffs to include synchronization between DoD and its interagency partners. To help with this synchronization effort, USFOR-A developed an OCS Common Operating Picture (COP) tool that gives DoD and the interagency the same visibility into contractor usage and other critical data. OSD and the JS are looking to incorporate a similar COP tool that can be standardized and implemented at every Geographic Combatant Command (GCC)⁶⁰ that would be available for both peacetime and contingency operations and is planning to establish a working group to define long-term OCS data requirements for all Combatant Commands.

Opportunities: Through our research and industry visits, the team identified additional opportunities to improve interagency cooperation and OCS integration, planning, and management. For example, OSD(ATL) is exploring the contingency program management (CPM) concept that proposes to stand up a dedicated organization at the GCC that will plan and



synchronize security cooperation, humanitarian assistance/ disaster response (HA/DR) or contingency operations with non-DoD organizations. Although OSD(ATL) would like CPM to be a dedicated organization at every GCC, there is little chance of adding this capability out of hide during a period of downsizing. Therefore, OSD(ATL) should leverage existing organizations such as JCASO to perform the intended functions and tasks of the CPM concept. The benefit and intent of this concept should not be lost simply because the manpower billets are not made permanent.

Recommendations: Through our research and industry visits, the team identified several recommendations to further improve OCS operational planning. For example, DoD may want to consider integrating PSSO contract services into their operational planning process both at the combatant command and service-component level.

DoD's processes to improve contingency contract-services planning, integration, and synchronization are still in their infancy, but are maturing. Once the Joint Staff (J4) completes its establishment of commercial services UTCs in JOPES, the first recommendation is for DoD to collect data on which contract services are used the most for each different type of contingency and where they may overlap military capability.

The second recommendation is to combine this data with a consolidated Integrated Priority List (IPL) of critical contract services capability requirements compiled from all military services and combatant commands. Historically, The Joint Capabilities Integration and Development System (JCIDS) has been used to procure future military platforms and systems, not services, but it does leverage combatant commanders' IPLs to help prioritize platform capability requirements. Leveraging this idea, a "contract services IPL" might enable a similar process for prioritizing and optimizing procurement of contract services capabilities to fill gaps in core military capability. Because of the sheer volume of available contract services, limit the IPL [by omitting the typical "beds, beans, bullets, construction, etc." services already resident in the standing LOGCAP, AFCAP, and Navy Global Contingency Construction (GCCC) and Services (GCSC) Contracts]⁶¹ to contract services that have potential military applications that may reduce the need to procure additional military platforms and personnel.

The third recommendation is to vet the consolidated contract services IPL through the FCIB for validation, then provide it to the JROC as background in the JCIDS platform requirements validation process. This would provide the JROC a more informed, holistic picture of where contract services may have synergies that could augment or partially replace elements of U.S. military core capabilities (like aerial refueling for home-station training missions) to potentially reduce platform procurement quantities, yet retain sufficient capability for missions abroad.

The eventual usage data collected from J4's commercial UTCs in JOPES combined with a consolidated "contract services IPL" will provide DoD a holistic capabilities-versus-needs picture they can take to industry. The fourth recommendation is for OSD to bring this data to the table and engage in strategic dialogue with PSSO industry partners, perhaps via the FCIB or the roundtable talks recently initiated by USD AT&L, to explore opportunities for industry's current and emerging services capabilities to fill non-inherently governmental military capability gaps.



The final recommendation is for DoD to include in its dialogue with industry lessons learned from how partner-nation's militaries have compensated for losses in military capabilities (like undergraduate pilot training,⁶² explosive ordnance disposal,⁶³ aerial refueling⁶⁴, and search and rescue,⁶⁵ etc.) with PSSO contract services alternatives. This could open the minds of all participants to fresh ideas and the possibility of a new paradigm. It is important to note that the U.S. Navy and Marine Corps are already contracting aerial refueling services (a core military capability) from Omega Air Refueling Services, Inc.; so on a small scale, the idea has already taken root.⁶⁶ It begs the question whether such contract services might be expanded to cover other military Services' peacetime and training mission needs, thus either freeing up more military platforms for contingency operations or reducing the requirement for so many expensive platforms, crews, and maintenance personnel (i.e., potential cost savings).⁶⁷ In this time of enduring fiscal crisis, non-traditional approaches must be put on the table if DoD is going to find the best options for mitigating the threat of reduced military capability due to declining military budgets.

The United States Government has invested considerable resources toward understanding and institutionalizing private sector contract actions. Momentum continues to increase within the DoD and across the Whole of Government as illustrated above. Aggressive responses to legislative drivers over the past few years have yielded comprehensive improvements across the planning, management, training, force structure, and lessons-learned spectrum. The trends are encouraging for both the government and industry; however, both acknowledge there is more to be done. The outlook is largely optimistic as increased communication and cooperation throughout the spectrum will pay dividends in continuing the institutionalization of private sector support to operations.

CONCLUSION

Many government agencies depend on private industry to provide support services, especially in times such as war when deployed personnel are challenged to maintain a high operational tempo and remain vigilant over vast areas of responsibility. Throughout the wars of the past decade, the government contracted numerous services, which employed a staggering array of talent provided by a very responsive support industry. The U.S. exit from Iraq and impending draw down from Afghanistan are forcing both the government and private industry to reexamine, re-plan and reshape future requirements, with a greater challenge of unknown fiscal posture, and unstable funding in the near term.

As the U.S. implements a structured post-conflict draw-down, refines its strategy toward the Asia-Pacific region, and continues to deal with foreign and domestic crises, the PSSO industry must determine where to position itself during these uncertain times. Both the PSSO industry and the government agencies are expected to become leaner. Neither side fully understands the way ahead while the nation recovers from war... but what is clear is that they need each other.

During the course of this industry study, the individual team members began with varying impressions of the definition of the Private Sector Support to Industry. Over time, even though team members' apertures widened and each gained more knowledge, the team as a whole never came to an agreed conclusion on the full parameters of the industry. The team agrees on several common elements, however, such as; the PSSO industry is complex, misunderstood, and cannot



be measured in the same terms as a weapon system. The team also agrees that the firms themselves are fluid, flexible, and responsive.

The industry's health is vital not only to the functioning of the military services, both in peacetime and in war, but also to the whole of government. Overall, the PSSO industry is mature and financially healthy despite fiscal uncertainty. It will remain responsive as long as there are contracts upon which to bid and money to be made. It is incumbent upon the government to be a good partner in that effort.



ANNEX A - CRIMINAL ACCOUNTABILITY FOR PSSOs

Mr. Matthew Quinn, Department of Homeland Security

Private sector support to U.S. government (USG) operations is an accepted and efficient element in the business of national security. As the marriage between private industry and the government evolves, significant challenges are developing. Behavioral and use of force indiscretions by contractors have a chilling impact on diplomatic relationships and global perception towards the United States. A decade of increased contractor deployments and overall mission tempo has further exasperated the situation. Many are criticizing the level of oversight, immature policy, and lack of prosecution following criminal acts committed by contractors. The economic and political benefits of utilizing contractors, however, outweigh the question of suitability. The approaching post-conflict environment provides an opportunity for the USG to analyze and implement new policy and legislation directed towards contractor conduct, oversight, and prosecutorial guidelines.

Several initiatives emerged in recent history in an attempt to better manage contractor activities and prevent and/or respond to inappropriate and illegal personnel conduct. The Military Extraterritorial Jurisdiction Act (MEJA); portions of multiple Defense Authorization Acts and the Federal Acquisition Regulation; the Montreux Document; and, the International Code of Conduct, all strengthened awareness and tightened loopholes in regulation and legislation. Yet, none have solidified the judicial means to ensure successful criminal prosecution - the only real deterrent. This paper examines the status of U.S. policy directed towards contractor oversight related to felony violations of U.S. law. Does the Private Sector Support to Operations (PSSO) industry have impunity to commit violent crimes when operating overseas, often where no recognized government or rule of law exists? Has the USG responded effectively to address previous shortcomings in U.S. Code and administrative regulation? Or, does the PSSO industry and the personnel they hire have a proverbial “get out of jail free card?”

The USG continues to broaden its PSSO industry base to include aspects of contingency operations that past generations considered inherently governmental. Over the last decade hundreds of thousands of U.S. citizens and foreign nationals operated abroad as employees of U.S. hired contractors fulfilling the requirements of our nation’s military and diplomatic missions. PSSO personnel have been implicated in everything from theft and illegal business practices - to rape and murder. Due to the highly publicized 2007 shooting deaths of seventeen Iraqi civilians by members of a Blackwater International convoy security team, Private Security Contractors (PSC’s) are receiving the brunt of the attention. It is clear, however, that whether the PSSO industry provides security or food service, the issues of contractor conduct and prosecutorial venue remain an unresolved matter in the United States - despite more than a decade of attention.



Guiding Principles: The Montreux Document and the International Code of Conduct

Current international and domestic efforts to address the issue of contractor criminal violations focus on policy recommendations and best practices. Much of the attention is centered on PSC's through the Montreux Document and the International Code of Conduct (ICOC). While both of these documents are related specifically to PSC's, the guiding principles the documents are built upon provide a valid foundation for the whole of the PSSO industry.

The Montreux Document on Private Military and Security Companies. The Montreux Document is focused on preventing human rights abuses and establishing criteria through international law to ensure PSC personnel are appropriately trained and supervised. It is a non-binding voluntary agreement between participating nations that outlines “international legal obligations and good practices for States” regarding the use of PSC's during armed military conflict.⁶⁸ Its development was led by the Swiss Federal Department of Foreign Affairs and supported by seventeen other countries to include the United States.⁶⁹ The Department of Defense (DoD) position towards the document and their own policy for PSC's is clear: “DoD believes that its policy, directives, instructions, and the requirements for conformance with the ANSI (American National Standards Institute) standard for PSC's are consistent with and implement all of the provisions of the Montreux Document.”⁷⁰

Conversely, Human Rights First, an independent advocacy organization, is encouraging the USG to “implement the Montreux Document's ‘good practices’ in U.S. law and policy.”⁷¹ They are supported by an array of other humanitarian organizations and activists seeking to prevent future human rights abuses by PSC's.⁷² Although the Montreux Document is the first of its kind to delineate international legal obligations as they relate to PSC's - it has no bearing in a U.S. court and will do little to provide a deterrent to U.S. based organizations. While the U.S. only recognizes the framework in theory, it may provide legal avenues for other nations who recognize and participate in international criminal proceedings.

The International Code of Conduct. The ICOC is a follow-on effort in support of the Montreux Document. It “represents the PSC industry's commitment to abide by the legal obligations of the Montreux Document and implement the recommended good practices appropriate to private security service providers consistent with broadly accepted human rights principles.”⁷³ On November 9, 2010, fifty-eight international organizations, States, and PSC's participated in an official signing ceremony signaling their commitment to abide by the code.⁷⁴

Like the Montreux Document, adherence to ICOC principles is voluntary and the code carries no legal authority. Speaking at the ICOC signing ceremony, State Department Legal Advisor Harold Hongju Koh noted that while the code “may help complement State regulation . . . (it) cannot be a substitute for effective accountability under the law.”⁷⁵ The DoD is taking a similar stance through publicizing its support as “limited to the nature of this voluntary, industry



led initiative.”⁷⁶ The DoD’s Office for Program Support official public website highlights two critical points that weaken any effort to portray the ICOC as anything other than a feel-good initiative:

- The ICOC does not bind governments and incurs no obligations on the DoD⁷⁷
- DoD will not require signature to the ICOC or certification and oversight under the ICOC as a condition of any DoD contracts⁷⁸

The Flaw in Voluntary Best Practices: The Montreux Document and the ICOC have heightened awareness surrounding contractor conduct and oversight. For the U.S., neither has resulted in enhanced consequences for contractors beyond previously existing policy. The U.S. and the majority of the international community recognize the Montreux Document and ICOC as official “best practices” for PSC’s. There are two issues surrounding the success of each. First, neither document has any bearing on U.S. law. Second, the U.S. does not recognize any attempt to prosecute a U.S. citizen in an International Criminal Court or tribunal.⁷⁹ For either of these initiatives to have lasting impact on the PSSO industry, the U.S. would need to subject their citizenry to international law - an unlikely occurrence.

Current U.S. Legal Provisions

The ability for the U.S. to take legal action against the PSSO industry for criminal violations is a fuzzy issue made more obscure by the Montreux Document and the ICOC. Countries with established functioning governments and internationally recognized legal systems provide the foundation for prosecution of criminal violations that occur in that country. For the last decade, however, the U.S. area of operation has been Iraq and Afghanistan - leaving the USG as the primary venue to uphold the rule of law. Military personnel are subject to the Uniform Code of Military Justice (UCMJ). The UCMJ delineates rules, regulations, and consequences for a broad range of behavioral and criminal violations. Contractors, on the other hand, do not have clear lines of governance when supporting USG contingency operations abroad - where no valid foreign judicial system exists. Multiple legislative events have occurred in an effort to hold the PSSO industry accountable.

Military Extraterritorial Jurisdiction Act. The Military Extraterritorial Jurisdiction Act (MEJA) was enacted in 2000. It was the first step in clarifying the PSSO industry’s legal status operating outside the U.S.⁸⁰ The act was established to provide a legal mechanism to prosecute individuals for “offenses committed by certain members of the Armed Forces and by persons *employed by or accompanying the Armed Forces* outside the United States.”⁸¹ The law specifies that no prosecution may occur if a “foreign government . . . recognized by the United States, has prosecuted or is prosecuting . . .” the same defendant.⁸²



As written, the first draft of this law only accounted for PSSO personnel working directly for the DoD. Under this law, PSSO personnel employed by non-DoD agencies and departments were exempt from MEJA and no other enforcement mechanism existed. Failed attempts to prosecute contractors involved in the Abu Ghraib incident highlighted this flaw. Eleven military personnel were convicted and sentenced by court-martial. Yet, several civilian Central Intelligence Agency contractors, employed by CACI International and L-3, were implicated in the crimes at Abu Ghraib, but not prosecuted. A lawsuit against the contractors, Adel L. Nakhla, Daniel Johnson, and Timothy L. Dugan filed in 2008 was denied by the court in 2009 ruling because “. . . they did not satisfy the requirements for jurisdiction under the Supreme Court.”⁸³

In the years since, multiple lawsuits have been filed against CACI International et al, all of which were dismissed or denied - until recently. On November 1, 2012, the U.S. District Court for the Eastern District of Virginia reinstated all the tort claims in *Al Shimari v. CACI et al.*⁸⁴ The Center for Constitutional Rights reports this ruling may represent “the first (public) trial accounting for the atrocities committed at Abu Ghraib.”⁸⁵ The case is expected to go to trial in the summer of 2013.

MEJA as originally drafted and passed into law, provides a suitable avenue to hold DoD contractors accountable. It was the first step in meaningful legislation to address the increased prevalence of contractors in the battle space. MEJA’s downfall is the lack of specificity to include the remaining thousands of contractors employed by non-DoD USG entities. It is likely the defense attorneys for CACI International will highlight this fact should *Al Shimari v. CACI et al* ultimately go to trial.

2005 Defense Authorization Act (108th Congress). In 2004, while the investigation surrounding the *military* personnel involved in the Abu Ghraib case was underway, Congress moved to close the loophole for non-DoD contractors by including an amendment to MEJA in the 2005 Defense Authorization Act. The amendment clarified section 3267(1)(A) of Title 18 to include “. . . any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas.”⁸⁶ This amendment provides the USG with the legal avenue to pursue criminal charges against contractors - regardless of which USG entity hired them.

However, a critical flaw in the legislation remains. As noted by Paula McCarron in her article *The Long Arm of the Law*, “Congress neglected to define the phrase [*to the extent such employment relates to missions supporting the DoD*].”⁸⁷ This recognition came to light in 2007 following the Nisour Square shooting in Iraq. The incident involved the shooting deaths of seventeen Iraqi civilians by employees of Blackwater International; a U.S. State Department contracted PSC.



Following the shooting, the Department of Justice (DOJ) filed charges against the individuals responsible under MEJA and successfully secured federal criminal indictments. Defense attorneys for the accused claimed the DOJ was using MEJA beyond its intended scope. Attorneys cited the fact that the Blackwater contractors were “working under a U.S. State Department contract . . . and providing diplomatic - *not* - military services” (Emphasis added).⁸⁸ Ultimately, Judge Ricardo Urbina who cited mishandling of the case by government investigators dismissed the case on December 31, 2009.⁸⁹ Had the case continued to trial, it is likely defense attorneys would have had a valid defense provided they could prove the scope of work did not constitute a mission “supporting the DoD.”⁹⁰

2007 Defense Authorization Act (109th Congress). An additional loophole closed with the filing of the 2007 Defense Authorization Act. Spearheaded by Senator Lindsey Graham, the bill “extended military jurisdiction over those serving or accompanying an armed force in the field.”⁹¹ The critical amendment was the striking of the word “war” and insertion of “declared war or a contingency operation.”⁹² Up to this point, contracted personnel had a viable defense regarding criminal prosecution, considering the United States’ last formal declaration of war was against Romania on June 5, 1942.⁹³

MEJA Expansion and Enforcement Act of 2007 (110th Congress). In 2007, Congress moved to further strengthen legislation when the House of Representatives passed H.R. 2740 (110th Congress), the MEJA Expansion and Enforcement Act.⁹⁴ The bill, which died in the Senate, would have made MEJA applicable to employees of any contractor for “any department or agency of the United States, where the work under such contract is carried out in an area, or in close proximity to an area . . . where the Armed Forces is conducting a contingency operation.”⁹⁵ Section 3 of the failed legislation additionally called for the “establishment of (a) Theater Investigative Unit,” that would be staffed by, and operate under, the Director of the Federal Bureau of Investigation.⁹⁶

Civilian Extraterritorial Jurisdiction Act of 2011 (112th Congress). In 2011, Congressional sponsors Representative David Price (D-NC) and Senator Patrick Leahy (D-VT) introduced H.R. 2136 and S. 1145, the Civilian Extraterritorial Jurisdiction Act (CEJA). Similar to the failed H.R. 2740, this bill was designed as all-encompassing legislation meant to reach beyond the limited scope of MEJA and its DoD ties.⁹⁷ Under the bill, all contractors and civilian employees working overseas on any “program, project, or activity for any department or agency of the United States,” who commit a felony, would be subject to U.S. criminal code.⁹⁸ Like prior attempts to expand the reach of the DOJ, this bill was introduced - but not enacted.

Where do we stand today?



The business of national security is evolving beyond the USG and morphing towards a whole-of-nation venture. The PSSO industry participates in critical mission requirements and provides an economic - and often political - benefit to the United States. Much has been accomplished to clarify just where the PSSO industry stands relative to U.S. law when operating overseas on behalf of the USG - but more work is ahead. As the USG examines its use of the PSSO industry, it should look beyond fiscal accountability and efficiencies and determine what level of criminal liability the PSSO industry should be exposed to. It is clear the “best practices” effort only serves to heighten awareness and add unenforceable standards. Even the Federal Acquisition Regulations only includes provisions that “Contractor(s) *should* have a written code of business ethics and conduct” and “Contractors *should* have an employee business compliance training program” (Emphasis added).⁹⁹ Meaningful change will come only with legislation and criminal consequences.

Laura Dickinson, author of *Outsourcing War and Peace*, summed up the underlying issue surrounding PSSO accountability following her book release in 2011:

To begin with, there are gaps in the Military Extraterritorial Jurisdiction Act (MEJA), the primary law that gives U.S. courts the power to try contractors when they are accused of committing serious abuses. That statute does not clearly govern contractors who work for agencies other than the Defense Department, such as the State Department contractors involved in the Nisour Square incident. It is vital that Congress close this gap, and efforts are underway to do so in the Civilian Extraterritorial Jurisdiction Act (CEJA) . . .¹⁰⁰

Shortly after Dickinson’s recognition of the potential benefits the CEJA would bring, the legislation stalled in Committee.¹⁰¹ It is unclear why the two most recent bills failed to gain traction. While members of the PSSO industry have publicly announced their support for the ICOC and the Montreux Document, their position regarding actual legislation with real repercussions remains guarded. Some PSSO firms stated they do not support additional legislation and cite their internal code of conduct as a sufficient means for addressing conduct issues.¹⁰² This admission causes one to question if the industry fears that additional legislation would be a detriment to their business from a hiring and corporate accountability perspective.

So, does the PSSO industry have impunity to commit violent crimes when operating overseas? The answer is - it depends. It depends on who hired the contractor and the scope of the mission. U.S. law lacks the clarity to group the PSSO industry together under specific legislation. To further muddy the waters, there have been no public attempts to clarify how U.S. law will respond to foreign nationals employed by the PSSO industry working on behalf of the USG.



What is clear is the USG intends to continue their reliance on the PSSO industry and the public expects individuals who represent our nation be held accountable for wrongdoing. Without legislation that clarifies how the USG is authorized to respond, it is likely accountability will remain a murky issue.

**ANNEX B - Domestic Response: How Private Sector Support to Operation Firms
Can Be Employed to Improve U.S. Government Domestic Response Operations**



Mr. Lewis Ratchford, General Services Administration

In 1996, Brown & Root was awarded the contract to support U.S. and North Atlantic Treaty Organization (NATO) troops as part of the Stabilization Force (SFOR) operations in the Balkan region. This contract was extended to include (Kosovo Forces) KFOR operations beginning in 1999 and in my opinion, marked the beginning of US employment of the Private Sector Support to Operations (PSSO) industry as a mission critical partner during OCONUS contingency operations. The US further shaped this concept during Operation Desert Storm where 76 U.S. contractors deployed with 969 personnel to provide maintenance, technical assistance, and equipment support. Contractor personnel deployed almost at the same time as the first U.S. troops and provided support mainly at echelons above corps. Some contractor field service representatives and contact teams were used in the corps and division area, and a few went into Iraq and Kuwait with combat elements¹⁰³. This new methodology of providing life sustainment and logistics support in contingency operations was again seen during Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) where various services contract vehicles were used to provide support to U.S. combat operations and initiatives. With major military operations in Iraq and Afghanistan drawing down, many PSSO firms will have to identify new opportunities to create revenue or reduce organizational/overhead cost in order to conform to this new environment. In this paper I will discuss how PSSO organizations can establish viable business domestically by supporting the nationwide implementation of Presidential Policy Directive (PPD) 8 through efficiencies gained by re balancing Emergency Support Function (ESF) responsibilities between the federal government and private sector. To prove this opinion, I will dissect portions of the National Response Framework (NRF) and exploit the Essential Support Functions (ESF) that, through my experience as a member of the National Response Team (NRT), has time and time again proven to be more efficient when executed by the private sector.

Today, Private Sector Support to Operations (PSSO) firms are postured for success based on years of experienced gained in supporting operations such as Stabilization Force (SFOR) [Bosnia and Herzegovina](#), Kosovo Forces (KFOR), Operation Desert Storm (ODS), Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF) where they provided sustainment and logistic operations to US Forces. Over time, these experienced matured and PSSO firms increased their ability to provide mission critical services in conditions challenged by their austerity, fragile infrastructure, and a kinetic threat. Over the years of support, the industry advanced how contingency support services are provided capitalizing on lessons learned to create efficiencies and perfect the basic premise of operations...save life and property. The experience gained during OEF/OIF has created resilient capabilities for companies such as KBR, Fluor, BAE, and DynCorp to employ in support of domestic response operations. This experience includes the ability to establish supply lines in environments that lack viable access routes, telecommunications, and other critical infrastructure that is essential in establishing a baseline to conduct extended operations. An example of how PSSO firms increased their proficiency through experience is the establishment and operation of the Northern Distribution Network (NDN). The NDN is a bi-directional system air, land and sea supply routes that support the war in Afghanistan from the north to support the increased demand for both military and non-military supplies through avenues other than Pakistan. The Northern Distribution Network (NDN), a series of commercially-based logistical arrangements connecting Baltic and Caspian ports with Afghanistan via Russia,



Central Asia, and the Caucasus.¹⁰⁴ The environment in which the land leg of the NDN was established resembles many of the challenges that exist after major domestic disaster such as nonexistent/obstructed roadway infrastructure, lack of adequate communication architecture, and other operational hazards. Just as the architects of the NDN were challenged in establishing the network, the federal government has been challenged in providing domestic disaster support operations. I believe that just as the private sector was key in developing the NDN, they will also be able to assist domestic response operations through the experienced gained during OCONUS Contingency Operations in infrastructure development in austere environments.

DOMESTIC RESPONSE AND RECOVERY OPERATIONS

“Presidential Policy Directive 8 is aimed at strengthening the security and resilience of the United States through systematic preparation for the threats that pose the greatest risk to the security of the Nation, including acts of terrorism, cyber-attacks, pandemics, and catastrophic natural disasters. Our national preparedness is the shared responsibility of all levels of government, the private and nonprofit sectors, and individual citizens. Everyone can contribute to safeguarding the Nation from harm. As such, while this directive is intended to galvanize action by the Federal Government, it is also aimed at facilitating an integrated, all-of-Nation, capabilities-based approach to preparedness.”¹⁰⁵ The September 11 attacks triggered federal policy changes designed to influence emergency management in the United States, even though these attacks did not suggest a need for a wholesale restructuring of federal policy in emergency management. Instead, for several reasons, federal policy’s emphasis on terrorism and emergency management significantly degraded the nation’s ability to address natural disasters. The federal government sought to create a top-down, command and control model of emergency management that never fully accounted for, positively or normatively, the way local emergency management works in practice. While the context in which these changes have occurred is unique to the U.S. federal system, there are interesting implications for emergency management in nonfederal systems.¹⁰⁶ This theory regarding disaster response and recovery operations has been illustrated time and time again beginning with the federal government’s role in Hurricanes Katrina, Rita, Irene, and Super Storm Sandy just to name a few. The challenge that has plagued the federal government during past disaster response operations has been the imbalance of disaster response responsibilities between the federal government and the private sector as prescribed by the National Response Framework (NRF).

The National Response Framework is a guide to how the Nation conducts all-hazards response. It is built upon scalable, flexible, and adaptable coordinating structures to align key roles and responsibilities across the Nation, linking all levels of government, non-governmental organizations, and the private sector. It is intended to capture specific authorities and best practices for managing incidents that ranges from the serious but purely local, to large-scale terrorist attacks or catastrophic natural disasters.¹⁰⁷ It was designed to be scalable, flexible, always in effect, and clearly articulate response body responsibilities. In theory, the NRF appears to capture the essence of the solution to domestic response; however I believe that it underutilizes perhaps the most powerful component of its architecture...the private sector. The two primary advantages that the private sector has over the federal government are speed in mobilization and resilient local logistic support sources. Examples of private sector underutilization are peppered throughout the 15 Emergency Support Functions (ESF) that are used to execute domestic response and recovery



operations. Based on my experience as a National Response Team (NRT) member, these examples at their core revolve on how quickly the private sector can be mobilized and execute support operations through their existing networks. All disasters are local and as a NRT team member, I have witnessed the federal government compete with the private sector to acquire resources to respond to major disasters, of which the private sector was able to beat the federal government on the draw. This is because the private sector exists locally to support the affected community and will continue to support the community long after the federal response operations have concluded. Instead of competing with the private sector, the federal government must increase partnership opportunities that will increase the efficiency of resources used to respond to disasters. By adopting this principal, I believe that the federal government will not only increase its ability to deliver effective and just in time support to disasters, but also improve its image by providing relevant support to the American people. The vehicle used to support the response effort executed by the private sector and managed by the federal government are the Essential Support Functions of the NRF.

Emergency Support Function #1 (Transportation), provides structure for management of transportation systems and infrastructure during domestic threats or in response to incidents. The federal government has struggled to be successful in this area of response as often transportation resources are adequate or not available to support the disaster requirements.. This was seen during the Mid-Atlantic Derecho response operations where many federal government line haul assets were not capable of being employed to transport supplies to the effective areas (as reported by FEMA's National Response Coordination Center (NRCC). These assets were non mission capable because of their low utilization during non-disaster operations and the lack of a viable mission requirement outside of disaster response. This fact was the primary driver that caused the US General Services Administration (GSA) to reduce its number of "disaster response" rolling stock and establish its Tender contract vehicle for transportation support. GSA's Standard Tender of Service (STOS) serves as the base document for the transportation of Freight-All-Kinds (FAK) shipments by those federal civilian agencies that participate in GSA's Freight Management Program.¹⁰⁸ This contract vehicle was used to fill the gap created by a shortage of federal transportation assets with mission ready private sector assets to deliver supplies to the affected area. The reason why the private sector's capability is more reliable during disasters is because they exercise their assets every day and not just during disasters. The STOS contract is a perfect example of how the federal government can partner with the private sector to execute response operations (private sector) with federal oversight (US Government).

Emergency Support Function #2 (Communications) is another ESF that is better provided by the private sector. About 85 percent of the nation's critical infrastructure is owned by the private sector.¹⁰⁹ If the private sector owns the majority of communication infrastructure, why is the federal government trying to manage it during a crisis? It is safe to assume that is the private sector owns the assets; they are most familiar with their operation, and better prepared to respond to infrastructure challenges during disasters. The environment created during a major disaster is very similar to the degraded infrastructure that existed during most of OEF/OIF. Private sector firms have the organic resources and expertise to restore and provide a level of assurance of communication infrastructure during disasters that surpass the federal government's capacity. This is evident through contract vehicle that the USG employees on a daily basis to support steady state communication operations by contract vehicles such as the Networx contract. Networx offers



comprehensive, best value telecommunications that provide for new technologies, industry partners, and ways to achieve a more efficient and effective government. Networkx allows agencies to focus their resources on building seamless, secure operating environments while ensuring access to the best technology industry has to offer.¹¹⁰ This is yet again an example of harmony between the federal government and industry that can be used to increase disaster response operation efficiency through industry instead of the government attempting to shoulder a load that it normally does not shoulder.

Emergency Support Function # 3 (Public Works) is perhaps the best example of operations where the federal government should turn over execution responsibility to the private sector. Within ESF 3, the US Army Corps of Engineers have the responsibility to provide a 54 generator solution package to support response and recovery operations. Historically, the Corps has struggled with providing a complete package of generators (54) and of those provided, some have been non mission capable. The challenge associated with this requirement is that the generator solution is only mobilized during an exercise or emergency operation. In order to gain efficiency and ensure that the generators are not only available, but also mission capable, the federal government should contract this requirement out or establish a Blanket Purchase Agreement (BPA) in order to support this requirement. I experienced this challenge as a member of the NRT during Hurricane Irene. The Federal Emergency Management Agency's headquarters lacked generator support and once the requirement was identified, all available generators in the area were depleted. Neither the Corps of Engineers nor GSA had the capacity to acquire generator support as the storm was less than 24 hours away. A contractor replied to a proposal posted by GSA and was able to provide not only generator support to FEMA headquarters, but also was able to round out the 54 generator pack requirement, proving efficiencies of the private sector to support operations.

Emergency Support Function # 6 (Mass Care, Emergency Assistance, Housing, and Human Services) is another example of a service that is better provided by the private sector instead of the federal government. Emergency Support Function 6 the delivery of Federal mass care, emergency assistance, housing, and human services when local, tribal, and State response and recovery needs exceed their capabilities. In short, this ESF mirrors requirements associated with those identified for base camp operations through LOGCAP. Fluor, KBR, and DynCorp International have gained experience in executing these services during their stint in support of OEF/OIF. This function requires major mobilization of effort and has an extremely long logistics tail that supports the operation in equal time. Because the federal government does not provide this service every day, it is very expensive to establish a base to execute this operation. The private sector not only has the capacity to support this requirement, but also usually has a logistics mechanism in place to support continued operations. This is an important fact because all disasters are local, the private sector is a part of the local community, and is best equipped to resolve ESF 6 related challenges because of their proximity and established local connections. The federal government should establish a contract similar to the provisions associated with LOGCAP, provide a retainer fee to ensure readiness, and allow private sector companies demonstrate what they have learned in supporting the war effort right here at home.

Emergency Support Function # 14 (Long Term Community Recovery) provides a mechanism for coordinating Federal support to State, tribal, regional, and local governments, non-



governmental organizations (NGOs), and the private sector to enable community recovery from the long-term consequences of extraordinary disasters. Once again, the private sector has been providing this service to the Department of Defense abroad for over 20 years. The federal government is challenged within this ESF by the duration required to fully recover from a major disaster and the shift in priority to either respond to a new requirement or steady state governance. For the same reasons identified in the previous paragraph on ESF #6, this function is better served by the private sector because of the organic capacity that they have to sustain prolonged operations. A good example of this fact was the local response effort associated with the 2008 floods in Cedar Rapids, IA. This event received federal support, but it was the initial support from local industries that shaped the environment and did not lose a single life in 6th worse declared disaster in the history of the United States.¹¹¹

CONCLUSION

Whether it is providing viable transportation solutions, establishing a base camp for displaced personnel, or restoring critical communications, the federal government must realize its capacity to execute timely disaster response operations, identify those areas where they lack capacity, and fill the void with private sector solutions. Experience is the key to innovation and the federal government must capitalize of the experience and operational capacity/investment that has been acquired by PSSO firms during contingency operations and execution of their everyday business. The private sector is not the solution for all problems sets, but if we are to fully implement the president's concept captured in PPD 8, the private sector must be better employed to address challenges associated with the federal government's ability to quickly respond when the country needs them the most, during major domestic response operations. I believe that the domestic market is viable and PSSO organizations are the right solution that will allow the federal government to effectively leverage PSSO organizations existing resources and network to quickly mitigate the effects of disasters. Therefore my policy recommendations that support rebalancing requirements through previously mentioned ESF are as follow:

- ESF #1 (transportation): Establish a contract/agreement with a major logistics transportation organization such as Fed Ex to coordinate the expedited movement of goods to support disaster operations. This overarching national contract should mirror requirements identified by GSA's Standard Tender of Service (STOS) contract.
- ESF #2 (Communications): Relinquish the lead for communication infrastructure assurance execution to the private sector since they own approximately 85% of it and focus federal efforts on those communication networks that are inherently governmental systems, i.e. classified communication nodes. This requirement should be based on concepts illustrated in the GSA's Networx contract.
- ESF #3 (Public Works): Contract out generator support requirements to a private sector organization that can better assure generator readiness during disasters.
- Emergency Support Function # 6 (Mass Care, Emergency Assistance, Housing, and Human Services) and ESF #14 (Long Term Recovery): Contract these requirements to a proven organization such as FLUOR or KBR with a contract vehicle such as



LOGWORLD, LOGCAP, or AFCAP to provide sustained base camp operations for first responders and displaced personnel as required. This service should be secured by a retainer and enacted as needed.

I believe that these recommendations will create national efficiency, provide an alternative for PSSO firms to focus their services to in lieu of overseas contingency operations, and provide preservation of experience/capabilities gained by PSSO firms over the last 17 years.



ANNEX C -PSSO - CONSIDERATION FOR APPLYING TO THE JAPAN SELF DEFENSE FORCE

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The privatization of select U.S. military and government functions has become an accepted means for reducing costs. The Japan Self Defense Force (SDF), however, has focused on internal operational capabilities and self-sufficiency rather than out-sourcing - and with good reason. The Great East Japan Earthquake in 2011 provides a valid example of the perils of over reliance on the private sector. Following the earthquake, the SDF depended on contractors to provide food service and transportation, among other services, in support of military operations. The contractors, however, were not able to sufficiently support the operation due to damage to the company itself and the surrounding infrastructure.

Regardless of the failing, defense budget constraints and the increasing price of weaponry will likely force the SDF to reduce personnel costs and expand their dependency on contractors. The SDF faces the inherent challenge of maintaining a balance between fiscal savings and future capabilities assurance. In order to meet fiscal constraints, the SDF should reconsider their current minimal use of the Private Sector Support to Operations (PSSO) industry.

THE CHALLENGE OF THE PSSO INDUSTRY

The use of contractors is not a new practice in the military. The SDF has contracted with the private sector for peripheral services such as ship maintenance, transportation, food service, and facility cleaning. The rapid growth of the PSSO industry following September 11, 2001, however, brought about notable changes to the scope of capabilities the PSSO industry can provide - especially in the U.S. The expanded U.S. military role in Iraqi and Afghanistan revealed the lack of personnel and unique skills required to conduct combat operations. As a result, the U.S. forces relied heavily on contractors - even in the battlefield environment. Moreover, the services the U.S. military is relying upon are getting closer to core functions, previously considered inherently government. In the U.S., it appears self-sufficiency has become a relic of a bygone age.

Despite these changes, the traditional idea of the U.S. military has retained its universal purpose; “Train army for a thousand days to use it for one morning– 用兵千日、用在一朝–.” Similarly, Japan subscribes to the same mindset; “The purpose of building and training military capability for a hundred years is just use for one day crisis– 百年兵を養うは、一朝に備う為なり.” These concepts are often cited to emphasize the importance of the SDF’s readiness. As demonstrated in the U.S., preparedness remains paramount even with their heavy reliance on contractors. The challenge for the SDF becomes how to best utilize the PSSO industry without sacrificing the level of readiness self-sufficiency provides.

Military crises are not resolved in one day and often evolve into prolonged difficulties. Hence, simple readiness cannot be the only goal. Continuous support to military operations after the conflict or crisis is also vital to maintain continuous operations even in the post-conflict



environment. Hence, the risk to operational continuity in the absence of self-sufficiency should also be assessed.

Risk Assessment / Management of the PSSO.

Readiness. The military must be prepared to maintain capabilities during periods of reduced demands. Private industry must make money in order to survive. Without an active contract, the PSSO has no option but to reduce capabilities. Hence, “Train army for a thousand days to use it for one morning” is not applicable to the private industry unless they are getting paid. By contrast, military’s have to maintain readiness and operational capability to react to one day’s critical situation immediately, whether continuous demands exist, or not. For the military, maintaining full spectrum self-sufficient capabilities provides little risk in terms of readiness. For this reason, military’s historically prefer internal organized capabilities that can be maintained without continuous demands. When certain operational capabilities or services are demanded continuously, military’s can maintain their readiness by relying on contractors. Contractor reliance for services used less often, but required with little notice, presents a risk to readiness, regardless of the service provider - military vs. private sector.

Moreover, if the quality and timeliness of services are inadequate, the military cannot manage the “one day” crisis. Therefore, quality and timeliness of services should also be assessed. Furthermore, should a military decide to rely on contractors for specified operations, they must also consider how to maintain readiness for future use. There is no guarantee the contractor will retain the capability in the future. O’Hanlon points out this risk to resiliency in his 2011 Brookings Institute article, *The National Security Industrial Base*, “Capabilities could be lost, and once lost, could be difficult, costly, and slow to replace if and when they are needed again”.¹¹² Barry D. Watts and Todd Harrison concur with this notion in their article *Sustaining Critical Sectors of the U.S. Defense Industrial Base*, “The simple truth is that for-profit U.S. defense companies are not at all likely to preserve the capabilities the military Services will need in areas where they have no business interest.”¹¹³ Hence, the use of contractors presents a risk to readiness that should be managed from a long-term perspective.

Operational Continuity. The assessment should focus on tying the contractor’s capability to near and far military requirements. Included in this assessment should be a capabilities review in severe environments. Contractors must continue to provide their services to the military without misbehavior before the enemy.

Equality for the public. If the contractor is able to influence the government’s decision-making process regarding public services, the user (the public) could be exposed to greater risk. Conversely, if the contractor has partial influence, the risk is relatively low. Hence, the level of influence the contractor has toward public services should also be assessed.

The Simple Idea of Risk Assessment. Table 1 shows the risk assessment and category of service provider – government or contractor – in terms of readiness, operational continuity and equality. Admittedly, human capital management, law, treaties, and political decisions, all affect the selection of service providers; however, the simple concepts below remain unaffected:

- If the temporary demand exists only in the military, the risk to operational continuity and readiness is high.



- If the temporary demand exists in military but continuous demand exists in private sector, skillsets transfer quickly and the risk is low.
- If the temporary demand exists in military and private sector, or the skillset transfer is slow even though private sector has continuous demand the risk is moderate.
- If the continuous demand exists in military, the risk is low.

Table 1. The Category of Service Provider

No	Demand in Military		Knowledge in Private sector	Demand in private sector			Risk of depending on private sector	Direct Service User	IGF	Service Provider		Examples
	Continuous demand	Temporary demand		Continuous demand		Temporary demand				Government	Contractor	
				No transfer time	Transfer time							
1	X	O	X	X	X	X	High	Public	Yes	O	X	War fighting
2	X	O	O	O	X	X	Low	Government	No	X	O	Translator
3	X	O	O/X	X	O	X	Middle	Obscure	Obscure	O/X		Convoy security
4	X	O	O/X	X	X	O	Middle	Obscure	Obscure	O/X		Local Intelligence
5	O	X	X	X	X	X	High	Public	Yes	O	X	Decision Making
6	O	X	O	X	X	X	Low	Government	No	X	O	Weapon Maintenance
7	O	X	O	O	X	X	Low	Government	No	X	O	Cook, Facility security
8	O	X	O	X	O	X	Low	Government	No	X	O	
9	O	X	O	X	X	O	Low	Government	No	X	O	

PSSO – in Japan

Expansion of the SDF mission after the Cold War and reduced defense budgets have forced increases in the out-sourcing arena. Inherently governmental functions and the level of acceptable risk remain unclear. Currently, no authorized documents detailing exactly what the government considers inherently governmental exist. Further, there are no clearly defined lines specifying what level of risk the SDF is willing to accept. Hence, the out-sourcing area has been decided by discretion of each department in the Ministry of Defense.

Further confusing the use of contractors, there is strong opposition in Japan towards using Japanese civilians to support the SDF in dangerous areas or areas of active conflict. This mindset comes from the tragedy of the Okinawa battle. The Imperial Army and Navy forced Japanese civilians to support military operations and many of them died. Hence, using Japanese civilians in dangerous areas is a critical issue. For this reason, utilization of contractors in dangerous environments has been unofficially eliminated by political choice.

Along these lines, Japanese policy makers' consider the SDF's capability versus local non-Japanese personnel when determining who to deploy and/or hire for international peacekeeping operations. For example, the Grand SDF was praised for contributing to the local economy and security by using local (non-Japanese) companies to support infrastructure improvements in Iraq from 2004 to 2006.

With the hesitancy towards the use of contractors in the SDF, fiscal constraints have necessitated a re-examination. SDF efforts are underway to "evaluate the out-sourcing in terms of cost-effectiveness and maintaining the mission capability".¹¹⁴ The boundary between inherently governmental tasks, commercial activities, and risk acceptance, however, are still not defined. Moreover, the Japanese government set the percentage of reduction to the discretion of each Ministry and without issuing detailed criteria. Consequently, inherently governmental operations are still maintained by political deliberation and at the discretion of the Ministry of Defense as shown in Figure 2.



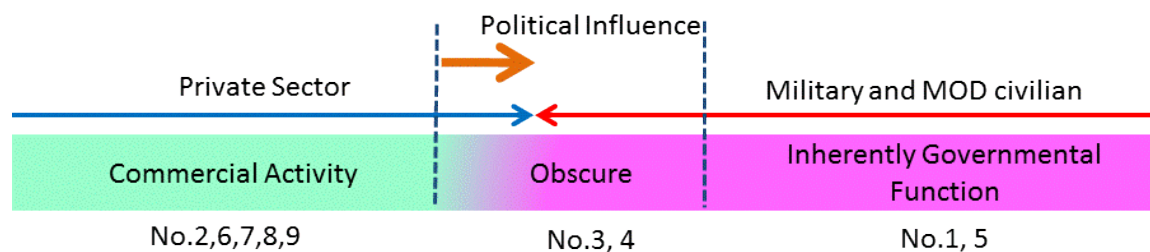


Figure 2. Relation between IGF and CA, and political influence in Japan

CONSIDERATION FOR APPLYING THE PSSO TO THE SDF

The categories of service provider should be defined based on Table 1. Moreover, in order to clarify criteria of IGF and CA, SDF should refer Department of Defense INSTRUCTION, NUMBER 1100.22.

Risk assessment procedure should be established in terms of readiness, operational continuity and equality. Department of Defense INSTRUCTION, NUMBER 1100.22 prescribes risk assessment in terms of the operation continuity. Hence, the SDF should refer to the INSTRUCTION. The INSTRUCTION, however, does not prescribe the boundary between inherently governmental and commercial activity as shown in Table 1. Moreover, the boundary is different by each nation's political situation. Therefore, the SDF should establish the means to clarify the boundary and the risk assessment/management for readiness and equality by its own idea.

Clarification of the Boundary in SDF. The boundary on No.3 and 4 in figure 1 should be defined by the risk of casualty of Japanese civilians. If there is the risk of Japanese civilian casualties by the operation, the SDF should do the operation by itself. It is, however, difficult to define clear boundaries for all SDF operations. Thus, situations should be divided into domestic operations and international peace-keeping activities. Theoretically, any place in Japan could be a danger zone when the SDF operates inside its borders; however, the civilian should be withdrawn from front line of operation. Hence, PSSO inside of Japan should be constrained to the area of non-direct support to front line operations.

On the other hand, international activities often require non-military functions, such as restoring infrastructure and school construction that could also take place in dangerous areas. If the operational requirement is beyond the reach of the SDF self-sufficient capability, and the SDF has to rely on contractors for front line operations, Japanese government should decide the necessity of sending SDF abroad in terms of national interest and legitimacies for using contractor in danger zone.

The risk assessment for readiness and the equality in SDF. Risk assessment for readiness and the equality could be conducted based on Table 1. No. 3 and 4, however, should be assessed individually. No. 4 does not have constant demands in either military or private sector; hence, the SDF should consider measures to maintain readiness after the operation. The risk should be assessed and managed in the following manner:



- Selecting critical sectors in No. 3 and 4.
- Confirm whether the company can maintain the capability by itself or not.
- Necessity of job transference from contractor to government employee in terms of readiness and equality.
- Necessity of government support (new contract) to maintain the capability.

Government support is new idea; however, it is commonly conducted in procurement field as R&D. R&D is maintaining capability of innovation and developing new technologies regardless of daily demand in military and private sector. Admittedly, LOGCAP (The Logistics Civil Augmentation Program) and CANCAP (Canadian Forces Contractor Augmentation Program) type of contract has been introduced in PSSO even in peace time to for future prepare operations; however, they do not have the perspective to maintain the readiness in terms of risk management. Therefore, new R&D –Readiness and Development (tentative name) – should be introduced to PSSO in SDF (Maybe in the U.S. Forces as well).

Moreover, it is very important to have interactive communication with the private sector for risk assessment before the operation, and for risk management after the operation. Furthermore, performance evaluation is also necessary to maintain the quality after the contract. The SDF should refer Canada's effort for evaluation – named Performance Based Contracting for Services.

CONCLUSION

In order to mitigate the risk, the SDF should consider risk assessment / management of PSSO. The SDF, however, has not clarified criteria for inherently governmental vs. commercial activity. Thus, the SDF should define the criteria at first. On the other hand, the risk assessment /management should be conducted from a readiness, operation continuity, and equality perspective. The risk assessment could be categorized in several ways, however, the SDF – a late starter – can refer the U.S. efforts for the criteria and risk assessment / management as a whole.

The boundary between inherently governmental vs. commercial activity and the risk assessment / management of readiness and equality, however, are not considered clearly even in the U.S. Moreover, they are different from nation to nation. Therefore, the boundary and the risk assessment / management should be considered from the SDF perspective. The boundary is strongly affected by involvement of civilians in dangerous areas. On the other hand, the risk assessment / management of readiness require a new effort that is different from LOGCAP or CANCAP in the SDF. The SDF should consider many things, however, little time exists in terms of expanding the SDF mission and declining defense budgets.



ENDNOTES

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- ¹ Marjorie Censor, *Contractors Look to Reduce Costs*, Washington Post, February 4, 2013
- ² R. Glen Hubbard and Anthony Patrick O'Brien, *Economics*, Prentice Hall, Third Edition 2010, page 391.
- ³ Michael E. Porter, "The Five Competitive Forces that Shape Strategy," *Harvard Business Review*, (Jan 2008), 83
- ⁴ Marjorie Censer, "*BAE Move Signals Industry Changes*", Washington Post, July 26, 2010
- ⁵ Fluor Corporation (Stock symbol: FLR), Company Profile, Ratio Comparison from thestreet.com, <http://www.thestreet.com/quote/FLR/details/ratio-comparison.html>, accessed 28 April 2013.
- ⁶ KBR Inc (Stock symbol: KBR), Company Profile, Ratio Comparison from thestreet.com, <http://www.thestreet.com/quote/KBR/details/ratio-comparison.html>, accessed 28 April 2013.
- ⁷ URS Corp. (Stock symbol: URS), Company Profile, Ratio Comparison from thestreet.com, <http://www.thestreet.com/quote/URS/details/ratio-comparison.html>, accessed 28 April 2013.
- ⁸ ManTech International Corp. (Stock symbol: MANT), Company Profile, Ratio Comparison from thestreet.com, <http://www.thestreet.com/quote/MANT/details/ratio-comparison.html>, accessed 28 April 2013.
- ⁹ CACI International Inc (Stock symbol: CAI), Company Profile, Ratio Comparison from thestreet.com, <http://www.thestreet.com/quote/CACI/details/ratio-comparison.html>, accessed 28 April 2013. <http://www.reuters.com/finance/stocks/financialHighlights?symbol=LLL.N>, assessed 19 March 2012.
- ¹⁰ A grouping of firms to represent a segment of the industry. The numbers are taken from TheStreet.com from the citations in references 5-9 above. The website does not reveal which firms are used in the grouping for the industry (e.g., Services) benchmark.
- ¹¹ "An index of the 500 largest publicly traded companies, as determined by Standard & Poor's. Considered by many to be the best indicator of the U.S. stock market's general direction and health." From <http://www.thestreet.com/topic/47002/sp-500.html>, accessed 3 May 2013.
- ¹² Current Ratio divides current assets (cash, inventory, receivables) by current liabilities (debt and payables) to determine the current ratio. Current ratio, therefore, indicates a firm's ability to pay short-term obligations. The higher the number the better; any figure below 1.0 would be a red flag as liabilities would outnumber assets, making it difficult to meet obligations, <http://www.investopedia.com/terms/c/currentratio.asp>, accessed 3 May 2013. The Current Ratio of the PSSO firms, an indicator of liquidity, is well above 1.0 and indicates that they are able to meet short-term liabilities ahead of the industry.
- ¹³ LTDE is calculated by dividing Long-term Debt by Long-term Debt + Preferred Stock + Common Stock. LTDE Ratio indicates how a firm finances growth. A high debt/equity ratio indicates a company uses outside aid to finance operations. This could be detrimental unless the firm generates more earnings than it would otherwise & thus benefiting shareholders. This also "depends on the industry in which the company operates. For example, capital-intensive industries such as auto manufacturing tend to have a debt/equity ratio above 2, while personal computer companies have a debt/equity of under 0.5." LTDE Ratio measured against the firm's market is the best indication of how well Long-Term Debt is used to provide sustained growth, <http://www.investopedia.com/terms/d/debtequityratio.asp>, accessed 19 March 2012. Although L3 has a higher LTDE ratio and a greater reliance on debt to finance operations than the industry average, it is well below the S&P 500 average, and the other three PSSO firms are minimally leveraged.



¹⁴ Return on Investment is a performance measure used to evaluate the efficiency of an investment or to compare the efficiency of a number of different investments. To calculate ROI, the benefit (return) of an investment is divided by the cost of the investment; the result is expressed as a percentage or a ratio, <http://www.investopedia.com/terms/r/returnoninvestment.asp#axzz1pie3d02G>, accessed 19 March 2012.

¹⁵ <http://www.Thestreet.com>

¹⁶ In 2010, the revenue was \$4.299B dropping to \$1.904B in 2012. Reference: KBR Form 10-K for fiscal year ended December 31, 2012, p75.

¹⁷ KBR Form 10-Ks for fiscal years ended December 31, 2009, 2010, 2011, and 2012, pages 13, 10, 9, and 9 respectively for employment. The 10-Ks for 2012 and 2011 p63 in both for cash generated by operating activities.

¹⁸ Information from Form 10-Ks for fiscal year ending December 31, 2012 except for CACI whose Form 10-K ended June 30, 2012.

¹⁹ Ibid.

²⁰ Jeff Chu, "How America's Top Military Officer Uses Business to Boost National Security," *Fast Company*, May 1, 2010.

²¹ Center for Strategic & International Studies, "Structure and Evolution of the U.S. Federal Services Industry 2000-2010", November 23, 2011.

²² O'Hanlon, Michael. "The National Security Industrial Base: A Crucial Asset of the United States Whose Future May Be in Jeopardy," *Brookings Institution*, February, 2011.

²³ Interview with confidential source, March 8, 2013.

²⁴ Dr. Ashton Carter, Under Secretary of Defense Acquisition, Technology and Logistics, *Boston Globe Interview*, July 2009

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²⁷ Army Regulation 715-9, "Operational Contract Support Planning and Management," (Department of the Army, Washington, DC, June 20, 2011): 5; Schwartz, p. 17-18.

²⁸ Army Tactics, Techniques, and Procedures Number 4-10, "Operational Contract Support Tactics, Techniques, and Procedures," (Department of the Army, Washington, DC, June 20, 2011): 1-1.

²⁹ Information extrapolated from a brief presented to PSSO Industry Study by a senior Government Official, Eisenhower School, January 11, 2013.

³⁰ Clarification on "retainer fees" and minimum amounts paid via ID/IQ contracts provided by senior Military Officer in the Department of Defense, while being interviewed by the author on March 19, 2013.

³¹ Dr. Jacques S. Gansler, "Bid Protests: Analysis to Date," NPS Acquisition Research Symposium, (University of Maryland School of Public Policy, May 14, 2009): slides 12-18; Information extrapolated from an interview with a senior Military Officer in the Department of Defense, March 19, 2013; Comments and information by the Honorable Mr. Dan Gordon, as paraphrased by Kathleen Miller, "Study: Protests Of U.S. Contracts Rarely



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³² 2018 represents the latest timeframe LOGCAP IV would come up for renewal. Originally awarded in 2007 as a one-year base plan with nine option years, this contract award was protested and was subsequently finalized in 2008.

³³ Not for Attribution Comments made to the Private Sector Support to Operations Industry Study on February 7, 2013.

³⁴ Joel Griffin, Private Contract Security Services to See Steady Global Demand” Security InfoWatch.com, 1 February 2013, <http://www.securityinfowatch.com/article/10862533/private-contract-security-services-to-see-steady-global-demand>; accessed 16 March 2013.

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³⁶ Deborah Avant and Renee de Nevers, “Military Contractors and the American Way of War, *Daedalus*, 2011, 140:3, p. 89.

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⁴³ Joint Statement of Mr. Alan F. Estevez, Assistant Secretary of Defense for Logistics and Materiel Readiness and Brigadier General Craig Crenshaw, Vice Director for Logistics Joint Staff before House Armed Services Committee on Operational Contract Support, 12 September 2012, http://armedservices.house.gov/index.cfm/files/serve?File_id=8f8caf04-e31e-44d3-8597-57d751682df0, (accessed 29 March 2013).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Comments made by OSD ATL staffer, Shanna Poole, when staffing the update to Part 158 of Section 32 in the Code of Federal Regulations (CFR), “Operational Contract Support.” December 29, 2011.



⁴⁷ Joint Statement of Mr. Alan F. Estevez, Assistant Secretary of Defense for Logistics and Materiel Readiness and Brigadier General Craig Crenshaw, Vice Director for Logistics Joint Staff before House Armed Services Committee on Operational Contract Support, 12 September 2012.

⁴⁸ Ibid.

⁴⁹ DEPARTMENT OF DEFENSE, Office of the Secretary, 32 CFR Part 158 [Docket ID DOD–2009–OS–0029], RIN 0790–AI48, Operational Contract Support

⁵⁰ Joint Statement of Mr. Alan F. Estevez, Assistant Secretary of Defense for Logistics and Materiel Readiness and Brigadier General Craig Crenshaw, Vice Director for Logistics Joint Staff before House Armed Services Committee on Operational Contract Support, 12 September 2012.

⁵¹ Lee Tate, AY13 Eisenhower School Student, previously assigned to the Joint Staff (J4), (interviewed on 20 March 2013).

⁵² Joint Statement of Mr. Alan F. Estevez, Assistant Secretary of Defense for Logistics and Materiel Readiness and Brigadier General Craig Crenshaw, Vice Director for Logistics Joint Staff Before House Armed Services Committee on Operational Contract Support, 12 September 2012.

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⁵⁴ “Better Buying Power 2.0 reflects the Department of Defense’s commitment to continuous improvement. Significant progress has been made since BBP was first introduced. Affordability analysis is now part of the standard Defense Acquisition Board (DAB) planning process to facilitate investment decisions; Should-Cost estimates are being used as standard practice within the military Services; and competitive incentive contracts, services acquisitions, and small business opportunities are receiving greater attention and focus. Many initiatives that were first introduced will remain, while a set of new initiatives have been identified and are being added to address current fiscal realities. The basic goal of BBP remains: deliver better value to the taxpayer and warfighter by improving the way the Department does business.”
[http://www.acq.osd.mil/docs/BBP%20Fact%20Sheet%20\(13%20NOV\)%20Final.pdf](http://www.acq.osd.mil/docs/BBP%20Fact%20Sheet%20(13%20NOV)%20Final.pdf), (accessed 4 April 2013).

⁵⁵ Gortney, William. 2011. Guidance for Combatant Commander Employment of Operational Contract Support - Joint Contingency Acquisition Support Office (JCASO). Washington, DC: CJSC,
<http://www.dla.mil/JCASO/Documents/CJCSN4130-01-JCASO-20Dec2011.pdf>

⁵⁶ Worley, Edward. "ACC Subject Matter Experts Examine Standardizing Contract Oversight, Surveillance." Army Contracting Command, last modified March 20, 2013, accessed March 25, 2013.
http://www.army.mil/article/99116/ACC_subject_matter_experts_examine_standardizing_contract_oversight_surveillance/.

⁵⁷ Gordon, Daniel. 2011. Revisions to the Federal Acquisition Certification for Contracting Officer's Representative (FAC-COR). Washington, DC: Office of Management and Budget, Executive Office of the President. <http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federal-acquisition-certification-for-contracting-officers-representatives.pdf>

⁵⁸ Ibid.

⁵⁹ Anonymous US Department of Defense J4 Representative. “JS Roadmap to OCS ICD Gap Cross-walk.” Interview/ Visit Occurred February 11, 2013.

⁶⁰ Anonymous US Department of Defense Official. “Phone Conversation and Email Exchange with Anonymous OSD(ATL) Staffers Regarding OCS Best Practices and Remaining Challenges.” April 1, 2013. OSD(ATL) supports the concept of developing a single OCS COP that can be shared with our interagency partners and would like to see it support more than just contracting or contracting-related data. For example, the OCS



Drawdown Cell, in partnership with the Deputy Chief Management Office (DCMO) and Expeditionary Business Operations (EBO), developed an OCS COP tool that pulls data from systems of record such as base closure schedules and data from the ISAF Base Transition Reporting System (BTRS), contractor personnel data from the Synchronized Pre-Deployment and Operational Tracker (SPOT); contract information from the Federal Procurement Data System, New Generation (FPDS-NG); financial information from the All of Government Spend (AGS) system, and other authoritative sources.

⁶¹ US Army Logistics Civilian Augmentation Program (LOGCAP), US Air Force Contract Augmentation Program (AFCAP), and US Navy Construction Capabilities Contract (NAVCAP) “are standing, long-term contacts designed to augment Service logistic capabilities with contract support in both preplanned and short notice contingencies.” <http://www.thefreedictionary.com/civil+augmentation+program>, (accessed 25 March 2013).

⁶² Canada’s military forces are significantly smaller and less well funded than U.S. forces, which require them to find ways to maximize military capability under less than optimal funding conditions. Out of necessity, the Canadian Department of National Defence (DND) has made significant strides in exploring and utilizing Canadian PSSO contract services to cover shortfalls in Canadian military force capability. For example, they have contracted out their equivalent of Undergraduate Pilot Training (UPT), where the contractor provides and maintains the airplanes as well as runs the actual training administration. Interviews conducted during 21-22 March 2013 Eisenhower School visit to the Canadian Ministry of Defense CJOC/J4.

⁶³ Canadian (DND) has also contracted out explosive ordnance disposal (EOD). Interviews conducted during 21-22 March 2013 Eisenhower School visit to the Canadian Ministry of Defense CJOC/J4.

⁶⁴ Canadian (DND) is considering contracting out for aerial refueling capability compatible with the new F-35 Joint Strike Fighters they are about to receive. Costs to modernize their aerial refueling fleet to be compatible with the F-35 would be prohibitively expensive, which is why they are considering a potentially cheaper contract service alternative. Lee Berthiaume, “Military will contract out air-to-air refuelling if Canada goes with F-35,” 20 December 2012, <http://o.canada.com/2012/12/20/military-will-contract-out-air-to-air-refuelling-if-canada-goes-with-f-35/>, (accessed 31 March 2013)

⁶⁵ “The UK’s Department for Transport awards Bristow Helicopters Ltd. the SAR-H contract, a GBP 1.6 billion deal to replace the British Armed Forces’ Sea Kings with a privately-operated service of 22 SAR helicopters from April 2015 – 2026. The service won’t become fully operational until summer 2017.” “Britain’s Next Search-and-Rescue Helicopters: Civilian Contractors,” *Defense Industry Daily*, 26 March 2013, <http://www.defenseindustrydaily.com/british-searchandrescue-a-billion-pound-partnership-02271/>, (accessed 29 March 2013).

⁶⁶ Omega Aerial Refueling Services Homepage, <http://www.omegairrefueling.com/vms/>, (accessed 1 April 2013).

⁶⁷ These examples show partner-nations’ expensive military platform capabilities being replaced, or at least augmented with potentially cheaper contract service alternatives. However, it is important to note that the nations highlighted in this section do not play as large a global leadership role as the U.S. and do not have to support as many dependent partners. In fact, in some of the aforementioned cases, the availability and utility of U.S. military aerial refueling and SAR capability during combined contingency operations likely figured into Canada’s and Great Britain’s decision calculus when they opted to switch to their respective contract service alternatives. They view the U.S. military as a central player and partner in global contingencies and are banking their own contract-alternative solutions at least partially on their enduring ability to leverage U.S. military capabilities in theater. Unlike Canada and Great Britain, the U.S. does not have a superpower ally with similar capabilities upon which to rely for military support; so in many cases, fiscally vulnerable U.S. military capabilities may not be able to be replaced with a cheaper contract service alternative, thus reducing U.S. options.

⁶⁸ The Montreux Document on Private Military and Security Companies, <http://www.eda.admin.ch/psc> (accessed 10 February 2013)

⁶⁹ Ibid



⁷⁰ Office of the Deputy Secretary of Defense, *Program Support*, Private Security Companies, <http://www/acq.osd.mil/log/PS/psc.html> (accessed 28 February 2013)

⁷¹ *Human Rights First: State of Affairs: Three Years After Nisour Square, Accountability and Oversight of U.S. Private Security and Other Contractors* (2010) www.humanrightsfirst.org/wp-content/uploads/pdf/State_Of_Affairs.pdf (accessed 18 March 2013)

⁷² Richardson, John, (2013) Montreux + 5 Background, *Initiative for Human Rights and Business*, <http://ihrib.org/site/jupgrade/blog/montreux-5-update> (accessed 20 February 2013)

⁷³ Ibid

⁷⁴ ICOC Timeline, *International Code of Conduct for Private Security Service Providers*, http://www.icoc-psp.org/ICoC_Timeline.html (28 February 2013)

⁷⁵ Koh, Harold H, (2010) U.S. Department of State Advisor, transcript: A response to introductory speeches from Swiss State Secretary Maurer, industry leaders, and civil society representatives, Signing Ceremony for International Code of Conduct, Geneva, Switzerland, <http://www.state.gov/documents/organization/179307.pdf> (28 February 2013)

⁷⁶ Office of the Deputy Secretary of Defense, *Program Support*, Private Security Companies, <http://www/acq.osd.mil/log/PS/psc.html> (accessed 28 February 2013)

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ On May 6, 2002, then Under Secretary of State for Arms Control and International Security John R. Bolton, provided a written withdrawal from the Rome Statute of Criminal Court to the United Nations Secretary General Kofi Annan. TEXT: Dear Mr. Secretary-General: This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty. Sincerely, S/John R. Bolton. <http://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm> (accessed 1 March 2013)

⁸⁰ Military Extraterritorial Jurisdiction Act of 2000, Public Law 106-523, Title 18 USC 3261, November 22, 2000, <http://www.pubklaw.com/hi/pl106-523.pdf> (accessed 8 March 2013)

⁸¹ Ibid

⁸² Ibid

⁸³ Dishneau, David (2008) Abu Ghraib Inmates Sue Contractors, Claim Torture, *The Associated Press*, <http://archive.truthout.org/article/abu-ghraib-inmates-sue-contractors-claim-torture> (accessed 11 March 2013)

⁸⁴ First Abu Ghraib Torture Trial Against Private Military Contractor CACI to Proceed, (2102), *Center for Constitutional Rights*, <http://ccrjustice.org/update%3A-first-abu-ghraib-torture-trial-against-private-military-contractor-caci-proceed> (accessed 5 March 2013)

⁸⁵ Ibid

⁸⁶ Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375 (108th Congress), Military Extraterritorial Jurisdiction Over Contractors Supporting Defense Missions Overseas, Section 3267(1)(A) part II, www.dod.gov/dodgc/olc/docs/PL108-375.pdf (accessed 9 March 2013)



⁸⁷ McCarron, Paula B, 2008, The Long Arm of the Law, *The Military Extraterritorial Jurisdiction Act*, <http://www.aca.org/fileupload/177/ahaidar/McCarron.pdf> (accessed 9 March 2013)

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⁸⁹ Savage, Charlie (12/31/09) Judge Drops Charges From Blackwater Deaths in Iraq, *The New York Times*, <http://www.nytimes.com/2010/01/01/us/01blackwater.html> (accessed 8 March 2013)

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⁹¹ McCarron, Paula B, 2008, The Long Arm of the Law, *The Military Extraterritorial Jurisdiction Act*, <http://www.aca.org/fileupload/177/ahaidar/McCarron.pdf> (accessed 9 March 2013)

⁹² John Warner National Defense Authorization Act for Fiscal Year 2007, *House of Representatives*, 109th Congress, H.R. 5122, pg. 137, asafm.army.mil/Documents/OtherDocuments/CongInfo/BLDL/CR//07AUTHcr.pdf (accessed 11 March 2013)

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