11

Implementing Change

JUDITH A. MILLER

The premise of this book is that significant organizational change is necessary, both inside the Department of Defense and across departmental boundaries. If the new national security team agrees, how should it go about making these changes? Those who have studied the process of institutional change assert that time horizons matter: smaller incremental steps toward change can be carried out in several years, but fundamental change more realistically requires on the order of five years — *not* counting any legislative authorizations that might be necessary. Even for a new administration looking forward to a potential two terms in office, those timelines could be chilling. But assuming the administration can crystallize quickly behind a change agenda,[1] and can seize the opportunity for a bipartisan dialogue and partnership with the 107th Congress, we believe many of the changes outlined in prior chapters can be made promptly by executive branch decision, and can be made to stick by follow-on legislation. To put these points in context, this chapter first briefly outlines prior significant legislative and administrative efforts to achieve fundamental change for the national security establishment, and then turns to this book's specific recommendations for change.

The information and help provided by Alice Maroni, Harvey Nathan, Deborah Lee James, Paul Koffsky, Karen Yannello, Eliana Davidson, and John Casciotti are gratefully acknowledged.

1. I do not suggest that the proposals for change presented here need be swallowed whole. The point of this chapter is to suggest how the new administration and the new Congress could go about implementing whatever portion of these changes they adopt as their own.

Prior Defense Reform Efforts

A brief review of how structural change within the national security establishment has been achieved in the past reveals legislative and administrative changes of considerable significance, typically occurring virtually simultaneously. For example, the national security structure we live with today was first laid out legislatively by the National Security Act of 1947.[2] It reflected the lessons of World War II, and positioned the United States for the Cold War to follow, in a number of fundamental ways. It created a Secretary of Defense; provided for Departments of the Army, Navy, and Air Force within the National Military Establishment; established the National Security Council; and created a Director of Central Intelligence. But even before its enactment, a Joint Chiefs of Staff (JCS) directive approved by President Truman formally spelled out JCS authority with respect to the unified commands. This was a significant mandate *not* spoken to by the 1947 Act, but it was then folded into the follow-on "Key West Agreement" of 1948, which in turn helped implement much of the 1947 Act for the National Military Establishment.[3]

The departmental structure resulting from this first effort at organizational change had unfortunate similarities to the Articles of Confederation with which this country started in 1781. Although the military departments were part of the National Military Establishment, they were each cabinet-level departments that at best acted as a loose federation of equals, with uncertain ties to the Secretary of Defense.

At the urging of Secretary of Defense James Forrestal and the Eberstadt Task Force Report to the Hoover Commission, the National Military Establishment was replaced by the Department of Defense pursuant to the National Security Act Amendments of 1949.[4] As a result, the military departments no longer had cabinet-level authority, and instead became part of the Department of Defense. The position of Chairman of the Joint Chiefs of Staff was also officially created by

2. P.L. No. 80-253, 61 Stat. 495 (1947) (codified as amended at 50 U.S.C. § 401).

3. U.S. Department of Defense, *Functions of the Armed Forces and the Joint Chiefs of Staff* (March 11–14, 1948).

4. P.L. No. 81-216, 63 Stat. 578 (1949) (codified as amended in various sections of 5 and 10 U.S.C.).

this statute, but given the authority only to preside as a non-voting member of the Joint Chiefs of Staff.[5]

At the beginning of the Eisenhower administration, the new President used his reorganization authority under Title V of the U.S. Code to submit his 1953 Reorganization Plan to Congress for approval.[6] It took further steps to strengthen the Secretary of Defense and his staff, and the role of the Chairman. The Key West agreement was thereafter revised, and Department of Defense Directive 5158.1 was issued to carry out other presidential recommendations, for example, that the JCS duties of the Chiefs were to be their principal duties.[7]

In 1958, in the aftermath of Sputnik, and at the urging of President Eisenhower, Congress passed additional reform legislation: the Department of Defense Reorganization Act of 1958.[8] It was this Act that defined the authority of the Secretary of Defense over the Department of Defense as "direction, authority and control," even with respect to the military departments.[9] It also gave the Secretary broad discretion to reorganize the Department. The military departments were taken out of the chain of command; unified and specified combatant commands were established by statute. Again, the broad outlines of the Act were implemented in detail through Secretary of Defense directives.

Although the cumulative effect of the 1947, 1949, and 1958 Acts (and the 1953 Reorganization Plan) was to increase the authority of the Secretary of Defense over the Department, to lay a strong foundation for joint commands, and to decrease the relative role of the military departments, at best these were trend lines. In many respects the Department remained an uneasy coalition of competing power centers; the Chairman of the Joint Chiefs of Staff, the Joint Staff, and the unified commands were especially perceived as being left with the short end of the stick.

In theory, many of the problems on the joint side of the Department could have been fixed by directives from the Secretary of

5. 63 Stat. at 581-83.

6. 5 U.S.C. § 903; Reorganization Plan No. 6 of 1953, 5 U.S.C. app. 1.

7. U.S. Department of Defense, Directive 5158.1 (July 26, 1954).

8. Department of Defense Reorganization Act of 1958, P.L. No. 85-599, 72 Stat. 514 (1958) (codified as amended at 50 U.S.C. § 401).

9. 72 Stat. at 514.

Defense; e.g., giving more clout to the Chairman of the Joint Chiefs of Staff and the combatant commands, or insisting that the military departments proffer better officers for service on the Joint Staff. For those who knew the Department of Defense *before* the Goldwater-Nichols Department of Defense Reorganization Act of 1986, however, the idea that lasting results could have been accomplished by Secretary of Defense fiat — or even presidential direction — is preposterous.[10] Even a decade and a half after the passage of Goldwater-Nichols, many of its ambitious goals are yet to be achieved. To pick just one example, the Commanders-in-Chief (CINCs) of the Unified Commands (the four-star heads of the major joint commands) were empowered by the legislation — but *not* authorized by JCS directive — to exercise logistic and administrative authority broadly during peacetime.[11] The military departments in particular opposed Goldwater-Nichols before enactment, and each now even more zealously, if possible, protects its "organize, train and equip" role that the Act preserved. But what Goldwater-Nichols did was empower and legitimate change that the Secretary of Defense might legally have carried out in large part on his own. The Act itself was a statement of a bipartisan consensus in Congress that reform was needed, and an implicit promise to the reform-minded at the Department of Defense that Congress would not chip away at the basic outlines of the Act at the behest of one or more disappointed losers.

Time for Goldwater-Nichols II?

Do we need a Goldwater-Nichols II? And should it extend beyond the Department of Defense? The empowerment of institutional reform that the Goldwater-Nichols Act provided cannot, fourteen years later, be denied. The Joint Staff has been transformed from a relatively sleepy backwater to an effective, efficient — and some would argue too single-minded — staff supporting the Chairman of the Joint Chiefs of Staff. The Chairman and the Vice Chairman have clearly played, day in and day out, an institutionally effective policy and leadership role — at the National Security Council, in the Joint Re-

10. The Goldwater-Nichols Department of Defense Reorganization Act of 1986, P.L. No. 99-433, 100 Stat. 992 (1986) (10 U.S.C. §§ 111 et seq.).

11. 100 Stat. at 1013 (codified at 10 U.S.C. § 164).

quirements Oversight Council (JROC), and in assisting the Secretary of Defense and the President in operations and in budget deliberations — that they simply were not staffed to play before Goldwater-Nichols. DESERT STORM — and our operations in Haiti, Bosnia, Kosovo, and Iraq — have been just the visible pay-off of these reforms on the operational side. But the underlying theme of this book is that Goldwater-Nichols was just the beginning. It permitted the re-tooling of DOD's missions and power centers that made DESERT STORM, and subsequent missions up to and including Kosovo, successful.[12] But Goldwater-Nichols — like the National Security Act of 1947 itself — was written and originally implemented with the Cold War in mind. The Soviet Union transformed itself only in 1989. The Department, and the country, have been rethinking DOD's organization and mission ever since. It may, in fact, be past time for a concerted restatement of organizational principles that will take us well into the new century.

Does that mean that an enormous redrafting of statutory provisions is called for? Or that management change within the Secretary of Defense's existing powers must wait for a new legislative framework? I would argue emphatically not. The most striking driving force and enabler in Goldwater-Nichols, to my eye, were the specific personnel changes mandating joint-duty positions, establishing Joint Specialty Officers, and making promotion to flag rank dependent on joint experience — all backed up by the strengthening of the Chairman's role that permitted him to achieve their successful implementation.[13] This change could *not* have effectively been carried out by Secretary of Defense mandate — a mandate that could vary from Secretary to Secretary, let alone from administration to administration. Such a fundamental shift in promotion and staffing policy could only be implemented through legislation. But while these shifts in joint-duty requirements were a fundamental underpinning of the Goldwater-Nichols reforms, none of Goldwater-Nichols' sponsors would have spent years in study and support of that Act if all it ac-

12. The U.S. experience in Somalia makes it clear, however, that the Goldwater-Nichols reforms were a necessary but not sufficient basis for success. See, e.g., Mark Bowden, *Black Hawk Down: A Story of Modern War* (Boston: Atlantic Monthly Press, 1999) for a further description of what went wrong in Somalia.

13. 100 Stat. at 1025-34 (codified at 10 U.S.C. §§ 601, 612, 619, 661–668).

complished was some tinkering around the edges of the personnel system.

What made Goldwater-Nichols a continuing engine for reform within DOD was — to use a hackneyed phrase — the "vision" expressed in the Act's statement of purpose that allowed those bent on reform in the Department to claim the Goldwater-Nichols mantle. "Goldwater-Nichols II" could ultimately perform a similar function today, if Congress and the executive branch put aside their differences and jointly push to achieve needed change. As outlined in prior chapters, the stakes are genuinely high: we could end up with the "wrong" defense for the twenty-first century, and we would be paying too many billions even for that. But this effort to achieve change will come to naught without sustained leadership, trust, and political will at *both* ends of Pennsylvania Avenue. If the branches work against each other, there will be no lack of partisans with entrenched views to exploit their differences.

But to recognize the obvious — that some changes either cannot be achieved without legislation or need to be propelled by a legislative mandate — does not gainsay the other lesson that leaps from a brief review of the significant structural changes that have occurred in the past fifty-plus years: that the administration can do much on its own *if* the Congress is with it. To point to just one example from the historical sketch laid out above, unified combatant commands were not officially established by statute until 1958.[14] They were not empowered to make fundamental command decisions in peacetime with respect to their components until Goldwater-Nichols. And yet they had been used in World War II, were defined by presidential directive in 1946, and were further bolstered by the Key West agreements of 1948. In other words, the President's authority as Commander-in-Chief and the Secretary of Defense's "direction, authority and control" can achieve a lot, if Congress ultimately embraces their decisions.

It perhaps also goes without saying that if the Congress is hostile to the changes being implemented, it can do much to hinder or stop their execution. A classic example is in the area of competitive privatization. While Congress, in 1988, declared a policy to rely on the

14. P.L. No. 85-599.

private sector for supplies and services if it is cost-effective to do so,[15] it substantially constrained that policy in practice by adopting a variety of reporting, timing, and other restrictions that made effective implementation of the policy almost impossible.[16] Because the Armed Services Committees of the House and the Senate continue (generally to the Department of Defense's great good fortune) routinely to produce a substantial Authorization Act each year, they can also quickly take action to stop or endlessly complicate a change not to their liking. This means that if the new administration decides to push for change — and to maximize its chance for success, to implement what it can administratively — it needs at least the tacit and preferably the enthusiastic support of the responsible committees.

Ideally, the new administration and the new Congress will jointly embrace a change agenda for national security. To help that partnership along, the executive branch should think explicitly about what the Congress would gain if it adopted some or all of the suggestions for change laid out in Chapters 1 through 10 of this book. Apart from satisfaction in helping to maintain the American military's edge over all comers, they can be effective participants by insisting on reports on implementation efforts and by effectively monitoring the results. The defense authorizing committees in particular, by virtue of their long tradition of effective annual legislative activity, may be especially suited to help lead Capitol Hill's efforts generally to grapple with the overlapping and cross-cutting inter-agency challenges that many of this book's recommendations present.[17] And working on the "big picture" might also re-establish a certain balance between the

15. 10 U.S.C. § 2462.

16. These constraints are found at 10 U.S.C. §§ 2305(a)(1), 2461, 2464-2467, 2469, 2470, 4532; Department of Defense Appropriations Act of 1996, P.L. No. 104-61, §§ 8020, 8037, 8050, 109 Stat. 636, 656, 659, 661-62 (1995); National Defense Authorization Act for Fiscal Year 1987, P.L. No. 99-661, § 317, 100 Stat. 3816, 3855 (1986).

17. For example, the Senate Armed Services Committee already has a functioning subcommittee on "Emerging Threats and Capabilities." The Nunn-Lugar Cooperative Threat Reduction Act of 1993 (Title XII of the National Defense Authorization Act for Fiscal Year 1994), Pub. L. No. 103-160, 107 Stat. 1777 (codified, as amended, at 22 U.S.C. §§ 5951-58), is another, earlier example of bipartisan cooperation by authorizers that crossed traditional jurisdictional lines.

authorizers on one hand and the appropriators on the other, who by definition appropriate on an annual time-line, and recently, often before the authorizers have even completed their work.

Implementing Defense Reform

The recommendations in this book vary greatly in sweep and in detail, from the revolutionary, clearly requiring legislation, such as civilian personnel reform, to the fundamental but almost prosaically counter-revolutionary, such as returning independent research and development (IR&D) funds to the cutting-edge research role they had twenty to thirty years ago, requiring a mix of legislative and regulatory change.[18] One approach to categorizing these rather lumpy proposals is whether — or how far — they can be implemented without the need for legislation. Another approach is to look at whether the current appropriations process will permit an otherwise achievable administratively or legislatively authorized reform to be carried through.

It is clearly beyond the reach of this chapter, or this book, to offer a tutorial on the executive branch's budget process or the committee structure and appropriations process of the Congress. Yet their interactions often seem to defeat reform even when many on both sides of the aisle seem genuinely determined to achieve it. Although this section's focus is largely on what the new administration can do on its own and what it needs to defer to authorizing legislation, it also tries to keep a wary eye on where the money is, and how those bent on reform could play more successfully in the budget arena.

If the new administration agreed in whole or in part with this book's recommendations, what could it do starting on the day the President is sworn in? In the joint world, it could implement virtually all of the recommendations of Chapter 2 and Chapter 3. That is, the Secretary of Defense could direct, pursuant to 10 U.S.C. § 162, that the Chairman of the Joint Chiefs of Staff (CJCS) publish an annual roadmap setting out joint architectures, integration needs, and capability shortfalls. The Secretary could make the CINC Joint Forces Command (CINCJFCOM) an advisor to the JROC and the Defense Advisory Board (DAB), and could recommend to the President that the next

18. See 10 U.S.C. § 2372; 48 Code of Federal Regulations (CFR) § 231.205-18 (1999).

CINCJFCOM have had prior service as a CINC or Service Chief or Vice Chief. The President could set out in the Unified Command Plan (UCP) the CINCJFCOM's responsibilities as an action agent for jointness, future capabilities, and joint experimentation.[19] The Secretary could direct the comptroller to assure proper resources for these missions at the beginning of the Program Objective Memorandum (POM) cycle. Since TRANSCOM and the Defense Logistics Agency (and the other agencies identified in Chapter 2 for consolidation as part of a unified logistics command) are not functions vested by law, the Secretary could direct their consolidation.[20] The Secretary could instruct the comptroller to work out the undoubtedly complicated resource issues that would flow from combining a unified functional command sponsored by the Air Force with several other defense agencies. The Secretary could allocate resources to standing joint logistical commands, and could cause the Office of the Secretary of Defense to publish logistics-deployment guidelines pursuant to recommendations of the Chairman of the JCS. To lock in a minimal legislative baseline for these changes, the Secretary could direct the General Counsel to include in the Department's authorization proposal legislative provisions making the CJCS's roadmap a statutorily required report, defining the experience requirements for the CINCJFCOM position, and making the CINCJFCOM a statutory member of the JROC.

Similarly, the command and control, information technology, and information assurance recommendations in Chapter 3 could also be authorized in large part by Secretary of Defense directive. Simply recognizing command and control (C2) as a readiness issue — and thus to be measured and reported on in the Senior Readiness Oversight Council (SROC) and the Joint Requirements Oversight Council — can be done by Secretary of Defense Memorandum. The Unified Command Plan can assign responsibility for command and control to Joint Forces Command. That responsibility was first given to the CJCS in 1962, and he could of course continue to have oversight re-

19. See 10 U.S.C. § 161, which provides that the Chairman periodically, and not less than every two years, review the missions, responsibilities, and force structure of each combatant command, and recommend changes to the President through the Secretary of Defense.

20. See 10 U.S.C. § 125(a); 10 U.S.C. § 191.

sponsibilities pursuant to 10 U.S.C. § 162. Either through the Unified Command Plan or by Secretary of Defense directive, CINCJFCOM could be directed to establish a Joint Task Force command and control system, an "expercise" office, and a Joint Command and Control Blueprint office. The UCP can separate responsibility for computer network attack (leaving it with CINCSPACE), from computer network defense. The Secretary of Defense can put computer network defense into the hands of the Department's Chief Information Officer (CIO), and direct that the National Security Agency (NSA) take on a supporting role on computer network defense.

This is nevertheless an area where saying it can be done significantly understates the difficulty of the task. First, the cumulative effect of the changes proposed in Chapters 2 and 3 is to shift power from the services to the joint world and from civilian decisionmakers, such as the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C3I), to the combatant command chain. Moreover, these shifts somehow have to work against a DOD internal funding system largely laid out and defended by the military departments, not the joint commands.

The way these cross-cutting funding problems have been handled in the past leaves much to be desired. The CINCs are constantly perceived as having wish lists unconstrained by budgeting realities and articulated far too late to the OSD to have a prayer of being included in the Secretary of Defense's guidance to the services that, each winter, kicks off the budget cycle for the following year. So if these organizational shifts in responsibility are to stick, the Secretary must be ready to tell the comptroller by February that the sponsoring services (Navy for JFCOM [formerly ACOM], Air Force for SPACECOM) must include some particular number of dollars in their submissions for these joint priorities. Somehow working with their sponsoring services, the CINCs need to be staffed in order to play in this broader budgeting environment.[21]

Of course, even if the funding process can be worked inside the Pentagon, the information technology revolution that it would enable also does not fit neatly into the traditional congressional appropria-

21. With respect to changes in CINC and other headquarters staffs, the Secretary must also keep an eye on 10 U.S.C. § 130a's limitations on management headquarters personnel.

tions process. The pace of change in this world simply outstrips by years the traditional appropriations process used for major defense procurements. A process that may work for a ten or twenty-year major procurement cycle for platforms like fighter planes or aircraft carriers — although perhaps not optimized even for them — does not seem to work at all in the nimble information-technology world. Ideally there, you want a pot of money against which you can draw to execute an architecture that may evolve every three months and where the very purpose is to have systems that stay cutting-edge instead of being bought to last twenty years. Industry is reinventing itself in this area apparently on a daily basis — shifting suppliers and ideas apace — and it does so by recognizing that it will have to budget some amount for information technology, without being able to specify its precise contours in advance. Appropriators tend to take a dim view of this approach. The Navy has nevertheless apparently managed in the FY 2001 appropriation and authorization process, after considerable struggle, to achieve initial approval of a multi-year contracting-for-services approach to the Navy/Marine Corps Intranet program, by funding it largely through operations and maintenance (O&M).[22] Perhaps in this one special area, the appropriators will find a way to accommodate themselves to an after-the-fact oversight role, but it is important to recognize how much this cuts against the grain. In another context — DESERT STORM — with 100,000 soldiers on the ground, the administration's request for an adequate pot of money up front to cover their costs was turned down by the appropriators for lack of specificity, twice forcing DOD to resort to the Food and Forage Act.[23] This is obviously not an appropriate fix for information technology or command and control issues.

Assuming that congressional oversight and funding complexities can somehow be resolved, there are also other difficulties: civilian oversight issues must be untangled, and the responsibilities under

22. Reports in various defense-related publications have made it clear that the source of funds and the program itself have been challenged both inside the Navy and by Congress. See, e.g., John Robinson, "Incoming CNO Warns Navy Intranet Effort Can't Bankrupt Readiness," *Defense Daily*, June 29, 2000, p. 2; "Senators Want to Further Restrict Navy Intranet," *Inside the Pentagon*, June 29, 2000, p. 10. See also H.R. 4205, 106th Cong. § 332 (2000), S. 2539, 106th Cong. § 810 (2000).

23. 41 U.S.C. § 11.

the Clinger-Cohen Act of the Chief Information Officer and ASD C3I in the command, control, and information technology areas must be worked through.[24] This chapter does not resolve these issues. If the Secretary of Defense and Deputy Secretary of Defense hit the ground committed to this reform agenda, they will also have to be committed to working out these issues with the relevant stakeholders. With issues as cross-cutting as these, that means the Deputy Secretary of Defense must be prepared to head an *ad hoc* task force of affected players, backed up by a working group that drafts implementing directives. To make this work, timelines have to be set and stuck to by the Deputy Secretary of Defense, without waiting for the new senior political team to make it through the confirmation process. Conceivably this effort could be merged (if not submerged) into the Quadrennial Defense Review, which the Deputy Secretary of Defense will chair and which will unfold on the same timeline. The Director of Central Intelligence (DCI) will also want to take part on at least some of these issues.

The main recommendation of Chapter 4 is to fold all the technical intelligence agencies — the NSA, the National Reconnaissance Organization (NRO), the National Imagery and Mapping Agency (NIMA), and the Central Masint Office — into one. This cannot be accomplished without legislation, because NIMA is a creature of statute, and thus apparently beyond the Secretary of Defense's otherwise broad reorganization authority, while NSA and NRO are so protective of their respective charters that it is inconceivable that they could be merged without congressional approval and oversight.[25] If the experience with NIMA is any guide, the Secretary cannot simply put forward a legislative proposal and wait to see how the Congress responds. To pursue this proposal, a transition team needs to be designated and given responsibility for working the myriad details of this change with the affected agencies, the national intelligence com-

24. The Clinger-Cohen Act of 1996 (also known as the Federal Acquisition Reform Act of 1996 and the Information Technology Management Reform Act of 1996), P.L. No. 104-106, 110 Stat. 642 (1996) (codified in numerous titles); Chief Information Officer responsibilities: 40 U.S.C. § 1425, 10 U.S.C. § 2223; ASD C3I responsibilities: 10 U.S.C. § 138.

25. NSA's charter is National Security Council, Intelligence Directive No. 9 (October 24, 1952). NRO's charter is U.S. Department of Defense, Directive 5105.23 (June 14, 1962).

munity, and the Congress, with particular emphasis on the Intelligence Committees, and with concern for the defense authorizing committees as well.

By contrast, the National Assessment Center proposal in Chapter 4 appears capable of implementation by the DCI — perhaps with a Presidential Decision Directive outlining its mission to the rest of the national security community.

Several recommendations in Chapter 5 for countering asymmetrical threats will clearly require congressional action in the form of legislative authorization and supporting appropriations: to establish a university-affiliated, government-owned laboratory for biowarfare defense technology; and to organize a government-funded but private National Information Assurance Institute.[26] The biowarfare defense technology laboratory, if modeled as suggested on the Department of Energy's nuclear laboratories, needs to include provisions for oversight mechanisms endorsed by Congress from the beginning. It would also have to be designed with an eye to the Biological Weapons Convention Protocol, currently being negotiated, that will deal with implementation of the Convention through on-site inspections. Other recommendations, such as creating a Deputy National Security Advisor for such cross-cutting issues as catastrophic terrorism and counter-proliferation (addressed at greater length in my discussion of Chapter 10's recommendations), and adopting strong programs to develop and deploy security technology and techniques like the "two-man rule," are clearly steps that could begin to be implemented immediately by the executive branch.

Chapter 6 on America's technological edge can largely be implemented through DOD decision-making. The Department can encourage second and third-tier consolidation of defense industry; support teaming, joint ventures, and export reform; improve education within the acquisition community; and grapple with whether and how to intrude into make/buy decisions. This is a far-reaching but nevertheless bread-and-butter docket for the incoming Under

26. The experience of the Financial Services Information Sharing and Analysis Center to date may also be relevant to this proposed public-private partnership effort. That center brings together a secure database, analytic tools, and information gathering and distribution facilities to share information on security threats, vulnerabilities, incidents, and solutions among its members in the banking, securities, and insurance industries.

Secretary of Defense for Acquisition, Technology, and Logistics (USD AT&L). But some legislative changes that go back to a prior way of doing business appear to be called for in the areas of IR&D;[27] improved cash flows to defense industry;[28] and the ability to establish a Federally Funded Research and Development Center (FFRDC) in the area of biological warfare defense.[29] A statutorily required report on the defense technology base by the Secretary of Defense would highlight and enable the Congress as well as the executive branch to track the overall capability of the defense industry.

Chapter 6 also calls for dealing with antitrust law and export control policies. Antitrust laws have a substantial constituency, along with resident bodies of expertise at the Federal Trade Commission and the Department of Justice (DOJ), and are reformed even less often than DOD.[30] Export control policies have been the subject of major congressional focus and investigations in the last few years (even though substantial administrative steps have been undertaken to streamline the process through the Defense Trade Security Initiative).[31] A major commitment of resources within the administration and on the Hill would be required to make further changes in these two areas. The proposal for an export agency funded by State, Defense, and Commerce would require legislation to overcome the explicit fiscal-law rule that effectively forbids the mixing of departmental appropriations.[32]

The implementing strategy for the Revolution in Business Affairs is largely laid out in Chapter 7: use existing base closing authorities as leverage to inspire a renewed effort to enact BRAC-like legislation; repeal the many legislative impediments to privatizing and outsourcing; and again grapple with A-76 reform within the execu-

27. 10 U.S.C. § 2372.

28. 31 U.S.C. § 3903.

29. 10 U.S.C. § 2367.

30. See, e.g., Sherman Anti-Trust Act, 15 U.S.C. §§ 1 to 7, Robinson-Patman Act, 52 Stat. 446, 15 U.S.C. § 13.

31. See, e.g., 65 Fed. Reg. 45,282 (2000).

32. Treasury and General Government Appropriations Act, 2000, 106 P.L. No. 106-58, § 610, 113 Stat. 430.

tive branch.[33] In order to overcome internal resistance to competitive sourcing, the Secretary of Defense should issue specific policy guidance to the Quadrennial Defense Review, declaring that the private sector is the preferred provider of goods and services. The acquisition reform proposals of Chapter 7 build on the last eight years and do not require legislative action.

It is apparent from the scope of Chapter 8 on human resources management that the multiple recommendations for reform require legislation.[34] They also require a full-bore commitment to change from the entire Department. The payoff here is in some ways the highest: the ability to renew and protect the talented base on which the entire Department rests. But change requires the Secretary of Defense to get buy-in from the President up front, and a presidential direction to the Office of Management and Budget to permit enabling legislation to be submitted on the civilian side. On the military side, the Joint Chiefs of Staff must commit to the idea that unless the Army, Navy, Air Force, and Marine Corps take a more targeted approach to compensation and skill sets, none of them will be able to cope with and compete against the dot-coms for talent.

Much of Chapter 9 on managing the Pentagon's international relations can be implemented through the Presidential Decision Directive (PDD) process. But support from Congress will be necessary for an augmented role at the UN, for support of a UN military police force, and to further burden-sharing through military-to-military training and cooperation.[35] Funding for military-to-military contacts and contacts with non-governmental organizations would need to be regularized in the budget cycle at DOD and on Capitol Hill as well, not just thought of as CINC-initiative funds or viewed as an after-thought in the budget process.

With respect to the interagency mission of dealing with new threats, Chapter 10 recognizes the structure put in place at the NSC by President Clinton, but goes considerably further. It calls for creat-

33. Existing base closing authority is at 10 U.S.C. §§2341, 2687. See Defense Base Closure and Realignment Act of 1990 (part A of Title XXIX of P.L. 101-510) for an example of prior "BRAC" legislation. Impediments to privatization and outsourcing are cited at note 16 above.

34. 5 U.S.C. § 1101 et seq.

35. 10 U.S.C. § 168.

ing a Deputy National Security Advisor with real clout, by enabling him to be a player who can direct agency investment and program priorities in his interagency areas of responsibility, backed by OMB enforcement. This much can be accomplished by the President directing it. A budget process that tries to suggest priorities months after DOD has almost finished its budget cycle will not work here any more than in the joint arena described above, which means NSC and OMB must come to the table with their priorities, preferably by February of each year, to assure that at least at DOD the services take these numbers into account.

But this is obviously not just a DOD problem. As was seen this year, appropriators for the various departments with a current role in the anti-terrorism mission drastically under-funded the requests: for DOJ training of first responders; for Terrorism Task Force Offices; and to protect government computers from hackers.[36] Two years ago a modest effort by DOD to get needed authority for the Department — much desired by DOJ, the State Department, and the NSC, as well as DOD — to provide certain non-reimbursable support to civil authorities for combating terrorism in the United States and overseas at the request of the Attorney General or the Secretary of State, resulted in an even more modest temporary provision that required such support, limited to $10 million, to be reimbursable, absent a Secretary of Defense waiver "in extraordinary circumstances."[37] Congressional staff members have noted that one problem was that these cross-cutting budget requests were not made until May: that is, a good three months too late. But there also appears to be a recognition that multiple committees of jurisdiction cannot develop an integrated view of what is needed, and may see other more traditional programs within their respective oversight agencies as having priority.

The new administration can do more to present its requests in a timely way, and the recommendations of this book, including consideration of a new budget category for these multi-agency programs, will help assure that fix. But this is an area where Congress may also

36. Stephen A. Holmes, "Antiterrorism Spending Falls Short, Administration Says," *New York Times*, July 30, 2000, p. A18.

37. Military Assistance to Civil Authorities to Respond to Act or Threat of Terrorism, P.L. No. 106-65, § 1023, 113 Stat. 747 (10 U.S.C. § 382 note).

need to do more: to consider, for example, a special appropriations subcommittee drawn from the regular appropriations subcommittees of the affected agencies to deal with an integrated anti-terrorism budget. On the authorizer's side, an openness to joint meetings or an *ad hoc* conference-type committee drawn from each of the committees of jurisdiction might be an unorthodox but effective measure for dealing with this problem. We have not, however, suggested special select committees, because over time they tend to become permanent, and to multiply even further the jurisdictional barriers to action in the Congress.

Other recommendations in Chapter 10 — to assign the job of information infrastructure protection to DOD; to give national security precedence over law enforcement with regard to threats to the homeland; and to increase the DCI's authority over the intelligence collected and disseminated by the FBI's National Security Division and over the intelligence budget for new threats — may be harder still. While the more "radical" models were rejected in Chapter 10, many of its proposals contain elements that can be challenged on similar grounds. It is not, moreover, at all clear that a change in FBI culture can be achieved simply because a DCI directs it, as numerous Attorneys General might attest from their own experience, and despite their apparent authority. A different approach might be to amend Federal Rules of Criminal Procedure 6, to make grand-jury material shareable within the government for national security reasons. An Infrastructure Protection Institute legislatively authorized under DOD auspices, as proposed in Chapter 3, might be a gentler means of having DOD play effectively in the information infrastructure arena. But by directly proposing the reshuffling of significant agency authorities, these proposals could certainly form the basis for a renewed and spirited discussion within the executive branch and on Capitol Hill.

Conclusion

The preceding section of this chapter has taken a "nuts and bolts" approach to the question of how to go about implementing the recommendations of this book, recommendation by recommendation, laying out a menu of choices for the new administration and the new Congress to implement or not. This approach appeals because, al-

most by definition, organizational reform across a host of tangentially related subject areas resists a catchy "campaign" phrase to rally to. But the lack of a slogan or theme does not mean that these efforts at change need go forward in isolation from each other. A broad effort to implement change across the national security establishment, packaged more or less as laid out in this book, could instead be presented to the Congress and the executive branch officials charged with implementing it as an integrated set of initiatives to ready defense for the twenty-first century. To "sell" the legislative and administrative package as another "Goldwater-Nichols" leap forward will require commitment from the President and from the military and civilian leadership at DOD, combined with a willingness to make the case inside the Pentagon and on Capitol Hill. A similar commitment from the leadership in Congress is just as important, perhaps using the device of joint hearings to underline a congressional readiness to take on these issues in a bipartisan spirit of cooperation with the President's new team. While full-throated endorsement by Congress of many of these initiatives is not a prerequisite for their implementation, broad congressional support for the package of initiatives outlined here, whether by way of supportive hearings or legislation, is clearly desirable — and indeed essential if lasting change is to be achieved.