SUMMARY OF THE JUDGMENT by Lord Justice Moses and Mr Justice Sullivan

Since the judgment is long, we have prepared a summary; this is not part of the judgment. (References are to paragraphs in the judgment).

1. Between 30 July 2004 and 14 December 2006 a team of Serious Fraud Office lawyers, accountants, financial investigators and police officers carried out an investigation into allegations of bribery by BAE Systems plc (BAE) in relation to the Al-Yamamah military aircraft contracts with the Kingdom of Saudi Arabia. On 14 December 2006 the Director of the Serious Fraud Office announced that he was ending the SFO's investigation. (§ 2)

2. In October 2005 BAE sought to persuade the Attorney General and the SFO to stop the investigation on the grounds that its continued investigation would be contrary to the public interest: it would adversely affect relations between the United Kingdom and Saudi Arabia and prevent the United Kingdom securing what it described as the largest export contract in the last decade. Despite representations from Ministers, the Attorney General and the Director stood firm. The investigation continued throughout the first half of 2006.(§ 3)

3. The allegation made by the claimants is clear. It sets out a report from the Sunday Times dated 10 June 2007. The report states that:-

> "Bandar (Prince Bandar bin Sultan bin Abdul Aziz of al-Saud) 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." (§ 22)

4. No admission of a specific threat was made in the Government's skeleton argument. In those circumstances the court asked Mr Sales QC, on behalf of the defendant, to explain the factual basis upon which the court should proceed. We were told that we should base our judgment on the facts alleged by the claimants. We shall do so: there is no other legitimate basis. Moreover, the facts alleged are of particular significance in the instant application. The significant event which was soon to lead to the investigation being halted was a threat 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. (§ 24)

5. Ministers advised the Attorney General and the Director that if the investigation continued those threats would be carried out; the consequences would be grave, both for the arms trade and for the safety of British citizens and service personnel. In the light of what he

regarded as the grave risk to life, if the threat was carried out, the Director decided to stop the investigation.(§ 5)

6. The Director, in his first witness statement, states that the reason why he discontinued the investigation was that to continue:-

> "would risk an immediate cessation of co-operation in relation to national and international security which might have devastating effects on the UK's national security interest – both locally in the UK and in the wider international field in the Middle East…a compelling case had been made out that the UK's national security and innocent lives would be put in serious jeopardy if the SFO's investigation continued." (§ 48)

He says:-

> "It was this feature of the case which I felt left me with no choice but to halt the investigation."(§ 39)

7. The defendant in name, although in reality the Government, contends that the Director was entitled to surrender to the threat. 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 in the United Kingdom, by causing the investigation to be halted. 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". (§ 6)

8. So bleak a picture of the impotence of the law invites at least dismay, if not outrage. The danger of so heated a reaction is that it generates steam; this obscures the search for legal principle. The challenge, triggered by this application, is to identify a legal principle which may be deployed in defence of so blatant a threat. However abject the surrender to that threat, if there is no identifiable legal principle by which the threat may be resisted, then the court must itself acquiesce in the capitulation. (§ 7)

9. The Director's decision is challenged on six grounds. The first ground alleges:

   i) It was unlawful for the Director to accede to the threat made by Prince Bandar or his agent; such conduct was contrary to the constitutional principle of the rule of law; (§ 49)

10. The constitutional principle of the separation of powers requires the courts to resist encroachment on the territory for which they are responsible. 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.(§ 58)

11. 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. (§ 59)

12. Threats to the administration of public justice within the United Kingdom are the concern primarily of the courts, not the executive. It is the responsibility of the court to provide protection.(§ 60)

13. The rule of law is nothing if it fails to constrain overweening power.(§ 65)

14. It is beyond question that had the Director decided to halt the investigation in response to a threat made by those susceptible to domestic jurisdiction, the court would have regarded the issues which arose as peculiarly within their sphere of responsibility. (§ 66)

15. In yielding to the threat, the Director ceased to exercise the power to make the independent judgment conferred on him by Parliament.(§ 68)

16. The Government's answer is that the courts are powerless to assist in resisting when the explicit threat has been made by a foreign state.(§ 73)

17. It is difficult to identify any integrity in the role of the courts to uphold the rule of law, if the courts are to abdicate in response to a threat from a foreign power.(§ 76)

18. The courts protect the rule of law by upholding the principle that when making decisions in the exercise of his statutory power an independent prosecutor is not entitled to surrender to the threat of a third party, even when that third party is a foreign state.(§ 78)

19. 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. (§ 79)

20. Certainly, for the future, those who wish to deliver a threat designed to interfere with our internal, domestic system of law, need to be told that they cannot achieve their objective. Any attempt to force a decision on those responsible for the administration of justice will fail, just as any similar attempt by the executive within the United Kingdom would fail. (§ 80)

21. No-one suggested to those uttering the threat that it was futile, that the United Kingdom's system of democracy forbad 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. If, as we are asked to accept, the Saudis would not be interested in our internal, domestic constitutional arrangements, it is plausible they would understand the enormity of the interference with the United Kingdom's sovereignty, when a foreign power seeks to interfere with the internal administration of the criminal law. It is not difficult to imagine what they would think if we attempted to interfere with their criminal justice system. (§ 90)

22. The principle we have identified is that submission to a threat is lawful only when it is demonstrated to a court that there was no alternative course open to the decision-maker. This principle seems to us to have two particular virtues. (§ 99)

23. Firstly, by restricting the circumstances in which submission may be endorsed as lawful, the rule of law may be protected. If one on whom the duty of independent decision is imposed may invoke a wide range of circumstances in which he may surrender his will to the dictates of another, the rule of law is undermined. (§ 100)

24. Secondly, as this case demonstrates, 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. Whilst we have accepted the evidence as to the grounds of this decision, in future cases, absent a principle of necessity, it would be all too tempting to use a threat as a ground for a convenient conclusion. We fear for the reputation of the administration of justice if it can be perverted by a threat. Let it be accepted, as the defendant's grounds assert, that this was an exceptional case; how does it look if on the one occasion in recent memory, a threat is made to the administration of justice, the law buckles? (§ 101)

25. The more the defendant stresses that he reached a conclusion free from pressure imposed by the UK Government, the more he demonstrates the inconsistency in submitting to pressure applied by the government of a foreign state. We have identified a principle of law which seeks to protect him from both. (§ 169)

26. The claimants succeed on the ground that the Director and Government failed to recognise that the rule of law required the decision to discontinue to be reached as an exercise of independent judgment, in pursuance of the power conferred by statute. To preserve the integrity and independence of that judgment demanded resistance to the pressure exerted by means of a specific threat. That threat was intended to prevent the Director from pursuing the course of investigation he had chosen to adopt. It achieved its purpose. (§ 170)

27. The court has a responsibility to secure the rule of law. The Director was required to satisfy the court that all that could reasonably be done had been done to resist the threat. He has failed to do so. He

submitted too readily because he, like the executive, concentrated on the effects which were feared should the threat be carried out and not on how the threat might be resisted. 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 to bear that essential principle in mind that justifies the intervention of this court. We shall hear further argument as to the nature of such intervention. But we intervene in fulfilment of our responsibility to protect the independence of the Director and of our criminal justice system from threat. On 11 December 2006, the Prime Minister said that this was the clearest case for intervention in the public interest he had seen. We agree. (§ 171)