

# The Legal Framework and the Defence System

#### National Legislation\*

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#### Systems and Concepts

- Act which establishes Rules for Exceptional Conditions in which the Armed Forces take over the Control of Internal Order (N° 24.150 – 1985/06/07. Last amendment: DL N° 749 1991/11/08) (1)

Legislative Decree which establishes Rules which the Armed Forces have to be subjected to when operating in Zones not declared in State of Emergency (DL N° 738 - 1992/03/10. Last amendment: Act N° 28.222 – 2004/05/17)

Last amendment: Act N° 28.222 – 2004/05/17) - Act on the Entry of Foreign Troops (N° 27.856 - 2002/10/30) - National Mobilization Act (N° 28.101 - 2003/11/13) - Security System and National Defence Act (N° 28.478 - 2005/03/23) - National Intelligence System Act (N° 28.664 - 2006/01/04) - Act which establishes the Legal Nature, Responsibilities, Competencies and Organic Structure of the Ministry of Defence (N° 29.075 - 2007/08/01) - Act which establishes the Rules for the Use of Force by Members of the military in the National Territory (Decree-Law N° 1.095 – 2010/09/01)

#### **Military Organization**

Peruvian Army Organic Act (DL N° 437 - 1987/09/27. Last amendment: Act N° 29.417 – 2009/09/30)
 Peruvian Air Force Organic Act (DL N° 439 - 1987/09/27)
 Navy Organic Act (DL N° 438 - 1987/09/27)
 Organic Act for the Joint Command of the Armed Forces (DL N° 440 - 1987/09/27)
 Military Status Act for Officers of the Armed Forces (N° 28.359 - 2004/10/13. Last amendment: N° 29.405 – 2009/09/15)

ment: Act N° 29.406 – 2009/09/15) - Act which creates the Fund for the Armed Forces and the National Police (N° 28.455

- 2004/12/31)

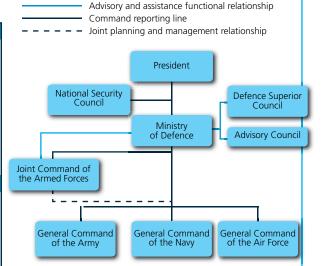
- Act on the Promotion of Officers in the Armed Forces (N° 29.108 - 2007/10/30. Last amendment: Act N° 29.404 - 2009/09/10)

Act on the Disciplinary Regime of the Armed Forces (N° 29.131 - 2007/11/09. Last amendment: DS 014-2009 –DE- 2009/05/23)
- Military and Police Justice Law Organization and Procedures Act (N° 29.182 - 2008/01/11. Last amendment: Decree-Law N° 1.096 – 2010/09/01)
- Military Service Act (N° 29.248 - 2008/06/28)
- Military Police Penal Code (Decree-Law N° 1.094 – 2010/09/01)

(1) The Constitutional Court declared as unconstitutional paragraphs c), d) and e) of article 5 amended by Legislative Decree N° 749, and article 11; and it amended certain texts of articles 4, 5, 8 and 10 (sentence N° 0017-2003-AI/TC – 2004/08/14).

\* The Legislative Decree concerning Self-Defence Committees as people's organizations to develop self-defen-ce activities within their community (DL № 741 – 1991/08/11) was submitted for derogation by the Congress on July 1st 2010; said derogation is expected to occur by the end of this year.

Source: Compilation based on the legislation above mentioned. For constitutional provisions see Chapter 1

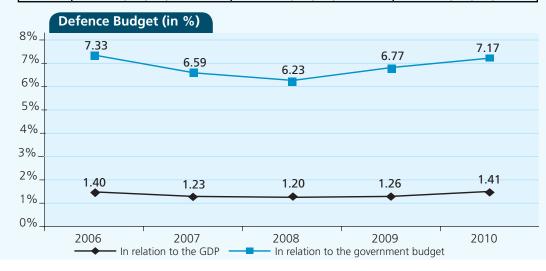


The President convenes the National Security Council, the governing body of the national defence and security system, composed of the President of the Council of Ministers, the Ministers of Foreign Affairs, Interior, Defence, Economy and Finance and Justice, the Chairman of the Joint Command of the Armed Forces and the President of the National Intelligence Council. The Ministry of Defence is the main executive body of the system and receives the advice of the Superior Defence Council, composed of the main leaders in the Ministry, the Chairman of the Joint Command and the General Commanders of the Armed Forces. The Consultative Council is a direct advisory body for the Minister. The Joint Command is the body in charge of joint military planning and employment. The Congress holds the powers granted by the Constitution and permanently monitors defence related issues through the specific committee

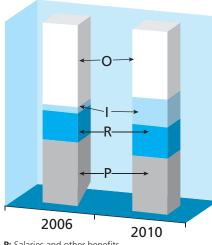
Source: Compilation based on Ley que establece la naturaleza jurídica, función, competencias y estructura orgánica básica del Ministerio de Defensa (N° 29.075 - 2007/08/01) and Ley del sistema de seguridad y defensa nacional (N° 28.478 - 2005/03/23).

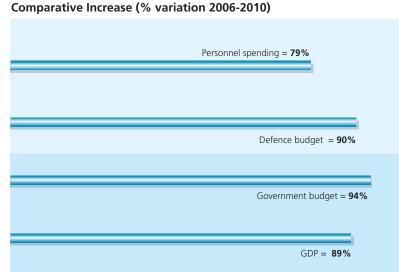
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Year	Defence Budget (in US\$)	Government Budget (in US\$)	GDP (in US\$)
2006	1,086,270,304	14,828,650,056	77,358,000,000
2007	1,252,580,042	19,020,674,584	101,504,000,000
2008	1,515,727,130	24,332,118,765	125,828,000,000
2009	1,600,023,237	23,645,587,544	127,368,000,000
2010	2,067,397,486	28,822,985,457	146,280,000,000

**The Budget** 



# **Defence Budget Breakdown**



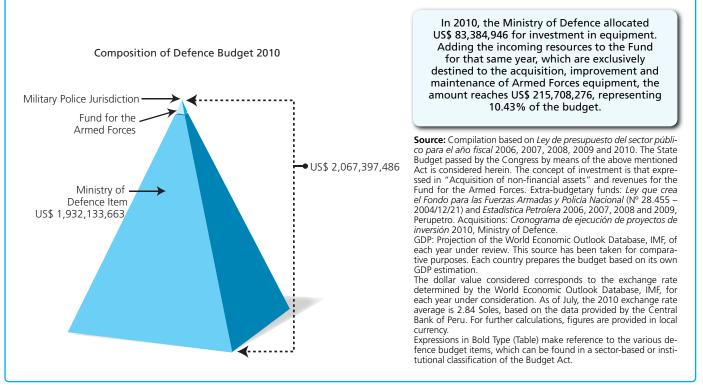


P: Salaries and other benefits R: Retirement and pension funds / I: Investment O: Other expenses

Defence Budget 2010 (in Lo					
Programs	Personnel and Benefits*	Consumer Goods Services	Other Current Expenses	Capital Expenses**	TOTAL
Ministry of Defence	2,838,858,280	2,101,962,983	14,047,252	532,391,089	5,487,259,604
Military Police Jurisdiction	2,101,000	6,190,000	60,000	0	8,351,000
Subtotal	2,840,959,280	2,108,152,983	14,107,252	532,391,089	5,495,610,604
Extra-budgetary					
Fund for the Armed Forces					375,798,257
TOTAL					5,871,408,861

\* Includes social security obligations.

\*\* Includes debt services.

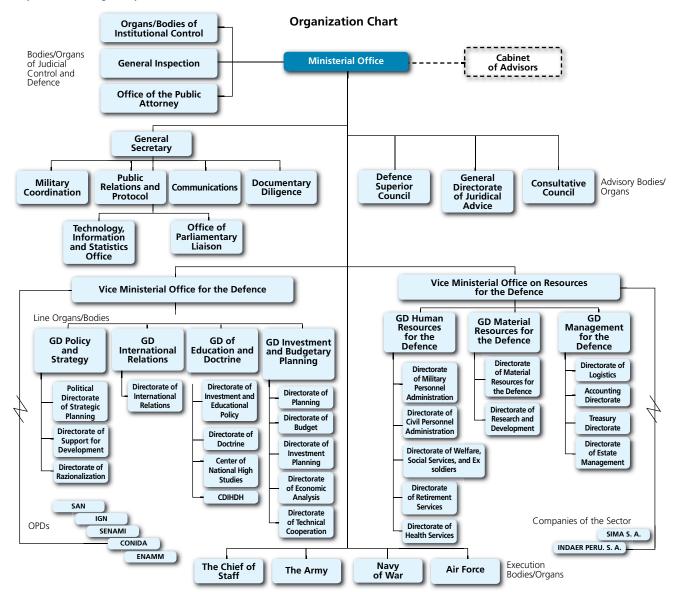




# The Ministry of Defence

#### **Responsibility:**

It is the main executor body of the national security and defence system, responsible for formulating, coordinating, implementing, executing and supervising the national defence policy in the military sphere, as well as for designing, planning and coordinating this policy in the non-military arena, in accordance with current laws in effect. (Ley del sistema de seguridad y defensa nacional, N° 28.478 – 2005/03/23, Sec. 18)



Note: The total number of employees is 167 (15 officers, 41 professionals, 79 technicians and 32 assistants). Data as of April 2010

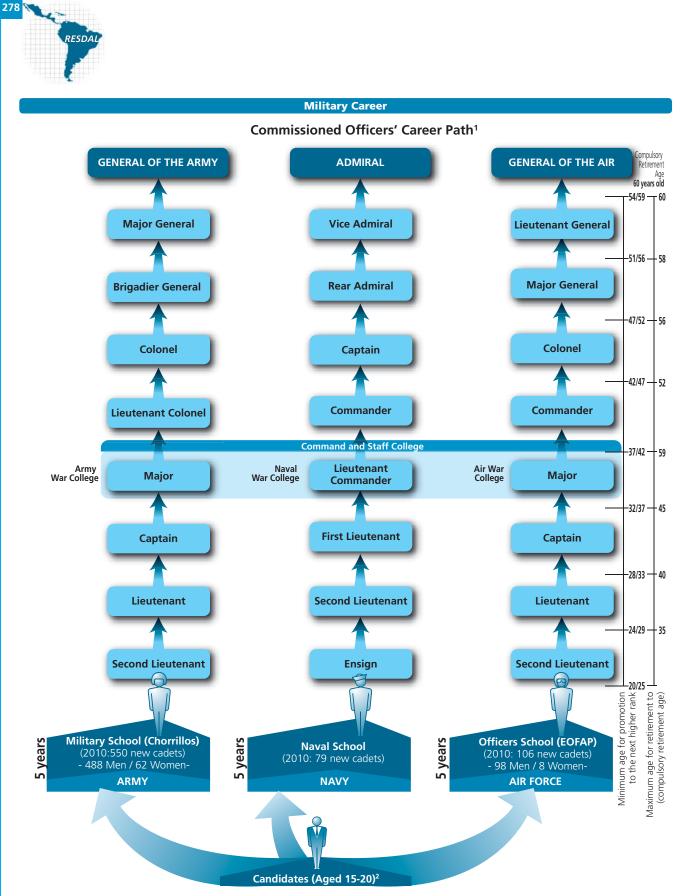
Current Minister (September 2010): Jaime Fernando Thorne León	
Can military members be Ministers of Defence?: Yes	[The Minister
Number of military members who were Ministers of Defence: 11	currently in charge is not considered. The creation date
Number of civilians who were Ministers of Defence: 6	is related to the
Have there been any women in charge of the Ministry of Defence?: No	moment in which the term "Defence"
Average permanence in the Minister of Defence position: 1 year and 4 months	becomes part of the Institution's name]

Source: Compilation based on information provided by the Ministry of Defence.

# **Political Definitions**

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		Source: /	Marco Estraté	gico del Sec	tor Defensa 2	2 <i>007-2011</i> a	nd <i>Plan Perú</i>	2021.				
		Promote t	the sector's mi	ilitary and civ	vilian personi	nel welfare.						
		<ul> <li>Implemen</li> </ul>	nt result-based	l manageme	ent systems th	hat ensure th	e efficient, tr	ansparent ar	nd sustainable	e use of the s	sector's resou	rces.
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			the human ar							for national	defence, and	d adopti
neral	Purpose	s:										
		Promote p	programs for r	military and	civilian perso	nnel welfare						
		utilization	of resources.		5		5	and mechanic	ana, with ud	isparency di		inty in t
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		5	n the Armed		,		<b>C</b> 12					
			technological				tor.					
		• Strengthe	n peace and o	cooperation	with other co	ountries in th	ne region and	take part in	peacekeepin	g operations		
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ector	Policies											
		to national	development	in efforts fo	r the strengh	ening of pea	ice and interr	national secu	irity.			
			e sector is rep							es under its r	eposability, c	ontribut
		5. Optimizir	ng the operati	ion of the na	ational securi	ty and defen	ce system in	order to def	end Peru's pe	rmanent inte	erests.	
			integration as		t for the prote		Antarctica ai		ent, the deve	iopinient of ti	ne Amazon n	egion, a
			ig the establis ging an active					•		-	he Amazon r	egion a
		2. Promotin	ig the teachin	g of nationa	al security cor	icepts at all I	evels of the n	ational educ	ation system		5.	
Ļ		, ,	full operabilit		ned Forces fo	cused on the	e deterrence,	defence and	prevention of	of conflicts, ir	ncluding pea	cekeepii
		security poli	icies are aime		ating at the st	ervice of the	people and tr	teir developi	ment, as well	as ensure na	tional securit	y. Natio
			framework of apable of effic									

Source: Compilation based on reports submitted to the United Nations Register of Conventional Arms and the United Nations Instrument for Reporting Military Expenditures and reports submitted to the OAS on the Implementation of Confidence and Security-Building Measures.

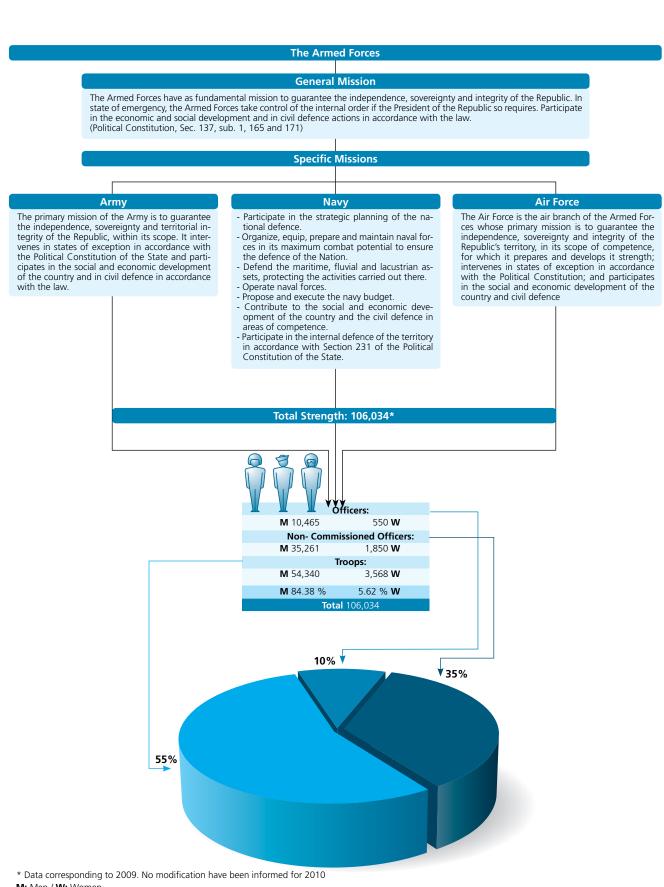


1 Command corps includes officers who have been educated at military academies from the beginning of their professional careers. The graph makes a theoretical reconstruction of officers' promotion through the completion of mandatory courses. Further requirements for promotion have not been considered.

2 Ages of 15-20 have been considered for comparative purposes. Entry age varies depending on the services. The minimum age for promotion will depend on the age of graduation from the appropriate military education institution.

**Source:** Compilation based on the Ley orgánica del Ejército Peruano (DL N° 437 - 1987/09/27. Last reform: Law N° 29.417 – 2009/09/30); Ley orgánica de la Fuerza Aérea del Perú (DL N° 439 – 1987/09/27); Ley orgánica de la Marina de Guerra (DL N° 438 - 1987/09/27); Ley orgánica del Comando Conjunto de las Fuerzas Armadas (DL N° 430 – 27/09/1987) and Ley de situación militar de los oficiales de las Fuerzas Armadas (N° 28.359 – 2004/10/13. Last amendment: Law N° 29.406 – 2009/09/15/09). New cadets: information provided by the armed forces' website.





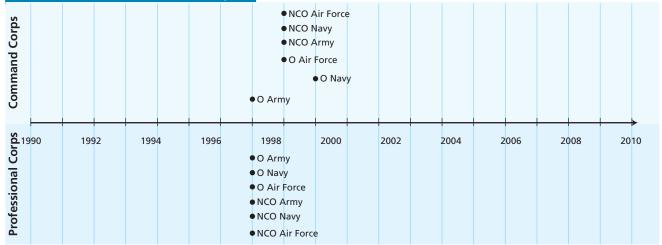
M: Men / W: Women

Source: Ley Orgánica del Ejército Peruano (DL N° 437 – 1987/09/27), Ley Orgánica de la Fuerza Aérea del Perú (DL N° 439 – 1987/09/27), Ley Orgánica de la Marina de Guerra (DL N° 438 – 1987/09/27) (missions) and information provided by the Ministry of Defence (Regular Forces).



# Women in the Armed Forces

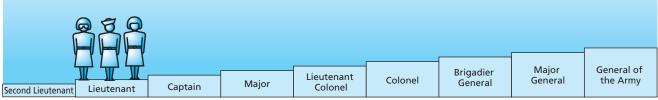
#### Women's Admission to the Armed Forces (year)



O: Officers - NCO: Non-commisioned Officers

Note: The Command corps includes officers who have been educated at military academies from the beginning of their professional careers. The Professional corps refers to those who develop a career in the civilian sphere and are then incorporated to the armed forces.





Note: These ranks correspond to the Army, as an example. The equivalent rank for Lieutenant in the Air Force is the same and Second Lieutenant in the Navy.

5.62 % (5,968) of the total Armed Forces are women.\*

\* Data corresponding to 2009.

Source: Information provided by the Ministry of Defence and Project 07-184 Global Peace and Security Fund-RESDAL.

#### **Military Service**

It is voluntary for both sexes and has a duration of up to two years. The entry requirements are the following:

- Being single.
- Having completed the primary school.
- Not having criminal records.
- Passing the physical and psychological examination.

Former students and former cadets of the Police and the Armed Forces who have attended military schools for at least one year shall be exempted from the military service.

According to the Military Service Law, among other things, soldiers shall receive basic, technical and productive or higher technological education in different fields; 10 points over 100 for applicants to Armed Forces and Police schools; and 50% of the registration fee value.

Source: Ley del servicio militar (Nº 29.248 - 28/06/2008).

#### **Defence and National and International Community**

#### **Participation in Peace Operations**

	Military Component							
Current Missions	M	М	MC					
	Men	Women	Men	Women				
MINUSTAH (Haiti)	-	-	371	1				
MONUSCO (Dem. Rep. of the Congo)	5	2	-	-				
UNFICYP (Cyprus)	-	-	2	-				
UNMIL (Liberia)	2	-	2	-				
UNMIS (Sudan)	13	-	-	-				
UNOCI (Ivory Cost)	3	-		-				

MEM: Military experts on mission, including military observers, judge advocates and military liaison officers, among others - MC: Military Contingent.

**Source:** Compilation based on documents from the Department of Peacekeeping Operations of the United Nations. Data as of 31 August 2010.

Peru contributes 401 military troops to the United Nations peacekeeping missions, which represents 5.24% of the total contribution of Latin America.

The CECOPAZ, Joint Training Centre for Peacekeeping Operations, was created on November 11, 2003. In May 2001, the CECOPAZ presented the First

Female Contingent of Blue Helmets, made up of 23 female non-commissioned officers of the Air Force.



# Support Actions

#### Security in the VRAE region

Different operations for the control of the Apurimac and Ene rivers' valley region (VRAE), declared in state of emergency, are carried out through the Joint Command of the Armed Forces. The VRAE Special Command is a specialized body responsible for the actions in the area. This special command has a Joint Base of the Armed Forces, made up of air, naval and ground components.

#### Operations

The control tasks in the area consist of ground, naval and air operations, which include intelligence and strategic activities performed in conjunction with the National Police. The "Mayo 2010" Operation Plan was based on the operational concept of creating a large fence in the VRAE region and keeping the area under surveillance. The "Julio 2010" Operation Plan aims at specific operations instead of conventional actions in vast sectors of the region.

#### Civic Actions

Apart from surveillance, control and direct action operations to fight against terrorism and drug trafficking, the Special Command performs several civil support actions in the VRAE community. Actions carried out during 2010 include health care in different medical specializations, legal advice, delivery of food, working tools and school stationery, as well as recreational activities in the communities of the area.

### 2010 Investment Projects

There are several investment projects for Armed Forces detachments in the VRAE region, which include the implementation of detachments, apart from the implementation and reinforcement of communication and surveillance systems.

#### Amounts allocated to each institution

Army: US\$ 128,931 Air Force: US\$ 70,324 Navy: US\$ 110,870

# Community Support

Through its different institutions, the Armed Forces regularly perform civil actions, providing support to the population through service provision, with the aim of contributing to fulfilling the urgent needs of the populations under extreme poverty. The actions are carried out periodically in different areas of the national territory.

#### Main activities:

- Promotion and execution of health care and dental campaigns.
- Promotion and execution of veterinary campaigns.
- Organization of lectures on family planning, personal hygiene..
  Providing information on the Military Service Law and its rules.
- Organization of cultural, sports, religious and recreational activities.

# Outstanding activities during 2010:

• Civil integration action. General and specialized health care, dental care, nutrition and psychology; veterinary care; legal advice and lectures on women and children rights and family violence; recreational activities and breakfasts.

• Multisector civil action. Health care, legal assistance, supply of breakfasts, food, education materials, recording of reserves, debris cleaning and removal. The activity took place at a national level with the support of several public and private institutions, benefitting more than 160,000 people across the country.

• Civil action in Huachocolpa. Supply of materials, health care and medicine distribution, benefitting over 3,000 people.

# **Natural Disasters**

Activities during 2010:

Rescue and evacuation operations, distribution of materials and basic supplies, road recovery and establishment of air bridges in areas affected by rains and floods in the Cusco department. Assistance provided to almost 3,000 people and distribution of 16.5 tons of aid material.

Rescue and aid activities for the inhabitants affected by rains and river floods in the Puno region. Seventeen tons of humanitarian aid material was delivered.

Cleaning, repair, rescue, lifesaving and aid tasks were carried out for the population affected by landslides in Carhuaz and Huánuco.

"Air Bridges", including transport of medicines and basic materials, rescue tasks and aeromedical evacuations in disaster scenarios.

Source: Websites of the Joint Command of the Armed Forces, Army, Air Force, Navy and Ministry of Defence and Cronograma de ejecución de proyectos de inversión 2010, Ministry of Defence.



Analisys:

# Peru 2009-2010, The Challenges of Growth

Ciro Alegría Varona Professor of the Pontificia Universidad Católica.

Throughout his administration, President Alan García has made sure to declare, in every possible important occasion, his position against excessive ordnance spending in the region. This does not constitute a statement of principle or ideals, but rather the result of a specific situation. Since 2002, Peru's economy has been growing year over year. With annual rates in the range of 5-10% and inflation around 2%, Peru has become a small oasis for capitals spooked by the international crisis, which provided outstanding availability of money and internal credit. However, this growth is not indicative of a growth in productivity or dignified employment levels. The current phase of infrastructure and education investments is for the long term. Therefore, sacrificing tax resources in armament would be counterproductive, since fiscal surplus and public saving are the main drivers of development.

At the beginning of the current administration, 2006-2011, spending in armament renewal was estimated in about US\$650 million for five years, a small amount compared to those invested by other countries in the region. In fact, 2009 acquisitions were in the order of US\$35 million, which was within the estimated budget. This material of Chinese origin includes rockets, night vision goggles, and vehicles for the use of the Army. Currently, a contract is in place with Russia for maintenance and equipment services for MIG 29 aircraft and helicopter acquisitions, including two combat helicopters. In 2010, Israel-made antitank missiles were acquired, a decision totally backed by the specialists. Instead of competing with Chile over who has the most modern tanks (tanks that cost about

US\$10 million each and necessarily operate in groups of several), an efficient antitank system was chosen, costing one fifth of that amount. The decision to abandon the acquisition of Chinese tanks was not due to any doubt as to weapon quality, but rather a strategic decision based on the potential scenarios in which the tanks were to be used and if such spending was actually in line with Peru's security policy.

Peru's particular financial situation also serves to explain the historical opportunity the country has had to introduce large reforms in civil-military relations in Latin America. These reforms, implemented at the beginning of Toledo's office, generated a series of Offices of Vice Ministers and General Civil Directorates, within the Ministry of Defence, which affected -for the first time and systematically- both budget cycle and military career management. With these reforms at the beginning of the current government, and with Allan Wagner as Minister, the joint command was included among the Ministry's planning and execution organizations, promotion rules were further defined, and more exhaustive administrative controls were applied, breaking the old parallelism existing between civil and military leadership. This has served to put an end to corruption scandals - including war material maintenance - which so proliferated in the past. Fluid cooperation between military commands and civilian executives has been essential in the recovery of operational capacity within the framework of the aforementioned strategic position. Women's entry to the armed and police forces, together with the changes introduced

to disciplinary regulations and budgetary improvements in the military service, have all contributed to solve the identity crisis left behind by Fujimori's decade. Pending tasks in the defence sector of Peru include the structural solution of the pension and salary issues; the organization of a connected educational system between the Armed Forces and universities; the strengthening of State presence in the territory by the appropriate use of military facilities and capabilities; an adequate legal defence for personnel prosecuted as a result of the anti-guerrilla struggles; technological advancement and preparation to further contribute to international security.

Peru's position has had certain impact on the region. Ecuador and Paraguay, which governments are more in line with the "Bolivarian-style" planning than with economic liberalism, have supported Peru's initiative. Considering that these three countries are receiving investments from Chile and Brazil, and are current or potential energy suppliers, it would be better for them to share a common position looking for a way to improve their negotiating power. Peru's stability is one of Brazil's main interests. Brazilian mines Motorantim and Vale have recently invested approximately US\$1,000 million; Electrobras is planning to build seven hydroelectric power plants in Peru; the Trans-Amazonian highway will be opened in 2010, connecting Acre with the Southern Andean region; another Trans-Amazonian highway will be open in the North; and Peru's ports will be prepared to handle future large volumes of trade between Brazil and China.

With regards to the South American Defence Council, Peru has found that Brazil's initial proposal is not clearly defined and has therefore emphasized the importance of deepening previously adopted agreements on matters such as the war against terrorism, the fight against drug trafficking, finding a peaceful solution to pending matters, showing unrestricted respect for national sovereignty, and confidence-building measures. Peru, undoubtedly, helps Unasur's objectives and, therefore, requests that further efforts be made to strengthen Unasur's foundations in a regional defence community. In South America, the realistic principle stating that a region's governing power has to function as mediator and arbiter in conflicts originated within the region before they are projected into the world's scenario is particularly true in this case. Brazil observes this fact. An example of this is Brazil's active participation in peace negotiations between Peru and Ecuador and its current commitment to Peru's economic development.

A central element of Peru's position is the search for a final solution to pending border issues with Chile. This solution should be somewhere in the line of the settlement reached with Ecuador in the Protocol of Peace, Friendship and Boundaries, signed in Rio de Janeiro in 1998. Chile does not recognize the existence of any pending issues, since it considers that all matters have been regulated by the status quo. Peru has, therefore, formally filed a claim before the International Court of The Hague in January 2008. In August 2010, Ecuador has accepted Peru's request to clarify its non-participation as third party in this proceeding. Without changing its neutral position regarding Peru's claim, it has ratified all fishing treaties that Chile considers as border treaties.

In 2009, the Defence sector implemented a series of actions against the remnants of the terrorist group Sendero Luminoso (Shining Path), which moves along the valleys of the Apurímac and Ene (VRAE) rivers. Such small armed groups parasitize drug trafficking economy and recruit children among coca leaf growers, who submitted to these kinds of works forced by extreme poverty. In Huallaga, eradication, although extensive, has not been successful, since the aggregate number of cultivated areas has exceeded the number of the eradicated ones. However, in that same valley, crop replacement and police chasing of drug dealers have vielded some encouraging results. In the rest of the country, although drug shipments have been seized, their leaders have not been captured, with leaves their cartels practically unharmed. Drug trafficking has no relevant incidence on the Legislative Branch, political parties and media, but its incidence grows in selected regional governments. Backed by the United States, millionaire rewards have been offered for the capture of cartel leaders, including now Sendero Luminoso's leaders, who are still running their operations in Huallaga and the VRAE region.

Almost untouched by the international economic crisis, Peru was forced to face an interior security crisis in June 2009. A Police assault in a highway boycott that was being held in Bagua dramatically escalated the local violence level, leaving 29 fatal victims, most of them policemen who were held hostage by indigenous groups. This was the final outcome of a six-month controversy with Amazonian indigenous organizations which were against new decrees that favoured investing in fiscal lands, without prior consultation to their inhabitants. Instead of increasing the level of violence, the Peruvian government avoided taking measures that would continue with this confrontation escalation. These decrees were annulled. It is impossible to interpret these protest movements, as well as other local protests, as symptoms of political instability. Espionage and corruption cases (namely "Business Track" and "petroaudios,") which generated a crisis at Ministry level, cannot be interpreted either as symptoms of a relapse in political instability. They can be compared to the approximately 50 crimes committed by drug trafficking, which have led to a new type of challenge in terms of security that requires a systemic response.