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## WORD FROM THE EDITOR-IN-CHIEF

# Defence Trade and

The US Department of Justice's move in detaining and searching the CEO of BAE Systems, Mike Turner and several other top managers as they arrived at the George Bush International Airport in Houston, Texas and then serving them subpoenas brings the never-ending story of the alleged BAE Systems' corruption scandal over the "Al Yamamah" deal with Saudi Arabia one further step closer to sheer delirium.

Just for the sake of discussion, let's clarify a point or two – not about the scandal, about which you all have certainly already heard more than enough from the media, but rather about certain admittedly unpalatable yet unavoidable aspects of international trade.

It is a matter of fact that major deals between a government office and a foreign supplier will on occasions involve money exchanging hands, beyond and above payments specified in the contract. Indeed, this would happen rather frequently not to say most of the time in certain countries, and very few nations could claim to be totally immune from this plague.

This phenomenon is normally presented as corruption – that is, the foreign supplier would bribe an individual in a key position, in order for him to select the supplier's product over the competition, or indeed to "invent" a non-existing requirement and acquire whatever item the supplier has to offer even though such is not really needed. But while this might indeed theoretically happen, I would suggest that in most cases it is an exceedingly unlikely proposition – not out of ethical considerations, but because of the monumental risks it entails. An official who accepts bribes this way would remain in a very precarious position, completely vulnerable to eventual exposure by both the losing industrial competitors as well as his own personal enemies and rivals, should any of them get wind of what has happened. And, needless to say, the risks are even more catastrophic for the company itself.

At least based on my limited personal experience in such matters, the overwhelming majority of cases rather involve a bland form of extortion. That is, an official in a position of power will make it clear that for the deal to proceed, wheels must be oiled with money. As an acquaintance was once told by a Colonel, whom he was trying to bribe over a relatively small purchase (blankets), "You must be new at this... It'll be a flat 1% for me and 0.5% for each of my two deputies, irrespective of who gets the contract. We'll not wrong our Service and we'll select the best bid – but there has to be something in it for us, too". Whether this "something" is simply added to the total value of the contract, and thus is ultimately footed by the taxpayers of the purchasing country, or rather the seller will have to detract it from its own profit does of course have rather momentous implications for all of those involved, but it is largely irrelevant for this discussion.

The above situation applies to all possible forms of foreign purchases, whenever and wherever someone has the power to decide or to influence the decision and completely irrespective as to whether we are talking about arms, commercial aircraft, trains, dams, industrial plants or hospitals. Indeed, I seem to understand that there have been cases where bribes had to be paid (or at least were requested) in

## the Misuse of Justice



bonds between the West and Saudi Arabia), and magistrates/Justices debating on the fine points of who has jurisdiction over what, and who might conceivably also have a variety of their own political agendas as well as being seen as inhabiting the "reality vacuum" of legal niceties.

Now let me say something. Separation of powers and judicial independence are two absolutely essential tenets for our democratic societies, and I would certainly agree that no compromise shall be accepted in this regard. But then, "separation of powers" is not restricted to the Executive having no right to influence or curb the Judiciary; it also means that certain areas and decisions are the Executive's exclusive preserve, and the Judiciary has no meddling with them.

There is an admittedly very fine defining line here, and I would certainly wish and applaud for governments to be submitted to the rule of law as regards their relationship with the citizens ("There are judges in Berlin"). But as regards matters directly affecting a nation's security and overall strategic interests, I beg to differ.

To say it all: if the British Government comes to the conclusion that it is in the national interest for a British company to be allowed (or, which might well have been the case here, to be instructed) to "bribe" a highly-placed and influential member of the Saudi royal family, which actually is in view of local customs and requirements, then this is and should remain the British Government's decision alone.

  
Ezio Bonsignore

order to allow humanitarian supplies to be distributed after a natural catastrophe.

While industries do have a certain amount of freedom in deciding (as a matter of principle or on a case-by-case basis) whether and to what extent to go along this particular road, things get much more delicate when governments become involved on the suppliers' side as well – be this in the sense of supporting their national industries' efforts to win export contracts, or even more ominously in the case of government-to-government deals such as "Al Yamamah". This is often the case for major defence purchases, but it is certainly not restricted to the defence trade. A government may very well have excellent political and strategic reasons for wanting to achieve a supplier-to-customer relationship with a certain country, reasons that go much beyond the financial interests of the industries involved and even the simple desire to protect jobs. Under such circumstances, defining what exactly constitute an illegal bribe might become a matter for debate.

The reason why true or alleged "corruption scandals" tend to periodically erupt over major defence purchases, but virtually never over other (and often much larger in financial terms) deals has nothing to do with bribes being a specific and peculiar aspect of the international defence trade. Rather, it reflects the fact that these campaigns are routinely instigated by people or organisations that are pursuing their own political and ideological agendas, and find it convenient to leverage the (real or alleged) bribery affair in view of very different and often rather perplexing goals. For instance, one of the most vociferous forces currently clamouring for "all the truth to be exposed" about the BAE Systems/ Saudi Arabia connection is an organisation calling themselves CAAT – Campaign Against the Arms Trade. This very name seems to

suggest that their holier-than-thou righteousness about the stench of corruption in "Al Yamamah" is purely cosmetic and instrumental, and they have ulterior and indeed openly declared motives.

But while such unrelenting campaigns can have a significant impact on public opinion, the involvement of Justice is a much more serious matter altogether.

The then British Prime Minister, Tony Blair, moved in December 2006 to halt the ongoing probe on "Al Yamamah" by the Serious Fraud Office (SFO) on the grounds of national security – and he was only too right if you ask me. The High Court has since ruled that SFO did act unlawfully in dropping the case, which in theory should lead to the investigation being reopened. SFO however has appealed against the High Court's ruling, and the matter is still pending. As for the US, the Department of Justice is of the opinion that BAE Systems can be investigated under the Foreign Corrupt Practices Act (FCPA) because the company allegedly paid the bribes owned to Prince Bandar into accounts controlled by him at a bank in Washington. BAE Systems may also have stepped on a number of sensitive feet due to their increasing industrial presence in the USA, but that's a different subject.

The net result of all the above is, I'll say, pretty alarming. An issue which involves exceedingly sensitive aspects of the trilateral relationship between the UK, the US and Saudi Arabia, and which is thus eminently of a political nature, is being wrestled out of the control of the responsible political authorities, and is rather being handled by an unlikely alliance of variously motivated protesters and their puppeteers (not only the usual anti-defence crowd – there even are those who rather aim at wrecking the

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