



# Why arms procurement goes wrong

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## Summary

Public procurement is a key function of government, and effective, efficient and honest procurement processes are crucial to ensuring that scarce public funds are well spent and that important public projects are carried out. However, such processes are often best by waste, corruption and inefficiency. Military procurement can be particularly problematic. Both the international arms trade and, more generally, arms procurement procedures—whether from domestic or overseas sources—are highly susceptible to waste and corruption.

This background paper discusses some of the key problems associated with military procurement, in the context of the ‘national security exception’ that frequently shields the military sector from critical scrutiny in financial matters, and which affords the military itself or the arms industry special treatment compared with civilian sectors. This can engender failings at all stages of the procurement cycle: policy and planning, budgeting, decision-making processes, and monitoring and control. The paper also discusses efforts to reform procurement processes and some of the key issues that need to be addressed in such efforts. Both the problems and the attempted solutions are illustrated by a series of case studies from around the world that comprise the bulk of the paper.

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## I. Introduction

Public procurement is a key function of government, and effective, efficient and honest procurement processes are crucial to ensuring that scarce public funds are well spent and that important public projects are carried out. However, such processes are often best by waste, corruption and inefficiency.

Military procurement can be particularly problematic. Both the international arms trade and, more generally, arms procurement procedures—whether from domestic or overseas sources—are highly susceptible to waste and corruption. Even in the absence of dishonesty, poor processes can lead to purchases with high cost but questionable strategic purpose, severe delays and cost overruns. These in turn can lead to both unnecessary diversion of resources into military spending and injury to the rule of law.

Section II discusses some of the key problems in arms procurement in both developing and developed countries, and efforts for reform. This is illustrated with a series of country case studies in section III. This paper complements the Oxfam Policy Brief ‘Principles for good processes of defence procurement’,<sup>1</sup> and is based on a longer working paper by the authors.<sup>2</sup>

## II. Failures of arms procurement: the special treatment of the military sector

Public procurement is frequently a source of waste and corruption, in both developed and developing countries. The head of the Nigerian Bureau of Public Procurement claimed in 2009 that 90 per cent of bribes in the Nigerian Government came through the procurement system.<sup>3</sup> Military procurement can be particularly problematic. A major reason for this is the ‘national security exception’, which allows military and security issues to be treated as a special case with special privileges. There are several aspects of this:

- *Secrecy*. ‘National security’ is often used as a blanket justification for avoiding scrutiny of security issues, well beyond the justifiable needs of confidentiality. Secrecy may be used to hide corruption, and inhibits the ability of parliament, civil society and the public to hold the executive to account, and to ensure that funds are being well spent.
- *Security issues as a no-go area*. The perception that security issues is a no-go area for debate, leads to matters of high policy being left to the executive, and frequently the president alone. Like secrecy, this impedes proper scrutiny of the sector.

<sup>1</sup> Reference

<sup>2</sup> Perlo-Freeman, S. & Solmirano, C. “The pitfalls of arms procurement”, SIPRI working paper, <http://www.sipri.org/whatever.....>

<sup>3</sup> Olajide, B. ‘Public Procurement Act: a potent weapon against corruption?’, *Nigeria Guardian*, 30 Sep. 2009. It is not clear if this figure is based on actual estimated data or is a generalization, but the view that public procurement is a very major source of corruption is certainly widely held.

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- *Privileging of the military as an institution.* Even in democratic countries, the military may enjoy considerable political influence, or at least autonomy to pursue their own policies, including in spending and procurement. The military may also find it easier to avoid scrutiny from the parliament, audit bodies and anti-corruption bodies.
- *Privileging of the national arms industry.* The industry may enjoy close links to government, including a ‘revolving door’ between ministries of defence and the industry. This may create conflicts of interest and opportunities for corruption, but may also award the industry strong domestic preference in procurement, favourable contractual arrangements, and high tolerance for failure and inefficiency.

A second broad reason for problems with military procurement is the size, complexity and technical specificity of major arms programmes. This can in itself be a barrier to transparency and scrutiny, as well as a source of cost and timetable overruns. These particular characteristics of military procurement can contribute to specific flaws at all stages of the procurement process.

1. *Policy and planning.* Military procurement should be clearly linked to established defence policy goals. Otherwise, large sums of money may be wasted on unnecessary arms, while genuine security needs may be unmet. In practice, however, many countries lack a clear defence policy that spells out the country’s security needs. In such cases, procurement decision making is likely to be ad hoc, and greatly vulnerable to corruption. Even where defence policies are clearly elucidated, procurement decisions may fail to follow from policy structures for a variety of reasons, such as presidential or military discretion in procurement decisions, and off-budget funding (see e.g. case study 6 in section III).<sup>4</sup>

2. *Budgeting.* Military procurement should be coordinated with the budget process, to ensure that plans are affordable and fit with budgetary priorities. However, this is often hampered by lack of transparency in military budgeting. In many countries, very few details of the defence budget are made publicly available. SIPRI’s *Budgeting for the Military Sector in Africa*<sup>5</sup> found that in several of its African case studies, the use of ‘confidentiality’ prevents the public from accessing information on military budgets. The existence of off-budget sources of funding for arms procurement is another common way in which procurement can be disconnected from budgeting. These include dedicated natural resource funds for arms procurement (case study 5, Chile),<sup>6</sup> or credit purchases of arms from overseas (see case study 6, Indonesia).<sup>7</sup>

<sup>4</sup> See also Omitoogun, O. ‘Nigeria’ in Omitoogun & Hutchful, *ibid.* Also Perlo-Freeman, S., Solmirano, C. & Ismail, O. ‘Military Expenditure’, chapter 5 in SIPRI Yearbook 2010, OUP, 2010.

<sup>5</sup> Omitoogun & Hutchful, *ibid.*

<sup>6</sup> While definitive proof is hard to come by, SIPRI believes that the practice of using oil revenue funds to make off-budget arms purchases is widespread. See e.g. also for Peru, Ministerio de Defensa del Peru, Libro Blanco de la Defensa Nacional, April 2005, Cap. IX, URL: <http://www.mindef.gob.pe/>

<sup>7</sup> See also e.g.. ‘Chavez gets USD 2.2 billion loan to buy Russian weapons’, El Universal (Caracas), 14 Sep. 2009.

However, even where budgeting is comprehensive and transparent, long-term procurement plans may fail to match long-term budget planning (see case study 8, the UK).

3. *Procurement decision processes.* Arms procurement decision processes may fall wholly outside regular frameworks, or otherwise fail to follow standards of good practice. Guatemala's procurement laws explicitly exclude the military (case study 1). Ad hoc exceptions to normal procedures, such as direct government-to-government arms deals made by the president are not uncommon, as in Indonesia in 2003 (see case study 6). Arms procurement may display far greater tolerance for sole-sourcing of contracts, secrecy surrounding tender requirements, and preference for domestic suppliers (e.g. case study 9 on Canada's F-35 purchase). A further concern can be political interference in tendering processes, as in the controversial 1999 South African Strategic Defence Procurement package, which has been the subject of severe corruption allegations.<sup>8</sup> The persistent use of agents in arms procurement, a major source of corruption vulnerabilities, is another feature typical of the sector.

4. *Procurement contracting and implementation.* The procurement of major weapon systems in major arms-producing countries is perennially the subject of major delays and cost over-runs. This partly results from the enormous size and complexity of projects, especially those involving new technology, and partly from the cosy relationship between government and the arms industry. In the United States, a 2010 Government Accountability Office (GAO) report found that the 98 ongoing Major Defense Acquisition Programs were collectively \$402 billion over budget.<sup>9</sup> In the United Kingdom, the National Audit Office (NAO) similarly reports continually highlight failures in procurement processes and escalating delays and overruns (see case study 8).

5. *Parliamentary scrutiny* of the military sector in general, and budgeting and procurement in particular, is often weak, due to a number of factors. *Lack of capacity and/or interest* by parliamentarians can be a major obstacle to proper scrutiny of military procurement.<sup>10</sup> In Colombia, for example, there is no parliamentary defence committee (see case study 2). Similarly, *lack of political will* sometimes interfere with proper scrutiny. This can be the result of an ingrained cultural belief that 'the military' sector is a 'no-go area'. Especially in newly democratized systems, the military may retain certain prerogatives that make civilian oversight very difficult. Other reasons may

<sup>8</sup> Discussed in more detail in Oxfam 'Shooting down the MDG', 2008, also Feinstein, A., Holden, P. & Pace, B. (forthcoming) 'Sins of commission: corruption and the arms trade', Chapter 1 in SIPRI Yearbook 2011, OUP.

<sup>9</sup> U.S. Government Accountability Office, Assessments of Selected Weapon Programs, GAO-11-233SP, Mar 29, 2011. For a recent overview of US acquisition systems and efforts at reform, see Schwartz, M. 'Defense Acquisitions: how DoD acquires weapons systems and recent efforts to reform the process', Congressional Research Service, 23 April 2010, [www.fas.org/sgp/crs/natsec/RL34026.pdf](http://www.fas.org/sgp/crs/natsec/RL34026.pdf).

<sup>10</sup> E.g. 'the deficit of civilian experts has hampered the effectiveness of executive and legislative institutions intended to oversee the military'. Born, H., P. Fluri, A. Johnson, Parliamentary oversight of the security sector: Principles, mechanisms and practices (Geneva: Geneva Center for the Democratic Control of Armed Forces, 2003), p. 38.

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relate to legal restrictions; insufficient time to analyse the defence budget proposal; insufficient access to classified documents; existence of extra-budgetary resources; fragmentation of defence expenditures (in different parts of the general budget); ruling party parliamentarians failing to hold the executive to account; or uncontrollable aspects of the defence budget.<sup>11</sup> (See also case study 6 on Indonesia.)

6. *Auditing and monitoring* institutions may fail to effectively scrutinize the military due to ingrained cultures of secrecy and impunity. In Nigeria, the 2007 Public Procurement Act (PPA) has made some real progress in improving government procurement and the Economic and Financial Crimes Commission (EFCC) is active in tackling endemic corruption.<sup>12</sup> However, although military procurement falls under the PPA, effective scrutiny of military procurement seems lacking. A 2010 survey by the Public and Private Development Centre, a civil society monitoring group, on the effectiveness of the new PPA did not even include the Ministry of Defence in the list of agencies surveyed.<sup>13</sup> The military also appears to have remained untouched by EFCC investigations, despite notorious levels of corruption in the institution. A list of 55 high profile cases pursued by the EFCC from 2007 to 2010, whose targets include former ministers and state governors, includes no cases against Ministry of Defence or military personnel.<sup>14</sup>

### Corruption

Both the international arms trade and domestic military procurement—in both the developed and developing world—are highly subject to corruption, as has been widely documented by Oxfam, Transparency International and others.<sup>15</sup> All the weaknesses in procurement processes discussed above contribute to this. The lack of a clear link between defence policy and procurement makes it easy for corrupted politicians and officials to manipulate procurement processes. Poor transparency in budgeting or the existence of off-budget expenditure outside public scrutiny greatly facilitates the corrupt diversion of funds. Weak, non-transparent decision-making processes, the prevalence of sole-sourcing, and similar failings all create vulnerabilities. The failure or inability of the parliament, civil society, auditing institutions and anti-corruption bodies to properly scrutinize the military sector makes it far easier for corruption to go undetected and unpunished. The veil of secrecy that can

<sup>11</sup> Born & Johnson, *idem*; and Born, H. 'Defence Budgeting in ASEAN Member States: Parliamentary Perspectives', 4th Workshop of the ASEAN Inter-Parliamentary Forum on Security Sector Governance, May 2008, pp. 8, URL: [http://ipf-ssg-sea.net/event\\_080523\\_phuket.htm](http://ipf-ssg-sea.net/event_080523_phuket.htm)

<sup>12</sup> For example, Nigeria's score in Transparency International's Corruption Perceptions Index improved from 1.0 out of 10 in 2001 to 2.7 in 2008, although it subsequently declined somewhat. See [www.transparency.org](http://www.transparency.org)

<sup>13</sup> Public & Private Development Centre, *Implementing the Nigerian Procurement Law*, note 32.

<sup>14</sup> [http://www.efccnigeria.org/index.php?option=com\\_docman&task=cat\\_view&gid=27&Itemid=87](http://www.efccnigeria.org/index.php?option=com_docman&task=cat_view&gid=27&Itemid=87)

<sup>15</sup> See for example [www.defenceagainstcorruption.org](http://www.defenceagainstcorruption.org); Oxfam, *Shooting down the MDGs*, note 34; Courtenay, C. 'Corruption in the official arms trade', *Transparency International Policy Research Paper 001*, April 2002; Roeber, J. 'Parallel Markets: corruption in the official arms trade', *Campaign Against Arms Trade Goodwin Paper no. 3*, June 2005; Feinstein, A. 'Sins of commission' note 34.

run all the way through military decision-making processes likewise provides cover for the corrupt. In exporter countries, favoured arms companies may enjoy relative immunity (see e.g. case study 12, the UK).

### **Reforming arms procurement**

Many countries have recognized the economic, political and security-related harm that can be caused by poorly-designed or corrupt arms procurement systems. In the USA, acquisition reform is a perennial theme for successive administrations and congresses,<sup>16</sup> and numerous efforts at reform have been instigated.<sup>17</sup> In many other countries, as discussed in the case studies below, different aspects of reform have been undertaken, sometimes as part of broader efforts at security sector reform and improving civilian control of the military. Some of the key principles for effective reform include:

- *Tackling the ‘national security exception’.* Reforms need to question automatic assumptions of privileged status for the military sector. Secrecy should only be invoked when there is a clear security justification. The military should, as a rule, be subject to the same oversight institutions as other sectors of government.
- *Engaging the parliament and civil society.* These actors often shy away from—or are kept away from—scrutinizing military issues. A key element of reform is to encourage greater parliamentary and civil society involvement. This often requires building capacity amongst them to scrutinize military matters. The efforts of DCAF and RESDAL is an excellent example of such efforts (see case study 4).
- *Addressing all stages of the procurement cycle.* This includes policy and planning, budgeting, tender and selection processes, contracting and implementation, parliamentary scrutiny, and auditing and evaluation processes.
- *Holistic efforts to tackle corruption.* This requires action both by purchasing governments and exporters. Key elements include comprehensive legislation to ban all forms of corruption, strong anti-corruption institutions with the will and capacity to enforce measures. Some specific measures for arms procurement include Defence Integrity Pacts (see e.g. case study 13, India), and banning or restricting the use of agents.

Reforming procurement can bring many benefits, in terms of ensuring the best use of scarce public funds, minimizing diversion of resources to the military, and democratic debate and oversight. At the same time, the status quo has its beneficiaries, and reform may face powerful cultures of secrecy

<sup>16</sup> See e.g. Schwartz, M., note 35.

<sup>17</sup> Most recently the 2009 Weapons Systems Acquisition Reform Act McGerty, F. “Obama signs US Weapons Systems Acquisition Reform Act”, Defense News, 22 May 2009.

and military privilege. Tackling this requires not only executive-led reform, but the constant efforts of both parliament and civil society.

### III. Case studies

The following case studies, from a range of developing and developed countries, illustrate many of the issues discussed above, both the problems, and the efforts at reform. They are grouped partially thematically; however, many countries exhibit several of the issues discussed.

#### **Case study 1. Guatemala's democratic transition**

The end of the civil war in Guatemala and the signing of the 1996 Comprehensive Peace Agreement were meant to bring about long-awaited changes in civil–military relations. While many reforms were carried out in the return to democracy, many others were met with strong resistance. For example, the military is still protected by the Constitution to guard the details of their budget as a state secret. The Ministry of Defence has avoided oversight using Article 30 of the Constitution, which grants citizens the right to access information related to government activities, with the *exception* of military or diplomatic matters affecting national security.

*The Guatemalan constitution effectively exempts the military from civilian oversight*

The secrecy with which the defence sector is still managed in Guatemala makes it difficult to identify the policies and strategies that reflect the country's security needs. A 2006 report noted that there are no processes and mechanisms to evaluate whether the assignation of resources is efficient and if they are used for their intended purposes.<sup>18</sup> It is therefore not surprising that military procurement is still treated under the national security exception.

#### **Case study 2. Colombia: lack of parliamentary role in defence issues**

For a country that allocates 3.5 per cent of gross domestic product (GDP) to military spending, it is surprising that Colombia lacks appropriate parliamentary scrutiny of its military sector. A study conducted in 2009 noted that there has traditionally been a low interest by parliamentarians in issues related to defence and security. This could be the result of the specific dynamic that civil–military relations have had in Colombia influenced by the so-called Lleras doctrine (*doctrina Lleras*), according to which the military

<sup>18</sup> De León Escribano, R., 'Presupuesto de Defensa en Guatemala: Auditoria Social', en IEPADES, Política Publica de Defensa y Modernización de las FF. AA. a través de la formulación del presupuesto, Guatemala, 2006; pp.175.

does not intervene in politics, and civilians do not interfere in issues of security and defence.<sup>19</sup>

In the parliament, there is no defence committee alone but a commission—called the second commission—that deals with national defence along with international politics, foreign trade and economic integration, international parliamentary relations, borders, and diplomatic and consular career, among others. It is formed by 13 members of the Senate and 19 members of the Chamber of Representatives. It has no participation in the budgetary process, as this responsibility falls under the third and fourth commission, which deal with finance, economic planning and policies and budget.<sup>20</sup>

*In Colombia, the military does not intervene in politics, and civilians do not interfere in defence*

### **Case study 3. Argentina: engaging civilians in defence policy making**

Argentina is one country that has broadened the debates of its defence planning to include the participation of civil society. In 2010, during the review of its Defence White Paper, the Ministry of Defence organized a series of seminars around the country with the participation of non-governmental organizations, the business sector, academics and defence experts from the civil society, and the like.<sup>21</sup> This is not the first time that this process takes place; in fact, similar public debates took place in 2003 when the Executive launched an initiative named ‘National Defence in the Democratic Agenda’. The project sought to promote greater participation by civil society, the parliament and political parties in the construction of a new defence policy and of new models of military organizations for Argentina.<sup>22</sup> The project was also the launching platform for the 2010 review of the defence paper. Similar processes took place in the review of Chile’s defence paper in 2009/10 and are expected to take place in the first elaboration of Brazil’s defence paper in 2012.

*Argentina has included extensive civil society participation in developing its defence white papers; other South American countries are following suit*

### **Case study 4. Promoting parliamentary engagement: the work of DCAF and RESDAL**

As parliamentary scrutiny of the military is weak in many countries, attempts have been made to encourage parliamentarians to take a larger role in

<sup>19</sup> García Pinzón, V. ‘Parlamento, Defensa y Conflicto en Colombia: Aproximación Analítica a la Comisión Segunda del Congreso de la República’, coord. Alejo Vargas Velásquez, *Parlamento y Defensa en América Latina. El papel de las comisiones*, Vol. II (Buenos Aires: RESDAL: 2009), p. 52.

<sup>20</sup> Idem, pp. 64-65.

<sup>21</sup> See Libro Blanco de la Defensa 2010, URL: <http://www.libroblanco2010.gov.ar/>

<sup>22</sup> Pampuro, J. ‘Una nueva política de defensa’, *Clarín*, Aug. 11, 2003, URL: <http://old.clarin.com/diario/2003/08/11/o-01901.htm>

oversight of the sector. The Geneva Centre for Democratic Control of the Armed Forces (DCAF) has been at the forefront of developing this capacity. DCAF's parliamentary programmes encompass two main platforms: developing the skills of parliamentarians and staffers to engage on defence, intelligence and law enforcement oversight issues; and developing knowledge products that parliaments and parliamentarians can refer to when performing their oversight roles.<sup>23</sup> DCAF's *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices, Handbook for Parliamentarians* is one major tool, providing parliamentarians with a guide to the norms, principles, mechanisms, and best practices of parliamentary oversight of the security sector. A unique feature of the Handbook is a section on 'what parliamentarians can do', which gives them an opportunity to tailor DCAF's recommendations to each specific country and idiosyncrasy.

In Latin America, the Security and Defense Network of Latin America (RESDAL) has worked since 2001 on strengthening the capacity of civil society in issues of civil–military relations, defence and security; monitoring civil–military trends in the region; and educating civilians about these issues. The network has been instrumental in promoting transparency in defence budgeting through its methodology for analysing defence budgets, and its guide for civil society advocacy. RESDAL also conducts training for parliamentary action in security and defence issues.<sup>24</sup> The work of RESDAL has been key to addressing the main issues of the security and defence agenda of Latin America, a region with a history of military intervention in politics.

### **Case study 5. Chile's Secret Copper Law and efforts for reform**

An illustrative example of how regular procedures are avoided is arms acquisitions made by Chile under the 'Secret Copper Law. The case also illustrates how the role of the parliament may be limited by special treatment of the military.

The Copper Law was created in 1958, imposing a tax on copper sales to generate funds for arms acquisitions.<sup>25</sup> The tax was raised from 7.5 per cent to 10 per cent in 1973 by the military government, which also established a division of the revenues into equal parts for the army, navy and air force, each of which has control of its own funds—thus precluding joint decisions on arms acquisitions.<sup>26</sup> The decision on what equipment to purchase is effectively reserved to a few military officers in each service. A special committee is

<sup>23</sup> See <http://www.dcaf.ch/Topics/Detail?lng=en&id=121489>

<sup>24</sup> See <http://www.resdal.org/ing/>

<sup>25</sup> Patillo, G. 'The Allocation of Resources to the Armed Forces in Chile: A Case of Limited Transparency', in *Arming the South. The Economics of Military Expenditure, Arms Production and Arms Trade in Developing Countries*, eds. Brauer, J. and J. Dunne (New York: Palgrave, 2002), p. 387.

<sup>26</sup> Patillo, G. 'El Presupuesto de Defensa en Chile: Procesos Decisionales y Propuesta de Indicadores de Evolucion,' *Security and Defense Studies Review* no. 1 (Winter 2001), pp. 136-137.

formally responsible for authorizing funds for procurement, but in practice ‘it is not expected to question the proposals submitted by each service’.<sup>27</sup>

One key feature of the military procurement process is that it does not fall under civilian scrutiny as the armed forces have complete autonomy in this area. The law specifically ‘does not allow Congress to involve itself in the study and approval of arms purchases’.<sup>28</sup> As arms procurement is not included in the regular budgetary process, the congress cannot have a voice on this issue and neither is it allowed to monitor the budget.<sup>29</sup> One aspect of the military budgetary process, in general, is that the congress cannot modify it as there is a law that establishes a minimum base for the armed forces. Congressional participation in defence issues is, therefore, very limited.

The Copper Law has long been controversial, and may now be on the way to being replaced. In 2008, calls to eliminate the Copper Law came from CODELCO’s executive chief.<sup>30</sup> In 2009, President Michelle Bachelet sent a proposal to the congress seeking to eliminate the law and replace it with a new funding system for military procurement.<sup>31</sup> The project, however, was never approved. In May 2011, President Pinera signed a new proposal that is being considered by the congress. The project takes into consideration some of the principles of the 2009 proposal<sup>32</sup> and incorporates new ones, such as an enhanced role for the congress in debates over strategic capabilities for defence,<sup>33</sup> something that is absent in Chile’s current defence scheme.

*From 2006 to 2010, the Chilean armed forces received an average \$1.2 billion annually for arms purchases, under the ‘Secret Copper Law’; these funds fall completely outside civilian scrutiny*

### **Case study 6. Indonesia: military autonomy continues despite reform**

Indonesia’s military budgeting and procurement systems reflect the continuing high level of autonomy enjoyed by the military, despite considerable reform since the end of the Suharto dictatorship in 1998. Further efforts for reform face military resistance.

<sup>27</sup> Rojas Aravena, F., ‘Chile’, in *Arms Procurement Decision Making Volume II: Chile, Greece, Malaysia, Poland, South Africa and Taiwan*, ed. Sing, R. (Oxford: OUP, 2000), p. 17.

<sup>28</sup> Aravena (note 49), p. 18.

<sup>29</sup> Rojas Aravena, F. (note 49), p. 22.

<sup>30</sup> Gastine, A., ‘CODELCO CEO questions Copper Law’, *Santiago Times*, 25 June 2008

<sup>31</sup> ‘Chile derogaría ley de cobre que financia compra de armas’, *El Comercio* (Lima), 9 Sep. 2009, and Higuera, J., ‘Chile submits draft for procurement funding reform’, *Jane’s Defence Weekly*, 7 Oct. 2009, p. 11.

<sup>32</sup> See e.g. Perlo-Freeman, S. et. al. ‘Military Expenditure’, chapter 5 in *SIPRI Yearbook 2010*, OUP, 2010, pp. 183-184.

<sup>33</sup> Ministerio de Defensa Nacional, Chile, ‘Presidente Piñera firmó Proyecto de Ley que Modifica Financiamiento a las Fuerzas Armadas’, 16 May 2011, URL: <http://www.defensa.cl/2011/05/16/presidente-pinera-firmo-proyecto-de-ley-que-modifica-financiamiento-a-las-fuerzas-armadas/>

*Weak civilian and parliamentary control.* While the parliament have been very active in the *reformasi* process that has removed the military's direct political influence and brought them under the control of a civilian Department of Defence (DOD),<sup>34</sup> they have very limited involvement and weak capacity in terms of oversight of defence policy. Moreover, while there is a civilian Minister of Defence, the DOD is largely staffed by military officers, leading to a situation described as 'tacit military control'.<sup>35</sup> The military has resisted efforts for parliamentary scrutiny of its activities, with one officer claiming before the Parliamentary Defence Committee that even soldiers' salaries were secret.<sup>36</sup>

*Large off-budget military spending and poor budgetary oversight.* Off-budget sources include arms imports funded by barter or counter-trade; arms imports funded by export credit loan, where it appears that, with repayments coming from the Ministry of Finance;<sup>37</sup> and security payments made by companies to the government for military services. In addition, regional governments sometimes make significant contributions towards the military.<sup>38</sup> These extra-budgetary sources of funding largely lack any transparency or oversight mechanisms. In addition, there is an extensive network of military-owned businesses that persist despite the passage of laws supposed to abolish them. While major vehicles for corruption, it is doubtful however how much funds these bring into the military itself, as opposed to the private bank accounts of senior officers.<sup>39</sup>

*Weak civilian oversight at Indonesia's Department of Defence creates a situation of 'tacit military control'*

*Weak and inconsistent monitoring and reporting of expenditure.* Reported actual expenditure figures have often diverged significantly from the official budget, but different estimates of spending have also diverged from each other. The Parliamentary Defence Committee also currently plays no role in monitoring the implementation and auditing of the defence budget, only having input in the planning phase.<sup>40</sup>

*Weak and corrupt procurement systems.* An anti-corruption seminar in January 2008 found that the costs of weapons were systematically increased by corruption and political interference.<sup>41</sup> The Indonesian Minister of Defence,

<sup>34</sup> Marbun, R. & Shihab, H. 'The Parliament and Security Sector Reform', in Sukadis, B. (ed), Almanac on Indonesian Security Sector Reform 2007, Geneva Centre for the Democratic Control of Armed Forces, 2007.

<sup>35</sup> Anggoro, K. 'The Department of Defence of the Republic of Indonesia: Civil Supremacy without Effective Control', in Sukadis, B. (ed.), *ibid.*

<sup>36</sup> 'The politics of defense budgeting in Indonesia', ISDPS Newsletter 4/09, 11 June 2009, [http://idsps.org/option,com\\_docman/task\\_cat\\_view/Itemid,15/gid,56/orderby,dmdate\\_published/ascdesc,DESC/](http://idsps.org/option,com_docman/task_cat_view/Itemid,15/gid,56/orderby,dmdate_published/ascdesc,DESC/).

<sup>37</sup> Al-Ahlaq, M. M., 'The role of civil society organizations in Security Sector Reform', in Sukadis, B. (ed), *ibid.*

<sup>38</sup> Too high a price: the human rights cost of the Indonesian military's economic activities' Human Rights Watch, June 2006.

<sup>39</sup> Human Rights Watch, *ibid.*

<sup>40</sup> ISDPS, *ibid.*

<sup>41</sup> Khalik, A. 'Arms procurement dogged by markups', Jakarta Post, 26 Jan. 2008.

Juwono Sudarsono, himself complained of persistent ‘middlemanship’ in arms procurement in 2007.<sup>42</sup> Senior military officers claiming the right to conduct their own independent procurement, undermining civilian control.<sup>43</sup> A further problem has been direct arms import deals by the President. In 2003, President Megawati Sukarnoputri negotiated directly with Russia for the import of Sukhoi fighters, to be exchanged for palm oil and other commodities. The deal, which did not meet any identified military need, was investigated by Parliament; once eventually delivered, the planes were grounded within two years.<sup>44</sup>

*Procurement reform.* A new public procurement system was introduced in 2006, creating a standard procurement cycle, of planning, execution and oversight for arms procurement.<sup>45</sup> Long, medium and short-term procurement plans are produced (but not published), and the procedures allow for oversight by the DOD, National Audit Office, Parliament, and the Corruption Eradication Commission. However, Parliamentary oversight remains weak due to lack of knowledge and capacity.<sup>46</sup> Defence Integrity Pacts have been introduced for procurements involving export credits.

### **Case study 7. Turkey: increasing civilian scrutiny of military budgets**

The Turkish military, seeing itself as the guardian of the constitution, plays a powerful role in Turkish politics and has conducted numerous military coups. In recent years however, the current government has enacted a number of measures to reduce the military’s role in politics and increase civilian control, responding both to internal demands and external pressure from the European Union (EU). Among these measures have been those relating to military spending.

*A 2010 law finally makes Turkish military spending subject to civilian audit*

Constitutional amendments in 2004 abolished a restriction preventing the national Court of Audit from inspecting Ministry of Defence spending and assets. This was finally followed up by legislation in 2010 which allows the military to be subject to civilian audit. Additionally, the 2005 Law on Public Financial Management and Control requires extra-budgetary funds—in particular a number of extra-budgetary sources of military spending—to be brought within the state budget and subject to parliamentary scrutiny. The law also requires more detail on the defence budget to be presented to the

<sup>42</sup> IDSPS, note 56.

<sup>43</sup> Human Rights Watch 2006, *ibid*.

<sup>44</sup> Maharani, C. & Matthews, R. ‘Progress, but Indonesia’s Defence Reformasi still faces problems’, *Defence Review Asia*, April/May 2009.

<sup>45</sup> Wulan, A. ‘Defenceless defence, sophisticated procurement mechanisms’, Explanatory background note on the role of Parliament in defence procurement in Indonesia, Inter-Parliamentary Forum on Security Sector Governance in South-East Asia Regional Parliamentary Workshop, Phnom Penh, 12-13 Oct. 2008.

<sup>46</sup> Wulan, A. note 65.

parliament, and requires a longer period for debate before approval of the budget.<sup>47</sup>

However, the 2010 legislation has been criticized by one commentator for limiting the extent of the audits of the military, in particular for allowing spending to be assessed only in terms of internal criteria, but not to question the policies underpinning the spending, or whether they make good use of public resources. The law also allegedly exempts the military from making public its goals and targets.<sup>48</sup>

### **Case study 8. British arms procurement planning failures: the ‘conspiracy of optimism’**

Arms procurement in the United Kingdom is subject to rigorous oversight. The Defence Procurement Organization within the Ministry of Defence oversees all procurement. Major arms procurement projects are the subject of review by the National Audit Office, whose reports are in turn scrutinized by the Parliamentary Public Accounts Committee.

Despite this scrutiny, all is far from well in the British system. The NAO reports consistently show large cost overruns and schedule delays in major projects. This has been exacerbated in recent years by a failure to match ambitious major arms procurement programmes to long-term budgetary plans, with a gap of up to £36 billion over 10 years between equipment plans and likely funding.<sup>49</sup> The 2010 Strategic Defence and Security Review implemented a number of cuts to major programmes, but was constrained by contractual obligations. A £3.6 billion investment in Nimrod reconnaissance aircraft was written off. Two aircraft carriers will still be built, but one is to be mothballed shortly after completion and the other will operate without planes for 10 years.<sup>50</sup>

*The UK Ministry of Defence lacked any system to ensure procurement plans were matched to budgetary realities; this resulted in a £36 billion ‘unfunded liability’ for major weapons orders by 2010*

<sup>47</sup> Narli, A. N., ‘Aligning civil–military relations in Turkey: transparency [sic] building in defense sector and the EU reforms’, eds E. M. Felberbauer, P. Jureković and P. Pantev, *Transforming National Armed Forces in South East Europe: From the Social to the Military Challenge* (National Defence Academy and Bureau for Security Policy: Vienna, Oct. 2004), pp. 157-186.

<sup>48</sup> Kemal, L. ‘Hiding behind the shield of secrecy’, *Istanbul Today’s Zaman Online in English*, 11 May 2011, <http://www.todayszaman.com/columnist-243564-hiding-behind-the-shield-of-secrecy.html>.

<sup>49</sup> UK National Audit Office, *Ministry of Defence: the Major Projects Report 2010*, 15 Oct. 2010, [http://www.nao.org.uk/publications/1011/major\\_projects\\_report\\_2010.aspx](http://www.nao.org.uk/publications/1011/major_projects_report_2010.aspx); and House of Commons Public Accounts Committee, *The Major Projects Report 2010*, 15 Feb. 2011, <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpubacc/687/68702.htm>.

<sup>50</sup> UK MOD, *Securing Britain in an age of uncertainty: the Strategic Defence and Security Review*, October 2010,

A review of MOD procurement in 2010<sup>51</sup> found numerous systemic problems. One was the lack of any institutional system to ensure that equipment plans were linked to long-term budgetary plans. Another was a tendency to ‘gold plate’ system requirements, adding costly capabilities with little military need. A third was a ‘conspiracy of optimism’ over costs and time-schedules with major arms companies, whereby both the company and MOD had an incentive to underestimate costs so as to get projects approved.<sup>52</sup> Arguably, these highly favourable contracts (for the companies) reflect the very close relationship between the MOD and the arms industry, with a persistent ‘revolving door’ between MOD officials and the industry.<sup>53</sup>

One sign of the British Government’s intent to reform procurement is that the review author, businessman and journalist Sir Bernard Gray, has been appointed Chief of Defence Materiel at the MOD, to implement the reforms he recommended.<sup>54</sup>

### **Case study 9. Canada’s non-transparent F-35 procurement**

Canada’s decision in July 2010<sup>55</sup> to procure the F-35 multi-role stealth combat aircraft (Joint Strike Fighter) from the USA has been the source of much controversy, leading to opposition parties in Parliament finding the minority Conservative government of Stephen Harper to be in contempt of Parliament over the issue, forcing a fresh election.<sup>56</sup>

*The justification for Canada’s C\$16–18 billion ‘sole source’ procurement of F-35 combat aircraft is a state secret*

The decision to acquire the F-35 was taken by the government as a sole-source acquisition, without any competitive tender. This sole source decision was justified on the basis of a statement of operational requirements that was not made public. The need for the stealth capacity of the F-35 in particular was widely questioned.<sup>57</sup> Some observers also questioned the claims of national security for keeping the

<sup>51</sup> Gray, B., ‘Review of Acquisition for the Secretary of State for Defence’, MOD, October 2009, <http://www.mod.uk/NR/rdonlyres/78821960-14A0-429E-A90A-FA2A8C292C84/0/ReviewAcquisitionGrayreport.pdf>

<sup>52</sup> Gray, B. note 74.

<sup>53</sup> For a list of examples of major figures moving between the MOD and industry, see e.g. <http://www.caat.org.uk/campaigns/calltheshots/revolving.php>. There is no suggestion of improper behaviour on the part of any of the individuals concerned.

<sup>54</sup> Ministry of Defence, “Bernard Gray appointed Chief of Defence Materiel”, 16 Dec. 2010, <http://www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/BernardGrayAppointedChiefOfDefenceMateriel.htm>

<sup>55</sup> Canada News Centre, “Canada’s Next Generation Fighter Capability : The Joint Strike Fighter F-35 Lightning II”, <http://news.gc.ca/web/article-eng.do?m=/index&nid=548059>.

<sup>56</sup> Galloway, G. “Harper government falls in historic Commons showdown”, The Globe and Mail, 25 Mar. 2011, <http://www.theglobeandmail.com/news/politics/harper-government-falls-in-historic-commons-showdown/article1956416/>. Despite the considerable unpopularity of the F-35 decision, the Harper government was re-elected with a majority in the subsequent election in May.

<sup>57</sup> Staples, S. “Pilot error: why the F-35 stealth fighter is wrong for Canada”, Canada Centre for Policy Alternatives Foreign Policy Series, October 2010; “An Estimate of the Fiscal Impact of Canada’s Proposed Acquisition of the F-35 Lightning II Joint Strike Fighter”, Office of the Parliamentary Budget Officer, 10 March 2011; and

statement of requirements secret, given that such documents were normally made public, even when they openly discussed flaws in the state of Canada's current defences.<sup>58</sup>

In addition to the secrecy behind the sole-sourcing of the F-35s, the costs of the planes were the subject of questions. While the government claimed an overall lifetime cost for the F-35s of C\$16–18 billion (US\$16.5–18.6 billion), an independent study by the Parliamentary Budget Office estimated that the actual costs would amount to US\$29.3 billion. This claim was disputed, but one of the complaints of the opposition parties was the failure of the government to place detailed cost information before Parliament.<sup>59</sup>

There is no suggestion of corruption in the F-35 procurement. But the failure to disclose the statement of requirements that forms the justification for the sole-source procurement leaves neither the Canadian public or parliament able to assess the strategic and economic logic behind the decision, but required to take it on trust.

### **Case study 10. Colombia: making transparency the default**

Since 2002, Colombia has implemented a series of reforms aimed at improving transparency and anti-corruption in arms procurement. For example, during the procurement process, all information is made available to the public, except the 'technical specifications relating to contracts for the Ministry of Defence', which are omitted for national security reasons.<sup>60</sup> Colombia also requires the signing of an Integrity Pact and an anti-corruption commitment for any potential contract.

Similarly, all procurement is non-confidential unless the Minister of Defence decides otherwise. This practice has 'allowed for confidentiality to remain for all relevant contracts, but stopped the bureaucratic marking of non-confidential contracts'.<sup>61</sup> More recently, the MOD announced the centralization of the procurement system as a further step to avoid corruption in each armed service.<sup>62</sup>

A further step to make military procurement more transparent and accountable was the creation of the Ethics and Transparency Commission at the MOD, an organ in charge of monitoring the use of extraordinary resources allocated to the defence and security sector. This commission, according to the Minister of Defence, 'became an open forum of discussion that allowed us to

<sup>58</sup> "Heading for 'stealth-gate'", The Prince Albert Daily Herald, 25 Feb. 2011, <http://www.paherald.sk.ca/Opinion/2011-02-25/article-2280869/Heading-for-stealthgate/1>.

<sup>59</sup> Galloway, G. note 68.

<sup>60</sup> Transparency International, Experience with Implementing a Defence Integrity Pact in respect of the Procurement of Combat Aircraft for the Republic of Colombia, Report 2, March 2006, p. 7, URL: <http://www.defenceagainstcorruption.org/publications>

<sup>61</sup> Pyman, M., and A. Wegener, Building Integrity and Countering Corruption in Defence & Security, Transparency International, Feb. 2011, p. 53, URL: <http://www.defenceagainstcorruption.org/publications>

<sup>62</sup> Infodefensa, El Ministerio de Defensa de Colombia centralizará el sistema de adquisiciones de material, March 21, 2011, URL: <http://www.infodefensa.com/?noticia=el-ministerio-de-defensa-de-colombia-centralizara-el-sistema-de-adquisiciones-de-material&categoria=&pais=Colombia>

guide important decisions to strengthen the security of the country and to make the execution of resources more accountable'.<sup>63</sup> In the context of the high financial burden of Colombia's security sector, this initiative has been an important step to improve the accountability of government policies.

### **Case study 11. South Korea: reforming structures and tackling corruption**

South Korea has undertaken a series of reforms to various aspects of its procurement processes in an effort to improve efficiency and eliminate corruption. A first key step was taken in 2006, with the creation of a single agency for military procurement, the Defence Acquisition Procurement Agency (DAPA), headed by a civilian and merging nine previous offices and agencies. At the same time, a Defence Acquisition Program Act was enacted which established a unified procedure for procurement, and 'replaced the traditional dependence on a handful of selected military elites with a regulation-based structure'.<sup>64</sup> Strong conflict of interest and financial disclosure rules were brought in for procurement staff, as well as greater transparency.<sup>65</sup> DAPA also saw the introduction of Defence Integrity Pacts, supported by the creation of an ombudsman as an independent civil society monitor of procurement processes, with powers to carry out audits in response to complaints. The overall effect on the efficiency of procurement has been positive, with the time for decision-making processes almost halved.<sup>66</sup> Sung-Goo Kang, who acted as Ombudsman from 2006-2009, claims that the new system has greatly increased the transparency of procurement processes and reduced corruption.<sup>67</sup>

*Colombia, India, Indonesia and South Korea have all introduced 'Defence Integrity Pacts' as one means of reducing corruption in arms procurement*

However, the reforms have not been without problems, and corruption in arms procurement persists. To further address this, a bill was presented to the parliament in 2011 (still under consideration at the time of writing), to enforce greater transparency in the South Korean arms industry, requiring arms companies to disclose costs of production and brokers to declare their charges to clients. This was aimed at tackling what a senior DAPA official claimed

<sup>63</sup> Ministerio de Defensa, 'Consolidación de la Seguridad Democrática. Un esfuerzo con decisión y resultados', 18 May 2009, URL: [http://www.mindefensa.gov.co/irj/go/km/highlightedcontent?SearchSessionMode=Proxy&SearchSessionID=01e5d9b6-f5a2-2d10-9d87ca6657d7576f&DocumentUri=/Mindefensa/Documentos/descargas/Documentos\\_Home/Gestion\\_Min\\_Santos.pdf&DocumentIndex=8](http://www.mindefensa.gov.co/irj/go/km/highlightedcontent?SearchSessionMode=Proxy&SearchSessionID=01e5d9b6-f5a2-2d10-9d87ca6657d7576f&DocumentUri=/Mindefensa/Documentos/descargas/Documentos_Home/Gestion_Min_Santos.pdf&DocumentIndex=8)

<sup>64</sup> Sung-Goo Kang, 'Reform in defense sector procurement and the role of civil society: an experience of civil society for defense sector procurement monitoring', Proceedings of the 4th International Public Procurement Conference, 26-28 Aug. 2009, [http://www.ippa.org/ippc4\\_proceedings18.html](http://www.ippa.org/ippc4_proceedings18.html).

<sup>65</sup> Transparency 2011, note 21, p58; and Karniol, R. 'ROK creates new acquisitions agency', Jane's Defence Weekly, 4 May 2011, p14.

<sup>66</sup> Transparency 2011, note 21.

<sup>67</sup> Sung-Goo Kang, as note 96.

was widespread falsification of financial records, in a context where 70% of contracts were not subject to competitive bidding.<sup>68</sup>

### Case study 12. The UK's cancelled investigation into BAE Systems

A major test of the commitment of western countries to tackling corruption in the arms trade was the decision by the UK government in December 2006 to cancel an investigation into the major 'Al Yamamah' arms sales by the UK company BAE Systems to Saudi Arabia, which began in the 1980s. Following the enactment of legislation in 2002 to implement the OECD Convention on the Bribery of Foreign Officials, the UK Serious Fraud Office (SFO) began investigations into a number of BAE deals, including Al Yamamah, where it was alleged that BAE had, over a number of years, paid over £1 billion to Saudi Arabian Prince Bandar al Sultan, a key middleman for the deals.

Following intense lobbying by BAE and others, and threats by the Saudi Government to abandon a potential new contract for, the SFO—heavily influenced by Prime Minister Tony Blair—terminated the investigation. The government claimed that the decision was based on threats by Saudi Arabia to withdraw anti-terrorism cooperation.

This decision arguably violated the OECD Convention on the Bribery of Foreign Public Officials, which forbids consideration of national economic advantage or relations with other states in pursuing corruption investigations. The OECD Working Group on Corruption conducted an investigation, which found that the British Government had not taken adequate steps to examine the seriousness of threats to the UK's national security; that insufficient efforts were taken to exclude considerations of economic interest or relations with another state from the decision; and that the government failed to explore alternative responses to the Saudi threats.<sup>69</sup> The report concluded, 'The Working Group is disappointed and seriously concerned with the unsatisfactory implementation of the Convention by the UK'.<sup>70</sup> The UK's 2010 Bribery Act was one response to reforms suggested by the report.<sup>71</sup> This case exhibits how the close relationship between the

*BAE Systems is alleged to have paid a Saudi prince £1 billion in 'commissions' relating to the 'Al Yamamah' arms deal; the British Government was criticized by the OECD for shutting down a corruption investigation into the deal in 2006*

<sup>68</sup> Tae-hoon, L. "Why is the arms trade plagued with corruption?", The Korea Times Online, 19 Apr. 2011.

<sup>69</sup> OECD Working Group on Bribery in International Business Transactions, "United Kingdom: phase 2bis Report on the application of the Convention On Combating Bribery Of Foreign Public Officials In International Business Transactions and the 1997 recommendation on combating bribery in international business transactions", 16 Oct. 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

<sup>70</sup> Ibid., p4.

<sup>71</sup> <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/publications/bribery-act.htm>

government and arms industry can hamper anti-corruption efforts and the rule of law.

### Case study 13. India: tackling deeply engrained corruption

According to SIPRI data, India was the world's largest arms importer in 2006–10. The perennial corruption that has plagued Indian arms procurement is thus a major issue, and now the focus of sustained government efforts. In 2005, India's Central Bureau of Investigations (CBI) was investigating 47 separate arms deals.<sup>72</sup> Most noteworthy was the \$269 million contract signed in 2000 with Israel Aircraft Industries (IAI) and Rafael for surface-to-air missile systems. The Defence Minister at the time, George Fernandes, Navy Chief Admiral Sushil Kamar, and Jaya Jaitley, President of Fernandes' party, have been accused of receiving bribes. Numerous agents and arms dealers have also been indicted in relation to this and other deals.<sup>73</sup>

*In 2005, India's Central Bureau of Investigations was investigating 47 separate corruption cases*

The current Indian Government has sought since 2004 to tighten up procurement procedures and eliminate corruption. Defence Minister A. K. Anthony is seeking to enforce more fully a previous prohibition on the use of agents<sup>74</sup>, while independent monitors have been appointed to vet all major defence deals.<sup>75</sup> Some deals with companies implicated in corruption have been cancelled,<sup>76</sup> and others suspended.<sup>77</sup>

As part of the 2006 Defence Procurement Procedure, Defence Integrity Pacts are being implemented on all procurements with a value over 1 billion Rupees (around \$25 million).<sup>78</sup> The DIPs place a detailed series of responsibilities, with accompanying penalties, to guarantee against corrupt behaviour, on both the procuring agency and all bidders, along with an Independent Evaluation Monitor with broad investigatory powers.

<sup>72</sup> Rahul Bedi, 'Delays and anti-corruption red tape dog Indian procurement', *Jane's Defence Weekly*, 21 Dec 2005.

<sup>73</sup> See, e.g.: Rahul Bedi & Alon Ben-David, 'India's CBI files corruption charges', *Jane's Defence Industry*, Nov. 2006, p3.; S. Satyanarayanan, 'FIR against Fernandes, Jaya, ex-Navy chief', *The Tribune*, Chandigarh, 10 Oct 2006.

<sup>74</sup> 'India vows to clean up military contractor corruption', *Agence France-Presse*, 25 Oct. 2006, [http://www.spacewar.com/reports/India\\_Vows\\_To\\_Clean\\_Up\\_Military\\_Contractor\\_Corruption\\_999.html](http://www.spacewar.com/reports/India_Vows_To_Clean_Up_Military_Contractor_Corruption_999.html).

<sup>75</sup> 'Government appoints independent monitors to vet major defence deals', *Times of India*, 10 Sep 2007, <http://timesofindia.indiatimes.com/articleshow/msid-2355630.cms>

<sup>76</sup> Khulu Phasiwe, 'Denel bribe row deals blow to SA arms trade', *Business Day*, 4 Oct 2005, <http://www.businessday.co.za/articles/frontpage.aspx?ID=BD4A98377>.

<sup>77</sup> Sandeep Dikshit, 'Barak probe stalls project', *The Hindu*, May 21 2008, <http://www.thehindu.com/2008/05/21/stories/2008052160960100.htm>.

<sup>78</sup> Transparency International India, <http://www.tiindia.in/content.asp?ma=Programs&ta=The%20Integrity%20Pact>.