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**THESIS**

**ARMS TRANSFERS TO VENEZUELA: A COMPARATIVE  
AND CRITICAL ANALYSIS OF THE ACQUISITION  
PROCESS (1980-1996)**

by

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March 1999

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Certain aspects of the Venezuelan acquisition process for arms from 1980-1996 may have contributed to bribery and corruption, thus making both Congress and the Venezuelan populace highly skeptical of requests for weapon acquisitions. This thesis, a comparative and critical analysis, examines the Venezuelan acquisition process from 1980 to 1996, using the highly structured U.S. acquisition model as a benchmark for comparison. The analysis traces the complex acquisition process in both countries from the initial requests for materiel until the acquisition is made and the product is employed. This thesis further describes the Venezuelan and the U.S. processes by using four frameworks: institutional, regulatory, organizational and the process itself. This description also entails economic, social, and political factors that influence the procurement process. Many differences in the processes, such as the country's resources and the size of its Armed Forces, are described. Other important differences are the facts that, unlike the U.S. Congress, the Venezuelan Congress has a limited role in the procurement process, and unlike the U.S., the Venezuelan President exerts supreme control, including economic control, over the Armed Forces. The thesis proposes that Venezuela would benefit by adopting the practices of the U.S.

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ANALYSIS OF THE ACQUISITION PROCESS (1980-1996)**

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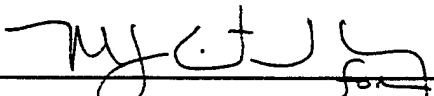
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## **ABSTRACT**

Certain aspects of the Venezuelan acquisition process for arms from 1980-1996 may have contributed to bribery and corruption, thus making both Congress and the Venezuelan populace highly skeptical of requests for weapon acquisitions.

This thesis, a comparative and critical analysis, examines the Venezuelan acquisition process from 1980 to 1996, using the highly structured U.S. acquisition model as a benchmark for comparison. The analysis traces the complex acquisition process in both countries from the initial request for materiel until the acquisition is made and the product is employed. This thesis further describes the Venezuelan and the U.S. processes by using four frameworks: institutional, regulatory, organizational and the process itself. This description also entails economic, social, and political factors that influence the procurement process.

Many differences in the processes, such as the country's resources and the size of its Armed Forces, are described. Other important differences are the facts that, unlike the U.S. Congress, the Venezuelan Congress has a limited role in the procurement process, and unlike the U.S., the Venezuelan President exerts supreme control, including economic control, over the Armed Forces. The thesis proposes that Venezuela would benefit by adopting the practices of the U.S.



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## I. INTRODUCTION

### A. THE NEED FOR ARMS AND FACTORS AFFECTING IT

Like many countries around the world, Venezuela must approach questions of security and defense by considering its geography, its natural resources, and its regional political interests. Since 1958, when democracy was definitely established in Venezuela, two major considerations have delineated Venezuela's security policy more than others. These are the nation's status as a major oil producer and member of the Organization of the Petroleum Exporting Countries (OPEC), and its role as a regional power within the Caribbean Basin.<sup>1</sup> The country's defense posture, internal disposition of forces, its relations with neighboring states, and its arms transfer are due, in large part, to these two considerations.<sup>2</sup> With the development of Venezuela as a major oil producer and with world-wide favorable prices, the National Armed Forces of Venezuela (Fuerzas Armadas Nacionales, FAN) became one of the best equipped military forces in Latin America by the 1970s and early 1980s. This also was due to Venezuela's shared interest with the U.S. to counter Cuba's military strength and influences in the Caribbean Basin.

In 1977, the U.S. imposed an arms-transfer moratorium on the Latin American nations [Ref.1], which instituted a "presumption of denial" of requests for attack jets and other high technology items. Despite this restriction, Venezuela received twenty-four F-16 fighters in 1983. In spite of some concern expressed by other regional powers, such as Colombia, the Reagan administration pushed for this sale on the grounds that Venezuela needed advanced aircraft to help protect the Caribbean sea-lanes, to secure its oil resources against a possible external attack, and to secure the approaches to the Panama Canal. In addition, the Reagan administration believed those allies, such as Venezuela, should be encouraged to share strategic responsibilities with the U.S. and to complement its military forces.

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<sup>1</sup> The Caribbean Basin is a broad geopolitical region encompassing all nations and dependencies in or bordering the Caribbean Sea. This area includes all Caribbean Islands, northern South America, Central America, Mexico, and the United States.

<sup>2</sup> In this thesis, we define arm transfer as imports "only" of military equipment, usually referred to as "conventional" including weapons of war, parts, ammunition, support equipment, and other commodities designed for military use. (The U.S. Arms Control, and Disarmament Agency uses both imports and exports for defining arms transfer).

The neighboring Colombia's concern for Venezuela having such military strength still exists in 1999. This concern is primarily due to the disparities between Venezuela and Colombia fixing their boundaries. The most visible irritant in this relationship is the boundary demarcation of the Venezuelan gulf, a conflict that stretches back to colonial times. This conflict reached its peak on August 9, 1987, when the Colombian warship "ARC CALDAS" (Exocet equipped corvette) entered Venezuelan waters in a clear violation of sovereignty. Venezuela avoided direct confrontation with its neighbor and the problem was solved diplomatically. In addition to this, Venezuela has suffered from Colombia's guerillas attacks in Venezuelan border areas since the late 1980s. Also, Colombian drug traffic has become another menace and reason for the Venezuelan Government to equip the Armed Forces.

With the end of the Cold War and the Soviet Union disappearing as the prime arms provider to Cuba, the U.S. has been reconsidering the Venezuelan role in the Caribbean. The U.S. focus on combating the drug problem has been a primary concern for transferring arms not only to Venezuela but to Colombia as well. Because of this and other factors, the U.S. decided on August 1, 1997, to end the 20-year moratorium on the sale of advanced weaponry to Latin American countries.

Venezuela has historically depended on external sources for its arms requirements. Therefore, about six to eight percent of its annual defense expenditures are used in foreign currency for defense procurement. These defense procurements are influenced by internal conflicts, external threats, such as the 1987 Colombian crisis, or by economic prosperity. These influences were confirmed by Gertrude Heare in her 1971 study, and in 1973 by P. Schmitter [Ref.2: p. 117-118] who showed that such factors affected military expenditures in Latin America. In Venezuela, determining a particular trend in military expenditures has been difficult. However, these factors earlier mentioned have a strong influence in Venezuela's defense expenditures.

Since Venezuela's years of economic boom ended, the Venezuelan Armed Forces have been constrained from acquiring new weapon systems. In addition to the economic crisis, the military equipment acquired in the "good times" is aging. Thus, the Armed Forces must modernize and maintain this equipment in order to accomplish their tasks and missions. The Venezuelan Government has been achieving most of this modernization by way of public debt. Since 1984, when the Venezuelan economic crisis started, the Venezuelan Armed Forces have been receiving additional credits for weapon acquisitions with funds raised from government bonds and other public debt.

Although Latin America has the lowest percentage of weapon acquisition expenditures compared to its gross national product, with an average of two percent for

the region[Ref 3], countries like Venezuela continue purchasing weapons in order to maintain an equilibrium in the region, and to combat the new guerilla and narcotraffic threats.

Venezuela defense expenditures have been decreasing since 1980 because of the declining oil prices worldwide. While the Venezuelan defense expenditures have been increasing as a result of currency depreciation, the expenditures in U.S. constant dollars have been declining. This coincides with the Schmitter and Heare studies made in the 1970s [Ref.2: p. 117-118]. In the following graph, the Venezuelan defense expenditures are shown in both local currency (Bolivares, Bs) and U.S. constant dollars. The increases and decreases during those years coincide with those factors considered by Schmitter and Heare affecting defense expenditures and mentioned on page two of this chapter:

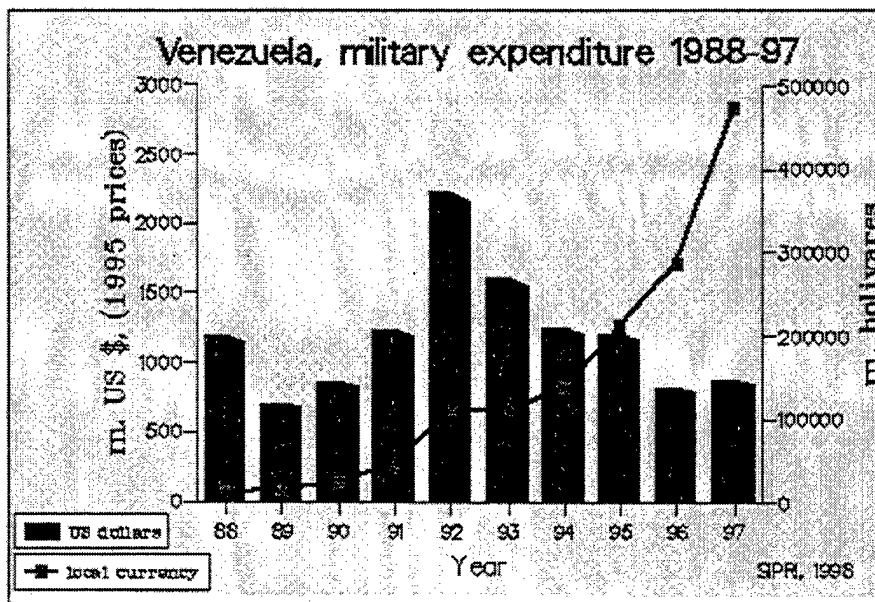


Figure 1. Venezuela Defense Expenditures from Stockholm International Peace Research Institute, 1998

In view of this economic turmoil in Venezuela and due to the cuts in government spending, the Venezuelan Armed Forces have been forced to maximize the value of each expenditure to accomplish the mission established by the constitution and other laws. In addition, because of these budget reductions, Congress has imposed more restrictions on acquiring weapon systems through debt, because it believes that the Armed Forces should be financed by funds other than debt. In that sense, many legislators advocate creating a special financial law to fund the Armed Forces. These members of Congress also believe

that they must revise the structure and size of the Armed Forces and adjust its mission to meet the new strategic requirements of the country [Ref.4].

Venezuela depends heavily on foreign industrialized countries for arms transfers. Since 1977 when the U.S. banned the sale of weapon systems to Latin America, Venezuela, as did many other countries, went to other international markets to purchase weapon systems. Due to surprising increases in revenue, and to the Colombian crisis in the Venezuelan gulf, Venezuela accelerated the process for acquiring new weapon systems from European and Asian countries. In addition, Venezuela recently contracted the modernization and maintenance of these systems. These processes carried incredible contracting problems. For example, in 1985, the Venezuelan Government contracted the company, Yulecris International, and the U.S. Company A.V. Technology to build 300 Dragon Vehicles. On May 5, 1997, a legal study was introduced to Congress reflecting a possible overprice in the contract. Another example was the 1988 contract for modernizing Venezuelan Navy patrol boats by the Italian company, Oto Melara. In that case, Oto Melara did not finish the job and payments were illegally made, defrauding Venezuela of about 9.5 million dollars. A last example of these deficiencies was the contract for modernizing 81 Army AMX-30 tanks by the Venezuelan-Italian Van Dam company on August 7, 1988. In this case, the contracting company received payment for more than 70 percent of the contract price without delivering any operational tanks.

It was during these and other acquisition processes that many cases of bribery and corruption were exposed, and even today, many of these cases are still in courts of law. These cases were ignited, primarily, by some European countries such as France and Germany where bribery was granted by these governments as a tax reduction for defense contractors [Ref.5]. For these reasons, as well as the decreasing purchasing power of the Venezuelan government, the Congress started a campaign against weapon acquisitions, and started to scrutinize the acquisition processes carefully.

This situation created a lack of confidence in the Armed Force's acquisition process and a loss of credibility by the Venezuelan citizens in their Armed Forces. Despite these facts, neither Congress nor the Armed Forces made serious analysis of the bribery and corruption problems that the Armed Forces were facing.

## **B. SCOPE OF THE THESIS AND METHODOLOGY**

Little research has been carried out to verify whether the acquisition process for the arms transfer to Venezuela between 1980 and 1996 was an important factor in permitting bribery and corruption, making both Congress and the Venezuelan populace highly skeptical of the Armed Forces' request for weapon acquisitions. This thesis is a



comparative analysis of the Venezuelan acquisition process over a period of sixteen years, using the U.S. acquisition process as a model. This thesis also presents the Venezuelan acquisition process and determines to what extent it can be improved—reducing bribery, corruption, and streamlining the process—by applying the U.S. acquisition model as a benchmark for comparative analysis. The analysis will be made by considering the defense acquisition process as a complex procedure for translating mission needs into a stable, affordable, and well managed acquisition program. A description of the Venezuela and the U.S. process is developed which includes the most relevant factors influencing the different stages of this process. The four main frameworks considered in this analysis are

- the institutional framework, where the Legislative, Executive, and Judicial branch are examined
- the regulatory framework where constitution, laws, and other regulations controlling and affecting the process are taken into account
- the organizational framework, where all offices intervening into the process are described
- the procurement process framework, where the different steps, activities, and decisions are described

The methodology for this research was based on the inductive method,<sup>3</sup> which helps us answer our primary question: To what extent can Venezuela's Armed Forces acquisition process be improved—reducing bribery and corruption and streamlining the process—by applying the U.S. acquisition model as a benchmark for comparative analysis?

The descriptions and ideas in this thesis have resulted mainly from researching relevant literature. The literature studied included: the constitutions of both countries, laws, regulations, presidential orders and other government documents concerning the acquisition process; congressional reports, studies and books on acquisition processes, and to the maximum extent, use of the Internet as a reliable source of information.

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<sup>3</sup> The inductive method is the process by which a theory is generated. In this method if the researcher does not have an answer to a question, he starts a fact-finding process to obtain an answer and to generate a theory. (Buckleys and Chiang, *Research Methodology and Business Decisions*, National Association of Accountants, 1976. P. 21)

For this research, the comparative analysis method was used. This method was based on a 1973 study by Neil Smelser regarding methodology in comparative analysis [Ref.6: p 45-52]. With Smelser's study as my primary reference, my thesis analyzes the similarities and differences of the acquisition processes in the U.S. and in Venezuela.

### **C. DEFINITIONS AND ABBREVIATIONS**

Being a highly complex procedure, the acquisition process involves many definitions and since so many offices and different defense organizations of both countries are involved, many abbreviations are used. In order to avoid confusing the reader, the definitions and abbreviations are explained in the text and in footnotes whenever necessary.

In order to develop a basic understanding of the acquisition process, I considered the definition of a Defense Acquisition System given by the Defense Systems Management College in its guidebook *Introduction to Defense Acquisition Management* [Ref.7: P1]:

The defense acquisition system is a single uniform system whereby all equipment, facilities, and services are planned, developed, acquired, maintained, and disposed of by the Department of Defense (DOD). The system includes policies and practices that govern acquisition, identifying and prioritizing resource requirements, directing and controlling the process, and contracting and reporting to Congress.

Although this definition is based on a U.S. defense management agency, I considered it applicable to both countries since the overall process—to obtain goods and services for the Armed Forces—is the same in both the U.S. and in Venezuela.

The Federal Acquisition Regulations (FAR), designed to provide uniform regulations among all executive agencies and departments of the U.S. Government, use the term "acquisition" in place of "procurement," the latter term being synonymous with "contracting," as a subset of acquisition functions. In this thesis both terms, "procurement" and "acquisition," are synonyms.

### **D. ORGANIZATION OF THIS THESIS**

Any comparisons between the processes and procedures used by two different countries are difficult to make. Many variables influencing the procedures are unique to a particular country or organization. For this reason, the acquisition processes for both countries are described in Chapter II and III. The four frameworks already mentioned

(institutional, regulatory, organizational, and procurement process frameworks) are used to describe all the factors affecting the acquisition process in both countries.

Chapter IV establishes a comparative analysis of both the Venezuelan and U.S. acquisition processes based on the four frameworks previously described. There, the differences and similarities in both processes are emphasized using the frameworks considered for this analysis. Additionally, in this chapter some factors which are causing bribery and corruption and which are also reducing efficiency in Venezuela's process are analyzed.

Finally, Chapter V develops conclusions and findings based on the descriptions and comparisons made in the precedent chapters. In addition, this chapter answers the question: To what extent can the Venezuelan acquisition process be improved by applying the U.S. acquisition model as a standard for comparative analysis? Furthermore, several recommendations are made in order to evaluate the feasibility of improving the Venezuelan acquisition process, reducing bribery and corruption and streamlining the process, based on the results presented in this research.



## **II. THE VENEZUELAN ARMED FORCES ACQUISITION PROCESS**

As a sovereign nation, Venezuela sustains its national security and protects its borders with the Armed Forces. In order to accomplish this important and fundamental mission, the armed Forces must train personnel, and acquire weapon systems and a diversity of materiel. In this chapter the procurement process of the Venezuelan Armed Forces will be described as well as the organizations, regulations and other factors affecting this process.

### **A. INSTITUTIONAL FRAMEWORK**

Venezuela is constitutionally a Republic. In addition, the Republic is also considered a federal state (Constitution Art. 2). Because of the transformation of the country, divided in autonomous regions along the lines of the federation established in 1811 and consolidated in 1864, this federation functioned politically until the beginning of this century and then became unified over the last 90 years. Venezuela began to be decentralized with the enactment of the Organic Law<sup>4</sup> for Decentralization and Transfer of Powers in 1989 [Ref.8:]. In accordance with the federal system, the Venezuelan Constitution makes a distinction between departments proper to national, state, or local power. On a national level (national government), public functions are distributed among the legislative, executive, and judiciary branches. Since the government is responsible for the national security, and since the existence of the Armed Forces depends on the government, a discussion of these three branches, and their roles in the procurement process is necessary.

#### **1. Congress**

The Congress of the Republic of Venezuela is the caucus by which the representatives of the Venezuelan people exercise legislative power. Two chambers constitute the Congress: the Senate and the Chamber of Deputies (Cons. Art. 138). Universal, secret, and direct voting elect the members of the two chambers every five years at the same time as the President. Congress is empowered to legislate on matters of national competence and to regulate the operation of the different branches of the national government as well as to exercise control over the public administration (Cons.

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<sup>4</sup> Organic laws are statutes enacted by the Venezuelan Congress and further signed by the President.

Art. 139 and 160). Each one of the legislative chambers also has exclusive functions. For example, the Senate is entitled to authorize the executive power to carry out different administrative acts including defense procurement, and the Chamber of Deputies is empowered to open the discussion of the annual budget law.

Both chambers in Congress have a permanent Defense Commission with seven members each. One of the members, normally from a majority party, exerts the presidency of the commission. These commissions are responsible for overall functions assigned constitutionally, such as studying different law projects, agreements, resolutions, demands in specific defense affairs, and investigations. In addition, the Defense Commissions in both chambers can name subcommissions that will oversee studies and considerations on specific affairs, which are assigned to them. Once the study is completed, the subcommissions prepare a report, which is discussed when the Commissions are in full session. In addition, these Defense Commissions are in charge of initiating studies in order to accomplish specific functions clearly stated in the Constitution. For example, the Senate Defense Commission is responsible for studying and submitting authorization of Venezuelan military missions abroad, to authorize foreign military missions within the country (Article 150, Numeral 4), and to authorize the promotion of officers of the Armed Forces from Colonel or Captain and upper ranks (Article 150, Numeral 5). In the case of the Chamber of Deputies, the Defense Commission can initiate studies concerning the budget of the Armed Forces or other similar affairs. This commission also has the authority to conduct hearings in defense affairs and to censure the Defense Minister when necessary.

### ***Legislative Oversight***

The Venezuelan Congress has the General Comptroller of the Republic Office as an auxiliary organ to control the public administration. According to the Constitution, the Comptroller General of the Republic Office has the responsibility to control and oversee income, spending, and goods of the nation as well as the operations related to them. (Article 234). On December 13, 1995 a new Organic Law of the Comptroller General of the Republic was enacted and published in the *Official Gazette of Venezuela*<sup>5</sup> [Ref.9:]. This organic law states in its Article 5 that all the departments of the government that integrate the public administration are subject to the vigilance, oversight

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<sup>5</sup> The *Official Gazette of Venezuela (Gaceta Oficial [G.O])* publishes all the national laws, regulations, and decrees previously approved by the respective power. In Venezuela all the statutes, regulations, decrees, and other official directives must be published in the official gazette to be officially valid. This is in accordance with the Law on Official Publications of 1941. (G.O. N° 20546 of July 22, 1941)

and control of the Comptroller General of the Republic Office. However, the same law establishes in its Article 36 that the expenditures for security and defense of the State are exempt from the control of the Comptroller General of the Republic Office. According to this law, only the orders of payment for these expenditures require verification by the Comptroller General of the Republic. The directive that regulates the Organic Law of the Comptroller General of the Republic Office defines in Article 8 the following as expenditures for security and defense:

- in the Ministry of Defense the payments to military personnel and expenditures in commission services, funds for the acquisition, operation, maintenance and repairs of weapon systems, public security equipment, and telecommunications
- funds assigned for operation of intelligence organizations, military liaisons in foreign countries, and military operations involving the security and defense of the nation

These expenditures are classified by law as “secrets” and consequently are exempt from the regulatory control of the Comptroller General of the Republic. This comptroller function is delegated to the Comptroller General of the Armed Forces, and consequently Congress loses its oversight power over such expenditures. Other expenditures, not mentioned above, are considered by law as “ordinaries,” which means that they are discretionary and subject to oversight by the Comptroller General of the Republic.

In addition to the above, politicians with little knowledge about defense affairs have integrated the Venezuelan Congress, and specifically the Defense Commissions, through the years. Consequently, due to this lack of knowledge, the participation of these commissions in making decisions and accomplishing their regulatory functions in security and defense has been limited. Therefore, many defense budget requests, investigations, and procurements of weapon systems passed through these commissions without much scrutiny. Although the 1961 Constitution mandates oversight of the public administration to Congress, it was not until recently, when many scandals appeared in defense procurements, that Congress started looking closely at these processes. On February 14, 1998, Deputy Bernard Alvarez, a member of the Defense Commission, stated that the participation of Congress in the Defense Affairs has been limited to the role of merely authorizing defense spending. As a result, Congress has a marginal participation in generating defense policies and immense limitations on controlling the Armed Forces. This situation, said the deputy, “generates a model that imposes constraints in democratic control” [Ref.10]. Also since the Venezuelan

President has the authority to organize and to administer the Armed Forces, Congress exerts a minor influence in such matters

## **2. Executive**

The 1961 Constitution continues a long tradition of a powerful president, who serves as head of state and chief executive. As mentioned, the Venezuelan President exerts constitutionally the supreme authority over the Armed Forces. Consequently, he has the power to administer and deploy the Armed Forces and has the final decision to approve the defense procurement request presented by the Defense Minister who is responsible for the overall process. The President also exercises sole control of foreign policy. He can authorize expenditures outside the budget and can negotiate loans in the name of the Republic. In addition, the President has the constitutional power to appoint and to remove the Defense Minister without congressional consent. Moreover, the President has the power to dictate the directives that regulate the implementation of the organic laws enacted by Congress. These regulations are not subject to the approval of Congress, and the courts are not empowered to review them. Thus, the President has a strong influence in the defense procurement process since he is constitutionally empowered to intervene, not only to develop directives regulating the processes but even to appoint the authority responsible for the process. Moreover the President can declare national emergencies and consequently can obtain supplies from the industrial base and can even temporarily restrict or suspend constitutional guarantees. Finally, the President can—as stated in the Organic Law of the Armed Forces—appoint the Comptroller General of the Armed Forces.

### ***Executive departments and agencies***

Following a long military tradition in Latin America, the Minister of Defense of Venezuela is an active duty Major General or Vice-Admiral. He is appointed by the President and normally remains in charge of the Ministry no longer than two years. The Minister of Defense is responsible for the overall procurement process according to the Organic Law of the Armed Forces. Also, according to the same law, the president appoints the Comptroller General of the Armed Forces who is also a general officer on active duty. Both the Minister of Defense and the Comptroller General of the Armed Forces are the main agents in the defense procurement process, so most of the procurement decision making, control, and oversight functions are executed by the military. This is confirmed by Richard Downes, a military analyst from Miami



University, who states that “ In Latin America there is little effective civilian control of the military,” and added, “the key decisions are made by the military....” [Ref.11]

According to the Organic Law of Central Administration<sup>6</sup> the Minister of Defense has the following procurement responsibilities:

- to serve as direct agent of the president in administering the Armed Forces
- to organize, set doctrine, oversee, and to deploy the Armed Forces
- to fabricate or procure all materials needed by the military. This includes importing, exporting, storing, transporting, registering and trading war materials and weapon systems
- to elaborate programs, projects and to supervise all construction of military installations, buildings and other constructions related to the national defense

In addition, the Minister of Defense has the authority to delegate the procurement of certain goods and services for the Armed Forces to each Chief of Service, yet the Minister maintains the responsibility for the procurement. This situation applies only when the funds to be expended are from the budget law and not from additional or extra-budget funds. In the latter, only the Minister is responsible for the process and does not have the authority for delegation, as we will see in the description of the procurement process.

The Comptroller General of the Armed Forces Office is, according to the Organic Law of the Armed Forces, the highest organ to exert internal control of the administration of the Armed Forces, including defense procurement. Among the responsibilities assigned to the Comptroller General of the Armed Forces the following concern defense procurement:

- to dictate policies and instructions, as well as to practice continuous evaluations of the internal control system of the Ministry of Defense
- to open administrative investigations against public officials within the Defense Sector when the public patrimony is endangered
- to verify the execution of the budget law according to the needs of the different services
- to review the state of the materiel used for security and defense

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<sup>6</sup> The Organic Law of Central Administration (G.O. N° 5025 , Dec. 20, 1995) establishes the guidelines to organize and administer the ministries and establishes the primarily responsibilities for each one of the Ministers of the executive cabinet.

- to exert control before receiving weapon systems and others materials that are a result of procurement processes

In addition to the above, the Comptroller General of the Armed Forces acts as a liaison between the Ministry of Defense and the Comptroller General of the Republic Office. Furthermore, the Comptroller General of the Armed Forces has the responsibility to supply all the necessary documents requested by the auxiliary office of the Congress as stated by law.

### **3. Judicial**

The administration of justice in Venezuela is a duty of the Government and it is exercised through the courts of the Republic. The law on the Judiciary of 1987 regulates the courts [Ref.12]. The Council of the Judicature, an autonomous constitutional organ regulated by its organic law, governs the courts. Within the defense procurement process, there are three levels involved: commercial courts, military courts, and administrative courts.

The courts involved in defense procurement are placed in hierarchical order and have jurisdiction according to the amount of money involved in the process or the importance of the case. In general, court decisions can be appealed to a higher court, but a case cannot be heard in more than two instances. Only decisions handed down in the second instance can be appealed before the Supreme Court of the Republic.

The Supreme Court of Justice is constitutionally the highest tribunal of the Republic and therefore the last resource for appellation. The Supreme Court presided over by fifteen justices who are appointed by Congress, applies the principle of subjecting the state to the rule of law. This rule of law is guaranteed by the existence of judicial review of administrative action courts, which are integrated in the judiciary. The Political Administrative Division of the Supreme Court of Justice exercises this special jurisdiction together with the First Court on Judicial Review of Administrative Action and fifteen superior courts. All these courts are competent to annul general or individual administrative acts contrary to law, including abuse of power. In addition, they make judgments for monetary payments, the reparation of damages for which the administration is responsible, and they are responsible for taking the necessary steps to reestablish law and order when illegal administrative activities occur. These courts were also, until recently, the judiciary resource for claims by defense contractors.

The Venezuelan Congress enacted on March 25, 1998, the Arbitration Commercial Law, which filled a legal void that existed in the legislation. The Arbitration Law also established the norms and procedures for the arbitration process (Chapter IV,

Arbitration Law), and allows parties to solve disputes or claims before going to court. Consequently, this new law permits both the contractor and the government to avoid spending funds in costly court cases.

This law describes two types of arbitration: institutional and independent. Any commercial association or international association related to the national economy can act as arbiter in an institutional arbitration. Three arbiters selected by the parties (contractor and Government) in dispute exercise the independent arbitration.

Furthermore, Congress enacted in 1982 the Organic Law of Safeguard and Public Patrimony (Ley Organica del Patrimonio Publico). This law put in place the Courts of Safeguard and Public Patrimony in order to prevent corruption and to pursue and sanction public servants and contractors involved in corruption cases.

Finally, the Comptroller General of the Republic has the authority to act in bidding processes canceling the award and annulling these when necessary and applying sanctions if required.

## **B. REGULATORY FRAMEWORK**

In Venezuela, the principle of written law prevails. Therefore, precedent is considered an auxiliary or subsidiary source of law. Court decisions are not sources of law but the interpretation of them can be used as reference. When there is no written law, the civil code considers analogy and the principles of law as formal sources of law. As a result, since the regulation framework is the written law that affects defense procurement, this regulation framework plays an important role in Venezuela's Armed Forces procurement process.

### **1. Constitution**

The Constitution of January 23, 1961, is the supreme source of law in Venezuela. This Constitution is the twenty-fifth since the declaration of independence in 1811. From it, the bases for the procurement process are established. The Venezuelan Constitution designates the following authority to the government:

- the organization and regimen of the Armed Forces
- the approval of Congress to sign contracts of national interest
- the inclusion of a clause in national interest contracts mandating that doubts and controversies that can appear in public contracts must be solved by courts of the Republic of Venezuela

In addition, the constitution establishes the authority and responsibilities in the legislative, executive, and judiciary branches of the Government affecting defense procurement.

## **2. Statutes**

On the national level, legislation is made up of organic and ordinary laws; the former occupies an intermediate position between ordinary laws and the Constitution. Congress enacts the organic laws in Venezuela under absolute majority of both chambers (Constitution Art. 163). In addition, the constitution states that the laws that systematically assemble the rules on a specific subject can be called codes. Only the Commercial Code [Ref.13] affects defense procurement since it establishes the principles to initiate commercial activities and their relationships with third parties only within Venezuelan territory.

The organic laws are the most important affecting the defense procurements. They specify the authority, responsibilities, and the main procedures for the procurement process. The following are the organic laws influencing the procurement process:

- Organic Law of the Comptroller General of the Republic
- Organic Law of the Armed Forces
- Organic Law of Central Administration
- Organic Law of Public Credit
- Organic Law of Safeguard and Public Patrimony
- Organic Law of National Public Treasury
- Organic Law of Budgetary Regimen
- Organic Law of Administrative Procedures
- Organic Law of Customs

All these laws contain regulations to be applied during the procurement process and as such are considered mandatory.

## **3. Regulations**

The Venezuelan constitution empowers the President to dictate the directives that regulate the implementation of the organic laws. Consequently, the president signs the

directives that regulate the organic laws affecting defense procurement. In addition, the President exerts control over the procurement process by the way of decrees or instructions. The following decrees and directives are fundamental in defense procurement:

- Norms for the Acquisition of War Material and Equipment for the Armed Forces through Public Credit Operations. Presidential Decree N° 175 of June 27, 1984
- Norms for Orienting Demand of Building, Goods and Services from the Public Sector to the National Production. Presidential decree N° 1,234 from October 8, 1981
- Regulation about Public Bidding, Private Bidding and Direct Adjudication for Contracting Construction and Acquiring Goods for the Public Administration. Presidential Decree N° 534 from March 15, 1985
- General Conditions for Contracting Constructions. Presidential Decree N° 1,802 from January 20, 1983

Also, the Comptroller General of the Republic dictates regulations affecting defense procurement. These regulations are published in form of “circulars” or by resolutions of the Comptroller General of the Republic.

Finally, the Minister of Defense, the Comptroller General of the Armed Forces, the commanders of each service and other heads of department, such as the Chief of the Joint General Staff, can dictate regulations under their authority in the form of “directives” or resolutions. The following represents the most important directives affecting defense procurement:

- Norms for the Acquisition of Goods and Services to be Supplied to the National Armed Forces. Directive of the Comptroller General of the Armed Forces N° OAT-01-86 from June 13, 1986
- Regulation for the Acquisition of Goods and Services for the National Armed Forces. Resolution of the Minister of Defense N° 7,587 from June 27, 1988

## **C. ORGANIZATIONAL FRAMEWORK**

### **1. Ministry of Defense**

Most of the offices involved in the acquisition process are concentrated in the Ministry of Defense because the Minister of Defense has maximum responsibility for

defense procurement. In the Ministry of Defense, the following organizations are actively involved in the acquisition process: the General Administration Direction, the General Direction of Planning and Budgeting, the Legal Consultant, and the Joint Chief of Staff Office. The General Administration Director has the mission to coordinate, lead, and supervise the financial and administrative activities of the Armed Forces through the systems of budgeting, contracting, acquisitions, accounting, and payment. This director works closely with the General Direction of Planning and Budgeting on implementing the acquisition and supply systems, contracting, accounting and budgeting systems. In addition, the General Director of Administration coordinates with the Comptroller General of the Armed Forces the controls of the Administration of the financial resources as well as the register of all transactions and accounting systems.

The General Direction of Planning and Budgeting primarily coordinates the planning and budgeting of the Armed Forces as well as the allocation of the financial resources assigned to the defense sector. The Direction of Planning and Budgeting coordinates with the General Direction of Administration the economic studies required in order to maximize the use of the financial resources assigned to the defense sector. In addition, this office analyzes the Armed Forces' needs for extra-budget requirements for acquiring weapon systems, equipment, and other war materiel.

The Legal Consultant has the responsibility to review the contract projects and to provide a legal opinion during the procurement process. Furthermore, he can put in writing the contracts when the minister requires it.

Finally, the Joint Chief of Staff Office is responsible for determining the strategic and logistical justification of the weapon system or materiel to be procured. This last case occurs only when the expenditures are classified as security and defense (secret funds), and the financial resources are from public credit and additional to the current budget.

## **2. The Comptroller General of the Republic Office**

The Comptroller General of the Republic Office is the auxiliary organization of the Venezuelan Congress with the constitutional function to oversee the public administration. Therefore, this office oversees the procurement process of the Ministry of Defense under the conditions stated earlier in this chapter.

### 3. The Comptroller General of the Armed Forces Office

The Comptroller General of the Armed Forces Office is the other organization actively involved in the Venezuelan Procurement process. Within the organization of the comptroller office, the following offices participate in defense procurement:

- Direction of Control for Secret Expenditures
- Direction of Control for Ordinary Expenditures
- Direction of Investigation
- Direction of Auditing

These directions accomplish the functions, which were stated on page fourteen of this chapter, mandated by law for the Comptroller General of the Armed Forces.

The following is the structural organization of the Comptroller General of the Armed Forces Office:

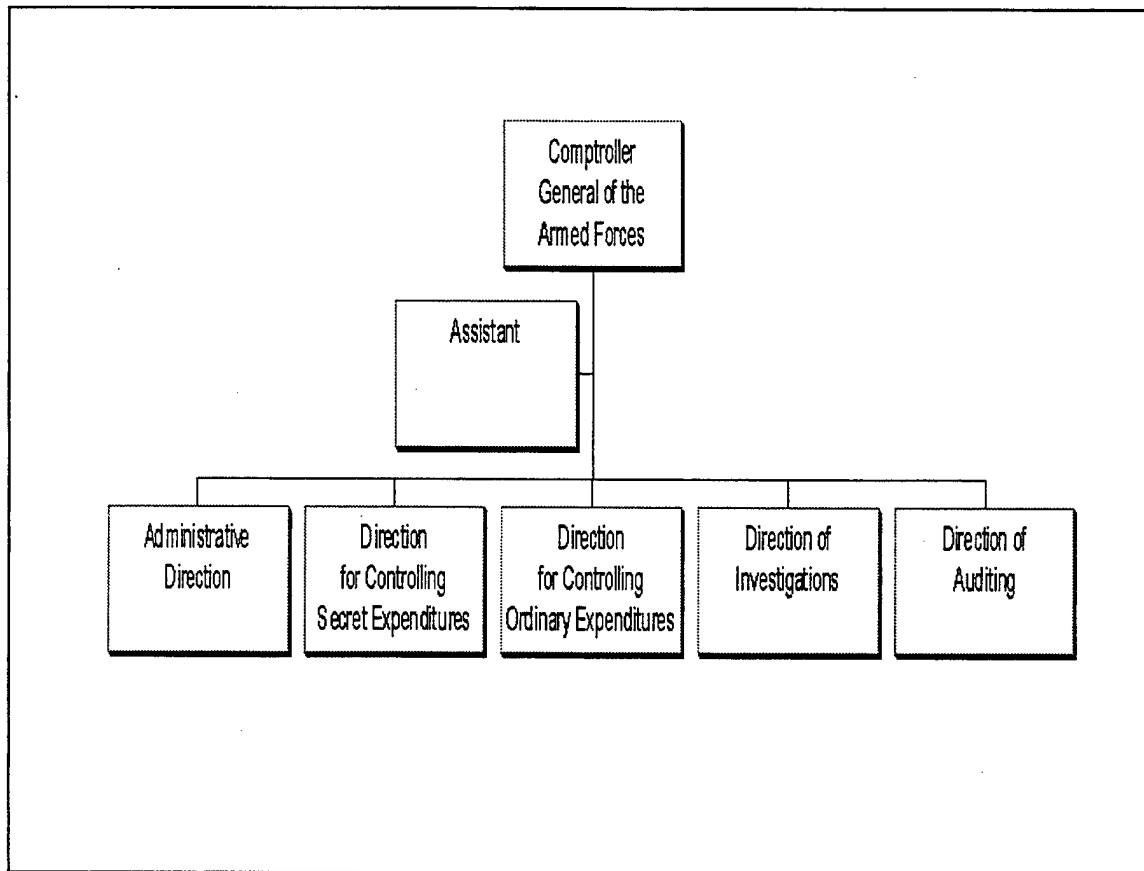


Figure 2. Comptroller General of the Armed Forces of Venezuela Organization Chart

#### **4. Head of Services**

Each commander of service has a Logistic Command with a Direction of Acquisition. These directions have subordinate departments such as Contract and Bidding, Planning, Public Credit, Verification and Control, and Reception. These directions are also responsible for preparing all documents during the procurement process once a need is determined and a purchase is required. In addition, each service has a planning and budgeting office with the responsibility to plan the required financial resources and to produce the annual budget.

### **D. PROCUREMENT PROCESS**

#### **1. Focus**

The Venezuelan Military portion of the overall Government budget rarely exceeds 10 percent. From 1950 until 1986, Venezuela military expending as a percentage of the gross domestic product was between 1.5 and 2 percent. [Ref.14: p.196]. Inasmuch through the years, the Armed Forces have been constrained from making defense procurements from the current budget. In addition, the lack of a significant domestic arms industry and the consequent importing of almost all of its weaponry represented another constraint in defense procurement. In 1975, the Armed Forces attempted to address this deficiency by establishing the Venezuelan Military Industries Company (Compañía Anonima de Industrias Nacionales [CAVIN]). However, by the 1990s, CAVIN had made little progress. Domestic arms production consists of ammunition, small arms, explosives, some spare parts, and coastal patrol boats for the Navy and the National Guard. As a result, the Venezuelan procurement process has focused primary on acquiring imported weapon systems. These acquisitions are characterized by obtaining mature systems from industrialized allies in the global market.

#### **2. Acquisition Phases**

The Presidential Decree N° 175 (Norms for the Acquisition of War Materiel through Credit Public Operations), mentioned in section B of this chapter (Regulation Framework), establishes the acquisition phases for the procurement of weapon systems. Even though this decree covers only the procurement process for weapon systems acquired by public credit, we consider this decree as the foundation for determining the



acquisition phases. This is due to the reason previously explained that the Venezuelan Armed Forces have been constrained from making weapon acquisitions from the current budget. Therefore, the only source of funds for procurement and maintenance of weapon systems is public credit or debt.

The Decree N° 175 describes the steps for the acquisition process. Since the Venezuelan Defense Organization does not have any documents defining the acquisition phases, we use this presidential decree in order to develop the acquisition phases and milestones during the procurement process. The decree N° 175 initiates the description of the process by ordering each service and the head of each department to solicit permission from the Minister of Defense to initiate acquisition projects not covered by the current budget. Once the studies are finished, the heads of departments or Chiefs of Service present the Minister with a project reflecting the employment, logistics, technical capabilities, and financial requirements to explain the need and benefits of the acquisition. Then the Minister of Defense sends the Joint Chief of Staff Office the acquisition project for analysis. The Joint Chief of Staff Office then generates a strategic and logistic study and issues an opinion about the project based on the General Plan for Development of the Armed Forces. After that, the Minister of Defense presents the project with the opinion of the Joint Chief of Staff Office to the Joint General Staff of the Armed Forces. This consultative organization evaluates the project in function of equilibrium of forces (internal and external) and according to the national situation. Once the project is approved, the Minister of Defense sends it to the Comptroller General of the Armed Forces. The Comptroller General of the Armed Forces then makes a price analysis and formulates recommendations according to his function. After this evaluation, the Minister of Defense sends the project to the Minister of Finance who determines the financial aspects of the project based on the government fiscal income and debt. Finally, the Minister of Defense presents the project to the President for approval.

Once the project reaches this point, the Direction of General Administration of the Ministry of Defense revises the project and confirms with the Ministry of Finance that funds are available for the project. Then the project is sent to the Ministry Council for consideration (rarely are the projects rejected at this point). Once the Ministry Council approves the project, the Legal Consultant of the Ministry of Defense revises the project and the contract clauses and then submits these to the Minister who signs the contract. Finally, the contract is sent to the Direction General of Administration Office which is responsible for sending the contract to the service office or the head of department who is responsible for its implementation and control.

Figure 3 below illustrates the acquisition process described above:

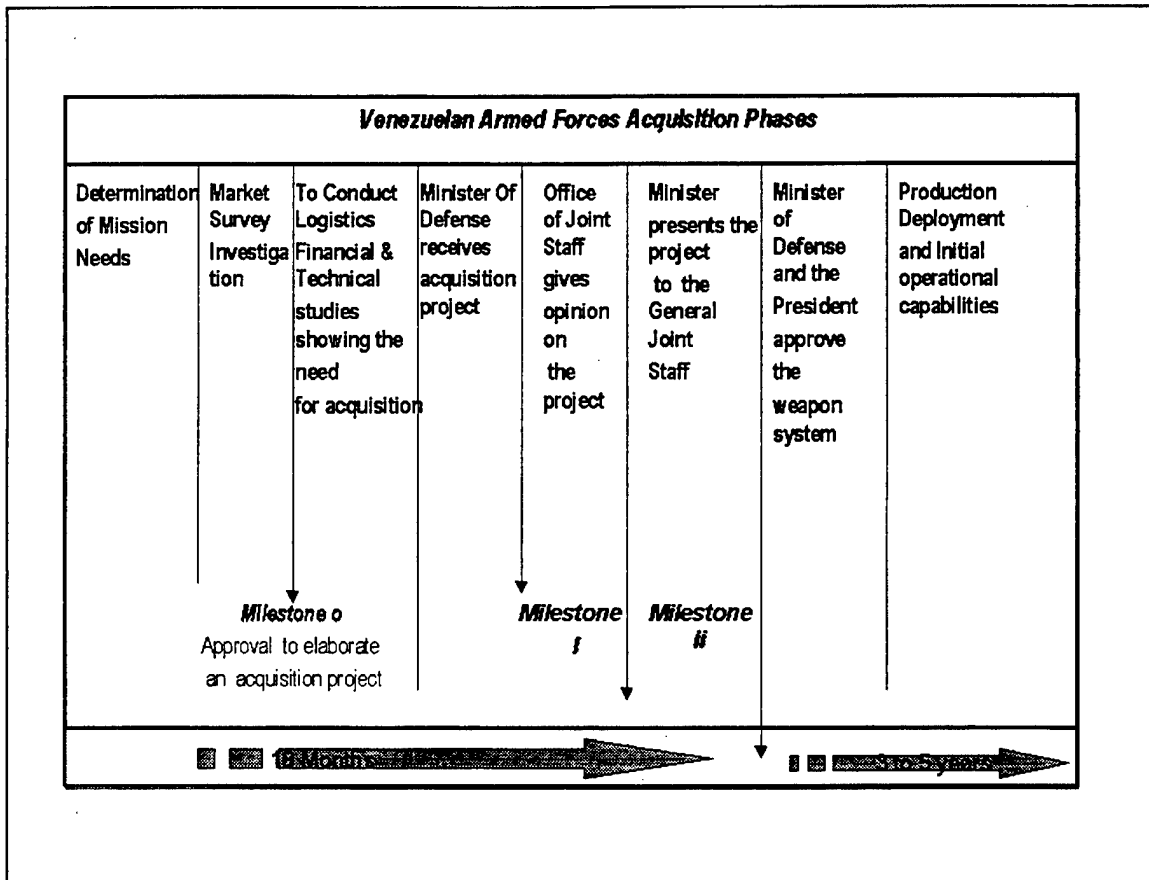


Figure 3. Venezuelan Armed Forces Acquisition Phases

From this figure, we see that these milestones are the approval of the acquisition project by an organization or consultative agency. The price analysis and revision by the Comptroller General of the Armed Forces and the availability of funds by the Ministry of Treasury are not really considered as milestones in the process. These last two procedures together with the approval of the Ministers Council are considered administrative and do not create real changes in the technical characteristics of the weapon systems to be procured.

### 3. Funding

As stated before, the funds for procurement on defense have two sources. The first is the annual budget, which follows a planning, programming and budgeting phase.

The Organic Law of Budgetary Regimen and the Annual Budget Law regulate this process for obtaining funds.<sup>7</sup> The second source of funds is government debt. The Organic Law of Public Credit establishes the process to obtain funds by this means. Additionally, every year Congress enacts a law that authorizes the executive to contract and execute credit public operations during that fiscal year. This law defines the kind of financial operations (treasury letters, treasury bonds and others type of government financing) that the Government can use in that particular year in order to obtain the approved funds. These operations are authorized following recommendations of the Venezuelan Central Bank and approval of the finance commissions in Congress.

In the process to develop the annual current budget, the Venezuelan Armed Forces develop the planning phase based on presidential policies and the Nation's Defense Plan, which is written by the National Security and Defense Council.<sup>8</sup> After that, the programming phase is developed by the Direction General of Programming and Budgeting of the Ministry of Defense. This programming is based on directives given by the Central Office of Budget (Oficina Central de Presupuesto [OCEPRE]), which is the presidential agency with overall responsibility to formulate the national budget. Then, the Direction General of Programming and Budgeting of the Ministry of Defense sends the instructions for developing their respective budgets to each chief of service and head of department. Finally, the Direction of Programming and Budgeting receives from budgets the services and the heads of departments and consolidates the defense sector's budget. This defense budget is presented to the OCEPRE for corrections and approval and then with the national budget is sent to Congress for study. The Venezuelan Congress through its finance commissions studies the budget, and makes the necessary adjustments. Then Congress enacts the budget for that fiscal year, and it is sent to the President who signs or vetoes that budget.

#### **4. Procurement Methods and Source Selection**

In 1990, the Venezuelan Congress enacted the Bidding Law. This was the first written law where specific procurement methods are defined and the principles to apply them are established. Although the Minister of Defense signs the contracts, the chief of

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<sup>7</sup> The annual budget law is similar to the U.S. annual appropriation and authorization bills, but are put together in a single document.

<sup>8</sup> The National Security and Defense Council is composed of the Minister of Defense, the Minister of Interior, The Minister of Foreign Affairs, the Minister of Finance and the permanent secretary of the council who is an active duty general appointed by the President.

services and heads of departments are responsible for the procurement method. In this law three different procurement methods are established. The first is the General Bidding method (full and open competition) where all the participant companies submit a bid in a sealed envelope. In this case, the contractor is only required to be registered as a government contractor in the Venezuelan Registry of Contractors. This registry, which became electronically available on the Internet in 1997, is managed by a presidential agency, the Central Office for Statistics and Information Systems, which is responsible for maintaining all the information on government contractors.

The second procurement method is the Selective Bidding where the chief service or head of department makes a pre-selection based on recommendations of the bidding committee appointed for the process. The pre-selection of possible offerors is based on the company's technical and financial capabilities to state clearly a determined requirement in a pre-selection process. Once the companies are pre-selected, they can offer their bids based on technical, operational and financial capabilities. These factors, with price, are the main considerations in the source selection process.

Finally, the third and last procurement method is direct adjudication. In order to accomplish procurement by this means, the defense agency must justify and document the reason why a singular contractor is considered in the procurement.

All three methods use a bidding committee, which is responsible for the overall bidding process and for making recommendations to the chief of service or head of the agency who is responsible for granting the award.

After the approval of the award by any of three methods of procurement, the chief of service informs the Minister of Defense of the award and makes the final adjustments to the contract.

## **5. Contracts**

As described in the acquisition phases in this chapter, the acquisition project, which includes the contract, follows an extensive series of steps until it is approved and signed by the Minister of Defense. These contracts are generally firm fixed-price types. This is true when defense procurements are based primary on acquiring mature systems. These mature systems represent advantages not only for the contractor, which minimize risk in developing new products, but for the Venezuelan Government as well. It is important to note that during the procurement process the contract receives at least six revisions from different agencies involved in the process. These revisions are the result of fears by responsible heads of agencies to be involved in scandals, and lack of

confidence that contracting personnel have in the process. The following offices perform these revisions:

- Direction of Acquisition of the service or department
- Chief of Service or head of the department
- Direction General of Administration of the Ministry of Defense
- Comptroller General of the Armed Forces Office
- Legal Consultant of the Minister of Defense
- Ministry of Finance ( examines only financial clauses of the contract)

Finally, the Minister of Defense who formally executes the contract signs the contract, which in Venezuela is a separate document from the technical, financial and logistic clauses (these are included as annexes to the contract).

## **6. Management of the Acquisition Process**

Before the enactment of the Organic Law of Public Credit, the management of the acquisition process within the Armed Forces was based on the regulatory instructions established in the old Organic Law of the Comptroller General of the Republic, the Organic Law of the Armed Forces and the Constitution. These laws were very general in giving instructions for administering the acquisition process, and so each service or department under the minister of defense had its own means for managing the process. In 1984, the Congress enacted the Organic Law of Public Credit to control government spending from debt. In the same year, President Jaime Lusinchi signed the Decree 175, already described in section b. (acquisition phases) in this chapter. In this decree, for the first time, every simple department involved in the procurement process from the President to the Minister of Defense received specific instructions to follow during the procurement process. After that, in 1990 with the enactment of the Bidding Law by Congress more instructions for accomplishing the procurement process were given to the Armed Forces. Since then, the Armed Forces adapted the acquisition organization in order to accomplish the requirements stated in these new regulations. Consequently, each service included an office for management of the acquisition process by public debt, office for bidding process and a contract office, all of them depending on the Acquisition Director.

The Acquisition Director of each service has civilian and military personnel in these offices with backgrounds in laws, economics, and administration (in the case of

civilians), and logistics, technology, and administration (in the case of the military). Civilians receive their degrees from private and governmental universities around the country. In which case, they are incorporated in the military environment and the defense procurement process with little or no background in defense matters. Some lawyers are military officers on active duty, but they represent a minority in the entire lawyer workforce, and their studies are many times the result of personal effort and not from a programmed curriculum development. In addition, since the military officers working in these procurement offices do not have backgrounds in the techniques of writing contracts or negotiating, they are disadvantaged at the time of contracting. Also, this personnel has a high rate of turnover as a result of changes in the directors of acquisition who always bring in their own teams to work in this unique environment. Therefore, the civilians who are more permanent in their duties normally start a new process of indoctrinating the new team, which delays the process.

In managing the procurement process, the defense organization lacks the ability to train the personnel to do the work. The efforts to correct this deficiency always involve seminars or short courses in specific areas of the process. In addition, senior civilian employees teach the new trainees on-the-job skills. Additionally, this did not happen until 1997 when the government started to create computer supported processes and electronic data interchange. Then the defense organization was included in the new Platform of Official Information (Platino), which is the connection between the government and all the national institutions. In addition, the defense procurement organization was included in an electronically managed bidding system called "Compita"(Competing) to help manage the procurement process.

Finally, the United Nations included Venezuela in the Integral E-Commerce and Business Information Network (TIPS), which is a United Nations Development Program, considered the largest integral and informative e-commerce business network available for doing business.

## **E. SUMMARY OF THIS CHAPTER**

In this chapter, the Venezuelan procurement process was described. We saw how the different frameworks play a role in structuring defense procurement, and also how some of these frameworks have more influence in the process than others. For example, the executive power with the figure of the President and the Defense Minister strongly affects procurement decisions. In addition, we observed the lack of oversight power that Congress has over the procurement process—some restrictions imposed by law. These

factors can facilitate corruption and bribery within the defense procurement process. Such factors will be considered in further analysis of this research.

In the next chapter, I will describe the U.S. procurement process based on the same frameworks used in this chapter. This will permit a comparative and critical analysis of the Venezuelan procurement process and will establish the foundation for developing the findings and conclusions of this work.





### **III. THE U.S. DEPARTMENT OF DEFENSE ACQUISITION PROCESS**

The study of the U.S. defense acquisition process is a complex undertaking. Procurement is accomplished by following an extensive procedure that involves a variety of military and civilian agencies subject to a variety of laws and regulations. In addition, each one of the Government branches (executive, legislative, and judicial) has a function to play in the defense procurement process, occasionally affected by divergent objectives such as economy or politics.

This chapter discusses the U.S. defense procurement using the four frameworks—institutional, regulatory, organizational, and procurement offices—considering the influence that the three branches of the U.S. Government exert in the process.

#### **A. INSTITUTIONAL FRAMEWORK**

##### **1. Congress**

The U.S. Congress's central role in policy making can be traced to the writers of the constitution. James Madison, Alexander Hamilton, and the others established the principles for Congress to be the lawmaking body and set out its relationship with the other branches of the Government [Ref.15: p.1]. Not remarkably, the U.S. Congress composed of the Senate and the House of Representatives strongly affects the defense procurement process as both overseer and the only legislative body of the Federal Government. The General Accounting Office (GAO) helps the Congress with its oversight function.

As the only legislative body, the U.S. Congress is constitutionally the ultimate source of funds for the Federal Government (Article 1. U.S. Constitution). Therefore, its role in defense procurement is fundamental.

Congress has a well-structured organization for studying the U.S. defense requirements. This organization includes two authorizing committees—the Senate Armed Service Committee (SASC) and the House National Security Committee (HNSC) (Former House Armed Services Committee (HASC)); and two appropriation committees—the House Appropriation Committee (HAC) and the Senate Appropriation Committee (SAC). These are in addition to the Senate and House of Representatives Budget Committees. All these committees are involved in different phases of the congressional defense budget. These different committees use the budget process as a

way of performing oversight as they hold hearings based on the military requests and analyze the reasons for a particular project before approving it.

### ***Legislative Oversight***

In addition to controlling federal spending, the U.S. Congress enacts the laws that affect defense procurement. The overall scheme of this process is found in the Armed Services Procurement Act of 1949. Moreover, the legislative oversight of Congress is also exerted by the enactment of statutes.

Congress constantly revises defense procurement policies and practices relying on the General Accounting Office (GAO). The GAO functions under the direction of the Comptroller General of the United States and among its responsibilities are

- to audit Government accounts
- to settle and to adjust claims by and against the U.S.
- to decide merits and protest regarding contract awards or proposed awards
- to present audit reports on the efficiency and effectiveness of defense operations including procurement

The Comptroller General also prepares determinations on a contractor's protest against a Government agency. These determinations are published as "Comptroller General Decisions" and often function as precedents for interpreting statutes and other laws.

The Government Operations Committees within Congress supplement the activities of the GAO. First, they review the GAO reports and make recommendations to Congress, and second, they conduct their own studies on defense procurement projects.

## **2. Executive**

The executive branch headed by the President of the U.S. also plays several major roles in defense procurement. Among others, these roles include:

- to develop plans, programs and budgets to be considered by Congress
- to execute budgets and to implement the plans and programs approved by Congress
- to supplement statutory acquisition policies and procedures through such means such as Executive Orders

- to appoint agency heads and other officials who have direct or indirect management control over acquisition programs

The President as the head of the executive branch can establish policies and procedures for defense procurement by the mean of Executive Orders. The Executive Orders (E.O.) stay in effect unless rescinded by the President. Two recent and important executive orders are the E.O. 12352 & E.O. 12931 "Federal Procurement Reform," dated March 17, 1982 and October 13, 1994, respectively. The first order directs agency heads to assign a Procurement Executive with agency responsibility to oversee the agency's procurement goal and guidelines and to measure and evaluate procurement office performance. The second E.O. prescribes other measures to streamline procurement systems and to ensure that the procurement focuses on customer needs. The latter E.O. also mandates agency heads to establish career education programs for procurement professionals, including requirements for successful completion.

The President can also use the E.O. as a means to achieve economic and social policy goals. One example of this is the E.O. 12138, which encourages the awarding of subcontracts under federal prime contracts to women-owned enterprises.

### *Executive Departments and Agencies*

The Secretary of Defense as well as the secretaries and heads of the various military departments—through congressional delegation—have the power to make major procurement decisions affecting their departments. The Armed Services Procurement Act of 1947 grants the secretaries of the military services the authority to make procurement decisions and underlines the guidance for making such decisions. In addition, other civilian agencies are also performing an important role in the defense acquisition process. Among them, I found:

- The Office of Management and Budget (OMB)
- The Office of Federal Procurement Policy
- The Board of Contract Appeals
- The Federal Acquisition Regulatory Council
- The Defense Acquisition Regulations Council
- The Attorney General of the U.S.

These offices are further described in section C (organizational framework) of this chapter.

### **3. Judicial**

The judicial branch is constitutionally responsible for all legal cases that involve the Government. This occurs when the contracting officer or Board of Contract Appeals cannot administratively settle a dispute between the Government (represented by the Contracting Officer [CO]) and one of the contractors under the terms established in the contract. In this case, the issue is taken to court. The court resolves such disputes based on Federal Statutes, case law, and the terms and conditions of the contract. The judicial branch has the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Federal Claims and as a last resource for claims the U.S. Supreme Court.

The U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Federal Claims are the result of the enactment of the Federal Courts Improvement Act of 1982. The latter obtained its actual name from the Federal Courts Administration Act of 1992 [Ref.16: p.21-2]. The Court of Appeals has jurisdiction over appeals from decisions of the Boards of Contract Appeals and the Court of Federal Claims. The Court of Federal Claims can directly receive a contractor's claim from CO's decisions. Moreover, the Court of Federal Claims has jurisdiction to grant complete relief on any contract claim brought forth before the contract is awarded. Finally, the U.S. Supreme Court has the authority to rule final decisions in contract disputes. This last step is rarely exerted in defense procurement. Under the U.S. judicial system, the contractor has two ways for claiming disputes. Figure 4, which follows, explains graphically the dispute process:

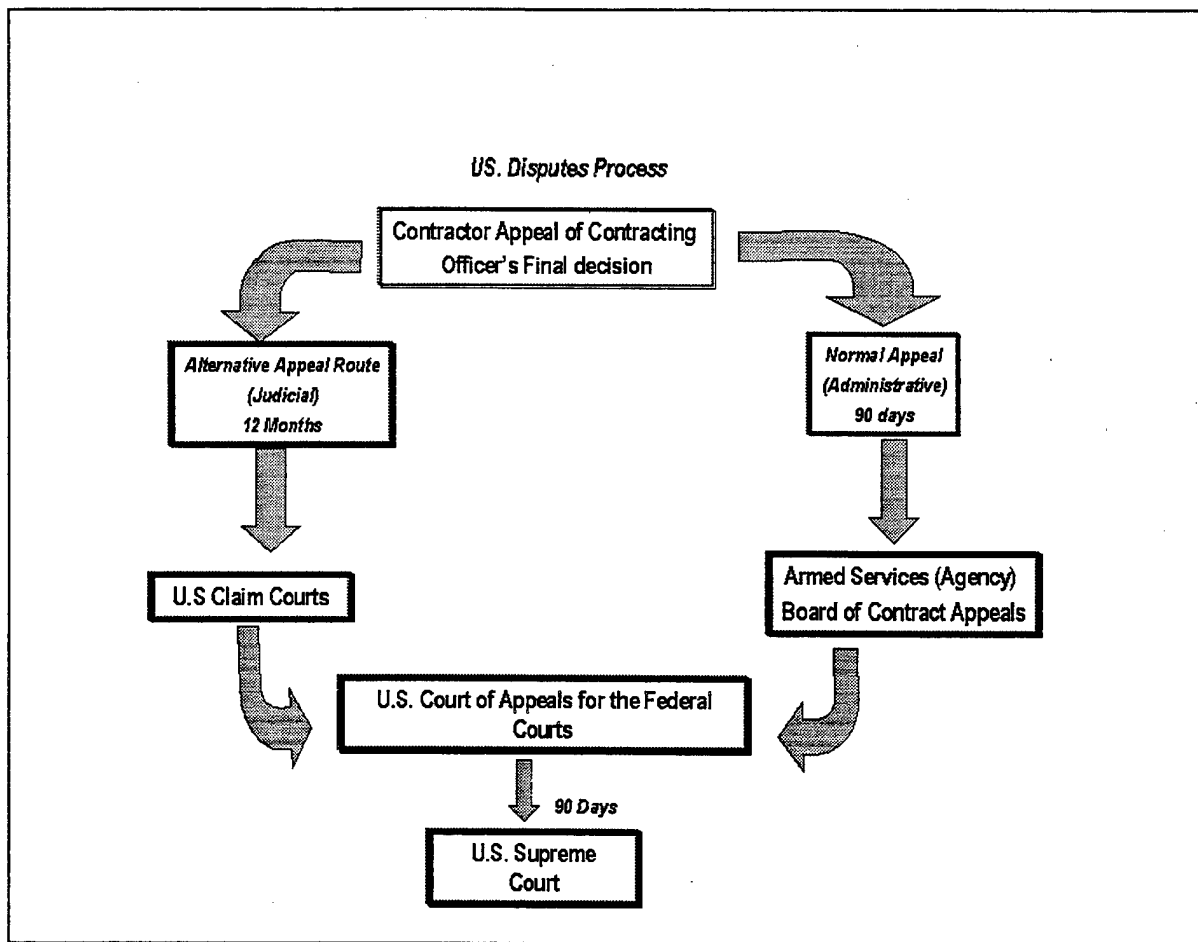


Figure 4. U.S. Dispute Process

## B. REGULATORY FRAMEWORK

The authority for the Department of Defense to conduct systems acquisitions (i.e., to develop, produce, and field weapon systems) proceeds from three levels of the regulatory framework, which are discussed in the following sections.

### 1. The Constitution

As stated earlier, the U.S. Constitution empowers the three different branches of the Government to act by different means and to set rules for the defense procurement process. Even though the U.S. Constitution specifically does not describe the power for the government to enter contracts, the U.S. Supreme Court has ruled that the Government has the inherent power to enter into contract agreements if represented by a public official (i.e., Contracting Officer)

## 2. Statutes

The statutory authority of Congress provides the legal basis for defense procurement in the U.S. Some of the most prominent laws affecting defense procurement are

- Armed Services Procurement Act of 1947, now essentially replaced by subsequent legislation
- Small Business Act (1963), as amended
- Office of Federal Procurement Policy Act (1983), as amended
- Competition in Contracting Act (1984)
- DOD Procurement Reform Act (1985)
- DOD Reorganization Act of 1986 (Goldwater-Nichols)
- Federal Acquisition Streamlining Act (FASA) of 1994
- Title 10, United States Code (U.S. Armed Forces and DOD Organization)
- Annual Authorization and Appropriation bills, which in recent years have contained substantial changes in statutory requirements.

All these laws provide the second level of the regulatory framework in the defense organization. They are necessary because of the unique status of the Government (the Government as a sovereign body has special powers and immunities but also has unique limitations in its contractual authority).

## 3. Regulations

The third level of the regulatory framework emanates from the executive branch in the form of executive orders, national security and presidential decision directives, and other departmental or agency regulations. Some examples include:

- Executive Order (E.O.) 12352 (1982), which mandated procurement reforms and the establishment of the Federal Acquisition Regulation (FAR)
- National Security Decision Directive (NSDD) 219 (1986), which directed implementation of recommendations of the President's Blue Ribbon (Packard) Commission on Defense Management<sup>9</sup>

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<sup>9</sup> The Packard Commission named for its Chairman David Packard, a former Deputy Secretary of Defense, recommended in 1986 among other suggestions the establishment of an Under Secretary of Defense (Acquisition) now the Under Secretary of Defense for Acquisition and Technology (USD [A & T]).

- National Security Review (NSR) 11 (1989), which directed the Defense Management Review and Subsequent Defense Management Report to the President
- OMB Circular A-109 (April 5, 1976). This circular establishes policies to be followed by executive branch agencies in the acquisition of major systems.
- The Federal Acquisition Regulation (FAR), (1984). This document consolidated the major procurement regulations of various departments and agencies to decrease the volume of regulatory guidance. The FAR applies to the acquisition of all goods and services and is the primary set of regulations for all executive agencies.
- Defense FAR Supplement (DFARS), which applies to all of the military and DOD agencies, was completely re-written in 1991 to eliminate unnecessary text and clauses, to modify thresholds and other burdens for contracting officers. The DFARS is supplemented from time to time by the issuance of Defense Acquisition Circulars.
- DOD 5000 series, March 15, 1996. These directives incorporate new laws and policies, separate mandatory policies from discretionary practices, and integrate for the first time acquisition policies and procedures for both automated information systems (AISs) and major weapon systems.

Agency heads are empowered by statute or by presidential order to prepare and issue rules and regulations. The Government is required under the Administrative Procedures Act to publish most, but not all, the rules and regulations in two publications. First, the daily *Federal Register* that provides a uniform system for making regulations and legal notices issued by the Federal Government available to the public. And second, the *Code of Federal Regulation*, which is a catalog or codification of the rules (published in the *Federal Register*) concerning the Government.

### **C. ORGANIZATIONAL FRAMEWORK**

Not only is the Department of Defense organization involved in the procurement process, but other civilian agencies in the executive branch, as well as some offices of the legislative, are also actively immersed in this complex process. This section describes the most important offices in the process.

#### **1. Department of Defense (DOD)**

The organization of the military departments is partially prescribed by statute. The DOD includes the Office of the Secretary of Defense, the Organization of Joint Chief of Staff, the military departments, the unified commands, and other agencies, such as the

Defense Contract Audit Agency and the Defense Logistic Agency. All these defense organizations play a role in defense procurement.

The Department of Defense, considered the biggest purchaser in the world, had 380,615 persons employed in its acquisition organization at the end of fiscal year 1995 [Ref.17]. The functional area of procurement in this huge organization is managed at the secretariat level by an Under Secretary of Defense for Acquisition and Technology (USD [A &T]), who is a statutory appointee. Procurement operational responsibility is generally decentralized to the military services. Research and development (R&D) policies and procedures are under the responsibility of the service assistant secretaries for R&D. The responsibility for research, development and acquisition of hardware and for other logistics aspects is generally delegated to major commands.

Within DOD certain major commanders are designated as the “head of the agency.” These commanders delegate their authority, except critical functions, to contracting activities. This authority is further delegated to the contracting officers.<sup>10</sup> The DOD 5000 series establishes the monetary thresholds and, based on these thresholds establishes the level of management and responsibilities for the procurement process.

## **2. Head of Services**

The agency head establishes overall agency policies, appoints persons to fill key positions, and has “unlimited” (subject to thresholds) acquisition authority. The agency head sometimes makes essential acquisition decisions, such as in source selection. Agency heads must also warrant that planning, programming and budgeting systems are established to ensure the efficiency and effectiveness of the acquisition function.

## **3. The Defense Logistic Agency**

The Defense Logistic Agency (DLA) provides consumables, supply items, and logistic services common to the military services. The DLA provides contract administration services through its branch, the Defense Contract Management Command (formerly the Defense Contract Administration Service).

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<sup>10</sup> The Contracting Officer (CO) is the essential operational person in the defense acquisition process. A CO may have the authority to enter into, administer or end contracts. The fundamental authority and responsibilities of the CO are found in the Federal Acquisition Regulation (FAR 1.6).



#### **4. The Defense Contract Audit Agency**

The Defense Contract Audit Agency (DCAA)—initiated in 1965—performs contract audit functions and provides accounting and financial advisory services for all DOD components, as well as for other government agencies. The DCAA provides services related to negotiation, administration, and settlement of contracts and subcontracts, as well as defective pricing and fraud situations.

#### **5. The Office of Management and Budget**

The Office of Management and Budget (OMB) recommends, monitors, and adjusts programs and funding levels for those programs. It is also responsible for consolidating the federal budget to be presented by the President to Congress.

#### **6. The Office of Federal Procurement Policy**

The Office of Federal Procurement Policy (OFPP) which is part of the OMB has an administrator appointed by the President. Its overall function is to provide direction of procurement policy and leadership in the development of procurement systems of the executive agencies. This office also prescribes Government procurement regulations, procedures and forms when the Federal Acquisition Regulatory Council fails to reach an agreement in a particular procurement policy.

#### **7. The Board of Contract Appeals**

The Board of Contract Appeals (BCA) has statutory authority granted by the Administrative Dispute Resolution Act of 1990. The board, which is established by each major agency, has the authority to resolve contract disputes between a contractor and the contracting officer (CO).

#### **8. The Federal Acquisition Regulatory Council**

This council consists of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space, and the Administrator of General Services. The council assists in the direction of Government-wide procurement policies and regulatory activities in the federal government.

## **9. The Attorney General of the U.S.**

The Attorney General of the United States represents the executive branch of the Government in matters pertaining to the constitutional aspects of acquisition legislation or in the prosecution of acquisition-related fraud.

### **D. PROCUREMENT PROCESS**

#### **1. Focus**

The 1996 revision of the DOD 5000 series marked a major milestone in the defense procurement process. The intent of this revision, as stated by Dr. Paul Kaminsky (USD [A&T]), is, “to define an acquisition environment in order to make the DOD the smartest, most responsive buyer of the best goods and services, meeting the needs of the warfighter at the best dollar value over the life of the product.” [Ref.18: P.1]. The U.S. defense procurement process is focused nowadays on modernizing and replacing the aging systems and, by this means, maintaining the U.S. supremacy worldwide.

#### **2. Acquisition Phases**

All military systems acquisitions are based upon a need or requirement. The identification of the requirement often results from analyzing potential enemy’s capabilities in relation to our own. This threat analysis and capability assessment would lead to concept studies to meet the mission need. It is important to note that today’s U.S. defense organization does not automatically acquire new weaponry to counter a threat because such a reaction is the most costly option. Other preferred options before purchase are changing doctrine, training and tactics.

The U.S. acquisition process is divided into “phases” and “milestones.” As stated previously, the process starts with a determination of mission needs. Then the process is subdivided into milestones and phases. The milestones are the decision points that separate the phases of an acquisition program. Four major milestones exist:

- Milestone O, the approval to conduct concept studies
- Milestone I, the approval to begin a new acquisition program
- Milestone II, the approval to enter engineering and manufacturing development

- Milestone III, the approval to produce / deploy and to field the weapon system

The approval of each one of these milestones permits the project to move to the following phase. These milestones are part of the decision making process of the Acquisition Executives responsible for the procurement. The milestone decision authority with these responsibilities is defined by the DoD 5000.2-R. This directive establishes acquisition categories (ACAT) based on monetary thresholds in both research and development and procurement costs. These acquisition categories are defined in figure 5, as follows:

**Acquisition Categories**  
(Does Not Include Automated Information systems)

<b>Acquisition Category</b>	<b>Decision Authority</b>	<b>Threshold</b>
<b>ACAT I</b>	DAB Review Designated by the USD Decision by USD (A&T)	\$335 Million RDT. & E. or \$2.135B Procurement
<b>ACAT IC</b>	Component Review Designated by USD A&T Decision by Component Head/CAE	\$335 Million RDT. & E. or \$2.135 B. Procurement
<b>ACAT II</b>	Does not meet ACAT I criteria Designated by Service Secretary/ CAE	\$140 Million RDT. & E. or \$645 Million Procurement
<b>ACAT III</b>	Does not meet ACAT I , ACAT IA or II criteria Designated by Service Secretary/ CAE	No Fiscal Criteria

Figure 5. U.S. Acquisition Categories (from DOD regulation 5000.2-R)

The acquisition phases are all the tasks and activities needed to bring a program to the next major milestone during an acquisition process. Phases provide a logical means of progressively translating broadly stated mission needs into well-defined, system-specific requirements and ultimately into operational, effective, suitable and survivable systems. These acquisition phases are

- Phase O, Concept Exploration
- Phase I, Program Definition and Risk Reduction
- Phase II, Engineering and Manufacturing Development
- Phase III, Production, Fielding/Deployment and Operational Support

Finally, it is important to note that during the Concept Exploration phase these alternatives are studied:

- first, Product Improvement Programs (an actual improvement of existing weapon systems)
- second, Service Life Extension Programs (to extend the useful life of an existing item)
- third, non-developmental or commercial items (another service has the item or can be found in the commercial sector)

### **3. Funding**

Since 1961, the formal process that the Department of Defense has followed in preparing its budget has been known as the Planning, Programming, and Budgeting System (PPBS). Until recently this process was made annually, but in 1985, Congress mandated a change to a biennial budget. As a result the DOD now goes through the whole PPBS process only every other year. [Ref.19;p. crs-24, 25, 26, 27]

The PPBS process is designated not only to prepare the budget for submission but also for a long-term financial plan. This long-term financial plan extended over a period of six to eight years is called the "Future Years Defense Program" (FYDP). The PPBS process can be divided into three different phases:

First, the Planning Phase: This is designed to integrate assessments of potential military threats facing the country. Here, many factors such as national strategy and defense policy play important roles in writing the final document, which is the Defense Planning Guidance (DPG). This DPG provides the basic rationale for the DOD programs and budget.

Second, the Programming Phase: Here each military service prepares a Program Objective Memorandum (POM) which details the specific needs in programs and forces of each service to accomplish the stated DPG. This POM is revised by the Defense Resources Board (DRB) and appealed by the services. The final revision and approval generates the Program Decision Memoranda (PDM) that the Secretary of Defense approves and signs.

Third is the Budget Phase: The services and agencies prepare their budgets, which OSD then reviews and modifies through Program Budget Decisions. The DOD Budget Estimate Submission (BES) is sent to the Office of Management and Budget (OMB) in October. At OMB it is reviewed, adjusted and merged with the rest of the Government's budget request. The President's Budget is sent to Congress in February for Congressional action.

The submission of the President's Budget is followed by congressional action. Congress provides funds for defense programs mainly by appropriating funds in annual appropriation acts, including the Department of Defense Appropriations Act, the Military Construction Appropriation Act and other appropriation laws. Congress also authorizes annual defense programs through the Defense Authorization Act.

#### **4. Procurement Methods and Source Selection**

Since the enactment of the Competition in Contracting act of 1984 (CICA), "full and open competition has become the byword of all government procurement." [Ref.20: p.2-16.]. This goal is reached primarily by using sealed bidding and competitive proposals, the two basic methods of procurement. The CICA requires that procuring agencies acquire materiel "competitively." This means that the procurement agencies must solicit sealed bids when time permits. The award will be made on the basis of price and other than price-related factors, and it is not necessary to conduct discussions with the responding sources. In a competitive proposal, the contracting officer considers among other factors, the offeror's particular experience with what is being procured, the offeror's technical and management capability, the available and reliable cost information, and the contract type the offeror is willing to accept.

Finally, there is a third type of procurement called non-competitive. Non-competitive contracts are allowed under Federal Acquisition Regulation but are exclusively subject to seven circumstances:

- The property or service is available from only one single source.
- The agency's needs are so urgent that the Government's interest can be seriously affected.
- An award to a particular contractor is necessary to maintain that source in case of national emergency.
- The terms of an agreement or treaty between the U.S. and a foreign government or organization have the effect of requiring the use of non-competitive procedures.
- The law expressly authorizes that procurement to be made from a specified source, or the agency's need for a brand-name commercial item for authorized resale.
- National security would be compromised.

- The agency determines that non-competitive procedures are necessary in the public interest and provides Congress with written notice of its determination at least 30 days before contract award.

A contracting officer must follow certain procedures before making procurements by non-competitive contracts. The contracting officer must justify the use of non-competitive contracts in writing, certifying the accuracy and completeness of the justification and obtaining the necessary approvals. (For example, for contracts over \$10 million, approval from the agency acquisition executive is required).

The source selection process is used by the U.S. defense acquisition organization in competitive, negotiated contracting to select the proposal offering the most advantageous alternative to the DOD. There are two approaches, which can be used to select the most advantageous alternative to DOD. These approaches are either the "lowest cost" proposal or "best value" proposal.

In many instances, using the "lowest cost" acceptable proposal approach results in selecting the most advantageous alternative. In this approach the contracting officer states the minimum requirement in the solicitation, describes the information that the offerors must submit for evaluation, and uses a "go-no-go" (pass/fail) evaluation of the technical proposals. Finally, the contracting officer grants and awards a contract to the responsible offeror that submits a technically acceptable proposal at the lowest evaluated cost. This source selection is normally used when the contracting officer is using sealed bidding negotiation.

The "best value" approach permits greater flexibility to use sound business judgment in weighing non-cost factors against costs in selecting the proposal that best meets the DOD needs. This approach also permits access to information about a potential offeror that exceeds the price alone. This can provide a better understanding of how an offeror intends to meet delivery, quality, and performance requirements at the offered price and increase the likelihood of selecting quality suppliers.

## **5. Contracts**

Most of the federal contracts are fixed price. This means that the Government pays a fixed sum of money, previously stipulated in the contract, to the contractor as a consequence for performance. Other contracts are cost reimbursable. These occur when the Government reimburses the contractor for the allowable incurred costs of performance. There are numerous variations to these two contract types to fit the circumstances.

Normally, the Contracting Officer (CO) selects a contract type, considering the risk inherent in the acquisition, and then identifying the type of contract that would mitigate the risk for both the Government and the contractor. The CO also must determine whether that contract type would be proper under the circumstances, given certain limitations on its use. The following is a list of the main contract types used by COs:

- firm fixed price
- fixed price with economic price adjustment
- fixed price award fee
- fixed price redeterminable
- fixed price incentive
- cost plus fixed fee
- cost plus incentive fee
- cost plus award fee
- cost and cost sharing
- time and material and labor hours
- combinations of two or more of the above compensation arrangements in the same contract.

## **E. MANAGEMENT OF THE ACQUISITION PROCESS**

Since the establishment of the DOD under the guidance of the National Security Act of 1947, several attempts have taken place to reform and streamline the acquisition management process. Several executive branch commissions have studied the problems associated with defense acquisition. However, it was not until 1991 with the passage of the Department of Defense Authorization Act that the first steps were taken to really change the U.S. defense acquisition process [Ref.21: p.11].

The Authorization Act called for the establishment of a panel of experts from government and private industry to study the laws directing defense procurement and to propose to Congress a set of relevant acquisition laws in 1993. The panel gave its report which, basically concentrated on changes that would help streamline the acquisition process throughout the 1990s.



Many of the panel's recommendations were implemented via subsequent legislation. The most notable examples are the Federal Acquisition Streamlining Act (FASA) of 1994 and the 1996 National Defense Authorization Act. The FASA made many changes in the acquisition process and affected considerably contracting procedures. Some of these changes include emphasizing the use of Electronic Data Interchange (EDI) for the solicitation and award of government contracts. In addition to this, Secretary of Defense William Perry while in office took various steps to improve the defense procurement process. Policy memos from the USD (A&T) implemented most of these changes.

These policies include the institutionalization of Integrated Product and Process Development (IPPD) and Integrated Product Teams (IPT) which permit a better understanding between contractors and program managers, emphasis on the use of commercial specifications and standards, implementation of performance-based specifications, and recognition of Cost as an Independent Variable (CAIV).

Using these management tools, which include improved communications and more efficient processes, the DOD is changing acquisition. Such changes will continue because the Congress is asking for acquisition workforce reductions, so the DOD is trying to provide the warfighters with the best products in the most timely manner possible under severe budget constraints.

## **F. SUMMARY OF THIS CHAPTER**

Unlike the Venezuelan process, we saw in this chapter how the U.S. Congress powerfully controls the defense procurement process. In addition, I described how not only a particular office such as the GAO exerts this control but also how special committees within Congress control the budgeting process. This oversight control leads to lengthy legislative discussions often with political overtones or influence, yet this oversight control certainly reduces the opportunity for the Military to make illegal practices within the procurement process. Because of this oversight control, the DOD is seeking ways to legally streamline the procurement process in order to make it even faster and more efficient, as I explained in the last part of this chapter.

In the following chapter I will compare and analyze the two processes already described in order to determine the weaknesses and strengths of the Venezuelan defense procurement process.



## **IV. COMPARISON AND CRITICAL ANALYSIS OF THE VENEZUELA ARMED FORCES ACQUISITION PROCESS**

### **A. COMPARING THE VENEZUELAN AND U.S. ACQUISITION PROCESSES**

This chapter uses the frameworks presented previously to analyze the Venezuelan acquisition process by comparing it with the U.S. process.

This approach enables a clearer comparison and contrast of the procurement process in both nations despite some considerations such as Armed Forces dimensions.

No single country can approach the size and dimensions of the United State's defense establishment as it relates to the number of weapon systems, the size of the forces, the money spent on defense procurement or maintenance, and other comparative measures, such as expenditures in research and development [Ref.22: p.4]. Thus, comparing the U.S. procurement process to other nations is difficult due to the immense differences in size and resources. More specifically, comparing the U.S. and the Venezuelan acquisition process is even more laborious, owing to vast differences in legislation, geography, culture, and even national security.

### **B. INSTITUTIONAL FRAMEWORK**

#### **1. Congress**

In republican systems, such as in Venezuela, the legislature exacts accountability for the public administration "after the fact" rather than "during." This is not the case in the Federal system of the U.S. where Congress exerts control during and after the public administration. The Venezuelan Congress oversees neither the acquisition of weapon systems or other procurements classified as security and defense expenditures.<sup>11</sup> Also the Venezuelan Constitution differs enormously from the U.S. Constitution in assigning Congress control of the Armed Forces. In fact, the Venezuelan Congress has a limited role in the management of the Armed Forces. Within its authority, Venezuela's Congress can permit overseas military missions when the executive branch requires it, approves the promotion of high-ranking officers, and initiates the process and final approval of the

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<sup>11</sup> Security and Defense expenditures are classified as "secret" by the Central Office of Budget (Oficina Central de Presupuesto OCEPRE), and they receive a special treatment in the Venezuelan Budgetary process. The OCEPRE is the equivalent office to the U.S. Office of Management and Budget (OMB).

budget. In contrast, the U.S. Constitution states that Congress has the power to form and sustain the Armed Forces and to elaborate the rules for managing them. These differences mandated by the constitutions are easily observed in the structures that both the U.S. and Venezuelan Congresses have for managing defense affairs. These immense differences are noted in the following figure:

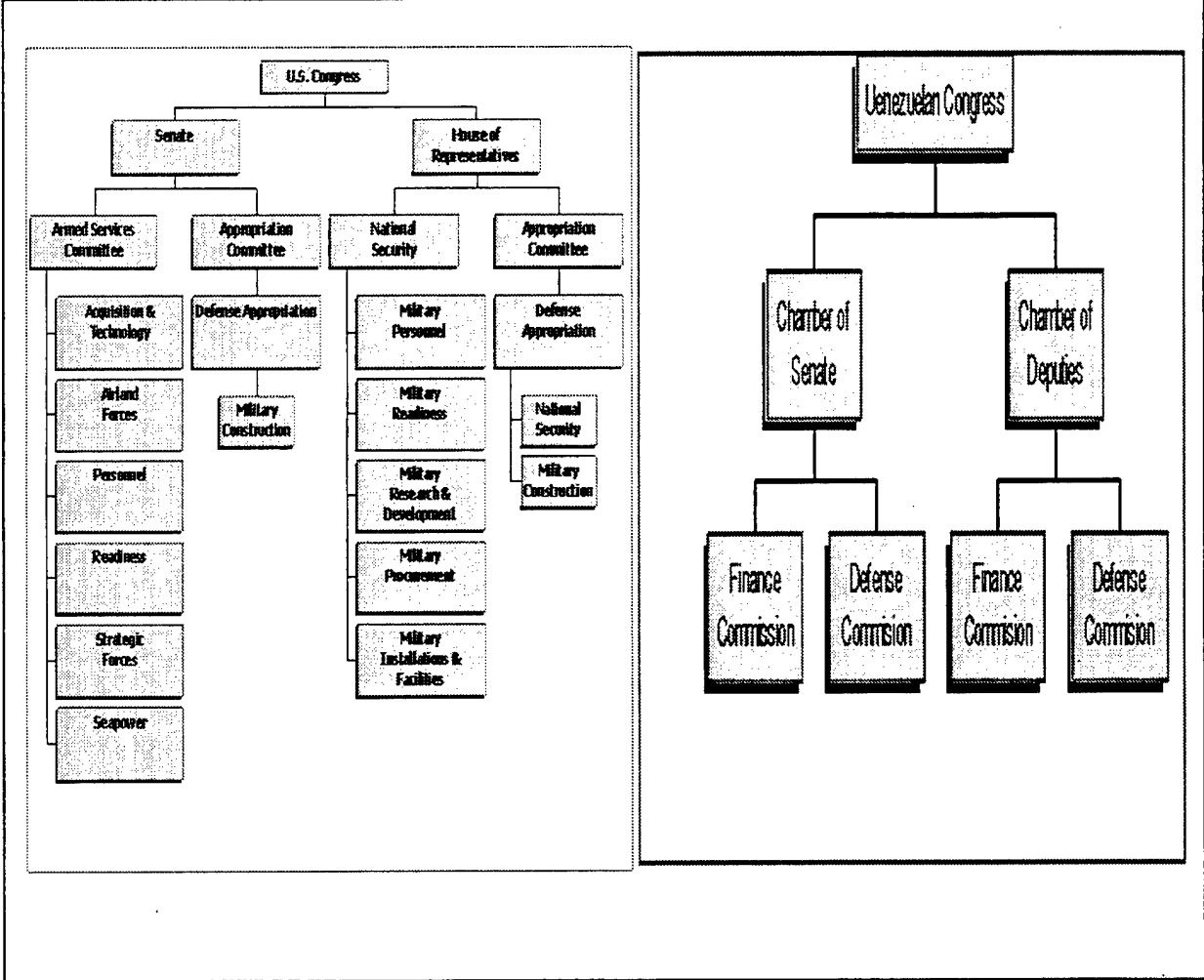


Figure 6. Comparison between the U.S. and Venezuelan Congress Structures Affecting the Acquisition Process in Both Countries.

The Venezuelan Constitution states in its Article 190 that the President exerts the supreme hierarchical authority of the Armed Forces and consequently organizes, governs, administers, and deploys them. This article is reaffirmed in the organic law of the Armed Forces of Venezuela (Chapter III, Section 1, Article 54). From these basic laws, many

administers, and deploys them. This article is reaffirmed in the organic law of the Armed Forces of Venezuela (Chapter III, Section 1, Article 54). From these basic laws, many Venezuelan legislators believe that the connection between Congress and the Armed Forces is based solely on approving documents but not on really overseeing or restricting them. Thus, the political control that the Venezuelan Congress exerts over the Armed Forces is slight [Ref.23.]. Also, in Venezuela the obsession of the so-called "military secret"<sup>12</sup> has eroded Congress' participation in military affairs and increased the distance between the civil and military sectors, which means evaluating and controlling the Armed Forces is difficult [Ref.24]. As a result, Congress then plays a secondary role in formulating defense policies and in controlling military expenditures. This situation has a clear influence in permitting bribery and corruption among the military since Congress does not exert effective control over the military.

### *Legislative Oversight*

The limited role of the Venezuelan Congress in defense procurement contrasts clearly with the U.S. constitutional arrangement in which broad responsibilities are assigned to the legislative branch: The U.S. Congress can both initiate defense related legislation and significantly modify its overall direction, as well as the administration of the specific details of national security policy. Clearly, the U.S. Congress enacts the laws that directly govern the Department of Defense (DOD) procurement. Although the Venezuelan Congress also enacts such laws, its oversight power is diminished when the expenditures or budgets are classified as security and defense. The Comptroller General Office, as an auxiliary of the Venezuelan Congress, has the legal authority to exercise internal and external control of the public administration, including the Ministry of Defense (MOD); however, expenditures, such as weapon acquisitions, designated to the security and defense of the state will be exempt from the control regulations established in the Organic Controller Law (Title III, Chapter 1, Article 36). In this way, the Congress loses its oversight control which is gained by the Comptroller General of the Armed Forces, the Minister of Defense, and the President.

This legislation excludes the orders for payment which is revised by the Comptroller General of Venezuela in order to verify whether the expenditures were charged to funds approved in the budget or charged to additional debts after the budget

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<sup>12</sup> The Security and Defense Law establishes in its Title 1 Article 4 that all the documents and other information related to the security and defense of the nation will be considered "secret" and their dissemination will be illegitimate.

and legally accorded. This situation generates a second cause for fraud or corruption among the military during the defense procurement process in Venezuela.

In contrast, the U.S. General Accounting Office (GAO) has an active role in the DOD contracting process. Its influence is notorious because it audits efficiency and effectiveness of the defense acquisition processes and maintains oversight and auditing control of defense contracts in progress. In addition, the GAO has the power to decide the merits of protests for both contracts and proposed awards. However, in the Venezuelan case, the administrative courts of the Republic resolve protest by the contractor in the bidding process and the verdict can be appealed before the Supreme Court. If irregularities by the participants (contractor or public official) are proven, the Comptroller Office<sup>13</sup> sanctions the violators of the bidding process.

It is important to note that, as a result of many scandals in defense procurements, due, in part, to the two reasons earlier mentioned—lack of oversight control by Congress—the Venezuelan Congress is now seeking ways to oversee the defense procurement process. For example, in the last three years Congress has called for hearings in which the Commanders in Chief of different services must give reasons for acquiring and maintaining weapon systems and to explain the costs for these procurement actions.

## **2. Executive**

The Venezuelan President, as the highest authority of the Armed Forces, also has the final decision in determining whether or not to proceed with a defense acquisition. However, prior to this, the overall responsibility rests with the Minister of Defense. Likewise the US. Congress has directly delegated many contractual powers to the President through the Defense Production Act of 1950, which empowers the President to oversee the defense industry and to obtain supplies in case of a national emergency. Nonetheless, this power is rarely exercised. In the case of Venezuela, the President can exercise this power based on the Organic Law of Security and Defense (Chapter II, Title VI, Article 31). In both countries, the Presidents exercise their power to achieve the desired social and economic policy goals. Yet despite this last fact and because the defense industrial base in Venezuela is scarce, most of the business for contracting defense weapon systems goes to foreign industrialized countries.

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<sup>13</sup> The General Comptroller of Venezuela is the authority for applying sanctions in the bidding process when the funds are classified as ordinary (Bidding Law, Chapter VII, Article 68.)

Whereas the Venezuelan Constitution empowers the President to dictate the application of the laws, the U.S. Constitution does not give this power to the President. Yet, the U.S. President exercises executive orders, which set forth policies or rules regarding acquisition policies. In Venezuela, the President can also exercise this power by way of decrees. In addition to this power and according to the Organic Law of the Armed Forces, the Venezuelan President has the authority to appoint the Comptroller General of the Armed Forces who is responsible for overseeing and controlling the Defense Acquisition Process ("Secret Funds"). The President, the Minister of Defense and the Comptroller General of the Armed Forces are legally responsible for the overall acquisition process and all expenditures for security and defense.

### *Executive Department and Agencies*

In Venezuela, far different from the U.S., the Minister of Defense is an active-duty Major General or Admiral who is appointed by the President. This official, within the public administration, is the overall responsible agent for the defense acquisition process. This differs enormously from the U.S. defense acquisition process in which the Defense Acquisition Executive<sup>14</sup> is a civilian. The Under Secretary of Defense for Acquisition and Technology (USD [A&T]) is the Acquisition Executive who is responsible for defense procurements. Each of the Services Components Acquisition Executives are assistant secretaries of that service. They have the power of delegation. In Venezuela, where the Commanders-in-Chief of each military component are active duty Major Generals or Admirals, the Minister of Defense can delegate the authority for acquisition to one of his Commanders, except when the acquisition funds are obtained by means of public debt.

The U.S. Department of Defense has among its military agencies the Armed Services Board of Contracts Appeals, the Defense Acquisition Regulation Council—and under the Office of Management and Budget—the Office of Federal Procurement Policy. All these organizations exercise rules and regulations in the defense acquisition process. None of these organizations has a counterpart in Venezuela with the exception of the Comptroller General of the Armed Forces.

The Joint General Staff of the Venezuelan Armed Forces serves as advisory body to the Minister of Defense in decisions on acquisition matters. This function is similar to the function covered by the U.S. Defense Acquisition Board which

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<sup>14</sup> The Acquisition Executive is the individual within the Department of Defense charged with the overall acquisition management responsibilities.

advises the USD (A &T) on major decisions regarding individual acquisition programs, specifically, and acquisition policies and procedures, generally [Ref.25: p. 10].

In the case of the Major Automated Information Systems (MAIS), the Minister of Defense of Venezuela is required to carry out the regulations established by the Central Office of Statistics and Information Systems (Oficina Central de Estadísticas e Informática, OCEI), which is a subordinated office of the presidency. This differs from the U.S. where the MAIS are acquired under the guidance of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD[C3I]). The acquisition executive for Automated Information Systems (AISs) establishes policies and procedures unique for AISs and, also, chairs the Major Automated Information Systems Review Council.

### **3. Judicial**

The judicial branch of the government in both countries also affects defense acquisition processes. For instance, the U.S. Court of Appeals for the Federal Circuit, the U.S. Court Federal Claims, and to a lesser extent, the U.S. Supreme Court are constitutionally responsible for making judicial decisions affecting procurement in the U.S. In Venezuela the Administrative Courts of the Republic, the Superior Courts of Safeguard and Public Patrimony and the Venezuela's Supreme Court are actively involved in influencing the procurement processes.

In the U.S., the defense contractor has options to dispute contracts. First, after a final decision by the contracting officer and without obtaining a negotiated settlement, the contractor can appeal to the U.S. Federal Court of Claims or to the Defense Board of Contract Appeals. Then, the contractor can appeal to the Court of Appeals for the Federal Circuit before the case reaches the U.S. Supreme Court. In Venezuela, until recently, only one option existed to proceed in the cases of claims or contract disputes. This process was, basically, to introduce a contractor claim into the First Instance Administrative Courts of the Republic.<sup>15</sup> Then, the claimant had two opportunities to appeal before turning to the Supreme Court.

On March 25, 1998, the Venezuelan Congress enacted the Arbitration Commercial Law which states "the Arbitration Accord" where both parties in dispute agree to submit under arbitration "the differences with respect to a contractual

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<sup>15</sup> The First Instance Administrative Courts of Venezuela are the first level courts for introducing negotiations or administrative claims against the government by any particular person or organization.



of disputes and averts litigation, is also increasing since the Administrative Disputes Resolution Act of 1990.<sup>16</sup>

Under U.S. laws, in the case of protest during the awarding of a contract or after a contract has been awarded, the contractors can pursue a settlement. First, the contractor takes action within the applicable DOD agency, and then can file a protest with the Comptroller General (GAO), Small Business Administration (if applicable). Finally, the case may go before the U.S. Courts. In Venezuela, the contractor can also file a protest before the Comptroller General of the Republic and according to the Bidding Law, the Comptroller General can cancel the award and can apply sanctions if applicable. [Ref.27: p.22] Also, the contractor can file a protest before the Administrative Courts of the Republic.

In Venezuela, as a consequence of corruption cases and bribery affecting defense procurements and government contracting, the Congress enacted the Organic Law of Safeguard of the Public Patrimony (*Ley Organica de Patrimonio Publico*) to prevent, to pursue, and to sanction all public administration officials, contractors and public employees in corruption cases. This law, enacted in 1982, created the Superior Courts of Safeguard and Public Patrimony. For the first time that particular law served as a basis for impeachment and suit against the Venezuelan President, Carlos Andres Perez, in 1993.

#### **4. Summary of the Institutional Framework**

In this section of the chapter we saw how the Legislative power of the U.S. exerts very strict controls over the defense procurement activities of the DOD. This contrasts with the weak oversight situation that the legislative possesses in Venezuela defense procurement. Also, we saw how the military in Venezuela has more influence in procurement decisions contrasting with the U.S. process where review boards, heads of departments or acquisition executives are mostly civilian and make the important decisions in the procurement process. Additionally, it is important to highlight the intent of the Venezuelan Congress to reduce bribery and corruption by enacting the Organic Law of Safeguard and Public Patrimony in 1982.

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<sup>16</sup> The Administrative Dispute Resolution Act of 1990 defines the alternative dispute resolution as any procedure that is used instead of litigation to resolve issues in controversy, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration, or any combination thereof.

## C. REGULATORY FRAMEWORK

Naturally, in both Venezuela and the U.S., the defense procurement is based on regulations and since public funds are obligated and expended for public purposes, these regulations play an important role in the defense acquisition process.

### 1. Constitution

The Constitution as the supreme law in both countries is considered first for regulating the defense acquisition process. In Venezuela, the Constitution states that the Government has the authority, with the approval of Congress, to enter into contractual agreements involving the national interest. Also, the Constitution dictates that any contract with public funds must have a clause that empowers the courts of the republic to solve any dispute or controversy and could not be solved amicably [Ref.28: p.23].

In the U.S., although the constitution does not address whether the Government has the right to enter into contracts, the Supreme Court in a “landmark” decision (United States versus Tingery, 1831), declared that the federal government has the inherent power, based on sovereignty, to enter into contracts and has the implied powers, as necessary, to properly perform of its duties [Ref.29: p.3-3]. The Supreme Court also gave guidelines to the public for determining the legitimacy of the Government to contract. This means that the Government has, now and then, the legitimate authority to contract, if it is represented by an authorized official.

### 2. Statutes

In the U.S., the term *statute* applies to the laws enacted by the legislative branch of the government and signed by the President. In Venezuela, these laws are called *organic laws*, and are also enacted by Congress and signed by the President. The Organic Law is identified by its name (i.e. Organic Law of Labor). This is different in the U.S. where the law receives a public law number and is then included in the U.S. Codes. Furthermore, in Venezuela, the Organic Law must be published in the *Official Gazette* in order to be valid.

Many statutes in the U.S. prescribe policies for defense acquisitions. For example, annually the appropriation and authorization bills contain numerous policies regarding defense acquisition. The most fundamental of these bills that contains an overall policy for the acquisitions is the Office of Procurement Policy Act (41 USC 401). Venezuela does not have an organic law similar to the Procurement Policy Act. However, several organic laws, such as the Organic Law of Budgeting Regimen, the

Organic Law of Central Administration, the Bidding Law, and the Organic Law of the Armed Forces establish policies regarding acquisition policies and procedures. Also the Organic Law of the Comptroller General of the Republic further states policies regarding defense acquisition procedures.

### **3. Regulations**

Regulations, also called administrative laws, provide the third level of acquisition regulations for both countries. The sources of these regulations are executive orders signed by the President, rules and regulations established by head of agencies, and decisions by the Comptroller General and administrative law judges. The sources of such regulations are similar in both countries. However, in Venezuela, the President also has the constitutional power to enforce the regulations for each organic law enacted by Congress. Consequently, the Venezuelan President signs the directives for applying the organic laws affecting defense procurement.

In the U.S., the basic set of regulations relating to procurement is the Federal Acquisition Regulation (FAR). This FAR is an ever-changing and alterable document since two councils forcefully maintain it. The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are the two agencies responsible for this task. In contrast, Venezuela lacks both a similar regulatory document and similar organizations. However, the President can sign the directives for applying the law, and such this deficiency is diminished. Nevertheless, this process is not as intensive or alterable as the FAR.

The U.S. Department of Defense also has the Defense FAR Supplement (DFARS), which applies to all of the military and DOD agencies. The DFARS was re-written by the Department of Defense in 1991 and is supplemented from time to time by distribution of Defense Acquisition Circulars or departmental letters. In addition, on March 15, 1996, the U.S. Secretary of Defense William Perry signed the DOD revision and updated directives 5000.1 and 5000.2-R. these directives accomplish four major objectives:

- incorporate new laws and policies affecting acquisition
- separate mandatory policies and procedures from discretionary practices (DOD 5000.1 states guiding principles for all Defense Acquisition, and DOD 5000.2R states mandatory policies and procedures for major weapon systems acquisitions )
- eliminate redundant or needless documents and policies within the defense acquisition agencies

- integrate, for the first time, acquisition policies and procedures for both weapon systems and automated information systems

This last change was similar to the situation in Venezuela where procedures for acquiring weapon systems are separate from automated information systems acquisitions. The U.S. defense acquisition system is also influenced by the Office of Management and Budget Circular A-109 (OMB Circular A-109), which establishes policies that the executive branch agencies must follow to acquire major systems.

The Venezuelan Armed Forces have a directive establishing “Norms for the Acquisition of Goods and Services to Supply the National Armed Forces” (the Comptroller General of the Armed Forces, June 13, 1986). This directive was modified and supplemented by the “ Regulation for the Acquisition of Goods and Services for the National Armed Forces” (June 27, 1988) and the Presidential decree N°175 of “ Norms for the Acquisition of War Materiel and Equipment for the National Armed Forces Through Credit Public Operations” [Ref.30].

#### **4. Summary of the Regulatory Framework**

From analyzing this framework it is simple to see how the U.S. regulatory systems is a well-structured and continually refined system. Legislators and public officials are constantly streamlining the procurement process. This situation contrasts greatly with the Venezuelan regulatory system that has been traditionally lax and is far more immutable.

#### **D. ORGANIZATIONAL FRAMEWORK**

Despite recent downsizing in the U.S. Department of Defense, the DOD is the biggest purchaser in the world [Ref.31:p.2-13]. For this reason and because mainly public funds are used for defense expenditures, the DOD is one of the biggest acquisition organizations in the world. The DOD has as many as 20 acquisition organizations, as well as a diverse multi-layered workforce. The functional area of procurement is managed at the secretarial level by the Under Secretary of Defense for Acquisition & Technology who is the statutory appointee. Other agencies, such as the Defense Contract Audit Agency and the Defense Logistic Agency, are also offices with responsibilities within the U.S. Defense procurement process. Additionally, procurement offices in the U.S. are functionally organized according to how procurement authority is delegated.

In Venezuela, the maximum level of responsibility for procurement belongs to the Minister of Defense. Also, the rest of the organization is structurally affected in the way

the procurement authority is delegated. As a consequence, each military service has similar organizations for procurement functions. The Venezuelan Defense Acquisition Organization does not have a Defense Logistic Agency (DLA) responsible for common logistic support to each service or to provide contract administration services. The Venezuelan procurement organization, similar to the DLA in the U.S., is the General Administration Direction under the Ministry of Defense. However, this office lacks important functions, such as contract administration and delegates this responsibility to each service. Another important difference between both acquisition organizations is that the Venezuelan Acquisition Organization relies on the Comptroller General of the Armed Forces Office for the overall responsibility of auditing and control. Consequently, each single contract over a certain monetary threshold must be verified and approved by the Comptroller General of the Armed Forces Office before being purchased. The goods and services contracted must also be verified before final acceptance. As a consequence, delays in contracting and final acceptance occur.

The U.S. defense acquisition organization is also affected by thresholds and acquisition categories in order to assign the office with oversight responsibility. Structurally, both the U.S. and the Venezuelan defense acquisition organizations have more differences than similarities although the primary purpose of obtaining goods and services for the Armed Forces is the same. The organizational structure of both defense acquisition organizations is presented in figure 7:

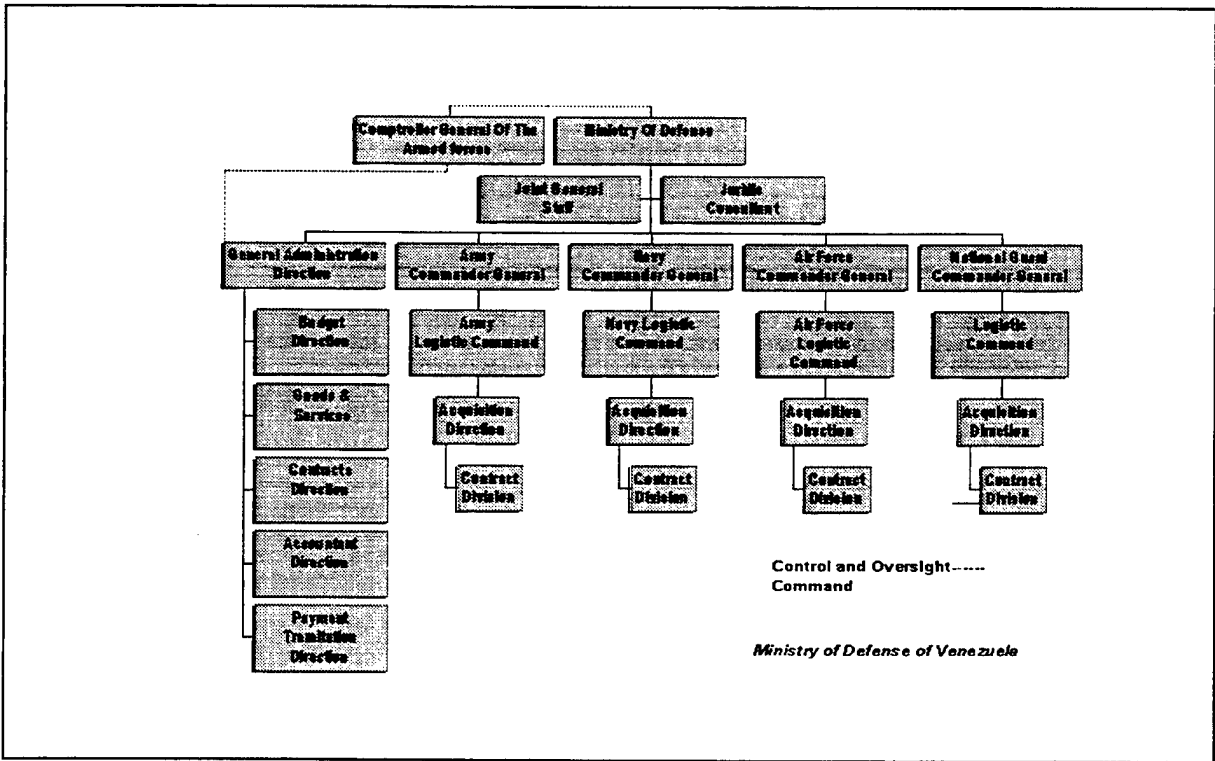
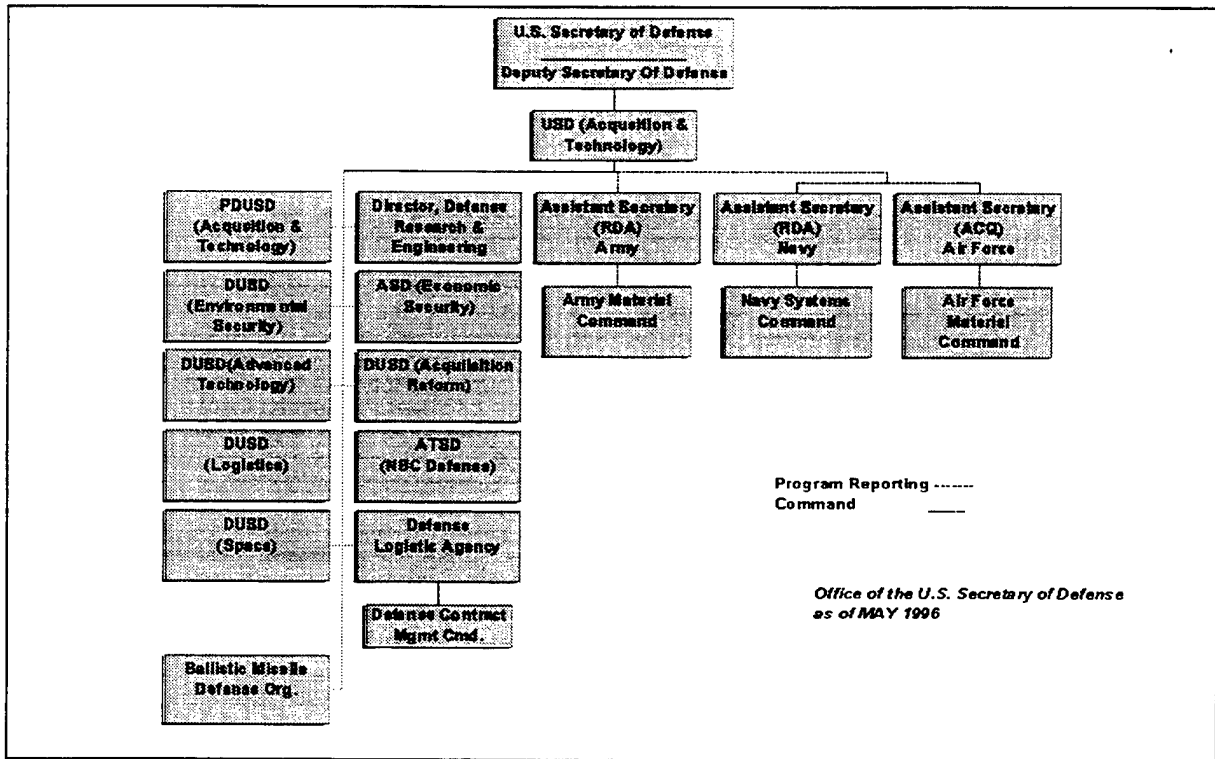


Figure 7. U.S. and Venezuelan Defense Acquisition Organizations

By comparing the two organizational charts, we clearly see how the U.S. has developed a well-defined acquisition organization for supporting the Armed Services. This includes the Deputy Under Secretary of Defense for Acquisition Reform. Unfortunately, the Venezuelan Defense Acquisition Organization has been more inalterable over time. It is also important to note that the U.S. defense acquisition organization is now under a congressional downsizing. The U.S. Congress in the Defense Authorization Act for 1996 reduced the acquisition workforce by 20 percent in all DOD acquisition organizations within a five-year period beginning on October 1, 1995 [Ref.32].

### **Summary of the Organizational Framework**

In this section, we compared the two acquisition organizations and we saw how the volume and cost of procurement and the use of public funds play an important role in defining the size of the U.S. DOD acquisition organization. Moreover, we saw how the Venezuelan defense organization lacks of fundamental organizations that could both support and improve the procurement process.

## **E. PROCUREMENT PROCESS**

### **1. Focus**

The U.S. defense acquisition strategy affirms: "The US pursue a focused modernization effort to replace aging systems and incorporate cutting-edge technologies to ensure continued U.S. military superiority" [Ref.33:p.1]. This statement differs enormously from the focus that is pursued by the Venezuelan Armed Forces acquisition process. Venezuela reduces risk in acquisitions by purchasing more mature technologies; however, both processes have a common goal: to obtain the best product from the available resources.

After the U.S. Defense Quadrennial Review in May 1997, some changes were instituted in the U. S. defense acquisition process. First, the need to implement fully the acquisition reform was led by Dr. Perry, Secretary of Defense, and Dr. Kaminzky, USD (A&T). This acquisition reform was the foundation for the Federal Acquisition Streamline Act of 1994, which established four main areas in changing the method of system acquisitions but not the focus. Theses four areas were

- First, to implement to the utmost extent superior business practices by developing integrated product teams, military specifications and standards reforms, and to consider cost as an independent variable (CAIV).
- Second, to redesign DOD business practices in defense acquisition and make the process “paper-free” and replace “just in case” by “just in time.”
- Third, to apply market incentives to improve quality, reduce costs and meet customers’ needs.
- Fourth, to reduce support structures and focus in core competencies.

In the case of Venezuela, since 1984, no studies have been conducted to change the acquisition system or to consider changing the focus of the process. Although Venezuela’s President, Rafael Caldera, signed a decree ordering the restructuring of the Public Administration [Ref.34:p. 2] on September 14, 1994, no major changes occurred in the Venezuelan defense acquisition process.

## **2. Acquisition Phases**

Generally speaking, the U.S. and Venezuela follow similar acquisition phases for their major weapon systems. These U.S. phases include:

- identifying the requirements for new weapon systems
- defining alternative weapon systems
- conducting feasibility studies
- designing, developing, testing, producing and fielding systems

This last phase is most similar to Venezuela’s system, since most of the weapon systems acquired for the Venezuelan defense organization are mature products.

The process of identifying the requirements for new weapon systems is quite similar in both countries. This process is based on determining a need that requires a materiel solution. In the case of Venezuela, each service is responsible for presenting to the Minister of Defense the acquisition projects, including logistics, technical and financing studies, which include a formal analysis on how the project will be used and how it will meet the needs of the Armed Forces. This project is similar to the Mission Need Statement (MNS) developed in the U.S. acquisition model; however, here important differences between the U.S. and Venezuela rise. First, while the MNS is generic and not system specific, the Venezuelan acquisition project considers two or more specific products. Second, while the MNS describes the need in broad operational



terms, the acquisition project requires a specific analysis of how the project will be used by the service requesting it. Finally, while the MNS is limited to five pages, the Venezuelan acquisition project is made as extensive as possible in order to justify the project.

In Venezuela, once the Minister of Defense accepts the project, it is then submitted to the Joint Staff Office which presents its analysis of the project to the Joint General Staff of the Armed Forces for opinions and approval by the Venezuelan Defense Minister. This process obviously differs from the U.S. model where the Joint Requirement Oversight Council (JROC) validates and approves the MNS, and then the Defense Acquisition Board helps the USD (A&T) to decide, whether or not, to approve concept studies, while the Venezuelan Minister decides to procure a defined weapon system.

From this, it is obvious that the acquisition phases in the Venezuelan process are highly concentrated and less defined from the beginning, reducing the milestone decision timeframe, compared to the U.S. model where the four phases and the four milestone decisions are broader and more specific over time. In figure 8 the two acquisition phases are compared:

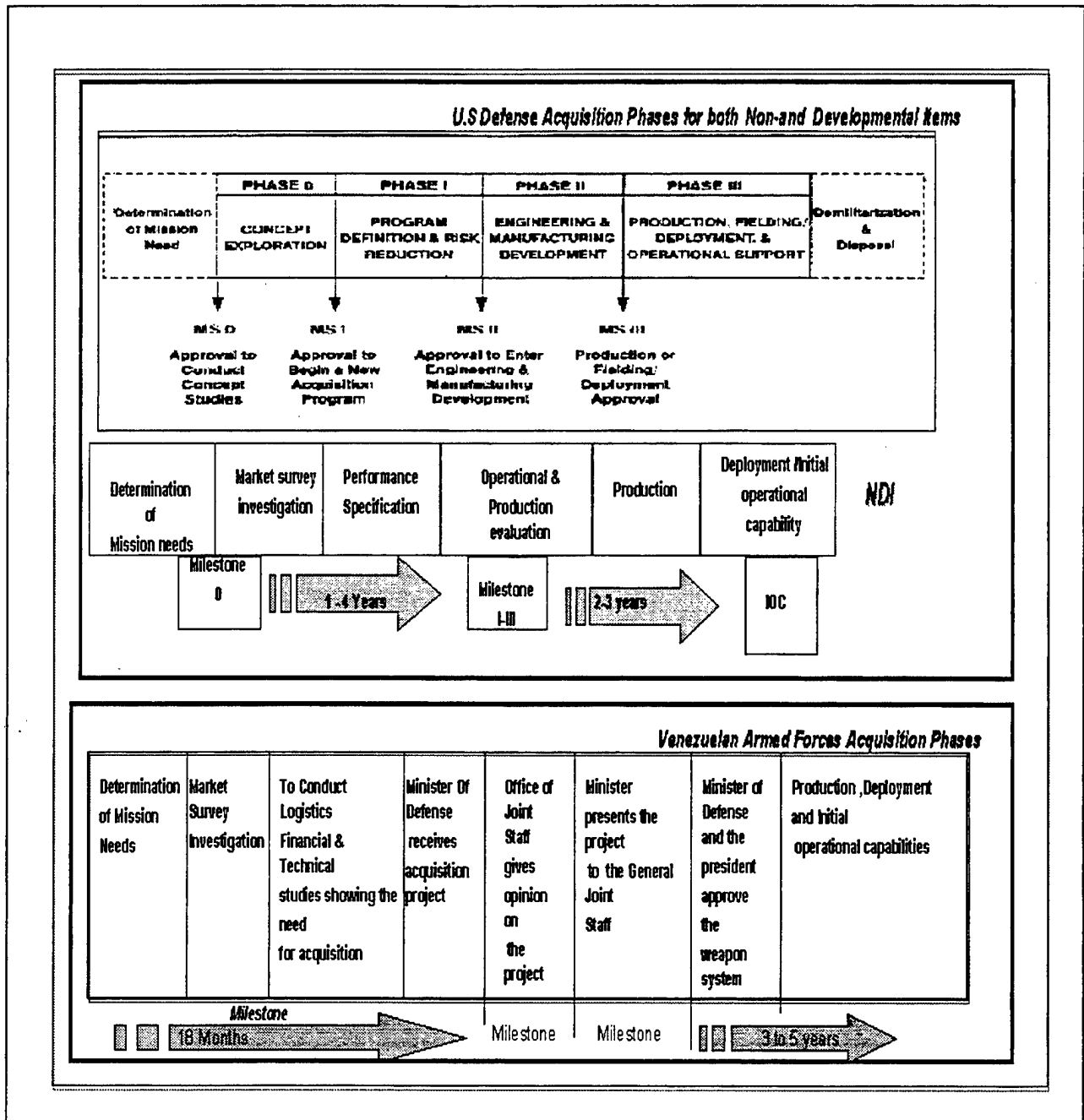


Figure 8. U.S. and Venezuela Acquisition Phases (US Acquisition model from US Marine Corps Acquisition Guide)

However, in the U.S., a project can be “tailored” according to different factors, such as the maturity of the project or whether or not commercial or non-developmental items exist to cover the required need. In that case, the process to acquire this type of mature system can be adjusted from zero to four years until the systems are operational

and all production evaluations are concluded. Then two or more years are needed for production and fielding. Together, completing the project can take approximately six to eight years. This time is computed from approval until the systems are operational and deployed. A similar cycle of events occurs with the Venezuelan acquisition phases. Nevertheless, it is important to note that from one milestone to another in the U.S. acquisition system, the milestone decision authority needs to revise the exit criteria in order to keep the program sharply focused.

### **3. Funding**

The process for obtaining funds in both countries is generally quite similar. Both processes start with a planning phase. Then, a programming phase follows, and finally a budgeting phase, which must have congressional approval, takes place. In this later phase many differences occur. Also, in developing the Future Years Defense Program, the U.S. is different since the Venezuelan Armed Forces possess neither similar computer data bases nor other programs for developing future budgets.

In developing the planning phase, both countries are subject to executive orders. The U.S. Armed Forces are under the President's National Security Strategy and National Military Strategy. Venezuela's Armed Forces are influenced by Presidential policies and the Nation's Defense Plan. During the programming phase, the U.S. DOD organization analyzes the results of the planning into a rational six-year defense program based on the available resources. In Venezuela, the programming phase is also based on the available annual resources pre-assigned by the Central Office of Budget (Oficina Central de Presupuesto, OCEPRE). This occurs when funds for weapons acquisitions come from the ordinary budget. When the Venezuelan Armed Forces require additional funds, not provided by the normal budget, the programming phase must include a justification for the additional money before Congress and the Finances Minister. In the latter case, the Minister of Defense is only responsible for controlling spending of this additional money.<sup>17</sup> In both countries, the budgeting phase transforms the programming phase into a congressional form for approval. However, in the U.S., the Congress exerts more influence because it defines instructions for planning and expenditures in authorization and appropriation bills. These instructions can include reducing or increasing weapon acquisitions, eliminating programs, or establishing acquisition policies. Because the

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<sup>17</sup> As stated early in this chapter when the acquisition of weapon systems is by public debt the Minister of Defense will not have power for delegating responsibility, and he will held responsible for contracting the weapon system (Presidential Decree 175 of June 27, 1984).

Venezuelan Congress lacks experience in the areas of defense, little change occurs. It is also important to note that in the U.S., the overall responsibility for the budgeting phase is placed on the U.S. DOD Comptroller. In Venezuela, this responsibility rests with the Defense Minister and the Defense Finances Director. The Venezuelan Armed Forces Comptroller has only oversight control over the processes and has no financial power. In both countries once the budget is enacted by congress, the President signs or vetoes them. In the Venezuelan case, this Budget is the Budget Law for the current year. In the U.S., it is called the Defense Appropriation Act for the fiscal year. The U.S. Congress must also pass a companion Authorization Act to permit the expenditure of funds that have been appropriated. Additionally, while the Defense Budget in the U.S. Congress is considered an independent process involving all the defense committees, the Venezuelan Congress considers the Armed Force's budget with the overall presidential budget.

#### **4. Procurement Methods and Source Selection**

In the U.S., since the enactment of the Competition in Contracting Act of 1984 (CICA), "full and open competition" has become the motto of the procurement process. This goal must be reached by the use of sealed bidding and competitive proposals [Ref.35:p.2-16]. But in Venezuela, the Bidding Law was not promulgated until August 10, 1990, and this law established the procedures for open competition. In Venezuela's case the bidding can proceed in three forms: a) general (full and open competition); b) selective, where only capable businesses are invited to bid; and c) direct adjudication, which is similar to a U.S. noncompetitive contract and which is also developed only under exceptional circumstances. The first method of procurement is, similar to the U.S., a sealed bidding method where all companies are invited to submit their proposals. In this case, the companies are required to be officially registered as a government contractor in the Venezuelan Registry of Contractors.<sup>18</sup> In Venezuela, most of the weapon systems contracts use selective bidding since only capable business organizations world wide are invited to bid in the procurement process.

The source selection process for procurements in Venezuela is normally based on technical, operational and financial conditions. Here a difference arises from the U.S. model. Since the administrative risk to the contractor is not measured, as in the US., a monetary warranty or premium will be required from the contractor and specified in the

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<sup>18</sup> The register of contractors is an office which maintains file of all the government contractors in Venezuela. This office was established after the enactment of the Bidding Law and became electronically available on the web for registered users in 1994.

solicitation. This warranty must be deposited when the contract is awarded. Also, in Venezuela, the solicitation differs from the U.S. because the solicitation establishes the general conditions of the bid, the technical, financial, and operational conditions, but not contract clauses as is the U.S., where the solicitation documents will actually be the contract. In the case of Venezuela, the contract is a separate document signed by the Minister of Defense (or delegated) and the contractor, and includes the technical, financial and administrative conditions of the solicitation which are annexes to the contract. Finally, as in the U.S., the Venezuelan procurement process develops the evaluation factors for contract awards during the solicitation phase, but the process differs in the US. because price and price-related factors are serious concerns in the award decision.

## **5. Contracts**

The procurement of most weapon systems in Venezuela is based on buying mature systems, which represent little risk in research and development. Also, the contractor can easily estimate the costs. As a consequence, the Venezuelan procurement process fundamentally develops firm fixed-price contracts. This differs enormously from the U.S. procurement model because developing products, new weapon systems, and state-of-art technologies require different types of contracts where both the contractor and the government share the risk. On the other hand, the U.S. defense procurement process has developed as many as five contract types and some variations. This is not the case with Venezuela where the firm fixed-price contract predominates. An important point to stress is although the U.S. defense procurement agencies attempt to buy non-developmental items as part of their acquisition reform strategy, many contracts still involve other than firm fixed prices.

## **6. Summary of the Procurement Process**

Although the Venezuelan procurement process follows similar steps and pursues a similar purpose to the U.S., the U.S. procurement process has an oversight or milestone point of control on each phase that involves new funds. This of course represents more steps and more time frames for the process but establishes control. This is not the case in Venezuela where the process, may move rapidly, but also generates a high risk for corruption and bribery.

## **F. MANAGEMENT OF THE ACQUISITION PROCESS**

Many more differences exist in this last area of my comparative analysis. These differences begin with the structure for managing the procurement process. In the U.S., starting with the program manager and ending with the Defense Acquisition Executive, the DOD facilitates the procurement process. This chain does not exist in Venezuela. The establishment of acquisition categories, acquisition decision authorities, and integrated product teams by the U.S. Secretary of Defense, gives the DOD procurement process a vast difference never seen in the Venezuelan Defense procurement process. Also, Venezuela's process does not give the contracting officer power to sign contracts. This is a highly centralized decision placed on the Venezuelan Minister or his delegated subordinates when applicable. Furthermore, in managing the acquisition programs, the Venezuelan organization does not have personnel trained in managing defense contracts or developing acquisition programs. Normally, those jobs are performed by a technical officer (engineer or armament officer) who has no background in acquisitions or negotiations. The contracting officer's function is normally performed by a team of lawyers, without the power to make contract awards. Moreover, the Venezuelan organization does not have a cost analysis agency capable of helping to develop a well-defined acquisition strategy and to consider costs as an independent variable (CAIV). Also, these cost analysts would help the program manager and contracting officer develop the Earned Value Management Systems (EVMS) criteria (as mandate by DOD regulation 5000.2-R) during the solicitation phase and provide the basis to oversight during the execution of a contract. Finally, since the application of the Federal Acquisition Streamlining Act of 1994, and because of using advanced technology in managing the procurement process, the U.S. has developed an important mechanism to support the process. This advanced technology includes the Defense Acquisition Deskbook on CD-ROMs, web page versions, the electronic commerce technologies as electronic data interchange (EDI), the Electronic Commerce Resource Centers Program and other such resources. This massive information effort was not adopted in Venezuela until 1997 when Venezuela entered the Integral E-Commerce and Business Information Network (TIPS), developed the Platform of Official Information (Platino) and entered into a commercial electronic bidding system called COMPITA. However, because these recent advances are really new, personnel do not know that they exist or simply ignore them.

## **Summary of the Management of the Acquisition Process**

In this section we saw how the Venezuela defense Organization lack an essential management chain for streamlining the procurement process. Although the Minister of Defense centralizes the power for signing contracts, this centralization generates delays and creates bureaucratic organizations throughout the Ministry of Defense. In addition, the lack of an organizational office capable of cost analysis support during acquisitions—makes the organization vulnerable to contractor prices and increases the possibilities for overpricing and corruption. Additionally, the low levels (of information technology and automated-system-resources) add to the bureaucracy. Finally, the absence of well-trained personnel in the areas of acquisition management and contracting and the high turnover in manpower debilitates the organization's potential for efficient procurement processes.

### **G. FACTORS AFFECTING ACQUISITION PROCESSES IN BOTH COUNTRIES**

Based on Krikorian's statement, which began this chapter, the U.S. Department of Defense is considered the biggest purchasing office in the world with a request in outlays for the fiscal year 1999 of \$252.6 billion. Most of these funds are spent in the U.S. procurement processes. However, despite this huge amount requested by the President for the U.S. Armed Forces, some members of Congress strongly believe that much money is wasted annually by the Armed Forces and since the Warsaw Pact no longer exists, they believe the Armed Forces do not require such an enormous amount of money. Instead, Congress calls for downsizing, cost reductions, program cuts and other budget reductions. The same argument is occurring in Venezuela where Congress believes that Venezuela requires a new focus on the goals of the Armed Forces, such as their use against guerrillas and narcotraffic and, consequently, they also ask for budget reductions. Furthermore, in Venezuela another factor is added to this congressional desire for reductions in budget spending. The economic crisis that started in Venezuela as a consequence of the worldwide oil price reductions requires Congress to reduce the budget in order to avoid increases in the national deficit. Nevertheless, because the main weapon systems of the Army, Navy, and Air Force are aging, additional credits were approved in recent years to modernize these, despite the congressional resistance. A similar situation is confronting the U.S. DOD where in order to maintain supremacy in weaponry modernization, replacing aging systems is one of the primary objectives of the Secretary of Defense.

Another factor affecting both countries' processes and also related to Congress and politicians is the political lobbying for defense contracts. In the U.S., members of Congress generally desire defense contracts for their states because they represent prosperity and benefits. Consequently, they try to obtain and to increase appropriation money for defense projects within their states. In Venezuela, this does not occur since most of the defense procurements are foreign. However, bribery and lobbying for campaign funds for the political parties influence defense procurement.

Finally, in the case of Venezuela, many corruption cases in the defense procurement process have caused feelings among these politicians and the public that "something is wrong." As a result, Congress delays assigning funds to defense procurement programs while tedious and extensive hearings are conducted and the process is revised over and over again.

## **H. SUMMARY OF THIS CHAPTER**

In this chapter the U.S. and Venezuelan procurement processes were compared and from this comparative analysis we discovered many deficiencies that degrade the efficiency of the Venezuelan defense procurement process and facilitate bribery and corruption.

For example, in this chapter we saw how the legislature in Venezuela is weak in exercising oversight power over the Armed Forces. Also, we saw how the oversight function as well as the procurement decision making process is under the control of the military. This situation contrasts with the U.S. where civilian officials exert the acquisition decisions and Congress exerts the oversight function within the process. In addition this chapter showed how the Venezuelan organization is weak in cost analysis and in this way facilitates the possibilities for overpricing in contracting and bribery between contractors and acquisition officials. Additionally, the Venezuelan system is vulnerable for two primary reasons. First, their personnel lack adequate training in acquisition and are subject to a high turnover rate. Second this generates fraud either overtly or by acts of omission.

Finally, this chapter shows how the U.S. defense organization simplifies the procurement process by introducing changes in management, and the regulatory framework, while the Venezuelan procurement has been more inalterable over time and with no significant changes in these areas.



## **V. CONCLUSIONS AND FINDINGS**

### **A. SUMMARY OF THE THESIS**

This thesis has presented my view of various aspects of the acquisition processes in the U.S. and Venezuela in defense organizations. The processes have been compared, and recognizing that direct comparison between these two countries of widely different populations, government structure, defense organizations and industrial capabilities is difficult, some areas of possible improvement have been discussed.

In each one of the frameworks studied, I found relevant aspects that require development in order to improve to the maximum extent possible the Venezuela's armed forces acquisition process and to reduce bribery and corruption. These aspects are discussed in this chapter as they were presented—by frameworks—and they answer to the primary questions of our research.

### **B. CONCLUSIONS AND FINDINGS**

The actual procedures followed by the two countries for procurement of weapon systems are, in general, straightforward and follow logical steps from one stage to another. However, some factors in the Venezuelan defense procurement process must be revised in order to avoid the corruption and bribery problems already described, and to make the process more efficient and less bureaucratic. These are our conclusions and findings from our study.

#### **1. Institutional Framework**

In the legislative branch, the Venezuelan Congress lacks effective oversight power over defense procurement although it has an oversight office with this responsibility. This weakness is a direct consequence of the restrictions imposed by law over the Comptroller General of the Republic Office. In addition, most members of the Defense Commission in both chambers have neither military background nor training in the areas of defense or national security. Thus, they cannot exert efficient oversight in the acquisition of weapon systems. This situation has created a crucial deficiency in the weapons acquisitions processes and has further been a source of corruption within the military. This conclusion confirms a 1996 study by Bernard Aronson. He said that in

most Latin American nations there is still no real civilian-military dialogue, and at best only rudimentary oversight by elected legislatures exist [Ref.36: p A-21].

In the executive area, we saw how a General on active duty runs the Ministry of Defense with overall responsibilities from approving the initial stages of an acquisition process until signing the contract. This represents vast powers centralized in only one military person. Of course a situation like this facilitates the possibility that contractors can commit bribery and a Minister can be corrupt. This is a clearly contrasting situation with the U.S. where the Secretary of Defense and his service secretaries—who are responsible for acquisition, personnel, and policy matters—are civilians and the review boards are composed of both civilians and the military. In addition, the four Venezuelan military services are also under the direction of general and flag officers. Consequently, one must conclude that there is little civilian control of the military. The President, as the constitutional Commander in Chief of the Armed Forces, exercises the only civilian control over the Armed Forces but with little influence in the procurement process and his decisions are highly influenced by the military. Additionally, this situation of having senior military officers occupying these important positions creates a high level of personnel turnover due to the normal process of a military career. As such, the possibility of continuous improvement in the acquisition process because of a long and stable management is virtually impossible. In the last sixteen years, the executive power did little to develop the military industrial base. Now, owing to the economic crisis in Venezuela, and the lower price of oil in the world market, developing this area in the short run appears impossible. As a result, Venezuela must obtain maintenance, spare parts, and new weapon systems from its industrialized allies. This will require a more efficient process to attain the best value.

The absence of one executive agency capable of cost analysis and other administrative functions, such as contract administration, causes delays in the procurement process and duplication of functions between agencies. Such is the case of the contracts, which are revised by as many as three offices during the process. In addition this absence increases the potential for fraudulent acts by permitting overpricing and other illegal acts.

In the judicial branch, the main problem is found in the application of sanctions on the transgressors of the laws affecting contracting. Many public officials and high-ranking officers were accused of corruption charges but until now only one (President Carlos Andrés Pérez in 1993) was sentenced and paid for a corruption charge.

In addition, in this area, we saw as a positive sign the enactment of the Arbitration Commercial Law, which represents a huge time reduction and economical approach for solving disputes in court.

## **2. Regulatory Framework**

The Venezuelan regulations assigned much of the responsibility and oversight of the procurement process to the military. This situation facilitates in some ways the possibility for fraudulent acts by the military during the procurement process. My conclusion is that the absence of regulatory instructions giving oversight power to the auxiliary office of the Congress in defense procurement is an important factor facilitating bribery and corruption. In addition, the presence of many corruption cases has increased regulations to accomplish an acquisition. In which case, many steps have been added and many revisions are executed with the purpose of enforcing these regulations. Consequently, the efficiency of the process has been reduced as a direct consequence of corruption.

Finally, in the revision of the regulatory framework we could not find a directive statute or other regulatory document that mandates specific timeframes for revision. Consequently, the time used by each agency in revising contracts or other documents is subject to agency criteria and generates delays.

## **3. Organizational framework**

The offices involved in the procurement process have undergone transformations since the enactment of new laws in 1984. However, these transformations are mostly the results of regulatory ordinances and are not the result of efficiency studies and analysis of the processes. The incipient use of electronic means and the excessive workload of the procurement processes make the procurement offices a typical bureaucratic governmental office where a project can remain for fifteen days waiting for an analyst's recommendations [Ref.37:p.6/K].

The Direction of Administration of the Ministry of Defense is one of these overloaded procurement offices, which generates delays in the process. This is because of continuous revisions of contracts and a limited capacity for analysis. According to the law, this direction is not a revising office; however the Direction assumes this role trying to avoid possible mistakes made by the military services during project elaboration. This revision adds one more step to the process, loads more work on this office, and delays the procurement process.

#### **4. Procurement Process**

In management of the procurement process, we found the following deficiencies: first, the high levels of rotation among the military personnel working in the procurement processes is on average 1.5 year and sometimes of less. For example in 1994-1995, the Director of Acquisition of the Army was rotated four times and, in spite of the professional capabilities of these military officers, the inefficiency in the acquisition process was present [Ref.38:p. V-3].

Second, the civilian and military personnel receive more of their training at work and many times officers involved in negotiation processes learn this difficult task at the negotiation table. Therefore, this situation creates inefficiencies in the procurement process and facilitates the possibility for bribery to the officers responsible for the negotiation by the contractors.

Third, excessive bureaucracies exist in the contract revision process where three or more agencies perform these revisions before giving final approval and signing a contract.

Fourth, we found the acquisition process in general and the acquisition phases in particular highly centralized in Venezuela's Minister of Defense. With the overall responsibility for the process, the Minister of Defense exerts most of the control of the procurement and the process is too much in the minister's hands before reaching an oversight council. This situation facilitates the possibility for the Minister to be corrupted by the Contractors.

Fifth, in the management of the procurement process, the defense organization is creating a possible source of corruption from the beginning, when the needs are established because these requirements are not only operational but also product-oriented.

#### **C. RECOMMENDATIONS**

The major recommendations resulting from this thesis can improve the procurement, reduce to some extent bribery and corruption, and are based on the conclusions and findings. These recommendations are

- To implement educational courses or seminars for preparing the civilian and military personnel in the relevant areas of acquisition, such as acquisition management, contracting, negotiation, electronic resources, and cost analysis. This educational effort should include professional civilians from the acquisition workforce in military courses, such as National Defense or Command and Staff. Also to develop courses in legal matters and application of the Organic Law of Safeguard and Public Patrimony. In this area also to

implement at the highest extent possible the use of electronic resources by the acquisition workforce.

- To reduce to the maximum extent possible the rotation of military personnel involved in defense procurement. A possible solution is to permit this rotation only between similar jobs within the acquisition workforce and within a four-year timeframe. This idea would reduce the learning process and training.
- To develop acquisition phases similarly to the U.S. where the mission need statement must be operationally oriented, and with the General Staff of the Venezuelan Armed Forces acting as overarching council on each well-defined milestone. Although this recommendation will not streamline the process, it can reduce the possibility of fraud.
- To limit the contract revision to only one agency, with a regulatory document that establishes the timeframe to revise the projects by each agency involved in the procurement process. This will generate a more efficient approach to contract revision and to accelerate the process.
- To develop a cost analysis agency under the Direction of the Administration of the Ministry of Defense, which would conduct cost analysis and provide contracting officials with cost and price information.
- To decentralize the procurement process giving the opportunity to each head of service or department to sign contracts after being approved by the milestone authority. In this case, we suggest the Joint Chief of Staff as the milestone authority.

Finally, our last recommendation suggests Congress and the Ministry of Defense establish a real civilian-military dialogue. This will permit Congress to become familiar with our Armed Forces through specially oriented courses in national defense and military doctrine, and will lead to a revision of the important oversight function of Congress in the defense procurement process.



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