



Bribery allegations and BAE Systems

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BAE Systems was accused of corruption, specifically making bribes, in regard to the Al Yamamah arms agreement with the Saudi Arabian Government. This was investigated by the Serious Fraud Office (SFO) following the leaking of a letter from the then Director of the SFO to the former Permanent Secretary at the Ministry of Defence.

The SFO discontinued its inquiry in December 2006, citing the need to safeguard national and international security, a move which was supported by the then Prime Minister, Tony Blair. A legal challenge that the SFO's decision was unlawful was not successful.

In addition to the allegations surrounding Al Yamamah, parallel SFO investigations were also conducted into a number of other BAE defence contracts in South Africa, Chile, the Czech Republic, Romania, Tanzania and Qatar.

In February 2010, BAE Systems reached a settlement with the US Department of Justice (DoJ) to plead guilty of conspiring to make false statements to the US Government in connection with certain regulatory filings and undertakings, including the Al Yamamah agreement as well as contracts with the Hungarian and Czech governments.

In March 2010, BAE Systems pleaded guilty to conspiring to defraud the United States by impairing and impeding its lawful functions, to make false statements about its Foreign Corrupt Practices Act compliance program, and to violate the Arms Export Control Act and International Traffic in Arms Regulations. It was given a \$400 million fine and agreed to take measures in order to stay within US and foreign laws concerning corruption and the exports of arms. The company also agreed to retain an independent compliance monitor for three years to assess its compliance program and to make a series of reports to the company and the DoJ.

This Standard Note is referred to in the Research Paper, *The Bribery Bill* (RP 10/19).

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1 The Al Yamamah agreement

1.1 Background

Al Yamamah (“the dove”) is a government-to-government agreement between the UK and Saudi Arabia which commits the UK to developing and sustaining a technologically advanced military force and supporting infrastructure in Saudi Arabia. The agreement was first initiated in September 1985, and BAE Systems acts as the prime contractor on the programme for the UK Ministry of Defence.

Under two memorandum of understanding (MOU) signed in the 1980s, BAE Systems supplied the Saudi Armed Forces with a large number of fighter jets, training jets, civilian aircraft, weaponry, ground support services and equipment, the construction of air and naval bases and three minehunter ships.

A further MOU was signed in December 2005 by the two governments to replace the Tornado aircraft with 72 Eurofighter Typhoon fighter jets.

1.2 Allegations of corruption, and the Serious Fraud Office’s inquiry and subsequent discontinuation

In September 2003, *The Guardian* alleged that BAE Systems was operating a “a £20m ‘slush fund’ designed to bribe Saudi officials”, based on a letter it had seen from the former director of the Serious Fraud Office (SFO) to Sir Kevin Tebbit, the permanent secretary at the Ministry of Defence.¹ The following day, the SFO told *The Guardian* that it was considering opening a full-scale criminal investigation into the matter.²

As the SFO’s investigation continued, in December 2006 the Saudi government was reported by the *Daily Telegraph* as giving the UK “10 days to halt a fraud investigation into the country’s arms trade - or lose a £10 billion Eurofighter contract”, adding “The Saudis are said to be “outraged” by the probe into the activities of companies linked to BAE Systems ... The country’s advisers have made clear through diplomatic channels that unless the inquiry is closed, the kingdom’s arms business will be taken elsewhere”.

The newspaper quoted a Foreign Office spokesman who said “The Serious Fraud Office is an independent Government department and part of the criminal justice system. Other parts of Government cannot and would not interfere in or prejudice its investigations”.³

On 15 December 2006, the SFO announced that it was discontinuing its inquiry:

The Director of the Serious Fraud Office has decided to discontinue the investigation into the affairs of BAE SYSTEMS Plc as far as they relate to the Al Yamamah defence contract with the government of Saudi Arabia.

This decision has been taken following representations that have been made both to the Attorney General and the Director of the SFO concerning the need to safeguard national and international security.

It has been necessary to balance the need to maintain the rule of law against the wider public interest.

¹ The Guardian, [BAE accused of arms deal slush fund](#), 11 September 2003

² The Guardian, [Fraud Office looks again at BAE](#), 12 September 2003

³ Daily Telegraph, [Halt inquiry or we cancel Eurofighters](#), 1 December 2006

No weight has been given to commercial interests or to the national economic interest.⁴

The then Attorney General, Lord Goldsmith, told the House of Lords that the SFO inquiry was being halted and said:

In order to complete this investigation, significant further inquiries would be necessary, which would last in the SFO's judgment a further 18 months. It accordingly has concluded that in these circumstances the potential damage to the public interest which such a further period of investigation would cause is such that it should discontinue that investigation now. I agree that there are considerable uncertainties that a prosecution could be brought; indeed, my view goes somewhat further as I consider, having carefully considered the present evidence, that there are obstacles to a successful prosecution so that it is likely that it would not in the end go ahead.

As to the public interest considerations, there is a strong public interest in upholding and enforcing the criminal law, in particular against international corruption, which Parliament specifically legislated to prohibit in 2001. In addition I have, as is normal practice in any sensitive case, obtained the views of the Prime Minister and the Foreign and Defence Secretaries as to the public interest considerations raised by this investigation. They have expressed the clear view that continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation, which is likely to have seriously negative consequences for the United Kingdom public interest in terms of both national security and our highest priority foreign policy objectives in the Middle East. The heads of our security and intelligence agencies and our ambassador to Saudi Arabia share this assessment.⁵

In his January 2006 monthly press conference, the then Prime Minister, Tony Blair, explained the position he had taken:

Well I won't get into discussing the intelligence aspect of this, but I can absolutely assure you there is no doubt whatever in my mind, and I think those of any of the people who have looked at this issue, that had we proceeded with this [the SFO inquiry] the result would have been devastating for our relationship with an important country with whom we co-operate closely on terrorism, on security, on the Middle East peace process, and a host of other issues, and that is leaving aside the thousands of jobs that we would have lost which is not for consideration in this case but nonetheless I just point it out.⁶

It was subsequently reported that the US Government had made a formal diplomatic protest to the UK Government following the SFO's decision to discontinue its inquiry into BAE Systems within days of the SFO's December 2006 announcement, and that several governments, including the US, "had raised the issue at a meeting of the anti-bribery working group of the Paris-based Organisation for Economic Cooperation and Development".⁷

The Guardian subsequently reported that leaked SFO documents of its investigation alleged that BAE Systems' Chief Executive, Mike Turner, former Chairman Sir Dick Evans, and two other executives were named as corruption suspects. BAE Systems did not comment.⁸

⁴ Serious Fraud Office, [BAE Systems Plc/Saudi Arabia](#), press release, 14 December 2006

⁵ [HL Deb 14 December 2006 c1712](#)

⁶ Number 10, [PM's monthly press conference January 2007](#), 16 January 2007

⁷ Financial Times, [US issued protest on axing of BAE probe](#), 27 April 2007

⁸ The Guardian, [BAE bosses named as corruption suspects](#), 17 January 2007

Responding to a question of the impact on the investment climate and business confidence in the UK following the SFO's decision, the then Industry Minister, Margaret Hodge, told the House "The Government remain extremely serious about tackling corruption. This decision sets no precedent of any kind and was made on legitimate public interest grounds".⁹

1.3 Judicial appeal against the SFO's decision to discontinue the inquiry

On 10 April 2008, the High Court ruled that the SFO's decision to discontinue its inquiry was unlawful, as the Financial Times reported:

Two senior judges delivered a fierce rebuke to the government for "failing to recognise the rule of law" in a case - brought by two pressure groups - that triggered international condemnation of London's record on corruption. They accused it of allowing a foreign nation to "pervert the course of justice".

"So bleak a picture of the impotence of the law invites at least dismay, if not outrage," said Lord Justice Moses in the High Court in London, as he ruled that the Serious Fraud Office had illegally allowed threats by Saudi officials to derail the bribery probe, which was scrapped in December 2006.¹⁰

The SFO subsequently decided to appeal the ruling, with the new SFO Director, Richard Alderman, explaining:

The Judgment of the Divisional Court raises principles of general public importance affecting, among other things, the independence of prosecutors and the role of the court in reviewing a prosecutor's evaluation of the public interest in a case like this. The Court itself has commented that the issues raised in this case are important points of public interest. I will therefore be seeking permission to appeal to the House of Lords to obtain a definitive ruling.¹¹

On 30 July 2008, the House of Lords ruled to allow the SFO's appeal, a decision that was welcomed by the SFO who noted that it meant that the SFO's former Director, Robert Wardle, had "acted lawfully in discontinuing an investigation into alleged bribery and corruption surrounding the BAE contract to supply Tornados to the government of Saudi Arabia".¹²

1.4 BAE Systems' settlement

In February 2010, BAE Systems announced a joint settlement with the SFO and the US Department of Justice (DoJ). Under the terms of the settlement, the SFO reached an agreement with BAE Systems regarding its activities in Tanzania (see section 2 below), but not Al Yamamah.¹³

It would also "plead guilty to one charge of conspiring to make false statements to the U.S. Government in connection with certain regulatory filings and undertakings. The Company will pay a fine of \$400 million and make additional commitments concerning its ongoing compliance".¹⁴ It was reported that the "certain regulatory filings and undertakings" referred

⁹ [HC Deb 29 January 2007 c113W](#)

¹⁰ Financial Times, [UK wrong to axe BAE probe](#), 11 April 2008

¹¹ Serious Fraud Office, [Serious Fraud Office to appeal against Judgment](#), press release, 22 April 2008

¹² Serious Fraud Office, [BAE/Saudi defence contract: House of Lords ruling on the discontinued investigation](#), 30 July 2008

¹³ Serious Fraud Office, [BAE Systems plc](#), 5 February 2010

¹⁴ BAE Systems, [BAE Systems Plc announces global settlement with United States Department of Justice and United Kingdom Serious Fraud Office](#), press release Ref. 014/2010, 5 February 2010

to the Al Yamamah contract,¹⁵ as well as contracts with the Hungarian and Czech governments. BAE Systems said that the agreement with the DoJ was subject to court approval.¹⁶

On 1 March 2010, the DoJ issued a press release which stated that BAE Systems had “pleaded guilty today in U.S. District Court in the District of Columbia to conspiring to defraud the United States by impairing and impeding its lawful functions, to make false statements about its Foreign Corrupt Practices Act (FCPA) compliance program, and to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR)”. The Acting Deputy Attorney General, Gary G. Grindler, said “Today, BAE Systems pleaded guilty to knowingly and willfully making false statements to U.S. government agencies”.¹⁷

It added that BAE Systems had been fined \$400 million, which was “one of the largest criminal fines in the history of DOJ’s ongoing effort to combat overseas corruption in international business and enforce U.S. export control laws”.¹⁸

As part of its guilty plea, BAE System also agreed “to maintain a compliance program that is designed to detect and deter violations of the Foreign Corrupt Practices Act, other foreign bribery laws implementing the OECD Anti-bribery Convention, and any other applicable anti-corruption laws, and that is designed to detect and deter violations of the AECA and ITAR, as well as similar export control laws”. In addition, “under the terms of the plea agreement, BAES [BAE Systems] has agreed to retain an independent compliance monitor for three years to assess BAES’s compliance program and to make a series of reports to the company and the Justice Department”.

The press release went on:

According to court documents, from approximately 2000 to 2002, BAES represented to various U.S. government agencies, including the Departments of Defense and Justice, that it would create and implement policies and procedures to ensure its compliance with the anti-bribery provisions of the FCPA, as well as similar, foreign laws implementing the Organization for Economic Cooperation and Development (OECD) Anti-bribery Convention. According to court documents, BAES knowingly and willfully failed to create mechanisms to ensure compliance with these legal prohibitions on foreign bribery. According to court documents, the gain to BAES from the various false statements and failures to make required disclosures to the U.S. government was more than \$200 million.

[...]

Despite BAES’s representations to the U.S. government to the contrary, BAES knowingly and willfully failed to create sufficient compliance mechanisms to prevent and detect violations of the anti-bribery provisions of the FCPA.¹⁹

On issues relating to the Al Yamamah agreement, the press release stated:

¹⁵ The Independent, [BAE Systems pays \\$400m to settle bribery charges](#), 6 February 2010

¹⁶ BAE Systems, [BAE Systems Plc announces global settlement with United States Department of Justice and United Kingdom Serious Fraud Office](#), press release Ref. 014/2010, 5 February 2010

¹⁷ Department of Justice, [BAE Systems PLC Pleads Guilty and Ordered to Pay \\$400 Million Criminal Fine](#), press release, 1 March 2010

¹⁸ As above

¹⁹ As above

... according to court documents, BAES began serving as the prime contractor to the U.K. government in the mid-1980s, after the U.K. and the Kingdom of Saudi Arabia (KSA) entered into a formal understanding. According to court documents, the “support services” that BAES provided according to the formal understanding resulted, in part, in BAES providing substantial benefits to a foreign public official of KSA, who was in a position of influence regarding sales of fighter jets, other defense materials and related support services. BAES admitted it undertook no adequate review or verification of benefits provided to the KSA official, including no adequate review or verification of more than \$5 million in invoices submitted by a BAES employee from May 2001 to early 2002 to determine whether the listed expenses were in compliance with previous statements made by BAES to the U.S. government regarding its anti-corruption compliance procedures. In addition, in connection with these same defense deals, BAES agreed to transfer more than £10 million plus more than \$9 million to a bank account in Switzerland controlled by an intermediary, being aware that there was a high probability that the intermediary would transfer part of these payments to the same KSA official.²⁰

2 Other inquiries into BAE Systems

In tandem with the Serious Fraud Office’s investigation into the Al Yamamah deal, parallel SFO investigations were also conducted into a number of other BAE defence contracts in South Africa, Chile, the Czech Republic, Romania, Tanzania and Qatar.

Among those the deal to provide Tanzania with a civil-military air traffic control system in 2000/01 has been the most controversial. At the time Tanzania had ‘Heavily Indebted Poor Country’ status, had high levels of poverty, malnutrition, inadequate education and healthcare and was proposing to purchase the system at a cost of £28m when the country had only a handful of military aircraft. At the time both the World Bank and the IMF concluded that an alternative system to meet the needs of civilian air traffic control could be purchased for £10m. That deal with BAE was concluded in 2001 despite widespread opposition. Although the details of the SFO investigation have remained confidential there were a number of reports that the investigation was centred upon allegations that a \$12m commission was paid by BAE Systems into the Swiss bank account of a Tanzanian middleman who had connections with senior military and government officials in Tanzania.

At the beginning of February 2010 both the Serious Fraud Office and the US Department of Justice, which had also been investigating a number of BAE’s business dealings, announced that it had reached a global agreement with BAE Systems regarding all of the corruption allegations under consideration. With respect to the Tanzania deal, the Serious Fraud Office announced in a statement that:

The SFO has today reached an agreement with BAE Systems that the company will plead guilty in the Crown Court to an offence under section 221 of the Companies Act 1985 of failing to keep reasonably accurate accounting records in relation to its activities in Tanzania. The company will pay £30 million comprising a financial order to be determined by a Crown Court judge with the balance paid as an ex gratia payment for the benefit of the people of Tanzania.²¹

It also went on to state:

²⁰ As above

²¹ [Serious Fraud Office Press Release](#), 5 February 2010

In conjunction with this agreement the SFO has taken account of the implementation by BAE Systems of substantial ethical and compliance reforms and the company's agreement with the DoJ announced today, and has determined that no further prosecutions will be brought against BAE Systems in relation to the matters that have been under investigation by the SFO.

BAE Systems subsequently pleaded guilty to the charges it faced in the US and, in addition to issues relating to the Al Yamamah agreement (see section 1.4), the DoJ also cited BAE Systems' sales of fighter jets to the Czech Republic and Hungary:

In one specific instance, BAES caused the filing of false applications for export licenses for Gripen fighter jets to the Czech Republic and Hungary by failing to tell the export license applicant or the State Department of £19 million BAES paid to an intermediary with the high probability that it would be used to influence that tender process to favor BAES.²²

The agreement has been largely welcomed by commentators. The NGO Transparency International said "the SFO and DoJ must be congratulated on finally achieving an outcome. It is important for companies to receive large fines if they have engaged in unethical behaviour. We hope this settlement will now allow BAES to draw a line under its past and will send a message to UK companies that corruption does not pay".²³ However, Campaign Against the Arms Trade and Corner House have both expressed dismay at the decision. In a joint statement they commented:

Today's settlement involves a lesser offence that took place in an economically weak country [Tanzania], but ignores allegations of much greater wrongdoing (in terms of both activities and monies involved) in the UK and other countries, all of whom are politically stronger or are close allies with the UK.

The two groups say that questions must be asked about why, how and when the decision to settle was made and whether undue influence was placed on the Serious Fraud Office.²⁴

Both organisations have suggested that they may now pursue this issue in the High Court.

²² Department of Justice, [BAE Systems PLC Pleads Guilty and Ordered to Pay \\$400 Million Criminal Fine](#), press release, 1 March 2010

²³ [Transparency International press release](#), 5 February 2010

²⁴ <http://www.thecornerhouse.org.uk/item.shtml?x=565972>