

# BAE: a company out of control



On 14 December 2006 the UK government dropped the Serious Fraud Office investigation into BAE Systems arms deals with Saudi Arabia. The Attorney General and Tony Blair tried to justify the decision in terms of "national security" but it was clear that the determining factors were the interests and influence of BAE Systems.

## The arms company – BAE Systems

BAE Systems, the company that was British Aerospace before it became too 'global' for 'British', is the world's third largest arms producer. It makes fighter aircraft, warships, tanks, armoured vehicles, artillery systems, missiles, munitions and much more. Its only significant non-military business, Airbus, was sold off in 2006.

These arms are sold indiscriminately around the world and the company thrives on insecurity. Its 2005 Annual Report candidly states that "New threats and conflict arenas are placing unprecedented demands on military forces and presenting BAE Systems with new challenges and opportunities...". The company claims to have military customers in "some 130 countries", with its foremost markets being the repressive Saudi Arabian regime and the US, to which BAE Systems has steadily been moving its business. Strides in this direction were the purchases of combat vehicle and munition manufacturer United Defense and armoured vehicle maker Armor Holdings, giving BAE a major stake in the US's ground fighting in Afghanistan and Iraq. Other export deals to areas of conflict and widespread human rights abuse include sub-systems for Israeli F-16 fighter aircraft and Hawk light combat aircraft to Indonesia during its repression of East Timor.

Allegations of corruption in the aftermath of a major BAE deal are a common occurrence. Once the Serious Fraud Office (SFO) had begun its investigation with regard to Saudi Arabia, its investigation spread, encompassing deals with six other countries.

**The government backing:** The UK government provides astonishing levels of political and financial support to the arms industry in general, and BAE in particular. Perhaps most importantly, the company had a loyal servant in Tony Blair. In his autobiography, former Foreign Secretary Robin Cook observed "I never once knew number 10 come up with any

decision that would be incommensurate to British Aerospace". Tony Blair went out of his way to promote arms deals for the company (in Saudi Arabia, South Africa, India) and overruled cabinet colleagues to approve controversial arms export licences (to Tanzania, Zimbabwe). But the company's influence is far broader and more engrained than this, not least from spinning the revolving door to provide jobs for influential political and military figures, and having executives on an array of high-level advisory bodies.

## The buyer – Saudi Arabia

The object of BAE's long-term attention is a royal family that is oppressive and corrupt. It has an appalling human rights record with even the UK Foreign Office identifying Saudi Arabia as a "major country of concern" in its 2007 Human Rights Annual Report. King Abdullah's succession to the throne in August 2005 was expected in some quarters to lead to improvements. However, Human Rights Watch has reported that not only were these expectations not met, but that there were "signs of backsliding on issues of human rights defenders, freedom of association, and freedom of expression". Amnesty International's 2006 Report relates an escalation in killings by security forces and armed groups which "exacerbated the already grim human rights situation". Women continue to face severe discrimination and little protection against violence in the home. This situation is paralleled for the millions of migrant workers.

No one appears to dispute that the Saudi regime is corrupt. And this corruption is much more than an afterthought when it comes to arms deals. It is a motivation. In the words of the *Financial Times* the day after the investigation was dropped, "Military spending... is used as a mechanism for distributing wealth and power within the top ranks of the House of Saud."

Lord Gilmour, Defence Secretary in the 1970s, stated in 2006 that in relation to Saudi Arabia, "You either got the business and bribed or you didn't bribe and didn't get the business" (Newsnight 16.6.06). And a 1971 letter from the UK Ambassador to Saudi Arabia to the MoD alleged that Defence Minister Prince Sultan had "a corrupt interest in all contracts". These two examples might seem a long time ago, but they are just as relevant now. Most strikingly, Prince Sultan is STILL the Defence Minister! He is also now, with the

## Ongoing SFO investigations

On 23 January 2007 the Solicitor General confirmed that BAE Systems' dealings with six other countries were still under investigation.

### Chile

In September 2005 the *Guardian* reported that BAE had secretly paid £1 million to General Pinochet in return for help over arms deals. The payments were said to have appeared in US banking records, unearthed by a Chilean judge pursuing General Pinochet for tax evasion, and were made between 1997 and 2004. A SFO team is reported to have met the judge in Santiago.

### Romania

In June 2006, with the arrest of a BAE agent, it emerged that the 2003 sale of two ex-Royal Navy frigates to Romania by BAE was under investigation by the SFO and MoD Police. Payments of £7 million in "secret commissions" were allegedly made to clinch the £116 million ship refurbishment deal.

### South Africa

In October 2006 the SFO raided the offices of John Bredenkamp, alleged by the *Guardian* to be BAE's agent in the £1.6 billion sale of Hawk and Gripen jets to South Africa in 1999. In January 2007 a Johannesburg newspaper, the *Mail & Guardian*, published details of a leaked "mutual legal assistance" request from the SFO to South African authorities. The document contained details of alleged secret payments and allegations that "there is reasonable cause to believe" that BAE and named executives had "committed offences of corruption."

### Tanzania

In November 2006 both the *Times* and the *Guardian* reported that the SFO was investigating the sale of a BAE military air traffic control system to Tanzania. In January 2007, following interviews with two Tanzanian middlemen, the *Guardian* alleged that commissions of \$12 million, 30% of the value of the deal, had been paid into Swiss bank accounts by BAE.

### Czech Republic

In November 2006, the sale of Gripen fighter aircraft to the Czech Republic became linked with the SFO investigation. The *Guardian* had said in 2003 that the US had accused BAE of "corrupt practice" following reports from the CIA and rival arms companies, and that the Czech police had confirmed bribery attempts by BAE. In February 2007 a senior Swedish prosecutor started an investigation into the contract due to the involvement of Saab, the part-BAE-owned manufacturers of Gripens. Czech police re-opened their inquiries.

### Qatar

Following the sale of a package of UK arms to Qatar in 1996, BAE paid a £7 million "commission" into three Jersey trust funds under the control of Qatar's Foreign Minister. A criminal investigation began in Jersey in 2000 but ended in 2002 on "public interest" grounds. The Qatari Foreign Minister denied any wrongdoing but agreed to pay Jersey £6m for "perceived damage".

succession of King Abdullah (who was the Commander of the Saudi Arabian National Guard in the 1970s), Crown Prince.

## The deal – Al Yamamah

The BAE-Saudi corruption allegations that were under investigation by the SFO all relate to the massive Al Yamamah deals between the UK government and Saudi Arabia. These deals were signed in 1985 and 1988 and revolved around the sale of Tornado fighter and ground-attack aircraft by BAE, to be paid for in a convoluted oil barter arrangement. The deals have continued over the entire intervening two decades. BAE's Chief Executive has stated that, over this period, the package has netted the company over £40 billion.

Rumours of corruption surfaced within weeks of the first Al Yamamah agreement and in 1989 the National Audit Office launched an investigation. The resulting 1992 report was read by only two MPs at the time and was never published. As the deal continued, so did the allegations. In 1994 the Chairman of Thorn EMI admitted to paying huge commissions of 25 per cent

on a £40 million deal for fuse assemblies for Tornado bombs (*Guardian* 14.11.94), and in 1997 a Panamanian company served a writ against Rolls Royce alleging that the company was willing to pay only £23 million of owed commissions in excess of £100 million (*Private Eye* 9.1.98). Mark Thatcher was the subject of allegations in the mid-1990s, as was Jonathan Aitken who was subsequently jailed for perjury. But none of these seemed to concern the government. In 2001, when the SFO wrote to the MoD's top civil servant about allegations, he not only prevented the MoD's Fraud Squad from investigating, but also tipped off BAE's Chairman. (*Guardian* 13.10.03)

## The investigation

There seemed little likelihood that there would be a way past BAE's blanket denials and the government's refusal to act. However, from September 2003 *Guardian* reporters David Leigh and Rob Evans wrote a series of articles about an alleged BAE "slush fund" involving sports cars, prostitutes, gambling trips and yachts, and alleging that the company was "running an international system of secret commission payments, using Swiss banks and a tiny island in the

Caribbean." The newspaper handed evidence to the SFO and the following year, in November 2004, the SFO announced that it and the MoD police had "commenced an investigation into suspected false accounting" with regard to BAE and arms deals with Saudi Arabia.

Threats to the investigation were reported almost immediately with the *Sunday Times* (14.11.04) warning of an end to contracts if Saudi royals were embarrassed. But one year later, after visits by Tony Blair and Defence Secretary John Reid to argue BAE's case for more sales, the Saudis were reassured enough to sign an "understanding" under which BAE would supply 72 Eurofighter Typhoon jets. *Guardian* (27.9.05) allegations that the negotiations had been stalled because the Saudis had made three demands, one of which was the end of the SFO investigation, were denied.

The Eurofighter "understanding" became an "agreement" (signed by Prince Sultan of the "corrupt interest in all contracts") and the government confirmed that the Export Credits Guarantee Department (ECGD) would renew insurance cover for arms sales to Saudi Arabia, including the Eurofighter. All appeared to be progressing smoothly...

Until it seems the SFO got too close for comfort. The *Sunday Times* (19.11.06) reported that the SFO had persuaded a magistrate in Switzerland "to force disclosure about a series of confidential Swiss bank accounts" and on discovering this, in September 2006, the Saudis had "hit the roof", threatening to cut diplomatic links, intelligence co-operation and payments on Al Yamamah, and delivering a 12-page letter to Blair demanding an explanation of why the investigation was continuing. From that point on, there was a steady stream of press articles about the potential loss of the Eurofighter contract.

Both BAE and the Saudis were said to have briefed Lord Bell's public relations company and a media and lobbying campaign had obviously begun. The focus of the campaign was employment, the only argument that might hold some sway with the public and most MPs. The *Daily Mail* (25.11.06) reported that "this silly fraud probe" would cost 50,000 UK jobs. This extravagant figure was also used by several other papers despite even a Eurofighter-commissioned report indicating that the real figure was less than a tenth of this. The lower level of jobs, BAE's steady relocation of its activities abroad, the costs to the taxpayer of subsidising arms exports, and the loss to the civil economy of skilled workers, all combine to give a very different picture of the economic arguments.

But the media campaign wasn't about a debate, it was about ending the investigation. On 27 November, BAE's Chief Executive raised the temperature of the coverage by stating "we are not currently moving

forward on finalising the Typhoon contract" (*Financial Times* 28.11.06). Reports that the deal could go to French or US companies made the threats more concrete. On 2 December the *Daily Telegraph* said that Saudi Arabia had given the UK a ten day deadline to halt the SFO investigation or lose the Eurofighter contract. Shortly afterwards the Defence Industries Council, consisting of the major arms companies, wrote to each member of the Cabinet complaining of the "uncertainty" caused by the investigation.

## The political intervention

Tony Blair could not resist intervening on behalf of BAE. The Attorney General who only a few weeks before had said "I would not stop a prosecution on political grounds", who was still struggling to regain any credibility after the fiasco of legal advice around the invasion of Iraq, and whose role was also under pressure due to cash-for-honours, capitulated. Concern over his embarrassment was insignificant compared to that over any caused to Saudi princes and a consequent threat to BAE's profits.

The only questions remaining were when to announce the end of the investigation, who would take responsibility for it and how it would be justified.

**When:** There was a tight timetable. Whether or not the Saudi ten day deadline was real, it indicated the level of urgency and Tony Blair was shortly due to leave for six days in the Middle East. Fortunately, on Thursday 14th, the day before he was due to leave, the report into the death of Princess Diana was to be released. Add to this the widespread public concern over the serial killings in Ipswich and overall it seemed to be a very good day for burying bad news, so good that it might cover not only the dropping of the SFO investigation, but also Blair's police interview over cash-for-honours.

**Who should take responsibility:** Though it was clear who must be seen to make the decision – the Director of the SFO – number 10 either forgot this or couldn't bear to be out of the limelight. Shortly after the Attorney General had been very careful to say that the SFO had taken the lead, Blair went out of his way to claim "full responsibility". And then Blair's spokesman decided that the Attorney General's assessment had been key. (*Guardian* 16.12.06)

**How to justify it:** The only fig leaf available to the government was "national security". But it was reported that even M16 could not sign up to this (*Guardian* 16.1.07). The *Financial Times* asked the wider question of whether pouring arms into Saudi Arabia really advanced UK and western strategic aims, suggesting that "A bloated absolutist monarchy squandering fabulous public wealth is not exactly a recipe for stability." (15.12.06)

Understandably, the Attorney General appeared to feel that more justification was needed and attempted to suggest that it was unlikely that there would have been a prosecution. This was not the opinion of the SFO Director who had "perhaps a different view" (*Financial Times* 16.12.06) with an estimated 18 months of the investigation yet to run. The Attorney General's argument was also completely at odds with the many reports of the investigation "hotting up", not to mention that the SFO had considered offering BAE a plea-bargain shortly before the decision to end the inquiry.

Meanwhile, Tony Blair knew that, despite the illegality of the argument, the only justification of any acceptability was 'jobs' and he couldn't refrain from attempting the emotional blackmail. At his January press conference he noted, "... That is leaving aside the thousands of jobs which would have been lost which is not the consideration in this case but I just point it out". (*Daily Telegraph* 17.1.07)

## The fall-out

There has been widespread condemnation of the termination of the investigation. Embarrassingly for the government, the Organisation for Economic Co-operation and Development (OECD)'s working group on bribery wrote to the Foreign Office to ask why the SFO stopped its investigation, and a meeting of the group in mid-January reported that it had "serious concerns as to whether the decision was consistent with the OECD Anti-Bribery Convention" (OECD 18.1.07). A further meeting in March humiliated the UK government by deciding to send inspectors to find out why the investigation had been dropped and also why the UK has yet to bring a single prosecution since incorporating the OECD's anti-bribery treaty into UK law. (*Guardian* 15.3.07)

More widely, over 130 UK and international non-governmental organisations including Amnesty International and Friends of the Earth wrote to the Prime Minister in January 2007 asking him to reconsider. Major institutional investors Hermes and F&C wrote to the government expressing their concern over the impact of the decision on the investment climate and financial markets. An Early Day Motion calling on the government to re-open the investigation has been tabled by cross-party MPs. There have been Lib Dem sponsored debates in the Commons and Lords on the dropping of the inquiry, and Lib Dem and SNP MEPs requested that the European Commission investigate the decision.

## The judicial review

Shortly after the decision was announced, CAAT and The Corner House, a social and environmental justice group, agreed to work to reinstate the SFO investigation via legal action. On 10 April 2008, in a

historic victory for the campaign groups, the High Court quashed the SFO decision to terminate the investigation. In a strongly worded judgment, the Court described how BAE and the Saudi regime had lobbied Tony Blair and his ministers to have the investigation dropped. The judges went so far as to describe the Saudi threat as a "successful attempt by a foreign government to pervert the course of justice in the United Kingdom".

Contrary to Blair's claim to be protecting the UK, the High Court found that UK's adherence to the rule of law had been undermined by the decision to drop the investigation in the face of the Saudi threat. The judges, Alan Moses and Jeremy Sullivan, ruled that the SFO's director "failed to appreciate that protection of the rule of law demanded that he should not yield to the threat". They added that surrender to a threat "merely encourages those with power, in a position of strategic and political importance, to repeat such threats". It was not the investigation, but the decision to cut it short, that has endangered national security.

The judges were clearly annoyed that, as they put it: "There is no evidence whatever that any consideration was given as to how to persuade the Saudis to withdraw the threat, let alone any attempt made to resist the threat". They then moved on to a vital point about motivations: "Too ready a submission may give rise to the suspicion that the threat was not the real ground 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 Government almost immediately announced its intention to appeal against the decision. The appeal will be heard by the House of Lords on 7 and 8 July. Considering the questions raised by the case to be of general public importance, the High Court has ordered the Government to pay all the costs both for the case so far and for the appeal regardless of the outcome.

The High Court's decision means that the investigation is technically reopened. However, the new director of the SFO, Richard Alderman, has said that he will make no decision in practice until after the House of Lords has ruled on the appeal.

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