NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

MBA PROFESSIONAL REPORT

Improving the Transparency/Anti-corruption Efforts in Defense Procurement: Recommendations from Global Practices

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December 2011

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REPORT DOCUMENTATION PAGE			*Form Approved OMB No. 0704–0188*
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704–0188) Washington DC 20503.			
1. AGENCY USE ONLY *(Leave blank)*	**2. REPORT DATE** December 2011	**3. REPORT TYPE AND DATES COVERED** MBA Professional Report	
4. TITLE AND SUBTITLE: Improving the Transparency/Anti-corruption Efforts in Defense Procurement: Recommendations from Global Practices			**5. FUNDING NUMBERS**
6. AUTHOR(S) 1st Lt. Ilker Kilaz, 1st Lt. Kadir Hayri			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943–5000			**8. PERFORMING ORGANIZATION REPORT NUMBER**
9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			**10. SPONSORING / MONITORING AGENCY REPORT NUMBER**
11. SUPPLEMENTARY NOTES The views expressed in this report are those of the author(s) and do not reflect the official policy or position of the Department of Defense or the U.S. Government. IRB Protocol number N/A			
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; distribution is unlimited			**12b. DISTRIBUTION CODE** A

13. ABSTRACT ***(maximum 200 words)***

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14. SUBJECT TERMS Transparency, Corruption, Defense Procurement, Single-Source Contracts, Offset Agreements, Anti-Corruption Conventions.			**15. NUMBER OF PAGES** 145
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	**18. SECURITY CLASSIFICATION OF THIS PAGE** Unclassified	**19. SECURITY CLASSIFICATION OF ABSTRACT** Unclassified	**20. LIMITATION OF ABSTRACT** UU

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IMPROVING THE TRANSPARENCY/ANTI-CORRUPTION EFFORTS IN DEFENSE PROCUREMENT: RECOMMENDATIONS FROM GLOBAL PRACTICES

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Submitted in partial fulfillment of the requirements for the degree of

MASTER OF BUSINESS ADMINISTRATION

from the

NAVAL POSTGRADUATE SCHOOL
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IMPROVING THE TRANSPARENCY/ANTI-CORRUPTION EFFORTS IN DEFENSE PROCUREMENT: RECOMMENDATIONS FROM GLOBAL PRACTICES

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LIST OF ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
AECA	Arms Export Control Act
AMP	Avionics Modernization Upgrade Program
ASD	European Aerospace and Defense Industries
AU	African Union
BAE	BAE Systems
BDI	Federation of German Industries
BIS	Bureau of Industry and Security
BPI	Bribe Payer's Index
BUSA	Business Unity South Africa Anti-Corruption
CAD	Component Advanced Development
CICA	Competition in Contracting Act
CIPE	Center for International Private Enterprise
CIS	Common Industrial Standards
COIN	Counterinsurgency
CPI	Corruption Perception Index
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DII	Defense Industry Initiative
DIP	Defense Industrial Participation
EAPC	Euro-Atlantic Partnership Council
EDA	European Defense Agency
FAR	Federal Acquisition Regulation
FCPA	Foreign Corrupt Practices Act
FPDS	Federal Data Procurement System
FY	Fiscal Year
GAO	Government Accountability Office
GCB	Global Corruption Barometer
GDP	Gross Domestic Product
GIACC	Global Infrastructure Anti-Corruption Center

GPA	Government Procurement Act
GRI	Global Reporting Initiative
GTZ	German Agency for Technical Corporation
IACAC	Inter-American Convention Against Corruption
ICC	International Chamber of Commerce
IEF	Index of Economic Freedom
IMF	International Monetary Fund
INDEM	Information Science for Democracy
IPAP	Individual Partnership Action Plan
ISAF	International Security Assistance Force
ITAR	International Traffic in Arms Regulations
J&A	Justification and Approval
KSA	Kingdom of Saudi Arabia
LOA	Letters of Offer and Acceptance
MEDEF	French Business Confederation
MOD	Ministry of Defence
NAC	National Anti-Corruption Unit
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NED	National Endowment for Democracy
OAS	Organization of American States
OCCAR	Organization for Joint Armament Cooperation
OECD	Organization for Economic Co-operation and Development
OPORA	All-Russian Non-Governmental Organization of Small and Medium-Sized Business
PACI	Partnering Against Corruption Initiative
PACS	Project Anti-Corruption System
PAP-DIB	NATO Partnership Action Plan on Defense Institution Building
PARP	Planning and Review Process
PcAW	Public Concern at Work Whistle-blowing
PfP	Partnership for Peace

PwC	PricewaterhouseCoopers
RCC	Regional Contracting Center
SDB	Small Diameter Bomb
SDD	System Design and Development
SFO	Serious Fraud Office
SIPRI	Stockholm International Peace Research Institute
SME	Small and Medium Enterprises
SSET	source selection evaluation team
TI	Transparency International
TI DSP	Transparency International Defence and Security Programme
UNCAC	UN Convention Against Corruption
UNDP	United Nations Development Program
USAID	United States Agency for International Development
WGI	World Governance Indicator
WGZ	Weak Governance Zones
WTO	World Trade Organization

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ACKNOWLEDGEMENTS

In the first place we would like to record our gratitude to our beloved and generous country Turkey and Turkish Armed Forces for providing us this opportunity to receive our MBA degree from Naval Postgraduate School.

We gratefully acknowledge our advisors Professor Max V. Kidalov and Professor Francois Melese for their invaluable insight and guidance throughout our project. Further, we sincerely appreciate their patience and leniency in this period. We also would like to thank our editor Jack McCrone for his important contribution to our project.

Sincerely, İlker Kilaz and Kadir Hayri

I would like to express my gratitude to my wife, Hatice, who has always supported and encouraged me throughout this MBA project. Without her patience and support, I would not be able to focus on this MBA project. Furthermore, I would like to thank Kadir Hayri for his valuable support and commitment.

Sincerely, İlker Kilaz

My special thanks are dedicated to my lovely wife Tugce for her endless support and empathy throughout my studies. Our journey to here started with many dreams and together with her we made all come true. Words fail to express my appreciation for her dedication, love and persistent confidence in me. Other than her support she presented me the most valuable gift ever; my daughter Zeynep Duru. Her arrival and presence in our lives is an unforgettable memory regarding to Monterey. Sizi Çok Seviyorum, İyi ki varsınız CANLARIM.

My parents also deserve special mention for their inseparable support and prayers. My Father, Yusuf Hayri and mother Gulten Hayri thanks for your caring and sincere prayers, and my brother Fatih Hayri for being a supportive sibling.

In particular, I would like to convey my special thanks to my father in-law Lutfu Yardimoglu, mother in-law Yasemin Yardimoglu and brother in-law Berk Yardimoglu

for their togetherness, support and interest in our education. I feel extraordinarily fortunate in being a member of this beautiful family.

To my project partner Lt. Ilker Kilaz; I feel very lucky to share this study with you Sir. We went through some rough times together, but especially your calm attitude and perceptiveness contributed a lot to this study.

Finally, I would like to thank everybody who was important to the success of this study, as well as expressing my apology that I could not mention personally one by one.

Sincerely, Kadir Hayri

I. INTRODUCTION

This chapter presents the purpose, background information, research questions, scope, limitations, assumptions, methodology, and organization of the study.

A. BACKGROUND

> A comprehensive, widely accepted definition of corruption does not currently exist in the literature. Different aspects of the problem are often highlighted in competing definitions depending on the objective of the investigation. Nevertheless, corruption can generally be described as the abuse of public power for private benefit. (Gupta et al., 2006).
>
> From bribes paid at military checkpoints to multi-million dollar procurement kickback schemes, corruption squanders scarce public resources, reducing the effectiveness of government spending, and impeding economic development. Policy-making and implementation efforts are distorted when officers or administrators abuse their access to state resources and privileges. At the highest levels of government, corruption can affect decisions on war and peace, and future policy that impacts society. When basic information about defense spending is kept secret, it can undermine public confidence in the state and the armed forces. In the worst cases, corrupt networks embedded in national and transnational economies can encourage and sustain violent conflict, leading to further economic degradation with negative impacts on human life and living conditions. In short, defense corruption can threaten national security. (Reiling, 2009)

As mentioned above, corruption is a significant problem in the defense sector, and "allegations of corruption in this sector are neither infrequent nor unexpected" (G. D'Agostino, 2011). Arms deals are a global business and require special attention. The U.S. Department of Commerce estimates that 50% of all bribery-related complaints relate to defense transfers (Transparency International, 2006). According to Stockholm International Peace Research Institute's data, total global military expenditures were around $1.62 Trillion in 2010 (SIPRI, 2011).

In the same year, the total value of worldwide arms transfer agreements was approximately $25 Billion (in 1990 constant Dollar Values).

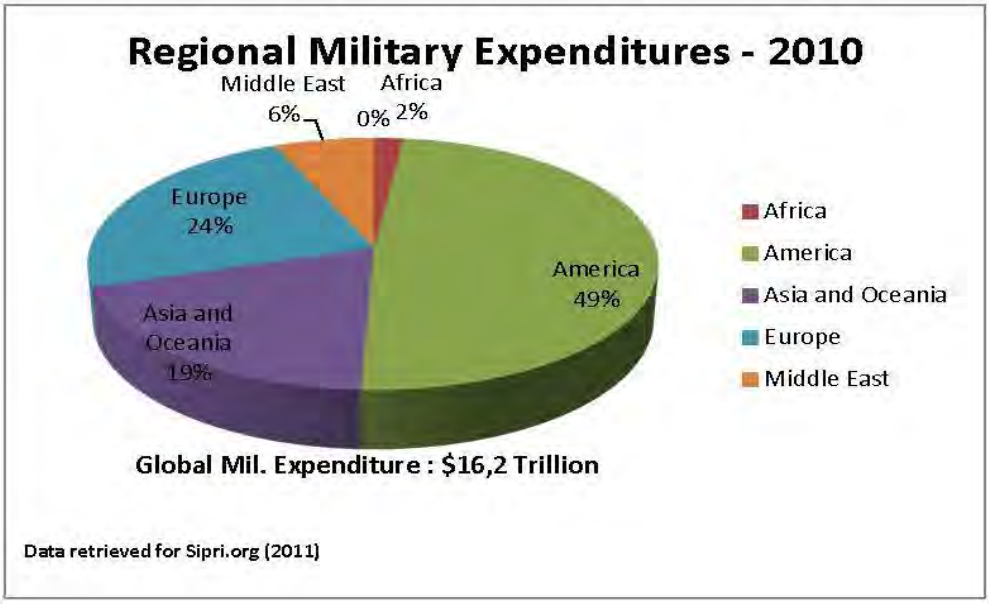

Figure 1. Regional Military Expenditures-2010 (From: SIPRI, 2011)

Combined, the USA, Russia, Germany, China, France and the UK represented 81% of major arms suppliers, and 60% of those arms were exported to developing countries. (SIPRI, 2011) (Figure 2)

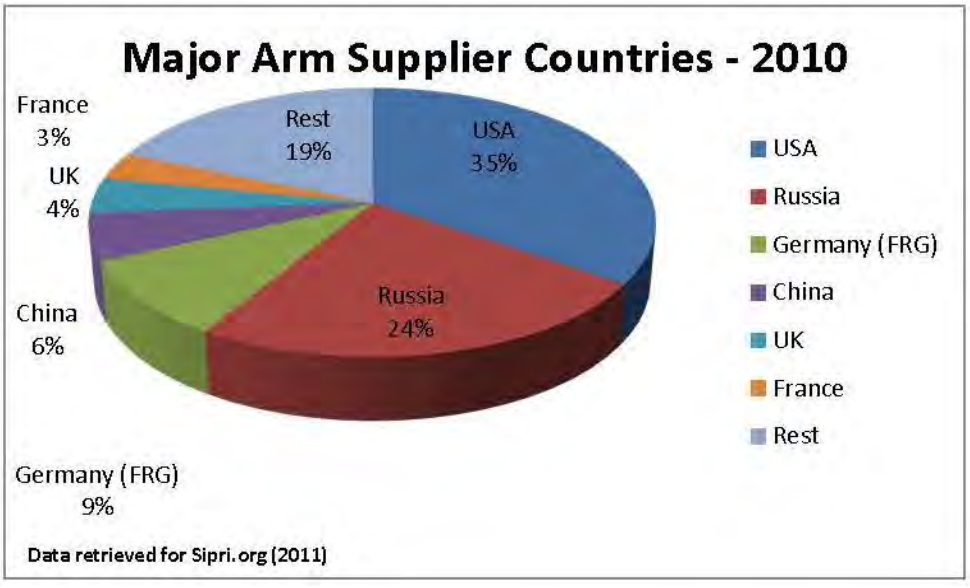

Figure 2. Major Arm Supplier Countries-2010 (From: SIPRI, 2011)

The structure of defense procurement is characterized by large, technically complex contracts, with multiple layers of subcontractors, and procurement agents often hidden behind a shield of secrecy and security. Secrecy and national security are legitimate concerns for states, but they are also misused in oversimplified arguments to obstruct government/military transparency.(Pyman, Ethics and Corruption Relating to Arms Exports, 2005).

According to Transparency International, the average procurement process typically involves around ten steps: government policy creation, capability gap definition, requirement definition and support, online project cost assessment, tender, bid assessment, contract award, delivery and in-service phases. Every stage of this process holds specific risks of corruption; however the tendering stage requires particular scrutiny because of vulnerabilities that arise from offset arrangements and single-source procurement methods.

Tendering emerges as one of the steps in a procurement process that is highly vulnerable to corruption risks. Prospective bidders can be invited to submit bids with little or no advertising; excessive use of confidentiality can conceal corrupt actions and hamper oversight efforts; single source justifications could be strategically used to select a preferred vendor; and collusion among bidders can undermine competition resulting in higher prices and impacting other evaluation criteria.

Strategic government investments in security can enhance economic growth. However, overly large military burdens and excessive government spending can reduce it, and overt corruption can compound these negative effects. Governments sometimes try to justify excessively large militaries by attaching benefits from offset agreements in costly arms deals. In theory, the economic burden of large arms purchases are offset by the seller (Matthews, Defense offsets: policy versus pragmatism, 2004). Offsets can take the form of assistance to create or support a defense industrial base, offer job opportunities, provide transfers of technology, and/or reduce barriers for a country to produce state-of-the art defense equipment.

However, in practice, the results are often far different. A lack of transparency, accountability, and integrity undermines many of the desired benefits of offsets; such cases often occur under the veil of secrecy, and with an unrealistic perspective of a country's ability to absorb technology. Additionally, these agreements are especially vulnerable to corruption since they often lack adequate monitoring of performance, and they are conducted in an opaque and complex environment. The excessive discretionary power held by state procurement officials and bureaucrats in offset agreements can easily translate into personal gains, cronyism and nepotism, and encourages bribery as a tool for companies to gain a competitive advantage.

Another significant corruption risk related to the tendering process is single-source procurements. It is common knowledge that limited competition in defense procurements "leads to relatively high level of informal contracts and to rent-seeking activities, providing fertile ground for the growth of corrupt practices" (G. D'Agostino, 2011). The existence of sole source contracts is often justified by governments to preserve their national defense industrial bases and security interests (Regina Wilson, 2006). Sole source contracts often lack the multiple levels of oversight found in competitive contracts. Although not intrinsically a proof of corruption, the non-competitive structure and secrecy of single-source procurements makes the procurement process more vulnerable to corruption (Regina Wilson, 2006).

The recognition of corruption's subversive and detrimental economic and social effects dimensions forced states to seek both internal and international remedies. In order to relieve this burden, countries devised inward-looking strategies while also organizing numerous multilateral efforts to control transnational corruption. Some of the best known multilateral initiatives are the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Inter-American Convention against Corruption, and the United Nations Convention against Corruption. In addition to these macro-level efforts, defense companies have developed a common set of principles called Common Industry Standards (CIS) to combat corruption. Moreover, NATO, working with the civilian anti-corruption organization Transparency International (TI),

recently launched a "Building Integrity Initiative" that includes an Integrity-self Assessment Questionnaires, a Compendium of Best Practices, and Training Modules specific to defense sector corruption for member and partner countries.

Despite the existence of multiple domestic and international efforts, it is unrealistic to assert that global corruption is resolved. Every year, corruption scandals make headlines and draw public reaction. Similarly, defense procurement corruption is widespread and poses significant threats to the security and prosperity of countries around the globe. In this context, it is important to recognize that successful anticorruption strategies depend on an understanding of the underlying causes of corruption, and producing realistic and effective solutions. "Defining corruption is important because effective anticorruption or government integrity programs depend on establishing clear targets and standards (Anthony Lanyi, 2005).

At this point, some shortcomings of current strategies are explored, and common gray areas in the tools that let corruption flourish are identified. This thesis examines the effectiveness of anti-corruption efforts in curbing corruption in defense procurement, with special focus on the tendering stage.

B. PURPOSE OF THE STUDY

The purpose of this study is to investigate corruption-related vulnerabilities, gaps, and problematic areas specific to the defense procurement cycle, as well as the measures, tools, and mechanisms that were devised and put into practice in order to curb and prevent corruption. This includes examining the steps of defense procurement, assessing which of these steps are most prone to corruption, and investigating the options and tools available to curb corruption in defense procurement—particularly in the case of sole source selection methods and offset arrangements. The effectiveness of current tools and measures will be discussed. Three cases from around the globe will be used to illustrate the theories. Finally, this study will propose a set of recommendations to address the

shortcomings of the current tools in the fight against corruption, and devise a set of questions to help detect and prevent corruption vulnerabilities related to offset arrangement and sole source selection.

C. RESEARCH QUESTIONS

- What are the corruption related vulnerabilities that exist in the defense procurement cycle?
- Which vulnerabilities pose higher risks in the defense procurement cycle?
- What are the significant risks related with offset arrangements and sole-source procurement methods?
- How effective are existing anti-corruption tools and strategies in the defense procurement cycle?
- How do existing tools and measures impact corruption vulnerabilities in the defense procurement cycle?

D. SCOPES, LIMITATIONS, ASSUMPTIONS

This study focuses on specific phases of the defense procurement cycle, and their vulnerability to corruption.

This study will examine corruption schemes initiated by both buyers and sellers; globally accepted anti-corruption-tools will also be a major focus.

Corruption risks in the private sector will not be addressed, nor will any locally devised and implemented anti-corruption measures.

E. METHODOLOGY

This research methodology is limited to the literature review of sources related to defense procurement, corruption vulnerabilities, and the measures, tools, mechanisms and international conventions opposing corruption. Information regarding these tools and mechanisms is derived from different sources. These sources include anti-corruption conventions, anti-corruption guidelines and integrity systems, voluntary anti-corruption principles, court rulings, and NATO and U.S. initiated efforts against corruption. The data for assessing the effectiveness of existing anti-corruption methods is

retrieved from the Federal Procurement Data System (FPDS), Transparency International UK, and the Stockholm International Peace Research Institute (SIPRI). The data illustrated in the cases is derived from Transparency International, U.S. GAO documents, and U.S. litigation process documents.

F. ORGANIZATION OF THE STUDY

This study is comprised of seven chapters.

Chapter I presents this study's background information, purpose, research questions, scope, limitations, assumptions, and methodology.

Chapter II provides fundamental information about procurement and corruption, and then investigates corruption risks that are pertinent to each step in the defense procurement cycle. The most vulnerable step in the defense procurement process is identified. Sole sourcing and offset arrangements are discussed as among the highest risk tools and methods that contribute to defense corruption.

Chapter III explores the nature of sole sourcing and offset arrangements, and provides a deep and detailed picture of related reasons for corruption and inherent risks in the defense procurement cycle.

Chapter IV presents a set of global anti-corruption tools and methods available in both the public and private sector that reveal the scale of the fight against corruption. This chapter provides information about international anti-corruption conventions, defense industry anti-corruption plans, and defense integrity pacts. Additionally, this chapter highlights the regulations and efforts against corruption belonging to the world's most significant military organization, NATO, and country with the largest defense industry, the USA.

Chapter V measures the effectiveness of existing anti-corruption tools affiliated with major players in defense industries and markets such as the U.S., the UK, Sweden, Italy, etc. This chapter proposes a measure of effectiveness of anti-corruption efforts by evaluating changes in Transparency International's global corruption perception indices

after these states implemented relevant anti-corruption strategies. Finally, a matrix is used to reveal how existing anti-corruption conventions match up against key corruption vulnerabilities.

Chapter VI analyzes three different cases involving defense procurement corruption. This chapter first presents background information on each of the cases from court decisions, scholarly works and news articles, and then investigates these cases to identify corruption vulnerabilities.

Chapter VII provides conclusions from the analysis in the previous chapters, and recommends some policy changes to reduce corruption in defense procurement.

II. THE DEFENCE PROCUREMENT CYCLE AND ATTENDANT CORRUPTION RISKS

A. INTRODUCTION

Research question: *What are the areas of highest risk involved in the defense procurement cycle? And, what are the implications if those areas are not addressed?*

This chapter will first explore the basic characteristics of public procurement and corruption. After that, corruption risks throughout the procurement cycle are examined, identifying the most vulnerable steps in the procurement process. Finally, offsets and single-sourcing risks will be further explored.

B. THE DEFINITION OF PROCUREMENT

Public procurement plays a significant role in a government's primary task of delivering public goods. Governments procure not only products such as pencils, drugs, and tanks; they also procure services like security, maintenance, etc. Governments aim is to obtain high quality, and low cost goods and services. A competitive procurement process enables governments to leverage the benefits of competitive markets to make the most cost-effective purchases.

Public procurement typically involves significant resources in a given country. For developed countries, public procurement usually has a 10–15% share of the GDP, while in developing countries procurement involves as much as 20% of GDP (Evenett, 2002).

The UN defines public procurement as the "overall process of acquiring goods, civil works and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration through the end of a services contract or the useful life of an asset" (Thai, 2009, p.3).

1. Procurement Process

Overall public procurement frameworks consist of several key components: "laws and regulations, workforce, process and methods and organizational structure" (Thai, 2009, p.8). This chapter addresses only the procurement process and methods components of the overall framework.

Although public procurement officials could make positive contributions to the planning and preparation phases of a budget based upon their experience, in practice they primarily deal with the execution phase of an approved budget.

Typical phases of the procurement process include:

- Procurement planning
- Requirement definition
- Sourcing
- Selection of procurement strategy
- Preparation & issuance of solicitation documents
- Receipt and opening of offers
- Evaluation
- Contract review and award
- Contract finalization & issuance
- Contract management

(United Nations Development Programme (UNDP), 2011). Several key principles can be defined for a sound procurement process. These include being based upon regulations and rules; being efficient and economic; promoting competition and transparency; and strengthening accountability (Campos & Pradhan, 2007).

C. THE DEFINITION OF CORRUPTION

This chapter will explore the lack of transparency and integrity, and corruption risks throughout the public procurement cycle, especially in defense procurement.

Many definitions exist for corruption. In this chapter, corruption refers to "the misuse of public office for private gain" (Klitgaard, MacLean-Abaroa, & Parris, 2000). The 'office' position might be in public, private or even nonprofit organizations.

Corruption is obviously not a new phenomenon. Corruption has inflicted negative effects on societies and governments across a variety of civilizations. It is visible in ancient Chinese history, Indian scriptures, and in the works of Roman historians. (Campos & Pradhan, 2007, p. 2) Today, corruption is a top concern for most International organizations (such as NGOs and watchdog groups). Corruption becomes a focal point due to its damaging effects on many aspects of a nation's society, economy and general prosperity. Corruption diverts resources provided by taxpayers, aid money from the international community, donations, etc., from the goal of providing public goods and welfare services. This process distorts the public financial management system, lowers the credibility of governing entities, and creates unstable and unjust environments.

Corruption negatively affects an economy by reducing investments, which consequentially slows down economic growth rates and tax revenues, decreasing the efficiency of public investments and country infrastructure (Tanzi, 1998).

The estimated damage inflicted by corruption may be as high as 50% of a contract's value. A study estimates that more than "1.1 billion EUR public funds (were) lost to corruption" in 2005 in the Czech Republic (Transparency International, 2006).

Public procurement is especially vulnerable to corruption because it has a different expenditure profile from other transactions. Public procurement usually involves high value and low volume transactions.(Campos & Pradhan, 2007)

Why does public procurement attract so much attention? The answer lies in the important role it plays in both international trade and the economy. In some cases, such as in developing countries, public procurement may constitute more than 20% of the GDP (Campos & Pradhan, 2007). Defense or military procurement also comprises a large part of the GDP; for example, defense procurement accounts for more than 70% of all federal procurement in the USA (Cox, 2010).

D. CORRUPTION RISKS ACROSS THE PROCUREMENT CYCLE

Corruption risks may occur during any phase of the procurement process. In the initial stages of the procurement cycle, requirements can be manipulated and tailored so that a particular company will be the only one suitable. Moreover, some provisions that will pave the way for corrupt practices, such as offsets and special financing packages, may exist in the design phase. The bid evaluation phase can rely on poorly defined and arbitrary criteria, rather than well-defined, systematic criteria developed from procurement goals and objectives. The awarding of contracts might favor single-sourcing rather than full and open competition. Finally, the contract delivery and administrative phase may lack oversight and monitoring.

1. UN Perspective

The UN presents a general overview of corruption risks in the public procurement cycle, and categorizes them into corresponding procurement phases (United Nations Development Programme (UNDP), 2011). They are as follows:

a. Procurement Planning/Budgeting Risk

- Inadequate analysis of the supply market, organizational requirements and stakeholder needs and issues
- No planning undertaken, thus no risks assessed
- Needs falsely inflated or stated in a manner that permits low quality goods/services to pass
- Requirements prepared in a manner that favors or disfavors particular suppliers
- Poorly substantiated "justification" for "waivers"
- Budgets set artificially high to cover kick-backs

b. Procurement Selection Process

- Using inappropriate procurement methods with the aim of finding ways to subvert the decision-making processes.

- Evaluation criteria designed to favor a particular supplier and disqualify others
- Information shared to favor a particular supplier
- Restricting the tender pool of potential suppliers or creating shortlists of "weak" suppliers against a favored supplier
- Mishandling tender documents
- Accepting late bids/proposals
- Rejecting legitimate bids
- Inappropriately evaluating a supplier
- Mishandling bids received
- Documents submitted by bidders are fraudulent but not detected

c. Contract Award and Management (Performance)

- Splitting procurement actions to stay below the threshold for procurement review
- Unrealistically low bid with expectation to later amend the contract
- Unrealistically high caliber goods/experts later replaced by inferior ones
- Corrupt subcontractors
- Contract is different from bid/proposal in terms of specifications, quantities, level of effort, delivery schedule and payment terms
- Oversight and reporting requirements minimized in contract to avoid scrutiny
- Inadequate personnel for oversight
- Acceptance of cost overruns
- Manipulation and destruction of supporting documentation
- Splitting contracts/purchase orders to avoid scrutiny
- Unjustified contract extension or amendment

2. Transparency International Perspective

Transparency International provides another perspective of defense procurement corruption risks in the procurement cycle (*Transparency International Defence, 2011a)*:

a. Government Policy: Privileged defense relations; defense budgets; external financing; manufacturing government pressure on importers

b. Capability Gap Definition: Military, political & commercial influence

c. Requirement/Contract Definition: Inadequate/corrupt military/official expertise, anonymous agents; 'justified opacity', excessive use of national secrecy

d. Support Requirements Definition: Costly & complex

e. Outline Project Costing: Unreliable data

f. Tender: Single sourcing; bidder collusion; lack of transparency; offset requirements; inadequate timescales

g. Bid Assessment & Contract Award: Evaluation manipulation; favored bidders; offsets bias outcome; lack of transparency; failure to consider value for money

h. Manufacture & Delivery: Variation order; lack of official control; incorrect equipment performance and lack of remedial contract measures

i. In-Service Phase: Call-off contracts; lack of expertise; lack of long-term oversight (especially for service contracts)

Of all the procurement process steps, the tender phase emerges as the area of highest risk in the procurement cycle. This is especially true when it involves a sole-source selection process, collusion among bidders, and offset requirements that complicate oversight and monitoring efforts.

The Defense and Security Program of Transparency International identifies nine areas of risk in the procurement process: "technical requirements, single-sourcing, agents

and brokers, collusive bidders, financing package, offsets, contract award and delivery, subcontractors, and seller influence"(*Transparency International Defense, 2011b*)

For the scope of this project, technical requirements, single sourcing, and offsets will be analyzed in the next section.

Key areas area vulnerable to corruption will be discussed in detail.

3. Key Corruption Risks

a. Technical Requirements

Defining technical requirements is one the initial stages of the procurement cycle. Corruption risk at this stage arises from "the complexity and high monetary value of defense contracts, as well their direct connection to national security and thick wall of secrecy and confidentiality shielding them" (*Transparency International Defense, 2011c)*.

It is natural for states to protect their crucial and key defense matters and surround them with secrecy, but it is not appropriate to assign a blanket of secrecy to most basic commercial goods and services. It is actually indicated that "in many cases, some 70–80 per cent of contracts (by value) do not need their current confidentiality marking" (*Transparency International Defense, 2011a)*.

The close buyer-supplier relationship that exists in defense procurements makes it easy to perform corrupt practices and to obscure the acquisition process.

b. Single Sourcing

Single-source procurement contracts are defined by Pyman et al. (2009) as "contracts awarded by a government to a company without competitive process. Such contracts are also referred to as sole-source, non-competitive, or no-bid."

Lack of competition, as in a market economy, distorts and threatens the ultimate goal of obtaining the best value for money spent in a public procurement. There could be justifications for single-sourcing, such as emergency situations that bypass

bureaucratic levels of oversight and analysis that can slow the process. However, other than these rare cases, single sourcing poses an important corruption risk; a single defense related goods or services provider can establish close relations with defense procurement organizations, creating pressure through the strategic lobbying of lawmakers to pass regulations that facilitate the awarding of contracts to a favored provider.

In a competitive defense procurement processes, due to the many steps of oversight and analysis, corruption becomes much more difficult to implement. Concerns and questions can be brought to the attention of the public and media by the losing bidders (Pyman et al., 2009).

c. Offsets

Offsets in defense procurement are the agreements in which a buyer requires that suppliers invest a portion of the contract back into the investing country as a condition of the purchase of defense services and/or articles (Martin, 1996). The U.S. government defines offsets as;

> The industrial compensation practices that foreign governments or companies require U.S. firms to enter into as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act (22 U.S.C. § 2751, et seq.) and the International Traffic in Arms Regulations (22 C.F.R. §§ 120–130). In defense trade, such industrial compensation can include mandatory co-production, licensed production, subcontractor production, technology transfer, and foreign investment. (U.S Department of Commerce Bureau of Industry and Security, 2011)

Defense export sales have often included offset arrangements. The use of offsets dates back to late 1950s in Japan and Europe (GAO, 1997). Offsets can serve as industrial policy tools that compensate the purchaser's economy (and tax payers) for a large public investment not directly perceived to benefit the population to improve balance-of-payments accounts. However, the defense investments themselves are designed to enhance the country's defense capabilities (Transparency International Defence, 2011d*)*.

Offsets pose serious corruption risks, particularly to defense. "The Government Procurement Agreement (GPA) of the World Trade Organization, the North American Free Trade Agreement (NAFTA) and the European Union prohibit them, for example. However, the GPA and the EU make an exception for defense procurement, while the GPA also allows exceptions for developing countries" (Transparency International Defence, 2011d).

Due to their opaque, complex, and highly technical nature, offsets often attract little attention. However, they involve considerable sums of money with little or

no transparency and accountability. The combination of these factors contributes to increasing corruption related risks and the emergence of new opportunities for defense corruption. (Muravska et al., 2010).

E. CHAPTER SUMMARY

In conclusion, the tender phase is the step in the defense procurement process most vulnerable to corruption risks; while offsets and single sourcing pose the most important corruption risks.

In the following chapter, corruption risks of offsets and single sourcing will be explored further.

III. ANALYSIS OF INDUSTRIAL COOPERATION AGGREMENTS (OFFSETS) AND SINGLE SOURCING

A. BACKGROUND OF OFFSETS

1. Introduction and Definitions

The era preceding the end of the Cold War was dominated by arms suppliers who controlled markets and set prices. However, soon after the end of the Cold War demand for major weapon systems collapsed. Reduced demand meant countries could now pressure suppliers putting stress on the industry (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005).

The political transformation of the world transformed the defense market. There were few buyers and many sellers. To stay in business, companies needed to "make their offers virtually irresistible with promises of lucrative 'add-ons', collectively called offsets" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Companies accepted that, without offsets, they would be excluded from the majority of international sales (Martinez, 2010).

In basic terms, offsets are the requirements demanders ask of defense equipment suppliers in order to provide financial relief (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005), and reduce their huge cost burdens of acquiring major weapon systems (Jurgen Brauer, 2005, s. 2). According to these requirements, supplier companies have to reinvest a percentage of their main contract back into the importing country, in order to "offset" the expenditure (Transparency International UK).

Over time, offsets developed from add-ons into an integral part of all defense contracts (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Offsets exist today as "necessary pre-conditions for the sale and purchase of defense-related hardware and, to a lesser extent, certain high-value civilian equipment, in those countries that require it" (Martinez, 2010).

Typically, strategic buyers try to extract as much as possible from these lucrative 'add-ons,' and use them to boost their national economy by redirecting the cash outflow to their industrial base. In other words, it is "some sort of a leverage exploited by a buyer to obtain compensatory benefits by asking the seller to undertake well-designated activities to improve the economy of the buying country" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005).

The potential positive effects, or the leverage expected out of the offsets, are valuable investments that would create jobs, encourage the growth of localized defense related industries and national economies , and compensate the purchaser's economy for a large public investment not directly beneficial to the country's population (Jurgen Brauer, 2005) (Transparency International UK).

In addition to "justifying arms expenditure," offsets also emerged as instruments to contend with hostile public opinion against defense spending (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005).

2. Types of Offsets

Typically, offsets are either direct or indirect. Direct offsets investments directly related to the acquisition of the purchaser (Jurgen Brauer, 2005). Their simple form may include buy-backs, "co-productions or licensed production or sub-contracts of the system and its sub-systems" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). This arrangement incorporates the buyer into the production stage of the main weapon systems, its sub-assemblies, and the components they are contracted to purchase. Therefore, the countries that seek to develop their defense industrial base generally require direct offsets since they are "accepted to be the best form of direct offsets is technology transfer" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005).

Indirect offsets, which can be military or civilian, are not related to the subject of the acquisition (Transparency International UK). These offsets can take the form of foreign investment and countertrade (barter, counter-purchases, and buy-backs) (Jurgen

Brauer, 2005, s. 3). They can actually be regarded as pure trade arrangements where "the sellers, buy or help in finding a buyer for a specific percentage from the original importer within a specified period" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Currently, because buyer countries have realized the immense economic and social potential of offsets, there are twice as many indirect offsets than direct offsets (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Generally, countries without a required level of absorptive capacity in their national industrial defense bases try to use indirect offsets to gain other benefits from their defense imports (E. Anders Eriksson, 2007, s. 4). Indirect offsets may be completely unrelated to a company's core business, and performing activities outside of this scope may require significant use of offset service providers and consultants, which can easily expose the contract to corruption risks. (Jeffery Taylor, 2011, s. 298)

The U.S. Bureau of Industry and Security (BIS) has categorized offset transactions as follows: co-production, technology transfer, subcontracting, credit assistance, training, licensed production, investment, purchases, and other. The diagram below illustrates how each category is classified as direct and/or indirect (U.S. Department of Commerce Bureau of Industry and Security, 2010).

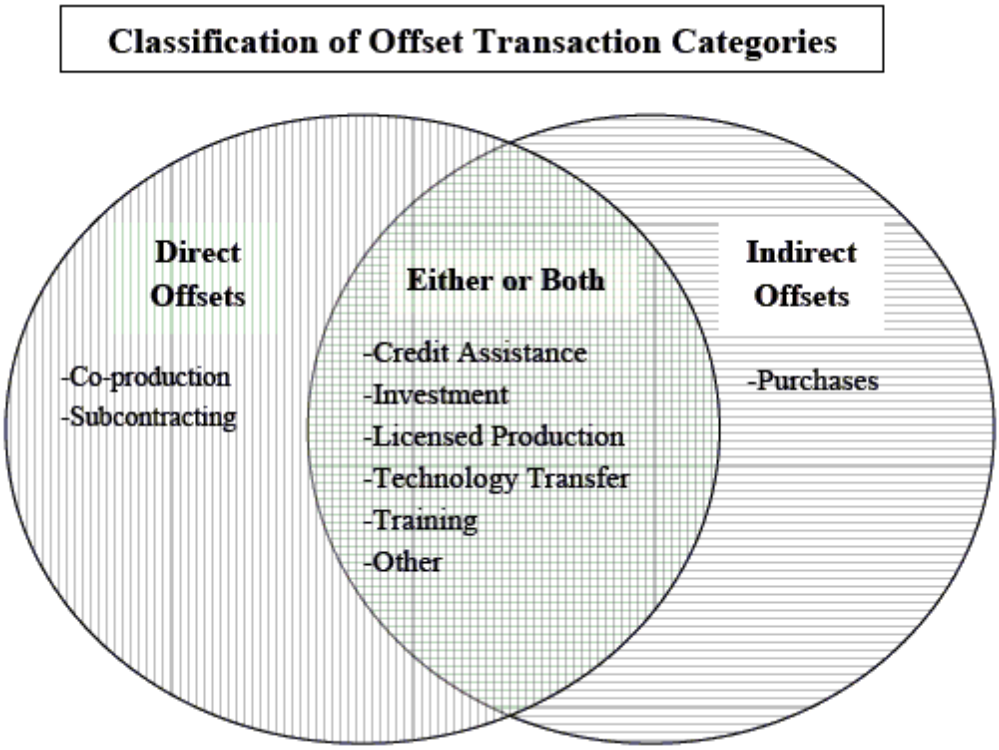

Figure 3. Classification of Offset Transaction Categories (U.S. Department of Commerce Bureau of Industry and Security, 2010)

3. Objectives of Defense Offsets

> With regard to giving and receiving offset work, each country can be allocated to one of three groups. First, there is the USA that largely exports equipment and thus does not receive, but rather provides offsets. Second, there are a small number of states like France, Germany and UK that both import and export armaments and thus who both provide and receive offsets. Finally, there are a large number of states that largely import defense equipment and who thus typically only receive offset work. (Martin, 1996)

As stated above, there are supplying and receiving parties in defense offsets that hold idiosyncratic objectives. In broad terms, countries importing weapon systems require offsets for a variety of reasons that include easing economic burdens, increasing or preserving domestic employment, obtaining desired technology, and promoting targeted industrial sectors (Impact of Offsets in Defense Trade: An Annual Report to

Congress, 2010). Obviously, all of these objectives should be consonant with national economic objectives. They should be broad-based and fulfill an economic need (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005).

More specifically, every country identifies one or more of the objectives stated above, and tailors these offsets to satisfy those nation-specific goal (Suman M. G., Defence Offsets: proving detrimental to the services, 2010). However, it should not be forgotten that "arms importing countries' offset objectives evolve over time and their strategies change as their objectives evolve" (Jurgen Brauer, 2005). In the absence of well evolved objectives, offsets may become less focused and be highly wasteful (Suman M. G., Defence Offsets: proving detrimental to the services, 2010).

Developing countries like Singapore and Taiwan have specifically targeted arms niches in which they want to be prime manufacturers, whereas countries like Brazil, India and Indonesia, with regional power status, have attempted to create the domestic capability to produce a comprehensive range of weapon systems. In addition, states like South Korea seek the ability to produce a wide spectrum of systems in order to broadly participate in industrial markets, where states like Poland view arms offsets as an opportunity to revitalize their collapsed, indigenous arms industry. South Africa aims to simply obtain the arms and keep the money at home as well (Jurgen Brauer, 2005, p. 6). Offset demands are structured to fulfill these objectives and implement national strategies.

From the perspective of the USA as the largest offset supplier, offsets have served "important foreign policy and national security objectives of the United States, such as increasing the industrial capabilities of allied countries, standardizing military equipment, and modernizing allied forces" (Impact of Offsets in Defense Trade: An Annual Report to Congress, 2010). The primary motivation for weapons transfers through the 1950s was to help allied countries counter any possible Soviet thrust into Western Europe. In the 1960s, the offset agreement with West Germany was designed to minimize the impact of a balance-of-payments deficit (Maskus, 1996, s. 358). Additional U.S. objectives can be

listed as “increasing interoperability of weapons systems among its allies and, expanding the range of military suppliers available” (Maskus, 1996, s. 373).

However, the approach of the U.S. has changed because of their “economically inefficient and market distorting effects” (U.S Department of Commerce Bureau of Industry and Security). The USA considers offsets as:

> …a burden on its economy and a necessary evil, which cannot be wished away. In 1999, the Congress had opined that unilateral efforts by the U.S. to prohibit offsets may be impractical in the current era of globalization and would severely hinder the competitiveness of the U.S. defense industry in the global market. It accepts that offsets are a part of the current defense trade environment. (Suman, 2005)

4. Progressive Effects and Economic Values of Offsets

The use of offsets is now commonplace. Today, virtually all countries who import defense equipment require some type of offset. There are approximately 130 countries using offset agreements (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Between 1993 and 2009, the average value of 736 offset agreements signed by 49 U.S. firms with 46 different countries amounted to 70.14% of the value of the contracts. The total value was $75.90 billion (U.S. Department of Commerce Bureau of Industry and Security, 2010). A European Defense Industry and Market report estimated that, among European Union Members, the value of offsets was around $5,880 M, and the average offset percentage was 135% (E. Anders Eriksson, 2007). These numbers imply the total value of the offset programs provided by the arms sellers to the European defense equipment buyers.

Indigenous development and production of defense equipment will, theoretically, “provide an independent capability for the required equipment, as well as the most benefit for the domestic economy in terms of jobs and technology acquisition” (Martin, 1996, s. 1). States that are unable to possess this ability have sought “offset” agreements in order to achieve this goal. Yet, even if offsets are thought to hold “important potential for developing and emerging economies, until recently there has been little research on

how well offsets work in practice" (Jurgen Brauer, 2005). The economic and developmental contributions of offsets to countries importing arms have questionable efficiency and effectiveness.

Normally, it is expected that offsets reduce the costs of procuring arms for the importing country by stimulating job creation, creating a foundation for defense industrial bases, and transferring general and specific technology, "since technology is seen as the key to future economic prosperity" (Jurgen Brauer, 2005, p. 7). Furthermore, it is assumed there will not be more costs than from off-the-shelf arms purchases (Jurgen Brauer, 2005, p. 8). However, no country is eager to transfer their latest technology as an offset to an importing country without commercial gains (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). "As Dumas points out, the foremost objective of the arms seller is to make a sale and profit, not to contribute economic development" (Haines, 2004, p. 312). "Even if the technology is deemed free as an offset, the seller invariably tries to charge an inflated price for jigs, fixtures, test beds, training and technical documentation" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005).

From a contractor's perspective, contractual offset requirements impose added risks and penalties for non-performance. Because, they include the potential cost of offset program failure in their weapon sale programs (Martinez, 2010). Markusen states that the administrative cost of offsets for seller companies runs from 7% to 10% of a contract's value (Baskaran, 2004). Because of these additional costs, companies usually attach premiums that include expenses not present in the absence of offsets (Jurgen Brauer, 2005, s. 4). Briefly, offset contracts were more expensive than off-the-shelf arms purchases (Jurgen Brauer, 2005, s. 1).

In addition to cost inflations, economists approach arguments of job creation suspiciously (Julia Muravska, 2010). For example, Saudi Arabia's $3.8 billion defense offset for the 1985 U.S. Peace Shield program was expected to create approximately 75,000 jobs, but employed only 3,540 members staff (as of 2009) (Pfeifer S. , 2010). Another example is South Africa, which approved a R29.9 billion arms contract, and

expected the attached offsets, worth of R106 billion, to create 65,000 jobs over a 7 year period (Lamb, 2004, p. 284). However, Dunne and Lamb criticized this promise: "a cost of R1.6 million per job is extremely high, nearly 20 times the average cost per job in South Africa's defense industry" (p 288).

Regarding offsets associated with the transfer of technology, it is crucial to highlight that an importing country should have a "high degree of local technological absorptive capacity" to accomplish the expected improvements in the industrial base (Matthews, 1996).

> The technology sought should be such that the recipient can exploit it fully by developing its other applications as well. That will provide the necessary economies of scale. The buyer nation should also match the technology sought with its own capability for absorption. The greatest drawback of technology transfer as an offset is that it is very difficult to measure its real impact and effectiveness. (Suman, 2005)

Successful offset projects should establish long-term industrial partnerships that continue to benefit countries even after the contractual obligation has been fulfilled and, the "transferred technology must make the local defense industry self-sustaining" (Martinez, 2010, s. 3) (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). However, this is not guaranteed (Martinez, 2010). Offsets operate on a contract-by-contract basis, and sub-contracting benefits wane once the foreign supplier has completed its offset obligations; this is because compensation contracts do not compel the principal contractor to maintain industrial ties with subcontractors (Struys, 1996). For example, India's defense industry was able to obtain certain technologies, but "failed to acquire capabilities sufficient to close the technology gap with developed countries and keep pace with technological change in weapon systems" (Baskaran, 2004, s. 219).

In summary, offset programs are widespread, and theoretically offer important benefits to an acquiring country. Yet, proper selection, detailed planning, close supervision, and regular monitoring are keys to their success and value (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Otherwise,

offset programs can be wasteful and uneconomical. For this reason, a careful program selection method should be devised in order to evaluate their "viability, estimated credit value, monitoring ease, and demonstrability of accruing benefits." (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005As Brauer (2004) mentions, each country should organize an audit team for arms trade offsets that would be responsible for measuring the full economic costs of defense acquisition deals (Lamb, 2004).

B. CORRUPTION RISKS INVOLVED IN OFFSET AGREEMENTS

1. Vulnerability of Offsets to Corruption

Offsets attract consistent criticism for their inefficiency and market distortion, but they are growing rapidly without any serious attempt to ascertain their value and ability to deliver their promised benefits (Julia Muravska, 2010). Despite criticisms, however, offsets are not inherently condemned to failure, and do not necessarily entail grand corruption. In fact, if constructed and analyzed properly, they are able to yield benefits to importing countries (Julia Muravska, 2010, p 2). However, not all information pertaining to offsets is duly published. "Sellers are generally reluctant to reveal the quantity of offsets they had to offer to clinch a deal. They term it as commercially sensitive information" (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Additionally, companies seldom disclose their offset obligations, or the premium they charge importing governments for delivering their offset requirements. This lack of transparency throughout the process is responsible for the significant corruption risks often accompanying offsets (Julia Muravska, 2010).

Moreover, offset deals are conducted in a highly opaque atmosphere "with decisions made away from legitimate scrutiny, and contracts awarded on a discretionary basis. This shield from attention yields higher corruption risk in offset arrangements" (Ben Magahy F. V., 2010). Because of this complexity and opacity, offset deals receive little attention (Transparency International - UK). Normally, when processes are not fully

scrutinized, and "unobservable, the potential private benefits of corruption are high, malfeasance is likely" (Ben Magahy F. V., 2010).

There are additional factors that make offset agreements vulnerable to corruption (Julia Muravska, 2010). "Elements crucially missing in these offset characteristics are offset contract monitoring, auditing, and feedback to the importing country's defense contract-issuing organization" and lack of accountability, highly technical structure, and the large monetary volumes of contracts. (Julia Muravska, 2010) Moreover, offsets often entail no repercussions for failure to deliver the projects (Jurgen Brauer, 2005, s. 7) (Julia Muravska, 2010).

As mentioned previously, governments use defense offsets as industrial policy tools to influence their country's economic development. However, this intervention may also generate vested interests (Ben Magahy F. V., 2010, p 15). Transparency International's most recent report notes that the functional authority of officials in offset arrangements can create incentives for companies to manipulate officials in their favor, rather than going through competitive activities. In this setting, inefficient suppliers can be undeservingly awarded contracts in exchange for bribes to officials. As a result, offsets serve as potent vehicles for bribery rather than their original purpose (Ben Magahy F. V., 2010).

Another sensitive area of offset arrangements is the increased amount of agency involvement from figures such as political office holders, procurement officials, exporting country officials, brokers, consultants to third party officers, and potential beneficiary companies. The presence of so many players in a transaction makes the process more prone to corruption because it is difficult to properly follow such a large number of negotiations, and therefore it is also difficult to identify irregularities (Ben Magahy F. V., 2010). Additionally, the wide variety of offsets offered makes it costly and difficult to monitor transactions.

An additional vulnerability of offset arrangements is their valuation, which is "not done in monetary value but through offset credits" (Julia Muravska, 2010). Offsets are commonly assigned a 'multiplier value,' which is applied to the actual value of an offset

transaction to calculate the credit value earned. It is a method of assigning weight to different offset programs. Buyers use multipliers to provide sellers with incentives to offer offsets in the areas of their choice (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). In most cases, however, the multipliers used to calculate offset credits are determined confidentially during the negotiation stage, which renders them subjective and arbitrary (Julia Muravska, 2010). During the determination phase of multiplier values, it is highly possible that biased public officials make implicit recommendations to channel offset agreements to favor specific companies.

According to legal frameworks, offsets are illegal in the majority of trade agreements and industries. "The Government Procurement Agreement (GPA) of the World Trade Organization, the North American Free Trade Agreement (NAFTA) and the European Union prohibit them. However, the GPA and the EU make an exception for defense procurement, while the GPA also allows exceptions for developing countries" (Transparency International - UK). Offsets, linked to billion Euro defense contracts, are also extensively criticized in Europe and the United States (Graeme, 2011).

When joining the GPA, developing countries can negotiate offsets during the qualification phase of tenders; however, offsets may not be used as award criteria, and procurement processes including offsets may be excluded from the scope of the GPA if other governments find it necessary to protect their own national security interests (Ben Magahy F. V., 2010). General procurement rules in the EU also prohibit offsets, but Article 296 makes an exception: "necessity for the protection of the essential national security interests which are connected with arms production" allows states to consider offsets mechanisms while procuring military equipment (Ben Magahy F. V., 2010). Under the current legal frameworks and regulations concerning offsets, governments always have enough leeway to justify their reasoning (Ben Magahy F. V., 2010).

2. Related Corruption Types and Structural Loopholes

The Transparency International's report on offsets (2010) identifies two categories of offset corruptions. Under the first category, "corruption is restricted to the

scope of offsets and entails the parties involved in the definition, negotiation, management and monitoring of offset programs obtaining undue benefits from the offsets themselves" (Ben Magahy F. V., 2010). Relevant examples include an "obligor bribing public officials to release offset credits, without actual contract fulfillment, or the obligor buying invoices from local companies, that is, from projects unrelated to contractual offsets, and presenting them as such" (Julia Muravska, 2010).

The second category is distinguished by the use of offsets to complete a corruption cycle within an acquisition. As mentioned before, offsets are usually less scrutinized than major contracts. This lack of auditing allows funds to be easily transferred to corrupt hands via offsets. For example, offset projects with excess profit margins may allow the beneficiary company to use a pre-negotiated part of this margin to bribe officials able to fix the lucrative contract (Julia Muravska, 2010, p. 4). The need for a specific capability can be inappropriately influenced (Ben Magahy D. S., 2009) by corrupted public officials, and the offset projects can be set to favor the companies directly or indirectly related to those officials (Ben Magahy F. V., 2010). For example, in the Czech Republic, purchases of Gripen fighters raised questions about the included offset package; investigations concerning the structure of the tendering process revealed that senior Czech officials had been paid to intentionally form a contract biased towards the selection of Gripen fighters (Ben Magahy F. V., 2010, s. 30).

As these examples show, there is a considerable amount of opportunities for corruption to penetrate these notoriously opaque arrangements (Ben Magahy F. V., 2010, s. 18). In addition to the characteristics of offsets, the structural vulnerabilities of these arrangements can be discerned by focusing on the actors involved. In his study, Suman arranges the offset process into five stages: Policy Stage, Planning Stage, Negotiation Stage, Implementation and Monitoring Stage, and Feedback and Review Stage (Suman M. G., Offsets In International Arms Trade Need For A National Policy, 2005). Similarly, TI's Defense Offsets Report also describes five main stages of offset programs: Decision of government, Tendering Process, Assessment of Bids, Design of the Offset Package, and Award of Contracts (Ben Magahy F. V., 2010).

In each stage, structural loopholes generate opportunities for a variety of members involved in the arrangement to corruptly influence the process. These actors and key vulnerabilities are summarized by TI under three main headlines detailed below (Ben Magahy F. V., 2010).

a. Political Corruption

Political corruption results from the discretion granted to political officials in the public procurement process—specifically in the area of offset packages. Corrupt activities occur "when politicians or functionaries use their privileged access to resources (in whatever form) illegitimately to benefit themselves or others" (Heywood, 2002). Political actors may create the need for unnecessary offset packages, then award them to a bargaining contractor and pocket the offset funds (Julia Muravska, 2010). Internationally, offsets can be used by government officials of exporting countries, who offer offsets as benefits to political figures in the importing country (Ben Magahy F. V., 2010).

b. Bureaucratic Corruption

Similar to political corruption, bureaucratic corruption can also take place in any stage of offset arrangements. The procurement personnel of the defense ministries or the related procurement agencies most likely have discretion in shaping offset arrangements (Ben Magahy F. V., 2010). For example, a main supplier company may use offsets to bribe officials rather than paying those bribes monetarily, which would expose them to further scrutiny (Julia Muravska, 2010). This relatively sheltered method is risk-free for both procurement officials and company agents. The discretionary power of state officials creates a gap of transparency, and makes the procurement personnel key instruments for carrying out corrupt activities.

c. Private Sector Corruption

For corrupt activities to occur, at least two parties need to be involved: solicitor and supplier. The private sector remains on the supply side of the corruption

(Ben Magahy F. V., 2010). In most of the previously mentioned examples, companies make payments or establish grounds for state officials to obtain personal gains. In some cases, this is done by companies' own initiatives to safeguard a contract, or solicited by the state officials as a prerequisite for the contract award (Julia Muravska, 2010). In other cases, the bidder companies make payments to contractor companies in order to access offset packages, which is called "private-to-private corruption" (Ben Magahy F. V., 2010). It is arguable that there are fewer incentives for this behavior in a competitive market that penalizes inefficiency (Argandona, 2003). However, larger companies may actually shift the burden of bribing state officials to smaller companies.

C. SINGLE-SOURCING IN DEFENSE PROCUREMENT AND ASSOCIATED RISKS

1. Introduction and Definitions

Single source contracts, also called sole-source contracts, are awarded to a company without going through competitive awarding phases (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006). The appearance of single-sourcing in defense contracts can be traced back to WWII, but by the end of the cold war there was a significant decline in the demand for defense equipment. This compelled "arms-producing companies be consolidated or turned into civilian facilities in order to remain economically viable" (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006). After creating "national champions" through mergers, it was critical for governments to secure their existence through single-source contracts. However, a 2010 report in the U.S. stated;

> ..because of the ever-shrinking pool of defense contractors (which ironically is partly the result of the peace dividend Washington urged contractors to take part in at the end of the Cold War), the government often has 'little choice other than to rely on the contractors that were the original equipment manufacturers. (GAO, 2010)

Agencies use a series of competitive exceptions for contracts. The two most common are the presence of "only one responsible source," and statute mandates to sole-

source awards, such as in the U.S. Small Business Administration's business development program. (US Department of Health and Human Services, 2011) "In other cases, program offices may press for contracts to be awarded to a specific contractor without competition, due to their previous relationship and the contractors understanding of program requirements" (United States Government Accountability Office, 2010). There are also other reasons presented for single-source procurement in the defense industry: the desire to award maintenance of a product to the original producer, "the need for 'freedom of action' which is the ability to conduct operations independent from other states or entities" (Currie, 2011), the existence of rights in data, patent rights, copyrights, or trade secrets which makes service available from only one source, and standardization requirements for replacement items which are available from only one source.

Governments use of single-source contracting can be rational, and in favor of the State in several contexts. For example, agency operations can be delayed by soliciting and evaluating offers from suppliers. Additionally, because of the related costs of soliciting and evaluating offers, government's costs in competing contracts can be more than the savings it realizes from the competitive contracting. (Manuel, 2011) But even in these circumstances sole-source contracts hold much higher corruption risks than competitive contracts. (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006) Competitive contracts are important to save the taxpayer money, improve contractor performance, prevent corruption, and promote accountability for results. However, since sole source contracts lack the benefits of competition in quality and cost, they undermine transparency in source selection, and hence can encourage corrupt acts in defense procurement. (Knut Leipold, 2009) Without the guidance and oversight of the competitive process defense procurements would be more prone to corruption (Manuel, 2011).

In a 2009 report to Congress, the U.S. Department of Defense presented their perspective on the existence of competition in the defense industrial base. The report

expressed the ultimate desire for an industrial base that was reliable and cost-effective, with an ability to meet strategic objectives. The report described a "cost-effective" industrial base as a;

> ..competitive industrial base with at least two viable innovative suppliers with strong design teams in mature market areas and a greater number in market areas where demand is high and innovation is critical to meet future operational objectives (Department of Defense, 2009).

However, the 2008 FY Report of the U.S. Department of Defense on Foreign Sources of Supply depicts that in the fiscal year 2007, 68.04% of all contracts for defense items and components were awarded by non-competitive contract value, and 40.11% by contract number (United States Department of Defense, 2008). This ratio provides evidence for Transparency International's argument that "countries that claim to employ single-source rarely, often have high percentages of non-competitive defense procurements" (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006).

2. Legal Frameworks in United States and Europe

In the U.S., the Competition in Contracting ACT (CICA) of 1984 mandated that the government must use full and open competition in procurement activities, and allow all responsible companies to vie for government contracts. This regulation restricts procurement officials from awarding contracts to companies solely based on their past business relations, previous high quality products, and punctual delivery (Stanberry, 2009).

However, the act specifies seven exceptions that allow for sole-source contracts. The exceptions are:

- When only one responsible source and no other supplies or services will satisfy agency requirements.
- The existence of unusual and compelling urgency.
- The need to maintain vital facilities or suppliers in business in the event of national emergency.

- When disclosure of the government's needs would threaten national security.
- When "full and open competition" contradicts the public's best interest.
- When authorization or requirement by a statute
- In the case of an International agreement or treaty between the United States and a foreign government or international organization

These "exceptions" cover common situations in which competition is not possible, or when the government values other objectives (e.g., maintaining the industrial base) more than full and open competition (Manuel, 2011). CICA also requires contracting officers to provide justifications for all noncompetitive procurements (Stanberry, 2009).

This act specified that contracts should be awarded on the basis of best value, stating that in many cases, quality may predominate cost factors in selections. John T. Welch Jr., the Assistant Secretary of Acquisition for the Air Force, explained in 1988 that the purpose behind the CICA "was not to establish competition for competition's sake, but to foster it as part of an overall effort to achieve the best value for our taxpayer's dollars" (Klaes W. Wandland, 1993).

"The EU Defense Procurement Directive governs the procurement procedures for defense and non-military security supply, services and works contracts. This law is applicable in all EU Member States" as of 2011 (Maelcamp, 2011). The aim of this directive is:

> ..to harmonize acquisition procedures throughout the EU: first by increasing competition and encouraging cross-border bidding among European bidders, so as to prevent systematic sole-source procurement or non-competitive procurement from national suppliers; second, by increasing transparency through the obligation to advertise defense contracts in the EU Official Journal. (Maelcamp, 2011)

According to Article 346 of the Treaty (formerly Article 296), the EU's procurement rules previously allowed deviations from normal competitive requirements; this meant that defense procurement contracts could be excused from European open

market rules (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006) when a good or service required secrecy, necessitated special security measures, or concerned a state's essential security interests (DCAF, 2006). According to EDA press release of 2005, "more than 50% of defense procurement by EU governments was done outside the framework of the EC rules on public procurement because of that exemption" (Heuninckx, 2008). However, in the updated Defense Procurement Directive, the European Commission strongly criticizes Member States for abusing the national security exemption. The directive mandates more transparent and competitive defense procurements (Maelcamp, 2011).

According to the new directive, member countries are obliged to advertise contracts, have a minimum of three competing bidders, and award contracts based on the absolute best value (Maelcamp, 2011). The exceptions to this contract are

- Very sensitive contracts like intelligence services, counter-intelligence activities, and border protection.
- Cooperative programs under NATO, OCCAR, or the European Defense Agency (EDA).
- International agreements or arrangements between Member States and third countries.
- Cooperative programs between MODs based on R&D, but only to the extent that the aim is to develop "new" equipment.

3. Facts and Figures

Even though quantitative data regarding single-source procurements is difficult to obtain, and often cited as "sensitive" by defense ministries, current data allows us to deduce the inclination of governments for single-source procurement. Transparency International's 2006 report provides a comprehensive and concentrated study on the issue (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006). However, as previously mentioned, the

difficulties in acquiring quantitative data limit the report's scope to a small number of countries, namely Ireland, Portugal, UK, Hungary, Germany, Poland, Japan, and the Czech Republic.

In 2005, the EU's average for single-source procurement activities was around 50% by contract value. By contract number, the range is between 20% and 65%, and by contract value 3% to 84% (Regina Wilson, 2006). The UK has different statistics. According to TI's report, the percentage of single-source procurements in the UK is around 30% by value (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006); however, a recent independent report presents the average to be around 40% by value, with a cash value of £8.7bn per year between 2005–2010 (Currie, 2011). According to the same report, "single source contracts in the UK are estimated to account for approximately 70% of cost overruns, significantly greater than their 40% share of procurement value."

Poland, Japan and the Czech Republic have relatively high averages of 65%, 80% and 85% respectively. With 3% and 22%, Ireland and Portugal have the lowest non-competitive procurement averages (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006); these two countries have relatively small domestic defense industries and economies. It can be deduced that smaller defense budgets may follow more rigorous procurement procedures, and there is no pressure from domestic defense industries to follow inward oriented procurement policies (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006).

Similar to the UK, the U.S. also publishes its data about non-competitive contracts (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006). According to the Federal Procurement Data System (FPDS), only 35% of the DoD contracts were awarded non-competitively in 2010; the average was approximately 32% between 2005–2010 (Jesse Ellman, 2011, s. 24). FPDS data shows "the dollar amount of "non-competed" contracts has nearly tripled since 2001, rocketing from 50 billion in 2001 to more than $140 billion in 2010.

However, there is a quite a bit difference between these numbers and the numbers in the FY08 Report of U.S. Department of Defense on Foreign Sources of Supply. This report discloses that in 2007, 68.04% of all contracts for defense items and components awarded non-competitive by value, and 40.11% by number (United States Department of Defense, 2008). This significant difference can be accounted for by the exclusion of certain contracts in the FPDS data, such as large umbrella contracts, and indefinite delivery/indefinite quantity contracts (Weinberger, 2011).

In recent years, U.S. defense non-competitive contracts are a higher percentage by number than by value (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006).

4. Inherent Corruption Risks

The defense sector is a highly vulnerable sector. Under the veils of secrecy and national interests (Transparency International, 2006), this sector funds a relatively low number of contracts with large budgets (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006). In this environment, single-source procurement can easily further allow corruption to permeate the process, which is already prone to corruption (Regina Wilson, The Extent of Single Sourcing and Attendant Corruption Risk in Defense Procurement: A first Look, 2006).

Single-source procurements kill competition; the potential for acquiring higher quality goods and services for lower costs is wasted. In addition to the lost opportunity to gain valuable contracts, the lack of competition can provide the freedom to become entangled with corrupt hands (Manuel, 2011). The lack of a competitive process excludes layers of control and supervision from experts, and parliamentary oversight to evaluate bids and readily reveal corrupt acts (DCAF, 2006).

In a defense procurement environment that commonly uses single-source contracting, responsible officers hold great discretionary power in awarding lucrative contracts to companies. Contracting officials can exploit this discretionary power to favor their personal interests. Corrupt personnel may write tender documents to favor only one

company (Transparency International, 2004, s. 9); they may also set "unrealistically short bidding periods that limits participation and possibly lead to failure of tender, collusion, and nepotism" (ABD/EOCD Anti-Corruption Initiative for Asia and Pacific, 2006).

Corrupt environments are also commonly created through the deliberate failure of open tendering. Corrupt procurement personnel can easily cause the failure of procurement outcomes by setting inadequate bidding conditions, or unrealistic/contradictory requirements, specifications.

Another method limiting competition, is to insufficiently publicize bid opening. Contracts then receive an insufficient number of responsive bids, so that corrupt officers can justify direct or single-source contracting methods (ABD/EOCD Anti-Corruption Initiative for Asia and Pacific, 2006). This increases the opportunity for collusion, favoritism and nepotism; because such a small number of competitors have an interest in the proceedings, the procurement receives less scrutiny (ABD/EOCD Anti-Corruption Initiative for Asia and Pacific, 2006).

It is also possible that bidders collude with each other to choose a "winner," who later compensates the other companies; bidding then appears to be sufficiently competitive, but in reality is the exact opposite (Transparency International, 2004). This type of situation can be devised by the companies themselves, or orchestrated by corrupt contracting officials.

In the United States, contracts that are awarded using competitive procedures but where only one offer is received are a specific area of concern. In these cases contracts are recorded as competitive contracts when they actually were non-competitive (United States Government Accountability Office, 2010). This is important because the federal acquisition regulation (FAR) does not require cost and pricing data from the contractor if competition exists. If non-competitive awards are incorrectly labeled as competitive, then there is a good chance for corruption because, contractors have the opportunity to submit inflated prices (Klaes W. Wandland, 1993).

D. CHAPTER SUMMARY

This chapter discusses the significant corruption risks related to offset arrangements and single-source contracting methods, which are widely-used in defense acquisitions programs. The following chapter focuses on the vulnerabilities of these arrangements by analyzing specific cases from different acquisition programs.

IV. OVERVIEW OF EXISTING TRANSPARENCY AND ANTI-CORRUPTION PRACTICES IN DEFENCE ENVIRONMENT

A. OVERVIEW OF EXISTING TOOLS

1. Introduction

Appreciating the nature and extent of corruption is crucial to formulating, implementing, and assessing strategies to combat corruption (McCusker, 2006). There are state-level and transnational approaches to combating corruption. This chapter provides an overview of current tools, and strategies to combat corruption. Chapter questions that we attempt to answer include:

- What are the relevant strategies, mechanisms, tools and international efforts utilized in defense environments (both by governments and defense business companies) to fight against corruption?

  Within this framing question the chapter will address the following sub- question:

- What are the specific strategies of the worlds' biggest defense establishments, NATO, and the USA?

These two questions will establish to the basis for a discussion about the effectiveness of current tools used to fight against corruption in the defense industry.

Measuring and preventing corruption is not an obvious process. Corruption is a complex, ambiguous phenomenon. It occurs in secret and takes a variety of forms, ranging from petty abuses to major political scandals (Reiling, 2009, p. 7). Furthermore, the patterns of corruption vary over time and from society to society. In order to understand the immense diversity of corruption's origins, forms and effects on countries, the roles of the internal and external stakeholders should be examined (Doig, Riley, 2007, pg.1).

There are different types of corruption in defense. Measures to address the risks of corruption will be effective only where there is an understanding of which particular aspect of the problem is being addressed (NATO Integrity Self-Assessment Tool, Pg.4).

Countering corruption, particularly in defense and security establishments, is a multi-faceted process with many steps, layers, and potential pitfalls (Transparency International). The tools and methods utilized should be tailored to track these variables and propose applicable solutions within the changing social environment of corruption (Doig, Riley, 2007, pg.1). However, there is no single rule or model applicable to control, accountability and transparency in the defense procurement process. Every country develops its own unique approach and manner to manage and control defense procurement (Tagarev, Transparency in Defence Policy, Military Budgeting and Procurement, 2002, pp. 49–50).

Attempting to implement a one-size fits all strategy to fight corruption is unlikely to be successful. There are no clearly delineated solutions to corruption, but there are a number of ways to mitigate the effects of corruption. (McCusker, 2006)

In addition to the efforts of government and non-governmental organizations, many defense companies now "(address) the issue more directly than they did during the days of Cold War. The changing legal environment, including the anti-bribery convention of the OECD, has generated the conditions for this shift. The defense industry and governments have been increasingly interested in implementing anti-corruption policies in both national and international defense environments. (Rousseau, 2010) Exporting governments, importing governments, and defense companies are introducing mechanisms, such as Integrity Pacts, for greater transparency and accountability in defense procurement. Some of these tools include civilian oversight of defense procurement (Fernandez, 2011). Additionally, states belonging to the United Nations are currently negotiating a treaty to regulate the arms trade by 2012. Anti-corruption provisions will be an important part of the treaty.

2. Mechanisms, Tools, and International Efforts

At its June 2008 meeting in Vienna, The UN Global Compact group agreed to develop an online Anti-Corruption Tools Inventory. The inventory consists of basic frameworks that companies and governments may use to protect themselves from

corruption. Transparency International's Defense and Security Program (TI DSP) has also developed tools to navigate and counter the corruption process and collaborate with interested parties. Most of the measures recommended in these tools fulfill four main complementary functions of repression, detection, prevention in a repression perspective and prevention in an incentives perspective. Certain instruments also address the private sector and assist companies in undertaking measures to prevent corruption in their internal organizations (Organization for Economic Cooperation and Development, 2003).

The relationship between the governments and the private business sector is very close at the level of defense acquisitions; therefore it would be beneficial to examine the tools and practices available for both the private sector and governments simultaneously.

The tools can be categorized under the titles as below:

a. Anti-Corruption Conventions

The conventions are "written international agreements between groups of countries that recognize corruption as a worldwide and cross-border problem, and express a shared political commitment to addressing the problem" (Business Anti-Corruption Portal, 2011). These international treaties are "designed to fill gaps in existing anti-corruption laws." (Heinemann, 2006, s. 79) These conventions are increasingly important in today's global environment; states and private actors are increasingly interconnected through travel, new forms of communication, trade and investing. They are binding instruments—once signed and ratified, they become compulsory to uphold, and they provide a framework for addressing cross-border issues. The most significant of these conventions are as follows (Business Anti-Corruption Portal, 2011).

(1) OECD Anti-Bribery Convention. The OECD Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) is the most focused of the major anti-corruption conventions. Its aim is "to address the supply side of bribery by covering a group of countries accounting for the majority of global exports and foreign investment" (Transparency International). The Convention deals with "active corruption" or "active bribery," which is the act of offering

a bribe, as opposed to "passive bribery," which is the act of receiving bribes. Additionally, this convention seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials (Organisation for Economic Co-operation and Development, 2011, p. 14). The Preamble of the Convention emphasizes the bribery phenomenon and its undermining effects on governments and economic development, while also highlighting the shared responsibility of countries to combat bribery in the international business arena (Organisation for Economic Co-operation and Development, 2011).

The Convention requires ratifying members to establish a criminal offence article under its law. This would prevent foreign public officials from being bribed to obtain or retain business or other unlawful, improper benefits in the conduct of international business (Organisation for Economic Co-operation and Development, 2011). The scope of the convention can be regarded as narrow, but it is significantly important because the 36 signatory countries own most of the multi-national corporations. (Heinemann, 2006, s. 80)

The 3rd article of the Convention, which defines the "Sanctions," stresses the importance of effectively, proportionately, and persuasively punishing bribery of a foreign public official. Guilty parties should be extradited and deprived of liberty. If individuals are not considered criminally responsible under a party's legal system, effective non-criminal sanctions must be ensured. In addition, the proceeds of the bribery should be seized, and each party should consider additional civil or administrative sanctions upon the responsible individuals.

The Convention also agreed that the investigation and prosecution of a foreign public official's bribery should not be influenced by national economic interests, the investigation's effect on international relationships, or the identity of the individuals involved.

The 8th article of the Convention requires each ratified member to focus on the standards of accounting and auditing records. The aim of this article is to sustain full disclosure of financial statements in order to prevent off-the-books accounts.

(2) UN Convention against Corruption. The UNCAC and the Anti-Bribery Convention are mutually supportive. However, among various international conventions, the UN Convention against Corruption "is by far the broadest of any of the international anticorruption conventions to date" (Yukins, 2006). This document has the potential to serve as a truly global framework since 140 signatories are a mixture of developed and developing countries. Additionally, it covers a broader scope of issues related with both domestic and foreign corruption, and offers a wide range of preventive measures as establishment of anti-corruption agencies and legal assistance between states. (Heinemann, 2006, s. 81) "It covers a wide range of offences, including domestic and foreign bribery, embezzlement, trading influence, as well as the concealment and laundering of the proceeds of corruption" (Business Anti-Corruption Portal, 2011). The Convention contains provisions for detecting and sanctioning corruption; it also requires signatory states to implement measures and criminalize corruption in their public sectors (Business Anti-Corruption Portal, 2011).

Articles 5 through 15 of the Convention commit each signatory state to the development and maintenance of effective, coordinated anti-corruption policies.

> Following Article 6 requires enacting states to establish 'anti-corruption bodies' to implement and tout anti-corruption policies. Article 7 requires civil servants to be paid adequately and promoted on merit, and state parties are to 'maintain and strengthen systems and prevent conflicts of interest.(Yukins, 2006).

Articles 8 through10 asks parties to establish codes of conduct for their public officials, set procurement standards, and provide greater transparency in public administration. Articles 12 and 13 deal with reducing corruption in the private sector, and call for the enhancement of public participation in the anti-corruption efforts (Yukins, 2006, p. 189).

Following articles 15 through 42 addresses criminalization and law enforcement efforts, articles 43 through 50 includes detailed requirements for international cooperation in investigating and prosecuting corruption. Articles 51 through

59 deals with asset recovery calling for international cooperation in identifying and seizing assets tainted by corruption, articles 60 through 62 includes international training and information exchange efforts. (Yukins, 2006, pp. 190–191)

One main weakness of the UNCAC was the lack of an effective review mechanism to evaluate signatory members' degree of implementation of the Convention. In 2009, however, the Conference of the State Parties to the UNCAC agreed on such a mechanism, although only on a voluntary basis (Global Advice Network). Additionally, the Convention does not adequately address a recurring danger in public procurement: the "revolving door." As government officials move into the private sector, and their private counterparts enter government, there is a pronounced risk that procurement decisions inside the government will be corrupted by past relationships—or by future job opportunities (Yukins, 2006, pp. 198–199).

(3) Inter- American Convention against Corruption. The Inter-American Convention against Corruption (IACAC) of the Organization of American States (OAS) is the first international judicial instrument dedicated to fighting corruption. The Convention obliges State Parties to implement measures related to their judicial systems and public policies. These measures aim to promote the development mechanisms to prevent, detect, prosecute, and eradicate corruption as well as to promote, facilitate, and regulate cooperation between State Parties on these matters (Transparency International).

The Convention Action Plan predominantly suggests establishing general transparency of public administrations, and developing priorities for achieving such transparency (Sutton, 1996, s. 1455). In order to take full advantage of this transparency, this convention urges the protection of whistle-blowers, the creation of official oversight bodies, most importantly, the oversight by a civil organizations. (Sutton, 1996, s. 1459–1460). The Convention attacks individual acts of corruption, and systems that permit such acts to flourish. In response, the convention promotes cooperation between states in order to curb corruption by through state-level and transnational approaches (Sutton, 1996, s. 1457).

On a smaller level, the convention focuses on measures to ensure public oversight of government functions by addressing conflicts of interests among public employees, and also tracks any illicit enrichment of individuals (Sutton, 1996, p. 1455).

Beyond the general terms of anti-corruption, the Convention offers specific articles on transparency during the acquisition of conventional weapons. The objective of these articles is to provide regional transparency by exchanging information regarding such acquisitions (Organization of American States, 2010). The convention requires parties to annually report detailed information about their imports and exports of conventional weapons to the depositary: the General Secretariat of the Organization of American States. In addition to these annual reports, parties are also required to notify the depositary with the information of arms acquisition through imports or through national production.

(4) Council of Europe Conventions**.** The Council of Europe has implemented two important policies to fight corruption. In 1998, the Criminal Law Convention on Corruption was adopted as a regional consensus on how states should address criminalization and international cooperation in the area of corruption (Business Anti-Corruption Portal, 2011). This convention covers public and private sector corruption. It deals with broad range of corruption offences as active and passive bribery of public officials, trading in influence, money laundering and accounting crimes. (Argandoña, 2007, s. 483) Additionally, "it also requires signatory countries to establish the liability of corporate entities for acts of corruption committed by their employees or agents" (Business Anti-Corruption Portal, 2011).

The Civil Law Convention on Corruption was adopted in November 1999, and it was "the first attempt to define common international rules in the field of civil law and corruption" (U4 Anti-Corruption Resource Center, 2006) "Its signers are obliged to authorize civil actions for compensation of firms damaged by corrupt practices." (Carrington, 2007)

(5) African Union Convention on Preventing and Combating Corruption. The African Union has taken a bold step towards immunizing Africa against the pandemic of corruption (Udombana, 2003, s. 447). The AU Convention on

Preventing and Combating Corruption was adopted by the heads of state at the African Union Summit held in Maputo on July 11, 2003. The Convention was an attempt to develop international law addressing corruption in Africa (there was no existing international law) (Udombana, 2003).

The AU Convention has provided a comprehensive framework and covered a range of criminal offences including bribery (domestic or foreign), diversion of property by public officials, trading in influence, illicit enrichment, money laundering, and concealment of property (Business Anti-Corruption Portal, 2011). The convention generated measures for prevention, criminalization, regional cooperation, mutual legal assistance and recovery of assets. Public and private sectors are both addressed in this convention, as well as both the supplying and demanding sides of corruption. The convention provides unique, mandatory provisions of private-to-private corruption and transparency in political party funding (Transparency International).

b. Anti-Corruption Guidelines and Integrity Systems from Select Countries

(1) Anti-Corruption Handbook for the Norwegian Business Sector. This handbook has several purposes: to make companies aware of how Norwegian and international legislation addresses corruption, to encourage management to raise awareness amongst its employees about corruption, to spread awareness of methods for dealing with gifts, hospitality, bribery, conflicts of interest, tax issues and facilitation payments, and to advise companies on establishing mechanisms to reduce corruption at home and abroad (Business Anti-Corruption Portal, 2011). It also provides key recommendations for the procurement of goods and services from suppliers (Transparency International Norway, 2009). For implementation, guidance requires commitment from top management, risk mapping, organizational involvement, written policies and standards, training programs, internal controls and auditing and whistle blowing mechanisms and the application of an effective and specific internal anti-corruption program.

(2) Business Unity South Africa Anti-Corruption (BUSA) Guide for South African Small and Medium Enterprises (SMEs). This guide was developed by BUSA with support from the German Agency for Technical Cooperation (GTZ) in August, 2009. BUSA aims to ensure that business plays a constructive role in South Africa's economic growth, development and transformation and to provide a competitive environment in which businesses of all sizes and in all sectors can thrive and expand. (Business Unity South Africa, 2005)

(3) Business without Corruption (Russia) - An Action Guide. This guide was produced by the Information Science for Democracy (INDEM) Foundation and the All-Russian Non-Governmental Organization of Small and Medium-Sized Business (OPORA in Russian), with support from the United States Agency for International Development (USAID) and the Center for International Private Enterprise (CIPE) (Business Anti-Corruption Portal, 2011).

The objective of this brochure was to support small business owners in Russia with tools to resist corruption and to provide them with strategies to survive and grow in an excessively aggressive environment. (The INDEM Foundation) After an assessment of the corruption level in Russian business environment between 2001 and 2005, the document continues with a focus on bureaucratic corruption and highlights the importance of civil society institutions to protect businesspeople. (Business Anti-Corruption Portal, 2011)

(4) Confronting Corruption - The Business Case for an Effective Global Anti-Corruption Program. This report was developed by a global professional services firm, PricewaterhouseCoopers (PwC), in 2008. PwC's Confronting Corruption report examines to the current efforts of companies to manage the risk of corruption, and advises them how to better protect themselves in the future (Business Anti-Corruption Portal, 2011). This analysis aims to provide a road map for implementing effective anti-corruption programs. The quantitative findings of this report were based on a survey of senior executives and anti-corruption experts (PricewaterhouseCoopers, 2008).

(5) Federation of German Industries (BDI) - Preventing Corruption. The "Preventing Corruption - BDI Recommendations" provides information to companies about the international legal anti-corruption efforts, and puts emphasis on the importance of CEO's and senior management approach to corruption in their business. The organization offers nine principles to guide the preparation and enhancement of codes of conduct and internal organizational measures (Business Anti-Corruption Portal, 2011).

These principles include strict compliance with laws and other regulations at home and abroad, exemplary behavior of corporate management, fair dealings with suppliers and customers, restrictions on gifts and remunerations, separation between business and private expenditures, regulations about engagement of business partners for private purposes, conflicts of interest arising from outside professional commitments or capital interests, engagement of agents, and donations to political parties and politicians (BDI- Federation of German Industries, 2007, s. 7–8).

(6) French Business Confederation Brochure on Preventing Corruption. Similar to previous country examples, the French Business Confederation MEDEF's brochure targets its internationally active business corporations. The document provides explanations about different forms of corruption, and information about the legal responsibilities enforced by the OECD Convention and the French anti-corruption laws. In a specific focus, key questions raised and vulnerabilities addressed regarding to the use of agents in business transactions. (The Business and Industry Advisory Committee, 2010)

c. International Chamber of Commerce (ICC) Tools for Self-Regulation

"The ICC Rules of Conduct are intended to serve as a method for voluntary self-regulation by business against the background of applicable national laws" (International Chamber of Commerce, 2005).

These rules are a general summary of good commercial practices. This source aims to assist companies in fulfilling their legal obligations so that they comply

with anti-corruption initiatives at the international level. However, these rules do not carry any legal weight (Business Anti-Corruption Portal, 2011). The report covers the prohibition of bribery and extortion, agents and other intermediaries, joint ventures and outsourcing agreements, political and charitable contributions and sponsorships, gifts, hospitality and expenses, facilitation payments, corporate policies, and financial recording and auditing, and responsibilities (International Chamber of Commerce, 2005).

d. OECD Risk Awareness Tool for Investors in Weak Governance Zones

The tool aims to provide a supportive document and guidance for the companies that invest in WGZs, "where governments are unwilling or unable to assume their full responsibilities." (Business Anti-Corruption Portal, 2011) This resource addresses the risks and ethical dilemmas that are common in these regions, and recommends " obeying the law and observing international instruments, heightened care in managing investments, checking business partners and clients and dealing with public sector officials, and speaking out against malpractices." (OECD, 2006)

e. Reform Toolkit - Combating Corruption: A Private Sector Approach

This toolkit was developed by the CIPE and the National Endowment for Democracy (NED) in 2008. It provides important concepts regarding the underlying causes of corruption; it also suggests concrete suggestions that private sectors can reform (Business Anti-Corruption Portal, 2011). The toolkit includes explanations of the costs and causes of corruption, stages in the fight against corruption, the demand-side and supply-side methods of fighting corruption, and case studies of anti-corruption programs in Bulgaria, Colombia, and Serbia (Center for International Private Enterprise, 2011).

f. Transparency International Business Principles for Countering Bribery

The Transparency International Business Principles offers a guide for companies to develop their institutional anti-bribery programs. In the same context, the

document refers to the importance of external verification of these anti-bribery systems to assure their effectiveness and value addition to the corporation.

This document focuses on the development of programs for countering bribery taking the form of political contributions, charitable contributions and sponsorships, facilitation payments, gifts, hospitality, and expenses. Additionally, it describes the requirements of program implementation by emphasizing the importance of business relationships, human resources, training, raising concerns and seeking guidance, communication, internal controls and record keeping, monitoring, and review and external verification and assurance. (Transparency International, 2009)

g. Voluntary Anti-Corruption Principles

(1) Global Compact Principle 10. The Global Compact is a voluntary international initiative developed by UN. It promotes companies to embrace, support and enact core values in the areas of human rights, labor standards, environment and anti-corruption. These core values are required for corporations to be part of the solution to the challenges of globalization. (UN Global Compact Office, 2011)

The 10th principle ("*Businesses should work against corruption in all its forms, including extortion and bribery*") is a specific focus on addressing the fight against corruption. It requires a holistic approach from the participants to successfully resolve and address this problem.

(2) OECD Guidelines for Multinational Enterprises**.** "The guidelines are recommendations addressed by governments for multinational enterprises." (OECD, 2008) An updated format of these guidelines are released in 2011 covering major issues about combating bribery, bribe solicitation and extortion, due diligence and competition. The document refers to the intense competition and variety of legal and social responsibilities in the business environment of multinational companies. Further, it addresses the risks of neglecting these rules, and attempting to gain uncompetitive advantage. In addition, it emphasizes the importance of safeguarding activities to protect whistle-blowers reporting negative practices that are contravening the law. (OECD, 2011)

(3) Partnering Against Corruption Initiative (PACI)**.** PACI is a global initiative developed by companies to serve companies in the fight against corruption. All companies are invited "to join PACI regardless of their size, country of origin or affiliation with the World Economic Forum" (Business Anti-Corruption Portal, 2011). It is a collective action which aims to allow companies' to benchmark their internal practices against global best practices (World Economic Forum, 2011).

In 2011, as a product of a joint study with TI, ICC and UN Global Compact they published an important document about resisting extortion and solicitation in international transactions. This document was designed as a training tool based on real-life scenarios and cases. Its primary intention was to raise awareness about bribe solicitation, and provide practical guidance for employers how to respond in case of similar inappropriate demands (World Economic Forum, ICC, TI and UN Global Compact , 2011).

h. Corruption Cases and Court Rulings

(1) Cases under the Foreign Corrupt Practices Act. These publications provide a parallel knowledge about actual enforcement activities under the Foreign Corrupt Practices Act (FCPA) of the U.S.. These cases and court rulings are valuable resources to follow current U.S. foreign bribery proceedings, and reveal the trends and patterns in FCPA enforcement. (Shearman & Stealing LLP, 2011)

(2) UNICORN - Bribery Cases. United against Corruption (UNICORN) is in close relationship with trade unions around the world. Their purpose is to raise awareness about existing anti-corruption instruments, provide protection for whistle-blowers and support cooperating trade unions in their fight against corruption (Business Anti-Corruption Portal, 2011) Their website provide external reports, resolutions and statements, briefings, bribery cases and whistleblower cases covering fraud and corruption issues. Further, they provide sectoral indices including the defense sector which summarizes defense related bribery investigations and corruption cases from all around the world (UNICORN, 2011).

i. Country Specific Information

(1) Business Anti-Corruption Portal Country Profiles. This portal covers 62 developing country profiles containing information about different types of corruption that companies may encounter in different countries. The portal provides general information about each country and then supplements this information with specific sectoral data and findings of quantitative country surveys on corruption. (Business Anti-Corruption Portal, 2011) Country files include sector descriptions with related corruption types, levels of corruption in these sectors under the titles of individual, business and political. Provided country-specific information is collected through publicly available (Business Anti-Corruption Portal, 2011).

(2) Business Fighting Corruption - Country Resources. Business fighting corruption is a 2008 initiative of World Bank Institute. The initiative calls for a "collective action" for business partners and stakeholders. Their portal is an interactive and business-oriented web source designed to provide tailored tools for the use of corporations and their stakeholders. The website lets users to share their experience and knowledge for the benefit of other users. The portal also includes business cases, a collective action guide, country profiles and sector specific resources (Business Fighting Corruption, 2008).

(3) Global Integrity Country Reports. The Global Integrity Report started serves as a tool to understand governance and anti-corruption mechanisms at national levels. It is prepared by journalists, local researchers and academics to give policymakers and citizens of nations a set of important information to debate on (The Global Integrity, 2011).

Country reports mainly assess the existence, effectiveness and citizen access to governance and anti-corruption mechanisms. Further, they include comparisons between the existing legal framework of countries and the realities about the implementation of these regulations. (The Global Integrity, 2011) The reports particular focus is on the transparency of the "public procurement process, media freedom, asset disclosure requirements, and conflicts of interest regulations" (Business Anti-Corruption Portal, 2011).

j. Due Diligence

This element illustrates particular situations in which companies should be alert to corruption. A systemized strategy towards standard business procedures may significantly reduce the risk of being subject to corrupt practices (Business Anti-Corruption Portal, 2011).

(1) Agent Screening Process. This evaluation procedure has been particularly devised for SMEs that are planning to use agents to enter new markets. The procedure requires an active business code of conduct for corruption and bribery. This procedure can help SMEs to minimize the problems related with corrupt agents and secure their business plans in the target country. In case SMEs plan to outsource this evaluation procedure, they may use this screening guideline as a reference document (Business Anti-Corruption Portal, 2011).

(2) Consultant Evaluation Process. This process was developed for companies planning to use consultants to conduct business in a foreign country or region. It proposes a framework for proper selection of consultants and about their contract renewals. The purpose of this procedure is to minimize the problems related to corrupt consultants by focusing on business codes of conduct for corruption and bribery. This process is expected to reduce the overall risk associated with conducting business in another country, or region (Business Anti-Corruption Portal, 2011).

(3) Joint Venture Consortium. This procedure has been developed for companies planning to enter into a partnership, joint venture, or consortium. The procedure is based on an active business Code of Conduct for corruption and bribery. Expectations from this procedure are to minimize the problems resulted from corrupt partners, and reduce the risk of doing a joint business in target countries (Business Anti-corruption Portal, 2011).

(4) Contractor procedure. This is a handy tool to determine corruption risks related with a contracting activity. This procedure is intended to identify the gaps in which bribery can potentially occur in the phases of the initial offer, the contract negotiation, the signing of the contract, and the execution of the delivery (Business Anti-Corruption Portal, 2011).

(5) Public Procurement Due Diligence Tool. Public procurement is a high-risk area for SMEs because corrupt actions put companies under the risks of blacklisting, extortion and legal prosecution. Additionally, they can be banned from submitting bids on lucrative contracts which are crucial to their existence in the business (Business Anti-Corruption Portal, 2011).

The tool includes three documents and an interactive tool to help assessing corruption risks in a specific instance of public procurement. The guidance documents describe the overall principles, the procedure document provides the evaluation matrix and the risk assessment document includes the questions posed for the phases of public procurement. The interactive tool helps to determine risks arising from procedural steps and generates a risk profile from the given answers. (Business Anti-Corruption Portal, 2011)

k. Grey Areas

(1) Crossing the Line - on Gifts, Hospitality and Expenses. "The challenge of developing an operational definition of corruption takes companies into "grey areas" where the boundaries between right and wrong are not clearly drawn." (Kathyrn Gordon, 2003) In business relations, gifts and hospitality are often considered the "grey areas" between corruption and appropriate relationship building (Business Anti-Corruption Portal, 2011).

This tool is developed by Confederation of Norwegian Enterprise to clarify what is legal in regards to offer and receive gifts and manage hospitality and expenses (Confederation of Norwegian Enterprise , 2006) .

l. Reporting

(1) Reporting Guidance on the 10th Principle against Corruption. This is the most succinct, practical guide, regarding anti-corruption practices, currently available to companies.

It equips businesses with the practical means to report anti-corruption policies comprehensively and effectively; public reporting strongly signals to employees, investors and consumers that a company is serious about clean business (Business Anti-Corrption Portal , 2011).

(2) Global Reporting Initiative Guidelines. The GRI creates a framework for organizations of all sizes to measure and report their economic, environmental, and social performance. Sustainability reports based on the GRI framework can be used to benchmark organizational performance concerning laws, norms, codes, performance standards and voluntary initiatives. It can also be used to demonstrate a commitment to sustainable development and transparency (Business Anti-Corrption Portal , 2011).

m. Sector-Specific Anti-Corruption Resources (Defense Sector)

(1) Common Industry Standards (CIS) for the European Aerospace and Defense Industries (ASD). The ASD Common Industry Standards is a voluntary code adopted by member companies to 32 National Trade Associations in 21 European countries." (Business Anti-Corruption Portal, 2011) Main objective of the standards is to enhance the competitive development of Aerospace industry free of corruption, and allow all participants a level ground to compete on fair bases." The standards cover issues which include compliance with laws and regulations, gifts and hospitality, political donations and contributions, and dealing with agents, consultants and intermediaries. (Advancing UK AeroSpace, Defence & Security Industries, 2009) The standards strives "to avoid all forms of direct and indirect corruption by encourage agents, consultants and business partners to comply with integrity standards (Business Anti-Corruption Portal, 2011).

n. Training

(1) Business Anti-Corruption Portal Basic Training Development. This training procedure was developed as an integrated part of a larger integrity system program prepared by the Global Advice Network. It was devised for

companies that have adopted an active business policy concerning corruption and bribery. Training is a key part of the program; the type of training is tailored to the company's needs, which are identified through the assessment of a company's existing skills, knowledge, and the capacity for employees and business partners (Business Anti-Corruption Portal, 2006).

(2) Defense Leadership in Building Integrity Course. This course is provided by TI UK's International Defense & Security Program. It aims to strengthen foundations, within the defense and security sector, for leadership, integrity, good governance and countering corruption. Emphasis is placed on open communication and the relationships between participants, staff and speakers. A cross-cultural examination on the topic of corruption in the defense sphere is also provided, which advances the ability to implement a nation's counter-corruption mechanisms. (Transparency International)

o. Whistleblowing

(1) ICC Guidelines on Whistle-blowing. The whistle-blowing system is essential to the integrity programs implemented by companies seeking to comply with anti-corruption efforts. The ICC Guidelines on whistle blowing provide practical tools that allow companies to establish internal whistle-blowing mechanisms (Business Anti-Corruption Portal, 2011).

(2) Public Concern at Work Whistle-blowing (PcAW) Assistance . PCaW is an independent authority whistle-blowing for the sake of public interests. (Business Anti-Corruption Portal, 2011) It promotes the responsibility of individuals and organizations. (Public Concern at Work, 2003) It also offers professional support for whistle-blowers, and educates organizations about this critical issue (Business Anti-Corruption Portal, 2011).

p. Leadership Workshop & Days

According to TI's Security and Defense Program, leaders must be visibly committed to reform. Leaders must be strong role models for ethical behavior. They must

be able to successfully persuade officers, officials, and the public that change is necessary, and spread knowledge about corruption through education and training. Leaders must also be open to third parties like defense companies and civil society. (Transparency International)

There are several ways to engage with key leaders in defense area:

(1) Leadership Workshops & Leaders' Days. Leaders' Days, which brings civil and military leaders together to exchange ideas, highlights corruption vulnerabilities and fosters the discussion of tools and solutions. These events help leaders develop a common understanding of corruption and the risks it poses to their countries. These events encourage confidence through an open discussion on corruption. (Transparency International)

(2) Roundtables. Roundtable organizations are generally half-day events that host senior defense ministry or Presidency officials, procurement officials, Members of Parliament, Ambassadors, defense companies, and the media. Major procurements or defense scandals often create the impetus to organize a roundtable in order to discuss the issue of corruption in the defense sector. (Transparency International, 2011)

q. Anti-Corruption Plans

"Tackling corruption in defense and security is a process that requires the diagnosis of specific problems and the engagement of officers, officials and stakeholders." (Transparency International, 2011) A remedial plan is necessary for coordinating and managing integrity-building measures. A good anti-corruption strategy contains clearly-defined steps for building integrity and reducing corruption. The first step is of the calculation of strengths and vulnerabilities, which areas in need of reform and an appropriate strategy. An anti-corruption plan needs specific time-frames and milestones; progress should be reported regularly to an overseeing group. Most importantly, there should be a mechanism for monitoring progress and results. Possible mechanisms include public surveys, employee surveys, external reviews, and media scrutiny. (Transparency International, 2011)

r. Defense Integrity Pacts

Defense Integrity Pacts combat corruption at the tendering and contract stages of procurement. They bind bidders and the government together in a contract; this reduces the possibility of corruption occurring during and after the tendering stage. (Transparency International, 2011)

Integrity Pacts supplement weak laws with contractual requirements. Additionally, the contracts attract more bidders when there a fair playing field and independent, technical scrutiny are both present. These pacts encourage confidence in bidders through their visible effort at maintaining a "clean" procurement process; these pacts require independent monitors and the extensive probity of government. These pacts reduce the costs of contracts and supplement inefficient enforcement by reinforcing sanctions. They also enforce strong penalties, forcing companies that engage in corrupt behavior to withdraw from bids. (Transparency International, 2011)

Integrity pacts are applicable during the tendering stage, rather than after the awarding stage, and can sometimes provide independent assurance throughout the execution phase of the contract as well. Because the defense procurement process often has a poor reputation of being subject to political influence, integrity pacts may strengthen public confidence. (Ben Magahy D. S., 2009)

However, Integrity Pacts are not a solution; they do not address structural or legal issues such as the reform of the procurement process. Additionally, these pacts can be rendered ineffective in the absence of a credible Independent Monitor. Integrity pacts must not be reduced to an administrative procedure; they must be supported from the top of the defense ministry in order to be effective in the national strategy against corruption.

s. Independent Monitors

Independent Monitors are appointed by the government to oversee the defense integrity pact process. It is essential that the Monitor's independence is not compromised by the nature of the appointment. Independent Monitors should not be

government employees; they should be familiar with the language and culture of the country to which they are appointed; they should understand the defense procurement process; and they should be available for an indefinite amount of time because of the extensive length of some contracts. The role of monitors must be clear: they are formally independent, obligated to publish all findings, and they may not be reprimanded by the government for any negative claims. (Transparency International, 2011)

B. NATO ANTI-CORRUPTION STRATEGIES, EFFORTS

1. NATO Partnership Action Plan on Defense Institution Building (PAP-DIB)

NATO's Partnership Action Plan on Defense Institution Building includes ten objectives and numerous courses of action in different areas—from parliamentarian control and oversight to organizational management, financial planning or international affairs. This initiative aggregates most of these domains into a single, comprehensive approach to defense reform. (Bucur-Marcu, 2010, p. 2) This initiative stresses the need to formulate and implement security and defense policies in a transparent and responsible manner.

The NATO PAP-DIP enterprise endeavors to help nations building defense institutions. This enterprise assists nations in analyzing their development of democratically responsible defense institutions, such as the armed forces. (Bucur-Marcu, 2010, p. 1) The initiative was not designed as a new plan of defense or security sector reform, but rather as a prerequisite for adjusting existing sectors so that they are more effective within a democratic framework. (Bucur-Marcu, 2010, p. 2)

As a NATO partnership initiative, PAP-DIB does not have any tools to implement programs; its aim is to benefit the existing tools and mechanisms of the Euro-Atlantic Partnership Council (EAPC) and the Partnership for Peace, including the Individual Partnership Action Plan (IPAP) and the PfP Planning and Review Process (PARP) (Bucur-Marcu, 2010, p. 3)

2. Integrity Self-Assessment Process

The Integrity Self-Assessment Process has been developed within the NATO Partnership Action Plan on Defense Institution Building (PAP-DIB). It is focused on practical support for nations, helping their defense reform efforts, as well as helping nations meet their international obligations within the United Nations framework.

The process begins with a detailed questionnaire for senior members of national defense ministries. Based on this questionnaire, a draft report is produced by an expert team, consisting of national and international experts. The draft report is followed by a visit from the expert team, which includes in-depth interviews with relevant figures in the defense establishments before submitting a final report. The document contains a set of questions that cover all the key topics relevant to building integrity and reducing corruption: Democratic control and engagement, national anti-corruption laws and policies, anti-corruption policies in defense and security, personnel (behavior, policy, training, discipline), planning and budgeting, operations, procurement, engaging with defense companies and other suppliers, nation-specific questions. (Transparency International)

3. Compendium of Best Pratices in Building Integrity and Reducing Corruption Risk in Defence

The compendium details national and international history of fighting corruption. This compilation presents the foundations of a strategic approach to reducing corruption risks in defense. The approach combines efforts to build integrity, increase transparency, and improve accountability in defense institutions. Such a combination increases the moral burden of corrupt behavior, reduces perceived rewards, and increases punishment. (Tagarev, Enabling Factors and Effects of Corruption in the Defense, 2010)

In more detail, the compendium also examines the sources and reasons for corruption in defense. The best practices of building integrity and enhancing transparency and accountability are also examined, including the areas of personnel policies and manpower management, defense budgeting and financial management, procurement,

offset arrangements, outsourcing, privatization, public-private partnerships in defense, utilization of surplus equipment and infrastructure, the involvement of defense personnel and assets in economic activities.

Finally, the compendium presents details on relevant regulatory frameworks and approaches demonstrated to assist in building integrity at the level of individuals, executive branches of government (and the defense ministry in particular), parliaments and audit offices, ombudsman institutions, the defense industry, civil society, the media, and international organizations.

4. Training Module in Building Integrity and Reducing Corruption Risk

The aim of this training module is to educate military and civilian personnel about the risk of corruption in the security sector. This training is specifically intended for personnel possessing the rank of full colonel, or an equivalent civilian grade level. The module focuses on how to strengthen integrity and reduce corruption in defense, and how to support transparency and good governance. Additionally, the module discusses how officials should engage with the public and civil society.

5. NATO/ISAF Counterinsurgency (COIN) Contracting Guidance

NATO/ISAF has developed the COIN contracting guide to streamline the contracting efforts in Afghanistan. These efforts significantly impact contracting policy and, and has nonlethal impacts on the battlefield in Afghanistan. (Center, 2011) This guide reviews the huge scale of contracting activities in Afghanistan, and the opportunity and danger that is associated with these activities. With this objective, the COIN guidance aims to prevent large quantities of international funds from reaching corrupt hands. It also aims to finance insurgent organizations, strengthen criminal, dark networks, and undermine ISAF's campaign objectives.

The guidance recognizes the role contracting plays in countering insurgencies; that to see how contracts with Afghan firms procuring Afghan goods and services generate employment and assist the development of a sustainable economy. (Petraeus, 2010) Additionally, the guidance endorses contracts that lead to the hiring of Afghan

workers and Afghan owned-companies; when this is not possible, it encourages companies to hire Afghans and sub-contract with responsible Afghan firms. (Petraeus, 2010) Purchases from Afghans should minimize damage to existing economic systems and catalyze the expansion of the host nation's economy. "Job training, joint ventures, and creation of new businesses frustrate an insurgency's recruitment efforts and decrease its influence on the local population." (Center, 2011)

The COIN guidance requires the Regional Contracting Centers (RCCs) to establish systems and standard databases that are available to vendors and contractors to help them ensure they are not empowering the wrong people. To "contract with vendors that have fewer sub-contractors to prevent providing opportunities for criminal networks and insurgents to divert contract money from its' intended purpose." (Petraeus, 2010) Additionally, planning ahead of contracts, establishing reasonable timelines, and ensuring transparency and oversight, integrating contracting into intelligence, plans, and operations, consulting and involving local leaders in the contracting activities, developing new partnerships with a broader range of Afghan companies are seen core to accomplish and improve desired contracting while serving the campaign objectives.

C. U.S ANTI-CORRUPTION STRATEGIES ON DEFENCE PROCUREMENT

1. General Law on Bribery and Corruption

> Under U.S. law, foreign and domestic bribery falls under several distinct federal and individual state criminal statutes. Generally, the prohibited conduct involves paying, attempting or promising to pay, U.S. or non-U.S. government officials improperly to influence their official acts, or, in the private context, causing an employee or agent of a company to act in a way contrary to the interests of their employer. U.S. federal laws prohibit bribery of both domestic U.S. and non-U.S. government officials. In addition, individual state laws make it a crime to bribe domestic state and local officials. (Woolf Committee, 2008)

2. U.S. Federal Law on Bribery and Corruption (The U.S. Foreign Corrupt Practices Act)

U.S. federal law prohibits bribery of both non-U.S. and domestic federal public officials. The U.S. federal anti-foreign bribery statute is the Foreign Corrupt Practices Act 1977. The FCPA applies to U.S. persons and companies; any stockholder, officer, director, employee, or agent acting on behalf of a U.S. company; and any company that has a class of securities registered or that is required to file reports pursuant to the Securities Exchange Act of 1934. The FCPA can also apply to any non-U.S. company or individual if prohibited acts are enacted within the United States (Woolf Committee, 2008).

The FCPA adopts a strategy of combining criminal as well as regulatory approaches to the corruption cases. It targets individuals and corporations in the fight against corruption. The FCPA criminalizes corrupt payments made to any foreign official, which are paid by any agent of a publicly-held U.S. corporation, or individual citizens, nationals, or residents of United States who do not hold public offices. (Sutton, 1996, p. 1468) The FCPA also enforces accurate bookkeeping practices in order to ensure that entities participating in the U.S. stock market have measures to prevent corrupt payments to foreign officials. (Sutton, 1996, p. 1469) Finally, the FCPA deliberately exempts the most pervasive form of corrupt payments: the facilitating payment.

The FCPA's penalties for violations of anti-bribery and corruption provisions are severe. For criminal convictions, companies more than $2 million for each violation, or twice the amount earned through conduct that violates the FCPA. In addition, individuals can be imprisoned for up to five years. For civil violations, penalties of $10,000 for each violation may be imposed on companies and individuals.

3. U.S. State Law on Bribery and Corruption

States within the U.S. have individual sets of statutes that address both public and commercial bribery in connection to private (nongovernmental) business. Individual state statutes prohibit the bribery of state and local officials. Commercial bribery statutes,

which vary to some extent from state to state, generally criminalize the bribery of private business employees (and the employee's acceptance of bribes). (Woolf Committee, 2008)

4. United States Defense Industry Initiative (DII) on Business Ethics and Conduct

"DII is a consortium of U.S. defense industry contractors which subscribes to a set of principles for achieving higher standards of business ethics and conduct." (Business Anti-Corruption Portal, 2011) The customer of these companies is the United States Department of Defense.

The signatory companies are obliged to promote ethical conducts of business through the implementation of anti-corruption policies, procedures and other instruments in the areas of ethics and ethics training, internal reporting, self-governance, attendance at Best Practices Forums, and accountability to the public. (Defense Industry Initiative, 1997) In addition to adopting and adhering to this set of principles, signatory companies are also required to encourage these principles as "a standard for the entire defense industry, and a model for other industries" (Business Anti-Corruption Portal, 2011).

D. CHAPTER SUMMARY

> Corruption continues to manifest itself in a number of ways. It ranges from petty to grand in nature, from political to bureaucratic in focus, and from incidental to systemic in scope. Although perhaps self-evident, it is important to recognize that the errant behavior of individuals lies at the heart of corruption. Anti-corruption efforts often attempt to create an ethical standard by which individuals are supposed to abide, ignoring the fact that if such officials were moral beings, the corruption would not occur in the first instance. (McCusker, 2006)
>
> Any successful anti-corruption strategy therefore should endeavor to understand the often complex interactions that exist between the initiator of the corrupt act, the person who passively or actively participates in corruption and the wider society which meets the costs, directly or indirectly, of that corruption. (McCusker, 2006)

Additionally, the defense establishment has historically been one of the least transparent of any government organizations; it is very closed to public or even intra-

government scrutiny. The secrecy that is necessary to some defense activities often extends more widely than can be justified, leaving the defense sector with little oversight and large risks of corruption (Ben Magahy D. S., 2009).

Transparency suggests procedural visibility and clarity, facilitated by media investigations, parliamentary oversight, and academic scrutiny. Ensuring transparency requires proactive measures: providing information to the press; discovering errors, mistakes and malfeasance; and maintaining regular cooperative liaisons with national legislative bodies. Transparency must be assiduously pursued (Tagarev, Transparency in Defence Policy, Military Budgeting and Procurement, 2002, p. 23).

> In terms of the design of anti-corruption strategies it is important to construct a set of incentives to encourage rule-abiding, and discourage rule-averse, behavior by individuals engaged in corrupt practices. Thus, for example, strategies which reduce the scope for corruption via policy changes, increase the costs of corruption via monitoring and punishment of errant behavior and induce self-restraint within government are important first principles.(McCusker, 2006)

In this context, international organizations (OECD, WTO, UN and IMF), defense business corporation organizations (DII), governments, and non-governmental organizations (Transparency International) have developed tools, strategies, and mechanisms for aiding the fight against corruption in the public procurement process—especially in the defense procurement process.

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V. EFFECTIVENESS OF EXISTING ANTI-CORRUPTION MECHANISMS

A. INTRODUCTION

Today, countries are tightly connected internationally through trade, financial transactions, and new forms of communication. This is extremely important for the prosperity of global community. However, it is also easy for corruption to spread between countries through international networks (Transparency International, 2006). This means that efforts on both national and international scales can impact corruption worldwide.

Many bilateral and multilateral efforts have recently been developed by international organizations, non-governmental organizations, and academic experts to curb corruption. These comprehensive efforts include the introduction of new, cooperation between governments through anti-corruption conventions and transnational organizations, and the implementation of anti-corruption programs. (Alan Rousso, 2006) Integrated anti-corruption programs generally include conceptual documents, anti-corruption laws, dedicated agencies, inter-ministerial commisions, action plans, and monitoring mechanisms. Many countries have adopted a mixture of these anti-corruption programs (Alan Rousso, 2006). However, it is equally important to examine the -effectiveness of these programs.

This chapter focuses on the major Anti-corruption Conventions, and assesses their ability to reduce corruption. The "Convention Coverage Map" is presented to illustrate which vulnerabilities were addressed in these Conventions.

The primary objective of this research is to identify the impacts of these efforts to reduce defense related corruption. However, due to the lack of specific regional indices, the deductions of this thesis are based on general data and broad indices on corruption. In cases where there is not enough information available about defense related corruption,

general perceptions and data are useful indicators to reach a conclusion; defense procurement coincides with public procurement, so defense related corruption correlates to the general corruption of countries.

The concept of this research was to limit observations to ten countries that have adopted one or more of the aforementioned conventions, have a considerable amount of defense related import-export activities and expenditure, and most importantly, provide data that can be interpreted and compared with the other countries. According to these criteria, the countries chosen for research were the United States, the United Kingdom, Germany, Japan, Sweden, Brazil, Argentina, South Africa, Australia, and India. A matrix was created reflecting the coverage of these Conventions to provide a better understanding of their scope.

To reach a conclusion, data was derived from the World Bank's World Governance Indicator (WGI), The Ibrahim Index of African Government, Transparency International's Corruption Perception Index (CPI) and Bribe Payer's Index (BPI), and Heritage Foundation's Index of Economic Freedom (IEF). Additionally, some information from the Transparency International's Global Corruption Barometer (GCB) was consulted in order to compare and support findings. The TI Bribe Payers Index (BPI) also provided us the bribery perception scores of senior officers in the arms and defense industries.

The WGI Index identifies the six dimensions of governance as Voice and Accountability, Political Stability and Absence of Violence/Terrorism, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption. (Daniel Kaufmann, 2010) This research uses the "Control of Corruption" scores in its observations. Similarly, this research uses the Heritage Foundation's Index of Economic Freedom (IEF), which measures economic freedom under ten headings. (The Heritage Foundation, 2011) The Ibrahim Index of African Government is structured under 4 titles, which contains 14 sub-titles, 121 variables, and 86 Indicators (Mo Ibrahim Foundation, 2011); this research employs the "Corruption and Bureaucracy" scores under the "Accountability" subtitle of the "Safety and Rule of Law" title.

This thesis introduces the positive and negative changes that took place in the adopting countries after the ratification of the relevant conventions. The Common Industry Standards are used to map out the conventions' effects in applying companies.

B ASSESSING THE EFFECTIVENESS OF ANTI-CORRUPTION CONVENTIONS

This section focuses on the effectiveness of the International Conventions against Corruption in the specified countries.

1. The Coverage of Anti-Corruption Conventions

There are several risks related to the procurement of defense equipment. In order to decrease the amount of vulnerabilities in the procurement process, these risks should be addressed by through anti-corruption mechanisms. Table 1 shows risks and vulnerabilities are matched with those of the Anti-Corruption Convention and NATO-TI's Self-Assessment Questionnaire; this reveals which risks have been already been adequately addressed, and which still need more attention. The first table depicts the vulnerabilities produced by the actions of government personnel. The second table exhibits similar vulnerabilities generated by corporate and defense industry personnel.

During the production of this chart, it was taken into consideration that anti-corruption conventions are very broad international arrangements. The conclusions indicate that attention to specific vulnerabilities was based on the existence of references to these risks in convention texts. The NATO-TI Self-Assessment Questionnaire specifically addresses defense procurement and uncovers additional risks.

CORRUPTION RISKS COVERAGE MODEL					
CONVENTIONS	**KEY VULNERABILITIES – RISKS (ACTIONS BY GOVERNMENT PERSONNEL)**				
	Unnecessary/illegitimate Sole Source / Exclusion from Competition	Wasteful/unneeded requirement/outcome (lacking military value or public interest)	Government official/contracting officer PCI (personal conflict of interest)	Unduly restrictive disclosure/ Excessive secrecy	Offsets lacking military value or public interest
United Nations Convention against Corruption (UNCAC)	✓ (Article 9)	**None**	✓ (Articles 15 and 16)	✓ (Articles 10, 13(1), and a3(2))	**None**
OECD Anti-Bribery Convention	**None**	**None**	✓ (Article 1(1))	**None**	**None**
Inter-American Convention against Corruption (IACAC)	✓ (Articles III(5), XI(1)(a))	**None**	✓ (Articles III(4), VI(a), IX, XI(1)(a))	**None**	**None**
African Union Convention against Corruption (AUCAC)	✓ (Articles 5(4), 7(4))	**None**	✓ (Articles 4(1)(a) and (b))	✓ (Articles 9, 12(2), and 12(4))	**None**
Council of Europe Criminal Law on Corruption	**None**	**None**	✓ (Articles 2,3,5, 6)	**None**	**None**
Council of Europe Civil Law on Corruption	**None**	**None**	✓ (Article 5)	**None**	**None**
NATO-TI Self-Assessment Questionnaire	✓ (Questionnaire Part 7. Procurement)	**None**	✓ (Questionnaire Part 4. Personnel)	✓ **(**Questionnaire Part 1. Democratic Control and Engagement)	✓ (Questionnaire Part 7. Procurement)

Table 1. Coverage Map for Procurement Vulnerabilities and Risks (Public Personnel)

CORRUPTION RISKS COVERAGE MODEL					
CONVENTIONS	**KEY VULNERABILITIES – RISKS (ACTIONS BY INDUSTRY PERSONNEL)**				
	Unnecessary/illegitimate restraint on competition	Wasteful/unneeded requirement/outcome (lacking military value or public interest)	Contractor firm's Organizational Conflict of Interest	Contractor Executive's Personal Conflict of Interest	Offsets lacking military value or public interest
United Nations Convention against Corruption (UNCAC)	✓ (Article 12(2)(b))	**None**	✓ (Articles 18 and 21)	✓ (Articles 12 and 14)	**None**
OECD Anti-Bribery Convention	**None**	**None**	✓ (Article 1(1))	✓ (Article 8)	**None**
Inter-American Convention against Corruption (IACAC)	✓ (Article III(10))	**None**	✓ (Article VI(b)	**None**	**None**
African Union Convention against Corruption (AUCAC)	✓ (Articles 11(2),11(3))	**None**	✓ (Articles 11(1), 11(3))	✓ (Articles 6(a), 6(b), 6(c))	**None**
Council of Europe Criminal Law on Corruption	**None**	**None**	✓ (Articles 7, 8 and 18)	✓ (Article 14)	**None**
Council of Europe Civil Law on Corruption	**None**	**None**	✓ (Articles 1 and 3)	✓ (Article 10)	**None**
NATO-TI Self-Assessment Questionnaire	✓ (Questionnaire Part 7. Procurement)	✓ (Questionnaire Part 7. Procurement, Question 12)	**None**	**None**	✓ (Questionnaire Part 7. Procurement)

Table 2. Coverage Map for Procurement Vulnerabilities and Risks (Industry Personnel)

According to these coverage maps, we notice that the anti-corruption conventions are covering the issues of competition, personal conflict, and bribery in public services. However, wasteful outcomes, and unnecessary/no-value offset agreements are not properly addressed.

Even if these conventions address the aforementioned problems of competition, personal conflicts, and bribery, results vary greatly between countries; and the application of available methods of fighting corruption is different in each country.

2. Major Corruption Indices and Country Scores

The "country tables" display scores for each country from the major corruption indices. The scores visualize the changes in a country's corruption perceptions after it adopted the relevant conventions.

a. United States

The United States signed the Inter-American Convention against Corruption in June 1996, and put it into effect in September 2000. Later, the U.S. accepted the OECD Convention against Bribery of Foreign Public Officials in December 1998, and put it into force on February 15, 1999. In December 2003 the U.S. signed the UN's Convention against Corruption and put it into action in October 2006. In addition to these international and regional conventions against corruption, the U.S. has forbidden its companies from cross-border bribery since 1977, after the introduction of the Foreign Corrupt Practices Act (FCPA). According to this act, companies are mandated to maintain records concerning foreign transactions; one important contribution of the FCPA "has been the concept of extra-territorial jurisdiction in criminal matters means event the "foreign bribery occurs outside the United States, U.S. courts can exercise jurisdiction over offender firms falling under FCPA" (Pidaparthi, 2005).

According to the U.S.-Corruption Indices (Table 3), it is not possible for states that ratify anti-corruption conventions to serve as a remedial instrument for the

United States. Furthermore, it is worth noting that, with the exception of the Bribe Payers Index (BPI), the indexes show that scores have decreased, indicating an increase in corruption.

United States of America				
Year	Index			
	WGI(Corruption)	CPI	IEF	BPI
1996	1,56408778	N/A	90	-
1997	-	N/A	78	-
1998	1,546660062	7,5	77	-
1999	-	7,5	76	6,2
2000	1,64172971	7,8	75	-
2001	-	7,6	75	-
2002	2,048113454	7,7	78	5,3
2003	1,727916469	7,5	76	-
2004	1,788403051	7,5	77	-
2005	1,515147344	7,6	75	-
2006	1,266646025	7,3	75	7,22
2007	1,292365569	7,2	76	-
2008	1,452838288	7,3	73	8,1
2009	1,156200905	7,5	72	-
2010	1,232890271	7,1	73	-
2011	-	-	75	8,1

Table 3. United States Corruption Indexes Scores

b. United Kingdom

The UK accepted the OECD Anti-Corruption Convention in December 1998, and put it into force in February 1999. (OECD) The UK signed the UNCAC in December 2003 and put it into effect in February 2006. Furthermore, the UK adopted the European Criminal Law Convention on Corruption in 2004, but has not ratified the Civil Law Convention after signing it in 2000. (Council of Europe)

The corruption index scores for the UK do not provide evidence of improvement in corruption perceptions following the adoption of conventions. There is a significant decline in the World Governance Indicator, Corruption Perception Index, and in Economic Freedom Index. The UK has several allegations concerning defense

corruption: “There have been persistent allegations of bribery in the £43bn government-to-government deal, known as Al-Yamamah to sell defense equipment to Saudi Arabia” (Pfeifer S. F., 2008).

In the 2008 Progress Report on Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Transparency International stated that:

> THE UK’s termination of Al Yamamah- related bribery allegations against BAE Systems (BAE) in December 2006 was a damaging setback for the Convention. The assertion that national security concerns overrode the obligation to enforce the Convention, created a dangerous precedent that other governments could readily follow. (Jeffery Taylor, 2011)

United Kingdom				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	2,119425995	8,44	90	-
1997	-	8,22	90	-
1998	2,231704561	8,7	90	-
1999	-	8,6	82	7,2
2000	2,173134532	8,7	87	-
2001	-	8,3	86	-
2002	2,131336396	8,7	87	6,9
2003	2,071543294	8,7	83	-
2004	1,950486167	8,6	87	-
2005	1,904425441	8,6	87	-
2006	1,801889499	8,6	86	7,39
2007	1,724586684	8,4	86	-
2008	1,683455212	7,7	86	8,6
2009	1,536722236	7,7	84	-
2010	1,481645251	7,6	77	-
2011	-	-	77	8,3

Table 4. United Kingdom Corruption Indexes Scores

c. Germany

Germany accepted the OECD Anti-Corruption Convention November 1998, and put it into force in February 1999. (OECD) Germany signed the UNCAC in 2003 but has not ratified it yet. Germany has also signed the Council of Europe Criminal Law Convention on Corruption; the Civil Law Convention on Corruption has been signed but not ratified or implemented (Wolf, 2006).

Germany continues to be one of the world's most powerful and dynamic economies. (The Heritage Foundation, 2011) Often, Germany is the supplier during the procurement process. Currently, Germany has only ratified the OECD Anti-Bribery Convention, but it enforces strict anti-corruption laws in accordance with the remaining conventions. However, similar to the U.S. and UK cases, the corruption index scores do not show evidence of improvement in corruption perceptions after adoption of the conventions. On the contrary, there is increase in the perception of corruption (corresponding to the decrease in scores). Germany has been accused of bribery in defense deals; most recently, the German engineering firm Ferrostaal's was accused of orchestrating bribes to secure contracts in Portugal and Greece (Transparency International, 2010).

Germany				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	1,993327561	8,27	90	-
1997	-	8,23	81	-
1998	2,164021896	7,9	83	6,2
1999	-	8	82	-
2000	2,039511692	7,6	79	-
2001	-	7,4	80	-
2002	2,014033037	7,3	76	6,3
2003	1,954275536	7,7	74	-
2004	1,866052205	8,2	73	-
2005	1,861743586	8,2	77	-
2006	1,800089239	8	82	7,34
2007	1,704739755	7,8	82	-
2008	1,755087035	7,9	80	8,6
2009	1,713548701	8	78	-
2010	1,700708395	7,9	79	-
2011	-	-	80	8,6

Table 5. Germany Corruption Indexes Scores

d. Sweden

Sweden accepted the OECD Anti-Corruption Convention in June 1999, and put it into action in August 1999. (OECD) Later, Sweden signed the UNCAC in December 2003 and put it into action in September 2007. Additionally, the UK adopted the European Criminal Law Convention on Corruption, and the European Civil Law Convention on Corruption in 2004.

Sweden is an exemplary model of transparency and freedom from corruption. According to its scores in the corruption perception indexes, Sweden does not urgently need to improve its anti-corruption procedures.

However, this evidence can also be used as evidence that positive changes in country scores are not possible after the adoption of conventions.

A significant corruption issue in Sweden was the sale of JAS Gripen multirole fighters to South Africa in the late 1990s. Recently, Sweden's National Anti-Corruption Unit (NAC) launched a new investigation into allegations of corruption. (O'dwyer, 2011)

Sweden				
Year	Index			
	WGI(Corruption)	CPI	IEF	BPI
1996	2,304953486	9,08	90	-
1997	-	9,35	89	-
1998	2,3311854	9,5	91	8,3
1999	-	9,4	94	-
2000	2,417420885	9,4	95	-
2001	-	9	94	-
2002	2,312792936	9,3	94	8,4
2003	2,233149329	9,3	90	-
2004	2,173477901	9,2	93	-
2005	2,011841815	9,2	93	-
2006	2,211879919	9,2	92	7,62
2007	2,249531192	9,3	92	-
2008	2,255099693	9,3	92	-
2009	2,275510992	9,2	93	-
2010	2,250953346	9,2	93	-
2011	-	-	92	-

Table 6. Sweden Corruption Indexes Scores

e. Japan

Japan accepted the OECD Anti-Corruption Convention in October 1998, and put it into action in February 1999. (OECD) Additionally, Japan signed the UNCAC in December 2003, but has not put it into effect yet. In its regional efforts, Japan has endorsed the Asian Development Bank Organisation for Economic Co-operation and Development Anti-Corruption Initiative for Asia and the Pacific in November 2001.

> The Japanese defense market is an oligopoly. Firms in the defense industry also produce civilian goods, and the revenues they obtain from defense contracts are quite small relative to the revenues coming from the production of private goods. Because the Japanese constitution prohibits arms export, the defense industry in Japan essentially serves an

> internal market. Furthermore, defense contracts are not awarded on a competitive basis. The procurement procedures rely on cost-plus contracts, most of which are carried out at the discretion of the bureaucrats in charge. Information on prices and contracts thus become extremely opaque, which makes it easier for misuse and corruption to flourish. (Quyen, 2008)

Table 7 shows that Japanese corruption perception scores show a slow, steady improvement throughout the years.

Japan				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	1,044752289	7,05	90	-
1997	-	6,57	67	-
1998	0,928449238	5,8	71	5,1
1999	-	6	66	-
2000	1,170723751	6,4	58	-
2001	-	7,1	60	-
2002	0,844434534	7,1	64	5,3
2003	1,171928442	7	71	-
2004	1,227802024	6,9	71	-
2005	1,213406082	7,3	70	-
2006	1,348402375	7,6	69	7,1
2007	1,2141272	7,5	73	-
2008	1,258340378	7,3	76	8,6
2009	1,328661502	7,7	75	-
2010	1,537605809	7,8	73	-
2011	-	-	77	8,6

Table 7. Japan - Corruption Indexes Scores

f. Australia

Australia accepted the OECD Anti-Corruption Convention in October 1999, and put it into action in December 1999. (OECD) Later, in December 2003 they signed the UNCAC and put it into force in December 2005. Additionally, Australia has endorsed the Asian Development Bank Organisation for Economic Co-operation and Development Anti-Corruption Initiative for Asia and the Pacific in October 2003.

Australia is also a good example in the fight against corruption. Out of 12 countries surveyed, TI found that Australia is one of two countries that provide clear and accessible codes of conduct in matters related to defense (Bell, 2011). Australia's scores on the corruption Index shows nearly stagnant scores with little improvement.

Australia only recently enacted the conventions, but have still obtained a working anti-corruption mechanism.

Australia				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	1,884342018	8,6	70	-
1997	-	8,86	88	
1998	1,765287525	8,7	86	8,1
1999	-	8,7	89	-
2000	1,960539274	8,3	87	-
2001	-	8,5	87	-
2002	1,734808183	8,6	83	8,5
2003	1,924659082	8,8	85	-
2004	2,097818642	8,8	86	-
2005	1,93426755	8,8	88	-
2006	1,960589508	8,7	88	7,59
2007	2,047172717	8,6	88	-
2008	2,120562893	8,7	87	8,5
2009	2,05622087	8,7	86	-
2010	2,061006848	8,7	87	-
2011	-	-	87	8,5

Table 8. Australia Corruption Indexes Scores

g. Brazil

Brazil accepted the OECD Anti-Corruption Convention in August 2000, and put it into force in October 2000. (OECD) Brazil attended the regional Inter-American Convention against Corruption, signed the convention in March 1996, and put it into effect in July 2002. In 2003, Brazil signed the UNCAC and put it into force in June 2005.

The overall score and changes in the perception do not suggest an improvement in Brazil's corruption. On the contrary, scores indicate a decrease in success. In July 2011, Brazil's transportation minister resigned due to a corruption scandal; in August, the President was accused of passing a multi-billion dollar contract to buy fighter jets (BBC News, 2011). In Brazil, the proper application of anti-corruption conventions and related regulations are still in their infancy.

Brazil				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	-0,074428144	2,96	30	-
1997	-	3,56	27	-
1998	-0,001239009	4	30	-
1999	-	4,1	36	-
2000	0,043222089	3,9	40	-
2001	-	4	41	-
2002	0,012420952	4	39	-
2003	0,107676083	3,9	40	-
2004	0,028712602	3,9	40	-
2005	-0,171457962	3,7	39	-
2006	-0,141919383	3,3	39	5,65
2007	-0,114484714	3,5	37	-
2008	-0,015217099	3,5	33	7,4
2009	-0,103992257	3,7	35	-
2010	0,05611194	3,7	35	-
2011	-	-	37	7,7

Table 9. Brazil Corruption Indexes Scores

h. Argentina

Argentina accepted the OECD Anti-Corruption Convention in February 2001, and put it into force in February 2001.(OECD) Argentina also signed the regional Inter-American Convention against Corruption in March 1996, and put it in effect in August 1997. Argentina signed the UNCAC in December 2003 and put it into force August 2006.

In Argentina, corruption is widespread (The Heritage Foundation, 2011). Corruption has permeated both the government and private sectors, as the scores below show. Although Argentina adopted the conventions earlier than others, we cannot observe progress against corruption.

Argentina				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	-0,215799119	3,41	70	-
1997	-	2,81	52	-
1998	-0,186931735	3	34	-
1999	-	3	28	-
2000	-0,325497322	3,5	30	-
2001	-	3,5	30	-
2002	-0,523824188	2,8	35	-
2003	-0,537974912	2,5	35	-
2004	-0,439597558	2,5	28	-
2005	-0,41636537	2,8	25	-
2006	-0,386392635	2,9	25	-
2007	-0,394043468	2,9	28	-
2008	-0,471015832	2,9	29	-
2009	-0,515985931	2,9	29	-
2010	-0,437428278	2,9	29	-
2011	-		29	-

Table 10. Argentina Corruption Indexes Scores

i. South Africa

South Africa accepted the OECD Anti-Corruption Convention June 2007, and put it into force in August 2007. (OECD) In December 2003, South Africa signed the UNCAC and and put it into force in November 2004. In regional efforts, South Africa signed the African Convention on Preventing and Combatting Corruption in March 2004, and put it into force in November 2005.

In South Africa, corruption is most apparent in the awarding of government contracts. There are many examples of high-profile procurement scandals related to

bribery issues. There are also many unrevealed scandals at the provincial level, indicating that the provinces "are also struggling with serious irregularities in public procurement and contracting. Multinational companies have been involved in what is commonly known as the 'Arms Deal', which is the largest corruption scandal in post-apartheid South Africa. The former Deputy President, Jacob Zuma, was accused of being involved in the 'Arms Deal' scandal, where he allegedly demanded a bribe of ZAR 500,000 from the companies involved in the scandal" (Business Anti-Corruption Portal, 2011).

Table 11 reflects the mentioned corruption problems in South Africa. The index does not indicate an improvement in the country's corruption after the adoption of the Conventions.

South Africa					
Year	**Index**				
	WGI(Corruption)	CPI	IEF	BPI	IIAG
1996	0,75919542	5,68	50	-	-
1997	-	4,95	56	-	-
1998	0,648495684	5,2	57	-	-
1999	-	5	50	-	-
2000	0,612433257	5	52	-	85,7
2001	-	4,8	50	-	71,4
2002	0,391219774	4,8	50	-	57,1
2003	0,33110311	4,4	48	-	57,1
2004	0,473683211	4,6	48	-	64
2005	0,581727372	4,5	44	-	85,7
2006	0,429021003	4,6	46	5,61	85,7
2007	0,222326776	5,1	45	-	71,4
2008	0,151418668	4,9	46	7,5	71,4
2009	0,11260138	4,7	51	-	57,1
2010	0,093919992	4,5	49	-	-
2011	-	-	47	7,6	-

Table 11. South Africa Corruption Indexes Scores

i. India

India signed the UNCAC in December 2005 and put into effect in May 2011, but India has not yet signed the OECD's Anti-Corruption Convention. In regional efforts, India has endorsed the Asian Development Bank Organization for Economic Co-operation and Development Anti-Corruption Initiative for Asia and the Pacific in November 2001.

In India, there have been major corruption scandals involving high-level politicians' related to public procurement and contracting. There are particular allegations of corruption directed at the energy, telecommunication and defense sectors. In some cases, companies that previously violated the procurement regulations managed to win contracts by circumventing the law through their connections. (Business Anti-Corruption Portal, 2011) According to a 2010 report, the India Fraud Survey, "an overwhelming majority of the respondents indicated that the incidence of fraud, overall and specifically within their industry and company, is rising thereby indicating that India Inc. needs to deal with fraud risks firmly, and procurement, distribution and revenue leakage is the single most corruption exposed area" (KPMG India, 2010).

The grades in the perception indices reflect that India's improvement through years is poor. Until recently, India had not been a part of international anti-corruption efforts, but India reflects a pattern similar to countries like South Africa, Argentina and Brazil. The effect of these conventions can be discerned by comparing the countries that adopted the regulations years ago with the countries that have not adopted them yet. In this case, there is not a significant difference between the corruption levels of India and signatory countries.

India				
Year	**Index**			
	WGI(Corruption)	CPI	IEF	BPI
1996	-0,405534733	2,63	10	-
1997	-	2,75	28	-
1998	-0,285922008	2,9	26	-
1999	-	2,9	28	-
2000	-0,365128891	2,8	29	-
2001	-	2,7	29	-
2002	-0,490804882	2,7	28	-
2003	-0,4330392	2,8	27	-
2004	-0,418159924	2,8	27	-
2005	-0,40172312	2,9	28	-
2006	-0,278848612	3,3	28	4,62
2007	-0,417246746	3,5	29	-
2008	-0,403179158	3,4	33	6,8
2009	-0,368219241	3,4	35	-
2010	-0,516719172	3,3	34	-
2011	-	-	34	7,5

Table 12. India Corruption Indexes Scores

Based on this research, it can be concluded that conventions have not had a significant positive effect in the fight against corruption. Some countries have had success with anti-corruption programs both in the past and present, but others struggle with the same problems for years without any improvement. A 2009 report by TI, comparing the implementation of the OECD convention in signatory countries, describes some progress, but also draws attention to the variances between the countries enforcement levels of the conventions (Dell, 2009). Regardless, even when conventions are ratified and enacted by countries; "most states are willing to increase the probability of 'their' domestic companies getting contracts in foreign countries, and thus have few incentives to encourage investigations of their own firms, even if contracts are obtained in a way that they violate the treaties." (Soreide, 2006, s. 382) All participating countries hold the similar belief that the motivations to deter corruption should be questioned.

(Davis, 2002) Other critics argue that "international conventions are generally inspired by ideological considerations, but individual country behavior is guided by economic considerations" (Pidaparthi, 2005, s. 113).

C. CHAPTER SUMMARY

In this chapter, we intended to display the effectiveness of Anti-Corruption mechanisms, specifically the international anti-corruption conventions. The coverage of these conventions is mapped in the context of procurement vulnerabilities; index scores for the last 15 years of the major arms importing-exporting countries traced in the context of corruption perceptions.

There appears to be no positive change in the corruption perception index scores of countries after they ratified and applied the requirements of these conventions. These observations support the statement that it may be "premature to evaluate the general impact of the relatively new international anti-corruption conventions." (Soreide, 2006, p. 381) Although the extents of these conventions are adequate in theory, the implementation of these regulations is still problematic. The question remains whether corruption in some of these countries might have gotten substantially worse if the conventions had not been signed.

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VI. ANALYSES OF THREE DIFFERENT CASES FROM SOUTH AFRICA, US, SAUDI ARABIA AND UK

A. CHAPTER OVERVIEW

This chapter will explore three cases related to defense procurement. These cases are from different parts of the globe: South Africa, the U.S., Saudi Arabia, and the UK. Mainly, these three cases involve exceptionally high monetary value, corruption vulnerabilities, unneeded or wasteful offset arrangements that lack military value or public interest, unnecessary exclusion from competition, and the employment of agents, brokers, and other intermediaries as conduits to illicit payments and services unrelated to the goals of contracts.

B. SOUTH AFRICAN EXPERIENCE

1. Background

The background information related to the South African experience from Magahy et al. (2010) is as follows:

> The South African government approved the Strategic Arms Procurement Package in December 1999 costing R 30 billion (ca.U.S. 4.8 billion in 1999). The programme, involving purchases of high-tech warships, submarines, and aircraft from Germany, Sweden, Italy and the UK, has been the source of much controversy, both over the appropriateness of the package for South Africa, and over allegations of corruption in the numerous contracts contained within.
>
> The allegations implicated several senior figures in the South African government in receiving bribes to fund the ruling ANC's 1999 re-election campaign and, according to former ANC MP Andrew Feinstein, possibly to support the R 1.7 billion surplus currently held by the ANC.
>
> The programme's ambitious offsets programme was envisaged to run over a period of eight to fourteen years, and initially estimated to create 65,000 jobs and generate revenue of R 111 billion. Such forecasts may have been faulty—one study by Dunne and Lamb (2004) concluded that the economic benefits of offsets were unclear and there were "considerable doubts about whether South Africa as a whole has or will benefit from the deal." According to the authors, offsets' causality and sustainability

> remained also to be proven. A further study by Haines (2004) concluded that "employment creation by offset projects is limited, particularly in peripheral regions" and that there was evidence of substantial hidden costs associated with offsets. Moreover, according to a 20 March 2008 edition of South African news publication Mail & Guardian as well as scholars Dunne and Lamb, allegations of corruption accused government and senior defence officials of having conflicts of interest when awarding offsets contracts to companies to which they had direct links, in abuse of the policy of Black Economic Empowerment.
>
> Despite such alleged instances of corruption in the offsets programme, a government investigation team reported that though it found irregularities and improprieties in the conduct of certain government officials, it found no evidence of improper or unlawful conduct by the government as a whole. However, this report excluded one from the Attorney General on the submarines' acquisition.
>
> This document flagged unlawful practices during the evaluation phase and over the high score given to the largest of the offset projects, affecting the award of the supply contract. What is more, nine years later that project was still not completed. Finally, allegations of corruption in the offset package and the wider defence deal have been routinely featured in the popular media in South Africa. (Magahy et al., 2010, p.27)

2. Analysis

The case of South Africa and the relevant allegations indicates some of the procurement related vulnerabilities to corruption:

a. Offsets Lacking Military Value or Public Interest

Offsets in the procurement process sometimes complicate monitoring and oversight efforts. Due to their opaque, complex, and highly technical nature, offsets attract little attention. Moreover, they involve a high amount of monetary value and do not have enough transparency and accountability. The combination of these factors contributes to increasing corruption related risks and the emergence of new opportunities for defense corruption (Magahy et al., 2010).

Before analyzing the South African case, the justifications set forth by decision makers for such a high monetary value need to be examined:

> To justify its decision to purchase from foreign suppliers and to win public support for the arms deal, the South African government has continually stressed the potential positive effects of the proposed industrial participation (IP) offset-related industry and the national economy. At the time of approving the programme, they stated that the foreign suppliers had made IP offers worth R104 billion which would result in the creation of more than 65 000 jobs over a period of seven years Batchelor, P., & Dunne, P. (2000) p.1

The emphasis should be on the offsets and their likely positive outcomes such as new employment and contribution to the economic growth. However, the figures presented by the South African government for offsets (which are Industrial Participation in this case) have attracted some criticism from scholars like Batchelor and Dunne (2000):

> The job creation estimates which were presented by government in September 1999 suggest that R104 billion worth of IP commitments will create approximately 65 000 jobs—this amounts to R1, 6 million per job. This figure is extremely high and nearly 20 times higher than the average cost per job in the local defence industry. (…)Any such estimates are questionable, however, as the impact of the arms acquisition programmes, including the DIP [Defense Industrial Participation] activities, on job creation in the local defence- related industry is difficult to quantify. Certainly local purchases by the foreign suppliers, equity investments, joint ventures and export contracts will help to maintain jobs in the local defence-related industry, and prevent further retrenchments. In addition, even if the estimates presented above are accepted, they represent consider- ably fewer jobs than could be created if the money were used for other purposes than buying arms.

Moreover, Dunne and Lamb (2004) expressed doubts concerning the future capabilities of offset companies indicating that it's "not clear that the companies will be internationally competitive to allow follow-on industrial development to be sustainable." (Dunne and Lamb ,2004, p.290)

The case shows the gaps and problem areas that offset programs potentially carry within themselves:

They can be utilized as instruments to complete corruption schemes related to the acquisition process, "allowing payments to be made to governmental and military

officials, directly or indirectly, for undue influences over the decision process." (Magahy et al., 2010)

In addition, "offset programmes may be used to influence award decisions, even though they can be changed afterwards and the decision most times may not." (Magahy et al., 2010)

b. Government Official/Contracting Officer PCI (Personal Conflict of Interest)

Furthermore, during the implementation of acquisition programs, many flaws have occurred, eventually leading to costs for political figures. It caused the suspension of one government official, and according to a news article in the Economist:

> A European bidder had already admitted to securing discounts on flashy cars for several politicians. One of these, Tony Yengeni, the ruling party's former chief whip, was arrested in October for fraud, perjury and corruption. And on November 16th, a local bidder for an arms contract, Shabir Shaik, was charged with illegally possessing cabinet secrets on the deal. His brother was the government's chief negotiator for the 1999 deal, but this week was suspended from his job. The Economist *Gunning for Profit*. (2001, November 24).,

C. THE DARLENE DRUYUN CASE

1. Background

The information regarding the Darlene Druyun case is gathered from several GAO sources: GAO Testimony, (GAO, 2005a) about the sustainment of protests challenging the roles of biased officials; GAO Decision, (GAO, 2005b) about the small diameter bomb (SDB) program; and GAO Decision,(GAO, 2005c) about the avionics modernization upgrade program (AMP) for the C-130 aircraft.

The background information from GAO Testimony, (GAO, 2005a) is as follows:

> (…) in October 2004 Darleen Druyun pled guilty to violating the conflict of interest provisions of 18 U.S.C. § 208(a) based on the fact that she engaged in employment negotiations with The Boeing Company while she was negotiating on behalf of the Air Force for the lease of 100 Boeing KC 767A tanker aircraft. In addition to her employment negotiations,

documents submitted by Druyun in connection with the criminal proceedings establish that, in 2000, Druyun contacted Boeing personnel to request that Boeing provide employment for both Druyun's daughter and the daughter's boyfriend (who subsequently became Druyun's son-in-law). In response to these requests, Boeing created a position for Druyun's daughter and hired both her daughter and future son-in-law in the fall of 2000. In the documents filed in the criminal proceedings, Druyun further states that her decisions in matters affecting Boeing were "influenced by her perceived indebtedness to Boeing for employing her future son-in-law and daughter," and that with regard to the contract awarded in the C-130 AMP procurement, "an objective selection authority may not have selected Boeing."

Following Druyun's disclosures in October 2004, agency-level protests were filed at the Air Force by the three offerors who unsuccessfully competed for the C-130 contract: Lockheed Martin Aeronautics Company, L-3 Communications Integrated Systems, (the successor-in-interest to Raytheon Company Aircraft Integration Systems), and BAE Systems Integrated Defense Solutions, Inc. The Assistant Secretary of the Air Force for Acquisition subsequently advised each of the protesters that "the Air Force is of the opinion that the protest is more appropriately considered by the Government Accountability Office," and that "the Air Force will not decide the protest." Each of the companies subsequently filed protests with our Office maintaining that Druyun's recently disclosed bias in favor of Boeing, along with the information previously disclosed to the protesters regarding the agency's purported bases for rejecting their proposals, demonstrated that their proposals were not evaluated in a fair and unbiased manner.

In response to the protests, the Air Force argued that notwithstanding Druyun's acknowledged bias in favor of Boeing, the award to Boeing was proper because "there is no evidence that Mrs. Druyun influenced the SSET [source selection evaluation team]" and that, overall, "the evaluation process was conducted properly and in accordance with the evaluation criteria."

In that testimony GAO also presents its review of the records of the case:

(…) The record developed by GAO, including the hearing testimony, established the following key points. First, Druyun functioned as the lead procurement official throughout this procurement and employed a forceful management style. In this particular procurement, she left no doubt about who was in control from the outset. Before the evaluators had even completed their initial proposal review, Druyun requested that they come to Washington, D.C. to discuss the "status" of their evaluations; this

meeting was subsequently referred to as the "15 September massacre." From September 15, 2000 through the first request for final proposal revisions in February 2001, Druyun had the evaluators come to Washington five times to brief her on the ongoing evaluations; during these briefings, Druyun expressly or implicitly directed multiple changes to the evaluators' ratings, many of which favored Boeing. In our decision, we identify specific examples of Druyun's directions regarding each of the offerors' proposals.

Also, the record shows that following the request for final proposal revisions, but before the source selection process was complete, the contracting officer sent an e-mail to a recipient list that included virtually everyone involved in the source selection process, directing that the recipients "clean up" and "delete" various portions of the evaluation record. Specifically, this e-mail directed the recipients to "delete any comments where evaluators/advisors have suggested ratings," explaining that "[i]f the rating doesn't match the suggestion, we have protest fodder." The e-mail also specifically directed the evaluators to "[d]elete any derogatory or exceedingly glowing comments."

The first round of final proposal revisions was submitted on March 2. On March 9, the contracting officer reopened discussions and requested a second round of proposal revisions. At the GAO hearing, the contracting officer unambiguously testified that discussions were reopened to permit Boeing to "take care of" a "problem" in its cost proposal, explaining that, at that point, Boeing's proposal failed to comply with instructions the agency had previously given the offerors. No substantive questions were asked of any other offeror during these discussions. Nonetheless, during the GAO hearing, agency witnesses identified specific aspects of the protesters' final proposals that should have been brought to their attention, including aspects of the protesters' proposals that appear very similar to the "problem" Boeing was permitted to "take care of."

The second round of final proposal revisions was submitted on March 19. Thereafter, the source selection evaluation team briefed Druyun on the evaluations of final proposals. During this briefing the cost team was directed to review their analysis to "assure its accuracy." Upon receiving that direction, the cost team reduced Boeing's evaluated price and increased Lockheed's evaluated price. Additionally, in a subsequent meeting with Druyun, the source selection evaluation team described a specific approach to performance that Boeing had proposed as one "which tends to induce problems." Druyun directed that this description be crossed out of the evaluation record and replaced with the words: "Boeing will work out details post award."

In addition to the case of the avionics modernization upgrade program (AMP) for the C-130 aircraft, "various procurement actions taken by the Department of the Air Force in connection with the small diameter bomb (SDB) were protested by Lockheed Martin Corporation" (GAO, 2005b). Below is the background information from GAO Decision (GAO, 2005b):

> Lockheed Martin's protest relates, generally, to activities that took place between September 2001 (when Boeing and Lockheed Martin were each awarded component advanced development contracts under the SDB program) and August 2003 (when Boeing was selected for award of the SDD [system design and development] contract). However, the primary focus of the protest relates to activities that took place during the first few months of 2002 and culminated in the Air Force's decision to make significant changes to the SDB requirements and associated evaluation criteria--specifically, the deletion of phase II requirements for capabilities against moving targets.
>
> (…) the agency [Air Force] awarded component advanced development (CAD) contracts under the SDB program to Boeing and Lockheed Martin in September 2001. The contractors were advised that, during the 24-month performance period of the CAD contracts, the agency intended to conduct a "rolling down select evaluation" during which Boeing and Lockheed Martin would compete, on the basis of their performance under the CAD contracts, for award of the SDD contract. (…)Boeing and Lockheed Martin were advised of the criteria on which the SDD selection would be made; these criteria included, among others, a factor focusing on the evaluation of the contractor's capabilities with regard to the phase I fixed target requirements and a factor focusing on the evaluation of the contractor's capabilities with regard to the phase II moving target requirements.
>
> (…) at least initially, the agency "envisioned" the use of [deleted] to perform the phase II moving target requirements. (…) The record indicates that early in 2002, Lockheed Martin was viewed as having an advantage over Boeing with regard to [deleted]. Further, early in the procurement process, this advantage was interpreted as "strength in Phase II" for Lockheed Martin.
>
> (…) briefing documents prepared by the SDB program manager in connection with briefings given to the Air Force Chief of Staff and the Secretary of the Air Force (…) contain check marks in Lockheed Martin's column, indicating relative strengths, beside the terms "[deleted] (Spiral II)" and "[deleted] (Spiral II)."

> (…) In May 2002, following several months of meetings, briefings, and discussions within the Air Force, the Secretary of the Air Force approved various recommended changes to the SDB program—including the deletion of phase II requirements regarding moving targets. (…)Thereafter, the evaluation criteria applicable to the selection of an SDD contractor were similarly revised to eliminate consideration of the deleted requirements. (…)In August 2003, Boeing was selected for award of the SDD contract. (…)In November 2003, the Air Force executed a justification and approval (J&A) providing for the addition, on a sole-source basis, of the phase II moving target requirements to Boeing's SDD contract.

2. Analysis

The Druyun case became one of the biggest defense related scandals in U.S. history. There has been a lot of media coverage about Druyun case, and in the aftermath of the scandal, many experts examined the causes of corruption in cases of such high monetary value, and the outcomes and negative consequences to the Air Force and the U.S. government. The Dryun case did not only cost money, as Branstetter observes: "what is clear is that in addition to the untold sum of treasure that Ms. Druyun's misdeeds will cost the Government, countless hidden costs will be exacted through a loss of the trust of contractors and taxpayers alike in the government procurement system" (Branstetter, 2005).

GAO declared its decision after reviewing the protests submitted by the other bidders in which Boeing was awarded a contract through the help of Druyun:

> (…) we rejected the Air Force's assertion that there was no evidence that Mrs. Druyun influenced the source selection evaluation team. Similarly, in light of the failure to treat offerors fairly regarding discussions, we rejected the Air Force's assertion that the evaluation process had been conducted properly. Finally, because the contracting officer directed the evaluators to destroy various portions of the evaluation record and the agency failed to conduct meaningful discussions with all of the offerors, along with the evidence of Druyun's influence throughout the source selection process, we could not reasonably determine which of the four proposals should have been selected for award.

> We concluded that the record failed to establish that any one of the protesters was not prejudiced by the various procurement flaws. Accordingly, we sustained the protests.(GAO, 2005a)

The Druyun case and its allegations indicate some procurement related vulnerabilities to corruption:

a. Government Official's Personal Conflict of Interest:

In this case, the most prominent type of corruption occurs in the conduct of government officials in the presence of a clear conflict of personal interests. Druyun directed the procurement processes of the avionics modernization upgrade program (AMP) for the C-130 aircraft (GAO, 2005c), small diameter bomb (GAO, 2005b), and the Air Force's KC 767A tanker lease deal (Branstetter, 2005) while attempting to place herself and her family in jobs with the awardee, Boeing. Druyun intervened so that the Boeing company would be awarded the contract, which also benefitted herself and her family at the expense of the government and taxpayers; Druyun was also negotiating with the Boeing company for an employment position.

b. Sole Source – Exclusion from Competition:

Although Druyun's conflict of interest is the prevalent example of corruption in this case, the sole source method of selection in the case of the small diameter bomb (SDB) program also needs to be closely examined. The sole source method justified in some instances, such as the urgency and a lack of capable manufacturers, but in the SDB program, the sole source method was used as an instrument to complete the corrupt selection process by allowing the Boeing company back into the selection phase once the agency lead by Druyun limited its solicitation requirements to retain only those where Boeing was strong. "In November 2003, the Air Force executed a justification and approval (J&A) providing for the addition, on a *sole-source basis*, of the [formerly removed] phase II moving target requirements [back] to Boeing's SDD [system design and development] contract." (GAO, 2005b) This method of enlarging a previous contract award was chosen to eliminate competitors and reduce the possibility of challenges.

D. SAUDI ARABIA'S AL YAMAMAH DEAL

1. Background

In 1985, following negotiations between Saudi Arabia and the UK, the Al Yamamah contract was signed, making it the largest export incident in the UK's history (Magahy et al., 2010). The deal included an oil-for-arms payment method, and the number of aircrafts and "40 Tornado IDS aircraft, 24 Tornado ADV aircraft, 30 Hawk aircraft, and 30 PC-9 aircraft, together with associated support, services and ammunition at an initial cost of between £3 and £4 billion" (Williams, 2008).

After this initial deal, there was a follow-up phase signed in 1989, and another series of contracts in 2006, named Al-Salam, which "involved the supply of Euro-fighter Typhoon jets worth £5 billion to the Royal Saudi Airforce" (Williams, 2008).

Williams gives the background information related to the allegations about the Al Yamamah deal:

> Allegations that bribes were paid to secure the Al-Yamamah contracts began almost as soon as the contracts were signed. A newspaper report in October 1985, one month after the contracts were signed alleged the payment of bribes. In March 2001, the Serious Fraud Office (SFO) sent information to the Ministry of Defence (MOD) about allegations of fraud involving BAE in relation to Al-Yamamah. However, it was not until secret MOD documents were leaked to the press in 2004 that the SFO took action to investigate the allegations.
>
> (…)The SFO investigation was directed at allegations of suspected false accounting in relation to contracts for services between two travel and visa firms (Robert Lee International and Travellers World) and BAE in connection with contracts with the Saudi Government. The allegations were made by former employees of the firms, in a BBC programme where these employees alleged that as far back as 1989 they had been instructed by BAE to lavish cash, luxury gifts, and holidays on members of the Saudi Royal family responsible for overseeing the Al-Yamamah contracts. It was also alleged that BAE used a number of devices to disguise the payments and expenditures and that the money for these expenses, although provided by BAE in the first instance, were eventually paid for by the inflation of the contract prices by up to 32 per cent.

> After two years and an estimated expenditure of £2 million, the investigations by the SFO into the affairs of BAE, in so far as they relate to the Al-Yamamah arms deal, were abruptly terminated in December 2006. In a press statement, the Director of the SFO stated that the investigation was being discontinued on the basis of the need to safeguard national and international security and the necessity to balance the need to maintain the rule of law against the wider public interest and that no weight had been given to commercial interests or to the national economic interest. (Williams, 2008)

In the meantime, BAE was facing serious charges in the U.S. regarding the violation of the Foreign Corrupt Practices Act (FCPA) compliance program, the Arms Export Control Act (AECA), and the International Traffic in Arms Regulations (ITAR) (U.S. Department of Justice, 2010a) based on the same or related facts. In 2010, BAE pled "guilty to offences of false accounting to settle bribery allegations made over the enormous al-Yamamah arms deals with Saudi Arabia stretching back more than 20 years, as well as corruption allegations over arms deals in central Europe" (Leigh, 2010), and "was sentenced to pay a $400 million criminal fine" (U.S. Department of Justice, 2010a).

The U.S. department of Justice (2010b) gives the detailed information about the allegations related to the BAE's Al Yamamah deal:

> At least one of the LOAs [Letters of Offer and Acceptance] identified "support services" that BAES was obliged to provide. In the discharge of what it regarded as its obligations under the relevant LOA, BAE provided substantial benefits to one KSA [Kingdom of Saudi Arabia] public official, who was in a position of influence regarding the KSA Fighter Deals (the "KSA Official"), and to the KSA Official's associates. BAES provided these benefits through various payment mechanisms both in the territorial jurisdiction of the U.S. and elsewhere. BAES did not subject these payments and benefits to the type of internal scrutiny and review that BAES had represented it would subject them to in the foregoing statements to the U.S. government.
>
> BAES provided support services to that KSA Official while in the territory of the U.S. BAES provided certain of those support services through travel agents retained by a BAES employee, who was also a trusted confidant of the KSA Official. These benefits, which were provided in the U.S. and elsewhere, included the purchase of travel and accommodations, security services, real estate, automobiles and personal items.

> BAES undertook no or no adequate review or verification of benefits provided to the KSA Official, including the review or verification of over $5,000,000 of invoices submitted by the BAES employee from May 2001 to early 2002, to determine whether those invoiced expenses were costs which met the standards of review to which BAES was committed by virtue of the foregoing statements made to the U.S. government. BAES's provision of these benefits, and its lack of diligence and review in connection with such benefits, constituted a failure to comply with the foregoing representations made to the Department of Defense.
>
> BAES also used intermediaries and shell entities to conceal payments to certain advisors who were assisting in the solicitation, promotion and otherwise endeavoring to secure the conclusion or maintenance of the KSA Fighter Deals.
>
> After May and November 2001, and until early 2002, in connection with the KSA Fighter Deals, BAES agreed to transfer sums totaling more than £10,000,000 and more than $9,000,000 to a bank account in Switzerland controlled by an intermediary. BAES was aware that there was a high probability that the intermediary would transfer part of these payments to the KSA Official. BAES undertook no or no adequate review or verification of the purpose of these payments, and therefore BAES failed to comply with the foregoing representations made to the Department of Defense.

2. Analysis

The Saudi Arabia and BAE case primarily involves a corruption scheme of conflicts of interest; the seller possessed undue influence during the process by providing unrelated payments and other types of benefits to the government officials through 'agents, brokers and intermediaries.' Moreover, the deal might involve corruption vulnerabilities to offsets (Magahy et al., 2010, p.30), but so far no findings have been reported.

a. Government Official's Personal Conflict of Interest:

The allegations in court documents and media coverage about this case display the involvement of high ranking Saudi government officials and royal family members. Saudi officials allegedly accepted payment and services that "have no obvious link with defence contracts" (Fidler and Peel, 2007). These payments could have played a

significant role in awarding the BAE in 1985 such a high contract value, as well as guaranteeing the company later contracts. The U.S. Department of Justice (2010b, p.12–13) gave detailed information about the payments and services provided to Saudi officials related to Al Yamamah deal:

> At least one of the LOAs [Letters of Offer and Acceptance] identified "support services" that BAES was obliged to provide. In the discharge of what it regarded as its obligations under the relevant LOA, BAE provided substantial benefits to one KSA [Kingdom of Saudi Arabia] public official, who was in a position of influence regarding the KSA Fighter Deals (the "KSA Official"), and to the KSA Official's associates.
>
> (…)BAES undertook no or no adequate review or verification of benefits provided to the KSA Official, including the review or verification of over $5,000,000 of invoices submitted by the BAES employee from May 2001 to early 2002, to determine whether those invoiced expenses were costs which met the standards of review to which BAES was committed by virtue of the foregoing statements made to the U.S. government.

b. Agents, brokers and intermediaries:

Using agents, brokers, and intermediaries usually complicates the monitoring process; unnecessary layers are added to tracking efforts. Sometimes, employing these middlemen can be used to conceal illicit payments from the scrutiny of internal and external control figures.

The BAE used agents and intermediaries in this case for this purpose.

> During the U.S. investigation, "BAE has admitted it paid commissions to agents as part of the £43bn deal, which they say is normal practice in the business, and that given the size of the contracts, the sums were often large. But it has declined to say who received them while repeatedly denying any wrongdoing." (Fidler and Peel, 2007)

However, The U.S. Department of Justice found that "BAE also used intermediaries and shell entities to conceal payments to certain advisors who were assisting in the solicitation, promotion and otherwise endeavoring to secure the conclusion or maintenance of the KSA Fighter Deals" (The U.S. Department of Justice , 2010b, p.13).

E. CHAPTER SUMMARY

In this chapter, three international cases were analyzed to identify vulnerabilities in the procurement process. These cases involved high monetary value contracts, prominent figures in government and contracting companies, politicians, and well-known industry figures. The identified are

- Government official's personal conflict of interest,
- Unneeded and wasteful offset arrangements lacking military value or public interest,
- unnecessary exclusion from competition by using sole source selection method,
- And, utilization of agents and brokers and other intermediaries for purpose of undue influence of government officials.

The South African case depicts the vulnerabilities of offsets in defense procurement. Offset arrangements could not yield the purported benefits and contribution to the domestic defense and non-defense related industrial bases. Furthermore, they were used as an instrument to obtain the award for the submarine contract despite lower limitary value, in order to influence the evaluation process by receiving higher scores and not fulfilling the requirement later.

The Druyun case illustrates the risks of an individual possessing an inappropriate amount of discretionary power. The primary vulnerability was the government official's personal conflict of interest, and employment of the sole source selection method.

Saudi Arabia's Al Yamamah case illustrates the corruption vulnerabilities that are produced by the utilization of intermediaries as conduits to conceal illicit payments.

VII. CONCLUSION AND RECOMMENDATIONS

This chapter presents the answers to research questions, conclusions, recommendations, and areas of further research.

A. ANSWERS TO RESEARCH QUESTIONS

1. What are the Corruption Related Vulnerabilities that Exist in Defense Procurement Cycle?

Defense procurement is not distinct from public procurement; they share many common corruption vulnerabilities: bidder collusion, influence from sellers and political figures, lack of control and oversight, privileged relations, single-sourcing, offset requirements, and favored bidders. Yet, defense procurement contains several distinct characteristics. Excessive secrecy and security measures prevent a transparent procurement process, which could facilitate the concealment of corrupt activities.

2. Which Vulnerabilities Pose Higher Risk in Defense Procurement Cycle?

Of all the steps in the procurement cycle, the tendering phase is the most prone to corruption vulnerabilities. The primary vulnerabilities are the unnecessary exclusion from competition which can be named as illegitimate sole source, and wasteful, unneeded offset arrangements lacking military value and public interest.

3. What are the Significant Risks Related with Offset Arrangements and Single-Source Procurement Methods?

Offset arrangements are integral to contemporary arms deals; however, they often do not receive a necessary amount of scrutiny. Their opaque nature and relevant secrecy can potentially turn them into handy instruments for concealing large bribes. Generally, companies are not evaluated based on their offset performances, and they are reluctant to publicly release data about offset programs. Offset arrangements raise costs, are hard to monitor, and can have extremely complex structures. This complexity poses additional transparency risks; there is not enough skilled personnel to audit and evaluate these

arrangements. Furthermore, these arrangements fuel local corruption in the hands of procurement officials or corrupt politicians who channel sub-contracts to their own interest groups. Procurement officials can also create offset requirements arbitrarily, and form unnecessary and wasteful arrangements for the sake of their political or personal interests.

Single source procurement kills competition, and the absence of a competitive procurement process eliminates layers of quality control, evaluation and supervision. Furthermore, the discretionary power of contracting officials allows them to award lucrative contracts; officials can manipulate conditions the tendering process to justify single source procurement. By reducing the number of bidders, they reduce the risk of appearing to unfairly favor specific companies. Similarly, collusion between bidders can also eliminate the competitive process.

4. How effective are the Existing Anti-Corruption Tools and Strategies against Corruption in Defense Procurement Cycle?

Conventions are major international mechanisms that combat corruption. Corruption in the defense sector can occur on an international level. Conventions mostly address bribery and personal conflict issues; they encourage integrity, competition, and transparency in the public procurement process.

However, research shows that conventions do not necessarily have a positive effect on corruption. This may be attributed to adolescent stage of current conventions, or to the lack of enforcement mechanisms related to these regulations.

5. How do the Existing Tools and Measures Correspond to the Corruption Vulnerabilities in Defense Procurement Cycle?

Existing tools may only address the problems of defense procurement. The conventions and the FCPA for the U.S. are legally binding regulations, whereas the TI's Self-assessment questionnaire is a voluntary tool, without any formal obligations.

The Conventions mainly address bribery, personal conflicts of interest, and competition issues; however, they do not address the creation of wasteful or unnecessary

requirements. Offsets are not included in their content. There is a lack of international agreement on offset agreements, and even if offsets are banned from trade agreements, there are exceptions for defense procurements in the case of national security or a country's interests.

The FCPA is an important regulation for defense procurements because of its broader scope; however facilitation payments constitute important vulnerabilities to corruption in defense procurement.

The NATO-TI Building Integrity Self-Assessment is tailored for countries that are willing to assess their level of transparency, integrity and corruption risks in defense institutions. It offers a wide-range of questions to unveil the suspicious corners of the defense environment that set the grounds for corrupt acts. However, the NATO-TI Self-Assessment is only a tool for assessment, and does not contain any legal binding; it cannot actually fix any of problems it reveals. Governments need to be willing to create legal frameworks to settle these problems. This is important because every country has specific sensitivities that should be addressed with tailor-made regulations

B. CONCLUSION

The primary objective of this research project was to investigate the corruption vulnerabilities in the defense procurement cycle and the existing international tools for rectifying these vulnerabilities.

The conclusion of this research is that the tendering phase in the defense procurement cycle is the phase most prone to corruption vulnerabilities. The prominent vulnerabilities are the manipulation of competitive processes that encourages sole source tendering, and wasteful or unneeded offset arrangements that lack military value or public interest. In Chapters II and III, these matters were discussed.

Through the analysis of three international cases, it was found that offset arrangements can lack credible justifications; they can also be utilized as instruments in corruption schemes, used to influence the procurement process in favor of particular

bidders. Furthermore, sole source methods can allow bidders into the selection phase without the possession of contract requirements.

Anti-corruption measures and tools are important, but the integrity of key decision makers is the most important factor that these measures to function properly. As discussed in the Druyun case, corrupt actions would not occur if government officials did not willfully and deliberately choose to follow the path of corruption. This situation leads to questions about the figures who oversee these officials? Cordova-Novion and Jacobzone mention that "without clear limits and accountability rules, an oversight body may be subject to the same criticism that justified its establishment:—who will watch the watchers, who will guard the guardians? That is, who will oversee the regulator of regulators" (2011)?

An academic, sectoral analysis of corruption in the defense industry and defense procurement system does not exist, whereas health, education, construction, justice and other sectors, as well as overall public procurement system, are discussed and investigated by scholars like Campos and Pradhan (2007).

C. RECOMMENDATIONS

This study will present recommendations based on its conclusions:

Defense procurement organizations and officials need to be aware of the highly susceptible areas in the defense procurement cycle, particularly the tendering phase. Auriol suggests the e-procurement method to increase the number of bidders in the tendering process and decrease procedural costs:

> E-procurement reduces substantially procurement procedural cost. The firms registered into the system receive automatically the tender offers. If they wish to submit an offer, they do it electronically from their office. Since more firms are informed of the tender, and since it is less costly for them to submit an offer, the number of bidders increases. (Auriol, 2006, p. 875)

Furthermore, caution should be exercised when making the decision to utilize the sole source method and offset arrangements. When using reducing competition, decision

makers should take the corruption risks associated with the sole source method into consideration. As discussed in the Chapter III, offset arrangements inherently possess risks of diverting economic and development goals, may have only a small amount of credible justification, and obscure monitoring and oversight processes. Offset arrangements require careful scrutiny.

Taylor suggests several courses of action:

> First, procurement officers should conduct a benefit-cost estimate to determine whether the offset is superior to other instruments. For example, might bargaining for price discounts on the base good and then using these proceeds to purchase new technology on the open market be preferable to the offset? Alternatively, perhaps government could provide a subsidy to a targeted industry and foster growth more effectively in the domestic economy compared to the offset.
>
> Second, when an offset is selected as an attachment to the transaction, the government should construct a well-defined contract. The contract should specify (a) a list of products and/or firms in the domestic economy that the seller can partner with to fulfill the offset obligation; (b) a schedule for fulfillment of various stages of the offset obligation; and (c) a penalty clause for non-compliance. Research has shown that such specification is desirable.''
>
> Third, governments should build databases to allow for formal accounting of the offset programs. Like other government policies, offsets involve massive amounts of public funds. The performance of these funds ought to be accounted for by an offset audit team. Then and only then, argues Brauer (2002, p. 13), can the "public-at-large decide whether the losses or profits are worth the original objective. (Taylor, 2003, p.352)

This thesis suggests a micro level survey for defense procurement leaders that focuses on single source and offset arrangements. Following, are the questions for this micro survey:

1. **Single Sourcing:**

- What are the justifications for excluding competition in contracts?
- Is there any analysis of the cons and pros of using a single source method while foregoing the positive effects of competition during the tendering phase?
- Do any tendencies appear when the past contact awards are examined? Are any of the bidders repeatedly awarded on single source basis?

2. **Offsets:**

- What are the justifications for offset arrangements in the contract?
- Were any analyses made for the costs and benefits of the proposed offset arrangements? If so, are goals and relevant milestones clearly set within the offset arrangements?
- Did decision makers consider options such as applying subsidies to targeted domestic industries from the proceeds generated from the bargaining process, rather than using the offset option?
- How will the monitoring and oversight efforts be applied during the implementation phase of offsets?

D. AREAS OF FURTHER RESEARCH

A specific, sectoral investigation could be conducted into the defense procurement process, in order to attempt to understand the extent of corruption in the process. Particularly, the scale and effect of single sourcing and offset arrangements could be quantified.

Additionally, a comprehensive analysis of the effectiveness of current anti-corruption tools can be conducted with a specific focus on defense procurement. Analyses on other sectors exist, ranging from health to education, but such an analysis of defense is not present.

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