





THE UN PROCUREMENT PROCESS OF TODAY – GOT RID OF THE FRAUD LEGACY AND FITTED FOR FUTURE?

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Solo Flight

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INTRODUCTION

The United Nations (UN) procure in bigger extent in field missions, and are also engaged in main purchases steered from New York's Headquarters (HQ). The volume of its purchases in 2018 comprises 18,785 billion US Dollars (USD). The UN procurement process and its policies are comparable to all other state-driven public procurements by individual democratic nations. Unfortunately, the UN procurement process is often related with fraud, bribe and abuse. Even more, for a long time, it seemed that the UN engagements are fix interconnected with corruption by legacy. Additionally, the UN procurement process and apparatus are often considered as ineffective and without proper internal control mechanisms.

In 2006, a high number of frauds related with UN purchases were unveiled, and gained tremendous public and political interest. These scandals led to a demand of urgent needed reforms and changes in the UN procurement system. The latest revised version of the UN Procurement Manual (PM) was published in September 2019.

The demanded reforms from 2006 to 2019 led to improvements and increased effectiveness of the UN procurement process in some extent. This paper will examine the reforms in the UN procurement process and policy changes, and analyze in how far they are addressed in the 2019 PM to prevent further misconducts in the future.

¹ Main purchases are those with a volume of over one Mill. USD

² The United Nations. 2018 Annual Statistical Report On United Nations Procurement, 4, 2019.

³ GAO-report, 3, 2006.

Additionally, it is presumed that regulations are traditionally designed for land-based field missions. This paper will use the – so far – only UN led maritime mission, UNIFIL Maritime Task Force (UNIFIL MTF, UNIFIL MarOps), as example and case study to analyse whether the current regulations and policies are sufficient with regard to UN maritime missions. This mission started back in 2006 and is still ongoing. The frauds and the begin of UNIFIL MarOps match quite perfectly in time, and are thus chosen as snapshots in time for this examination.

In the course of this paper, it will be proven, that for now further process reforms and policies changes are not required when the existing ones are applied properly.

UN PROCUREMENT – GENERAL PURPOSE AND PRINCIPLES

UN procurement is the very broad collective term for acquisitions conducted by the UN, and is defined in rule 105.12 of the Financial rules.⁵ Applied and transcribed to the UN Procurement Manual, it implies "all actions necessary for the acquisition, by purchase or lease, of property, including products and real property, and of services, including works." For this paper, the term 'procurement' relates to the acquisition of goods, services, works or real property. The UN procure through transparent and competitive bidding.⁶

It is necessary to understand that each organization within the UN system, for example the World Food Programme, Children's Fund (UNICEF), Department of

⁴ UNIFIL stands for United Nations Interim Force in Lebanon, and is noted as the first UN-led maritime mission.

⁵ Financial Regulations and Rules of the United Nations, Rule 105.12; This is the overarching UN regulation document for all UN acquisition actions.

⁶ UN Procurement Manual, para 2.1

Peacekeeping Operations (DPKO/DPO), World Health Organization, procure goods and services in accordance with their own regulations and procedures.⁷ They conduct procurement with a different acquisition and procurement profile depending on their missions and mandates. In 2018, 39 different UN organizations reported and contributed to the Annual Statistical Report On United Nations Procurement (ASR). In the light of the greater goals of the UN and its foundational procurement principles, it is the good news that the individual organizations' procurements of goods and services encompasses suppliers in 223 countries and territories, including all 193 Member States. In 129 Member States, the procurement volume exceeded ten million USD.⁸ In the context of this paper, military-related procurements are conducted by two different departments of the UN Secretariat. Strategic acquisitions are steered by the Department of Operational Support (funding takes place in Department of Management Strategy, Policy and Compliance), while field procurements in the course of missions and operations fall under the responsibility of missions' Local Procurement offices. Volumes exceeding a threshold of one million USD have to be always reviewed by the UN Headquarters.⁹

Foundational principles are laid down in the Financial regulations 5.12 and in the PM, paragraph 1.4. They must always be seen in context with the character and the greater goals of the UN which are anchored in its Charter. The following general principles must be applied in the framework of UN procurement: 1. Best Value for Money, 2. Fairness, integrity and transparency, 3. Effective international competition,

⁷ Thai, Khi. Journal of Public Procurement, Progress of Procurement Reforms, 110, 2002; On 01 Jan 2019, the Department of Peace Operation (DPO) succeeded and replaced the DPKO.

⁸ The United Nations. 2018 Annual Statistical Report On United Nations Procurement, 7, 9, 2019.

⁹ Procurement Manual, para 9.4, 2019; https://hcc-hpsb-training.ilearn.un.org/about/aboutus, accessed 03 May 2020.

and 4. Procurement must be done in the best interest of the UN. Chapters 1.4 and 1.5 of the PM are dedicated to these principles. This also includes the ethical behaviour of UN staff members and vendors as a focal point.

THE 2006 FRAUDS AND LOUD DEMANDS FOR REFORMS

Several months after the Independent Inquiry Committee finished its investigations and report on administrative issues and abuse in the UN operated Oil-for-Food program in Iraq, another earthquake shaken the UN world. News reported about UN internal investigations which unveiled about 200 instances of alleged procurement mismanagement and fraud in peacekeeping operations and at the UN HQ in New York.¹¹ The UN Office of Internal Oversight Services (OIOS) proactively conducted these investigations, and found "substantial evidence of abuse in procurement operations." ¹² The investigations included several senior administration officers, e.g. a chairman of the Advisory Committee on Administrative and Budgetary Questions, procurement officers and an Assistant Secretary-General, and led to "special administrative leave" until completion of investigations and court hearings. Individuals were sentenced when found guilty for wrongdoing, or committed crime (conspiracy, wire fraud, money laundry, bribing). 13 The case potentially involved tens of million USD of global tax payers, for which the UN was responsible as steward. 14 Former US Ambassador John Bolton declared a "need for a fundamental shift in the organization's operating culture." As the

¹⁰ Financial Times, London, 21 Jan 2006; Washington File, 24 Jan 2006.

¹¹ Washington File, 24 Jan 2006.

¹² Financial Times, London, 21 Jan 2006; Washington File, 24 Jan 2006.

¹³ Supply Management, 12 Apr 2007; Financial Times, London, 21 Jan 2006.

¹⁴ Washington File, 24 Jan 2006.

president of the UN Security Council, he urged a public review of the report by the council and its 15 member nations. This is remarkable since the Security Council constitutes another UN Principle Organ than the DPO, which on the other hand belongs to the Secretariat, and runs the Peacekeeping Operations and Missions.¹⁵

In its 2006 report, the United States Government Accountability Office (GAO) came to the conclusion that the UN's overall control environment for procurement is weakened. This may have led to the recent evidence of corruption and mismanagement in the UN procurement branch at that time. As result of these deficiencies, millions of dollars in contributions from member states were unnecessarily vulnerable and at risk of fraud, waste and abuse.¹⁶

The following conditions were found by the GAO and OIOS, and are supposed to have weakened the overall performance and effective control over the 2006 UN procurement system.

Absence of effective organizational structure

The 2006 UN structure had not established a mechanism, or had implemented a single organizational entity what acted as single point of responsibility, or was capable to comprehensively manage and oversee the different procurement activities. As result, the leadership and authority responsibilities were highly diffused, especially regarding the so-called field procurement. Actually, the former Secretariat's Department of Management (UNDM) held the organizational authority for UN procurement, but instead field missions and their respective field procurement staff and chief officers reported to

¹⁵ Washington File, 22 Feb 2006.

¹⁶ GAO-report, 3,12, 2006.

the Department of Peacekeeping Operations. It's Office of Mission Support – although holding delegated procurement authority from the UNDM – was found to "lack expertise, procedures and capabilities needed."¹⁷ Finally, GAO and OIOS came to the conclusion that neither department "has taken reasonable care to safeguard", and therefore the UN lacked an organizational structure for effectively managing its billion USD heavy procurements.¹⁸

Lack of commitment to improve the professional workforce

It has also been found that the UN did not commit to improve its procurement workforce. Referenced studies indicated Procurement Service staff and peacekeeping procurement staff showed shortfalls and deficiencies in knowledge and proper application of even basic UN procurement procedures and policies. 19 Also, in this regard most procurement staff lacked professional education, training and experiences, or did not even posses any professional qualification certificates. The OIOS report unveiled a case where a requisitioning unit had directly purchased goods and services of nine million USD. In this case, staff violated unconsciously and unknowingly the principle of strict segregation of duties between requisitioners and procurement personnel.²⁰

Reports also objected that the UN did not establish professional career paths for UN staff members. Well designed and managed career paths would enable and encourage progressive training, and contribute to gathering experiences. This would generate specialists, and prepare them for engagements in increased levels of responsibility. ²¹ In

¹⁷ GAO-report, 12, 2006.

¹⁸ Ibid.

¹⁹ Ibid, 15, 16.

²⁰ Ibid.

²¹ GOA-report, 17.

addition, this would help to attract, and retain qualified, certified UN procurement personnel.

Lack of specific ethical guidance for procurement personnel

The UN did not adopt the full range of ethics guidance for procurement officials due to resource constraints. ²² "Such guidance would include a declaration of ethics responsibilities for procurement staff and a code of conduct vendors." ²³ Ethical principles are basically considered as key element of an internal control environment, of proper behaviour, and would also contribute to reduce the risk of fraud, waste and abuse, when internalized. This is especially important for long-standing mandates. ²⁴

Weaknesses in Key Control Activities

The GAO-report also specified weaknesses in key procurement control activities. For example, as result of the growth of UN peacekeeping operation, the UN Headquarters Committee on Contracts (HCC) did not have sufficient personnel and resources to keep up with the overwhelming workload and the significantly increased number of contracts to be reviewed. The size of the HCC staff remained relatively stable, and was not able to properly review contracts increasing in number and complexity.²⁵

With regard to the second foundational UN procurement principle of fairness, integrity and transparency the GAO-report objected that the procurement process did not provide means or a process to handle possible vendors protest. At this time, vendors could not protest the outcome of contract decisions. There was no independent office or official to process and review protests. Through an independent process handled vendor

²² GAO-report, 18, 19.

²³ Ibid, 18.

²⁴ Ibid.

²⁵ Ibid, 20, 21; Remarks: From 2003 to 2006, the number of contracts has increased about 60 percent.

complaints could raise UN senior officials' attention on failures of procurement staff to comply with procedures and regulations.²⁶

The PM as doctrinal rules and regulations publication for both field and HQ procurement staff has not been updated since its last review in 2004. In the meantime, procedures have been adopted, and latest information have not been inserted in the PM. The PM as compendium must reflect all current policies and procedures. This is especially important in geographically wide dispersed field missions to enable staff members to comply with these rules sand regulations.²⁷

Additionally, the GAO-report criticized that the UN did not apply a formal and regular Risk Management process to assess compliance, evaluate risks, and finally to implement controls, and bring issues to superiors' attention. The implementation of a comprehensive UN Risk Management strategy for procurement would help to constantly identify areas and activities where proper attention must be allocated, and that require a stronger oversight in order to avoid fraud, waste and abuse.²⁸

UN must reform its procurement system

While the number of peacekeeping operations continuously grows, the UN similarly procures a variety of goods and services. This may include a wide range of e.g. air transportation, spare parts and fright delivery and telecommunication equipment.²⁹ In his interview ambassador Bolton emphasised and made clear that "the safety of UN peacekeeping operations will be jeopardized" as essential goods and services will not be available without an accountable, cost-effective and transparent UN procurement

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²⁶ Ibid, 22.

²⁷ Ibid, 23.

²⁸ Ibid, 26, 27.

²⁹ GAO-report, 7; ASR figure 5.

practices.³⁰ In his belief, the problem involves more than money and integrity, Bolton further moves on, it "is about saving lives, not only of the civilians we are trying to protect, but the soldiers and civilians of the countries participating in peacekeeping."³¹

In response to the 2006 reports and international pressure, the UN has started extensive, fundamental procurement reforms.

REFORMS IN THE UN PROCUREMENT SYSTEM AND THE NEW 2019 PROCUREMENT MANUAL

In January 2007, Ban Ki-moon came into office and took over as appointed Secretary-General. The new Secretary-General declared procurement reforms as one of his top priorities. ³² Under his leadership, the UN conducted an ambitious reform plan, and took decisive actions to address the procurement deficiencies. ³³ Procurement reforms were carried out at both the organizational and inter-agency level. The overall aim was to strengthen the foundational principles while reflecting the international character of the UN and its Charter. ³⁴ As a second snapshot in time, the release of the new PM will mark the timeframe of examination in the course of this paper. ³⁵

Strengthening an effective organizational structure

In recent months, the organizational structure has been adapted to decentralize and to enhance the effectiveness and coherence of peacekeeping operations, and to create

³² Supply Management, 12 Apr 2007

³⁰ Washington file, 2006.

³¹ Ibid.

³³ Ban Ki-moon stayed in office as UN Secretary-General from 01 Jan 2007 to 31 Dec 2016.

³⁴ Procurement Practitioner's Handbook, para 1.5.

³⁵ There have been different revisions; the latest version has been chosen for this examination.

greater cross-pillar coordination.³⁶ Also, the 2019 PM provides much more details and clarification on functions and responsibilities across the structure.³⁷ Additionally, joint activities have been emphasized, and inter-agency working groups and a Procurement Network have been founded. Representatives and senior procurement staff personnel of 40 UN organizations are members of the High Level Committee on Management Procurement Network (HLCM PN). The aim of the HLCM PN is to promote the strategic importance of Procurement and Supply Chain Management, and to foster the efficiency and effectiveness of the procurement function within the UN system through collaborative procurement arrangements, and harmonization of procurement practices.³⁸

Commitment to improve the professional workforce

Procurement officers and staff personnel act in a special position of trust, and are required to maintain high standards of professionalism. In order to continuously enhance the professionalization of procurement staff, the UN has developed own procurement training and certification programmes to address specific UN and public procurement topics and qualification requirements. These courses include online training, in-house courses and attendance at training at external educational institutions.³⁹ With regard to the 2019 PM, this publication contains much more detail on training and certification requirements than previous versions. Also, the UN has acknowledged the complex work environment, and the need to maintain qualified and engaged officials.

³⁶ The United Nations. "UN reform: Two new departments for the peace and security pillar", accessed 05 May 2020, https://www.un.int/cotedivoire/news/un-reform-two-new-departments-peace-and-security-pillar.

³⁷ 2019 PM, para 2.2-2.8.

³⁸ Procurement Practitioner's Handbook, para 1.5.

³⁹ Ibid, para 1.6.

Reinforcement of specific ethical guidance for procurement staff

The UN has spent tremendous effort to encounter corruption, and to reinforce ethical guidance. Amongst other initiatives, in 2005, the UN Convention against Corruption (UNCAC) became effective. 40 On 1 January 2019, the Department of Management Strategy, Policy and Compliance (DMSPC) was launched. The DMSPC will monitor compliance of UN personnel with ethical obligations, harness good practices and address challenges that require a policy-level response. 41 The new 2019 PM dedicates chapter 1.5 to highest ethical standards, corruption, conflict of interests and standards of conduct. The text volume appears less than in previous versions, however, the current publications refers to different subsequent, comprehensive documents and Secretary-General's bulletins.

Independent Process for vendors protests

In response of the deficiency regarding vendors protests, the UN simplified the process and made it more transparent. In general, a protest process involves a designated senior official or a review board who will handle the case, and ensure a fair assessment. Vendors or bidders have the opportunity to reach the responsible office online, and have also the option to bring the case to the attention of the Office of Internal Oversight.⁴² The 2019 PM is very clear on the process and how initiate a protest.⁴³

⁴⁰ Yukins, Christopher, 307, 308, 328; for example, UNCITRAL: UN Commission on International Trade Law, a model law on Procurement of goods, construction and services.

⁴¹ The United Nations. "Department of Management Strategy, Policy and Compliance (DMSPC) launched", accessed 05 May 2020.

⁴² The United Nations, Department of Operational Support, Procurement Division. "Debriefing and Procurement Challenges", accessed 04 May 2020, https://www.un.org/Depts/ptd/debriefing-and-procurement-challenges; Procurement Practitioner's Handbook, 120.

⁴³ 2019 PM, ch. 8.8.7 and 10.2.

CASE STUDY - UNIFIL MAROPS AND ADAPTABILITY TEST

In the course of the examination and study of the new 2019 PM it turned out that this publication seems to be written in a neutral manner, although the UN traditionally thinks purely 'land-based' with regard to peacekeeping operations. Hereinafter, its application for maritime operations will be assessed.

The UNIFIL Maritime Task Force (MTF) deployed in October 2006, and acts in accordance with the mandate of the United Nations Security Council resolution 1701 form 2006. The missions purpose rests on two pillars: The MTF "supports the Lebanese Navy in monitoring and securing its territorial waters, and preventing the unauthorized entry of arms or related materiel by sea into Lebanon." The second pillar of the mission is the support to build up Lebanon's Naval capabilities until the "country's Naval and Security Forces are fully able to fulfill the maritime security tasks effectively on their own." A total of 15 countries have contributed to the MTF, and since the start of the operation 97,377 ships have been hailed, and 785 trainings and exercises have been executed with the Lebanese Navy.

Case Study examination

Like in land-based operations, nations provide forces, personnel and services as agreed in so-called Letters of Assist (LOA). These LOA provide terms and condition for the provision of (maritime) services by a nation in support of specific UN led mission.

Reimbursement regulations are contained in the UN Reimbursement Manual (RM).

⁴⁴ The United Nations Peacekeeping. "United Nations Interim Force In Lebanon", accessed 03 May 2020, https://unifil.unmissions.org/unifil-maritime-task-force.

⁴⁵ Ibid.

⁴⁶ Ibid; Contributing nations are Bangladesh, Belgium, Brazil, Bulgaria, Denmark, France, Germany, Greece, Indonesia, Italy, the Netherlands, Norway, Spain, Sweden and Turkey. 14,381 of those hailed vessels were referred to the Lebanese authorities for further inspections.

Paragraph 13.1 of the LOA between the UN and Germany regarding the provision of a corvette Class 130 to UNIFIL MarOps breaks down the reimbursement rate in percental portions for Diesel Fuel (14%), other liquid supplies like oil, Maintenance (62%), rations and water and harbour costs (19%).⁴⁷ These daily reimbursement rates and break downs are negotiated between each contributing nation and the UN individually. Also, each contributing nation has its own civilian contractor for maintenance and naval or general supplies. With regard to the need for specified and qualified contractors for naval equipment and with regard to military security caveats, this individualism-approach is appreciated.

However, as the PM and RM are prescribing more general regulations for procurement and purchases than narrow specifications, there is much room experienced for improvements with regard to the first foundational principle, best value for money. For example, goods and services, which are not specific for a nation or its naval assets, or if they do not violate national caveats, could be purchased collaboratively. This could be done through a Local Mission (Maritime) Procurement Office, and aim to obtain a quantity discounts on these goods and services, and to gain and share collective experiences with local providers and suppliers. As a result, daily reimbursement rates for maritime assets and services could be decreased through these "semi-dry" leases and collaborative UN procurement. ⁴⁸ These would encompass commonly shared neutral services like e.g. tugs, gangways, line handlers, berthing, laundry, waste removal, and goods like rations, potable water or liquid supplies, e.g. oil.

⁴⁷ LOA, 6, 2018.

⁴⁸ RM, 6, 2017; The RM specifies only dry and wet leases. In the course of this paper the term 'semi-dry' leases was introduced to express a hybrid form as parts of the logistic remain under national responsibility while other are executed commonly.

POLICY RECOMMENDATIONS

Detailed needs for 'technical' recommendations aiming at improvements for the 2019 PM version have not been identified in the course of this paper. As the 2019 PM is in force for only a short period of time, taken measures need time to evolute.

Organizational recommendations for policies would be firstly to keep steering course with proper application of the publication. Secondly, to implement a Lessons-Learned-process to evaluate taken measure over time and for a next PM revision. Thirdly, to emphasize internal and external control measures like a proper Risk Management process and engagements of the ombudsmen- and audit system through OIOS.

Policy recommendation regarding the UN led maritime missions would be to conduct a revision on possible common procurements as stated in paragraph of this paper. This could be done through a working group, including representants of the UN Procurement Department (might lead the project team), contributing nations and the MTF logistic branch. Purpose is to gain maximum benefit with regard to best value for money, and ensuring readiness and reliability of maritime forces (availability in operation area and sea days).

CONCLUSION

The aim of this paper was to conduct a comparison of snapshots in time from 2006 and 2019 and to analyze, whether frauds and misconducts in the UN procurement system can be prevented by commenced reforms and the new 2019 PM. Also, to prove

that the current regulations and policies are sufficient with regard to UN led maritime operations since the UN peacekeeping is traditionally land-minded.

For this examination, individual findings of the referenced GAO and OIOS reports were evaluated against taken improvement measures and initiated reforms. For the case study, the only UN led maritime mission in time has been chosen to validate the application of a presumed land-minded publication in maritime operations. As benchmark for both examinations served the four foundational principles, the character and great values of the UN and its Charter, and also the forces readiness status.

The examination led to policy recommendations which are meant to give time for commenced reforms to evolute, to implement a Lessons-Learned-process, and to emphasize internal and external control and audit means. Also, to seek for a revision of the UNIFIL MarOps logistical approach to strive for a collaborative procurement.

The overall aim is to reach further increases in effectiveness and improved outcome of responsible funding. Efforts would worth it, because like Bolton said, it is not only about purchasing and providing essential goods, services and money, it is about saving lives of civilians and our UN soldiers.⁴⁹

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⁴⁹ Washington File, 22 Feb 2006.

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