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Introduction to the Symposium Edition of the Texas A&M Journal of Property Law and The United States Defense Industry: Innovation, Acquisition, and Analysis

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**INTRODUCTION TO THE SYMPOSIUM EDITION OF THE
TEXAS A&M JOURNAL OF PROPERTY LAW AND
THE UNITED STATES DEFENSE INDUSTRY:
INNOVATION, ACQUISITION,
AND ANALYSIS**

By Lisa A. Rich[†]

On February 23, 2018, the Texas A&M Journal of Property Law held an innovative and informative symposium on the United States Defense Industry focused on the acquisition process from conception to deployment and the scientific, budgetary, political, and legal framework through which the United States joint force is forged. The symposium brought together stakeholders from academia, private and public sectors, and the military to explain, analyze, and assess the labyrinthine weapons acquisition system and its role-and impact-on national security.

“There is no perfect defense against the range of threats facing [the United States].”¹ “Nuclear, chemical, radiological, biological attacks[,]” cyber warfare, and natural disasters”² all require robust responses grounded in principle and exemplifying innovation. “Balance is the key to defense. . . . You want procurement to go along with troops and readiness to have a cohesive whole.”³

The United States national security platforms have received renewed focus and momentum in the last two years.⁴ Beginning with the

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1. EXEC. OFFICE OF THE PRESIDENT, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 10 (Dec. 2017), <https://www.hsdl.org/?view&did=806478> [<https://perma.cc/BC8W-LU9P>] [hereinafter 2017 NATIONAL SECURITY STRATEGY].

2. *Id.* at 7.

3. Andrew Clevenger, *Pentagon Strategy Outstrips Its Budget Process*, ROLL CALL (Jan. 22, 2018, 5:05 AM), <https://www.rollcall.com/news/politics/pentagon-strategy-plans-not-match-budget-process> [<https://perma.cc/Z9S9-E7ZC>].

4. Prior to 2017, the Budget Control Act of 2011 impacted funding and priorities for the Department of Defense through the process of sequestration. Budget Control Act of 2011, 2 U.S.C. § 900 (2012). For an industry perspective on the impact sequestration had on defense acquisitions and strategy, see, for example, RHYS McCORMICK & ANDREW HUNTER, AEROSPACE INDUS. ASS’N & CTR. FOR STRATEGIC & INT’L STUDIES, MEASURING THE IMPACT OF SEQUESTRATION AND THE DEFENSE DRAWDOWN ON THE INDUSTRIAL BASE, 2011–2015 (May 2017), <https://www.aia-aero->

Fiscal Year 2017 National Defense Authorization Act⁵ and continuing throughout 2017, Congress and the Executive Branch promulgated legislation, executive orders,⁶ regulations, and policy initiatives⁷ designed to reinvigorate the United States Joint Force and the entire defense industry acquisition process.

Specifically, both the 2018 National Defense Strategy and the 2017 National Security Strategy called for reinvigorated partnerships with universities and academia.⁸ Both also called for greater innovation within the defense industry throughout the acquisition process from need to deployment.⁹ The Fiscal Year 2017 National Defense Authorization Act, for example, required a review, analysis, and reorganization of the Defense Department’s approach to acquisitions and required a report to Congress, which included the following excerpt.¹⁰

*Today, we are emerging from a period of strategic atrophy, aware that [the United States] military advantage has been eroding. . . . A . . . rapidly innovating joint force, combined with a robust constellation of allies and partners . . . will provide the capabilities and agility required to preserve and prevail in conflict and preserve peace through strength.*¹¹

As observers have noted, however, “defense budgets [and the platforms funded by them], like aircraft carriers, can[not] turn on a dime.”¹² The budget governs a “Department of Defense acquisition system [that] is highly complex.”¹³ And, “[d]espite decades of efforts

space.org/wp-content/uploads/2017/08/May-2017-Measuring-the-Impact-of-Sequestration-Preliminary-Findings.pdf [https://perma.cc/8Q8H-667L].

5. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016).

6. *See, e.g.*, Exec. Order No. 13,806, 82 Fed. Reg. 34,597 (July 21, 2017) (calling for an assessment of the defense industrial base by April 2018).

7. *See, e.g.*, 2017 NATIONAL SECURITY STRATEGY, *supra* note 1, at 29; U.S. DEP’T OF DEF., SUMMARY OF THE 2018 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 8, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf> [https://perma.cc/GZP9-XJWK] [hereinafter 2018 NATIONAL DEFENSE STRATEGY].

8. *See* 2018 NATIONAL DEFENSE STRATEGY, *supra* note 7, at 8; 2017 NATIONAL SECURITY STRATEGY, *supra* note 1, at 21.

9. 2018 NATIONAL DEFENSE STRATEGY, *supra* note 8, at 10-11; 2017 NATIONAL SECURITY STRATEGY, *supra* note 1, at 21 (calling for a National Security Innovation Base that is the “American network of knowledge, capabilities, and people—including academia, National Laboratories, and the private sector—that turns ideas into innovations. . . .”).

10. *See* National Defense Authorization Act for Fiscal Year 2017 § 901. The report on the Defense Department’s compliance with the FY 2017 NDAA was submitted to Congress in August 2017 and is available at <https://www.defense.gov/Portals/1/Documents/pubs/Section-901-FY-2017-NDAA-Report.pdf> [https://perma.cc/V8Q4-CJCP].

11. 2018 NATIONAL DEFENSE STRATEGY, *supra* note 7, at 1.

12. Clevenger, *supra* note 3.

13. MOSHE SCHWARTZ, CONG. RESEARCH SERV., RL34026, DEFENSE ACQUISITIONS: HOW DOD ACQUIRES WEAPON SYSTEMS AND RECENT EFFORTS TO REFORM THE PROCESS 1 (2013), <https://www.hsdl.org/?view&did=728258> [https://perma.cc/P32G-KDHQ].

to reform the way that the United States develops and procures new weapons, [its] acquisition system [until recently has] remained sclerotic.”¹⁴ “Every weapon system in the United States arsenal is created to satisfy a specific military need (often referred to as a *requirement*), must be paid for by the federal *budget*, and is designed and built within the acquisition system.”¹⁵

The Symposium provided an important overview of this acquisition system and its importance to our national security. The acquisition process begins at the moment of innovation and recognition of need.¹⁶ It “encompasses the design, engineering construction, testing, deployment, sustainment, and disposal of weapons or related items purchased from a contractor.”¹⁷ At each point in the process, stakeholders from the public and private sectors are involved and impacted. As such, the symposium included representatives from every stakeholder group to provide a holistic and thorough analysis of the policy, science, and academic impacts of the weapons acquisition process.

The Fiscal Year 2019 National Defense Authorization Act currently has just been signed by the President.¹⁸ While this bill authorizes a number of the current administration’s national defense and national security strategies, stakeholders suggest that the Fiscal Year 2020 budget priorities will be even more important. According to Deputy Defense Secretary Patrick Shanahan, “[t]he 2020 budget is ‘probably the biggest step we can take to make sure we can[not] unwind [the Administration’s defense] strategy.’”¹⁹ “This is where many of the bets, in terms of innovation and some of the new technology, will take place.”²⁰

As such, the February 23, 2018, symposium was extraordinarily timely. It answered the Administration’s call to engage the academy in the national security discussion; recognized the strong ties Texas

14. 2017 NATIONAL SECURITY STRATEGY, *supra* note 1, at 27. For a detailed analysis of the defense acquisition process, see SCHWARTZ, *supra* note 13; MOSHE SCHWARTZ ET AL., CONG. RESEARCH SERV., R44010, DEFENSE ACQUISITIONS: HOW AND WHERE DOD SPENDS AND REPORTS ITS CONTRACTING DOLLARS (2016), https://www.ndia.org/-/media/sites/ndia/policy/documents/digest/3jan17/defense-acquisitions_how-and-where-dod-spends-and-reports-its-contracting-dollars.ashx [<https://perma.cc/6JL8-J9RL>].

15. SCHWARTZ, *supra* note 13, at 2 (emphasis in original).

16. *Id.* at Summary.

17. *Id.* at 1 (citation omitted).

18. See, e.g., Jim Garamone, *President Signs Fiscal 2019 Defense Authorization Act at Fort Drum Ceremony*, U.S. DEP’T OF DEF. (Aug. 13, 2018), <https://www.defense.gov/News/Article/Article/1601016/president-signs-fiscal-2019-defense-authorization-act-at-fort-drum-ceremony/> [<https://perma.cc/5ZHD-32C4>]. As noted in this article, the FY2019 NDAA *authorizes* the expenditure of approximately \$719 billion on defense, including acquisitions. It does not, however, appropriate these funds for expenditure. Congress currently is considering the FY2019 appropriations bills. *Id.*

19. Clevenger, *supra* note 3.

20. *Id.*

A&M University has to the innovative protection of the United States given its status as a land, sea, air, and space grant institution; and highlighted the intersection of law, science, and policy, throughout the acquisition process. The articles that follow in this issue continue that important dialogue and the expertise exemplified throughout the symposium. Anyone interested in the acquisitions process from concept to deployment will find the articles herein invaluable.