

**Parliaments and Defence Procurement:
Issues and Challenges**

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Introduction

A former defence minister once said that defence procurement for the military is like a child walking in a toy shop: they always want the most beautiful and the most expensive toys for boys.

On a more serious note, in this short presentation I would like to discuss the role of parliaments in defence procurement. There are four reasons why it is very important to discuss this issue within the Inter-Parliamentary Forum for Security Sector Governance in Southeast Asia:

The first reason is that a very substantial amount of government expenditures in Southeast Asia goes to defence procurement. For example, Indonesia, Singapore and Thailand each ordered defence equipment for around 1 bln USD in 2007, with the types of armament varying from armoured vehicles, attack helicopters, fighters to radar systems, submarines and major navy ships. I will not go deeper in the issues of trends and patterns of defence procurement in Southeast Asia – this will be addressed by Tim Huxley.

The second reason is that defence procurement processes are not only technical processes but also political ones. Defence procurement should fulfil a need and a purpose within the national security policy. The purchase of expensive weapon systems needs to be justified in light of the national security priorities and objectives. These policy objectives are of a political nature and need to be discussed in parliament.

Additionally, - the third and most important reason is that defence procurement typically refers to so-called butter-versus guns decisions. While the defence minister and the military professionals may well know what type of military weapon system and equipment is needed in what type of situation, it is not up to them to decide whether money should be spent to further social and economic development or on national security. The butter-versus-guns decisions need to be discussed and decided in the public arena of parliament.

Fourthly, - the last reason- parliament has the power of the purse and this extends to all government expenditures. Based on this constitutional principle, in many states, parliament plays a meaningful role in defence procurement. However, in other states and especially in Southeast Asia, parliaments are marginalised and often face extreme difficulty in exercising their constitutional rights. It is important that we use our Inter-Parliamentary Forum to learn from each other and to understand both the tremendous challenges as well as opportunities for parliamentarians to hold government accountable for the defence procurement decisions and expenditures.

I would therefore like to discuss the following 5 questions with you:

1. What is defence procurement?
2. What makes defence procurement different from other procurement processes?
3. What role can parliament play in defence procurement?
4. What are the main challenges for parliaments in defence procurement
5. How can parliament's role in defence procurement be strengthened?

What is defence procurement?

Defence procurement is the process by which national security authorities acquire the equipment and services necessary to fulfil the mission of the armed forces. In terms of equipment, this includes items intended for military use only, such as weapons systems and ammunition, as well as those that are not explicitly military items, from food to boots. As concerns services, many tasks that were once performed by military staff, from food service and logistical support to intelligence collection and analysis, are now contracted out to private companies and must also be subject to the procurement process.

Though the defence procurement process may differ from country to country, it usually resembles a cycle that includes the following stages:

- assessment of the threat and operational requirements;
- specification of technical requirements;
- exploration of supplier options and/or solicitation of tenders;
- negotiation, evaluation and selection;
- delivery management; and,
- review.

The defence procurement contract between a state and the supplier is the essential and key document. The contract can take the form of:

- Contracts for the purchase or rental of weapons and/or equipment;
- Supply contracts cover the purchase, leasing, rental or hire of products
- Work, services, maintenance and logistics contracts

The trend of governments to privatise security does and will affect defence procurement, in particular in the area of maintenance and logistics/transportation. Instead of buying transport capacity, a government can also decide to hire transport services from private companies. The advantage is that one only pays for delivered services and not for costly transport helicopters or airplanes and therefore does not need to train and employ costly

crews/staff. The disadvantage is, of course, the dependency on private companies. The same applies to buildings (leasing instead of buying) or the maintenance of equipment.

What makes defence procurement different from other procurement processes?

The acquisition of large weapon systems has a number of characteristics that distinguishes it from other kinds of government procurements:

Dominant role of the state: states can have the role of sole client, the role of a co-developer/producer and the role of regulator. As sole clients, states determine the demand for products on the basis of military needs; states define the size of the markets. Depending on the country, governments are sometimes heavily involved in research, development, evaluation and production (in case defence industry is nationalised). Lastly, as regulators, states control the arms trade by means of licences which exporters are obliged to have, including the delivery of equipment, the authorisation to tender for contracts and end-user certificates

The tender process: Though there are many ways to solicit tenders and evaluate bids, defence procurement contracts are generally either managed by competitive bidding or single-source procurement. Competitive bidding is the general rule for public acquisitions. However, for a number of reasons, defence procurement is often conducted via single source (also referred to as sole source, non-competitive or no-bid) procurement, both in developing and advanced arms exporting countries.

Long lead time: Not only does the development and production of weapon systems have a long lead time, it also costs years or even decades to build up appropriate force structures that can equip and maintain the weapon systems. The after sales cost for maintenance, updates and decommissioning are often higher than the initial purchase costs of the equipment.

Cost-overruns: as a rule of thumb, military equipment always becomes more expensive than expected, due to unpredictable factors such as: research and development costs; currency variations; number of other buyers.

Secrecy/confidentiality agreements: important elements of defence procurement decision-making processes are secret for reasons of national security, e.g. technical requirements, specifications of the weapons and equipment, details of the contract etc. .

Security of Supply: The nature of defence requires sources of supply to be guaranteed for the entire duration of an arms programme. To enable this, some state support their national industrial and technological defence industry.

Complexity of defence procurement programmes. Arms development programmes are complex. Since production volumes are limited and the risk of commercial failure high, state support is required. Equipment often consists of new systems which incorporate both military and civilian technologies. It has also a long life cycle: the time between the an operational need being expressed and the end of a system's life may be as long as 50 years. The quality/price ratio and risk management must be guaranteed throughout this period. States must, therefore, have access to adequate industrial and technological capacity throughout the life cycle of a system and maintain lasting, reliable relations with suppliers.

Compensation and offset orders

In addition to this, “off-the-shelf¹” arms purchases are often subject to offset arrangements. This allows the purchasing country to require a return on investment that may exceed 100% of the value of the contract. Such offsets may be direct, in the form of orders for local companies or transfers of know-how and technology related to the original contract. Offsets may also be indirect and concern industrial sectors other than the one covered by the contract in question, even non-military ones.

¹ Finished equipment already developed and available for purchase.

Interoperability needs: Obviously, a state wants its armed forces to work together, supported by interoperable military weapon systems and equipment. It would be rather unfortunate if the army was unable to communicate with the air force, police and navy. The need for interoperability must influence the choice of weapons/equipment and suppliers. Interoperability may also be needed for cooperation with foreign armed forces. For this reason, states increasingly tend to procure defence systems multilaterally, i.e. to buy specific equipment with a group of states. This is not only favourable in terms of their interoperability, but is also cheaper as purchasing several units at once will mean a lower price.

International law and arms control arrangements: International law prohibits or restricts the production, acquisition, transfer, stockpiling and use of certain weapons, such as landmines, cluster munitions and chemical, biological, nuclear, radiological, laser and other weapons. Furthermore, in many areas of the world, arms control agreements regulate the deployment of military forces and equipment. Defence procurement authorities need to be aware of the legal commitments that their country has undertaken or is likely to undertake.

What Role for Parliament?

Parliament has a number of powers that affect defence procurement that may be exercised in plenum, in committees such as security and defence committees or budget and finance committees, or via the power entrusted in individual parliamentarians:

- Establishing a legal framework for procurement;
- Debating and approving both annual and supplementary budget authorisations;
- Exercising oversight of the other governmental actors by requesting reports from the executive, hearing statements or testimony by government officials or issuing questions and interpellations to the government; and
- Approving procurement awards above a certain amount.

Based on these general powers, parliament can play a role in each of the six stages of the defence procurement cycle referred to above:

Defining long-term security planning. In many countries, parliament approves or is specifically briefed on long-term programmatic documents such as a national security strategy, white papers or defence reviews that develop a threat and security assessment and define needed capabilities (see the DCAF BG on *National Security Policy*). If the executive does not usually produce such documents, parliament may pass laws requiring them to do so.

Oversight of technical requirements. The MoD generally has primary responsibility for setting technical requirements for procurement. However, these requirements may be debated within Parliament, especially in the defence committee, when they concern particularly important or costly procurements.

Evaluating Supplier options/solicitation of tenders. Parliaments are unlikely to directly solicit or negotiate tenders. However, they can be involved in these processes in several ways:

- establishing the legal framework for the solicitation of tenders, whether this occurs through competitive bidding or at the discretion of security authorities;
- in some countries, approving procurement contracts above a certain level of funding (e.g., in Germany and Netherlands, €25 million; in Poland, €28 million) or those relating to certain types of weapons systems;
- in some countries, playing a role in selecting the vendor (e.g., Czech Republic and United States); and
- requesting reports from or holding hearings with government and industry officials regarding specific tenders and contracts.
- In some countries, parliament is involved in deciding on the compensation and off-set (which industries and regions will profit from a defence acquisition).

Be informed about the state of delivery management. No parliament is directly responsible for managing deliveries, though they may play a role in this issue if problems occur, for instance, voting to withhold payment on late or unsatisfactory deliveries. This includes monitoring to ensure that offset clauses in procurement contracts are respected.

The defence committee could request that the government informs parliament on a regular basis about delivery and implementation.

Request independent Review. While the MoD usually has its own review process, parliament should also conduct evaluations of procurement as part of a larger defence review process. This should be conducted separately from the executive's own review so that it can provide an independent source of information on security sector activities.

What are the key challenges of defence procurement?

Since the number of actors involved and the many technical aspects of project design, the acquisition process is often criticised for being complex, slow and costly. To a certain extent, this is simply the nature of the procurement process. Procurement contracts that have not been sufficiently scrutinised may waste money by proving to be too expensive or even technologically unachievable. The challenges of procurement include:

Ensuring transparency. In countries that lack civilian control, military and defence authorities often have the final say on what information is made public. However, even if some technical details of weapons programmes must remain secret, parliamentarians need access to this information, even if this requires a vetting process to ensure their reliability (see the DCAF Backgrounder on *Vetting for the Security Sector*). *Black budgets* i.e. budgets for military expenditures that are not approved by parliament and are therefore particularly susceptible to corruption, can be particularly problematic..

Preventing parochial concerns from harming the national interest. When domestic suppliers are involved, politicians may be tempted to secure funds for projects in their own districts, constituency or ethnic group at the expense of the national interest. An independent and vigilant press and civil society are the best means for preventing this practice.

Preventing corruption. According to an IMF report on corruption and military spending, “experts have estimated that bribes account for as much as 15% of the total spending on

weapons acquisition.” The problem of corruption is also recognised on the company side. A 2006 [survey](#) by Control Risks showed that roughly one third of international defence companies felt they had lost out on a contract in the last year because of corruption by a competitor. Transparent, competitive procurement practices and strong parliamentary oversight are essential to stopping and preventing corruption.

Non competitive tender process or single source procurement: This might be necessary where there is only a single competent supplier, or where there is great urgency. However, it is often a response to cumbersome competition procedures. Corruption is not necessarily present, but as the system degrades, with greater and greater percentages of work going out single source, so the corruption risk grows.

Revolving doors: decision makers who migrate from MoD in the government to defence company may develop close ties that could engender corruption.

Poverty reduction vs. security provision. A balance must be struck between development needs and security provision. But in developing countries and post-conflict situations, the main obstacles to meeting security needs are more likely to involve a lack of manpower, training or planning capacity rather than a lack of equipment. The procurement needs of developing and post-conflict countries will vary greatly depending on the government’s threat assessment, which is why it is important for the government to conduct a transparent, inclusive threat assessment as part of a broader national security policy [with external assistance if necessary] (see DCAF Backgrounder on *National Security Policy*).

Over-procurement. Developing countries may be tempted to purchase expensive weapons systems that do not really correspond to their real security needs, which may benefit more from investment in uniforms and training or simply higher salaries for security forces. The most important step towards correcting this problem is to begin with a formal, institutionalised security review that can help to identify the major security threats to the population and the capabilities needed to address these threats.

Under-institutionalized procurement process. Countries may not have the institutional capacity to have a viable, competitive procurement process. However, while such systems do require individuals with a knowledge of procurement practices, they may be easier (and less costly) to implement than many individuals might assume. A lack of resources is thus a poor excuse for not implementing a competitive bidding process for defence procurement, especially since it can help reduce costs owing to competition among suppliers and a decreased likelihood of corruption.

How to strengthen parliament's role in defence procurement?

Creating a stronger role for parliament has to take place in the wider context of institution building and democratic defence reform, including introducing greater transparency of processes, data and budgets of the defence sector, establishing stronger oversight mechanisms, promoting stronger civil society engagement as well as – last but not least – professionalisation of the armed forces.

Perhaps here lies the greatest role for parliament: creating transparent defence procurement processes based on an Act of Parliament.

What can you do as a parliamentarian? The recommendations below are all based on practices that already exist in certain states.

1. Request that your government sign and ratify all relevant arms conventions, in the area of NBC weapons, landmines and cluster bombs;²
2. Check whether the national security policy or the national defence white paper justifies specific defence procurement projects

² According to the Convention on Cluster Munitions website, the following Asian states have adopted the Convention in Dublin on 30 May 2008: Brunei Darussalam, Cambodia, Indonesia, Japan, Kyrgyzstan, Lao PDR, Malaysia, Philippines and Timor-Leste. See: <http://www.clusterconvention.org/convention/participants/states/>

3. Adopt a law that regulates the defence procurement process. Most of the elements mentioned below could be part of this law. In particular, as is the case in many countries, demand that parliament formally approves defence contracts above a certain threshold/level of funding (e.g. 1 million euro)
4. Although military spending is a monopoly of the state and defence procurement contracts are often drawn up in secrecy and under considerable discretionary powers of the executive, transparent procurement, normal government tender regulations should be extended to the defence sector.
5. Request competitive bidding processes (instead of single source/non-competitive bidding processes)
6. Compare government data on defence procurement projects with open sources. These data could include information on the price, specification and producer of the weapons and equipment. For example, Jane's defence publication lists the prices of the vast majority of defence weapon systems.
7. Request that your government conducts multilateral defence procurement processes. Buying weapons and equipments together with other countries will lead to lower prices and to interoperability as you buy the same equipment (for example states buy the same patrol boats in the fight against piracy in the straits of Malacca).
8. Parliament should oversee the compensation and off-set (which industries and regions will profit from a defence acquisition) related to defence procurement contracts.
9. Parliament should request that the national audit office or the anti-corruption office audits/verify all defence procurement contracts.
10. Make sure that the military service law includes provisions that prohibit retired armed forces personnel from working for defence weapons and equipment industries for the period of three years.

Nonetheless, a formalised process of scrutiny does not automatically translate into a meaningful role for parliament and its oversight committees. This also requires:

- Resources, such as support staff and access to independent expertise;
- A relatively stable membership to allow parliamentarians to develop expertise; and

- Motivation and interest on the part of parliamentarians, which determine the extent to which parliament will use its powers.

In short, parliaments must be both willing and able to assert their role in defence procurement.

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