

**Inter-Parliamentary Forum on Security Sector Governance (IPF-SSG)
in Southeast Asia**

**Explanatory Background Note
on the Role of Parliament in Defence Procurement in Malaysia
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1. Defence Procurement

(a) The legal framework for public procurement is governed by the following:

1. Financial Procedure Act 1957
2. Government Contract Act 1949
3. Treasury Instructions
4. Treasury Circulars

These instruments apply to procurement by all federal, state government and semi-governmental agencies and are not specifically applicable to defence procurement as such. The policy and rules for any form of official procurement are laid down by the Government Procurement Management Division at the Ministry of Finance. The Tenders Board for each procurement agency is appointed by the Minister of Finance. Thus, technically, defence procurement by the Ministry of Defence would come under this legal framework.

Although the Government is legally answerable to Parliament on any aspect of defence policy, including defence procurement it has, thus far, successfully evaded questions on this matter, primarily on the grounds that it would be prejudicial to national security interests. As a matter of fact, the possession of classified information about such matters would make a person liable to prosecution under the Official Secrets Act 1972 and its subsequent amendments. The latter, mostly promulgated during the Mahathir administration (1981-2003), have not only broadened the

interpretation of the act of possessing such information but also prescribed rather draconian mandatory penalties that the courts do not have any discretion in imposing on the accused.

- (b) The responsible agencies involved in defence procurement in Malaysia are the Ministry of Defence (Mindef) and the Ministry of Finance (MOF). Defence contracts valued at above RM 7 million (USD 2 million) must be submitted to the MOF for its final approval. As for the legal terms of such contracts, reference must be made to the Attorney-General's Department but there have been reported cases in which the terms of the final contract have ended up being in the best interests of the Armed Forces. There is a Tenders Board in Mindef that is in charge of overseeing the awarding of defence contracts worth less than RM 7 million, while the Procurement Division is responsible for looking into the technical, legal and other details of each proposed defence procurement. It is closely assisted in so doing by STRIDE or the Science and Technology Research Institute for Defence which used to be known as the Defence Science Technology Centre.

- (c) The internal controls on defence procurement mainly lie within Mindef and both armed forces and civilian personnel play a part in the Technical and Price Negotiation Committees. The external controls, on the other hand, essentially comprise the MOF and the Attorney-General's Department with the former acting as a sort of "check and balance" in decision-making regarding different bids from foreign and local suppliers. Their determining role, and especially that of the MOF, in the final selection of a particular piece of defence procurement has at times been the subject of criticism (unofficially) by senior Armed Forces professionals on the grounds that all the officials of the MOF are civilians who lack the necessary military expertise to make such decisions.

- (d) The implementation of the defence procurement process involves several stages of administrative procedures. First of all, the Budget for the Armed Forces as approved by Parliament has to be examined to determine the precise budgetary allocation for each specific item that is to be procured. This is followed by the preparation of the technical and other specifications for the item concerned; for instance, if it is for the Royal Artillery Regiment, then the specialists from that unit would be consulted in the preparation of the

specifications. The third stage involves deciding which of the four types of tenders is to be called:

- (i) Tenders that are only open to companies that have *bumiputra* (indigenous people) status;
- (ii) open tenders;
- (iii) limited tenders;
- (iv) tenders through direct negotiations with the supplier.

At the fourth stage, only the documents which concern open tenders and *bumiputra*-status companies are prepared: (i) and (ii). On the other hand, if the tenders are only for limited tendering and direct negotiations, approval from the MOF will have to be obtained before the tender documents can be prepared or procedures for direct negotiations are formulated.

Open tenders are for procurements valued at RM 200,000 (USD\$57,000) and above, while closed tenders only involve those between RM 50,000 and RM 200,000 (USD\$14,000-USD\$57,000). Procurement through direct purchases involving negotiations is only applicable for items worth less than RM 50,000. Samples of model tender documents can be found in the Treasury Instruction, Treasury Circular Letters and the Procurement Guidelines Book issued by the MOF. Notice of all tenders, whether for local procurement or from international sources, are fully advertised in the local and foreign media and also posted on the central procurement website of the Malaysian Government (<http://www.eperolehan.com.my/>). After the Tenders Board and the Procurement Division of Mindef have decided on a contract, a **Letter of Intent** is issued to the successful bidder and, if negotiations are deemed to be necessary, this forms the next step in the process. Following the conclusion of the negotiations or where there is no need for negotiations, a **Letter of Acceptance** is issued if the offer is accepted. The contract document is then prepared.

A Tender Opening Committee comprising senior Government officials from Mindef and MOF opens each tender and records the relevant information in a Register. The Tenders Board also has a Committee in charge of evaluating the technical aspects of a bid and

another Committee to study the financial details, all of which are then rated according to a scoring system. To enhance fairness and ensure a balanced evaluation, the evaluation Committees are not given any information pertaining to the identities of the bidders. Even after the approval of a particular defence procurement contract at the Ministerial level, it must then be referred to the Cabinet should there be any disagreement among the officials concerned and, in any case, all large procurements require mandatory Cabinet endorsement.

So far, the defence procurement system as outlined above seems to have worked fairly successfully with hardly any major slip-ups, although there have been cases where a particular item was found to be less effective than anticipated due to inadequate and incomplete assessment during the trial phase of the process. Such failures or incompatibilities have been experienced in all of the three services but the army, in particular, experienced serious problems when the plans to modernise its force implemented during the 1990s. Its decision to switch to more modern armoured personnel carriers, light to medium tanks, wheeled and tracked Infantry Fighting Vehicles, field artillery pieces and various other weapon systems resulted in several major errors in the choice of the new equipment. Most of the problems have been traced to ill-advised and poorly supervised technical modifications and variations in the configuration of the platforms that were selected.

- (e) Neither the general public nor the media have ever played any determining part in Malaysian defence procurement even though a number of sensational cases have been highlighted in the newspapers from time to time. When MPs have noticed these and brought them to the attention of Parliament, the Government has almost always been able to demonstrate that the information was either inaccurate or incomplete. Senior officers in the military high command have allegedly been involved in influencing arms procurement decisions according to rather unspecific Opposition criticisms. There is some evidence that certain high-ranking officers have been asked to take optional retirement possibly due to such practices, although it must be emphasized that the Government has never conceded that they were due to the pressure of the Opposition or public opinion and, therefore, the individuals concerned are considered to be innocent. There is undoubtedly a high degree of

transparency in Malaysian defence procurement as all tenders are advertised in both electronic media such as websites as well as in the print media. They are also frequently highlighted during local defence exhibitions such as the Langkawi International Maritime and Aerospace (LIMA) event and the Defence Services (DSA) show when they are held every two years. Defence procurement programmes are also disseminated in the niche media such as defence-centric blogs and defence magazines.

- (f) There is obviously an urgent need to make available more information about defence procurement policies and decisions to Members of Parliament as well as the general public. In order to enable a better understanding of the need to procure certain big-ticket items such as submarines, Mindef could opt to release a declassified version of the Government's Defence White Paper, which would include the justification for such decisions as well as the estimated costs. One of the major challenges in defence procurement for the future lies in the cost factor and the advantages and disadvantages associated with mixing and matching equipment and technology from too many different sources. The Malaysian military has probably sourced weapons systems and platforms from a larger variety of foreign suppliers than any other ASEAN member country. As this practice of relying on multiple sources for its military hardware has inevitably brought with it a great variation in advanced technological (especially electronic) terms, it is going to be increasingly difficult to find appropriate military personnel to manage such sophisticated equipment, not to mention their operability even at the present time.

2. Role of Parliament

- (a) Parliament is the legislative branch of the Malaysian Constitution and, as such, it has all the legal legitimacy necessary to be involved in every branch of the Government. Indeed, the very budgetary provisions that govern defence expenditure have to be passed by Parliament each year before Mindef can proceed with its defence procurement plans.
- (b) There is no formal mechanism for the Government through the Minister of Defence and his assistants to explain its defence procurement needs in detail. The primary grounds on

which MPs raise various questions relating to the subject are the conspicuously large expenditures for purchasing the most sophisticated defence systems for the country. At the moment, there is no formal mechanism within the parliamentary system for a closer scrutiny of such expenditures, for example, by having Commissions, Select Committees or other similar Parliamentary working groups in Malaysia. This is in sharp contrast to what is in place in other ASEAN countries such as Indonesia, the Philippines and Thailand. The inevitable conclusion, therefore, is that Parliament is not directly and materially involved in the defence procurement business as it is entirely dependent on what the Government chooses to divulge during Parliamentary debates.

- (c) While it is obviously desirable to have proper Parliamentary defence procurement oversight in Malaysia, it is imperative to acknowledge, as seen in other ASEAN countries with such Parliamentary mechanisms, that MPs themselves should be well versed in the subject of military technology, weapons systems and regional strategic developments. Ideally, their working groups within Parliament should be serviced by a permanent staff of dedicated specialists who can also draw upon other expertise both within and outside the country. The existing Parliament Resource Centre in Parliament House is wholly inadequate for this role.
- (d) It is entirely the prerogative of Parliament to build its own capacity in terms of expertise, time and funds to deal with defence procurement policies and their implications for the broader economic priorities of the nation as well as the strategic and military situation in the region. The existing Government in Malaysia has, so far, shown no inclination to encourage such a Parliamentary capacity for obvious reasons as it would both limit its own freedom in terms of decision-making as well as expose national security priorities to interested external parties.
- (e) Clearly, the major constraint in enhancing the role of Parliament in defence procurement policies in Malaysia as well as in the rest of ASEAN is the undeniable fact that subjects such as foreign and defence policies have very limited political capital for any aspiring MP. Both of these matters mean very little in a political milieu where local and national politics are all about bread-and-butter issues that concern the ordinary citizen's immediate

economic and social needs. One look at the election manifesto of any political party in Malaysia will bear ample testimony to this reality. The only time that the subject was thoroughly exploited (understandably so) and resulted in a thumping electoral victory for the ruling Government Party way back in 1964 was when Indonesian confrontation was being experienced first-hand by the people. The media can help to some extent by highlighting the subject to increase popular awareness but, invariably, it is only feasible when the country is faced with an immediate military problem such as Malaysia's dispute with Singapore over the rock formation of Pedra Branca or the Thai-Cambodian differences over the Hindu temple of Phra Vihear. Unfortunately, such fleeting news reports have, more often than not, only served to heighten nationalist emotions among the local population without much understanding of the problem at hand.

3. Conclusions/general assessment

It is undeniable that the investment of vast sums of public funds in defence procurement exercises ought to be monitored and constantly checked by Parliament in a functioning democracy. However, this is a function in which Parliament itself should rightfully take the initiative by holding the Government responsible for greater accountability and, where it does not threaten one's national security interests, transparency. There are sufficient examples of how such a process can be implemented and managed as seen in Indonesia, the Philippines and Thailand. Malaysia, being modelled on the Westminster practice, could opt for a Parliamentary Select Committee on Defence, which could meaningfully discuss such matters as defence procurement.

Not enough attention has been paid to the role of retired senior military personnel in the defence industry and, more particularly, in defence procurement contracts costing huge sums of money. Some of the personnel hold corporate appointments in local conglomerates that have been awarded lucrative support and coordination services such as the one involving the commissioning of the two *Scorpene* submarines. While there may be nothing that can be considered to be improper in these deals, the Government should be more open about the vested interests of politically-connected individuals as has been the case with Perimekar SB which was initiated by a prominent businessman who has well-known links with the several leading Government-linked corporate conglomerates. The contract for

support and coordination services mentioned above is worth Euro 114.96 million (RM 540 million) over a period of six years.

The third consideration that ought to be addressed is the degree of interest in and knowledge about the rather specialized subject of defence policy among Parliamentarians themselves. In the Malaysian case, research has shown that MPs, mainly from the Opposition, were far better informed and more knowledgeable during the 1960s and 1970s compared to the later period. One of the Opposition MPs of those days, the late Dr Tan Chee Khoo, probably had the largest library on military affairs and was regularly invited to the Armed Forces Staff College to share his thoughts with senior military officers. The situation today is vastly different and this is largely due to the somewhat myopic, but understandable, focus on the day-to-day concerns of the layman as well as the fundamental issues of national integration and economic justice.

Undoubtedly, in the absence of any immediate external security threat to the territorial integrity of the nation, the general public has very little time for the complex world of regional and international politics. The media, of course, reflects these trends by rarely making an issue of defence policy or procurement unless there is a short-term ‘sensationalisation’ of corruption and abuse of power by top leaders. The number of published works on Malaysian defence policy matters has been growing for some time but almost all of them are of a scholarly nature and thus do not capture the mind of the public as such. Even our think-tanks have not played their part in encouraging greater awareness among Malaysians by organizing events that are open to any interested observer, preferring instead to stick to their own somewhat incestuous networks of scholars and policy-makers.