

Britain: High Court rules government acted unlawfully in stopping BAe-Saudi arms inquiry

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On April 10, the High Court in the UK ruled that the Serious Fraud Office (SFO) acted unlawfully by ending a 2006 corruption inquiry into the £43 billion Al Yamamah Saudi-British arms deal.

Then-Prime Minister Tony Blair had argued for dropping the inquiry into the the British military company BAe Systems on the grounds that a rupture of relations with Saudi Arabia would threaten Britain's national interests. The ruling states that in doing so the government violated both British and international law.

The verdict was delivered by two High Court judges, Lord Justice Moses and Lord Justice Sullivan, in response to an appeal by two campaigning groups, Corner House and the Campaign Against Arms Trade (CAAT). In its challenge, CATT argued that the SFO's December 2006 decision to drop the probe was illegal under the Organisation for Economic Co-operation and Development's (OECD's) Anti-Bribery Convention.

The ruling means that Blair is again implicated in actions that are illegal under international law. He intervened on numerous occasions in the attempt to persuade the SFO to halt the inquiry. Following the closing down of the inquiry, Blair said, "Our relationship with Saudi Arabia is vitally important for our country in terms of counter-terrorism, in terms of the broader Middle East, in terms of helping in respect of Israel and Palestine. That strategic interest comes first."

Jonathan Aitken, a former Conservative government minister who was convicted of perjury, was closely involved with the rolling Saudi Arabia arms deals as Defence Procurement Minister in 1992-1993. He said on the verdict that even if the allegations against BAe were true, it remained correct to end the investigation in order to maintain good relations with Saudi Arabia. Pressure on the SFO was also brought to bear by BAe Systems, which argued that the inquiry could "jeopardise" the deal and "seriously affect" relations with Saudi Arabia.

The original "Al Yamamah 1" contract was signed by the Conservative government of Margaret Thatcher in February 1986. It involved Britain selling military aircraft, including Tornado fighter aircraft, Hawk training jets, and other military equipment, to Saudi Arabia, with BAe Systems the prime contractor. It was the largest export deal in British history, and by 2005, BAe had valued it at £43 billion.

In 1988, the government and Saudi Arabia signed the "Al Yamamah 2" agreement, when the Saudis ordered 48 more Tornados warplanes and other military hardware. The *Financial Times* commented at the time that Al Yamamah 2 was "the biggest [UK] sale ever of anything to anyone."

The basic framework of the agreements has continued through successive Conservative and Labour administrations. In 2006, a further deal was agreed by BAe to supply Saudi Arabia with the new Eurofighter Typhoon fighter plane. On agreeing to the deal, BAe chief executive Mike Turner gleefully announced, "We have £43 billion from Al Yamamah

over the past 20 years and there could be £40 billion more."

Almost immediately after the original contract was made public in September 1985, allegations of large-scale corruption began to circulate. The cost of the deal was widely believed within the arms industry to be more than 30 percent above the going rate

In the autumn of 2003, the *Guardian* found evidence of a £60 million slush fund operated by BAe to entertain visiting Saudi officials. It reported allegations that BAe officials had used the fund.

Following these and other allegations, Blair was forced in 2004 to authorise an investigation into the matter by the Serious Fraud Office. In the course of its investigation, the SFO discovered that BAe had been secretly funnelling billions of dollars abroad.

Further details regarding bribery and corruption relating to Al Yamamah continue to surface. A BBC *Panorama* investigation in June 2007 provided for the first time details of the mechanism involving BAe Systems with the approval of the British Ministry of Defence, in the transfer of hundreds of millions of pounds into accounts controlled by Prince Bandar, son of Prince Sultan, the Saudi defence minister. Bandar, the ex-Saudi ambassador to the US, was the main negotiator in the Al Yamamah agreement.

The BBC investigation detailed that up to £120 million a year was sent by BAe Systems from the UK into two Saudi embassy accounts in Washington. Riggs Bank in America was the banker to Prince Bandar and his embassy in Washington. Among its accounts was one in the name of the Saudi Ministry of Defence and Aviation. The BBC's *Panorama* saw a document showing that the prince had taken US\$17 million (£8.5 million) out of this account in the summer of 2003 for a construction project in Saudi Arabia. An ex-secret service investigator working for the Riggs Bank, David Caruso, told the BBC that the money was being used to build a palace for the prince.

Panorama also found that travelling expenses for the personal luxury Airbus plane, totalling "hundreds of thousands of pounds a year had been paid via BAe and the Ministry of Defence into another of the embassy's accounts in Washington."

The BBC and the *Guardian* alleged that BAe paid more than £100 million a year to Bandar personally over more than a decade in connection with the contract.

On November 9, 2007, the High Court of Justice in London granted a request for judicial review of the decision to drop the SFO investigation. The 42-page High Court ruling stated that the SFO director, Robert Wardle, and the government had given in to "blatant threats" from Saudi Arabia that if the SFO inquiry were not halted, it would endanger British-Saudi economic and intelligence ties.

The ruling stated that the government had failed to assure the court that everything had been done to meet the rule of law. Lord Justice Moses

said, “No one, whether within this country or outside, is entitled to interfere with the course of our justice.

“It is the failure of government and the defendant [Robert Wardle, the director of the SFO] to bear that essential principle in mind that justifies the intervention of this court.”

It said, “In the instant application, the Government’s response has failed to recognise that the threat uttered was not simply directed at this country’s commercial, diplomatic and security interests; it was aimed at its legal system.” The ruling rejected the government stance, which would mean that “the law is powerless to resist the specific, and, as it turns out, successful attempt by a foreign government to pervert the course of justice.”

The High Court named Bandar as the man behind an attempt to pervert the course of justice.

The court cited evidence brought by Corner House in the form of an article published in the *Sunday Times* dated June 10, 2007. It related to an incident in the autumn of 2006 when Prince Bandar personally visited 10 Downing Street to meet with Blair’s chief of staff, Jonathan Powell. The newspaper had based its report on a description of the meeting by two government officials.

Bandar had recently discovered that the SFO had gained access to a series of bank accounts in Switzerland, through which some of the alleged bribes were reportedly paid. The *Sunday Times* stated, “Bandar went into Number 10 and said ‘get it stopped’ [words omitted]. Bandar suggested to Powell he knew the SFO were looking at the Swiss accounts...if they didn’t stop it, the Typhoon contract was going to be stopped and intelligence and diplomatic relations would be pulled.”

The “Typhoon contract” was a reference to the recently signed 2006 deal between Saudi Arabia and BAe Systems to buy 72 Eurofighter Typhoon jets at an initial cost of £4.4 billion. Contracts for maintenance and training are expected to take the final costs to around £20 billion.

The ruling continues:

“A threat [was] made by an official of a foreign state, allegedly complicit in the criminal conduct under investigation, and, accordingly, with interests of his own in seeing that the investigation ceased;... The defendant [who is] in reality the Government...contends that the [SFO] Director was entitled to surrender to the threat.”

The ruling stated that the government had made no attempt to convince the Saudi government, “that it was futile” to make such threats. No one had even suggested to the Saudis “that the United Kingdom’s system of democracy forbade pressure being exerted on an independent prosecutor whether by the domestic executive or by anyone else; no-one even hinted that the courts would strive to protect the rule of law and protect the independence of the prosecutor by striking down any decision he might be tempted to make in submission to the threat.”

The summary, referring to Bandar, concludes, “Had such a threat been made by one who was subject to the criminal law of this country, he would risk being charged with an attempt to pervert the course of justice.” Bandar is immune from prosecution in the UK.

The ruling is scathing towards the government’s dismissive attitude to the rule of law and the judicial process.

“The court must, so it is argued, accept that whilst the threats and their consequences are ‘a matter of regret,’ they are a ‘part of life.’ So bleak a picture of the impotence of the law invites at least dismay, if not outrage.... However abject the surrender to that threat [says the government] the court must itself acquiesce in the capitulation.”

The ruling then suggests that the government’s actions were not ultimately determined by Bandar’s threats. It states that “too ready a submission may give rise to the suspicion that the threat was not the real grounds for the decision at all; rather it was a useful pretext. It is obvious, in the present case, that the decision to halt the investigation suited the objectives of the executive. Stopping the investigation avoided

uncomfortable consequences, both commercial and diplomatic.”

The summary gives expression to major tensions within ruling circles regarding the Labour government’s readiness to flout legal conventions in pursuit of cash and Britain’s imperial designs internationally—arguing that its readiness to do so in fact undermines Britain’s position internationally and threatens its system of rule domestically.

It insists, “If the Government is correct, there exists a powerful temptation for those who wish to halt an investigation to make sure that their threats are difficult to resist. Surrender merely encourages those with power, in a position of strategic and political importance, to repeat such threats, in the knowledge that the courts will not interfere with the decision of a prosecutor to surrender.”

Britain is a signatory to the February 1999 OECD Anti-Bribery Convention. Signatories to the convention were required to put in place legislation that criminalises the act of bribing a foreign public official.

In January 2007, the OECD began an inquiry into whether Britain had violated the Convention. If the payments to Bandar and/or to Saudi officials continued after 2002, when Britain’s own anti-corruption law took effect, the OECD say it may have breached the convention.

Panorama was told by Jeremy Carver, a lawyer and board member of Transparency International, “Those payments, on the face of it, are straightforward bribes as defined by the OECD anti-bribery convention.... It’s quite plain that he [Bandar] meets the test of who is a foreign official for the purpose of the OECD convention.”

The OECD has requested that the British government reopen the SFO inquiry into corruption.

The government has so far refused to comment on the High Court ruling at this stage or on whether it will request the SFO to resume its inquiry. But it is seeking, with support from the Conservative Party, to prevent such investigations from taking place in the future. Following the legal challenge by Corner House and CATT, it has quickly moved to draft legislation that would allow an Attorney General to close down such investigations as he or she saw fit on “national security” grounds. Were this legislation to be enacted, the British courts would be unable to make such a ruling in the future.

Former Conservative Foreign Secretary and Defence Secretary Sir Malcolm Rifkind said, “There have to be circumstances where the national security of this country becomes the priority for the government and which leads to a prosecution being suspended.”

Rifkind was part of a delegation that visited Saudi Arabia in 1993 for discussions with King Fahd on arms.

The high Tory *Daily Telegraph* was blatant in its disregard for the High Court ruling and its support for Blair’s insistence that the SFO investigation be dropped. In a leader comment, April 11, it outlined a view of Prime Ministerial power more akin to a dictatorship:

“Tony Blair was perfectly candid about his decision. To continue pursuing allegations of bribery in the negotiation of the contract between BAe Systems and the Saudi government would have caused ‘the complete wreckage of a vital national interest to our country.’

“Sometimes the primacy of the law collides with political and commercial reality. In a parliamentary democracy, the elected prime minister must have the right, in exceptional circumstances, to take such hard decisions in the national interest.”



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