

WIKILEAKS REVEALS HOW THE BRITISH LIED TO OECD ABOUT BAE BRIBERY

A WikiLeaks cable dated March 5, 2007 has raised new interest in the BAE bribery scandal (AP, WSJ, Telegraph). While no one seems to have noted this, the cable shows that the British lied to their counterparts at the OECD about details of the bribery investigation into BAE.

As the Guardian (which led the reporting on this story) reported three years ago, the UK's Serious Fraud Office started investigating evidence of an elaborate kickback system by which the Brits would give money to the Saudis for BAE contracts in 2004 (it turns out those kickbacks were allegedly used to fund covert operations). In 2006, Prince Bandar bin Sultan flew to London and threatened Tony Blair the Saudis would stop sharing information on terrorists if the SFO continued its investigation. As a result, in early 2007, the SFO stopped its investigation, citing public interest. The US settled its investigation of the same bribery scheme for \$400 million last year.

The cable appears to be preparation for the March 2007 OECD meeting of the Working Group on Bribery; it serves as a review of what had happened in the previous, January 2007, meeting regarding the British decision to stop its investigation of the BAE bribery scheme. Much of the cable reviews the stance of each country regarding the UK decision, with France vocally complaining that the British decision violated the Convention on bribery's prohibition on invoking relations with foreign countries as reason to spike a bribery investigation, and Australia fully supporting the UK decision. According to the cable, the American delegation was in between those two positions (they were

basically arguing for putting off a conclusion about the appropriateness of the decision until the March meeting for which this cable served as preparation):

The U.S. delegation took note of the experience and professionalism of U.K. delegation members. The US del inquired into what appeared to be inconsistent accounts relating to differences in views of the SFO Director and Attorney General regarding the merits of the case, reports alleging British intelligence agencies had not joined the government's assessment that the case raised national and international security interests, and whether the SFO could provide WGB members with assurances that BAE would not continue to make corrupt payments to senior Saudi officials.

[snip]

The U.S. delegation commented that it was not appropriate at this juncture to conclude that Article 5 does not contemplate the proper invocation of national security interests.

Ultimately, the cable reveals, the group developed a consensus to revisit the issue in the March meeting after further review of the British investigation.

The cable is perhaps most interesting because it gives us a glimpse of what the British publicly told the international community about its investigation, the targets, and the reasons for dropping the investigation.

The SFO Deputy Director falsely portrayed the decision to end the investigation as voluntary

Most interestingly, the cable shows that SFO Deputy Director Helen Garlick portrayed SFO Director Robert Wardle's decision to terminate the investigate as entirely voluntary.

Garlick started by underscoring the U.K. delegation's willingness to answer as much as possible the questions of the WGB, bearing in mind pending litigation in the U.K. Garlick reported that SFO and MOD Police investigators had expended more than 2 million pounds sterling on the BAE investigations. She said on December 14, SFO Director Robert Wardle had decided to discontinue the joint SFO/MOD Police investigation based on his personal, independent judgment.

The French doubted this (I'm guessing they were suspicious partly because Wardle did not brief the group himself). Shortly after the January meeting, the Guardian reported that Wardle disagreed with Lord Goldsmith's ultimate decision to spike the investigation and in 2008 Wardle testified that he strongly disagreed with the decision.

Wardle told the court in a witness statement: "The idea of discontinuing the investigation went against my every instinct as a prosecutor. I wanted to see where the evidence led."

All of which suggests the French were right to doubt that Wardle made this decision himself.

The Brits may have kept Bandar bin Sultan's role in the bribery scheme secret

In addition, it appears that the Brits may have kept Bandar bin Sultan's role in the bribery scheme secret—though it may be, instead, that the cable didn't record the details of the briefing pertaining to Bandar. The cable describes the Brits exhorting their partners to keep the contents of the briefing on the investigation classified.

U.K. delegation head Jo Kuenssberg said the U.K. recognized the level of interest of WGB members in the case and stressed the need to respect the

confidentiality of the information
contained in the U.K.'s briefing,

And then, among the details revealed in the investigation, the Brits described an "unnamed senior Saudi official" and "another very senior Saudi official" as recipients of some of the bribes in the scheme.

Third, payments made under the al-Yamamah contract to an unnamed senior Saudi official: Garlick advised that in October 2005, the SFO had demanded BAE produce documents including payments related to the al-Yamamah contract. The company made representations to the AG on public interest grounds (political and economic considerations) as to why the investigation should be halted. The AG undertook a Shawcross Exercise and sought representations from various British officials regarding the case. The SFO Director wanted to continue the investigation. On January 25, 2006, the AG agreed that there was no impediment to continuing the investigation. The SFO sought Swiss banking records regarding agents of BAE. The SFO found reasonable grounds that another very senior Saudi official was the recipient of BAE payments. The SFO was poised to travel to Switzerland in connection with its Mutual Legal Assistance (MLA) request when the decision to discontinue the investigation was made;

The cable explicitly named Turki Bin Nasir, then the head of Saudi Arabia's Air Force and already by that point publicly tied to the bribery scheme. So these two must be others. I'm guessing that Bandar—whose receipt of \$1 billion via the scheme would be broken by the Guardian in June 2007—is the "very senior Saudi official" mentioned, not least because his involvement seems to have been exposed at the Swiss bank account stage of the investigation. So the only

question, then, is whether the Brits kept his name—as they did the “unnamed senior Saudi official”—secret from their counterparts at the OECD. It appears, however, they did.

In addition, the British review of the investigation far underplayed the amount involved here.