

Dr John Jenkins
First
For the Appellant
Dated: 9 June 2008

IN THE HOUSE OF LORDS

ON APPEAL FROM THE DIVISIONAL COURT

R (on the application of)

(1) CORNER HOUSE RESEARCH
(2) CAMPAIGN AGAINST ARMS TRADE

Respondents

- and -

DIRECTOR OF THE SERIOUS FRAUD OFFICE

Appellant

- and -

BAE SYSTEMS PLC

Interested Party

DR JOHN JENKINS

I, Dr John Jenkins, Foreign and Commonwealth Office, King Charles Street, London SW1A 2AH, SAY AS FOLLOWS:

1. I am the Middle East Director in the Foreign and Commonwealth Office (“FCO”). I was appointed to that position in September 2007. I make this statement to address one particular matter that has a bearing on the section of the judgment of the Divisional Court in this case at paragraphs 87 to 90. The contents of this witness statement are within my knowledge or belief unless otherwise stated, and are true to the best of my knowledge and belief.

2. In my position as Middle East Director I am involved in the conduct of diplomatic relations with the Kingdom of Saudi Arabia. I am in a position to check the records held by the FCO and other Government Departments of contacts with Saudi Arabia via FCO officials, and via officials from other Departments. In this witness statement I set out material taken from those records which shows that, in relation to the Al Yamamah investigation which is at issue in these proceedings, HM Government did inform the Saudi Arabian Government on a number of occasions from 2004 that the Serious Fraud Office (“SFO”) is independent of the Government under the UK’s legal system. The threat later made by Saudi Arabia at issue in these proceedings was, on the understanding of the FCO, made with full knowledge by the Saudi Arabian Government of this point.

3. In what follows I set out verbatim extracts from documents which I have examined. The general context of each document is explained, and then the relevant quotation from it is set out. I should explain three points.

4. First, the extracts are put forward as the material in the relevant records held within Government bearing directly on the question whether HM Government informed the Saudi Arabian Government that the SFO is independent of the Government. I am satisfied, and those advising me are satisfied, that each extract is complete and accurate, so far as the document from which it is taken bears on that question, and in no way gives any false impression as a result of the redaction of (ie absence of quotation from) the remainder of the document.

5. Secondly, it will be obvious from the descriptions of the documents given below that the documents contain material which touches on other aspects of the Al Yamamah investigation and UK relations with Saudi Arabia in respect of it. That material is not set out, since it does not bear on the particular question to which this witness statement is directed and includes material which could not be disclosed for public interest reasons. In particular, material relating to the conduct of diplomatic relations with the Saudi Arabian Government is very sensitive, since there is a well recognized understanding between states in the conduct of international relations that diplomatic exchanges should be treated

as confidential. The strong reaction of the Saudi Arabian Government to what it would have regarded as a breach of confidentiality in respect of the Al Yamamah agreement had the SFO investigation continued shows how seriously it would be likely to regard any breach of confidentiality in relation to diplomatic exchanges. Moreover, if the documents referred to below were disclosed in unredacted form, they would not set out the full picture so far as the records held by HM Government are concerned, and it would be necessary for further witness evidence and further documents (themselves containing very sensitive material) to be put before the Judicial Committee to explain them and put them in proper context. I am advised that it is unnecessary and not appropriate for any such exercise to be attempted.

6. Thirdly, some redactions have been made in the extracts set out below, on public interest grounds. The particular Saudi Arabian representatives to whom the various communications were made are not identified. This is because to do so would be regarded by Saudi Arabia as a violation of the confidentiality of diplomatic exchanges, based on the understanding referred to above.

Documented occasions of HM Government informing the Government of Saudi Arabia about the independence of the SFO

a) The following text is set out in a letter of 2 pages, dated 21 December 2004, from the Head of Defence Export Services Organisation (Ministry of Defence) to a senior representative of the Saudi Arabian Government, dealing with the SFO investigation into BAE Systems plc:

“The SFO’s investigation is currently focused on the relationship between BAE Systems and their sub-contactors, and whether improper payments were made or false accounts drawn up at that level, and not on the AY agreement itself. The SFO have not yet decided whether the evidence would justify any legal action. If they concluded that it might, they would refer the evidence to the independent Crown Prosecution Service to determine whether to initiate any prosecutions. The Ministry of Defence, the British Government, and Parliament have no role in this process.”

b) The following text is set out in a memo of 2 pages, dated 22 December 2005, from the Head of Defence Export Services Organisation (Ministry of Defence) to, among others, Jonathan Powell (the Prime Minister’s Chief of Staff), dealing with Saudi representations on the SFO investigation into BAE systems:

“We made it clear that the SFO investigation was wholly independent of HMG, and that neither we nor Ministers had any power to intervene.”

“Among other things, he [the Commercial Director of Saudi Armed Forces Project] has informed them [the SFO] of the visit of the Saudi delegation and their concerns; and he has confirmed to them that we have made it clear to the Saudis that the SFO (and, should it come to that, the CPS) are completely independent of HMG. We have also emphasized to the Saudis, as my letter states, that neither the MOD, nor other Government Departments, nor Parliament, have any role to play in the SFO or CPS processes.”

c) The following text is set out in a letter of 3 pages, dated 27 November 2004, from the Private Secretary to the Prime Minister to the Assistant Private Secretary to the Defence Secretary (Ministry of Defence), reporting on a meeting between a senior representative of the Saudi Arabian Government and the Prime Minister, followed by a longer meeting with Jonathan Powell (the Prime Minister’s Chief of Staff):

“Jonathan [Powell] made it clear [to senior representative of the Saudi Arabian Government] that such investigations [ie by the SFO] were not a matter for [the UK] Government and we could not intervene in any way”.

d) The following text is set out in a letter of 2 pages, dated 12 January 2005, from the FCO Political Director to the Head of the Arabian Peninsula Group (FCO), reporting on a meeting between him and the assistant of a senior representative of the Saudi Arabian Government:

“I said [to the assistant] the investigations into BAE Systems were not the responsibility of the FCO.”

e) The following text is set out in a letter of 2 pages, dated 15 January 2005, from HM Ambassador, Riyadh, to a senior representative of the Saudi Arabian Government:

“Third, as you are aware, the United Kingdom’s Serious Fraud Office (SFO) has initiated an investigation into allegations of corruption and false accounting involving BAE Systems and some of their sub-contractors. This is an investigation into the dealings of some UK companies, not into the Al Yamamah agreement itself. If the evidence justifies legal action, the SFO would refer the evidence to the independent Crown Prosecution Service (CPS) to determine whether to initiate any prosecutions. I should emphasise that both the SFO and the CPS are totally independent of Government. The Ministry of Defence, other Government Departments, and the British Parliament have no role in, or influence over, the processes of the SFO and the CPS.”

f) The following text is set out in an email of 3 pages, dated 17 December 2005, from HM Ambassador, Riyadh, to the Commercial Director of the Saudi Armed Forces Project, reporting on a meeting between him and a senior representative of the Saudi Arabian Government:

“SFO Enquiry

[Senior representative of the Saudi Arabian Government] did not raise this. I said that senior officials in London were well aware of what was at stake. But the Attorney (in this capacity) and the prosecuting authorities were entirely independent. With that in mind, it was important that the Saudis did not try to extract from the Defence Secretary during his visit undertakings which were not in his power to give. He would just have to refuse.”

g) The following text is set out in a letter of 4 pages, dated 25 September 2006, from HM Ambassador, Riyadh, to Sir Peter Ricketts, Permanent Under-Secretary at the FCO:

“I recall that, in the margins of the meetings recorded above, and possibly on one or two other occasions (e.g. during The Prince of Wales’s visit in March this year), I had brief oral exchanges with [a senior representative of the Saudi Arabian Government] on the SFO enquiry, including those mentioned [above]. I remember [the senior representative of the Saudi Arabian Government] giving the impression that he had information of his own about the SFO enquiry (for example, he once volunteered that he understood that the

enquiry could be discontinued if it was not in the public interest (although he used a curious phrase which I can't now recall)). I remember telling him more than once that senior officials in London were well aware of just how serious the enquiry could be, and that we were working to persuade the legal authorities of this. But I always made clear that the enquiry was not in our hands, and that there could be no guarantees. I remember being worried that [senior representative of the Saudi Arabian Government] was more optimistic about the SFO enquiry than seemed justified on the facts available to me. I confess that I did ask myself at least once whether I should have done more to disabuse him. But he always gave the impression he had his own information, and really just wanted to use me to convey to London how concerned he was.

I can, moreover, give you a categorical assurance that at no stage did I promise [senior representative of the Saudi Arabian Government] that the SFO enquiry would be suspended or otherwise adjusted to prevent damage to Saudi interests. I would never have been so foolish.”

Statement of Truth

I believe that the facts set out in this statement are true.

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Dr John Jenkins

Dated: