

Farewell to the moral high ground: UK halts investigation into corrupt public procurement

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Last week the UK's Prime Minister, Tony Blair, ordered his country's Serious Fraud Office to drop their inquiry into the Al-Yamamah arms deal between BAE Systems and Saudi Arabia. Lord Goldsmith, the UK's Attorney-General and the government's chief legal adviser,¹ expressed himself in agreement with this decision, remarking that *'It has been necessary to balance the need to maintain the rule of law against the wider public interest.'*²

The SFO's investigation concerned allegations of bribery surrounding an arms deal, signed in the 1980s, which has earned the company around £43 billion over the past twenty years. It is alleged that BAE systems employed a 'slush fund' of around £20 million to bribe Saudi Arabian officials, and members of the Saudi royal family, in return for lucrative contracts connected with this deal. Saudi Arabia was reportedly outraged by the SFO investigation, and according to some commentators, said that it would cancel negotiations for a further deal for 72 Typhoon jets, amounting to some £6 billion, if the inquiry went ahead. It is also claimed that it threatened to withdraw all co-operation on security, and intelligence-sharing on terrorism, and to downgrade its embassy in London.

According to the Financial Times, the SFO probe was aborted just as the Swiss authorities were preparing to hand over details of relevant bank accounts – details that would have given the SFO crucial information to determine the course of their inquiry.

The reasons given by the UK government and its legal advisers for calling off the investigation vary. The Prime Minister cited the importance of maintaining Saudi support for the UK. *'Leave aside the effect on thousands of British jobs and billions worth of pounds for British industry ...'* he said. *'Our relationship with Saudi Arabia is vitally important for our country in terms of counterterrorism, in terms of the broader Middle East and in terms of helping in respect of Israel and Palestine.'* But Lord Goldsmith announced on Radio 4 that he thought the case *'wouldn't go anywhere at the end of the day'*, and should thus be discontinued. He also said that the SFO had expressed doubts about the wisdom of going on with the case in view of national interest concerns. (It should be noted that the SFO have not corroborated these remarks.)

¹ The Attorney-General is the chief law officer of the Crown in England and Wales, and advises and represents the Crown and government departments in court. He provides legal advice to the Government; for example, Lord Goldsmith's advised on the legality of the Iraq war. He has supervisory powers over the prosecution of criminal offences, but is not personally involved with prosecutions; however, some prosecutions cannot be commenced without his consent, and he has the power to halt prosecutions generally.

² Lord Goldsmith's Statement to the House of Lords on the BAE Systems:Al Yamamah Contract, Thursday 14th December 2006

This judgement must have a profound impact upon all UK citizens who are concerned with issues of corrupt government and development aid, since it makes it plain beyond all possible doubt that we cannot rely upon the integrity or the motives of our government or legal system. For a number of years, politicians of all hues have been citing the prevalence of corruption within developing country governments as a reason for withholding, or placing highly disputed conditions upon the disbursement of debt relief, grants, and other forms of aid by rich country creditors and donors, and many sectors within the international community have expressed sympathy with this view. It has been insistently asserted that good governance is a critical factor in promoting development and poverty reduction, while corruption, bribery, cronyism, embezzlement, and above all an absence or flouting of the rule of law, causes gross mal-distribution of available resources, and adversely affects a population's wellbeing. This assumption has habitually been used as a reason for withholding economic assistance to unethically governed states.

The moral impropriety of 'rewarding' countries which have poor records in the good governance area has been especially deplored by rich-country politicians, who complain that their electorates do not wish to see their 'hard-earned taxes' being squandered by dubious and unprincipled regimes. Although Hilary Benn, the UK Secretary of State for International Development, must be complimented for maintaining that his government should continue to work with such countries to improve their levels of integrity, his expressed views nonetheless typify the self-satisfaction inherent in this approach, and are reflective of an underlying conviction that Western governments (and that of the UK in particular) are both able and willing to provide a moral lead.

In a speech to the Royal African Society this year on political governance, corruption, and the role of aid, for example, Benn remarked that *'where there are bribe-takers, there are also bribe-givers. We have to do our bit in rich countries to address corruption in procurement and in other areas where bribery is prevalent....But the best way to ensure the accountability of governments is a political system that encourages scrutiny and questioning.....I think making progress is about making politics work. Politics that determines the choices we make. Politics that determines what kind of society it is we wish to live in and create and hand on to the next generation.'*

It is now clear that the UK government's current decision has totally undermined the credibility of this position, and the double-standard entailed in its determination to turn a blind eye to alleged procurement bribery by a British firm, while condemning such behaviour by developing countries, is blatant almost beyond belief. In fact, it is hard to overstate the appalling implications of the decision to call off the inquiry, and of the Attorney-General's expressed willingness to flout the rule of law. This extraordinary legal response must inevitably put in question the independence of the judiciary from the government, which is a fundamental constitutional principle. But even laying that aside, it is plain that if bribery and corruption can be condoned where it is perceived to be in the national interest, then it cannot be judged as morally inadmissible in principle; rather, its legality must always be regarded as a matter of debate. It does not take much imagination to see that such an attitude will sabotage any effort successfully to fight corruption in the international arena.

This is, of course, a generally accepted fact; indeed, Lord Goldsmith's opinion overturns all recognised anti-corruption rulings, which are designed as sanctions against crimes committed in pursuit of profit by companies. Exclusion or disqualification from public procurement is envisaged and recommended in these cases, for example, by the Organisation for Economic Co-operation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Indeed the 1997 Revised Recommendations to this Act state that *'Member countries' laws and regulations should permit authorities to suspend from competition for public contracts enterprises determined to have bribed foreign public officials in contravention of that Members' national laws'*.³

Not unnaturally, the OECD is considering mounting a legal challenge to the UK decision, and the Campaign against the Arms Trade (CAAT) and the heroic small NGO The Corner House, have already begun to pursue the matter through the courts. We ardently hope that they will be successful, but even if they are, the damage to the country's reputation, and to the standing of its judicial system, has already been done. Above all, from now on, no credence can be put on the government's avowed abhorrence of bribery, or its determination to 'help' the rulers of other nations root out corruption in their own countries.

Any discussion of the wider issue of the arms trade, and the fact that the UK is the fourth largest arms exporter in the world, lies outside the scope of this briefing, but concerned readers will find information and guidance on the CAAT's website at <http://www.caat.org.uk/>

Those who appreciate irony may find that the BAE Systems 2005 Corporate Responsibilities Report is worth a visit. Here they will find the company's Chief Executive Mike Turner declaring that *'we also need to be able to demonstrate the highest standards of integrity and responsible management of the key issues that our stakeholders consider material to our success'* one of which concerns *'anti-bribery and corruption practices.'* Just to ram the point home, there is a section on BAE's *'Integrity in business dealings'* which concludes with the words *'We do not, and will not, offer, give or receive bribes or inducements of any sort'*.⁴

Well, we would certainly never have guessed it if they hadn't told us. But after Lord Goldsmith's recent pronouncement, nothing can really surprise us any more.

³ It is interesting to note that in 2005 the OECD's evaluation of the UK's record on combating bribery stated that *"it is surprising that no company or individual has been indicted or tried for the offence of bribing a foreign official"* in the six years since the Convention was ratified in 1999, particularly given the size of the UK economy and level of its exports to countries with known corruption problems. The report also expressed concerns over "special rules" for investigating defence contracts and requirements by law enforcement authorities to disclose details of investigations to government departments.

⁴ We note that this says nothing about the past!

