

Warrior–Civilians

Nonmilitary Personnel on the Battlefield

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Introduction

Three military vehicles make their way down a dirt road outside of Al Basrah, Iraq. Air Force Office of Special Investigations (AFOSI) Special Agent Jill Thomas,¹ a Department of Defense (DOD) civilian employee, rides along with another agent and several military personnel. Outfitted in desert uniforms and military protective gear, the team is on its way to pick up a suspected al-Qaeda collaborator at his home. AFOSI is responsible for collecting intelligence in the area and intends to collect any computers, documents, or information located in the suspect's home after the military special operators apprehend him. As they approach the home, they begin to take on small arms fire. They expected resistance, but not to this extent.

An explosion overturns the lead vehicle. Personnel from the vehicle are quickly recovered and the convoy attempts to retreat. Agent Thomas is wounded in the exchange, but she understood the dangers of being in a combat zone. As a federal agent, she expected that she would be shot at, but in a combat zone, was she a combatant? She was briefed by a wing judge advocate general (JAG) that she was a civilian and couldn't lawfully be targeted by the enemy—unless she took part in hostilities. She wondered, for the first time, what that meant and how the enemy was expected to distinguish her from the combatants in the vehicle. In the event of her capture, to what protections was she entitled?

Jill's DOD identification card indicates she is a civilian. Under international law, civilian status protects her from direct attack by the enemy. However, she looks just like the other members of the team. She is wearing a military uniform, military protective gear, and carrying a weapon. Additionally, as an agent for AFOSI, she interrogates suspected al-Qaeda affiliates, conducts human intelligence (HUMINT) activities, and acts as a security escort—functions that have traditionally been performed by members of the military. Based on her conduct, would her captors still consider her a civilian, or had she somehow become an illegal combatant?

Problem Background

The presence of nonmilitary personnel on the battlefield is not new; they have supported the military in every major war in US history. During the Revolutionary War, they were used extensively in supply functions,² and later amidst the War of 1812, they completed the majority of the labor in the field under the complete command and control of the military.³ By 1908, the military had sufficient personnel and expertise in armed service to support itself.⁴ Yet during World War I and II, inadequate numbers of personnel once again necessitated the use of persons outside the military to support and sustain combat forces.⁵

By 1973, DOD adopted a policy of total force integration. The policy directed the armed services to fully integrate nonmilitary employees into the national defense effort.⁶ It wasn't until the end of the Cold War, however, that resource and budgetary constraints forced dramatic reductions in the active force.⁷ In response to fewer available dollars, DOD began utilizing persons outside the military to maintain operational readiness with a smaller number of active-duty service members.⁸

DOD's increased dependence on advanced technologies and weapons is another apparent factor driving its growing reliance on nonmilitary personnel. The technical expertise for many of the United States' sophisticated systems already existed within the civilian sector that developed them.⁹ Therefore, it seemed to make sense to place contractors—already trained and with system expertise—into positions supporting and maintaining this high-tech equipment. By doing so, the need to train military members to operate or support the systems was eliminated, freeing them up for combat-related duties. Nonmilitary personnel also relocated and deployed less often, providing greater continuity and institutional memory to the support of these systems.¹⁰ As a result, nonmilitary personnel were viewed as a way of achieving greater operational efficiencies at a reduced cost.

Since the early 1990s, individuals outside the military have become increasingly vital to conducting the mission of the armed forces. In some areas, they significantly outnumber uniformed service members and are conducting a broader spectrum of activities than ever before. The use of these nonmilitary personnel to carry out certain functions reduced the number of military troops and therefore the amount of service member entitlements, making the employment of individuals outside of the military force increasingly attractive. In addition, functions performed by contract employees can be purchased as needed. This allows the military to buy expertise without having to maintain the skill on a long-term basis. The use of nonmilitary personnel also provides DOD the flexibility to determine the most effective and efficient composition of the force. Despite all of the benefits of using nonmilitary personnel, there are also risks. Many of these individuals have become indistinguishable from combatants—in both appearance and function—creating uncertainty regarding their status as civilians.

In 1995, Maj Brian Brady, a US Army judge advocate, identified the fact that few deployed commanders and contractors understood the status of nonmilitary personnel in the field.¹¹ While some military analysts concluded that in a combat zone these individuals had become “legitimate targets,”¹² confusion remained about their status under the Law of War.¹³

The debate over the status of individuals “accompanying the force” continued in 2001, when Maj Lisa Turner and Maj Lynn Norton, two Air Force judge advocates again identified challenges associated with having nonmilitary personnel on the battlefield. They identified three categories of nonmilitary persons: DOD civilians, contractors, and nonaffiliated civilians—all having “varying statuses, rights and responsibilities under international and domestic law, and under DOD and service regulations.”¹⁴

The resulting development of domestic service doctrine reflected the confusion and uncertainty of the status of nonmilitary persons “accompanying the force.” Army Pamphlet 715-16, *Contractor Deployment Guide*, instructed that individuals who accompany the force¹⁵ “can only be used to perform selected combat support and combat service support (CSS) activities.”¹⁶ Joint Publication (JP) 4-0, *Joint Logistics*, added that “in all instances, contractor employees cannot lawfully perform military functions and should not be working in scenarios that involve military combat operations where they might be conceived as combatants.”¹⁷

Using nonmilitary personnel to perform “selected combat support and combat service support activities” lacks defined parameters and has not been limited to “traditional” support activities. While JP 4-0 initially limited contractor functions to three support arenas—systems support, external theater support, and theater support¹⁸—the scope of the contract duties has continued to grow. Systems support contracts designed to use nonmilitary personnel to repair and sustain existing systems have expanded to include system operation. During combat, weapon systems such as unmanned aerial vehicles (UAV) are increasingly being operated by nonmilitary personnel.¹⁹ Additionally, theater support contracts that used to provide goods, services, and minor construction²⁰ now include security details, facilities protection, and prisoner interrogation.²¹

The varying definitions of support led to differing conclusions by the armed services about the status of nonmilitary individuals executing these functions on the battlefield. The Air Force, for example, concluded that individuals performing “duties directly supporting military operations” were combatants “subject to direct, intentional attack.”²² The Navy, however, contended that these individuals were not combatants and “not subject to direct attack although they assume the risk of [becoming] collateral damage because of their proximity to valid military targets.”²³

Although attempts have been made to create clarity and consistency, doctrine and guidance remain unclear. Today contractors, who had once been restricted to using force only in self defense, can now use force when performing security functions and to protect assets and persons.²⁴ Bearing in mind this expanded authority, it is unclear how federal law can rationalize their status as civilians.²⁵

Consider the following: (1) By engaging in hostilities, individuals not in the military lose civilian status. (2) To the extent this is true, why would the DOD contract for services that place personnel at risk of becoming “illegal combatants”? (3) Moreover, with large numbers of nonmilitary personnel on the front lines wearing military uniforms,²⁶ how can they be protected from attack?

The current practices, at best, create a real risk that nonmilitary personnel will be intentionally targeted and, worse, if captured, subject to trial by the enemy for hostile acts.²⁷ From now on, DOD leaders and policy makers should eliminate the use of the term “civilian” except as defined under international law. Furthermore, the service secretaries should take the steps necessary to clearly distinguish personnel who qualify for civilian status from those individuals who do not. Finally, policy makers must consider incorporating nonmilitary individuals who perform activities other than battlefield logistics and supply *into* the armed forces. Making these individuals members of the force is necessary to eliminate the risk that they could be considered unlawful combatants.

Definitions: Who’s Really Who?

1. **Combatants:** members of the armed forces; a unique set of individuals authorized to engage in hostilities.²⁸ Examples: infantry soldier, submariner, and F-15 pilot.
2. **Noncombatants:** a subset of the armed forces who have been prohibited by their nation-state, not international law, from engaging in hostilities.²⁹ Noncombatants and civilians are mutually exclusive. As members of the force, this group receives no greater protections under the law than combatants.³⁰ Examples: military chaplains.³¹
3. **Civilians:** persons who are *not* members of the armed forces.³² These individuals include the indigenous population, nonaffiliated persons, and persons who accompany the armed forces.³³ This group is entitled to civilian status because they are not permitted to “take a direct part in hostilities.” Examples: the Cleaver family, Doctors Without Borders, and the Red Cross.
 - A. **Nonaffiliated persons:** a subcategory of civilians. Persons not affiliated with an armed force include the media, nongovernmental organizations, private voluntary organizations, intergovernmental organizations, refugees, stateless persons, and internally displaced persons.³⁴ Examples: the Afghanistan population and Doctors Without Borders.
 - B. **Persons accompanying the force:** a subcategory of civilians. This group includes individuals who accompany an armed force but are not members of it.³⁵ Examples: Blackwater Worldwide Security.
4. **Illegal combatants:** Individuals who engage in combat without the authority of their nation-state.

ATTITUDES AREN'T FREE

As illustrated in Figure 23-1, individuals on the battlefield are broadly classified as either “in the military” or “not in the military.” Within each of these two broad categories, there are two subcategories. For individuals in the military, the two subcategories are combatants and noncombatants. For those not in the military, the subcategories are nonaffiliated individuals and individuals accompanying the force.

The roles and statuses of both subcategories of “in the military” are fairly well understood. “Combatants” are those authorized to engage in hostilities against the enemy. They are obligated to conduct their war fighting in accordance with international law principles and to distinguish themselves from civilians. They may be directly targeted by the enemy, are entitled to prisoner of war (POW) status upon capture, and are immune from prosecution for their law of war (LOW) compliant actions.

“Noncombatants” are the nonfighting personnel of an armed force.³⁶ These individuals are not authorized to engage in hostilities because their nation-state has prohibited them from fighting. However, because they are members of the armed force, under international law they represent a legitimate target for attack by the enemy.

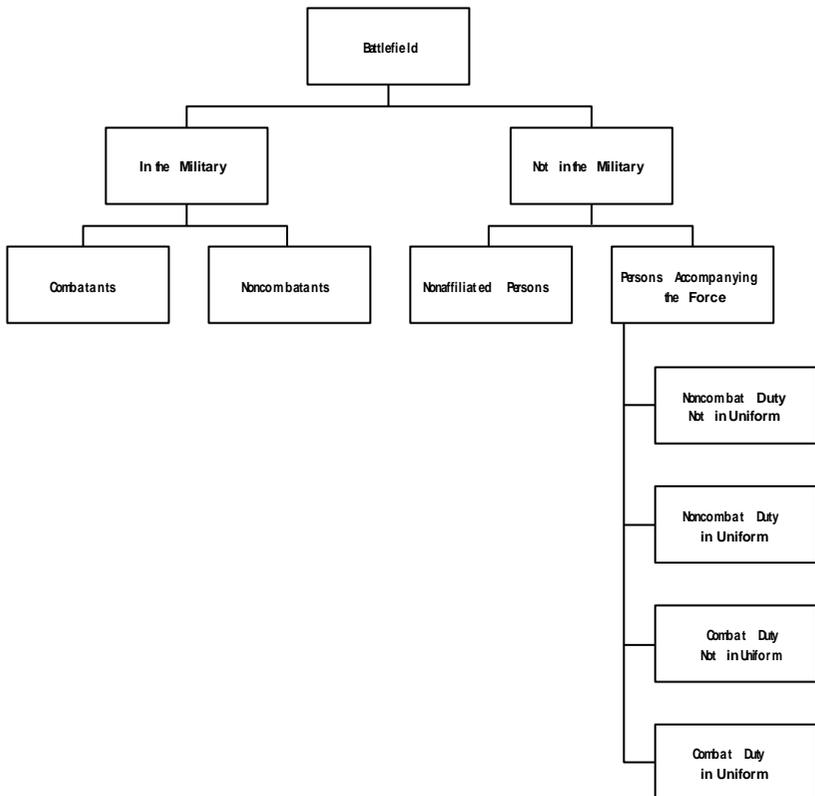


Figure 23-1. Classifications of individuals on the battlefield.

The categories of individuals “not in the military” are more problematic. Within the category of “not in the military,” nonaffiliated persons are the most clearly defined. These individuals are not associated with either of the warring parties and are not authorized to engage in combat. Nonaffiliated individuals are entitled to civilian status and thus are entitled to be respected and protected at all times. During hostilities the status and roles of this group of individuals present few legal concerns and are generally well understood.

Of those individuals who are not in the military, the category of “persons accompanying the force” is more complex, creating a great deal of confusion regarding appropriate legal statuses and roles. Within this subcategory of persons not in the military, there are four groups of individuals. The first group consists of individuals who accompany the force but remain distinct from it—this is the traditional definition of persons “accompanying the force.”

These individuals do not wear the military uniform, perform support—not combat—functions, and are therefore considered civilians under international law. Some examples of individuals in this group are contractors who provide billeting facilities, provide messing service, or operate the Army and Air Force Exchange Service. Although members of this group risk injury because of their proximity to military operations, they are not a legitimate target for the enemy because they are distinct from combatants in both appearance and function.

The remaining subcategories of persons “accompanying the force” are either not entitled to or are in danger of losing civilian status. These subcategories consist of individuals who are not in the military but perform either (1) non-combat duty, in military uniform; (2) combat duty, not in military uniform; or (3) combat duty, in military uniform.

Among these subcategories of nonmilitary personnel, the first group at risk consists of those persons who, although they do not perform combat duties, wear a military uniform. Persons in this category are at risk of losing their civilian status because they have become indistinguishable from combatants. The second group is made up of individuals who perform combat activities but do not wear a military uniform. Persons in this category violate the international *LOW* by engaging in combat illegally. Third are those individuals who engage in combat and wear the military uniform. They, like group two, engage in combat illegally. Although they distinguish themselves from civilians, they violate the *LOW* because they do not have combatant status.

Under international law, only members of the armed force are able to qualify for combatant status. By taking a direct part in hostilities without being members of the armed force, individuals become “illegal combatants.” Illegal combatants are not entitled to POW status. Additionally, they may be prosecuted by a detaining nation for any hostile acts they have taken.

Some Practical Examples

Goodwill Gail—Noncombat duty, in military uniform.³⁷ Under international law, persons “accompanying the force” are not members of the military.

These individuals do not qualify for “combatant” status. They support the force and typically include members of “labour units,” or they are “responsible for the welfare of the soldier;³⁸—like Gail. Gail is an Army morale, welfare, and recreation specialist and a DOD civilian. When she deployed to Iraq, she was issued a military uniform, which she wears daily. She travels around to different units to provide soldiers with game stations, videos, and magazines—anything to help them feel like someone cares. The problem for Gail is that by wearing the military uniform,³⁹ she has become indistinguishable from the armed force she supports.

Covert Chris—Combat duty, not in military uniform. Chris is an intelligence analyst and a DOD contract employee. In Iraq, he wears his jeans and a company shirt while accompanying the Army reconnaissance team. He wants to ensure he remains distinct from the military. He has been instructed by his contract manager that he is a civilian and cannot lawfully engage in activities that may be considered combat. The problem for Chris is that no one can tell him exactly what constitutes “activities that may be considered combat.” While some may not consider Chris to be a combatant, international law experts and a recent Israel Supreme Court decision define intelligence gathering against an enemy army as direct participation in combat.⁴⁰

G. I. Jill—Combat duty, in military uniform. As discussed, Jill Thomas, our heroine from the opening scenario, is an AFOSI agent and DOD civilian employee. She both wears the military uniform and performs a combat activity. Her job often requires the use of force, a key characteristic of a combatant.⁴¹ Further, she was hired to conduct prisoner interrogations and security activities formerly executed by uniformed service members.⁴² Jill has become a replacement for or an augmentee of the military force. However, she is not a member of it. Thus, although she distinguishes herself from those entitled to civilian status, she is engaging in apparent hostilities without authority. Her activities create the risk that she, like Chris, will be considered an “illegal combatant.”

Gail and the Need for Distinction

International law requires warring parties to distinguish their combatants through a distinctive uniform or symbol which makes them discernable from civilians. Over time, nation-states developed the practice of having combatants wear a military uniform.⁴³ This requirement is the result of the desire to restrict warfare to acts of violence against combatants and military targets. It is believed that forces unable to distinguish enemy combatants from civilians would likely resort to targeting all individuals in an area.

Article 48 of Additional Protocol I dictates that “to ensure respect for and protection of the civilian population and civilian objects, the Parties to a conflict are required at all times to distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly must conduct their operations only against military objectives.”⁴⁴ DOD’s conduct during current combat operations, however, fails to adequately differentiate its combatants from nonmilitary personnel. In fact, a recent policy

memorandum grants geographic combatant commanders the authority to direct uniform wear for deployed nonmilitary personnel, undermining the uniform's use as a traditional method of distinction.

DOD contends that, despite the international law requirement of distinction, uniform wear by nonmilitary personnel is *not* inconsistent with international law.⁴⁵ Directing individuals who are otherwise entitled to civilian status to wear a military uniform, however, makes distinguishing them from combatants impossible. This action by DOD, therefore, increases the likelihood civilians will be intentionally targeted by the enemy. While international law does not require combatants to wear a "military uniform," this practice has evolved over years of combat as the fundamental method of identifying combatants. Even so, DOD has ignored this tradition,⁴⁶ citing safety concerns. While it may be true that nonmilitary personnel in uniform are more easily identified at a distance by friendly forces, they are also easily misidentified as a combatant by the adversary.

This existing misuse of the uniform only adds confusion to the battlefield. DOD has prescribed some methods to distinguish combatants from civilians, but they are ineffective. One method, attaching the word "civilian" in place of the service name over the uniform pocket, is impractical. The identification tags are written in English and are often difficult, if not impossible, to see at a distance or under protective gear. Ultimately, military uniforms, even with the distinct name tape, are for all intents and purposes combatant uniforms. Arguing that uniform wear in a hostile environment increases the security of nonmilitary personnel contradicts years of tradition.

Chris and Jill and the Need for Combatant Status

The term "civilian" as defined by DOD is a US citizen or foreign national hired to work for the DOD.⁴⁷ The term identifies persons who are affiliated with the armed forces but are not service members. Individuals who are not in the military, however, are not necessarily entitled to civilian status on the battlefield. Under international law, civilian is a status afforded only to those persons who do not engage in hostilities.

In the scenario of Chris and Jill, both have directly participated in hostilities. As a result, neither of them would qualify for civilian status. Additionally, because they are not members of the armed forces—that is they are not combatants—international law would not recognize their authority to engage in hostilities. Absent appropriate authority, both of them could be considered criminals facing potential prosecution for their actions under the law of the detaining state. If either of them killed an enemy combatant, he or she could be tried for murder. Furthermore, because neither of them is entitled to status as a POW,⁴⁸ he or she could not expect repatriation at the cessation of hostilities.

Direct Participation in Hostilities

The complicated legal framework regarding "direct participation in hostilities" creates ambiguity about the types of activities that can be performed by

nonmilitary personnel. While international law does not prohibit nonmilitary personnel from engaging in combat, they may lose civilian status and are not protected as authorized combatants. Combat is defined by some experts as “kill[ing] or take[ing] prisoners, destroy[ing] military equipment, or gather[ing] information in the area of operations.”⁵⁴⁹ Others argue for an expanded definition based on the changing nature of warfare that includes persons who “operate a weapons system, supervise such operation, or service such equipment.”⁵⁵⁰ These ambiguities make it difficult to determine when an individual may be engaging in combat.

Too Much Legalese

Scholars of international armed conflict such as W. Hays Parks and Geoffrey Corn have attempted to clarify the activities that constitute “direct participation in hostilities.” Parks emphasizes that direct participation in hostilities is only an action which “cause[s] actual harm to the personnel and equipment of the enemy armed forces.”⁵⁵¹ Corn, on the other hand, advocates a “functional discretion” test.⁵⁵² Under Corn’s test, if an individual’s decision-making authority could result in a violation of the LOW, that activity should be considered a direct part in hostilities.⁵⁵³ The problem with this type of delineation necessitates an assessment of every activity being conducted to determine if a prohibited level of discretion exists.

Parks’ definition is equally problematic. According to this definition, it is difficult to determine what constitutes “actual harm.” For example, it is unclear if an intelligence analyst in the area of hostilities would qualify as a combatant. It may be argued the intelligence analyst is not causing actual harm to an enemy because the analyst is not killing anyone. According to the Israeli Supreme Court, however, “direct participation in hostilities” does not require the use of arms.⁵⁵⁴ Harm can be done without the use of arms at all. In this case, although the analyst is not shooting a bullet at the enemy, he is causing direct harm by providing targeting information that may be used by a B-1 bomber aircraft to drop bombs on the enemy.

Under Corn’s functional discretion test the same analyst’s activities would have to be assessed under the four LOW principles—distinction, necessity, proportionality, and minimization of unnecessary suffering—to determine the level of discretion the analyst possesses. Generally, for intelligence analysts, the principle of necessity is an essential consideration. An analyst is the primary individual responsible for identifying valid military objectives. The principle of necessity requires that a target be an object which by its nature, purpose, location, or use effectively contributes to the war-fighting, war-sustaining capabilities of the enemy and whose partial or total destruction will result in a distinct military advantage for friendly forces.⁵⁵⁵ Because the identification of targets is a fundamental combat operation, the misapplication of the principle of necessity could create a LOW violation. Thus in the Corn analysis, although the

analyst may not have discretion with regard to other principles of the LOW, he or she may still be considered a combatant.

A major problem with the functional discretion test is that mental discretion is difficult to measure and can change with seniority, rank, and level of responsibility. It is possible, then, to have personnel with the same duty title but different legal statuses based on the level of discretion they exercised during a particular event. A junior analyst deployed to the field, for instance, may not have the authority to designate targets while she is working at the air operations center. When she goes forward with the brigade combat team, however, her target designation authority may change. Attempting to ascertain her legal status based on her daily or perhaps hourly discretion is of little value.

Clearly identifying the status of persons on the field is critical in ensuring adequate protections for civilians and necessary entitlements for combatants. However, neither of these legal constructs provides much clarity for commanders or affected nonmilitary personnel. Personnel in combat need clear, simple guidelines and procedures that reduce the potential for diverse legal conclusions that may have devastating consequences.

The Risks

Gail, the goodwill specialist mentioned earlier, is a mother. She has a daughter and a son. She remembers when they headed off to college—the calls home and the care packages she sent. It was these memories that motivated her to bring compassion in the form of Sony PlayStations® and cookies to the troops—her troops. She never imagined that she would be considered a combatant. Today, however, she is in the crosshairs of Abdulla Sayeed,⁵⁶ a 17-year-old member of al-Qaeda. She would not be the first American Abdulla has killed. He has been fighting since he was nine. No time for school, but he doesn't need to read. He knows the uniform of the Americans. He aims and squeezes the trigger.

Meanwhile, in a small concrete room across town, Jill waits. She is alone in the room. She has been alone for about three hours now. The adrenaline from the earlier firefight has worn off. Surprisingly, she isn't worried. She understands that under international law, she is a POW and will be treated humanely. Suddenly, outside the door she hears yelling. She hears the English words "terrorist" and "criminal," and a man is thrown into the room. It's Chris. She doesn't know him, but she recognizes his face. What did her captors mean by "terrorist" and "criminal"? Were they talking about Chris? He isn't a terrorist or a criminal. He's an intel guy. He wears jeans and carries only the 9MM he is authorized for self-defense.

"MY GOD," she thinks. Maybe they were talking about her. They couldn't be. Admittedly she is in a uniform, but DOD wouldn't direct her to wear it if it weren't appropriate. And certainly they would not use her to carry out activities that were not lawful. But she looks like a combatant, and she is the one who was carrying an M4 assault rifle. The adrenaline is back.

What Now?

Under the current regime, nonmilitary personnel on the battlefield are at significant risk. They are wearing uniforms and protective gear that make them indistinguishable from their military counterparts. Additionally, the activities they conduct have expanded, closing the gap between support activities and actions which may be considered “direct participation in hostilities.” Both of these factors put the civilian status of these individuals in jeopardy. It is imperative that policy makers act to eliminate this risk. The following represent four simple, yet necessary actions to ensure adequate protections for nonmilitary personnel accompanying the force:

1. **Stop using the term “civilian” except as defined under international law.** Policy makers need to stop deceiving themselves. Not all nonmilitary personnel are civilians under international law. Using the term “civilian” to define all nonmilitary personnel leads to the misunderstanding that they all qualify for civilian status. They do not. Within national policy and guidance, DOD must limit the use of the term “civilian” to qualifying personnel.
2. **Clearly distinguish those who do qualify as civilians.** Individuals who are entitled to protection from attack must look like they are protected, not like a target. Directing nonmilitary persons to wear a military uniform undermines their protections and is inconsistent with the traditional practice of nation-states. A name tape with the word “civilian” is not easily seen or understood by an enemy. Nowhere under international law is anyone required to speak or read English. To ensure civilians are protected, they cannot continue to wear the uniform of the US military forces. If the purpose is to ensure quick, clear, and easy identification of civilians by *both* friendly and enemy forces, a reflective orange safety vest would be more effective.
3. **Limit the activities performed by nonmilitary personnel.** One of the primary purposes of international humanitarian law is to regulate the conduct of combat. Those not involved in the fighting must remain distinct—not only in appearance, as discussed above, but in function—from those who *are* involved in the fighting. The question over how much involvement in combat results in the loss of civilian status must be answered more clearly. Direct participation in hostilities, actual harm, and functional discretion tests are not easy to understand or apply. The traditional functions historically performed by civilians, however, provide a simple basis for characterizing noncombat activities. Examples from history include support activities⁵⁷ and logistics.⁵⁸

To ensure that nonmilitary personnel are entitled to civilian status, the functions they perform must remain limited to logistics and supply. Logistics is defined as “moving and supplying armies,”⁵⁹ while supply is the act of “providing”⁶⁰ items such as parts, food, and ammunition. It is inappropriate for civilians to supply services that involve the use of force⁶¹

against, provision of battlefield intelligence about, or the damaging of the opposing military's force or property. These three activities are inextricably combat and cannot be carried out by an individual in civilian status. Prohibiting nonmilitary personnel from executing these three activities creates greater clarity regarding the status of these individuals without limiting their ability to perform the type of logistics and supply roles needed and envisioned under international humanitarian law.

4. **Incorporate nonmilitary personnel who perform functions other than logistics or supply into the armed forces.** If DOD chooses to use nonmilitary personnel to conduct activities outside the scope of traditional supply and logistics, then it must accept that these individuals are no longer entitled to civilian status. Using civilians in this manner is inconsistent with the intent of international law and places true civilians on the battlefield at risk. Enemy combatants, witnessing the hostile acts by individuals who are not in the military, cannot readily identify which persons present a danger. As a result, all individuals in a contested area may be considered a threat, creating the risk that those associated with the military as well as those who are not will be killed.

To prevent the risk of attack against civilians, it is necessary to craft legislation to incorporate nonmilitary persons who perform functions other than those historically carried out by nonmilitary personnel into the armed forces. These individuals should be considered an "auxiliary" military force, identified by military uniform and capable of engaging in hostilities.⁶² As an auxiliary US force, these individuals would be entitled to combatant status and all the relevant protections. Additionally, incorporation of these individuals would create clearer lines of distinction and reduce the risk of any unintentional targeting of legitimate civilians.

The Merchant Marine Act of 1936 provides a solid foundation for crafting the necessary legislation. The act is a mechanism for nonmilitary mariners to become an auxiliary force during times of war.⁶³ In a similar fashion, selected nonmilitary personnel could become an auxiliary to the armed forces during deployments to areas of combat. Their membership in the force would additionally provide clear command and control for commanders while further enabling the nonmilitary personnel to carry out all activities, without the danger of being considered illegal combatants.

Legislating the incorporation of nonmilitary personnel into the force can be simple and does not necessarily have to entitle them to full service-member benefits. This issue, however, requires further consideration to determine what is appropriate. Currently, thousands of individuals are operating in hostile areas without an expectation of service-member benefits. However, because closely affiliated entities such as the Women's Air Force Service Pilots and some Merchant Marines have received some entitlements,⁶⁴ further research in this area is warranted.

Conclusion

The current policies and generalities leave personnel accompanying the force in uncertain and dangerous conditions. On the battlefield, every day they are taking chances. The risk that any individual supporting the military is in appropriately attacked or prosecuted for illegal combatant activities is a risk that US leadership should not continue to take.

Several layers of unclear or contradictory domestic policy and guidance currently exist, much of which is confusing even to legal experts. However, because the use of nonmilitary personnel during combat is likely to continue, policy makers must act to protect them. The recommendations outlined in this paper are simple, yet they provide clear parameters that will more effectively protect those present on the battlefield.

Notes

(All notes appear in shortened form. For full details, see the appropriate entry in the bibliography.)

1. The fictional scenario and character of Special Agent Jill Thomas are based on an interview of Special Agent Julie Lecea, Air Force Office of Special Investigations (AFOSI) detachment commander, Luke AFB, Arizona, regarding actual AFOSI activities in Iraq.

2. Harvell, *Department of Army (DA) Civilians in Support of Military Operations*, 1–2.

3. Ibid.

4. Ibid.

5. Ibid., 2.

6. General Accounting Office (GAO), *DOD Force Mix Issues*, chap. 0:2.

7. Heaton, “Civilians at War” 3.

8. GAO, *DOD Force Mix Issues*, chap. 0:1.

9. Ibid., chap. 2:3.

10. Ibid.

11. Brady, “Notice Provisions,” 3.

12. Ibid.

13. Ibid.

14. Turner and Norton, “Civilians at the Tip of the Spear,” 2.

15. Department of Army Pamphlet 715-16, *Contractor Deployment Guide*. Although the Army Handbook specifically addresses the limits of contractor support, similar legal arguments exist for civilian employees.

16. Army Pamphlet 715-16, 138.

17. Joint Publication 4-0, *Joint Logistics*, chap. V.

18. Ibid., VI.

19. Dunn, “Contractors Supporting Military Operations,” 5.

20. Ibid.

21. Ibid.

22. Ibid., 12.

23. Ibid.

24. 48 Code of Federal Regulations, Part 252.225-7040, b(3)(ii).

25. Ibid., b(3).

26. Army Pamphlet 715-16, App. B-1, para. 5-1.

27. Guillory, “Civilianizing the Force,” 4.

28. Additional Protocol I, Article 48.

29. Fleck, *Handbook of Humanitarian Law*, 84. (Medical service and religious personnel, although often categorized as “noncombatants” are granted the “benefit of neutrality,” and unlike other “noncombatants” are to be “respected and protected under all circumstances.” See *Handbook*, 88–89).

30. *Ibid.*, 84.

31. Medical service and religious personnel, although often categorized as “noncombatants” are granted the “benefit of neutrality” and unlike other “noncombatants” are to be “respected and protected under all circumstances.” See Fleck, *Handbook*, 88–89.

32. *Ibid.*, 210–11.

33. *Ibid.*, 95.

34. Turner, “Civilians at the Tip of the Spear,” 1.

35. Fleck, *Handbook*, 95.

36. *Ibid.*, 84.

37. Based on the real-world example in Bosnia cited by Katherine Peters in “Civilians at War.”

38. Fleck, *Handbook*, 95.

39. Haynes, “Combat Civilians.”

40. Israel Ministry of Foreign Affairs, “Israel Supreme Court Decision.”

41. Bailes, Schnecker, and Wulf, *Revisiting the State Monopoly*, 1.

42. Maginnis, “Security Contractors in War”

43. Fleck, *Handbook*, 75.

44. Additional Protocol I, Article 48.

45. Department of Defense Directive (DODD) 1404.10, *DOD Civilian Expeditionary Workforce*, para 6.9.8.

46. *Ibid.*

47. DODD 1400.31, *DOD Civilian Work Force Contingency*, para 3.1.

48. Additional Protocol I, Article 47, 1977.

49. Fleck, *Handbook*, 232.

50. *Ibid.*

51. Maxwell, “Law of War and Civilians on the Battlefield,” 18.

52. Corn, “Unarmed but How Dangerous?” 261.

53. *Ibid.*, 261.

54. Israel Ministry of Foreign Affairs, “Israel Supreme Court Decision.”

55. Department of the Navy, *Commander's Handbook on the Law of Naval Operations*, para 5.3.1.

56. Abdulla Sayeed is a fictional character. Any resemblance to any actual person, living or dead, is purely coincidental.

57. Green, *The Contemporary Law of Armed Conflict*, 106.

58. *Ibid.*

59. Dictionary.net, “What Does Logistics Mean?”

60. Dictionary.net, “What Does Supplying Mean?”

61. Nothing in international law prohibits anyone's use of force in self-defense; therefore nothing in this article should be interpreted to add such a restriction.

62. Merchant Marine Act, 1936, Title I, Section 101 (b).

63. *Ibid.*

64. US Maritime Service, “Mariners' Struggle for Veteran Status.”

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