

LIMITATIONS OF THE NATIONAL DEFENSE UNION: Why the DOD-DI relationship is best left at home

Opening

The historical relationship between the United States Department of Defense (DOD) and the American Defense Industry (DI) has been an extremely positive one. Images of the great material production of WWII spring immediately to mind. More recently, the great technological innovations made possible by the relationship between the DOD and DI have led to super offensive weapons, and life-saving defensive armament that have no global equivalent. Historically this has been a relationship limited to the physical boundaries of the United States; the direct projection of that material into combat has always been the strict province of the United States Government. Then came 9-11, the Global War on Terror, and a greater demand for personnel than our government agencies could provide.

Unfortunately, our national experiment to project the DI directly into combat zones has proven not nearly as effective as the historical relationship. Forced out of a sense of national security that demanded emergent action, the United States has attempted to extend the DOD-DI relationship into areas where it does not work effectively. In fact, the extension of the DI directly into contested areas of battle space has been at times counter-productive. The images of the DOD-DI today do not conjure up images of B-17s on assemblage lines, but rather, those of American civilians killed or captured while going to work.

The conclusion of this paper—that American citizen contractors should not be permitted in US designated combat areas—is not new; however, the lines of reasoning are unique. Other arguments decry the nation's use of private contractors in order to support a wider anti-war agenda, to loft criticism on the current administration, or as a rejection of our national strategic aims. This discussion is different; it is a proposal to end the use of contractors because their combat zone presence is eminently harmful to the projection of U.S. power. In other words, our ability to reach national strategic ends is hampered by the deployment of American citizen-contractors. To support that claim, this paper investigates the three areas which are most severely affected by the forward presence of the DOD-DI relationship: strategic objectives, ethical means, and Constitutional considerations.

Part I: OBJECTIVE DIFFERENCES

The strategic objectives of the Department of Defense and those of the Defense Industry are radically different. The DOD is charged with fighting and winning the nation's wars to ensure the security of the country and its citizens. The various companies that make up the Defense Industry are charged with increasing the wealth of their shareholders. This is not a slight or a criticism of the Defense Industry; it is simply reality, and normally a very positive attribute of the American free market system. Arguably, it was the American free-market system and its ability to *produce* that was chiefly responsible for U.S. victories in the two global conflicts of the 20th century. Clearly the differences in strategic objectives did not harm the nation's ability to pursue national objectives in

the past, so why the problem now? In the past, American companies and employees did not venture into active combat zones. It is precisely there, beyond the acceptable limitations of DOD and DI union, that the differences in objective create friction.

Even with strategic differences, the connection between DOD and DI in a peacetime environment is symbiotic; the growth and success of one supports the same in the other. When the relationship is extended spatially into an environment of sustained active combat—war by any label—it is more correctly termed syncretism. That is, the attempted union or fusion of two radically different philosophies. Beyond the Forward Edge of the Battle Area (FEBA) or within the designated Area of Operations (AO) the DOD is focused on pursuing lines of operations to ensure strategic victory. The DOD is not primarily concerned with the monetary cost; profit, market share, and quarterly earning do not figure into the decision making of military commanders. For those companies of the DI that deploy shoulder to shoulder with the military, such things do matter. In terms of national blood and treasure, if a DOD operation suddenly turns out to be more costly than expected, a change in operational objectives might be in order to reach the strategic ends. Perhaps more resources are required to overcome a tougher than expected adversary. The point is, the strategic ends remain the same—fight and win the nation's wars. When an American company finds the expenses greater than expected, the result is quite different: they leave. They can leave because *their success* is not tied to American foreign policy pursuits, and because it is not their duty or responsibility to ensure national security. Again, this characterization is not intended to color the DI as unpatriotic or greedy, but simply to explain the natural tension created when the free market enters a combat zone.

The different strategic objective between DOD and the DI leads directly to problems in sustaining a unity of effort. The reasons are quite apparent. The DOD can undertake a civic project, a military objective, or a governmental activity and see it through to completion regardless of the costs. So long as the national leadership is willing to pursue policy aims and national interests, the DOD can continue to dedicate resources to the effort. The DI simply can't work along similar lines. Regardless of the national interests at stake, at some point the danger to company employees becomes too great. At some point the lack of future profits becomes too debilitating. At some point the company shareholders become too disgusted at the loss in share price. In short, when the country pursues national interests through military force, the DOD can withstand changes in environment, military setbacks, and increasing monetary costs. Companies within the DI can't. When the DOD relies on such companies to fulfill supporting roles inside the contested battle space, and those companies can not sustain the effort and choose to exit the arena, the efforts of the DOD and the entire United States Government are undermined.

Foreign populations aren't concerned with the differences in strategic objective. Point of fact: when the United States Government promises to provide security, clean the water, turn on the power, or repair the communications grid, foreign audiences don't differentiate between American government officials and American citizens working for DI companies. In the eyes of affected citizenry, both are efforts under the auspice of the

USG. When a project fails or a promise goes undelivered, the blame falls on the country not the company. Unity of effort is substantially more important than the potential efficiency of the free market in counterinsurgency and nation-building environments.

Part II: ETHICAL MEANS

The United State's use of private contractors in the battle space of the current conflict undermines America's strategic requirement to gain ethical dominance. To effectively engage the enemies confronting the United States in the Global War on Terror (GWOT), in the environments where they exist, requires a national and international debate on the ethical, military means allowable. The United States finds itself fighting an enemy that is not only comprised of trans-national networks, but that also surrounds and embeds itself into local communities. These are organizations that wear no uniforms or distinctive markings, avoid direct confrontation with military forces, and openly advertise collateral damage as a propaganda tool against their adversaries. In short, these are enemy organizations that are using the very concepts of western, Just War discourse as strategic advantage. By wrapping a community of supporters around their organizations, they effectively create safe areas that can not be engaged. Or at least they couldn't be engaged in the past.

Current events make it increasingly apparent that the United States and her allies will, at some point, be forced to take the fight directly to the communities that support our adversaries. Recent campaigns and conflicts have demonstrated the strength of such community-based organizations. The failed Israeli attack on Hezbollah positions in the summer of 2006, the repeated failure of the Pakistani government to control North Waziristan, and the growing threat of the Sadr militia in Baghdad are all examples of what doesn't work to thwart this new type of threat organization. Something else is in order; a new means for attacking the threat where it lives, and the ethical clarity that it is they--the terrorists--who are responsible for collateral damage and death, not us. Such clarity is not possible when we, too, have non-uniformed civilians pursuing political objectives in the battle space.

To ensure national security, the United States will be forced to attack terrorist organizations in their community defenses. The only way this can be done successfully is to make the ethical case that such action is defensive, that the terrorists who seek refuge in those areas are illegal combatants, and that the unavoidable death to innocents is the responsibility of the terrorists, not the United States. American leaders can only make this case by invoking the Hague and Geneva Conventions and the Geneva protocols, and by citing the illegality in the actions of the terrorists themselves. Specifically, illegal acts concerning the lack of uniforms and markings, the intentional endangerment of non-combatants and innocents, and the militarization of sites that are protected from military retaliation. Before the nation can do this; however, requires that we first clean our own house. We can no longer allow American companies and their American citizen employees to move about the battlefield, armed or unarmed, in the pursuit of political objectives. We can no longer rely on private security companies to

protect logistical trains or supply depots. We can no longer accept that the DOD must be supplemented with private industry within contested battle space. This goes beyond the relevant issues of how to protect and punish individual DI employees. The argument here is that the use of American private citizens in this manner necessarily restricts the means available to the DOD. The United States can not make an effective ethical case for engaging illegal combatants when our own nation employs civilian contractors to support the physical acts of war.

The ethical realm makes for a very stark national decision. If the nation continues current practice, and continues to employ DI private companies and American citizens, then we as a nation either restrict the available options to the DOD or we face the certain charges of hypocrisy and tyranny by the international community. However, by ending the practice; by limiting the cooperation of DOD and DI to sovereign areas of stability, the nation is freed from our self-imposed restraints so that we might effectively take the fight to the enemy--where he lives. It is possible to both remain true to our ethical standards for prosecuting war and to also decisively engage terrorist communities, but the nation must first remove our own citizens from the battlefield.

Part III: CONSTITUTIONAL CONCERNS

The use of DI companies and contractors in the current battle space is not the result of an evil conspiracy between national leaders and private industry. It is the result of pragmatic decisions made with an eye on short-term efficiencies. The DOD simply did not have the personnel, numbers or expertise, to immediately launch into a conflict spread across the globe, and one which required multiple campaigns featuring nation-building efforts. While the current situation is understandable—a nation does go to war with the team it has—the Constitutional concerns that the DOD-DI relationship raises must be reflected on. The very way in which we have supplemented the DOD to pursue political objectives is Constitutionally questionable.

The founding fathers considered war to be a serious issue, but one that would have to be pursued from time to time. As such, the framers built checks on the power of the branches to pursue war. The Constitution is very clear on the subject; it provides exceptional executive powers to the President during times of war, and it provides legislative checks on the executive's power to pursue policy aims through war. Specifically, the legislature is given the responsibility to raise, fund and maintain the separate military services. Inherent in this responsibility, is the power to limit or grow the size of the services through funding.

The use of private companies and citizens to supplement the DOD is a Constitutional issue because it erodes the power of the legislature to “raise and support” the services. While the Congress still approves the budget, the services can use discretionary funds, and purchase capabilities through DI contracts. Supplemental bills provide additional funds for contracting at the discretion of the DOD. This all adds up to a DOD that remains strategically unequipped to prosecute the conflict at hand, while the missing ingredients are continuously provided by the DI directly into the battle space. In so

doing, the services themselves assume the responsibility to “raise and support”. The DOD is an agency of the executive, and, therefore, does not have the Constitutional authority to raise and support itself. The executive branch, through the use of DI contracts, has obtained power not granted to it. Furthermore, the continued erosion of the legislative ‘check’ on the executive’s power to pursue war is unhealthy for the nation. The DOD projection of DI companies and employees into combat zones is uncomfortably close to becoming, in a word, unconstitutional.

To be clear, this is not a rebuke of the President or a free-pass for the Congress. It is the legislature’s responsibility to uphold their Constitutional duties, not the other branches of government. Constitutionally, the legislature does not have the option of allowing the services to grow themselves or to supplement their own capabilities through the DI. They, the United States Congress, are fully responsible for such decisions, and it is they who must fulfill that role.

THE REASONS WHY

In light of the current political climate, it is critical to point out what this argument is not. It is not a rebuke or a critique of those American citizens who are working as private industry contractors. Too often these people are portrayed as nothing short of mercenaries; not true. Many are decorated military veterans, and almost all personally support the national objectives that they help pursue. Nor is this an argument against the Defense Industry or the companies that comprise it. The United States simply couldn’t pursue its many national interests without the American defense industry and the free market that it operates in. When the DI is limited physically to operating exclusively outside of U.S. combat areas, the relationship between the DI and the DOD is an incredibly useful instrument of national power. Finally, this is not a criticism of the U.S. government for allowing the DOD-DI relationship to blow past its functional limitations into the physically contested areas of the GWOT. National leaders did what they thought had to be done in order to execute the national strategy. The limited resources and capabilities to execute the GWOT required emergency action. What is important now is to recognize the limitations of the DOD-DI relationship, and to take the necessary corrective actions.

CLOSING RECOMMENDATIONS

Clearly, it is time to move the DI back into a more positive relationship with the DOD. To do this, the DI must be restricted to the physical space outside of all U.S. declared combat areas. This includes not only companies and citizens working with the DOD, but those contractors working with any agency of the United States Government (USG). In short, all Americans working in combat areas should work for, and be employed by, the USG. This would ensure a unity of effort, at least within agencies, that we do not currently possess. Similarly, by restricting the DI from combat zones, the nation is more able to employ the necessary military means to engage an enemy that employs human camouflage. To destroy terrorist organizations, the United States is going to require the moral courage and standing to declare such terrorists ‘illegal combatants’, and to raid the

communities that they hide within. Finally, it has been over five years since the USG required emergency action to engage the immediate threat. The Constitutional concerns raised by employing private companies and contractors should be put to rest. The sustainability of our national strategy demands this.

The need for corrective action is not completely unnoticed or unrecognized. One of the most underreported elements within the President's State of the Union Address in January 2007, is also the most germane to this argument. The President briefly mentioned a State Department initiative called the Civilian Reserve Corps (CRC). This initiative would provide on-demand experts that could supplement national efforts as *working representatives of the USG*. While the initiative is limited in scope, similar initiatives spread across the wealth of governmental agencies could provide the enhanced capabilities that we currently seek out through the DI. This is a project worthy of national attention and resources. In fact, it is precisely through the DI that the nation can expect to find the valuable personnel, as well as the responsible companies, that would provide the bodies for the CRC.

What is most required at this time is a national recognition of the problem. The DI-DOD relationship has historical significance, and is one of the primary reasons the United States emerged from the 20th century as the world's sole superpower. The American free market, and the defense industry it created, is a positive for American power and national security. However, the leap of this relationship into the physical battle space of the GWOT has come with a cost. Instead of the efficiency that we normally think inherent of free market systems, the spatial transition of the DI into active war zones has led to strategic inefficiency. By limiting the physical presence of the DI, and by increasing the capabilities of USG agencies including the DOD, the U.S. can better pursue the necessary national objectives that we have laid out before us.

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